

CRIMINAL LAW Appeal from Gun Court - (1) Illegal possession of firearm
(2) Common Assault - whether summing up prejudicial to applicant.
Failure of trial judge to give reasons for acceptance of Crown's case and
rejection of defence version. (CA states that although it would have
tempted (unwieldy) application for leave to appeal refused.
JAMAICA
Re Sentence Court⁽²⁾ Sentence of 3 years imp. at l/c under S 43 of Offences
Against the Persons Act reduced to one year which is maximum
IN THE COURT OF APPEAL permitted.

SUPREME COURT CRIMINAL APPEAL NO. 76/86

Cases referred to -

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

Reg. v Daniel Dacres Supreme Court Criminal appeal No 6/78 (unreported)

R. V. HORACE WILLOCK

Mr. Leon Green for Applicant

Mr. John Moodie for Crown

May 11 and 15, 1987

BINGHAM J.A. (AG.):

In this matter the applicant was convicted on 4th September, 1986 after trial which lasted for three days before Reckord J. (Ag.) sitting alone in the High Court Division of the Gun Court, for the offences of Illegal Possession of a Firearm and for Common Assault, respectively. His conviction on each count resulted in a sentence of three years at Hard Labour in respect of each count.

The single Judge refused an application for leave to appeal on 26th March, 1987 and when the matter came before this Court after hearing arguments by Mr. Green, in which the four Grounds of Appeal were condensed and argued as a single ground, without calling on learned Counsel for the Crown, we refused the application for leave to appeal and in keeping with a promise made at the time of our refusal, we now put our reasons into writing.

Delroy Merchant, the principal witness for the Crown operates a Beer Joint at Grants Gate in the Fruitful Vale area in the parish of Portland, his house being situated not far from this small shop. He operates this shop along with his girlfriend, one Miss Prudence McBean.

The charges against the applicant which led to his conviction arose out of an incident at Mr. Merchant's shop at Grants Gate on the night of 10th July, 1986 around 9:30 p.m. At that time a group of supporters of the People's National Party (P.N.P.) were on their way back from a political meeting held at Dumphries, which is also situated in the same parish. On passing through Grants Gate a motor-cade of P.N.P. supporters, which was being escorted by policemen from the Hope Bay Police Station, under the command of Sergeant Samuel Taylor, came to a stop at a section of the main road, a few chains from Mr. Merchant's shop and where a number of houses are situated. It appears that this stopping was due to an attack being made upon this group of P.N.P. supporters by persons from the Grants Gate area.

According to Mr. Merchant as the crowd of P.N.P. supporters approached they were in a jovial mood and there were shouts of "power" heard coming from the direction of the crowd. Then the applicant who was well-known to him before, came into his Beer Joint where he and his girlfriend, Pauline McBean, were and while Mr. Merchant was seated on the counter of his shop facing the road, the applicant pointed the muzzle of a gun in his face. The handle of the gun was covered with a red handkerchief. Mr. Merchant said that although he was frightened by the conduct of the applicant he was not so frightened. He was able to summon up enough courage to be able to tell the applicant: "Unu go away from here with unu politics war." Whereupon the applicant then left the shop and went outside into the road and he was seen to brandish the gun in the air and discharged two shots from it in the air.

Following this discharge of shots there was a further incident in which the supporters of both of the two major political parties, the People's National Party and the Jamaica Labour Party (J.L.P.), seemed to have seized the opportunity to start a commotion, in which stones were hurled at each other and there was also an exchange of gun-shots. Four policemen who were a part of the escort of the P.N.P. supporters were sent by Sergeant Taylor to investigate the incident. The commotion caused Mr. Merchant to

have to lock up his shop and he and Prudence McBean were forced to seek refuge in his house where he watched the rest of the proceedings from his verandah.

During Mr. Merchant's absence persons forced the door of the shop open and goods and money were removed from it.

The account of Mr. Merchant as to the conduct of the applicant, his possession of the gun and his actions in the shop and his discharging of it into the air was supported by Prudence McBean. Sergeant Taylor's evidence is also of no little significance as he testified to hearing two explosions which sounded like gun-shots coming from the direction where Mr. Merchant's shop is situated and this occurred very shortly after he had dispatched four police members of the escort to investigate the incident in which stones were being thrown at the P.N.P. supporters in the motor-cade. The first two explosions were followed about thirty seconds later by further discharges.

The gun-shots and the stone throwing continued for about ten minutes. After this ceased the party of P.N.P. supporters and the police escort continued on their way to the district of Shrewsbury.

The following morning Sergeant Taylor received a report from Delroy Merchant and acting upon this report the applicant was arrested and charged that same day about 11:30 a.m. with these two offences. When cautioned the applicant made no statement.

