

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 49/89

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

REGINA

VS.

PAUL LAWRENCE

No Appearance for the Applicant

Miss P. Williams for Crown

September 24, 1990

ROWE P.:

Paul Lawrence was convicted in the High Court Division of the Gun Court on the 5th of April 1989 for illegal possession of a firearm and robbery with aggravation. On the first count he was sentenced to serve a term of five years imprisonment and a similar sentence was passed on the second count. The sentences were to run concurrently. His application for leave to appeal on the ground that the learned trial judge erred when he refused to uphold the submission of no-case to answer was refused by the single judge and the application has been renewed before this Court.

The Crown's case was founded upon the evidence of two young women who were employed in a Video Club at Lancaster Road in St. Andrew. They gave evidence that at about 3 o'clock in the afternoon of the 9th of September 1988 two men

came into the Video Club. These men had been there earlier in the day and had been making enquiries as to how they could become members of the Club. This gave the women the opportunity to be able to make positive identification of the persons with whom they were speaking.

On the second visit the applicant, so the witnesses said, said to them that they were now engaged in a hold-up and the girls should pass over what property they had and to make no noise. In order to ensure that his demands were met he partly removed his shirt so that the handle of a gun which was stuck into his waist could be clearly seen. When they saw the firearm, the girls complied with the men's demands and the two men took away from the premises a quantity of tapes, a quantity of recorders, a television set, all to the value of \$40,000.00 and escaped in a waiting rented car.

Very soon after the robbers had departed, the owner of the shop came up. The witnesses got into her car and followed. As they drove along Molynes Road, one of the witnesses saw the applicant walking into the St. Andrew Parish Church Cemetery. She was able to recognise him partly by his face and partly by his clothing and she went along to the Police Station and got the services of a Special Constable. She came back with the Police and saw the applicant standing on Ambrook Lane. She pointed him out to the Police and he was taken into custody.

The point at issue at trial was whether or not there was sufficient evidence to show that the applicant was armed with a firearm and the defence relied upon the decision of this Court in R. v. Purrier and Bailey decided in 1976 and reported at 14 J.L.R. 97. That case can be distinguished from the instant case because there the witness said she felt something at the side of her neck which she did not see but

which she thought was a firearm. In the instant case the witnesses said that they saw what appeared to them to be a firearm stuck in the waist of the applicant. One of the witnesses said that she was particularly familiar with firearms as her relatives were police officers and from time to time carried guns in her presence. The learned trial judge held that the evidence supported the inference that the applicant was armed with either a real firearm or at the least an imitation firearm and rejected the no-case submission. With this conclusion we entirely agree.

The defence of the applicant was disbelieved. He said he was not anywhere near the premises and he had nothing to do with the offence. In all the circumstances the finding of guilt was based on abundant evidence and the application for leave to appeal is therefore refused. The sentences are approved and will run three months from the date of conviction, that is to say from the 10th of July, 1989.