

COURT OF APPEALS OF MARYLAND

Brown v. State, 222 Md. 312

160 A.2d 95 (1960) · No. No. 213, September Term, 1959 · Decided April 18, 1960

SUMMARY

Calvin Brown appealed his conviction for assault with intent to rob, challenging the sufficiency of the evidence and the credibility and sufficiency of the victim's identification. The Court of Appeals of Maryland held that credibility and identification were matters for the trial judge and that the evidence, if believed, supported the conviction. The court found no clear error and affirmed the judgment.

OPINION

PER CURIAM.

222 Md. 312 (1960) 160 A.2d 95 BROWN v. STATE [No. 213, September Term, 1959.] Court of Appeals of Maryland. Decided April 18, 1960. The cause was argued before BRUNE, C.J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ. C. Oliver Goldsmith, for appellant. Clayton A. Dietrich, Assistant Attorney General, with whom were C. Ferdinand Sybert, Attorney General, Saul A. Harris, State's Attorney for Baltimore City, and Julius A. Romano, Assistant State's Attorney for Baltimore City, on the brief, for appellee.

PER CURIAM: Calvin Brown appeals from his conviction and sentence on a charge of assault with intent to rob. He challenges the sufficiency of the evidence to sustain his conviction, and attacks the credibility of the testimony of the victim of the attack, one Dargan, who identified Brown as one of two men who attacked him. Able counsel appointed to represent Brown on this appeal has strongly questioned the victim's ability to identify Brown as the man who "yoked" him from behind, though the victim was unable to identify another suspect wearing a red sweater, as the man who attacked him from the front.

Dargan had described one of his assailants as wearing a red sweater. The case was tried before Judge Allen, sitting without a jury. The credibility of the witness and the sufficiency of the *314 identification were matters for the determination of the trial judge. *Johnson v. State*, 221 Md. 177, 156 A.2d 441.

The evidence, if believed, was ample to warrant conviction. We could not reverse the conviction on a question of evidence unless it were clearly erroneous. Maryland Rules, Rule 741 c. *Ward v. State*, 219 Md. 559, 150 A.2d 257.

We do not find that it was. We were informed at the argument that Dargan is now also an inmate of the same prison as Brown. A letter which he has recently written suggesting a mistake in his

identification of Brown, but denying any perjury in connection therewith, is not properly before us. Judgment affirmed.

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