C.A. Criminal Law (1) Illegal possession of firearm (2) Rape — whether verdict unreasonable and cannot be supported having regard to the evidence — Identification — Visual identification,

Application for leave to JAMAICA appeal refused

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 10/92

✓ comp

COR: THE HON MR JUSTICE CAREY PRESIDENT (AG)
THE HON MISS JUSTICE MORGAN J A
THE HON MR JUSTICE GORDON J A

REGINA VS LLOYD SPENCE

EVIDENCE

CRIMINAL PRACTICE

Mr. Delroy Chuck & Ewan Thompson for Applicant

Patrick Cole for Crown

December 14, 1992

CAREY P (AG)

On the 23rd of January 1992 in the High Court Division of the Gun Court held in Montego Bay in the parish of St. James, before Mr. Justice Pitter sitting alone, this applicant was convicted on an indictment which charged him for the offences of illegal possession of firearm and rape. He was sentenced to concurrent terms of seven years and ten years imprisonment at hard labour. He now applies for leave to appeal that conviction on the ground that the verdict was unreasonable and cannot be supported having regard to the evidence.

Mr. Chuck had hoped to show to this court by introducing fresh evidence that the brother of the applicant, one Errol Spence was wholly implicated in the offence charged against the applicant. He had deposed to an affidavit in which he put himself on the scene of this unfortunate incident at the material time but made no other admission. It was hoped, apparently, that he would have confessed to the crime, but apparently, cold feet got the better of him. In paragraph 19 he deposed:

> "I make this admission fully realizing that I may get a sentence."

Whatever that admission was, it was not an admission of the offence charged against Lloyd Spence. This attempt to get in fresh evidence fell to the ground. What was filed could not, in any event, qualify as fresh evidence. In the result, Mr. Chuck was constrained to say that there was nothing that he could properly urge.

The facts in this case which I now recount, are regrettably commonplace in this country. On the evening of the 24th of April 1991, a young woman accompanied by her boyfriend went to the beach at Liliput which is on the border between St. James and Trelawny to enjoy inter alia, the pleasures of the beach. While the young man undressed and went into the water his young lady friend remained on the beach, still dressed and while she was then on the beach, a man came up who was armed with a gun which he stuck in her side. She was able by the moonlight to observe his features. In the event he was intimate with her. There was a sort of a fracas between them because he took out a machete and a wrestling took place which, of course, enabled her to have another chance of observing him, given the lighting that was available.

Some eight days later while she was at work she recognised, passing outside her shop, her assailant. She called the police and he was arrested. In fact, in the course of evidence she stated that she had seen him the day following the incident but was unable to do anything about it because there was no police personnel in the vicinity.

Insofar as the defence went, it was a denial. The applicant said that he was not on the beach at the material time and he called his mother to support the alibi which he put up.

The learned trial judge considered the case with great care. He was alert to the dangers of visual identification

evidence and gave himself the appropriate warning. He came to a finding which was adverse to the applicant.

We ourselves have examined the evidence in this case. We have looked at the summation of the learned trial judge which we have considered with care and we can see no reason whatever to interfere with that verdict or to impugn the judgment which he gave. In the circumstances, the application for leave to appeal is refused and the sentence is to commence from the 23rd of April 1992.