JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 127/2000

BEFORE: **THE HON. MR. JUSTICE DOWNER, J.A.**
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.

GLENROY CLARKE
v.
REGINA

C.J. Mitchell for the appellant

Miss Kathy Pyke Assistant Director of Public Prosecutions and Miss Tanya Lobban, Crown Counsel for the Crown

November 5 and December 20, 2001

WALKER, J.A.

On June 20, 2000, in the Western Regional Gun Court held in Montego Bay, St. James, before Campbell J sitting without a jury the appellant was convicted on four counts of an indictment which charged him with Illegal Possession of Firearm (Counts 1 & 3) and Demanding money with menace (Counts 2 & 4). He was sentenced to serve terms of imprisonment of 5 years at hard labour on each count, the sentences imposed on counts 1 and 2 to run consecutively to each other and concurrently with the sentences imposed on counts 3 and 4. His subsequent appeal against conviction and sentence was heard and dismissed by this Court on November 5, 2001. At that time we affirmed the

appellant's convictions and sentences and ordered that the sentences should commence as from September 20, 2000. What follows are the reasons for our decision.

The case for the prosecution was based on two incidents, the first of which occurred on March 25, 2000 and gave rise to counts 1 and 2, and the second on April 1, 2000 which provided the foundation for counts 3 and 4. The evidence disclosed that Mr. Sutcliffe Logan and his business partner, Mr. Ogil Campbell, operated a small store under the trade name Home Market Network within the Charles Gordon market circle in Montego Bay, St. James. From that location the men distributed mainly fruits and vegetables in the course of doing business. On March 25, 2000, at about 8 p.m., Mr. Logan was in the process of closing the store when the appellant entered the building through the front door. The appellant was then accompanied by another man who stopped at the door while the appellant approached Mr. Logan at the counter of the store about 10 feet away. The man at the door immediately raised his shirt in a manner to reveal to Mr. Logan the fact that he was carrying a gun stuck in his waist band. Thereafter a lengthy conversation took place between Mr. Logan and the appellant at the counter within ear shot of the man at the door. The conversation was initiated by the appellant who introduced himself to Mr. Logan by saying "Hi, I am Frank, I collect protection money from people." The appellant went on to inform Mr. Logan that some people in the market circle from whom he was accustomed to collect protection money had been complaining that they did not have enough money to pay, the reason being that Mr. Logan was taking all the business by undercutting them in the pricing of goods. The appellant proceeded to suggest that Mr. Logan should adjust his prices to "put them up and see how it goes". At all times

during the conversation the appellant's companion remained standing at the front door of the store, frequently looking outside the store and several times raising his shirt to display the firearm he was carrying. At the end of the conversation both men left the store together, but not before the appellant advised that, if needed, he could be contacted by the name "Copper Head" at a location across the street. Mr. Logan testified that he felt intimidated by the conduct of both men on that occasion.

Mr. Logan next saw the appellant at about 8 p.m. on April 1, 2000. At this time the appellant, who was armed with a gun, was seen chasing someone down the road across from the store. Shortly after this there was a meeting in a garage adjacent to the store involving the appellant, Mr. Logan and Mr. Logan's business partner, Mr. Campbell (also called Dave). At that meeting the appellant (referred to as Glen) brandished a gun which he pointed at one stage at Mr. Logan while remarking:

> "mi have mi gun on mi the whole time and the boy dem no even find it. When police a pressure you, you can't get nervous. You can't get jumpy."

The appellant was here referring to an incident which had occurred shortly before and had been witnessed by Mr. Logan in which the appellant had been frisked by the police and had somehow managed to conceal the gun which he was carrying. However, to return to the events of this meeting, the record of the evidence of Mr. Logan disclosed the following questions and answers:

> "Q. Let us take it one step at a time. What did Dave say to him?
>
> A. "Weh you want. See the man here, tell him

what you want," addressing Glen. Of course, he was addressing Glen.

Q. And then you said anything?

A. Well, after he put the gun back into his waist band he said basically a money...

HIS LORDSHIP: He said what?

WITNESS: Basically a money. "Is money mi want." I am gonna have to pay like everyone else. At which time Dave said to him, "there is something you don't understand. The man is muslim and he is not gonna pay you anything."

Q. And then did the accused say anything after that?

A. He said that we don't have to look at it like a shake down. We would have to be paying security anyway so is like security cost. We don't have to feel no way about it.

