

C.A. Criminal Law - ① Illegal possession of firearm ② Robbery
with Aggravation - Sanitification - Alibi.

No inadequacy in evidence or error in summing up.
Application for leave to appeal refused.
JAMAICA
No case referred to

✓ comp

Evidence

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 221&222/87

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

REGINA

v

EVERTON JAMES
LEROY NELSON

No appearance for the Applicant

K. Pantry for the Crown

November 14, 1988

WRIGHT, J.A.:

This is an application for leave to appeal by Leroy Nelson who was convicted and sentenced for the offence of Illegal Possession of Firearm and Robbery with Aggravation in the St. James Circuit Court on the 2nd of December, 1987.

The facts simply are that at the district of Mafoota in that parish at the shop of one Zephaniah Barrett at about 10.30 p.m. on the 2nd of December, 1986 there were present Mr. Barrett, one Clairtilda Doeman and a Mr. Piggott. Mr. Barrett's house apparently is built onto the shop. About that time Miss Doeman went to the bathroom in the house and from there she observed about seven (7) men on the outside. She went to the shop, alerted Mr. Barrett who armed himself with his machete and a flashlight went outside, took up a stone while for safety Mr. Piggott ducked under the counter. Mr. Barrett threw the stone at the men whom he saw some twelve yards from his shop and in response two shots were fired which made him seek the protection of his shop which

was not itself a substantial building. It was in fact made of bamboo and board. He closed the front door and at that time he claimed that he recognised one of the men, Everton James whom he had known for fifteen (15) years. In the back of the shop he had a Tilly lamp which he said was burning as bright as daylight. Activity now shifted to the back of the shop. The men broke out a portion of the boarding and the bamboo and through that aperture in addition to spaces occasioned by the shrinking of the lumber in the door he was able to see both James and the applicant Nelson standing close together as he said, 'like brothers'. James he called 'Bandyke' had a gun as they stood there Mr. Barrett whether in desperation or a show of bravado decided he was going to kill one of them. So he told Miss Doeman to open the door, let him make an effort at them but when he raised the machete it bounced on the door and that frustrated his effort. He realised then that his best effort would be in flight and so he escaped through the front door, ran, jumped into the river nearby got out and made his way to Anchovy Police Station where he made a report. The police summoned help and returned to the premises but by then the men had fled the area. It was not until the 27th of April, 1987 that Detective Constable Wayne Brown and other policemen located James and Nelson at Adelphi where they were both arrested. Mr. Barrett knew the applicant Nelson for some twelve (12) years.

On the question of identification which was a crucial issue, the learned trial judge gave very careful attention bearing in mind that the defence was an alibi. They contended that they knew nothing about the charge. Having carefully perused the record of the case, we can see no inadequacy in the evidence nor any error in the summing-up by the learned trial judge. The evidence adequately supports the conclusion to which he came that Leroy Nelson was one of the seven (7) men present together at Mr. Barrett's shop and who took part in the robbery there. When Mr. Barrett got back from Anchovy he found that all his goods had disappeared. They had compelled Miss Doeman to hand over the money and they cleared the shelves of everything. They took as well, the bicycle

... which he had on the outside.

For these reasons, we refused the application.