

**IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

**CICA (Crim) APPEAL No. 012 of 2023
(Grand Court Cause No. Ind. 0102 of 2022)**

BETWEEN

ALVIN SHAQUILLE EBANKS

Applicant



V

HIS MAJESTY THE KING

Respondent

BEFORE: **The Rt Hon Sir John Goldring, President
The Rt Hon Sir Richard Field, Justice of Appeal
The Rt Hon Jack Beatson, Justice of Appeal**

Appearances: **Applicant in person
Mr Scott Wainwright, of the DPP for the Respondent**

**JUDGMENT
Transcript of oral judgment dated 21 November 2024 Approved
Release 4 December 2024**

THE PRESIDENT:

1. On 17 March 2023 following a trial before Justice Carter and a jury, the applicant was convicted on Count 1 of robbery contrary to section 242 of the Penal Code 2022 Revision, and on Count 2 of possession of an imitation firearm with intent to commit an offence contrary to section 18(6) of the Firearms Act 2008 Revision. He was sentenced to 12 years' imprisonment on the first count, 4 years' imprisonment concurrently on the second, and an outstanding term of seven months of a

suspended sentence was also ordered to be served, concurrently. The total sentence was therefore one of 12 years' imprisonment.

2. At the time of the sentence the applicant had 19 previous convictions. In June of 2015, he had been imprisoned for robbery.
3. The applicant now seeks leave to appeal against conviction and sentence.
4. Shortly before 9:00 PM on the 5 December 2022, Devon Kelly was working as a cashier at Hell Gas station in West Bay. He was counting the cash before closing up. A man with a long-sleeved grey, black and white shirt and a blue face covering ran in. Mr. Kelly could see his eyes and see that he had, as he described it, brown skin.
5. The man said give me the cash. Mr. Kelly said he recognized the voice to be that of the applicant Alvin Ebanks, otherwise known to Mr. Kelly as "Sticky". He had been at school "Sticky" and had known him for approximately for 14 years, albeit he hadn't seen him for some time.
6. The robber had what turned out to be an imitation firearm. It was a plastic toy gun. He struck Mr. Kelly with it several times, breaking the gun and injuring Mr Kelly slightly, before making off with another man in a Honda Civic motor vehicle with a white front bumper and some \$2200. The entire incident was captured on CCTV.
7. When the police came shortly afterwards, they saw coins on the ground and broken parts of the toy gun.
8. At approximately 9:20 PM, the police, having been given Mr. Ebanks' name, went to his home address at 35 Vibes Lane, West Bay. They checked inside and outside. The applicant was not at home. Their attention was drawn to a lot across the road from Vibes Lane. From some bushes the police recovered items of clothing. They included a blue mask and a grey, black and white shirt. The items closely resembled the clothing being worn by the assailant, as seen on the CCTV footage.

The prosecution, unsurprisingly, submitted that the robber had disposed of his clothing in an attempt to avoid detection.

9. When the officers went back to the applicant's home, they found in the same area a partially burned box which appeared to be the box for the toy gun. They also found a light blue shirt close to the box, which they also seized, as they did a pair of jeans from a bed inside the applicant's address. At approximately 9:30 that evening, there was found an abandoned and burnt-out silver Honda Civic with a white front bumper on Hetty's Lane, a short distance from the applicant's home address. That vehicle was later identified by its owner as having been stolen earlier that evening from outside his address on West Bay Rd. It was the prosecution case that this was the vehicle used in the robbery.
10. The recovered items of clothing and the mask were forensically analysed. DNA testing was conducted on them. Profiles matching those of the applicant were obtained from each of the items. The likelihood of the profiles recovered from the clothing and the face mask originating from someone other than the applicant was extremely remote.
11. On the 6 December the applicant was arrested on suspicion of robbery. In reply to the caution, he said *"You can see this on my foot, how can I do a robbery with this on my foot?"* He pointed to an electric monitor he was wearing on his ankle.
12. As well as having to wear a monitor, the applicant was subject to a curfew between 7:00 PM and 7:00 AM at 35 Vibes Lane. However, when his whereabouts on the evening in question were checked by means of GPS tracking information, it was revealed that between approximately 6:30 PM and 9:30 PM no signal was received from the electronic monitor. The prosecution's case was that the applicant had blocked the signal by covering it with foil, a common method of avoiding detection.
13. On the 7 December the applicant was interviewed under caution. He denied being involved in the robbery. He stated he had been at home at the relevant time in accordance with his curfew. When shown photographs of the clothing to which he was linked via the DNA profiles, he denied it was

his. He also denied knowledge of the box for the gun found close to the address. When shown photographs of the replica gun, he denied knowledge of it. He said, “*We don't deal with imitation*”.