Q. Was anything further said?

A. Dave asked him how much money. He said he is not gonna put no direct figure on it, just every week have one package ready for him."

In his defence which was presented in the form of an unsworn statement the appellant admitted visiting Mr. Logan's store in April. The appellant said that the purpose of that visit, during which he saw and spoke to Mr. Logan, was to discuss "drugs business" with Mr. Campbell whom he had known for over 20 years previously. He did not see Mr. Campbell on that occasion and was told to return to see him the following week. He returned the following Saturday when he saw and spoke to both Mr. Campbell and Mr. Logan in a garage next door to their business place. The conversation was about

money which the appellant claimed was due to him from Mr. Campbell. The appellant denied being armed with a gun, or showing a gun to Mr. Campbell or Mr. Logan on that occasion. He also specifically denied pointing a gun at, or demanding money from, Mr. Logan at that time.

In this appeal two grounds of appeal were relied on. It was argued firstly that the evidence tendered by the prosecution was insufficient to support the appellant's conviction on the first count of the indictment which charged Illegal Possession of Firearm on March 25, 2000 – the first incident. On this count, the appellant's conviction was based on section 20(5)(a) of the Firearms Act which provides as follows:

> " (5) In any prosecution for an offence under this section –
>
> (a) any person who is in the company of someone who uses or attempts to use a firearm to commit -
>
> (i) any felony; or
>
> (ii) any offence involving either an assault or the resisting of lawful apprehension of any person,
>
> shall, if the circumstances give rise to a reasonable presumption that he was present to aid or abet the commission of the felony or offence aforesaid, be treated, in the absence of reasonable excuse, as being also in possession of the firearm.;
>
> (b)..."

Here the evidence was that the appellant and his companion entered Mr. Logan's store together; that while the appellant engaged Mr. Logan in conversation at the counter of the store his companion who was armed with a firearm stood at the door about 10 feet away and within earshot of what was being said; that several times during the conversation the appellant's companion lifted his shirt to display his firearm; that at the

end of the conversation both men left the store together. From all the circumstances, including the tenor of the conversation between the appellant and Mr. Logan and the supporting role played by the appellant's companion, the trial judge found that the felony charged in the second count of the indictment was proved and that the appellant was also in possession of the firearm in question. Such a finding was based on the statutory presumption enacted by section 20(5)(a)(i) as to which the appellant offered no reasonable excuse. It was a finding that was fully justified on the facts as found by the trial judge. Accordingly, we found no merit in this ground of appeal.

Secondly, in relation to the appellant's conviction on the second count of the indictment, Mr. Mitchell submitted that there was no evidence of a demand for money as such. In the context of a case such as this a demand may be made expressly, or it may fall to be inferred from all the circumstances of the case. In the present case the second incident of April 1 provided a clear example of an express demand for money. On that occasion the appellant said "Is money mi want" and went on to warn Mr. Logan that he would have to pay like everyone else. However, in the first incident of March 25 the demand for money was subtly made. Then it was the obvious intention of the appellant as evidenced by words (his own) and deeds (those of his companion) that he (the appellant) should have been understood by Mr. Logan as demanding the payment of money in return for providing protection for Mr. Logan in the conduct of his business. It was a subtle demand which was not lost on Mr. Logan who felt intimidated by the men and understood perfectly what the appellant was all about. Indeed, on this occasion the appellant had defined his role from the very outset in announcing: "I collect protection

money from people." The subsequent explicit demand on April 1 served to identify and put beyond any doubt the true character of the events of March 25. Again, we found no merit in this second ground of appeal.

Mr. Mitchell did not seek to impugn the appellant's convictions on counts 3 and 4 of the indictment, nor did he argue the question of sentence we think with good reason.

The facts of this case provide the classic example of what is commonly referred to as a protection racket. It is a fairly recent phenomenon and one of the clear and present dangers with which the Jamaican society is currently beset. It is, in fact, a criminal device used to extort money from businessmen supposedly in return for ensuring their protection against all ills. The practice is islandwide. It is to be deprecated and must be discouraged by the Courts by the imposition of condign punishment on all persons found guilty of indulging in it. In the present case such punishment was imposed on the appellant and we see no reason to interfere with it.

Accordingly, we disposed of this appeal in the manner aforesaid.