

THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 5/2017

IND. 57/2016

C#2568/2016

BETWEEN:

Jonathan Welcome

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

BEFORE:

**The Rt. Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal**

Date of Hearing: Wednesday, 1st November 2017

Appearances: Mr Gregory Burke of McGrath Tonner for Appellant
Mr. Patrick Moran for DPP

JUDGMENT

**Revised from transcript of oral judgment 1st November 2017 and Approved
Released 18 December 2017**

Application for an extension of time and leave to appeal against conviction.

Sir Goldring, President:

1. On the 14th of December 2016, the applicant was convicted by a jury of possessing an imitation firearm with intent to resist arrest following a two-day trial in the Grand Court. The trial judge, the Honourable Justice Dobbs, subsequently sentenced him to six years' imprisonment.



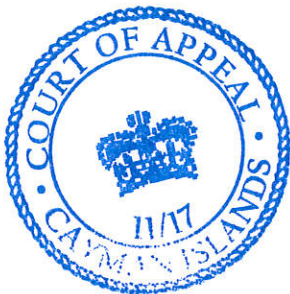
2. His present application is for an extension of time and leave to appeal against that conviction. The applicant himself has chosen not to attend. Mr. Burke, who has Legal Aid to advise him, has attended. We have indicated to him that we propose to deal with the appeal.

3. The issue at trial was identification. The Crown's case was that in the early hours of the morning of Saturday 17 April, the applicant with two others was walking in George Town. Two police officers were on patrol in a vehicle. They were Police Constable Wolliston and Police Sergeant McKay. PC Wolliston said he recognised the applicant when some 20 feet away from him. He got out of the vehicle, it having stopped. He told the applicant he needed to talk to him. They were within two to three feet of each other, according to Sergeant McKay. They went towards the back of the vehicle. There was a short conversation. They were described then as being less than five feet apart. The street lighting was good. PC Wolliston's view was unobstructed. Sergeant McKay said he saw the man (said to be the applicant) pull up his shirt, grip a handgun and run off. Both officers chased him. He was pointing what seemed to be a gun at them. He didn't drop it when asked to. He also pointed it at a man and a woman who were nearby. He escaped and was ultimately arrested on 22 April 2016, hiding in an attic of a house in George Town. When cautioned he said he had done nothing wrong. When interviewed he made no comment.

4. The agreed evidence at trial was that PC Wolliston had known the applicant since 2010. Their most recent meeting had been some five weeks before the incident in question. On that occasion, they spoke face to face for some ten minutes. At trial the applicant said it was not him at the scene. He was at home alone at the time. The issue, therefore, was the correctness of PC Wolliston's identification, or to be precise, recognition.

5. The applicant settled his own grounds of appeal. They overlap and come to this:

- i. Firstly, he submitted that the investigation was poor. There was a CCTV camera in the area. Its footage should have been obtained and enhanced. Had it been, his innocence would have been established.
 - ii. Secondly, the identification was poor. PC Wolliston was some 25 feet behind the applicant when he purported to recognise him.
 - iii. Thirdly, it is said that evidence was fabricated.
6. None of those grounds can be sustained. There was no criticism of the investigation at trial. Some CCTV footage was seized and disclosed with two viewing summaries to the defence. It showed two unknown persons running. It was never suggested by the defence it should be enhanced. They never sought to do so themselves.
7. We have set out the identification evidence. In short, it was a purported recognition in good light by someone who knew the applicant well. Furthermore, a careful Turnbull direction was given by the judge. Fabrication of evidence, seemingly by PC Wolliston, was never suggested at trial. No doubt had it been, the applicant's previous convictions for two offences of robbery and two offences of possessing an imitation firearm, would have been adduced.
8. In the circumstances, there are no arguable grounds of appeal against conviction. We therefore refuse to extend time for leave to appeal.



The Rt. Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal