

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MS JUSTICE SIMMONS JA
THE HON MRS JUSTICE TIE POWELL JA (AG)**

SUPREME COURT CRIMINAL APPEAL NO COA2021CR00076

CRAIGE WILLIAMS v R

Lawrence Haynes for the applicant

Ms Natallie Malcolm and Ms Andrene Hutchinson for the Crown

10 and 13 February 2026

Criminal law – Bench Trial – Summation – Deficiencies in the evaluation of the evidence – Failure of trial judge to analyse conflicts in the evidence – Credibility assessment – Weight of evidence – Whether verdict unreasonable or insupportable

TIE POWELL JA (AG)

Introduction

[1] On 25 October 2021, the applicant was convicted by a judge sitting without a jury in the High Court Division of the Gun Court holden at Morant Bay in the parish of St Thomas, for the offences of illegal possession of firearm (count one); forcible abduction (count two), and rape (count 3). On 15 November 2021, he was sentenced to 12 years' imprisonment at hard labour for illegal possession of firearm, 5 years' imprisonment for forcible abduction, and 15 years' imprisonment at hard labour for rape, with a stipulation that he serve 10 years before becoming eligible for parole. The sentences were ordered to run concurrently, and his name was directed to be entered on the Sex Offender's Registry.

[2] The applicant, distressed by his conviction and sentence, filed an application for leave to appeal both conviction and sentence on the ground that the decision of the learned trial judge was against the weight of the evidence. The application was considered and refused by a single judge.

[3] As is his right, pursuant to rule 3.11(2) of the Court of Appeal Rules (2002), the applicant renewed the application before this court. In addition, at the commencement of the hearing, he sought leave for an extension of time to file amended grounds of appeal and for relief from sanctions. The amended grounds are as follows:

- "I. The Learned Trial Judge failed to take into consideration or have sufficient consideration for the evidence tendered on behalf of the Defence through the following witnesses:
 - i. Detective Corporal Damion Gonzales
 - ii. Constable Richard Picart

and as a consequence of this failure, he misdirected himself as regards the credibility of the virtual complainant, resulting in the wrongful conviction of the [applicant] for the offences charged.

- II Had the Learned Trial Judge taken sufficient consideration of the evidence of the two witnesses in the light of the various inconsistencies found in the evidence of the virtual complainant, he would most likely have entertained a reasonable doubt in his mind as to the credibility of the complainant leading to an acquittal. His failure therefore resulted in a miscarriage of justice.
- III That specifically, as regards the evidence of the witness RICHARD PICART, the Learned Trial Judge gives the impression that because the witness had been (subsequent to the charges brought against the [applicant]) dismissed from the Force for illegal possession of firearm, he had no duty to assess his credibility and dismissed his evidence out of hand. This apparent display of bias was fatal to the defence since the question of the car door to the driver's side of the vehicle being left open when he approached that witness

and the other officer on the fateful night loomed large on the Defence's case since the true impact of it was that the complainant could have escaped from the car and also if she was shouting and screaming she would have been heard by the police patrol."

[4] The Crown raised no objection to the application, and leave was accordingly granted. These amended grounds of appeal are regarded as the supplemental grounds of appeal. Counsel further indicated that the applicant would also be retaining his original ground of appeal, namely, that the decision of the learned trial judge was against the weight of the evidence.

The case for the prosecution

[5] The essence of the prosecution's case was that on the night of 29 December 2012, the 17-year-old complainant was walking along the Yallahs main road, after midnight, when the applicant approached her in a vehicle. He questioned what she was doing on the road at that time of night, and after she explained that her aunt had put her out, he showed her a police identification card, to, according to her, confirm that he was a police officer. She entered the vehicle because he told her that he would take her to the police station.

[6] She sat in the front of the vehicle, and he drove off. She said that she told him that she had been raped earlier in the night. When they reached the Yallahs courthouse, he did not stop, and she told him to stop, showing him where she was going. However, he continued speeding and drove for about half an hour, to an hour, away from the courthouse, and then stopped on the roadway by a track. There, he started to question her. She asked him to take her to the police station, but he said he could not do that. He asked her to have sexual intercourse with him. She told him to take her to the station or let her walk home. She said she was crying. He then pulled off the road and drove down into the track, which she described as bushy and without lights, and came to a stop.

[7] While they were parked, a police vehicle passed along the road and stopped. The applicant exited the car, took his identification card, and approached the officers. While he was outside, the complainant attempted to open the door, but it was locked. She stated that she tried to signal to the police from inside the vehicle, but due to the distance, estimated to be over 37 feet, the officers could not see or hear her.

[8] After the officers left, the applicant returned and told her that he had informed them that he was with "his catty". He again asked her for sex, and when she refused, he drew his firearm and continued pressuring her. She refused, and he held the gun toward her, saying that if she did not comply, he would shoot her.

[9] She stated that he appeared upset and instructed her to remove her shorts and underwear, which she did out of fear. He placed the gun on the floor of the car near the brakes, moved to her side of the vehicle, reclined her seat, and had sexual intercourse with her. She reported that she cried throughout the assault.

[10] When he was finished, she dressed herself, and he returned to the driver's side of the car. He started the car again and drove out of the track. He took his gun, pressed it to her side, and asked her for her phone number, which she gave to him. He let her out at a bus stop in Pamphret, giving her \$100.00 for fare.

[11] She then tried making contact with her grandmother and friends via text messages. Her friend, Mr Randy Tyson, called her, and she spoke to him and told him that she had been raped.

[12] Later that morning, she received a call from a private number. She answered and recognised the voice to be that of the applicant. She later made a report to the police and was taken to the hospital.

[13] Mr Tyson and the investigating officer, Detective Corporal Nordia Rance gave evidence. The substance of Mr Tyson's evidence is that the complainant told him that she had been taken away by a police officer and raped. Detective Corporal Rance stated that,

following the complainant's report at the Morant Bay Police Station, she commenced investigations into the offences of illegal possession of a firearm, forcible abduction, and rape. She took the complainant for medical examination, visited the scene with her, and obtained call-trace data for the complainant's phone, which led to the applicant. An identification parade was thereafter held, at which the complainant positively identified him.

The case for the defence

[14] In his defence, advanced in an unsworn statement, the applicant admitted that he picked up the complainant and told her he was a police officer. He stated that she asked for identification, and he directed her to a bag containing both his identification and his firearm. He denied ever drawing or using the firearm against her and claimed that the sexual intercourse between them was entirely consensual.

[15] The applicant called three witnesses. The first was Mr Richard Picart, a police officer, on patrol that night who encountered the applicant while he was in the track with the complainant. At the time of the trial, Mr Picart was no longer in the Jamaica Constabulary Force as a result of having been charged and convicted of the offence of illegal possession of a firearm. The second witness was Detective Corporal Damion Gonzales, who photographed the motor vehicle and provided evidence regarding the locking system on the vehicle. The final witness was Ms Yvonne Fraser, a woman with whom the complainant had stayed for a day after being put out of her aunt's home.

[16] That, in summary, was the evidence placed before the court.

Submissions on behalf of the applicant

[17] Counsel for the applicant, Mr Lawrence Haynes, submitted that the learned trial judge's decision was against the weight of the evidence. He argued that the learned judge failed to give adequate consideration to the testimony of the defence witnesses, Detective Corporal Damion Gonzales and Mr Richard Picart, particularly in light of what he

contended were inconsistencies in the complainant's evidence. As a result, he maintained that the applicant was deprived of a fair trial.

[18] Counsel accepted that the alleged inconsistencies in the complainant's account, standing alone, might not have sufficed to undermine the conviction. However, he contended that the learned trial judge's glaring and egregious failure to properly assess the evidence of the defence witnesses, evidence which he said directly contradicted the complainant's assertions, materially affected the fairness of the proceedings. He argued that from the outset, the locking and window operating mechanisms of the motor vehicle, in which the incident was said to have occurred, emerged as a central factual issue, one that required careful and balanced evaluation considering the evidence from both the defence witnesses and the complainant.

[19] In relation to the evidence of Detective Corporal Gonzales, counsel pointed to the officer's testimony concerning the door's locking mechanism and window-operating system of the motor vehicle and emphasised that the officer testified that both the doors and the windows of the vehicle were manually operated. This, he argued, stood in stark contrast to the complainant's version.

[20] The complainant, on the other hand, described the doors and windows as being operated by buttons, and further testified that while the applicant exited the vehicle to speak with police officers who had stopped on the road, she attempted to open the door but found it locked.

[21] Counsel also referred to aspects of the complainant's evidence regarding the operation of the vehicle's windows. She testified that when she entered the vehicle, the windows were down and were subsequently raised after the car drove off, without any action on her part, thereby implying that the applicant must have operated them. She further stated that when the police vehicle approached, she attempted to lower her window but was unable to do so because the applicant's vehicle had been turned off.

[22] Counsel submitted that the learned trial judge further erred by failing to take into account the evidence of Mr Picart, who stated that when he encountered the applicant's vehicle on the track that night, the driver's door was open and was manually operated. Mr Picart also said he heard no screaming or crying coming from the vehicle. Counsel contended that the learned trial judge appeared to dismiss Mr Picart's evidence on the basis that he had been dismissed from the police force following his conviction for illegal possession of a firearm, and in so doing gave the impression that he had no duty to assess Mr Picart's credibility in a balanced manner.

[23] In summary, counsel argued that the learned trial judge failed to consider the evidence of Detective Corporal Gonzales regarding the locking and window mechanisms, and consequently misdirected himself in evaluating the complainant's credibility. He submitted that, had the learned trial judge properly examined the evidence of both defence witnesses that contradicted the complainant's account, he might well have formed a different view of her credibility. Counsel accordingly contended that this failure resulted in a wrongful conviction.

Submissions on behalf of the Crown

[24] On behalf of the Crown, Ms Andrene Hutchinson, whilst conceding that there were some deficiencies in the learned trial judge's summation, rested on their written submissions, which maintained that the learned trial judge, having had the benefit of observing the witnesses and having assessed their credibility firsthand, his findings of fact ought not to be disturbed.

Discussion and analysis

[25] Having reviewed the summation, it is clear that the learned trial judge's treatment of the evidence was notably concise. This brevity affected both the prosecution and the defence cases. The summation consisted largely of a recitation of the evidence, with little to no accompanying analysis. As a result, it lacked the level of engagement and evaluative scrutiny expected of a trial judge. The learned judge did not indicate the reasoning by

which he arrived at his decision. There was also no detailing of his findings of fact, nor any explanation of the evidential basis for those findings. Further, he identified no conflicts within the evidence and provided no explanation of how such conflicts were resolved.

[26] Whilst the summation leaves much to be desired, the learned trial judge demonstrated that he understood the essential ingredients for the various offences for which the applicant was tried. He also effectively showed that he was mindful of the general directions that should guide his consideration of the case as a trial judge sitting without a jury. For example, he reminded himself that the prosecution "must adduce evidence to the court to make the court feel satisfied of the accused man's guilt," and that "there is no burden on the accused man to prove his innocence". He also considered factors important in assessing a witness's credibility, including their demeanour and body language, as well as their behaviour under cross-examination. He was aware that prejudice should not influence his evaluation of the evidence. Although his treatment of the evidence lacked detailed analysis, his narration was thorough. It is therefore clear that he was familiar with the full case presented by both the prosecution and the defence. The learned trial judge also correctly identified credibility as the central issue in the case, specifically the question of who was speaking the truth regarding whether the sexual intercourse was consensual.

[27] However, despite this obvious familiarity with the standard judicial directions, the learned trial judge did not translate that awareness into a meaningful application of those principles to the evidence in this case. The summation lacked a detailed demonstration of the required evaluative process: there was no clear articulation of findings of fact, particularly on issues of credibility; no structured assessment of conflicting evidence and explanation of how key conflicts in the evidence were addressed or resolved. This absence of analytical engagement ultimately rendered the summation deficient.

[28] As it relates to the particular issues raised by the applicant, the learned trial judge did not expressly determine whether the car's locking mechanism was manual or

otherwise. He nevertheless addressed the relevance of this issue by noting that, like the complainant, Detective Corporal Gonzales could not open the front passenger door from inside the vehicle because the door handle was missing. It is clear from this reasoning that, for the learned trial judge, the key issue was that the complainant was unable to open the door, regardless of the mechanism by which the door operated.

[29] The learned trial judge did not expressly address the conflicts in the evidence as to whether the vehicle's windows were manually operated or controlled by buttons, nor did he engage with the testimony related to that issue. His only reference to this aspect of the evidence was to note that he would not speculate on the complainant's testimony that the windows were down when she entered the car but were up when the vehicle drove away, despite her not having caused this to occur.

[30] The applicant also argued that the learned trial judge failed to properly examine the substance of Mr Picart's evidence and instead focused unduly on the circumstances of his removal from the police force. Although it is true that Mr Picart's conviction emerged in response to a question posed by the learned trial judge, there is nothing on the record to suggest that this information was used in a manner that prejudiced the applicant's case. Indeed, the learned trial judge had explicitly reminded himself of his duty to consider only the evidence and to avoid any prejudice towards anyone in the case.

[31] There is likewise no indication that Mr Picart's evidence was dismissed without consideration. The learned trial judge summarised his testimony, noting, in particular, that Mr Picart stated that when he encountered the applicant's vehicle on the night in question, the driver's door remained open, and he heard no screaming or crying coming from inside the vehicle. It was also recorded that Mr Picart was challenged in cross-examination about the car door being open because that detail did not appear in his witness statement.

[32] The complainant, on the other hand, testified that she was screaming and crying and that the car door was closed. Whether Mr Picart would have been able to hear any

such sounds, therefore, depended on whose account the learned trial judge accepted. Ultimately, the resolution of this issue turned on credibility, and the learned trial judge was required to determine which version he found to be true.

[33] Given the deficiencies identified in the summation, and in light of the applicant's challenge to his conviction on the basis of the evidence, it is incumbent upon this court to examine the evidence in order to determine whether the established test has been met to justify the interference of this court. An applicant who seeks to overturn a conviction on evidential grounds must demonstrate that the verdict was "so against the weight of the evidence as to be unreasonable and insupportable" (see **Everette Rodney v R** [2013] JMCA Crim 1 at para. [22], where the court cited with approval **Joseph Lao v R** (1973) 12 JLR 1238).

[34] This court is also guided by the principle affirmed in **Patrick Comrie and others v R** [2012] JMCA Crim 16, where Brooks JA (as he then was) reiterated that an appellate court will not interfere with a trial judge's findings of fact unless those findings were made on an incorrect principle or were unsupported by any evidential foundation. His Lordship explained that such restraint reflects the distinct advantage enjoyed by the tribunal of fact, which has the opportunity to see and hear the witnesses and is therefore better placed to assess credibility. This principle was earlier expressed in **R v Horace Willock** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No. 76/1986, judgment delivered 15 May 1987, where the Court observed that the absence of detailed reasons or findings in a summation does not, without more, justify disturbing the verdict of a judge sitting alone, provided that the printed record contains material evidence capable of supporting the decision reached. These authorities reinforce the principle that this court must not substitute its own view for that of the trial judge unless the verdict is unsupported by the evidence or is otherwise rendered unsafe.

[35] The substance of the Crown's case has already been outlined. Of significance is that, in cross-examination, numerous suggestions were put to the complainant, all of which she denied and none of which appeared in the applicant's unsworn statement. For

example, she denied that the applicant asked whether she wished to go to the station or home; she denied asking him if he had a girlfriend, whether he liked her, or whether he would like a girl like her; she denied pulling out his penis; she denied that she was not crying; she denied that the applicant left the car door open when the police arrived; and she denied that the police were close enough that they could have heard her if she screamed. Crucially, none of these matters were mentioned by the applicant in his unsworn account. While the credibility of the complainant will not be affected by this, this does not bode well for the applicant as regards the assessment of his unsworn statement and the weight we can give it, given his silence on matters explicitly raised with the complainant and denied by her.

[36] There is nothing in the evidence to suggest that the complainant's testimony was materially weakened under cross-examination. Neither Detective Constable Gonzales nor Mr Picart was able to provide direct evidence as to whether the offences were committed; at most, their testimony bore on the complainant's credibility.

