[2020] JMCA Crim 11

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 50/2010

BEFORE: **THE HON MRS JUSTICE McDONALD-BISHOP JA**
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE P WILLIAMS JA

LINTON MITCHELL v R

Hugh Wilson for the appellant

Miss Patrice Hickson for the Crown

30 November, 2 December 2016 and 3 April 2020

P WILLIAMS JA

[1] On 2 March 2010, after a trial in the Home Circuit Court before Cole-Smith J and a jury, Mr Linton Mitchell, the appellant, was convicted on an indictment containing two counts, both for the offence of kidnapping. On 16 April 2010, he was sentenced to two years' imprisonment at hard labour on each count, which was suspended for 18 months.

[2] The appellant made an application for leave to appeal conviction and sentence on 27 April 2010. On 20 May 2012, a single judge of this court considered his

application, based on the transcript of the summation only, and opined that there would be some benefit gained by having a look at the transcript of the evidence in this matter, given the "strange circumstances". Further, the judge of appeal observed that the learned trial judge, while dealing with sentence, made a statement which casts doubt on whether this was really a genuine case of kidnapping. Leave to appeal was granted.

[3] The transcript of the notes of evidence in the matter was not received by this court until 29 October 2015. On 30 November and 2 December 2016, we heard and considered the submissions from counsel and made the following orders:

> "1. Appeal is dismissed.
>
> 2. Conviction and sentence affirmed.
>
> 3. Sentence to commence 16 April 2010."

[4] We promised then to reduce the reasons for our decision to writing. This has taken far longer to do than was intended and we apologise that the reasons are only now being delivered.

Background

[5] The basic factual background, leading to the charges which were laid against the appellant, is not in dispute. Two complainants, NJ-C and CP-H, gave evidence for the Crown. They were both students attending the Shortwood Teachers' College. On the afternoon of 1 May 2008, they boarded a taxi being driven by the appellant in Half Way Tree. Their destination was the college. There were two other females in the taxi.

[6] An argument developed between the appellant and his passengers en route to the college. Eventually, as the vehicle approached the college, a request was made of the appellant to stop. He ignored the request, drove past the college and continued driving in a direction away from the college.

[7] The complainants started screaming and sought to attract the attention of other passing motorists. A motorist, who was a licensed firearm holder, saw what the women were doing. He intercepted the appellant's vehicle which was eventually forced to come to a stop. Following a brief altercation between the motorist and the appellant, the appellant was shot and injured. The appellant was paralyzed as a result of the injuries he received.

The case for the Crown

[8] The first complainant, NJ-C, testified that early in the journey, the manner in which the appellant was driving led one of the passengers to tell him that he was driving recklessly. She described his response as not being "very kind", with him asserting that "nobody nuh tell [him] how fi drive".

[9] After the passenger spoke to him further about his manner of driving, NJ-C said the appellant began to drive "even worst [sic] than he was before". She at that point spoke up on behalf of the passengers resulting in the appellant telling her some 'bad words', so she 'shut up'. She shortly thereafter demanded that he let her out. The appellant stopped the vehicle, came and opened the door but as she was exiting the

vehicle, one of the other passengers advised her that it would be difficult for her to get another taxi from that location.

[10] The appellant then said to them "oonuh come out" but nobody answered and nobody moved. The appellant drove off and NJ-C described how he was "driving in and out, swerving from behind vehicles and in front of vehicles". He also drove through a red light and said, "a dead oonuh fi dead, a dead oonuh gal fi dead". NJ-C at this point began to feel fearful.

[11] As they proceeded on the road approaching the college, NJ-C said the appellant continued to curse 'bad words' and repeatedly said "a dead wi fi dead". NJ-C and the others began putting their fares together and one passenger at the back took the money from the others sitting there.

[12] At a point close to the college, NJ-C asked the driver to stop but he continued driving. A little before they reached the gate of the college, NJ-C, along with the others, asked the appellant to let them out but he kept driving at the same speed. He eventually drove past the gate and NJ-C began screaming. She opened the door thinking she could jump out. The driver said, "jump out nuh gal as, I can run the car over you".

[13] NJ-C saw the passenger who was sitting in the other corner at the back of the car also open her door and started screaming. NJ-C hoped to alert motorists coming from the opposite direction that something was wrong by pushing her door in and out. She also was hoping that the door would collide with the other vehicles coming in the

opposite direction forcing the appellant to stop. The appellant, however, veered to avoid a collision.

