JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 140/88

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

R. vs. MELVIN MARTIN

No appearances on behalf of Applicant

Miss Vinnette Grant for the Crown

January 18, 1989

ROWE P.:

The applicant Melvin Martin and his son Walter Martin were charged in the Home Circuit Court with a series of offences, burglary and larceny, wounding with intent and malicious destruction of property. The jury at the end of the day found the accused Melvin Martin not guilty of the charge of burglary and larceny but found him guilty on counts 2 and 3, those dealing with wounding with intent and malicious destruction of property, and the son Walter Martin they found not guilty on counts 1 and 2 but guilty only on count 3, for malicious destruction of property.

The learned trial judge imposed a fine in relation to Walter Martin on count 3 and he has not sought leave to appeal. Melvin Martin was sentenced to imprisonment for 2 years at hard labour on count 2 and for 12 months on count 3; the sentences to run concurrently, and he has sought leave to appeal.

The single judge, on reviewing the case, thought that there was absolutely no point in his favour and refused leave to appeal. He has renewed the application before this Court.

The Crown's allegation was rather simple. It was that on the night of the 30th of August, 1987, in Clarendon, the home of Mr. & Mrs. Lessep Edwards was invaded by some men and these included Melvin Martin and Walter Martin. Melvin Martin, said Mr. Edwards and his wife, were armed with a machete, and the first issue in the case was whether or not they could have been properly identified by Mr. Edwards and his wife.

The learned trial judge said - "really, this was not a case in which identification was in issue." There was light in the room and these persons were neighbours. The Martins lived side by side with the Edwards family. It was not a question of persons who knew each other but did not see each other regularly; they lived in adjoining houses and on this night, said Mr. & Mrs. Edwards, there was no doubt in their minds as to who these two persons were.

The Crown's case was that Melvin Martin used the cutlass to inflict three wounds to the head of Mr. Lessep Edwards and one wound to his hand. The intruders gave Mr. Edwards a warning that they wished him out of the area because he was an informer. That is the evidence which the jury believed. In relation to the count of malicious destruction of property, the allegation of the prosecution is that these two men, along with a third man, having injured Mr. Edwards inside the house, went outside and threw stones within, which smashed up a large quantity of expensive furniture, a buffet, two tables, a stove, and a dresser; a door was damaged, a window was damaged. All in all, the damage amounted to thousands of dollars.

The jury did not accept that the intention of the persons who came into the premises was to steal the property of Mr. & Mrs. Edwards and they quite rightly found both men not guilty on the count charging burglary and larceny. The defence was alibi: that Mr. Martin and his son were in their beds; they were sleeping; they had absolutely nothing to do

with Mr. Edwards. The defence further said that Mr. Edwards is a trouble-maker; he is very fond of the court house. A witness called by Mr. Martin for the defence said he was prosecuted by Mr. Edwards for wounding and the case was still not yet tried.

The learned trial judge placed the issues before the jury in a commendable fashion, treating the law and the facts with great care and particularity and the jury properly informed, came to the conclusion which, in our view, was based on substantial evidence, that the applicant was guilty of the offences charged. No medical evidence was produced but the police officer who investigated saw bandages on the person of Mr. Edwards and that supported Mr. Edwards' own testimony as to his injury.

We are satisfied that there is nothing amiss in relation to the conviction and that the sentence is appropriate in the circumstances. The application for leave to appeal is dismissed and the sentence will run from a period three months after the date of conviction.