C.A Criminal Law - Gun Court (1) Illegal possession of firearm (2) - robbery with aggravation - Evidence - Identification - Written evidence of identification primarily emanated by image - Appeal allowed.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 7/92

Evidence
Criminal Practice

COR: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

REGINA

VS.

EARL JOHNSON

Paul Ashley for Appellant

Lloyd Hibbert, Deputy Director of Public Prosecutions for Crown

December 7, 1992 and March 22, 1993

CAREY P. (AG.):

The following are the reasons for our decision on 7th December when we treated the hearing of the application for leave to appeal as the hearing of the appeal which we allowed, quashing the conviction and setting aside the sentence. We also directed that a verdict and judgment of acquittal be entered.

The appellant was convicted in the High Court Division of the Gun Court in Clarendon before Wolfe J. (sitting alone) of the offences of illegal possession of a firearm and robbery with

aggravation. He was sentenced to concurrent terms of five years and six years imprisonment at hard labour.

The facts which gave rise to these charges are as follows: On the 10th April 1989 at about 2:00 p.m. the victim, Gregory Brown, a farmer, while standing on the road at Palmers Cross in Clarendon was accosted by a young man who in hailing him referred to him in some vulgar term. At the same time, another young man suddenly appeared, to enquire about Brown's abililty to hear, to which, Brown made him to understand that the term used was not his name. Then a third man, who was armed with a firearm came up. He issued the command to one of the others later identified as the appellant, "work" which was understood to mean that the appellant should search Brown. Eventually the victim was pulled off the road into a less public place where he was again searched and robbed of some $600.00. He was then pushed out from where he had been forced and eventually made his escape. He made a report to the May Pen Police Station and the same afternoon he returned to the locus in quo where he identified the appellant to the police.

The appellant explained that the alleged victim was selling ganja to a "Dread" who refused to pay the price. During the cross-examination of this witness, the defence suggested to him, which in the event he denied, that during the incident involving the ganja deal with the "Dread" the witness had thrown stones which had caught the appellant who had chased him away, and that the witness promised or threatened to return later. The defence version was in terms of the suggestion put to the victim.

Mr. Ashley obtained leave to argue a ground of appeal relating to the issue of identification but we did not think there was any merit in the arguments deployed. We were however concerned, that having regard to the peculiar facts and circumstances in the case, there appeared to be no evaluation in that regard.

Our examination of the learned judge's summation showed that while he did give an analysis of the evidence of the appellant's witness, Josephine Daley, whom he said "was brought here solely for the purpose of gaining acquittal for this accused man", no other evidence was subjected by him to the same evaluation. Having formed this thoroughly unfavourable view of the witness' evidence, in our opinion, he used that contagion to infect the appellant's story. It is true he did return to the prosecution story to see if it satisfied the burden of proof. That approach is always appropriate especially where the tribunal has two stark, mutually inconsistent stories with which to deal. But where the stories touch and converge, the possibilities arising therefrom have also to be considered. The summation given cannot be accounted a reasoned one, if that consideration cannot be discerned on any fair reading of it.

In this case, it seems to us, at the very least, a curious fact that a man who had participated in a bare-faced robbery in the middle of the day would sit around playing dominoes awaiting the arrival of the police about which he had been forewarned. That curious fact was not examined so far as the judge's summation went. That failure in our view also affects this Court's perception of the reason for the judge's satisfaction that the burden of proof on the prosecution has been satisfied.

For all these reasons, we concluded that the verdict could not stand.