

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 17/07

**BEFORE: THE HON. MR. JUSTICE COOKE, J.A.
THE HON MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

CARLOS SOLOMON V. REGINA

Mr. Kenneth Ferguson, for the Appellant.

Miss Natalie Brooks for the Crown.

January 28, 2008

COOKE, J.A. (ORAL JUDGMENT)

1. Carlos Solomon was on the 8th of February, 2007, sentenced on 2 counts, one for illegal possession of firearm and the other robbery with aggravation for which he received 10 years and 20 years respectively. This trial took place in the Western Regional Gun Court in Montego Bay in the parish of St. James. Counsel for the appellant with commendable candour and recognition of the reality, indicated to the court that there is nothing which he could submit on behalf of the appellant. We unhesitantly agreed with his stance.

2. The bald facts are as follows. On the 17th of July, 2006 the virtual complainant Mr. Henderson was plying a taxi, at Market Street in Montego Bay. Across the road from his vehicle was the appellant Carlos Solomon. As is the

custom Mr. Henderson shouted out "Cornwall Court", which was to indicate the journey on which the taxi was about to embark. Passengers entered the car, four in all and the appellant sat in the front of the taxi beside the driver. When the taxi reached its destination Cornwall Court, the appellant seems to have had a change of mind or perhaps because of a preconceived strategy on his part, told the driver that he would wish to go to Albion which is an adjoining area and he wanted to see one "Ticka" who was "a sound man".

3. On their way to Albion against the opposition of the appellant the taxi driver took up another passenger. As the events unfolded it was not too difficult to realize why there was an opposition to taking on another passenger. In Albion what had been in the appellant's mind was brought into reality. He pulled a firearm. The other passenger fled for his life. Mr. Henderson was relieved of his cellular phone, cash and his motor vehicle. The virtual complainant made a report and the investigative process was set in trail.

4. On the 31st of October of that same year, in Montego Bay, at the Bank of Nova Scotia (B.N.S.) in the square, the virtual complainant spotted his assailant, contacted the authorities, and in due course the appellant was captured and placed in custody. He was charged and when cautioned he said that "it was a long time him know that man" that is, the virtual complainant. At the time of the trial the appellant gave sworn evidence that he did not know the

virtual complainant before and in any event he was in Stewart Town, which is a district in a neighbouring parish in Trelawny — a defence of alibi.

5. The central issue in this case was the question of visual identification. As such the learned trial judge had to demonstrate that he was aware of the judicial principles which were to be employed in determining this critical issue and also had to demonstrate that he applied those relevant and essential principles.

6. In this case the learned trial judge accepted that the complainant had been accustomed to seeing the appellant over a 10 year period, though hardly so, over the last 4 years.

- (i) There was evidence which was accepted that there was adequate lightening at Market Street.
- (ii) There was evidence of close proximity when they came face to face.
- (iii) There was evidence that the complainant and the appellant were in each others company for some time.
- (iv) There was evidence that on the trip up they sat side by side.
- (v) There was evidence that at the time of the robbery the roof light was on.
- (vi) The learned trial judge accepted that the appellant was no stranger to the complainant.

So there was adequacy of the factors which would go to test the reliability of the evidence of identification. The learned trial judge also addressed his mind to the credibility of the witness.

7. We are of the view that the approach of the learned trial judge was correct and the conclusion to which he arrived cannot be impeached. However, we would wish to note that the summing up was not blessed with elegance. It was not particularly well structured and it would be of great help to this court if the trial judges were to make a determined effort to properly structure their summing up.

9. However, on the totality of what we have before us the appeal is dismissed. The convictions and sentences are affirmed. Sentences are to commence on the 8th May, 2007.