

CA Criminal LMO - Trial - Gun Court - Illegal Possession of  
Firearm - assault - Identification - whether witness had  
sufficient opportunity to see assailant - facts to  
support finding of Judge. JAMAICA  
Application for leave to appeal refused ✓ comp

IN THE COURT OF APPEAL

No case referred to.

SUPREME COURT CRIMINAL APPEAL NO. 81/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.

Evidence

REGINA vs. LENFORD BURCHELL

Application for leave to appeal

Kent Pantry & Brian Sykes for Crown

20th September, 1988

CAREY, P. (Ag.):

In the High Court Division of the Gun Court held in St. James on the 8th of April, 1988, this applicant was convicted for the offences of Illegal Possession of a firearm and Assault, and sentenced to terms of five (5) years imprisonment at hard labour and eighteen (18) months hard labour, respectively; the sentences being ordered to run concurrently.

The short facts are that on the 29th of August last year, sometime about 6:50 in the evening, Mr. Norris Doeman went to the back of his premises because it appears his wife had just driven in. He was accosted by two men, one of whom he identified as the applicant, armed with "a long gun." The other man had at his disposal a machete. The applicant was well-known to Mr. Doeman as "Trainer". The applicant made some impolite enquiry of Mr. Doeman. This was followed by some conversation between the intruders, and the result of all that confab' was that Mr. Doeman was taken and trussed up with his own shirt, gagged with his handkerchief and made to lie on his face on the ground. While this activity was in progress, the applicant held

him at gun point and commanded him to be quiet on pain of having his head blown to smithereens.

Fortunately for Mr. Doeman, a car came into the premises, a male voice was heard in conversation with one of the ladies on the premises, Mrs. Doeman who remarked that she had not seen her husband and they should go around the back of the premises to see if anything had happened to him. Presumably, the applicant and his compatriot heard this which was sufficient to prompt a hasty departure.

In so far as the defence was concerned, it was a denial of the charge. The applicant said that he was ignorant of all these charges.

The only question for the learned trial judge was one of identification. Did the witness, Mr. Doeman, have sufficient opportunity to recognise his assailant? Was the lighting sufficient? Mr. Doeman said that he could see because "the time was clear; the time was very clear." Having regard to the circumstances of the assault, it was obvious that assailant and victim could not have been far apart. Indeed, there was some evidence that the applicant was standing over his victim at one time in the course of the events. The learned trial judge, as we said, had only this to consider. In our opinion, there were facts to support the view which he took of the evidence.

In the result, this application will be refused and the Court directs that the sentence should commence at the date of conviction.