25.11.97 Robbery Theft.

OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLAND

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IND. 50/97

REGINA V. CARLOS EUGENE MINZETT
ROBBERY

Ms. C. Richards for the Crown
Mr. J. Furniss for the defendant

BEFORE DOUGLAS J

JUDGMENT

The defendant is charged with one count of robbery, contrary to Section 230 of the Penal Code 91995) Revision . The particulars of the offences are that Carlos E. Minzett on the 12th day of June 1997 at Bodden Town Rd. Grand Cayman, stole CI$2000,00 cash, a valuable security namely a cheque in the amount of CI$741.00 and a wallet from Mr. George Hartwell Wood and immediately at the time of doing so used force on the said George Hartwell Wood.

I am satisfied that the prosecution has discharged the required burden of proof as far as the commission of the offence is concerned. It is the unchallenged evidence of the complainant that immediately at the time that the bag containing the cash, cheque and wallet was stolen, his assailant used force, not only striking him a blow to the back of

the head, but also one to his right eye and can be seen from the photos, exhibit 2.

The evidence of the complainant is that at the time during which this event took place, he was able to identify his assailant as the defendant. This is challenged by the defence on the ground that the witness is mistaken.

It is now axiomatic that when the case against the accused wholly or substantially depend on the correctness of one or more identification of the accused which the defence allege to be mistaken, there is a special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. A mistaken witness can be a convincing one.

It is therefore necessary for this court acting as judge and jury to examine closely the circumstances in which the identification come to be made. Mr. Hartwell Wood testified that he locked up his gas station and liquor store at 10:00 p.m. as was customary, taking with him 2 bags containing the money and cheques. He said, "I quickly went home, drove into the driveway up to the kitchen door at the back. I opened the door with the bag in my hand, one was pushed into the other bag. As I pushed the door open I felt someone grab the back of my shirt and try to pull me out of the house. The push was from behind me. I tried to get into the house by grabbing hold of stove but it started to move. I felt a punch in the back of my head. I turned around to see who it was. When I turned around I saw the chap I knew

an Haitian. I saw his face, he was approximately two feet from me. He had his fist clinched and struck me into the right eye. He got me down on the ground by hitting and pushing me down. He rolled me on my side. I landed on my back, I was still able to see him." Later the witness said "it didn't last very long, about three minutes. Most of the time I could see his face, I could see his face for about 2 1/2 minutes." The victim went on to explain that he had not been struck directly in the eye, just the bottom of it.

In the guidelines which I mentioned, commonly known as the Turnbull principles the first circumstance to be closely examined is how long did the witness have the accused under observation. Here the witness says 2 1/2 minutes. If this estimate is correct then most of it must have taken place during the struggle on the ground. Before being punched it could not have been more than a few seconds. The defence contend that it was more than a fleeting encounter. Had this constituted the entire encounter. I would be inclined to agree with the defence. However considering all took place I do accept that this constituted more than a mere fleeting encounter, and that the witness had sufficient time in which to see the face of his assailant.

Secondly, at what distance? The unchallenged evidence is 2 ft which under any circumstance one can accept as being close. Thirdly, in what light. The witness testified that the attack took place outside his open kitchen door. There was a florescent light on inside, that there were also two very bright street lights there. The officer Cotterell who testified does not appear to have recalled the lights,

and use a flashlight to search the area. I agree with learned Crown Counsel that even had those been the lights, as claimed by the complainant, the officer would still have required the use of a flashlight to carry out the search. However, taking into consideration where this attack occurred, that the assailant would have been for a time facing the open door through which the light was coming. I am satisfied that there was sufficient unimpeded light to enable the victim to see his assailant's face.

The next question required in this examination is whether the victim had ever seen the defendant before, and how often. In this regard the victim testified that he had known the defendant's family his whole life, and have always known the defendant. That during the past six years he was always at the liquor store, the grocery and at the club. "We would speak, and that the defendant would be quite pleasant". What is significant in this regard is that the victim testified that when he looked up and saw that it was the defendant, he was shocked. He went on to say that he saw the defendant every day for six years and would know him even in Miami. Lastly, as the police arrived he informed them who his assailant was. He said that he told them it was Haitian, the nickname of the defendant, the police say that he said Carlos Minzett. In any event this is minor significance as it refers to one and the same person.

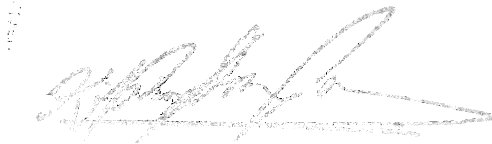
Later there was a showing of photographs. It is not challenged that the correct procedure were followed. What was challenged was this mode of identification in lieu of identification parade. In view of the

circumstances of the initial identification the police quite properly did not feel that a formal ID parade was required. Hence the showing of photographs. The evidence is that he was shown several photographs in an album. That he identified that of the defendant. I see nothing wrong in this procedure.

The defence is an alibi. I was not there, the victim was mistaken. The defendant himself testified on oath to this. His testimony was supported by three witnesses who testified that on the night in question he was at the rear of the complainant's liquor store watching his colleagues playing dominoes. One thing is clear from the evidence is that he was there at the rear of the liquor store when the police arrived. The main issue is, did he remain there throughout the entire evening. The evidence shows that someone could have left the rear of the liquor store, committed the robbery and returned in less than 15 minutes. When one considers that there were at least 12 men there that night, drinking and playing dominoes. I have no doubt that one of them could have slipped away unnoticed and committed the offence as alleged. The demeanour of two of the witnesses for the defence has much to be desired. incidentally one was the defendant's uncle, the other the friend in whose house he was hiding. The other witness at least admitted that he could have left without being seen by him.

I found Mr. Wood to be an honest and convincing witness. I do not for an instant find that he was mistaken. From the evidence I do believe that the defendant committed the offence, returned to the rear of the liquor store and that night when he discovered that the police were

looking for him went into hiding. I do not accept his story that he fled merely because he had been in breach of the conditions of his bail. Accordingly I find him guilty.



Kipling Douglas

Judge of the Grand Court

25th November 1997