

CA CRIMINAL LAW - Gun Court - Trial - (Illegal possession of firearm
(illegal possession of ammunition) - Evidence - Proof - Sentence.
with this trial judge gave consideration to all issues - 10th H.
proceeding mutually exclusive. which case, for a manifestly
excessive: Application for leave to appeal conviction refused. Sentence on
court for illegal possession of firearm reduced from 10 years to 7 years

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 39/88

JAMAICA

No case referred to

EVIDENCE

CRIMINAL PROCEDURE

BEFORE:

THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A. (Sunderland)
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

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R. v. ANTHONY REID

Application for leave to appeal

Miss Cheryl Richards for Crown

21st May, 1989

CAREY, J.A.

In the High Court Division of the Gun Court before Theobalds J sitting alone, the applicant was convicted on an indictment which charged illegal possession of a firearm and illegal possession of ammunition. He was sentence to concurrent terms of 10 years and 7 years respectively at hard labour. He now applies for leave to appeal conviction and sentence.

The facts shortly stated were these - on 30th June, 1987 at about 6:45 a.m. a number of police officers raided premises situated at 30 Studley Park Road in Kingston in search of men wanted by them and for guns and ammunition. The applicant was observed descending a flight of stairs clad in his underpants. He was carrying a red travelling bag. He was observed to look towards the police party and then to

make his way back up the stairs. Two of the officers gave chase and one of them held him. He is alleged to have shouted - "Do sah, nuh kill mi, people oonoo wake up, mi a guardie." When the bag was examined it was found to contain a .357 magnum revolver with 6 live rounds in the chamber. In the bag also was a match box with three live rounds. That weapon and those rounds of ammunition gave rise to the two counts with which he was charged. When the appellant was asked about the firearm, he said that a man had given him to keep and he was about to hide it.

The defence in this case was a denial as to possession. What the appellant said was that at 6:30 when he was in bed, he was awakened by a knock at his door. It was the police. They told the occupants their mission, which was to search for wanted men, guns and ammunition. They carried out a search in his apartment which he occupied with his lady friend and nothing was found. Indeed, he it was who invited them to search his apartment. The police continued their search on the building and entered an apartment next door, or some doors from his, which door or doors it was said, they kicked in, eventually emerging with a bag from which the ammunition and the firearm were extracted. He denied emphatically that he told the police that a man had given him the gun to keep.

There were thus two mutually exclusive stories before the learned trial judge. He had the witnesses before him and was in a position of advantage to make up his mind where the truth lay. Unhappily for the appellant, his finding was adverse to him. We have carefully reviewed the facts of

the case, we have looked at the learned trial judge's summation and he certainly gave careful consideration to all the issues which arose before him. We can see no reason whatever to interfere with the adverse verdict.

Insofar as the sentence imposed on count 1 is concerned, we do share the concern of the single judge as to the reason for the imposition of a sentence of 10 years for possession of a firearm simpliciter. We suspect, having regard to the particular nature of the firearm, namely, a magnum, that that may have disposed the learned trial judge to impose the sentence which he did. We think, however, that despite the dangerous characteristics of this firearm, 10 years imposed was outside the spectrum or the range for the offence of possession simpliciter. We could conceive of the situation where possession of a M16 rifle could properly attract such a penalty, but we do not think that the effect of a magnum is equivalent to that of an M16 rifle and we think, therefore, that some differentiation should be made.

We are disposed, therefore, to reduce the sentence on count 1 from 10 years to 7 years and we so order. Sentence will begin to run from the 12th of May, 1988. The application for leave to appeal his conviction is refused.