Sergeant Taylor estimated the crowd on the night of the incident at about eighty-five persons while Delroy Merchant's estimate was over one hundred persons.

The applicant gave sworn evidence and called some four witnesses including two police constables, Anthony Young and Errol Ferguson, who were in the police escort party.

The applicant denied having anything to do with Delroy Merchant on the night in question and sought to place himself at all material times near the front of the group of P.N.P. supporters. He admitted that the vehicles in which the party supporters were travelling did come to a stop on reaching Grant's Gate when stones were thrown at the group.

He also admitted to alighting from the vehicle in which he was travelling, but testified further to being ordered back into the vehicle by the police and to obeying this order.

Under cross-examination by learned Counsel for the Crown, the applicant attributed the account given by Delroy Merchant and Prudence McBean, as being due to political bias on their part, the reason being that Merchant was a J.L.P. activist and he stated that their accounts were false and concocted.

Both Constables Young and Ferguson supported the account given by the applicant as to where he was at the time of the stone throwing and when they heard the first explosions. According to Constables Young and Ferguson the stone throwing on the group of P.N.P. supporters was coming from the bush area as also the explosions which sounded like gun-shots.

Before us Mr. Green contended that:

1. In his summing-up the learned trial judge misapprehended the evidence of the applicant in two vital areas and so misdirected himself to the great prejudice of the applicant.
2. The summing-up merely recited the evidence of the witnesses for the Crown, the Defence and the submissions of both Counsel.
3. The learned trial judge failed to resolve the issue of conflict in relation to the facts which arose on the evidence.

In this regard he cited in support Regina vs. Daniel Dacres, Supreme Court Criminal Appeal No. 6/78, an unreported judgment of this Court delivered on 31st July, 1980, which sets out the duty of a trial judge sitting in the High Court Division of the Gun Court, to give a reasoned decision in each case.

In the instant case Mr. Green's main area of complaint was that the learned trial judge made no findings in his summation. This last submission found some favour with us, for the obvious reason that where a Court of review, as this Court is, has before it the basis as to how the tribunal hearing the matter below arrived at its conclusion, this is of immeasurable benefit to the Court both in the preparation of the matter and in

narrowing down the areas of argument, as well as assisting in the avoidance of frivolous applications for leave to appeal.

Despite this, however, the absence of reasons or findings in the summation would not necessarily provide a basis for disturbing the verdict of the learned trial judge, who as the tribunal of fact, had the clear and distinct advantage of seeing and hearing the witnesses at the trial and of weighing and assessing the demeanour of the witnesses. There is nothing to indicate from a careful examination of the summation that the learned trial judge did not make ample use of the opportunity that he had in this regard. Provided therefore, that on an examination of the printed record, there existed material evidence upon which there was a sufficient basis for the learned trial judge to come to the decision at which he arrived, there would be no reason for this Court to interfere with the decision at which he arrived.

The main thrust of the submissions of learned Counsel for the applicant was that when the evidence was examined what the whole matter resolved itself down to was, an issue of fact, as to whether the learned trial judge, in accepting the accounts of the witnesses for the Crown in preference to that of the applicant and his witnesses fell into error.

Although it was suggested to Delroy Merchant that he was an activist for the J.L.P., this suggestion was denied by him. Sergeant Taylor's testimony as to the first sequence of gun-shots, supported Delroy Merchant's account that two shots were fired and then came the general disturbance.

Moreover, it is somewhat strange that although both Constables Young and Ferguson were towards the front of the motor-cade and therefore nearer to Delroy Merchant's home and shop, and Sergeant Taylor heard two explosions sounding like gun-shots coming from the general direction of Merchant's home, ^{that} neither of these two constables were able to assist the Court as to the sequence of events relating in particular to the exchange of gun-shots.

When the evidence adduced on both sides is examined what the matter clearly resolved itself down to was an issue of fact between two conflicting versions and the learned trial judge, having seen and heard the witnesses ^{for the Crown} regarded their testimony as being the more credible of the two versions.

In the final analysis although this Court would have benefitted from the learned trial judge's statement of his reasons for his acceptance of the Crown's case and his rejection of the defence's version, on a careful examination of the printed record, we can find no basis for disturbing the verdict at which he arrived.

Accordingly, the application for leave to appeal against conviction was refused.

In so far as the sentence imposed on Count 2 which charges the applicant with Common Assault is concerned, a sentence of three years imprisonment at Hard Labour was imposed. However, section 43 of the Offences Against the Persons Act, which is the relevant section relating to such offences, provides for a maximum sentence of imprisonment in such cases of one year. It appears therefore, that the sentence imposed on this count was in excess of the maximum sentence of imprisonment permitted by law and the sentence on Count 2 is accordingly reduced to one of one year.