[14] NJ-C eventually noticed a car that had passed in the opposite direction, while she was pushing the door in and out, pursuing the taxi. It eventually blocked the path of the taxi and the driver came from this vehicle, armed with a firearm, and ordered the appellant out of the taxi. The appellant started reversing but was blocked by another vehicle and the taxi was then forced to stop.

[15] Under cross-examination, NJ-C denied that she had started to quarrel with the appellant from early in the journey. When pressed and confronted with excerpts from her statement to the police, she admitted that early in the journey, she had, in fact, said to the appellant "Driver, as a driver to another driver ediat ting dat". To this, the appellant had responded "nuff a unnuh a gwaan like unnuh a driver an unnuh a no driver. If unnuh no waan drive wid me, unnuh come out of the car".

[16] Under cross-examination, she acknowledged that at the point where she had first indicated she wanted to get out of the taxi, the appellant had requested that she pay the fare. She, however, insisted that he did not request this fare more than once. However, when confronted by what she had told the police, she acknowledged that the appellant at another point had stopped the car and started demanding money from them, and then he drove off while continuing to ask them for money. She accepted that she had told the police that as the appellant approached the gate of the college, he continuously said, "[u]nnu pay me mi money".

[17] NJ-C denied that the appellant had stopped at the gate of the college and demanded the fare to which she had responded, "mi nah pay yuh no fare because yuh too disrespectful". She further denied that the appellant had indicated to her or the other passengers that he was proceeding to the police post at the residence of the former Prime Minister to have police officers there settle the disagreement.

[18] CP-H, who was the other passenger in the appellant's taxi who testified on behalf of the Crown, gave evidence that was largely supportive of the version given by NJ-C. She described the appellant's manner of driving as being like a madman, in that he was driving fast and going from side to side.

[19] She testified that, at one point in the journey, the appellant had stopped his car and said "[g]al tek yuh what's it not out of mi car", using a 'bad word'. She responded "I am a Christian. I am a child of God". She also said to him "[t]he blood of Jesus is against you" and he started 'to trace' her, but she did not answer him.

[20] She said that, at the point near to the gate of the college when he had demanded the fares, she took $100.00 from her bag and held it in her hand. She was sitting in the front passenger seat next to the appellant. She glanced around to the back of the taxi and saw that one passenger had collected the fares from all the passengers sitting there.

[21] She said after they had passed the gate of the school and NJ-C started screaming, she said to the appellant "si mi hundred dollars in my hand here to pay you". She explained that after the appellant drove past the gate, she felt hopeless.

[22] Under cross-examination, she said that the driver did not ask for his fare until they reached the school. While he was driving away from the school, she said they said to him "you think we are not going to pay our fare, see our fare in our hands".

The case for the defence

[23] The appellant gave sworn evidence. He testified that after the journey had commenced, he executed a manoeuvre after which one of the passengers had said "driver a kill you want kill we off". He responded, "no one killing no one today… as a matter of fact I response for safety not comfort".

[24] The appellant explained that one passenger said he was 'feisty' and asked to be let out of the car. He stopped and opened her door. He explained to her that she would have to pay her full fare. Before she could respond another passenger told her of the difficulty of getting another vehicle from that location so she remained in the car and he continued the journey.

[25] He heard the ladies talking amongst themselves and one of the ladies cried out "the blood of Jesus is on you". He laughed and said, "Miss you know it nuh really well, bawling out the Lord's name in vain isn't necessary you know, a same so the teacher's them up a Shortwood call down duppy on dem and a run dem down up deh".

[26] The appellant said that after saying this, one of the ladies "blurt out again". She accused him of being 'feisty' along with other things. The appellant continued driving. He stopped the vehicle at one point and said, "Miss if you don't like the way I tek the

corner a little while or what I just say please come out of the car for me, please". No one responded, so he drove off.

[27] As the journey continued, the complainants continued to say things about him, so the appellant pulled over again and stopped. This time, he said "Miss, if you a guh complain and call mi names, seh things you don't know about mi why not come off the car here and let it be in peace, please come off a the car now nuh or …. or forever hold you peace meaning stop criticise me and stop talk things, you don't know me". Again, no one responded so the appellant continued driving. Before he moved off, he asked for the fares.

[28] The appellant said when he asked for the fares no one answered him. However, the complainants started mumbling again, so he repeated his request for the fares. He said, "no fare was coming".

[29] As the appellant approached the college, he knew he would have to stop and let them off so he again asked for the fares. The appellant thought that because of the argument, if anyone came out and did not pay him, there was no guarantee of him getting paid.

