

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 26/88

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

REGINA

VS.

VESTON LESLIE

K.D. Knight for the Appellant

Miss Y. Sibble for the Crown

April 18, 1988

ROWE P.:

Veston Leslie was convicted by the Resident Magistrate for St. Catherine for the offence of Unlawful Wounding and he was sentenced to a term of imprisonment of three years.

He has appealed against his conviction and sentence complaining firstly, that the verdict was unreasonable having regard to the evidence and secondly, that the sentence was manifestly harsh and excessive having regard to the circumstances.

Mr. Knight, who appeared for him this morning, did not urge much in support of the ground which dealt with the conviction, as he admitted that on the evidence the learned Resident Magistrate had sufficient to find as he did. In relation to sentence he argued that having regard to the fact that this was a young man, that no motive was shown, that he was a trainee constable who has lost all opportunity to become a member of the Jamaica Constabulary Force, that the sentence should not be a custodial one

and if a custodial, it should be shortened so as to allow for his release today.

We have considered the evidence in the case which was that on the 1st of September, 1986 a police trainee, Andrew Bell, was at the Police Academy at Twickenham Park at about 11:45 p.m. He was dispatched for duty and he approached the sentry box where the appellant was himself on duty. Andrew Bell was dressed in the appropriate police uniform, he was unarmed, and as he approached where the appellant, himself a trainee, was at the post, the appellant drew his firearm from his waist, cocked it and said to the complainant: "Bello what you a deal with." Thereafter, there was a conversation between the two men who were well known to each other, during which the complainant said to the appellant: "Although you have your gun you are a fool until you shoot me." The complainant walked away and he looked sideways, just in time to see the appellant pointing the gun to the left side of his face. Then there was an explosion and a bullet entered the left side of the face of the complainant, passed through his mouth and his nostrils and lodged somewhere in his head. He was hospitalized for ten days and up to the time of trial in 1987 he was still suffering from the injury which he had received.

It was suggested to him in cross-examination and it was the case for the appellant that the appellant did in fact draw his firearm and cock it for no reason at all but that it was the complainant who boxed the gun in an upwards swinging motion while it was held in the hand of the appellant, and that caused a shot to go off and to hit the complainant in the side of his face. The defence really was: "Yes, I had drawn my firearm, I didn't intend to fire any shots but it was your act, by hitting the gun while it was in a cocked position which caused the shot to go off."

The learned Resident Magistrate rejected the case for the appellant. He said it was patently concocted and he found that the appellant was lying. He accepted the account given by the complainant and found the appellant guilty.

We are of the view that it was a wanton, completely unnecessary and a very wicked act on the part of this appellant to draw, cock and fire at another trainee constable when the only thing that the appellant could say the trainee constable had done wrong was to come on to the appellant's beat when there was a rule that he ought not to do so.

We do not at all agree with Mr. Knight that this was merely a careless act on the part of the appellant. We think it was wanton. We think also that the sentence of three years hard labour, although the maximum which can be given for the offence of unlawful wounding by the Resident Magistrate was the appropriate sentence in these circumstances and cannot be considered excessive. In the circumstances the appeal is dismissed and the conviction and sentence affirmed. The sentence ought to run from the date of conviction.