

CIA CRIMINAL LAW - Trial - Burglary with intent - simple struggle
forward case - Judge dealt with issues adequately - no
reason to interfere - application for leave to appeal refused

10 cases referred to

JAMAICA

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Evidence

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 88/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. vs. BARRINGTON MCLEISH

Application for leave to appeal

Miss Yvette Sibble for the Crown

November 7, 1988

CAREY, P. (Ag.):

In the St. Catherine Circuit Court held at Spanish Town on the 18th April, 1988, this applicant was convicted on an indictment charging him with burglary with intent and he was sentenced to a term of 7 years imprisonment at hard labour. He now applies for leave to appeal against that conviction and sentence.

The short facts are that the owner of these premises a Mr. Simpson, secured his premises on the night of the 28th of December, 1986 and went off with his family to the country. The following day he returned to see a large crowd of persons at his gate and his bedroom ransacked.

A witness called on behalf of the Crown, a Mr. Powell, whom the learned trial judge described in unforcensic terms as "the key shot," the key witness so to speak," gave evidence that he saw this appellant enter those premises, that he Mr. Powell went up and knocked at the window and the appellant ran out. Mr. Powell raised the hue and cry which brought other persons to his assistance. The appellant was held and he was rescued by the police who came on the scene from the attention of the neighbours. In the premises, a travelling

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bag containing a large amount of items were found and it was plain that the intruders had collected the items preparatory to making their departure when they were interrupted by the vigilant Mr. Powell.

The appellant's defence was that he was, in effect, an innocent passerby when he was held by this group of persons who accused him of breaking and entering Mr. Simpson's house. He testified that he was a jeweller and that on the previous day he had agreed with his brother-in-law to meet him at that same ground, at 12 in the day. He went to that place, did not see his brother-in-law and he remained there from 12 until 4:30 in the morning. Further, that he was on his way to his brother-in-law's house in those early hours of the morning when he was held, as was already stated, by these persons and accused wrongfully.

This was a very simple and straightforward case. We have, very carefully examined the summation of the learned trial judge who dealt with the issues very adequately. We can see no reason whatsoever to interfere. In the result, the application for leave to appeal is refused and the court directs sentence begins to run from the date of his conviction.