

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 44 of 1993

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

REGINA vs. PAUL BROWN

Delroy Chuck for the applicant

Miss Carolyn Reid for the Crown

June 6 and 27, 1994

WOLFE, J.A.:

This applicant was convicted in the High Court Division of the Gun Court before McIntosh, J. (Ag.), sitting without a jury, for the offences of illegal possession of firearm and robbery with aggravation. He was sentenced to be imprisoned for seven years at hard labour on each count. This was on the 21st day of April, 1993.

Without attempting to advance any argument against the conviction, Mr. Chuck conceded that the only issue which properly arose on the evidence, to wit identification, was adequately dealt with by the learned trial judge in his summing-up.

The evidence adduced disclosed that on the 7th day of November, 1992, the virtual complainant, a prison warder, was held up by a lone gunman at the intersection of Harbour Street and John's Lane. This was at approximately 5:00 p.m. He was relieved of his watch, chain, bracelet and wallet which contained \$1,400. His assailant was unknown to him before that day but he recalled that he had seen him twice on the day in question, once whilst walking down Duke Street and on the occasion when the robbery was staged.

He next saw his assailant some two weeks later entering the St. William Grant Park in downtown Kingston. He pointed him out to the police and he was duly apprehended. That man, he says, was the applicant.

The applicant in an unsworn statement spoke of an incident on November 20, 1993. He avoided the incident of November 7, 1993, as if it were contagious.

The learned trial judge in his summation warned himself, as is required in cases of visual identification, and resolved the issue of identity against the applicant. Like Mr. Chuck, we too are of the view that the conviction is unassailable.

Without any conviction, Mr. Chuck sought to suggest that the sentence was excessive. We do not think so.

The application for leave to appeal is, therefore, refused. The sentence will commence from the 21st July, 1993.