

C.A. Criminal Cases - Gun Court - Thomas (illegally born) - evidence
showing intent to kill - evidence - Sancliff's wife - visual identification
- whether evidence sufficient. Application for leave to appeal
refused. The court is satisfied.

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 82, 85 & 86/88

EVIDENCE

C.R. v. P. v. P.

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

R. v. CURTIS THOMAS
DELROY RAYMOND
ANTHONY HARVEY

16/89

16/89

Application for leave to appeal

Miss Y. Sibbles for Crown

February 27, 1989

CAMPBELL, J.A.

In the High Court Division of the Gun Court the above applicants were on April 12, 1988 found guilty of illegal possession of firearm and shooting with intent.

Smith J (Ag.) as he then was, sentenced Thomas to 18 years at hard labour on each count while Raymond and Harvey were each sentenced to 8 years imprisonment at hard labour for illegal possession of firearm and 10 years imprisonment at hard labour for shooting with intent.

The application for leave to appeal of Thomas was heard and refused on January 16, 1989. We are concerned with the other two applicants.

The offences were committed on July 19, 1984. About 6.15 a.m., the applicants in the company of Thomas and others were seen at the intersection of Slipe Pen Road and Drummond Street acting in a suspicious manner by Det. Sgt. Winston Howell who together with Acting Corporal Bryan and

Constable Valentine were on mobile patrol duty dressed in plain clothes and travelling in an unmarked land rover.

Det. Sgt. Howell called out to them ordering them to stop. The response was that they drew hand-guns from their waists and opened fire on the police officers. The applicants scattered in different directions and were chased by these police officers. Thomas was pursued to the Kingston Public Hospital where in the area of the operating theatre he engaged Howell and Valentine in a gun battle before escaping. The other two applicants also escaped. Thomas and the two applicants were well known to Det. Sgt. Howell and Valentine.

On January 22, 1985, Howell identified the applicant Drummond at Central Police Station as one of the men who fired on the police in July, 1984. He denied having done so. Later that day Howell identified Harvey at the General Penitentiary as one of the persons involved in the incident. Harvey admitted being in the company of Drummond and Thomas but said he had no gun. Thomas was identified at the Gun Court on June 10, 1985. He denied involvement in the incident.

Thomas and Drummond each gave an unsworn statement while Harvey gave sworn testimony. They each said they knew nothing about the incident. In substance they were not at the scene. Harvey specifically said in evidence that he was in Saint Thomas at the time.

The sole issue before the learned trial judge was identification. This he considered critically and fully in the context of recognition having regard to the evidence of Howell and Valentine that they knew the applicant before. He found that at 6.15 a.m., there was adequate natural lighting to facilitate recognition. He accepted the evidence that the period of observing the applicants was short but this he said was compensated for by the fact that Howell and Valentine were police officers trained to be observant. They had a frontal view of the applicants and the evidence showed that they were in close proximity about ten yards away. The evidence relative to this issue was sufficient and the applications for leave to appeal are accordingly refused. Consistent with the

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order made on the refusal of the application of Thomas, we order that the sentences of the applicants commence to run from the date of conviction.