JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 150/88

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. ANTHONY RHODEN

Application for leave to appeal

Miss Paula Llewellyn for Crown

January 16, 1989

FORTE, J.A.

The applicant was convicted on three counts of an indictment, which charged as follows: count 1 for illegal possession of firearm, count 2 for robbery with aggravation and count 3 for unlawful wounding. On these counts he was sentenced to 10 years, 15 years and 5 years respectively.

The incident out of which these convictions arose occurred on the 5th of July, 1987 at about 12 o'clock in the day time. The complainant was at his farm, supervising the spraying of his citrus when the spray machine motor went silent. He called for his supervisor, and on getting no answer, he went himself to seek out the supervisor. On his way he saw the accused man, the applicant, standing with his back against the wall of his house; the applicant was then wearing a cap and a towel under that cap and a bag over his shoulder. Asked by the complainant what he was doing there, the applicant answered by producing a gun and at this stage he was joined by two other men, one of whom was also armed with a gun and the other with a knife. On their appearance the applicant asked the complainant "whey the gun deh," and apparently in an effort to get an answer, the man who was armed with the knife cut the little finger of the complainant. Not satisfied with

that he also cut the complainant on his cheeks, both cheeks and started to beat him. The complainant surrendering to all this violence that was exhibited upon him, decided that he would give the gun to them and led them towards his house. They followed, the applicant parting company with them to go to the back of the house. Before doing so, he gave the order to the other two men, "shot him, shot him," Fortunately for the complainant, the men did not obey. He however took them into the house where he handed over to them his revolver with 15 rounds of .38 cartridges. They then took him back outside where the applicant was apparently watching out, in case somebody came while they were committing their evil deeds. They thereafter left the complainant and made their escape. The complainant thereafter went to the police station, made a report. Some issue arose in the case as to whether he did in fact tell the police who it was that attacked him. However, he explained that by saying that he was so nervous, he forgot to tell the police the name of the applicant. He had known the applicant before, the applicant's mother having worked with him, his sister and his brother-in-law on the very property on which this incident occurred. He said that subsequent to that, he reported to the police that the applicant was one of the men and that he knew him only by the name "Blacker". Consequently, the police officer to whom the report was made searched and found the applicant and because he knew other persons by the name of "Blacker" he held an identification parade at which, on the 19th of February, 1987 the complainant identified the applicant as one of his assailants. The applicant offered not one word in his defence. We see no reason to disturb the conviction. The evidence was extremely adequate, it was daylight, the applicant was known to Mr. Haddad before. Mr. Haddad had ample opportunity and certainly sufficient time within which to recognize the applicant as the person who attacked him in the company of two other men.

For those reasons we see no reason to upset the conviction. The applicant was sentenced as I said before to 10 years on the first count, 15 years on the second count and 5 years on count 3. It is noted that application

for leave to appeal in relation to sentence on count 1 and 3 were refused by a Judge alone. However, the application for appeal against sentence in relation to count 2 was granted. We note that in sentencing the applicant the learned trial judge said among other things and I quote:

> "Possession of firearm is bad, robbery is bad and wounding Mr. Haddad is also bad and according to the evidence you were the instigator, you shot him and this is not just a mere robbery but you were the watchman outside."

There was some concern about those words of the learned trial judge because the evidence does not reveal that the applicant did in fact shoot Mr. Haddad. However, there is evidence that the applicant did threaten and did give an order to the other men to shoot him. Having regard to that and the acts of violence exhibited on the complainant in the execution of this offence, we find no reason to disturb the sentences passed in respect of any of these counts in the indictment. Consequently, the conviction and sentences are affirmed. The sentences are to run from date of conviction.