

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 137/91

BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

REGINA vs. IAN DYCE

Bryan Clarke for the applicant

Miss Carol Malcolm, Assistant Director of
Public Prosecutions, for the Crown

July 4 and 29, 1994

WOLFE, J.A.:

Ian Dyce was indicted in the Portland Circuit Court for the offence of rape. He was tried before Smith, J. sitting with a jury, on November 19 and 20, 1991, convicted and sentenced to ten years imprisonment at hard labour.

His application for leave to appeal was refused by a single judge on May 5, 1994. In refusing leave, the single judge said:

" The issue in the case was that of identification of the applicant. The learned trial judge gave the jury careful directions as to how to approach the evidence of the complainant who purported to identify the applicant by the light of the 'full moon'. The learned trial judge directed the jury as to the necessity of approaching that evidence with caution and the reason for doing so. In addition, there was evidence of an admission by the applicant, which if accepted by the jury after the correct directions as to how to approach it, would have provided corroboration for the complainant's identification of the applicant. There is no merit to the application which is accordingly refused."

The applicant continued his quest by seeking to obtain leave from the full court as is provided for in law. When the matter came before us, his counsel confirmed the ruling of the single judge and with admirable candour, advised the court that

After a careful examination of the record he could find nothing to urge on behalf of the applicant. We too are of that view.

Suffice it to say that the victim, a young girl of twelve years of age, was kidnapped and brutally assaulted sexually by the applicant and his crony on July 4, 1991. Both men were known to her before. Dr. Bloomfield who examined her, after the ordeal, found a longitudinal tear on the posterior walls of the introitus. There were a number of contusions at the vulva. The hymen was not intact.

The applicant was arrested on July 26, 1991, and upon being cautioned after arrest said, "Yes, mi have sex with her, but her people dem plan to compromise it."

The use of these words were not denied by the applicant when he gave evidence on oath but he attempted to explain them away by saying he was referring to a different incident which involved one Dionne.

After a most careful summing-up in which all the issues were fairly left to the jury, the inevitable verdict was arrived at. This application is totally devoid of merit and is accordingly refused. The sentence will commence as from February 20, 1992.