

CA CRIMINAL COURT - Gun Court - Trial. (Illegal possession of firearm, robbery with aggravation) - Judgment - usual complications - application for leave to appeal refused. to case referred to
JAMAICA Camp

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 56/88

EVIDENCE
Common Practice

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

R. v. PAUL GREY

Application for leave to appeal

Miss Paula Llewellyn for Crown

13th March, 1989

CAMPBELL, J.A.:

The applicant was on March 9, 1988 convicted and sentenced to three terms of 15 years imprisonment at hard labour, concurrent by Mr. Justice Gordon in the High Court Division of the Gun Court for the offences of illegal possession of firearm, robbery with aggravation, and burglary and larceny. The incident took place on March 21, 1986. Mr. Graham was held up at gun point shortly after he arrived at his home at 24 Aris Avenue, Smokeyvale in the parish of Saint Andrew. This is also the home of his employer Mr. John Aird. Mr. Graham had just parked his employer's Toyota Corolla car and was proceeding towards his room when he heard a voice saying "Gunman, don't move." He found himself surrounded by five men armed with guns, two had M16 rifles and two had short guns, he was questioned whether the main house had burglar alarm, while he was being questioned another man appeared who gave instructions and directions to the other men. He was relieved of \$11.00

which he had, he was also relieved of his watch and a clothes iron and thereafter he was tied, blindfolded and locked away in his room. This was however, after he had witnessed the breaking and entering into the main house by these men and the larceny therefrom of household items and equipment. He identified the applicant as one of the men involved in the incident, further that he was one of the men armed with an M16 rifle. He saw him by the side of the house at the time when all five men surrounded him. He again saw this applicant when the latter came by the louvre window of his room asking questions during the progress of the looting from the main house, the applicant was then about three feet away and they spoke for about four minutes. He had earlier been with the applicant, together with the others by the side of the house for about 10 minutes. He subsequently identified the applicant at an identification parade held at the Constant Spring Police Station on January 23, 1987. Mr. Aird who was abroad at the time of the incident said he proceeded to the United States of America on the 20th of March, 1986 after securing all windows and doors of his home, he returned to find the place ripped apart, to use his own words the place was "massacred". He missed two firearms, ~~appliances~~, steel cutters and other items. The applicant gave an unsworn statement in which he said he had nothing to do with the incident in Smokeyvale. The learned trial judge fully reviewed the evidence relating to visual identification and concluded correctly in our view that Graham had ample opportunity having regard to the physical circumstances then existing, of observing the applicant sufficiently to enable him to make a positive identification of him at the identification parade held some ten months later. We can find no fault with the summation and conclusion of the learned trial judge. The application for leave to appeal is refused, we order the sentence to commence from June 9, 1988.