

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 90/85

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Downer, J.A. (Ag.)  
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. MORRIS JOHNSON

C.J. Mitchell for Appellant

Winston Douglas for Crown

July 27, 1987

CAMPBELL J.A.

The appellant was convicted in the High Court Division of the Gun Court on September 27, 1985 of illegal possession of firearm and robbery with aggravation. In respect of the count for illegal possession of firearm he was fined \$2000.00 or three months imprisonment at hard labour. In respect of the count for Robbery with aggravation he was admonished and discharged.

The facts as found by the learned trial judge were that on the 2nd day of April, 1985 the appellant was armed with an object which in the learned judge's own words "certainly does not fit the description of the Firearm's Act which is by definition, a lethal weapon". The learned judge however found that inasmuch as the object was used by the appellant to menace the complainant Alton McDonald into taking off a pair of army boots which he had on, which the appellant then took away, it was an imitation firearm. This was predicated on the appellant having committed robbery with aggravation in the commission of which, it is sufficient to constitute the offence of illegal possession, that the appellant had an imitation firearm and not a real firearm.

2.

The learned trial judge in determining the issue as to whether the appellant had an imitation firearm said this:

"Of course, what we have here is an allegation that the object, whatever it might be, was used for the purpose of removing from Mr. McDonald, against his will, a pair of boots that he was then wearing and if that is so it means that that act would have satisfied the act of Robbery with Aggravation. In respect of the definition of the object which each witness described .... it was used for the purpose of committing this robbery and I find that robbery was committed in the circumstances of the evidence of each witness and so I hold that the facts ..... fit the imitation of a firearm."

It will be seen that the learned trial judge concluded that a robbery with aggravation had been committed solely from the *actus reus* of that offence namely "removing from Mr. McDonald, against his will, a pair of boots that he was then wearing."

However, in considering the defence version pertaining to the offence of Robbery with Aggravation the learned judge said:

"It seems also that what defence is saying, this is just the action of an officious soldier who sees boots being worn by somebody who should not, and perhaps he takes hold of him and decided to take off the boots. It is true that he took it to camp and gave it to the sergeant, which really fits in with one who is seeking to do something that he thinks he has a right to do. He gave evidence on the boots and he said that when he saw the complainant he told him that is only soldiers wear those boots, and he should give it to him and he refused."

The above excerpt from the learned trial judge's summation, amounts in our view to a finding that the appellant albeit regarded as an "officious soldier" in taking the army boots from the complainant, was none-the-less acting under a claim of right which he bona fide held in good faith namely that he could seize the boots on behalf of the army of which he was a member. This, as found by the learned trial judge, was evidenced by the appellant taking the army boots to Up Park Camp and handing <sup>them</sup> / over to the sergeant his superior.

## 3.

This being the case, there does not exist the mens rea to sustain the offence of Robbery with aggravation and the appellant ought to have been acquitted of this offence.

Following on his acquittal of this offence his conviction for illegal possession of firearm based on the finding that the object which he had was at most only an imitation firearm would also have to be set aside. The learned trial judge must have himself agonized on the culpability of the appellant in respect of the offence of robbery with aggravation as evidenced by the appellant being merely admonished and discharged on his conviction therefor.

For the above reasons we think the conviction and sentence on each count ought to be set aside. They are accordingly set aside and verdicts of acquittal substituted therefor.