

CRIMINAL LAW — appeal from Gun Court — ① Illegal possession of firearm
② Shooting with intent. HERE — wholly question of fact which
turns upon trial judge's view of credibility of witnesses.
Application for leave to appeal refused.
JAMAICA

No case referred to.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 139/87

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

REGINA

VS.

PAUL WINT

Wentworth Charles for Applicant

Mrs. Carol Lawrence-Beswick for Crown

May 16, 1988

ROWE P.:

This is an application for leave to appeal against conviction in the Gun Court on the 14th of August, 1987, for illegal possession of firearm and shooting with intent, on which occasion the applicant was sentenced to a term of imprisonment of five years at hard labour on Count 1 charging him with illegal possession of firearm and for seven years at hard labour on Count 2 which charged him with shooting with intent.

The prosecution's case came substantially from a witness Victor Thomas, who said that on the 17th of August, 1986, when the incident is alleged to have occurred, he was twenty years of age and he drove a truck for his father.

At 1:15 p.m. Thomas said he was walking in Spanish Town. There was a cart man just ahead of him when he was approached by seven men

whom he knew for some time, one of them being the applicant Paul Wint. He said that Paul Wint approached him and used words to the effect: "P.N.P. bwoy, whey yuh ah do up town." Then Paul Wint and the others surrounded him and Wint drew a ratchet knife which he used to cut Thomas on the lip. This came about because Thomas said the man flashed the knife at him; he pulled himself away somewhat, and the knife caught him on his lip and bled profusely. Thereafter, Wint pulled a gold chain from his neck, pulled a ring from his left little finger and finally took from his pocket his billfold, which contained twelve dollars. The applicant is alleged to have taken out the money and dropped the billfold on the ground. Then all seven men ran away.

Thomas said that he went into premises called 'Small Axe Yard' and was receiving treating for the wound which he had received to his face when, the applicant Paul Wint, returned along with a group of men and when he came to the premises he had a big gun in his hand, and he said: "Whey the bwoy deh?" At that time the applicant did not observe where Thomas was in the yard. The applicant Wint then fired a shot in the air. Thomas did not wait for anything else to happen, he ran and jumped the wall and as he was running, he looked back and he saw the applicant Paul Wint come to the wall which he had just jumped over and two shots were fired. Thomas said that when he looked back he saw the big black gun in the hand of Wint pointing at him and Wint was at the same time shouting: "Don't let the bwoy get away."

The defence offered was that the applicant and the complainant Thomas well knew each other for very many years. On the Sunday when this incident is alleged to have happened, the complainant was driving his father's truck, not walking as the complainant said. The complainant drove through a pool of water and splashed the applicant and the other men. There was an altercation because of this uncivil conduct on the part of the complainant. The complainant then drew a piece of iron and hit the applicant with the iron and thereafter the applicant took a knife which he used to cut the complainant Thomas. The applicant was therefore saying that there was

an incident on that occasion, but no gun was used, neither did he have any firearm. He did not fire any shots at the applicant.

The learned trial Judge having heard the witnesses, reviewed the evidence fully, accepted Thomas as a witness of truth and rejected the defence of the applicant Paul Wint. Mr. Charles was forced to concede in argument that this was wholly a question of fact which turned upon the learned trial Judge's view of the credibility of the witnesses who gave evidence and there was ample evidence on which he could come to the conclusion of guilt. Therefore, the submission that the verdict of the trial Judge was unreasonable having regard to the evidence is unsustainable.

In the circumstances, leave to appeal is refused and the sentences in this case will run from the date of conviction.