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NZLR

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IN THE COURT OF APPEAL OF NEW ZEALAND

NOT RECOMMENDED

CA. 161/89

1990

THE QUEEN

v

WINSTON JAMES SHANE YOUNG

Coram: Casey J (presiding)
Bisson J
Doogue J

Hearing: 29 November 1989

Counsel: K.G. Stone for the Crown
C.H. Toogood and S.N. Hewson for the Applicant

Judgment: 6 December 1989

JUDGMENT OF THE COURT DELIVERED BY DOOGUE J

This is an application by Winston James Shane Young for leave to appeal against his conviction on 16 March 1989 in the High Court at Wellington, following trial by a jury, of the offences of unlawfully taking and unlawfully getting into a motor vehicle, aggravated robbery, and discharging a firearm with reckless disregard for the safety of others.

The offences arose out of a series of inter-related events which commenced with the taking of a blue 1968 Morris Mini motor car from Fairlie Terrace, Wellington, on the night of 17/18 May 1988.

On 18 May 1988 the car was seen in Kenwyn Street, Newtown, and an off-duty policeman saw the co-accused and a man about six feet tall with short fairish hair, aged between 20 and 25 years, near the car. The latter man was European of skinny build. The men appeared to be acting suspiciously. There was evidence that the applicant had been working for people who lived in Kenwyn Street. He had stayed there on one night, which could have been the night of 17/18 May 1988. On that night he went out, returned wet, and was given a change of clothes.

On 19 May 1988 an aggravated robbery was carried out at a Wellington City Council depot in Chaffers Street, Wellington. A security guard had control of the wages to be paid to men at the depot. He had with him a City Council employee in charge of paying the wages. They were held up by two armed men at the depot. One of them had a sawn off shotgun and a shot was fired at the ground close to the security guard. The wages were stolen. There was no positive identification of either of the two men involved in the robbery as the men were wearing balaclavas. Neither the men delivering the wages nor the Council employees waiting to be paid could directly identify either the applicant or

his co-accused. There was, however, evidence that the blue Morris Mini motor car was used by the robbers. There was further evidence that one of the robbers had a bright green spot, like a little cross, on the left side of his face just below and behind the left eye on the temple. That man was identified as being European, appearing to be thin and fairly young with short hair. He was identified in this way when sitting in the blue Morris Mini immediately prior to the robbery. The applicant had a similar mark on his face. Subsequently the driver's licence of the owner of the blue Morris Mini car was found underneath a mat in a Triumph motor vehicle in the possession of the applicant when it was searched on the night of the robbery.

The question is whether that was sufficient evidence to justify the conviction of the applicant for the offences of aggravated robbery and reckless use of a firearm, Mr Toogood properly conceded there was adequate evidence upon which the convictions in relation to the unlawful taking and entry of the motor vehicle could be upheld. The co-accused was acquitted. It is submitted for the applicant that the verdicts were unreasonable and that they cannot be supported having regard to the evidence.

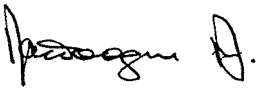
The jury was entitled to infer that the car was deliberately taken for the purpose of being used in the robbery. As the applicant was shown to be involved in the taking and use of the car, it was open to the jury to infer

he was a party to the robbery. This was particularly so when the description of the gunman was not inconsistent with the description of the applicant and when the gunman was identified as having a similar tattoo on his left cheek to that of the applicant.

Mr Toogood in his thorough submissions on behalf of the applicant, took us through the evidence in detail and stressed the inconsistencies between the descriptions by the witnesses of the gunman and the applicant. He referred to inconsistencies in the description of the clothing, the absence of any identification of any of the applicant's prominent tattoos, other than the one on the cheek, and, in particular, the failure of any of the witnesses to describe the gunman as tall. The applicant was 157 cm (6 foot 2 inches) in height. Those discrepancies in description were not surprising. The weather was bad at the time of the robbery. All of the witnesses had very limited opportunities to observe the robbers. Some of the witnesses were inside a building with a restricted view out of a small low door. Other witnesses were confronted by the robbers with the firearms for the briefest of periods. None of the witnesses had any real opportunity to consider and gauge the true height of the robber who fired the shot, assuming their estimates might have been accurate if they had, as he was either crouched with the gun or moving rapidly between the car and the security van with the wages.

Whilst, therefore, Mr Toogood said everything which could be said on behalf of the applicant, the issue was essentially a jury issue as to whether the circumstantial evidence was sufficient in the jury's view to justify the conviction of the applicant. There was adequate evidence upon which the jury was entitled to convict if they were so disposed.

The application for leave to appeal against conviction must be dismissed.



Solicitors for the Crown: Luke Cunningham & Clere Wellington

Solicitors for the Applicant: Kensington Swan Wellington