[30] The appellant said when he stopped by the college, he looked in the mirror and said, "fare please". The lady sitting behind him leaned forward and said "my [sic] nah pay yuh, yuh too feisty". To this he responded, "then alright, mi a guh up a Mr Patterson gate guh mek the police dem up a Mr Patterson gate deal with this".

[31] He then drove off with the hope that she would agree to pay the fare and failing that his intention was to deal with the matter in the best way by getting the intervention of a policeman. He said he saw the lady turn her head and say "woi, woi, help, help", but this was "like a humour to him".

[32] Eventually, while heading towards the police post, he was forced to stop by another vehicle, and he described the circumstances leading to his being shot.

[33] The appellant said that at no time did he threaten his passengers or make any sexual advances to any of them.

[34] Under cross-examination, the appellant denied the version the complainants had presented to the court. Significantly, he denied cursing bad words or quarrelling with any of them. He maintained that none of the passengers offered him any fare. He insisted that he did, in fact, stop at the college gate.

The appeal

[35] Mr Wilson sought and was granted permission to abandon the original grounds of appeal and to argue the following three supplemental grounds:

> "(1) The learned trial judge, in summing up to the jury, failed to identify the relevant material facts in support of each of the elements of common law kidnapping and as a consequence thereof the jury was deprived of any assistance as to how they should assess the evidence.
>
> (2) The learned trial judge erred in law in failing to withdraw the case from the jury on the ground that facts [sic] did not constitute or disclose the offence of common law kidnapping.

> (3) The learned trial judge erred in law in failing to sufficiently direct the jury on the mental element of common law kidnapping."

The appellant's submissions

Ground one

[36] It was Mr Wilson's submission that, although the learned trial judge substantially rehearsed the evidence of each eyewitness, she did not provide the jury with any guidance or assistance as to how they should assess the evidence against the background of the definition of kidnapping given.

[37] Counsel submitted that the learned trial judge should have directed the jury that the onus was on the prosecution to prove each element of kidnapping beyond a reasonable doubt and identify the relevant facts which supported or disproved each element.

[38] Further, Mr Wilson contended that the jury was not provided with any directions on the facts in support of the element of asportation. No guidance was given, he said, as to when asportation occurred, what distance of travel or movement would be necessary to constitute asportation, and whether the movement increased the risk of injury to the passengers.

[39] Counsel also complained that the learned trial judge did not properly or adequately address the issues of force or fraud, consent and lawful excuse. These important elements, he submitted, should have been brought to the attention of the

jury for them to determine whether the prosecution had proven its case to their satisfaction.

[40] Counsel submitted that, without the learned trial judge's guidance on these matters, the jury might have formed the view that kidnapping occurred when the appellant took the alternative route, coupled with the events that unfolded in the taxi during the journey to the college.

Ground two

[41] In support of ground two, Counsel submitted that there was an insufficiency of evidence to support the offence of common law kidnapping. He contended that the evidence led by the prosecution disclosed a case of dangerous or reckless driving and, therefore, the taking or carrying away was merely incidental to the dangerous or reckless driving. Counsel noted instances in the evidence of the complainants where they described the appellant's driving as reckless and dangerous. That, he said, supported his contention.

Ground three

[42] Mr Wilson complained under this ground that the direction given by the learned trial judge on the issue of what constitutes the offence of kidnapping was fundamentally flawed, confusing and inappropriate. Counsel submitted that the mental element of kidnapping is intention or **Cunningham** recklessness and he referred to **R v Hutchins** [1988] Crim L R 379 and **James** (1997) The Times, 2 October 1997, in support of this submission.

[43] Counsel further submitted that, in the instant case, the question is not what the appellant did or what inferences can be drawn from what he did, but what was his intention in carrying away his passengers from the place they wished to be. In view of the appellant's express intentions or purpose, it cannot be said, counsel submitted, that the appellant committed the offence of kidnapping, as the requisite element of *mens rea* was absent.

The respondent's submissions

Ground one

[44] Miss Hickson submitted, on behalf of the Crown, that it was clear from the learned trial judge's summation that she addressed her mind to the requirements of the offence of kidnapping and, based on the evidence as recounted in the summation, the offence was made out.

[45] It was Crown Counsel's submission that the learned trial judge's summation was not deficient in any respect. She highlighted those sections of the learned trial judge's summation relating to the directions on the burden and standard of proof as well as her directions on asportation and the evidence in support of this. She argued that there was no need for the learned trial judge to have given any further guidance as to the distance travelled in that the learned trial judge made it clear, at every opportunity, that the asportation took place at the point when the appellant drove past the complainants' stop at Shortwood Teacher’s College.

