

CRIMINAL LAW

*Gun and*

*(1) Illegal possession of firearm*

*(2) Robbery with*

*aggravation*

*HELD — Verdict*

*Whether verdict unreasonable:*

*plainly unreasonable — Appeal allowed — conviction quashed, sentence set aside — judgment of acquittal entered.*

JAMAICA

to case referred to.

IN THE COURT OF APPEAL

*comp.*

SUPREME COURT CRIMINAL APPEAL NO. 176/87

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

GEORGE TAYLOR

No appearance for the applicant

Miss A. McKain for the Crown

May 31, 1988

CAREY, J.A.:

The applicant, George Taylor, was convicted in the High Court Division of the Gun Court held in the parish of St. James on 29th of September, 1987, on charges of Illegal Possession of a firearm and Robbery with Aggravation. He was sentenced to terms of ten (10) years imprisonment at hard labour and five (5) years imprisonment at hard labour, respectively. He now applies for leave to appeal that conviction and the sentence imposed.

The short facts are that at about 8:15 on the morning of the 24th of June, 1987, Mrs. Patricia Robinson, the manager of a Meat and Poultry, West Gate in Montego Bay was on her way to work in her motor car when she came upon an obstruction along the way. A limb had been placed across the road and when she tried to get across that obstruction, the car stuck and then skidded. At about the same time, she observed two men,

2.

one on either side of the car. She identified this applicant as being the man on the right. Both men, she alleged, were armed with guns. She was robbed of her watch which she was constrained to hand over; her ring was taken away from her and money and other things. The men then made off. She was assisted by persons living about to effect a search in the neighbourhood. In fact, upon a call to her husband, a vehicle was obtained; a police vehicle either being non-existent or broken down with the police, a search was made along the road, and round about 11 o'clock in the morning, this applicant was seen at a bus stop where Mrs. Robinson pointed him out as being one of her assailants.

Insofar as the circumstances of identification are concerned, the robbery took place in broad daylight; the assailant and victim were in close proximity to each other and the victim estimated the duration of the incident at some seven (7) minutes.

The defence was an alibi. Up to 9 o'clock that morning, the applicant testified, he was at home and so was his father. His father who was called, confirmed his son's story that they were there certainly until 9 o'clock.

This matter has given us some concern because we note that in the learned trial judge's summation of the facts, she said this at page 73 of the record:

"I accept the father as a witness of truth but I know that he does not know what happened; he knows what happened afterwards."

We would mention that prior to that finding, she had made the following observation -

"The poor father came and said the son was there the morning. He was not asked and he couldn't tell me the definite specified hour what time. He said the shop was opened before 9 and closed after 9 before the incident. There was nothing untoward that

"should have alerted the father to the fact that the son was not there except what happened afterwards."

The question of time is, of course, in this case, of great importance; it is crucial. The victim stated that the incident took place at 8:15 in the morning. The father said the shop was closed at 9 and prior to and up to that time his son was there. The learned trial judge stated that she accepted him as a witness of truth. That being so, the inevitable conclusion and the inescapable conclusion was the defence of alibi had been established. The conclusion of guilt was inconsistent with her finding. Learned counsel for the Crown frankly conceded that the verdict could not be supported.

In our view, the verdict in this case is plainly unreasonable and for that reason we propose to treat the hearing of this application as the hearing of the appeal. The appeal will be allowed, the conviction quashed, the sentence set aside and a verdict and judgment of acquittal entered.