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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 147/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Wright, J.A.  
The Hon. Miss Justice Morgan, J.A.

R. v. GARFIELD HYMAN

Application for leave to appeal

Miss Paulette Williams for the Crown

3rd April, 1989

CAMPBELL, J.A.

The applicant was found guilty of illegal possession of firearm and rape in the High Court Division of the Gun Court and sentenced by Orr J. to 10 years and 15 years respectively at hard labour concurrent on June 16, 1988. The main witness said she was walking home on Conrad Lane on 17th January, 1988 which was a Sunday night, when she saw the applicant in a group of persons conversing. She had known him before. She passed them, and suddenly she felt someone grab her from behind by the neck. She asked who was grabbing her. The hand loosened from her neck, she spun around and saw that it was the applicant. The applicant said that it was a long time he had been watching the complainant who did not want to talk to "area boy." She shouted for rape and the applicant boxed her about four times. Two men rode up and the applicant asked one of them for his the applicant's gun remarking that the complainant was being difficult. He was given a gun; he clicked it and put it to the complainant's

forehead. He proceeded to draw her into what then appeared to be an abandoned building and there sexually assaulted her. This building turned out to be the home of the applicant.

The applicant's defence is that there was sexual intercourse but it was with the complainant's consent as they had been friendly for a long time. The learned trial judge adverted to the issue raised namely consent and warned himself of the danger of convicting in the absence of corroboration. He accepted the evidence of the complainant and expressly found that whatever discrepancies existed between the complainant's evidence and that of her mother, these were insufficient to destroy the complainant's credibility. In our view there is no merit in the application which is accordingly refused. We however order that the sentence commence from September 16, 1988.