

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 8 of 1992

BETWEEN:

WILSON FRASER

- Appellant

and

THE QUEEN

- Respondent

Before: The Honourable Mr. Justice D. Byron, Chief Justice (Acting) ~  
The Honourable Mr. Justice N.J.O. Liverpool, J.A.  
The Honourable Mr. Justice Satrohan Singh, J.A.

Appearances: Appellant in person  
Mr. Keith Friday for the Respondent

---

1992: Nov. 10, 13.

---

JUDGMENT

LIVERPOOL, J.A.

On 13th November 1992, we dismissed this appeal and promised to give our reasons for so doing in writing. This we now do.

The appellant was convicted on 22nd July, 1992 on an indictment which contained two counts. On the first count he had been charged with other persons unknown for the offence of robbery with violence contrary to the provisions of section 280(2) of the Criminal Code. The second count presented that he and other persons unknown stole two sums of money contrary to section 279(b) of that Code. He was sentenced to imprisonment for 8 years on the first count and 5 years on the second count, the sentences to run concurrently.

The case for the Crown was contained in the evidence of four eye- witnesses to the events, and two police officers to whom the

matter had been reported. All four witnesses testified to having seen the appellant and two other persons enter the premises at which the robbery and theft took place, and while holding a gun in his hand take the sums of money variously put as \$14,383.08 and \$14,088.00. The Crown relied on circumstantial evidence to prove the loss of two further sums of \$4,758.00 and US \$500.00 respectively.

The appellant raised four issues on his appeal, namely - the variation in the evidence of the witnesses for the prosecution as to the amount stolen; the difference in the time stated by the witnesses as the time at which the offences were committed; the failure of the police to hold an identification parade; and the failure of the police to put the station diary in evidence.

#### The amount stolen

One witness testified that the appellant and one other man took \$14,383.08 from a table at the factory, and another witness claimed that the sum stolen was "\$14,088.00 and some cents". The learned trial Judge dealt with these contradictions and warned the jury that if they thought them to be trivial they could be ignored, but that if they felt them to be serious they were entitled to treat the evidence as unreliable. There was no contradiction as to the two amounts which were the subject of the second count. In my view the learned Judge dealt adequately with the discrepancy surrounding the amount alleged to have been stolen on the first count.

#### The time of committal of the offence

All four eye-witnesses gave evidence to the effect that the appellant and two other men entered the Factory at around 3.00 p.m. on 26th July, 1991. Inspector Floyd Dragon, to whom the report was made, testified that this report was made to the Station at about 2.15 p.m. on the same day. The learned trial Judge again pointed out to the jury that this was another of the contradictions in the evidence of the witnesses, and urged them to be cautious when deciding whether or not to accept that evidence.

#### Identification

The learned trial Judge told the jury that one of the main issues in the case was the identification of the appellant and he went on to say -

"The accused, Wilson Fraser is asking you to believe that the witnesses for the Crown made a mistake when they said

to you that he the accused man was the person who came in the office with the other two guys unknown and stole the moneys in the charges. He is asking you to believe that this is a case of mistaken identity. What do you believe? I tell you, he having raised that question, there is therefore special need for caution before you can convict the accused on the reliance of the question of identification. I repeat, he having raised the question of identification, there is special need for caution before you can convict on the reliance of the correctness of the identification. You see a mistaken witness can be a convincing witness and many witnesses may be all mistaken or many witnesses may be all mistaken, so special care must be taken when dealing with the question of identification. You must therefore examine closely the circumstances in which the identification was made."

Of the four eye-witnesses to the incident, Royston Gilbert said that the appellant was in his presence for about 20 to 30 minutes; Joan Ettienne claimed that she observed him for about 12 to 15 minutes; Deanne Bourne stated that she saw the appellant for about 10 to 15 minutes; and Tedgra Mendes said in cross-examination "I did get a good chance to recognise you".

It is also important to bear in mind the circumstances in which the appellant was eventually taken into custody. The week following the incident both Deanne Bourne and Tedgra Mendes claimed that they saw the appellant in the city of St. Georges. Tedgra Mendes went in search of a friend, but when they returned the appellant was not to be found. One month after the incident Deanne Bourne saw the appellant at the Market Square in St. George's, she spoke to two policemen and went to the sugar factory where she spoke to her fellow employees and telephoned the police. Later that same day she returned to the Market Square with Tedgra Mendes and Royston Gilbert where they saw the appellant. Tedgra Mendes went to speak to the police who then arrested the appellant.

The accused suggested that the failure by the police to hold

The Station Diary

This ground of appeal also fails.

The Station Diary

The Station diary could have been relevant both in respect of the time when the incident was reported and as to the amount stolen. There were discrepancies as to both which, as was stated earlier, were pointed out to the jury by the learned trial Judge. The matter was left to their decision on the facts and after considering the evidence they returned a verdict of guilty.

Taking all these factors into account we see no reason for disturbing the findings and verdict of the jury. The appeal will be dismissed.

N.J.O. LIVERPOOL,  
Justice of Appeal

C.M.D. BYRON,  
Chief Justice (Acting)

SATROHAN SINGH,  
Justice of Appeal