JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 129/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA vs. DERRICK CAMPBELL

Miss Helen Birch and Delroy Chuck
for the applicant

Miss Lorna Errar-Gayle for the Crown

November 26, 1990

WRIGHT, J.A.:

The applicant, Derrick Campbell, was convicted on 15th August, 1989, in the High Court Division of the Gun Court before Reckord, J., on an indictment containing two counts. The first count charged illegal possession of a firearm, the second count charged wounding with intent.

The short facts briefly are that sometime in late February a younger brother of one Claude Gaynor was injured by the applicant. He had sustained stab wounds and had to go to the hospital. Claude Gaynor testified that on March 1 he was at his gate when he saw the applicant approaching on a bicycle. Gaynor took up a piece of stick in his hand and went out to find out from the applicant what had happened between himself and the brother because this, he said, was the first time he was seeing the applicant since that incident. When Gaynor asked the applicant what was the problem, the applicant jumped

off the cycle and ran back saying that Gaynor must wait until he came back. According to Mr. Gaynor, he threw away the piece of stick and went to his home and while there he looked along the road and he saw the applicant and one "Bucko" and about three others coming along. Gaynor went back on the road, picking up a machete on the way and the group stopped when the applicant and "Bucko" both put their hands to their waist. Each drew a gun and the applicant declared that Gaynor should come to him now "because the war start now, the war start". Gaynor said that he was not out for any war, he just wanted to know what happened and he would have to go to the police and report the matter. Whereupon the applicant said that Gaynor could not go back to the police and immediately "Bucko" fired a shot which flew through Gaynor's left thigh. Gaynor rushed at "Bucko", he said, to hold the gun to prevent "Bucko" from shooting at him any further and then he chopped at "Bucko" but apparently missed. While they were wrestling, Gaynor held "Bucko's" hand with the gun downwards and in that position he heard another explosion and he felt like an hammer had hit him in his forehead. Another shot had been fired and he was quite sure it was not "Bucko's" gun from which that shot came. The only other person there with a gun was the applicant. But Gaynor said that he did not see who fired the shot but he knew it was only the applicant there with a gun apart from "Bucko". Gaynor became dizzy and the next thing he realised was that he was at the Kingston Public Hospital.

On the 15th March, Gaynor received information as to where the applicant could be found and he went to the police station, reported it to Detective Sergeant Benjamin, to whom the original report had been made, and together with other policemen they went to the Vauxhall Secondary School, where construction work was in progress. There Gaynor pointed out

the applicant to Detective Sergeant Benjamin, who apprehended him. According to Gaynor, the applicant said nothing at the time but Detective Sergeant Benjamin said that the applicant said, "Me never fire fi mi gun". Detective Sergeant Benjamin had in his possession a warrant for arrest and when he arrested and cautioned the applicant on the warrant the applicant repeated the same words, "Me never fire fi mi gun".

There is here no question of mistaken identification because the applicant and Mr. Gaynor knew each other quite well. They lived in the same housing scheme and this was in broad daylight.

The applicant's defence was that after he had had the encounter with Gaynor, he had thrown his cycle at Gaynor, whom he said was then armed with a machete, and ran off and it was while he and "Bucko" were running away that he heard the explosion and they kept running so they were not anywhere near the point where Gaynor was shot.

It was a matter of credit for the learned trial judge to decide whom he believed and he accepted the evidence of the complainant, Mr. Gaynor, and with that we can see no fault. Indeed, it was entirely a matter of credit rather than any involvement with the very vexed issue of identification. The applicant was sentenced to five years imprisonment on the first count and seven years imprisonment on the second count.

But even if the applicant did not fire his gun, as he said, by the doctrine of common design he was party to the shooting by "Bucko" who, on the evidence, had fired the first shot.

Before us this morning, the attorney, Miss Birch, said that having perused the record she can see no ground to pursue the application and with that we agree. The sentence is ordered to run from the 15th November, 1989.