

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 194 of 1988

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

PAUL WINT

Application for leave to Appeal

B. Sykes for the Crown

October 24 and November 30, 1989

WRIGHT, J.A.

On October 24, 1989 we dismissed this application for leave to appeal against convictions and sentences on an indictment charging the applicant with Illegal Possession of Firearm (Count 1) and Robbery with Aggravation (Count 2). We ordered that the sentences of 8 years imprisonment at hard labour (Count 1) and 10 years imprisonment at hard labour (Count 2) should commence on December 1, 1988. The following are our reasons.

At the trial before Gordon J. on August 31, 1988, in the High Court Division of the Gun Court evidence was adduced that at about 2:00 a.m. on January 6, 1988 Mr. Dennis Thomas whose house is in front of his shop at 6 Olympic Avenue was awakened by sounds. He first checked a room in which two girls were asleep and, finding nothing wrong there, he looked outside and saw shadows. He armed himself with a flashlight and a garden fork. Next a window in his house was broken and in came two men - a masked man

whom he did not recognize and the applicant whom he had known since 1979 as "Humphy."

Mr. Thomas thrust the fork at the applicant but his attack was nullified by the applicant who hit him in his head with a gun which the applicant had in his hand. In the meantime one of the girls got awake and turned on the electric light which enabled Mr. Thomas to see his attacker clearly. The applicant called to his companion to stab Mr. Thomas. The stab caught him between two of his fingers and with blood streaming from his head he could no longer resist them; so when the applicant demanded money he showed it to him. In the result he was relieved of about \$400, a tape recorder, his flash-light, a cutlass and the garden fork. The men then left through the window by which they had gained entrance. Later the same morning he made a report at the Olympic Gardens Police Station to Detective Paul Robinson.

Cross-examined he rejected the suggestion that he had made a mistake as to the identity of the intruder and that was so, he said, despite the fact he was not wearing his glasses at the time because the applicant was within touching distance of him.

Detective Robinson visited Mr. Thomas' premises and made observations then prepared a warrant for the arrest of the applicant whom he had known for about 3 years. On April 21, 1988 he arrested the applicant on the charges. After caution the applicant responded "Boss, some a dem robbery them deh, a nuh mi do it and people a call up mi name:

Consistent with that statement his defence was a denial. In a sworn statement he said:-

'Yes sir. M'Lord, in the morning, the youth - the area leader come to my home and told me that Mr. Scatty - I know him as Scatty, I don't know him right name -----

He told me that he see a man favour mi. Well I go to Mr. Scatty in the morning and tell him that I hear my name calling "about the robbery and he tell me that he didn't see me. I said Okay."

The problem attendant upon that statement is that although his counsel Mr. Sylvester Morris spent much time cross-examining Mr. Thomas in an apparent endeavour to elicit that Mr. Thomas was mistaken he did not ask any question which could even faintly suggest this alleged confrontation.

The live issue in the case was one of recognition and Gordon J. in a careful assessment of the case demonstrated his awareness of that fact. Having identified the strength and weaknesses in the prosecution's case he concluded that Mr. Thomas was a witness of truth. Defence counsel had tried to salvage some gain in a submission that it had not been proved that the items taken, from Mr. Thomas' house had been taken against his will and consequently the count for Robbery with Aggravation should fail. This submission was quite rightly rejected and it is mentioned only to expose its inanity.

We concluded that there was no basis for interfering with the convictions and accordingly refused leave to appeal against conviction. There is nothing excessive, let alone manifestly excessive, about the sentences. Persons who undertake to violate the sancity of a person's home to rob and maim must be kept painfully aware of the risk they run if their adventure fails and they are caught. These sentences are salutary. Leave to appeal against the sentences was also refused.