[37] We do not consider the issues raised by the applicant regarding the windows and doors of the car to be of such monumental significance, when viewed against the totality of the evidence and the nature of the offences for which he was tried. Whether the passenger door's locking mechanism was manual or otherwise does not undermine the complainant's evidence that she was unable to open the door. Indeed, as the learned trial judge noted, Detective Constable Gonzales himself was unable to open the door from inside the vehicle due to the missing handle. In those circumstances, the locking mechanism takes the matter no further. Similarly, the issue concerning the operation of the windows does not go to the core of what the learned trial judge was required to determine. While these matters may have some bearing on credibility, they do not materially affect the central question of whether the offences occurred.

[38] As it relates to the conflict between the evidence of Mr Picart and that of the complainant concerning whether the car door was open or closed, and whether the complainant was screaming, we are of the view that this is a peripheral issue. Even if the

door had been open, this would not logically compel a finding that the complainant was not screaming, or that she was untruthful. Her explanation that her voice would not have carried the distance to the officers is plausible and so it was open to the learned judge to accept her evidence as true. Moreover, even if the complainant were mistaken or untruthful on this point, such a discrepancy would not undermine her credibility to the extent that her entire account should be rejected. It is also noteworthy that the applicant was silent on this matter in his unsworn statement.

[39] The learned trial judge, having had the advantage of seeing and hearing the witnesses firsthand, was in the best position to assess their demeanour and credibility. Indeed, he, having recognised that credibility was the main issue, assessed the complainant's evidence and expressly stated: "I have the unique opportunity to observe the witness firsthand and noticed her demeanour and conduct and attitude under drilling cross-examination."

[40] As to the offence of rape, there was no dispute that sexual intercourse occurred. The issue was whether the complainant consented. She rejected the suggestion that she was lying and denied that the intercourse was consensual with the applicant. Her account was that she was threatened with a firearm. The learned trial judge, having seen and heard the witness, specifically found that the complainant had not consented, and accordingly rejected the applicant's account. Therefore, the learned trial judge found the complainant to be a truthful witness as it relates to the critical issue of whether sexual intercourse was consensual to establish the applicant's guilt for rape, a conclusion that is supported by the evidence and unsurprising on the record.

[41] As it relates to the offence of illegal possession of a firearm, there was no dispute that the applicant was armed. The real issue was whether the evidence supported the complainant's account of the manner in which the firearm was used. The learned trial judge, having observed the complainant and assessed her demeanour under cross-examination found her credible. On the evidence, it cannot be discerned that she was discredited on this issue or on any other material issue. The only counter to her

evidence was the applicant's unsworn and untested statement denying any use of the firearm. In these circumstances, it cannot be said that the verdict of guilt was so against the weight of the evidence as to be unreasonable or insupportable.

[42] Regarding the offence of forcible abduction, the complainant's evidence again remained intact under cross-examination. It was suggested to her that she had told the applicant to drive slowly because she wanted them to talk and that she had not asked him to stop while he was driving; she denied those suggestions. The applicant, however, remained silent on these matters in his unsworn statement. In the face of the complainant's denials and the applicant's silence on these crucial matters, it cannot be said that the verdict of guilt was against the weight of the evidence or that it was unreasonable.

[43] It is our view that the complainant gave clear, consistent, and detailed evidence and was not materially shaken in cross-examination. The learned trial judge regarded her as a truthful and credible witness, which was a conclusion open to him. The defence case, by contrast, consisted of the applicant's unsworn statement, which was brief and bare, and which was silent on several matters put to the complainant in cross-examination, along with the evidence of his witnesses, none of whom could speak to what transpired between the applicant and the complainant. It is our view that the weight of the evidence supports the applicant's convictions. There was ample evidence on which the learned trial judge could properly conclude that the applicant was guilty of each of the offences for which he stood trial.

[44] In conclusion, given the state of the evidence, we find no basis in law to disturb the convictions. The evidence supports the verdicts, and no substantial miscarriage of justice arose from the deficiencies identified in the learned trial judge's summation.

[45] Regarding the application for leave to appeal sentence, the applicant had advanced no ground of appeal challenging the sentences, and in any event, there is no basis on which it could be contended that the sentences are manifestly excessive.

[46] Accordingly, we make the following order:

- (i) The application for permission to appeal is refused.
- (ii) The sentences are to be reckoned as having commenced on 15 November 2021, the date they were imposed and are to run concurrently as ordered by the learned trial judge.