

CA Criminal Case - Common venture - findings sustainable on evidence
all evidence for Crown to answer

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 231/87

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

R. v. EVERTON JAMES

Application for leave to appeal

Miss. Manzie Hughes for Crown

26th June, 1989

CAMPBELL, J.A.

On November 28, 1988 the application for leave to appeal of Leroy Nelson a co-accused was refused. This applicant's application was not considered as it was not then apparent that he had applied to the full court for leave to appeal following the refusal of leave by the single judge.

The learned trial judge found that Manzie Kelly was on December 11, 1985 set upon by the applicant and Leroy Nelson and robbed of some \$860.00. Nelson was armed with a gun while the applicant was armed with a machete. Kelly wrestled with Nelson in an endeavour to disarm him of the gun. His effort was frustrated by the applicant who rallied to the assistance of Nelson and chopped Kelly who had to release his hold on Nelson. Kelly ran from the scene but two gun shot explosions induced him to stop. The applicant apprehended Kelly, tied him with rope and marched him into the bushes where he was hit in his head with the gun by Nelson. He fell and faked death. Despite this,

Nelson fired the gun at him but miraculously it missed its target.
Both men were engaged in a common venture with participation by each.
The applicant admits his involvement with Kelly but says it was limited
to Intervening to part Kelly and Nelson who were engaged in a fight.
The learned Trial Judge rightly rejected the defence and accepted
Kelly as a credible witness. This finding is sustainable on the evidence.
The application for leave to appeal is accordingly refused.