

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 156/2006**

**BEFORE:           THE HON. MR. JUSTICE SMITH, J.A.  
                      THE HON. MRS. JUSTICE HARRIS, J.A.  
                      THE HON. MR. JUSTICE DUKHARAN, J.A.**

**RANDY TRAIL v R**

**Applicant unrepresented**

**Miss Maxine Ellis for the Crown**

**April 27, 2009**

**ORAL JUDGMENT**

**HARRIS, J.A.**

1.     The applicant, Randy Trail was on the August 23, 2006 convicted on 7 counts of an indictment. On count 1 he was charged with illegal possession of firearm, count 2 charged him with rape, on count 3 he was charged with abduction, on counts 4 to 5 he was charged with robbery with aggravation, on count 6 he was charged with indecent assault and unlawful wounding on count 2. He was sentenced to a term of imprisonment of 7 years on count 1, 15 years on counts 2 to 5, 5 years on count 6 and 2 years on count 7. It was ordered that the sentences should run concurrently.

2. The applicant made an application to a single judge for leave to appeal against his convictions and sentences; the application was unsuccessful. He now renews this before us. The evidence on which the Crown's case relies emanated from its two main witnesses, Mr. Germane Champagnie and CL the virtual complainants.

3. At about 7:15 on the night of July 26 2004, Mr. Champagnie and CL were at CL's gate, Mr. Champagnie having transported her home. They both alighted from Mr. Champagnie's car and were standing on either side of it; they were engaged in a conversation. While there, two masked men, one of whom was the applicant, appeared. The applicant placed the gun at Mr. Champagnie's head and ordered him to enter the car. He then pushed him on the driver's seat. He (the applicant) entered the car and sat on Mr. Champagnie's lap. In the meantime, the other man pushed CL into the car and sat on the front passenger seat beside her. The applicant then drove off with the front door of the car on the driver's side slightly ajar, with Mr. Champagnie's feet hanging from the car. A struggle ensued between Mr. Champagnie and the applicant. He, the applicant, hit Mr. Champagnie on his head causing a wound. The applicant then drove on. After proceeding for a short while, he stopped and Mr. Champagnie and CL were placed in the trunk of the car by the men. Thereafter, the applicant continued his journey, stopping once again at which time he demanded money from the complainants. The men took \$18,400.00 from Mr. Champagnie, and

\$200.00 in cheque and coins as well as other articles from CL's handbag. They also took the cellular telephones of both complainants.

4. With the complainants still in the trunk of the car, they sped away and yet made another stop at an area off the main road. There they opened the trunk of the car and ordered CL to remove her clothing. She obeyed, they then pulled her from the car by her hair. Thereafter they ordered Mr. Champagnie to remove his shirt and ordered CL to use the shirt to cover her head. Both Mr. Champagnie and CL obeyed these commands. The men, leaving Mr. Champagnie locked in the trunk of the car, took CL a little way off. There the applicant pushed her to the ground and then placed his penis in her mouth; this was also done by the other man. Both men then had sexual intercourse with her.

5. About a half an hour later both men returned to the car, taking CL with them. She was again placed in the trunk of the car with Mr. Champagnie. The men drove away, made a brief stop, then continued, then finally stopped, opened the trunk of the car and threw some liquid from a bottle on both complainants. Both described the liquid as one emitting a pungent odour. CL complained that this caused her to experience a burning sensation to her skin. The men then threatened to kill them. CL pleaded with them not to kill her. They then released her from the trunk of the car, but still kept Mr. Champagnie there. They ignited the front of the car and Mr. Champagnie pleaded with them

to permit him to come out of the vehicle. They finally acceded to his request. The car then became fully engulfed in flames.

6. Soon after emerging from the trunk of the car, Mr. Champagnie ran away. He was pursued by the men but was able to escape. He later made a report to the police. CL said that she had known the applicant previously, and that she had known his name, and that he had a bulge on his face. She said she knew him as "goose" but she was unable to identify him. However, there was evidence from Mr. Champagnie revealing that he had an opportunity to recognise the applicant at the time when he (Mr. Champagnie) came out of the car, that is, after it had been set ablaze. At that time, the applicant had removed his mask and was approximately 5 to 6 feet away from him. He testified that he had known the applicant as "goose" having met him a week before the incident, at which time they had spent about three hours in a swimming pool at a villa in Mamee Bay. They both participated in an activity in the pool. They also spent time engaging in discussions and in particular a discussion about repairing Mr. Champagnie's car, he, Mr. Champagnie having informed the applicant that the gears to his car were not in proper working order. The applicant had also told Mr. Champagnie that he was a mechanic.

7. Mr. Champagnie said that on the day he saw the applicant at the villa he had a bulge on his left jaw, and he said on the night of the incident, the protrusion was still there. He stated that a minute and a half had elapsed

between his coming out of the trunk of the car and running away. He said that at that time he was able to see the applicant's face. He also related that his ability to see the face of the applicant was aided by the light from the motor car which was ablaze. The applicant gave sworn testimony; he acknowledged that he knew CL and Mr. Champagnie. He admitted that he had met Mr. Champagnie at the Guest House in Mamee Bay, and that they had had discussions about repairs to Mr. Champagnie's car. It was also admitted by him that at the time of the encounter, Mr. Champagnie and himself spent a considerable time in the swimming pool at the guest house. It was also his evidence that he was living in Montego Bay from February to July and that on July 24 2002, he was at Hog Head Lane in Montego Bay and he remained in Montego Bay for the entire day.

8. The learned trial judge carried out his careful analytic review of the evidence of the prosecution witnesses and that of the appellant. He found Mr. Champagnie and CL to be credible witnesses, but did not fail to recognise that to a large extent, the crown's case was dependent on whether the person who the witness Champagnie said was the applicant had been correctly identified. He applied the *Turnbull* principle and gave the appropriate warning by reminding himself of the need for caution and the reason for the caution. He did not fail to take into account CL's inability to identify the applicant, and accordingly placed no reliance on her evidence in that regard. He specifically made reference to the fact that the holding of an identification parade would have been unnecessary for

the reason that the applicant had been known to Mr. Champagnie prior to the date of the incident.

9. There was sufficient evidence before the learned trial judge for him to have found as he had done that Mr. Champagnie had ample opportunity to have recognised the applicant as one of the men who committed the offences, and that he was not mistaken. The defence of alibi which was raised by the applicant had also been considered by the learned trial judge and he rightly rejected this defence. He properly addressed all issues arising in the case. There is nothing which would warrant this court to disturb his findings and conclusion.

10. So far as sentence is concerned, the applicant has had three previous convictions, one for larceny, one for unlawful possession of property and one for receiving stolen goods. The sentences imposed on all three counts fall within the range of sentences for each of the offences for which he had been convicted. In all the circumstances, none of the sentences can be said to be manifestly excessive. The application for leave to appeal against convictions and sentences is refused. Sentences are to commence on the 23<sup>rd</sup> November 2006.