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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 11 & 12/90

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

REGINA VS. ERROL GORDON
JUNIOR BARKER

No appearances for applicants

Miss Cheryl Richards for Crown

9th & 29th April, 1990

BINGHAM, J.A. (AG.)

The applicants were tried and convicted on the 25th of January, 1990 in the Gun Court Division of the St. James Circuit Court for the offences of illegal possession of a firearm, robbery with aggravation and shooting with intent. They were each sentenced to varying terms of imprisonment which, when the facts are examined, become explicable. On counts 1 and 2 Gordon was imprisoned for 12 years at hard labour, while receiving a sentence of 10 years at hard labour on count 3. Barker on the other hand, was sentenced on counts 1 and 3 to 5 years at hard labour while count 2 attracted a term of 7 years at hard labour.

The sentences were all made to run concurrently.

Applications for leave to appeal by the applicants having been refused by a single judge, their application was renewed before this Court.

The facts out of which the charges arose, given the escalation in gun crimes throughout the length and breadth of this country, are all too familiar.

On the night of 6th June 1988, the virtual complainant Wilbert Ireland and his common law wife, Eveth Samuels, were along with their children at home at a district known as Farm in the Green Pond area of St. James. Around 11:00 p.m. Ireland was seated at his backroom door while Samuels and the children were asleep in the room. It was full moon and what up to then appeared to have been a tranquil setting was suddenly interrupted by an invasion of the premises by four men among whom were the two applicants, both of whom were previously known to Ireland for about three months. He had known Gordon by the name Izes and Barker he had last seen about one month before the incident. Gordon was armed with a long gun. Of the other two men, one was armed with a hatchet which he used to slap Ireland across his neck. An argument developed in which Ireland was threatened and money was demanded from him. He stoutly resisted their request for money seeing this no doubt as an attempt on their part to relieve him of his honest livelihood and to reap where they did not sow. This resistance was eventually overcome when a shot was discharged from the gun which Gordon had. Some of the pellets resulting from this discharge of the weapon, struck one of the children, Michele, injuring her. The effect of all this was to cause Samuels to be aroused from her slumber and on realising what was taking place, she prevailed upon Ireland to hand over whatsoever money he had rather than risk the lives of the family. ith some reluctance he handed over nine hundred and eighty dollars which sum had the effect of appeasing the wrath of the robbers as they then quit the scene along with their booty. This was not before Ireland had been able to positively identify the applicants by means of the lighting available from the glow of a kerosene lamp which was alight in the room as well as from the bright moonshine.

A report was made at the Mount Salem Police Station shortly following the incident and their daughter Michele was taken to the Cornwall Regional Hospital for treatment. Acting on the report made, a search was launched that same night for the men and Warrants on Information were subsequently taken out for the arrest of the two men. Acting upon information received, the men were arrested on these warrants on 28th June, 1988 at the Montego Bay lock-up.

The applicants in their defence both denied any knowledge of the incident. Gordon hailed from St. James where he admitted that he was employed up to 1986 during which time he resided in Bethel Town in Westmoreland, and commuted daily by car to his workplace. He then left Westmoreland in 1986 to reside at Santa Cruz in St. Elizabeth and only returned to St. James on the day of his arrest in 1986 when he was on his way to attend a funeral and was taken off a bus by the police and taken to the Montego Bay Police Station where he was harrassed and placed in custody. He further denied knowing Green Pond or Farm District.

Junior Barker on the other hand, while denying any knowledge of the incident, admitted living with a relative in St. James some two miles from Farm where the offences were committed.

The issue in this case was identification, visual identification having been made of both applicants by the witness Wilbert Ireland. Despite certain discrepancies which the learned trial judge considered in weighing and assessing the evidence, he expressed himself as being fully aware of not only the issue which arose but more particularly of the cautious approach that he ought to adopt before resorting to act upon the visual identification by this witness. In this regard he

expressed himself thus:

> " All the Attorneys in this case, both for the Crown and for the defence, have stressed the importance of identification evidence and the dangers attendant on visual identification. The recent authorities out of the Privy Council have been referred to and I have been reminded of the possibility of mistakes. It has even been submitted that this has not been eliminated by the evidence adduced by the prosecution. I saw and I heard the witnesses and I am aware of the dangers attendant on visual identification, and the possibility of mistakes by witnesses."

On the examination of all the issues in this case and the facts that were alleged, we find therefore that there was ample evidence upon which the applicants could have been convicted and that the learned trial judge dealt with legal and factual issues in a very satisfactory manner resulting in the application being refused.

We, however, order that the sentences should commence on 25th April, 1990.