[46] With respect to the issue of force, fraud or consent, Miss Hickson submitted that it is not a part of the law of the offence of kidnapping that the degree of constraint used to deprive the passengers of their liberty or whether they were, in fact, deprived of their liberty, must be taken into account. Crown Counsel submitted that this rule applies to false imprisonment and, therefore, the learned trial judge did not err in law in not instructing the jury that this was an element of the offence on which they had to deliberate. Further, counsel submitted, the fact of a speeding motor vehicle and the threat of being run over by the driver of that vehicle, if there was an attempt to jump out, were demonstrative of sufficient restraint.

Ground two

[47] In response to this ground, Miss Hickson submitted that at the point of a no case submission, a trial judge is assessing the evidence to determine if there is sufficient evidence to call upon the accused to answer. The trial judge is entitled to come to a determination at this stage to stop the trial if there is insufficient evidence to continue, if the elements of the offence are not made out or if the evidence is so tenuous that a properly directed jury could not return a verdict of guilty to the offence.

[48] Crown Counsel submitted that this was clearly not the case in this matter. She said that this case was one that turned on the issue of credibility, given the manner in which the incident is alleged to have unfolded. All issues of credibility are to be left to the jury, so the learned trial judge was entirely within her remit to call upon the appellant to answer the charge laid.

[49] Crown Counsel further contended that although the manner of driving of the appellant on the date of the incident constituted dangerous and reckless driving, the offence of kidnapping was not merely incidental thereto. She contended that on a consideration of the evidence, it would be more plausible to argue that the careless and reckless driving was incidental to the offence of kidnapping.

Ground three

[50] Miss Hickson submitted in response to this ground, that the summation of the learned trial judge was without fault. She submitted that the jury was directed on the law and the evidence was recounted to them. The learned trial judge, she said, was careful to point out the requisite mens rea. She noted excerpts in the summation where she said that the learned trial judge appropriately addressed the issue.

[51] She posited that the offence in this case was committed by the fact that the appellant did not stop to let off the complainants at their destination when they requested to disembark his vehicle. The fact that he wanted to take them to the police post at the former Prime Minister's residence is not a defence as he knew they were not consenting to be taken past the gate of the school where they desired to disembark or he was reckless as to whether they were consenting or not. She too referred to **R v Hutchins**, which she said supported her submissions in some respects.

[52] The situation was aggravated, Crown Counsel contended, by the fact that the appellant did not stop of his own volition. She pointed out that, after he was intercepted by the licensed firearm holder who fired warning shots for him to stop, the

appellant tried to reverse instead of seeking the assistance of the licensed firearm holder to resolve the issue or to transport the complainants to the police post as he insisted he intended to do.

Law & analysis

Ground one:
The learned trial judge, in summing up to the jury, failed to identify the relevant material facts in support of each of the elements of common law kidnapping and as a consequence thereof the jury was deprived of any assistance as to how they should assess the evidence.

Ground three:
The learned trial judge erred in law in failing to sufficiently direct the jury on the mental element of common law kidnapping.

[53] These two grounds will be dealt with together, as they both relate to whether the learned trial judge's direction on the elements of the offence of kidnapping were sufficient.

[54] In the decision of the House of Lords in **R v D** [1984] 2 All ER 449, Lord Brandon of Oakbrook considered the ingredients of the common law offence of kidnapping and set them out as follows at page 453:

> "From this wide body of authority six matters relating to the offence of kidnapping clearly emerge. First, the nature of the offence is an attack on, and infringement of, the personal liberty of an individual. Second, the offence contains four ingredients as follows: (1) the taking or carrying away of one person by another; (2) by force or by fraud; (3) without the consent of the person taken or carried away and (4) without lawful excuse. Third, until the comparatively recent abolition by statute of the division of criminal offences into the two categories of felonies and misdemeanours (see s 1 of the Criminal Law Act 1967), the offence of kidnapping was categorized by the common law

> as a misdemeanour only. Fourth, despite that, kidnapping was always regarded, by reason of its nature, as a grave and (to use the language of an earlier age) heinous offence. Fifth, in earlier days the offence contained a further ingredient, namely that the taking or carrying away should be from a place within the jurisdiction to another place outside it; this further ingredient has, however long been obsolete and forms no necessary part of the offence today. Sixth, the offence was in former days described not merely as taking or carrying away a person but further or alternatively as secreting him; this element of secretion has, however, also become obsolete, so that, although it may be present in a particular case, it adds nothing to the basic ingredient of taking or carrying away."

