

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 8 & 9/84

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. AUGUSTUS TURNER & ANTHONY IRONS

Appellants unrepresented.

Miss Jennifer Straw for the Crown.

18th March, 1987

ROWE, P.:

Augustus Turner and Anthony Irons were convicted by Mr. Justice Patterson sitting in the St. James Circuit Court, Gun Court Division, of illegal possession of firearm, robbery with aggravation and wounding with intent. They were each given sentences of twelve years imprisonment at hard labour on each count, sentences to run concurrently. They have applied for leave to appeal against the convictions and sentences. These applications were refused by the single judge, and today they have not appeared and they have not instructed counsel to appear on their behalf.

The allegations for the Crown which were accepted by the learned trial judge were that on the night of the 15th April, 1983, in the parish of St. James, Mr. Samuel Fisher, a public health inspector, who also ran a business, went to his business premises and collected the day's taking at about 8:45 p.m. and went to his home in a taxi carrying his \$700.00 in his hand covered with a paper. As soon as he got to his house he was attempting to go through the grilled doors. The electric lights on his verandah were on and as he was about to enter the grilled doors two men approached him from the side of the house. Both of them wearing narrow strips of material across their eyes, he said, not more than a half-an-inch thick, and Mr. Fisher said they were both armed with guns. He seeing this, threw the money at them thinking that they would take the money and ran away. He was further attempting to enter through the grilled door when he realised that the men were coming at him, so he turned and faced them. A struggle ensued in which he held on to the gun in one man's hand and while he was wrestling with that man, he heard what he called a "click-click" behind him and he got the impression that somebody was pulling a trigger so he released the hold on the man who ran off a bit. Mr. Fisher turned to face the direction from which he heard the "click-click" and at that time he heard a report of a firearm and he felt a burning in his left arm. He ran into the house and he found that he had been shot through the left arm, the bullet making both an

entry and an exit hole. He went along to the hospital and a report was made to the police. He identified one of his assailants as the applicant Irons. Irons is somebody whom he had known for a very long time. He is the half-brother of Mr. Fisher's wife from whom Mr. Fisher is estranged. The applicant Irons had actually lived in the same house with Mr. Fisher for a number of years, albeit it was sometime past. The last time that Mr. Fisher had seen Irons was on the morning of the very day of the robbery when Irons had come to Mr. Fisher to ask him about a house for rent. Mr. Fisher said with the light from the verandah, with the length of time that the men were before him, with his knowledge of the applicant Irons he was in absolutely no doubt and he could not be making any mistake that Irons was one of his assailants.

As to the applicant Turner, he said that Turner lived in the house opposite to where the applicant Irons lived and that he had seen Turner daily for a number of years while himself and Irons lived in the same house. That he saw Turner occasionally over the years and on this evening there was no doubt in his mind that Turner was the person with whom he wrestled, eye-to-eye as it were, as he held on to the gun which was in the hand of Turner.

The question was one of identification. Both men gave a defence that they were not there. They were picked up the same night and charged. The learned trial judge had no doubt in accepting the

identification of each of these applicants and we are of the view that the convictions and sentences were appropriate and ought not to be disturbed. The sentences will run from the date of conviction.