

C.A. (Criminal Appeal) No. 28/90

2) Assault - evidence - Verdict - unreasonable - evidence.
Trial judge did not fully appreciate the evidence.
Verdict based upon a misreading of the evidence.
Appellate court convicted on a single ground of appeal.
case, various grounds of appeal.

JAMAICA

Comp

Evidence

Jack Hines

Miss C. Reid

March 18, 1991

WRIGHT, J.A.:

The appellant, Belzie Kelly, was on the
19th February, 1991, in the Gun Court Division of the Savanna-
la-mar Circuit Court convicted by Pitter, J. on two counts
charging him on count 1 with illegal possession of firearm
and count 2 with assault. On the first count he was sentenced
to five years imprisonment at hard labour and on the second
count twelve years imprisonment at hard labour.

Leave to appeal against convictions and sentences
was granted by a single judge and before us Mr. Jack Hines,
for the appellant, has argued a single ground that the verdict
is unreasonable and cannot be supported having regard to the
evidence.

It is clear from the summation by the learned trial
judge that he did not fully appreciate the evidence and so
misquoted it and thereupon his verdict was based. There is

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 28/90

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA vs. BELZIE KELLY

Jack Hines for the appellant

Miss C. Reid for the Crown

March 18, 1991

WRIGHT, J.A.:

The appellant, Belzie Kelly, was on the 19th February, 1991, in the Gun Court Division of the Savanna-la-mar Circuit Court convicted by Pitter, J. on two counts charging him on count 1 with illegal possession of firearm and count 2 with assault. On the first count he was sentenced to five years imprisonment at hard labour and on the second count twelve years imprisonment at hard labour.

Leave to appeal against convictions and sentences was granted by a single judge and before us Mr. Jack Hines, for the appellant, has argued a single ground that the verdict is unreasonable and cannot be supported having regard to the evidence.

It is clear from the summation by the learned trial judge that he did not fully appreciate the evidence and so misquoted it and thereupon his verdict was based. There is

no need to go into the details of the evidence. It suffices to identify the issues which called for the trial judge's determination:

1. The appellant attributed the charges against him to a fulfilment of the veritable complainant's threat to send him to prison as a result of a fight between them on 12th January, 1990, when the appellant confronted him with the charge that on December 21, 1989, he had tried to seduce the appellant's girlfriend. This charge formed the background to the indictment on 12th January, 1990. The trial judge mentioned the charge but did not make a finding thereon.
2. Did the appellant indeed possess a firearm as charged? The witness gave a description that did not fit any firearm he had ever seen nor can anyone determine what it is he was describing.
3. No firearm offence was committed so the deeming section of the Firearms Act could not be invoked.

Miss Reid, for the Crown, has quite correctly conceded that since the learned trial judge's decision was based on what he had quoted, which is a misconception of the evidence, she is unable to resolve the issue and accordingly she cannot argue in favour of the convictions being upheld. With this concession the Court agrees. The appeal is therefore allowed, the convictions quashed, sentences set aside and verdicts and judgments of acquittal entered.