

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 68/89

BEFORE: The Hon. Mr. Justice Rowe, P.
The Hon. Mr. Justice Carey, J.A.
The Hon. Miss Justice Morgan, J.A.

REGINA v. PATRICK GILLESPIE

N. Manley for Applicant

P. Dennis for Crown

July 17, 1989

MORGAN, J.A.:

In the High Court Division of the Gun Court on the 19th April, 1989, the applicant Patrick Gillespie was charged on two counts of an indictment one of illegal possession of firearm and the other of shooting with intent at Detective Sergeant Ayre.

On Wednesday the 30th September, 1987 Detective Ayre was travelling in an unmarked police car along with one Corporal Taylor and Corporal Taylor's little girl, aged 3 to 4 years. They were travelling along Higholborn Street when Detective Ayre was alerted by explosions sounding like gunshots. He turned on to Tower Street and at the intersection of Tower Street and Ladd Lane he saw five men in two groups, three on one side and two on the other. They were firing at each other. One set had their backs to him but the applicant whom he had known for some years was facing him. Detective Ayre stopped, the gunmen looked in his direction then closed ranks and fired

at him. He had come within five yards of them as they grouped. Corporal Taylor returned the fire and Gillespie who was near the sidewalk, fell in an open lot while the others fled pursued by Corporal Taylor. Detective Ayre started out of the vehicle but the little girl jumped out of the car shouting for her daddy, so he returned to the car and drove in the direction that Corporal Taylor had run. On his return to the scene he saw the applicant being placed in a van which sped off. This van was later brought back to the scene with the applicant by some policemen. Detective Ayre told the applicant then that because 'Tony' and himself had fired at them, they returned the fire and shot him. In reply the applicant said it was not the police who had shot him but that he was shot by one of the men. The applicant was shown the cartridge case that was picked up on the scene but said he knew nothing about it, that he was not one of those who was shooting.

The applicant in his defence said that he happened upon some men with guns while he was out on an errand for his employer; that they challenged him in conversation about one Tony and when he refused to co-operate he was shot by one of the gunmen on the urging of the others. Seconds after this occurred, the radio car came and the men started trading shots with the police. At this time he was shot and so he leaned on a wall; the police pursued the gunmen and after they left he was taken up by some kind folk and was on his way to the hospital when the van was intercepted by the police and he was brought back to the scene.

Detective Ayre saw the applicant shot helpless on the ground and although he said that the applicant fired a gun, he made no effort to retrieve the gun. When asked to explain this curious action he said that he was hearing explosions, (gun-fire) that he was concerned about the safety of Corporal Taylor, and also the little girl, that he considered that since the applicant was disabled, he would return to find him there. There is some

difficulty in accepting that a man of the rank of Detective Inspector could honestly believe - after however short a period - that he would return to find a gun on the person of the applicant. He was more likely to leave the area only if he was satisfied that there was no gun.

The applicant had from the commencement of interrogation and at all times maintained that he was not shot by the police. The learned trial judge did not accept this. He said:

"It is my view, it is an affront to commonsense that without any antecedent animosity, nothing leading up to the shooting, in the heart of South Side that somebody would just invade and shoot the accused in his calf."

There is an absence of evidence to support this approach and we conclude that he based his approach on facts which were not before the Court.

The learned trial judge, it is our view also interfered unduly in the conduct of the case. This together with the evidence as it stands and the explanation of the police officer are aspects of this case which are unacceptable.

For these reasons the conviction cannot stand and the appeal is allowed. The conviction is quashed, the sentence is set aside and a verdict of acquittal is entered.