

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 75/86

BEFORE: The Hon. Mr. Justice Carey, P. (Ag.)
The Hon. Mr. Justice Wright, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. OSWALD MUNROE

Application for leave to appeal

Hugh Wildman for the Crown

September 27, 1989

CAREY, P. (AG.)

In the High Court Division of the Gun Court held on the 30th of June, 1986 before McKain J, the applicant was convicted on an indictment which charged him for illegal possession of a firearm and ammunition. He was sentenced to pay fines of four thousand dollars in default four years imprisonment in respect of count 1 and in respect of count 2 he was fined one thousand dollars or one year imprisonment.

The matter has taken a considerable time to come before the court because the shorthand-writers involved, or one of them, mislaid the transcript she had made of the record. We do not propose to prolong this judgment by dealing with what we would consider to be gross inefficiencies in the system of transcribing, producing and storing transcripts in the Gun Court.

On the 1st of May, 1985, police officers who were on patrol in the Barbican area at about 9:45 a.m. observed a Morris Oxford taxi proceeding on the Hope Road. For reasons which the officers considered suspicious they followed this

vehicle and observed two men seated in the back of that vehicle. Those two men were subsequently charged for the possession of firearm and ammunition. One of them has not applied for leave to appeal, consequently we are concerned only with Oswald Munroe.

So far as the evidence went, the officers observed these two men looking through the rear glass of the motor vehicle in a manner which they considered suspicious, as we said, and therefore followed the car as it made its way along various avenues in the Barbican area. Finally they stopped the car and ordered them out. The driver came out and made some statement which is largely innocuous. These two men, that is the applicant and the other man with whom he was charged remained seated in the back of the car. When the officers noticed them in the back of the car, they were both sweating and trembling which would be a suspicious fact.

In the course of following that vehicle they had observed that in the lap of the other man was a travelling bag. When that bag was examined it contained a Luger Security .357 Magnum revolver and ten .38 rounds of ammunition; six rounds were in the chamber of the weapon. The applicant said in effect that he knew nothing about that weapon.

There was in our view circumstances which the learned judge was entitled to take into consideration in determining whether this applicant was in joint possession of the firearm with the other man in whose physical custody the bag undoubtedly was. She was entitled to draw an inference adverse to him on those factors, namely, the factor of the applicant and his colleague looking through the rear of the window in a manner which did not seem consistent with innocence and their physical condition of trembling and sweating unusually for that time of the morning.

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Our only concern really is with the sentence which was imposed, for it rendered defence counsel who appeared below speechless. His actual words: "My Lady, I am speechless" when the sentence was imposed on count 1. And indeed when the sentence was imposed on count 2 he said he was even more speechless. We are equally speechless. We think this applicant was extremely fortunate to get a chance of paying a fine but we can see no reason whatever to interfere in this regard. There were adequate facts on which the learned trial judge was entitled to come to a verdict adverse to this applicant and we do not propose to interfere with the sentence imposed.

The applications are refused.