

CA CRIMINAL LAW - Gun Court - Illegal possession of firearms, Burglary with intent - Trial - Evidence - Identification - Visual identification - whether evidence satisfactory - Sentence - whether manifestly excessive. Application for leave to appeal refused.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 213/83

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA

VS.

GEORGE MAIS

No Appearance for the Applicant

Miss Carol Malcolm for the Crown

April 12, 1989

ROWE P.:

The applicant George Mais was convicted in the Gun Court Division of the St. Ann Circuit Court on the 27th of October, 1988 of Illegal Possession of firearms and Burglary with intent and Mr. Justice Malcolm then imposed a sentence of ten years imprisonment at hard labour on the first count and five years imprisonment at hard labour on the second count and he ordered that the sentences should run concurrently.

From this conviction the applicant has appealed and in a long letter to the Court of Appeal he has set out his grounds of appeal. He said firstly, that there was insufficient evidence on the part of the Crown to cause him to be convicted, especially as there was a single witness for the Crown and that witness had said that his sister

who was present on the occasion would not come to Court to give any evidence. He said secondly, that there was malice between his parents and the parents of the Crown witness and therefore the witness ought not to have been believed.

The case for the Crown was that on the 29th of January, 1968 at about 11:30 p.m. Shawn Steer, a 17 year old farmer of Algerton in St. Ann, was asleep in his bed in a two-room house at Algerton. He was awakened by the sound of his kitchen door being kicked off. When he got up and went towards his mother's room, which adjoins his own, he saw the applicant in his mother's room and to use his phrase the applicant was 'stirring up the drawers.' The applicant had a gun in his hand which he used to point at the young man, Steer, who said he got very frightened when he saw this.

Steer said that he was able to recognise the face of the applicant by the aid of very bright moon-light, which shone in the room through a window, which had very thin curtains.

Steer had known the applicant for some nine years. They both grew up in the same district and up to a year before the time of this incident they had been on good terms.

There was evidence from the witness, Shawn Steer, that the Steers and members of the applicant's family had serious difficulties about a year before which caused the parties to cease being on speaking terms.

The applicant's defence was that he was not in the area at all on the 29th of January, 1968. He was then in St. Maryand had returned to the St. Ann area on the

1st of February, but had not gone to Algerton until the 7th of February. He gave details of the feud between his family and the Steer family and he suggested that it was his brother against whom the Steers had primary malice and somehow they had transferred that malice from his brother to himself.

In a quick-fire judgment Mr. Justice Malcolm summarily convicted the applicant as he found that the evidence of visual identification was wholly satisfactory.

We think that although the lighting which was available was not of the highest quality, the length of time which the witness had to observe the applicant, their familiarity one with the other, the fact that these are country people, accustomed to depend on moon-light at night, and the nearness with which they came into contact, were sufficient to enable the witness to make a positive identification and we see no reason to disturb the finding of the learned trial judge.

This applicant had seven previous convictions and although the sentence of ten years at hard labour might be somewhat on the high side, we do not think that it is manifestly excessive in such a way that it ought to be disturbed.

We therefore confirm the convictions and sentences and order that the sentences commence to run from the 27th of January, 1989.