

CA Criminal Case - Gun Court Trial - (Illegal Possession of Firearm, Wounding with Intent, Shooting with Intent) Sent to prison
Application for leave to appeal - evidence overruling. JAMAICA Refused
No leave referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 182/87

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

REGINA

v

IAN SCOTT

Application for leave to appeal

Miss Carol Malcolm for the Crown

January 30, 1989

WRIGHT, J.A.:

This is an application for leave to appeal against conviction and sentence on an indictment containing five Counts tried by Malcolm J. in the High Court Division of the Gun Court on October 7, 1987. The charges were as follows:-

Count 1	Illegal Possession of Firearm
" 2	Wounding with Intent
" 3	Wounding with Intent
" 4	Illegal Possession of Firearm
" 5	Shooting with Intent

The applicant was sentenced to 15 years imprisonment at hard labour on each Count - sentences to run concurrently.

No grounds of appeal accompanied the application although there is a notation indicating that grounds would be filed by the applicant's attorney.

The application was refused by a single judge on December 2, 1988 who noted -

"Complainants in Counts 2 and 3 and Accused known to each other. Issue is one of belief.

VRS: BCLY. "Counts 4 and 5 - Accused known to Police before. Sufficient opportunity to identify accused. Statements made to Police after caution in respect to incidents sufficient to amount to admissions.

Evidence - weight of - L.T.J. believed complainants."

That just about sums up the issue for consideration and we see no reason to disagree with the decision of the single judge.

Counts 1, 2 and 3 are the result of shooting incidents in Arnett Gardens in the region of 9.00 o'clock in the night of November 6, 1986. Barrington Williams, the victim in Count 2 testified that at about 8.50 p.m. he was standing on Machel Pathway where it meets with Collie Smith Drive when he saw the applicant whom he had known as 'Stella' for over 5 years and another man known as 'Barry Spur' walking towards him. Opportunity to recognise them was afforded by a street light on Collie Smith Drive which he said, 'bright up the whole street'. They were about three-quarters of a chain away when he first saw them and he kept watching them. 'Barry Spur' ran past him with a gun in his hand and he turned to see where 'Barry Spur' was going. By the time he turned around again the applicant was very near to him with his hand on a gun in his pocket. He too passed the witness and as he turned to keep track of the applicant he found himself confronted with a gun in the applicant's hand. Williams ducked and ran off. But to no avail. He heard 'bow' and felt a blow to his right hip and in his words -

"It (the bullet) fly through here suh and lodge in my belly and damage my tripe and doctor have to take it out."

He was admitted into the Kingston Public Hospital the same night and was discharged eight days later wearing a colostomy bag which he had to endure for some time. He said the bullet was left in him.

Cross-examination of this witness elicited the information that he and the applicant lived in the same area, that they saw and spoke to each other often and that sometime ago he had confronted the applicant with a report from the witness' sister that he, the applicant, and his friends had attempted to rape the witness' sister whom the applicant

for him (the applicant) .

At about 8.00 p.m. the

Lennox Russell, the victim in Court

On the question of identity

On January 15, 1987 a police

On June 1, 1987 the applicant was arrested at the General Penitentiary on the charges in the indictment and when cautioned he is alleged to have said -

"Mi remember de date of de shoot-out sah.
Mi gun drop from mi when mi get shot. Mi
in yah so already so it nuh mek no sense fi
tell no lie."

'Barry Spur' who featured in each of the incidents out of which the charges arose died before the trial of the applicant. Defence attorney, Mr. Roger Davis, seized upon that fact to suggest to Corporal Bennett that it was only since Barry Spur's death that the police had concocted the incident of January 15 to implicate the applicant. We do not think that such a suggestion enhanced his standing nor the interest of his client.

The applicant gave evidence denying his involvement in any of the charges made against him and maintained he was elsewhere. He denied, too, the words attributed to him on the occasion of his arrest.

Malcolm J. rejected his alibi, accepted Barrington Williams, Lennox Russell and the police as witnesses of truth and convicted the applicant on each Count. The issue here was one of recognition and the evidence thereon was overwhelming. As we said earlier, we see no reason for interfering with either the convictions or sentences. The application for leave to appeal is refused, the sentences are affirmed and will run from a date 3 months after the date of conviction.