

*C.A. Criminal Law - Gun Case - They - evidence - sent to  
(CA held "evidence" - "unreliable")  
Application for leave to appeal refused.*

JAMAICA

*No con. - referred to*

IN THE COURT OF APPEAL

*comp*

SUPREME COURT CRIMINAL APPEAL NO. 54/90

*Encl.*

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

R. V. CHARLES BARRETT

Applicant unrepresented

Miss Paulette Williams for Crown

JANUARY 21, 1991

ROWE P.:

A party of policemen from Montego Bay accompanied by a young-man, termed an informer, went to Belfield Police Station in St. Mary. There they were joined by a District Constable and the police personnel, went to the home of the applicant on the night of August 15, 1989. Issue was joined between the prosecution and the defence as to whether "the informer" accompanied the police officers to the applicant's home. The police said "No" this man had been left in the district. The defence alleged, that handcuffed, this person was at all times in the company of the police and more specifically at the applicant's home.

When the police party arrived at the applicant's home District Constable Simpson called the applicant who came to him on the verandah. The police then entered the half-finished dwelling-house which the applicant occupied alone and during a search of his bed, discovered under the mattress a .38 Smith and Wesson revolver with three live rounds and a .45 Smith and Wesson revolver with one live round. These were shown to the applicant, who, upon caution said:

"Officer, some youth pass yah the other day and say them a look mango and it look like them mine mi house, sah."

A further search was made under an open cellar of the house. The police dug a hole one foot deep and there underneath a sheet of zinc, wrapped in cloth was an M-16 Assault rifle containing a magazine with 11 x .56 live cartridges. Upon caution the applicant said:

"Officer, a the youth them mine mi house sah."

The applicant, gave sworn evidence in a commendably literate manner. He denied making the statements regarding the visit of "youth" to his premises but admitted that he did say unknown person or persons had "mined" his house. Police officers, he said, held him at gun point after he obeyed the order to leave his room and he saw the police throw some firearms on the ground. Policemen searched his house while he was on his verandah and returned with a firearm. They also dug under his house and recovered the M-16 rifle. He denied that two revolvers with ammunition were found underneath his mattress in his presence. In essence his defence was that "the informer", who said that he was associated with three notorious criminals, conspired with others to hide the firearms on his premises and further conspired to implicate him.

A number of residents of the Belfield area gave evidence for the defence to indicate that "the informer", handcuffed, had been with the police when they left the Belfield Station towards the home of the applicant, was with them when the police returned along with the applicant and finally left the Police Station in the company of the applicant and the Montego Bay police officers.

The trial judge accepted the evidence of the police officers that they were accompanied by the applicant to the bed on which he had been sleeping and that under the mattress two loaded firearms were discovered. He, however, held that having regard to the open nature of the cellar he could not be satisfied that the applicant was in exclusive possession of the M.16 Assault rifle. On that count he found the applicant Not Guilty.

These were unusual facts in the sense that if the police were speaking the truth, this applicant was literally on top of two loaded firearms. The evidence was overwhelming as to guilt and we find no merit in the application for leave to appeal against conviction or against the sentence of seven years at hard labour. The application for leave to appeal is refused. Sentence will commence on the 23rd of June, 1990.