

BARBADOS:

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Criminal Appeal No 17 of 2000

BETWEEN:

MICHAEL WAYNE JEMMOTT

(Appellant)

AND

THE QUEEN

(Respondent)

Before: The Honourable Sir Denys Williams, Chief Justice, The Honourable Mr. Justice Colin Williams and The Honourable Frederick Waterman, Justices of Appeal.

2001: September, 27th.

Mr. Andrew Pilgrim in association with Mr. Tyrone Estwick for Appellant.

Ms. Donna Babb for Respondent.

DECISION

On July 12, 2000 the appellant Michael Jemmott was found guilty of burglary, the charge against him being that on December 6, 1999 in the parish of Saint Michael he entered as a trespasser the dwellinghouse of Eulalie Haynes with intent to rape her, a person, therein.

The complainant gave evidence that it was about 4.30 a.m. when she heard a noise coming from the door of her home. She made her way to the door and was grabbed by a man who dragged her to the bedroom saying that he wanted "some of that". She struggled and screamed and the intruder ran from the house. Her testimony is that the appellant was the intruder and she understood his words to mean that he wanted to have sex with her.

Patrick Sandiford, a neighbour of Haynes, testified that he heard screaming that morning about twenty-five to five. He turned on the verandah light and saw the appellant running coming down from inside Miss Haynes's house. He had heard someone screaming "Michael, stop don't do that" and called out "Michael, what the fuck you doing". The appellant did not answer and ran through the gap opposite where he lived.

Inez Brathwaite, who lives next door to the complainant Haynes, testified that about twenty-five to five she heard a voice crying out "murder, murder". The shouts were coming from the direction of Miss Haynes's house. She turned on the verandah light and went on the verandah. While there she saw the appellant running from Miss Haynes's house. She testified that it was very bright - the street light in the area is very bright.

The appellant's explanation was that it was a ghastly mistake - the complainant and the witnesses were all mistaken.

The learned judge put to the jury the case for the Crown as well as the case for the defence:

"The Crown say that the evidence of Eulalie Haynes and the various witnesses who testified for the prosecution is reliable and trustworthy. The Crown also say that the accused is the man who committed the offence, that the evidence of identification given by the virtual complainant, by Patrick Sandiford and by Inez Brathwaite is worthy of your belief and that you should reject the alibi and found the accused guilty.

Inez Brathwaite is worthy of your belief and that you should reject the alibi and

found the accused guilty.

On the other hand the case for the accused is that he is not guilty. He says that the prosecution have the wrong man. He says that this has all been a ghastly mistake,

that the Crown's witnesses are all mistaken, that at the time when the offence is said to have been committed he was at his ex-girlfriend's house having his ear cut

open. Now. ...and that he bled from that ear profusely, soiling his clothes. He says that he is not the man who entered Eulalie Haynes' dwellinghouse on the 6th of

December, 1999 and he has maintained that position from the outset.....

Now, Mr. Foreman and members of the jury, the defence of alibi also arises on the evidence. The accused says that he was not at the scene of the crime when it was alleged to have been committed. As the prosecution has to prove the guilt of the accused so that you feel sure of it, he does not have to prove that he was elsewhere at the time on the contrary, the prosecution must disprove his alibi. And even if you

conclude that the alibi was false, that does not of itself entitle you to convict the accused. The prosecution must still make you feel sure of his guilt".

The amended grounds of appeal are that the trial judge:-

1. erred in law when he allowed the admission of identification in evidence contrary to section 100 of the Evidence Act;
2. erred in law when he allowed and/or invited a dock identification of the appellant;
3. failed to put the defence of the appellant adequately; and
4. erred in law when he allowed the Crown to question the virtual complainant about prejudicial matters;

Ground 5 was that the judge's direction on intention was inadequate and confusing and ground 6 that the verdict was unsafe and unsatisfactory.

The trial judge dealt with the problems that identification evidence give rise to from time to time but the evidence in this case was truly overwhelming. Our view is that there is no substance in any of the grounds.

There is only one point in the case. It is in relation to sentence. According to one part of the record the appellant was sentenced to 7 years imprisonment. In another part of the record the sentence is recorded as 9 years.

...The conviction is affirmed with a sentence of 7 years imprisonment to run from 22 August, 2000.

Chief Justice

Justice of Appeal Justice of Appeal.