

AMES

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO: 186/2006**

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.  
THE HON. MR. JUSTICE HARRISON, J.A.  
THE HON. MISS JUSTICE G. SMITH J.A. (Ag.)**

**RICARDO WRIGHT v R**

**Mr. L. Jack Hines for the applicant/appellant**

**Mr. Dirk Harrison for the Crown**

**November 6, 2008**

**ORAL JUDGMENT**

**SMITH, J.A.**

The applicant/appellant, Ricardo Wright was convicted in the High Court Division of the Gun Court on the 12<sup>th</sup> October 2006. The indictment contained four counts. These are:

- (1) illegal possession of firearm;
- (2) abduction;
- (3) robbery with aggravation; and
- (4) Rape.

He pleaded not guilty to all four counts. At the end of the case he was found guilty on counts 1, 2 and 4 and acquitted on count 3 which charged him with robbery with aggravation. On counts 1 and 2 he was sentenced to 12 years

imprisonment at hard labour and on count 4 to 25 years imprisonment at hard labour.

The application for leave to appeal went before a single judge on the 8<sup>th</sup> September 2008 and the learned judge refused leave to appeal in respect of the conviction, but granted leave against sentence.

The matter came before us on the 3<sup>rd</sup> November and we thought the assistance of counsel would be helpful. We therefore asked Mr. Hines, who was in court on another matter, to assist the court. He graciously agreed. The matter was set for the 6<sup>th</sup> November when Mr. Hines stated that having gone through the transcript carefully, he did not see anything that he could urge on the court in respect of sentence. However, although he was not urging anything in particular as far as the conviction is concerned, he went through the transcript with the court in relation to the defence of the applicant. We agreed that the directions of the learned Chief Justice were adequate.

The facts as briefly set out by the learned Chief Justice in the transcript are stated as follows page 108:

"The virtual complainant was a teacher in St. Mary. In 2004, she was a student and lived on the campus of the Edna Manley College of Visual and Performing Arts. On the 2<sup>nd</sup> May, 2004, at about 2:00 o'clock in the morning, she was walking along the Oxford Road in the company of two colleague students. They were returning from a session at the Quad. Upon reaching the vicinity of Sterling Motors on Oxford Road she felt someone hold her around her waist from behind and

that person pulled her into a car. Her colleagues tried to rescue her, but to no avail. She said that she was taken into the car, her face was covered and she was not able to say what was used to cover her face. Immediately her necklace was taken from her neck and earrings were removed from her ears. One of the persons pushed his hand into her blouse and fondled her and another pushed hands between her legs and indecently assaulted her.

She was sitting in the car and the persons who were doing this to her they were seated beside her. They questioned her as to where she was coming from and requested her to show her identification card. The car kept driving on and came to a stop, she was taken out of the car and the cover was removed from her face she was taken into a room and was ordered to undress.

There was no light in the room and she was able to see by the reflection of the light coming from outside. She was not able to see the faces of those persons in the room with her. One of the men came before her and ordered her to suck his penis which she did and another man came from behind and started to have sex with her. She went on to describe the ordeal and how she was humiliated by these men. She was sodomized by these men and she gave the graphic details as to what took place. After this ordeal she was traumatised she was taken outside by this tall man who was seeking to get transportation for her. About three (3) days after she was taken to this place and was able to describe the place and pointed out the appellant as one of the persons who sexually assaulted her. The appellant ran was chased and held by police."

On page 110 of the transcript the learned Chief Justice in his summing stated that:

"She said it was a gun because she was seeing the nozzle, she said she had seen guns before, she had seen police officers with gun looking like the one the

man had, after he hit her with the gun in her head she obeyed and did what he commanded her to do."

Having satisfied himself as to the fact that there was a gun, the Chief Justice stated that "the only issue in this case is the question of identity, there is absolutely no contest in relation to whether or not the complainant was raped, whether or not the person or persons who committed the rape were armed with a firearm or whether or not she was robbed and abducted there was no challenge. There was no suggestion put to her that she was not abducted. That there was no gun that sexual intercourse was not engaged without her consent and that she was robbed of her chain.

The applicant in his unsworn statement said, "I was not there I didn't participate in what happened" so the Chief Justice said the question is the credibility of the complainant and the identification evidence. He then went on give himself the full **Turnbull** warning and then later on at page 105 he described the incident in this way:

"It was a most traumatic experience for [the complainant]. Some ten or more men exposed her to [what I consider the vilest attack upon a woman that I have been exposed to in my many many years as a lawyer and a Judge. Men as she- said were just pouring into the building and -they were having sexual intercourse with her from behind, while others forced her to indulge in oral sex. Some even came more than once for her to perform oral sex. it must have been a traumatic experience for this young lady. I mention the trauma of the occasion. Not that I am sympathising with her ..."

The learned Chief Justice mentioned aspects of her evidence which convinced him that the complainant was a witness of truth. He went on to consider the statement of the appellant. At the end the learned Chief Justice entertained no doubt of the guilt of the accused man.

We agree entirely with counsel that 'by no stretch of the imagination can the sentence of 25 years on count 4 be described as manifestly excessive in the circumstances of this case. Leave to appeal is refused and the sentences are affirmed. Sentences are to commence as of the 12th January 2007.