[55] The ingredients that are set out by Lord Brandon may well be regarded as the *actus reus* of the offence. To establish the offence, the prosecution must prove the taking or carrying away of the victim by force or fraud, without the victim's consent, amounting to the deprivation of the liberty on the part of the victim and there is no lawful excuse for the taking or carrying away. The offence is committed when the victim is taken and carried away against his will.

[56] It is also necessary to consider the *mens rea* which must be proved in relation to the offence. It is, firstly, apparent that there must be some voluntary act on the part of the offender. In **R v Hutchins**, the English Court of Appeal accepted the ingredients of the offence to be as set out above and went on to find the following:

> "The intent required is a basic intent. It is the intent to take away a person without that person's consent. Kidnapping is but another form of assault. It can be deliberately committed knowing full well that the victim does not consent to be taken and carried away. It can also be committed when the accused is reckless as to whether or not the victim consents."

[57] To prove an offence of this nature, it is required that the offender be shown to be aware that the victim may not consent and nevertheless unjustifiably decides to take and carry away the victim.

[58] In his submissions, Mr Wilson acknowledged that the learned trial judge defined the offence of kidnapping in a manner consistent with that given by Lord Brandon in **R v D**. She first outlined the definition of kidnapping at common law at page 10, line 16:

> "Now, Mr Foreman and members of the jury, the accused, as I said, is indicted for two counts of kidnapping. Kidnapping consists of the taking or carrying away of one person by another by force or fraud without the consent of the person so taken or carried away and without lawful excuse."

[59] Immediately following this, she then asked the jury to look at the intention of the appellant at page 10, line 23:

> "You might ask yourself, Mr Foreman and members of the jury, because the accused is saying that he was taking them to the ex-Prime Minister's residence so that the police there could sort out the problem with the fare. The complainants are saying he just took us away, he just didn't stop at the gate. So you have to ask yourself, what was the intention of the accused. The intention is not capable of a positive proof, yet where intention is an essential ingredient in an offence it must be proved like any other fact in the case. The only practical way of proving a person's intention is to infer it from his word or conduct in the absence of the evidence. To the contrary, you are entitled to regard the accused man as a reasonable man; that is to say ordinary responsible, capable of reason. So in order to discover the intention of the accused in the absence of any expressed intention, you look at what he did.
>
> If you find that he did anything and ask whether as an ordinary responsible person he must have known that this would happen, if you find that he must have known, then you may infer that he intended the result of his action, and

> this would be satisfactory proof to establish the charge of kidnapping."

[60] The jury, therefore, from the outset of the summation was made aware of the ingredients of the offence. There was no complaint as to the general directions that were given about the offence.

[61] It is also significant to recognise that, before giving these directions, the learned trial judge had properly identified for the jury that the issue in this case was that of credibility. She also gave the jury appropriate directions on the burden and standard of proof, which made it clear that the prosecution must put before them evidence which satisfied them that the appellant was guilty.

[62] Having directed the jury on the elements that constitute the offence, the learned trial judge proceeded to recount each witness's evidence. There was no complaint about the fair and appropriate manner in which the learned trial judge recounted the evidence.

[63] The manner in which the learned trial judge rehearsed the evidence, given the way the events unfolded, involved, of necessity, an exercise which led to the recognition of the elements of the offence charged. One example of this is at page 16, lines eight to 16 of the summation. In recounting the evidence of the first complainant, the learned trial judge said:

> "When he got a little before college gate I asked him to let us out. He was still going at the same speed she said. Other vehicles were at the gate. He drove passed the gate and I

> screamed out, others say driver we are coming out. **She said she continued screaming out. She opened the door to jump out and him say, 'jump out gal so mi can run the car ova you**'" (Emphasis supplied)

[64] From this passage, it was obvious that the complainant was saying that she was carried away past her destination against her will. The learned trial judge was at this instance recounting to the jury the evidence that could satisfy the elements of being taken and carried away, lack of consent and the use of force. The learned judge need not have said more, having already defined the offence of kidnapping at common law.

