JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 31/90

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. V. ELTON WATSON

No appearance for the applicant

Miss Cheryl Richards for the Crown

April 6, 1992

ROWE P.:

The applicants Elton Watson and Winston Morris were convicted in the Gun Court Division of the Westmoreland Circuit Court on the 12th of February 1990 by Mr. Justice Pitter and they were each sentenced to seven years imprisonment on count 1 which charged illegal possession of firearm and five years hard labour on count 2 for robbery with aggravation. The sentences were ordered to run concurrently.

The evidence which was led by the prosecution in relation to the robbery was that at 9:30 p.m. on the 20th of May, 1989, the shop-keeper, Miss Clover Forbes, was in the act of closing up her grocery shop at Moreland Hill in Westmoreland when she heard the report of a gunshot outside and the door of her shop was kicked down and two men entered the shop. Miss Forbes, in consternation, jumped over her counter and went into a corner and from there she observed the two men approaching. One man was masked, whereas, the other man had nothing covering his face. Both men asked her for the

whereabouts of her brother, whose name was Val, and both men said they had been paid to kill Val. They went on to demand money of Miss Forbes, who at first denied that she had any money but thereafter relented and gave them $250.00. The men insistently demanded more money. She had $250.00 of partner money which she also gave to them. Miss Forbes said the masked man had a big gun slung over his shoulder. She was accustomed to seeing police officers with guns and she was in no doubt that what this man had was a gun.

The men went on to steal eighteen batteries, some dettol, milk, oats, a pair of water boots and syrup and these were taken away from the shop.

Miss Forbes said that the two men were in the shop for some twenty minutes. She was able to observe them as they remained in the shop because electric lights were burning in the shop. She also had an electric bulb to the front of the shop which was burning.

She said that as the men left the shop she was peeping through a hole in the wall and she noticed that the man who was masked, as he walked away from the shop, he kept looking back. At that time the mask had fallen from his face and she was able to see his face and to recognise him. She said that that man was Winston Morris. She knew him as 'Bingy' or as 'Love-up'. He is somebody whom she had known for over twenty years as he had grown up in the same district with her. In fact he owned a motor-cycle and would ride the motor-cycle in the area and on some occasions he would take her on the pillion and drive her to Church. So it was somebody with whom she was well acquainted over these long period of years. She said that the other man who did not have his face covered is the applicant Watson whom she had known for five years. At one time he lived in Moreland Hill and on occasions she saw him in the company of the applicant Morris. She said that on the several occasions when Watson had been to her shop he had spoken to her and that she had last seen him about four weeks before May 20, 1989.

When the applicants were taken into custody by the police they denied any knowledge of the incident. However, Miss Forbes went on to say that on the day after the robbery the applicant Morris came into her shop and had a conversation with her in which he denied that he was one of the persons who had been in the shop the night before and used words which she considered to be threatening to her.

The applicant Morris also said that the reason why he thought Miss Forbes had made a report against him was that she carried malicious feelings for him. He said that on an occasion she had given him a quantity of ganja to sell on her behalf and while he was on his way to Kingston with this ganja he was stopped in a road block and the ganja was taken away from him. Somehow, he had not been charged in relation to this alleged incident.

The learned trial judge having heard all the evidence, correctly reviewed the evidence in relation to the identification of both men. He considered fully the opportunity which the witnesses had for observing the two men; the distance which separated Miss Forbes from them, which was no more than four to five feet; the fact that there was adequate lighting in the shop and there was lighting outside and he considered the possible effect of a fleeting glance and held that in this case her identification of the applicant Morris could not be treated as a fleeting glance because she was so well acquainted with him.

He made special reference to the evidence that the man who had been wearing the mask kept walking and turning around and looking behind. He considered the possibility that there might have been a mistaken identification. He warned himself of convicting on the uncorroborated evidence of visual identification and this in our view sufficiently manifested that he had in mind the special reasons why one should be cautious in dealing with visual identification evidence.

Indeed at p. 52 of the Record the learned trial judge made these remarks:

> "Having looked again at the evidence of Miss Forbes, I warn myself of the dangers of convicting on the uncorroborated evidence of a complainant. Having warned myself, having given myself this warning, I nevertheless find that when Miss Forbes said that these two men were the men who entered the shop, she was speaking the truth; that she saw them; that her powers of observation then weren't limited in any way and she was quite able to say that both accused are the men."

Having regard to this finding the learned trial judge went on to say that they were guilty as charged.

We are therefore of the view that he correctly warned himself in relation to the issues which arose in the case and that he applied his own warning to the facts as found by him and therefore the decision to convict is unassailable.

The applications for leave to appeal are therefore refused and the sentences will run from the 12th of May, 1990.