J A M A I C A

IN THE COURT OF APPEAL
SUPREME COURT CRIMINAL APPEAL NO. 54/75

B E F O R E: The Hon. Mr. Justice Hercules
The Hon. Mr. Justice Robinson
The Hon. Mr. Justice Watkins

D O N A L D D E E R - Robbery with Aggravation

Mr. R. Small for the Applicant
Mr. W. Morris for the Crown

30th October, 1975.

HERCULES, J.A.,

The applicant in this matter was convicted in the Home Circuit Court on the 30th of January, 1975, before Mr. Justice Melville and a jury on two counts of robbery with aggravation.

In view of the order we propose to make, we will refrain from setting out the evidence in detail. Suffice it to say, as my learned brother Watkins was just pointing out to learned Attorney for the Crown, the case went to the jury on the basis of:-

(1) Evidence of the identification of the applicant by witnesses for the crown and

(2) an uncautioned statement which Sergeant Simpson stated the applicant made to him, namely, "Edward carry me go there".

We are not in a position to say whether the jury convicted on both (1) and (2) or on either (1) or (2). There is, in any event, the distinct possibility that they may very well have convicted on (2) alone.

As regards (2) at page 6 of the summing-up the learned Trial Judge directed as follows:

"..When we come to Sergeant Simpson's evidence, if you believe that he did tell the sergeant what the sergeant is saying that he said and when he told him that.....

that he was telling the truth, then even without the question of identity in the case you can convict him on what the sergeant is saying alone, plus if you have all of them together you may think that the crown's case is overwhelming".

Then on pages 24 to 25 those directions were reinforced as follows:

"The last witness, you remember, was Detective Simpson, Bevan Simpson. He got the report at the Hunt's Bay Station on the 25th of April. By the time he got to the Paper Products Company other policemen were there. But remember he was the man who was carrying out the investigations. He spoke to Mr. Newman and on the 3rd of May, that is about eight days after - five or about a week after - eight days after - he goes to the Central Police Station where he sees this accused man. This is what he said to him. He told him that he was a Detective Sergeant and he had received information that he, the accused, robbed the payroll of the West Indies Paper Products. The reply, according to him that the accused gave was, "Edward carry me go there". What does that mean, members of the Jury? Well, first, what you have to decide is, did he tell Simpson that? Now, you remember when the sergeant was cross-examined he was not asked one word about this you know, not one word. He is not challenged about it. The accused has said nothing about it. So, is it the truth? Did he tell Simpson that? Well, if he did, Mr. Foreman and members of the jury, is it the truth? It is not just why, did he say that? Secondly, if he did, is it the truth? Well, if you accept that he did it and it is the truth, that Edward carried him there and he was taking part in the robbery, then, members of the jury, you have to

convict.....

> convict him without any other evidence, or if you reject this you have the question of the identity. If you accept the identity by any of the witnesses apart from Miss Lyn, any of the other three, you are entitled to find him guilty."

According to the evidence, the applicant and another perpetrated these crimes. The statement "Edward carry me go there", is obviously pregnant with inferences. There were no directions whatsoever throughout the summing-up as to how the jury should deal with inferences. The Learned Trial Judge merely told them, on page 4, that they are entitled to draw inferences. Could it be inferred that the applicant meant, for instance, that Edward, having carried him there he (applicant) took part in the robbery? Could it not also be inferred that although Edward carried the applicant there the applicant did not participate in the commission of the offences? This is purely on the assumption that the jury, as they could well have done, made use of that statement as a basis for convicting the applicant.

In our view, the directions of the Learned Trial Judge on that statement called for a great deal more elucidation. Having regard to the manner in which the case was left to the jury, it was wrong to tell the jury that they could convict and even that they had to convict on the statement made to Sergeant Simpson, simpliciter. The failure to elucidate was a non-direction, amounting, in our view, to a serious mis-direction and may have led to a miscarriage of justice. This was the ground of Mr. Small's complaint. Clearly it is of substance and we, therefore, grant the application for leave to appeal. We treat the hearing of the application as the hearing of the appeal and allow the appeal. The conviction is quashed and the sentence is set aside.

In the interest of justice we order a new trial in the Home Circuit Court - the appellant meanwhile, to remain in custody.