

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Hart, Macdonald and Pace, JJ.A.

BETWEEN:

|                       |   |                     |
|-----------------------|---|---------------------|
| DAVID ROY SHORT       | ) | Appellant appeared  |
|                       | ) | in person           |
| Appellant             | ) |                     |
| - and -               | ) |                     |
|                       | ) | Kenneth W. Fiske    |
|                       | ) | for the respondent  |
| HER MAJESTY THE QUEEN | ) |                     |
|                       | ) |                     |
| Respondent            | ) | Appeal Heard:       |
|                       | ) | November 21, 1980   |
|                       | ) |                     |
|                       | ) | Judgment Delivered: |
|                       | ) | November 26, 1980.  |

NOTE: Leave to appeal granted and the appeal dismissed per reasons for judgment of Hart, J.A.; Macdonald and Pace, JJ.A., concurring.

HART, J.A.:

This is an appeal from conviction of the appellant for armed robbery of the Bank of Nova Scotia, Fairview Branch, on October 11, 1979 at approximately 5.45 in the afternoon, contrary to s. 302(d) of the Criminal Code of Canada, and for the use of a firearm while committing the offence, contrary to s. 83(1)(a) of the Criminal Code of Canada. The conviction was entered by Anderson, Co.Ct.J., who conducted the trial of the appellant together with another man Derrick Shears for these offences and sentenced them both to serve five years on the major offence and one year consecutive on the s. 83 offence. Mr. Shears did not appeal his conviction, and the appellant's appeal is from conviction only, alleging that the verdict was unreasonable and cannot be supported by the evidence.

Although the appellant was represented by counsel at the trial he presented his appeal in person.

At his trial the appellant gave alibi evidence to the effect that he was not at the bank at the time but was at his mother's home in Dartmouth during that afternoon and evening and was not therefore one of the masked men who robbed the bank. This alibi was not revealed until the time of trial more than five months after the charges were laid. In support of this alibi he called his mother and girl friend, but the trial judge disbelieved their evidence, as well as that of the appellant himself.

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After reviewing the evidence as a whole I am satisfied that the trial judge was perfectly justified in rejecting this evidence, and having done so it was for him to decide whether on the remainder of the evidence the Crown had proved beyond a reasonable doubt that the appellant and Mr. Shears were the two men that robbed the bank that Thursday afternoon. He so found, and we must now consider whether his verdict was reasonable and could be supported by the evidence.

On Thursday, October 11, 1979 at approximately 5.45 p.m., two men wearing jeans and T-shirts with ski-masks over their heads entered the bank on Dutch Village Road. The larger man carried a sawed-off shotgun and stood by the door while the smaller man went to two wickets and demanded that the tellers fill two plastic shopping bags with money. They did so to the extent of over ten thousand dollars in fives, tens and twenties, including one hundred ten-dollar bills of which the serial numbers had been previously noted. Each teller had a pack of fifty of these bills called "bait money" in her possession held together by a rubberband, and in accordance with instructions put these bills with the other money being taken by the robbers.

The two men were followed as they escaped in a small car and then changed to a larger Thunderbird vehicle

a few blocks away from the bank. The license plates of both vehicles were noted and given to the police after the second vehicle disappeared in the traffic.

Earlier that day, about 9.30 a.m., a man had called the Hertz Rent-A-Car agency on North Street from the direct line at the Lord Nelson Hotel and made arrangements to rent a Thunderbird vehicle. He was to pick it up some time after 11 a.m. At about 11.30 a.m. a taxi driver, working out of the Lord Nelson Hotel stand, picked up two men and drove them to the Hertz Rent-A-Car agency. The driver said that one of the men sat in the front seat with him and he identifies him as the appellant.

At the rental agency the manager identified the man who rented the Thunderbird as Mr. Shears, although he had used a false name and identification to rent the vehicle. The manager also noted that he was wearing a peculiar type of ring.

The Thunderbird rented to these two men was the same vehicle that was used as an escape vehicle from the robbery and was found ten days later abandoned in a parking lot on the campus of Dalhousie University.

The people who saw the two bank robbers described the larger man, who remained at the door of the bank, as being about six foot two inches tall and weighing about two hundred

and ten pounds with a "beer or pot belly". The other man was described as being smaller with his weight being estimated at one hundred and seventy pounds and his height at five foot seven and five foot eleven. At the time of the trial the larger man, Mr. Shears, fit the description accurately whereas the appellant claims that he weighed only about one hundred and twenty pounds and was five foot nine inches tall.

On the 19th of October as a result of a police search of the premises occupied by Mr. Shears four of the marked bills "bait money" were found. His only explanation for their possession was that he sold jewellery and other trinkets in the taverns and might have picked up these bills during the course of one of these transactions. The evidence also revealed that he had been spending money well in excess of his income during the days following the robbery; all payments being made in cash.

On October 25 the appellant was arrested and when searched found to have in his possession three of the marked ten-dollar bills. His explanation was that he sold drugs at the taverns and must have acquired them as a result of a sale.

The trial judge was faced with these rather vague explanations for the possession of bills which had been stolen only a short time before, and that the two men generally fit the description of the two men who committed the robbery.

Both men denied having gone to the rental agency to rent the get-away car, but were identified as having done so by reliable witnesses, and neither of them had any believable alibi which would place them elsewhere at the time of the crime. The appellant was also contradicted on collateral matters by other witnesses.

Although the evidence against the appellant was circumstantial I am satisfied that it was sufficient to have permitted the trial judge to find beyond a reasonable doubt, as he did, that it was the appellant and Mr. Shears who committed the robbery. It cannot, in my opinion, be said that the verdict was unreasonable or could not be supported by the evidence.

I would therefore dismiss the appeal.

*Charles Lind*

J.A.

Concurred in -

Macdonald, J.A.

Pace, J.A.

*J.P.*  
*J.H.*