[65] Again, at page 35, commencing at line 19 of her summation, in recounting the evidence of the second complainant, the learned trial judge said:

> "And she said she took out one hundred dollars and she had it in her right hand and the lady at the back also collected the fare. She said he glanced and saw that, and she said before he reached Shortwood gate, she said, one stop driver right at Shortwood Road and somebody else in the car also said one stop driver. And it was---he proceeded to pass the school gate and the person who was sitting behind the driver. Now, from the evidence it is [NJ-C] who bawled out for murder and opened the car and kept on bawling for murder. I didn't say anything like what was happening. I said when he passed the school long time, that is when he passed the school she said 'Si my one hundred dollars to pay you,' and the lady say, ' mi a goh jump out the car,' and him said, 'Jump out, mi a run di car ova yuh, a dead yuh fi dead,' and he kept on driving fast like a mad man."

[66] From this account, it was obvious that this complainant too was saying that she was carried away past her destination against her will. This evidence, if believed, would also have been proof of the ingredient of the absence of lawful excuse.

[67] The fair manner in which the learned trial judge rehearsed the evidence presented by the prosecution was the same manner in which she dealt with the evidence presented by the defence. Significantly, she juxtaposed the evidence of the prosecution's witnesses with that of the appellant in relation to the ingredients of the absence of lawful excuse and intent. At page 85, commencing at line, 1 she said:

> "Now, as I said before, kidnapping has four ingredients to it, the taking or carrying away of one person by another by force or form [sic] without the consent of the person who is taken or carried away and without lawful excuse.
> ….
> Now, you have to look at what he is saying that he was taking them, 'a Mr Patterson yard mi a go,' but did they consent to go with him? Because [NJ-C] is bawling out, 'Murder', 'Murder, 'Help', 'Help' and without lawful excuse...
>
> Now, what excuse will he have to be taking them away from their destination. He is saying that they owe him money. You remember learned defence counsel asked the police officer if a person can make a citizen arrest, the police officer said yes, you can citizen [sic] arrest.
>
> Mr Foreman and members of the jury, when a crime is being committed or you believe a crime is going to be committed in this case now he is saying that they owe him money for his fare. He says one lady refused to pay him for the fare. This will be a civil matter. Mr. Foreman and members of the jury, he would have to go and take a civil suit for his one hundred dollars. It is a matter for you, you have to come and decide whether or not, as I said before he had lawful excuse to take them away because he is saying, yes, I am driving them, but I am driving them up to Mr. Patterson. They are saying they didn't hear anything like that from him. You have to look at the evidence and decide whether you believe the witnesses or you believe the accused, whether he should have taken them away that day as they said he did. He is saying yes, I was going one car length from the second gate, but I told them I was going up to Mr.

> Patterson's gate to settle this dispute. So you have to look at the evidence"

[68] In the circumstances, although the learned trial judge did not specifically identify which bits of evidence supported each ingredient of the offence in the manner Mr Wilson contended was necessary, her summation was appropriately tailored to allow the jury to understand the issues which they had to consider. The directions on the law were unexceptionable and sufficiently clear for the jury to be able to apply the relevant law to the facts in arriving at a verdict, which cannot therefore be disturbed. There was no merit to grounds one and three.

Ground two

The learned trial judge erred in law in failing to withdraw the case from the jury on the ground that facts [sic] did not constitute or disclose the offence of common law kidnapping

[69] It is settled law that a submission of no case to answer should be allowed when the elements of the offence with which the accused is charged are not made out or there is no evidence upon which a jury properly directed could convict.

[70] At the end of the prosecution's case, counsel appearing for the appellant did, in fact, make a no case submission. He based it on the issue of identification since, he contended, in the circumstances there had been a dock identification. Given the evidence presented by the prosecution and the challenges that had been made to it, the learned trial judge correctly and summarily dismissed this wholly unrealistic submission.

[71] Mr Wilson, before us, sought to assert that there was an insufficiency of evidence to support the offence of kidnapping. We disagreed that the evidence was insufficient to support the offence of kidnapping and found that the learned trial judge correctly called upon the appellant to answer the charges against him. There was evidence to support each element of the offence.

[72] The two complainants testified in detail that the appellant carried them past their destination without their consent. They were unable to voluntarily disembark his taxi given the manner in which he was driving. They were fearful for their lives. Further, the complainants testified that they had not refused to pay the appellant his fares and, therefore, raised the issue as to whether the appellant had lawful excuse for carrying them away.

[73] All the above were matters concerning the credibility of the witnesses, ultimately to be resolved by the jury. The evidence, which had been presented on the prosecution's case, was such that the learned trial judge correctly concluded that it was sufficient for the matter to be determined by the jury. This ground, therefore, also failed.

[74] It was for these reasons that we made the orders set out at paragraph [3] above.