

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 150, 147, 149, 148 & 154/87

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

REGINA vs. ERIC MADURIE
ROHAN GRANT
DANIEL McCALLUM
ERROL CAMPBELL
TEXRITA BAILEY

Norman Manley for McCallum

Miss V. Bennett & Miss A. McKain for the Crown

May 30, 1988

CAREY, J.A.:

All these applicants, Eric Madurie, Rohan Grant, Daniel McCallum, Errol Campbell and Texrita Bailey, were convicted in the High Court Division of the Gun Court held in May Pen on the 21st of August, 1987 on charges of illegal possession of firearms and two counts of wounding with intent. In respect of these convictions they were sentenced to varying terms of imprisonment. Insofar as the applicant, McCallum, is concerned, he comes before this Court by leave of the single judge.

Mr. Manley who appears for the applicant Campbell, stated quite candidly that having read the papers with care, he can see nothing to urge before us. With that view, we are in entire agreement.

The short facts are: that these men were part of a large body of men who rampaged on the 24th of July, 1986 at around 9 o'clock in the morning at Raymond's in the parish of Clarendon. In the course of this rampage, some of them were armed with guns which they brandished and menaced people. Henley Brown was shot by Bailey and chopped by Campbell. All the applicants put forward alibis. The facts were all one way in respect of all the applicants, except McCallum, about whom we must say something. The incident took place in the broad daylight and all the applicants were well known in the area. However, with respect to McCallum, the learned trial judge made the following observation in the course of his summation. At page 221 he says:

"McCallum was there, according to the witness, but he did nothing. He is the only man, the witnesses agreed on, who had nothing in the nature of a weapon and did nothing in terms of hostility or violence that morning, but they all say he was there."

And at page 227 he again returned to McCallum and was content to point out that McCallum was present.

It is trite law that presence without participation, active participation, cannot amount to aiding and abetting so as to bring a party within the common design. There really was no evidence to constitute him as participating in any joint enterprise with the other applicants in their criminal activities on that morning.

In the circumstances, his appeal will be allowed, his conviction quashed, the sentence set aside and the Court will enter a verdict and judgment of acquittal. Insofar as the other applicants are concerned, their applications are refused and the Court directs sentences, in respect of them, to commence from the date of their convictions.