JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 180 & 181/1988

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

R. v. TREVOR KEENE AND LINVAL LINDO

Mr. C.J. Mitchell for the applicants

Miss Y. Sibble for the Crown

June 12, 1989

CAMPBELL, J.A.

The applicants were tried and convicted in the High Court Division of the Gun Court on the 28th of September, 1988 by Ellis J for the offences of Illegal Possession of Firearm and Shooting with Intent. They were each sentenced to fifteen years imprisonment at hard labour on each count, the sentences to run con-currently.

The charges were that on the 17th day of May, 1985 in the parish of St. Mary these two applicants were found in unlawful possession of firearm at a place called Woodford Park in a banana planation and when they were challenged by police officers they shot at the officers. In more detail

the facts were that one Patrick Smiley a Police Constable who was then stationed at Gayle Police Station received information as a result of which he and other constables namely Uriah Steele, Rudolph Taylor, Eucle Smalling proceeded to Woodford Park in St. Mary. They went into a banana plantation where they sighted these two applicants and five others. The police officers saw that they were armed. Smiley shouted "police," the response was that these two applicants and the others opened up a barrage of gunfire in the direction of the police officers.

The police officers took cover and returned the fire. They appeared to have been good marks-men because at the end of the shoot-out, five of the men were killed and on proceeding to where they were, three firearms were recovered. One was a semi automatic pistol another was a .38 revolver and the other was a .32 guardian revolver.

The evidence of Patrick Smiley was fully supported by the other constables. The applicants each gave sworn testimony. As is usual, the evidence was that of an alibi. Trevor Keene said he was at his relatives business place at Port Henderson while Lindo said he is a bus conductor and he was actually at work plying on his bus between Pembroke Hall and Kingston. The issue which was raised for the learned trial judge is the perennial issue of identification which in this case was really the recognition of persons who were known to the police constables - at least to three of them.

It must be admitted that the learned trial judge did not expressly state that he was warning himself of the dangers of mistaken identification, but it must be borne in

mind that he was judge and jury, thus in his role as a judge he was fully aware of the law and of the requirement that he should give critical consideration to the issue whenever it arose. He however, did reflect on the matter bearing in mind that it was a matter of recognition. He considered that the opportunity existed for the police officers to recognise these applicants and he considered that even though it cannot be said that they alone had fired at the police officers, they were part and parcel of a common design and that all seven of them would be equally guilty of shooting at the police officers with intent to do them grievious bodily harm.

We have carefully considered the evidence which was before the learned trial judge and his summation, and we find no basis on which he can be faulted. In this regard, we commend Mr. Mitchell for his frankness in openly indicating that he himself has scrutinised, no doubt very carefully, the record. He indicated he was counsel at the trial and he could find no basis on which he could fault the summation of the learned trial judge, or the conclusion to which he came and that he could not properly assist this court. We agree entirely with him. The sentencesof fifteen years may at first blush appear a little on the high side, but when one considers that this was like a contingent of gunmen who decided to take on the police force in armed conflict and actually engaged them in a short gun battle, we consider that the sentence was appropriate to the circumstance.

Accordingly the application of each is refused, the convictions and sentences are affirmed. We order that the sentences commence to run from the 28th of October, 1988.