14. In addition to the evidence to which we referred, there was evidence from Mr. McField, who was working at the filling station that night, as he often did. According to his evidence, the Honda Civic used in the robbery, came to the gas station for petrol on five or six previous occasions. He described the driver as local and wearing an ankle monitor. However, as we have said, there was a Honda Civic parked in the applicant’s yard when the police went on the night of the robbery, albeit it was not the one used in the robbery.
15. The issue at trial was whether the jury could be sure the applicant was the robber. The defence was of alibi. The applicant asserted he was at home at the time. He was, he said, “*having a smoke*” within the permitted area around his home. He had not seen the burnt gun box. As to his clothing with his DNA, he said he took off all sorts of clothing when outside when he had a smoke. He did not burn anything. He did not recall leaving his T-shirt outside. When he saw the police car arriving at his home, he ran inside, grabbed a bag of ‘weed’ and jumped over his yard to his neighbour’s. He denied the mask was his. He denied tampering with the monitor. He said he did not know why it was not transmitting. He said he had never met Mr. Kelly before.
16. His friend whom he called, said he was not out of her sight for more than 10 minutes after she came back from work at about 6:00 PM.

The grounds of appeal against conviction.

17. No grounds of appeal were lodged. The applicant has made a number of submissions to us in which effectively he has submitted the convictions are unsafe. He seeks fresh counsel and is critical of his previous counsel.
18. In short, he said his trial was not right. Mr. Myers, his defence counsel, did not do what he was told to do. The timing of the robbery was “*all confusing*” He said that he had asked Mr. Myers to instruct an expert on the monitor. He did not know what was going on with the monitor. He said that his monitor showed that he was at home.

19. He also argued that there could have been contamination of the DNA because the officer was not wearing gloves. He also produced a piece of paper in which several other issues were raised. It is unnecessary to go through it. It raises nothing of substance.
20. We have read the summing up with care. We have particularly concentrated on the judge's direction in respect of Mr. Kelly's purported recognition of the applicant's voice. The direction was impeccable. It was full and careful, being based on the conventional identification evidence direction. We need not set it out. It is at page 30, line 1 to page 35, line 20 of the summing up.
21. Had the case against the applicant depended solely upon Mr. Kelly's purported recognition, an argument that the convictions were unsafe might conceivably have got off the ground. However, there was copious evidence which suggested Mr. Kelly was right.
22. The applicant was not at home at the time of the robbery. The jury was entitled to conclude that he was lying when he said he had not worn the clothing and the mask with his DNA upon it. It was also entitled to conclude that the box found near his home had contained the imitation firearm used in the robbery, and he was lying about that. Finally, the burnt-out Honda in the vicinity of his home was additional evidence against him. In short, this was an overwhelming case.
23. As to Mr. Ebanks submissions, they are in our view without merit. There is no reason to suppose an expert would affect the safety of the conviction. There is no reason to criticize his previous counsel. As to whether there may have been contamination of the DNA, this was pursued at trial. As to the written submissions, they raise no arguable ground of appeal.
24. We refuse leave to appeal against conviction.
25. We now turn to the appeal against sentence.
26. Mr. Ebanks submission is that it was, to use his word, "*extreme*".

27. In respect of the robbery, the judge took as a starting point nine year's custody, reflecting her entirely justified view that the offence fell within category A - 2 of the Cayman Islands Sentencing Guidelines for commercial robbery. She increased the sentence to 12 years to take into account aggravating factors including the use of the mask to conceal identity, attempts to dispose of evidence and the applicant's previous convictions. As we have said, in respect of the seven months remaining of the suspended sentence, the judge made no order and for possession of the imitation firearm, the sentence was concurrent. To suggest that the resulting sentence of 12 years' imprisonment was in those circumstances manifestly excessive is in our view hopeless. We refuse leave to appeal against sentence.