

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 145/88

BEFORE: The Hon. Mr. Justice Carey, P. (Ag.)
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Morgan, J.A.

REGINA

v.

REUBEN PALMER

Application for leave to Appeal

Hugh Wildman for the Crown

September 27, 1989

CAREY P. (AG.)

In the High Court Division of the Gun Court held in Black River in the parish of St. Elizabeth on the 22nd of June, 1988, this applicant was convicted on an indictment which charged him for illegal possession of firearm, robbery with aggravation and wounding with intent. He was sentenced on the first count to seven years imprisonment at hard labour and on the next two counts to twelve years imprisonment at hard labour, all the sentences being ordered to run concurrently. He now applies for leave to appeal his conviction and sentence.

The short facts which gave rise to the conviction may be stated quite shortly:

On the 12th of December 1987 at about 10:30 p.m., Mr. Basil Rowe, who is a shop-keeper, was seated in his shop, checking some bills. He suddenly became aware of a sound and then a statement "Gunman". He looked up to see two men on the counter and one by the door. One of the men on the counter was pointing a gun at him. The other had a machete which he used to hit Mr. Rowe all over his body. In the meantime, there was a demand for the shop-keeper to hand over his gun. The shop-keeper is the licenced holder of a firearm.

In the course of this incident, one of the persons in the shop, apparently made some move, which did not sit very well with the intruders and the man who had the gun fired a shot, which ended up in Mr. Basil Rowe, injuring him. He was however able to grab hold of the man with the machete and pull him off the counter. A fight between them ensued, but the upshot of all that, was, that Mr. Rowe lost consciousness. When he regained consciousness, he observed the intruders in the process of robbing his shop.

Another witness for the Crown, a Mr. Calman Lewis, testified that the person armed with the firearm was this applicant, whom he had known for a period of some fifteen years. The witness stated that although at the early stages, the applicant was wearing a mask in the course of the fracas between the shop-keeper and the intruders, the mask came off and he was able to recognize him. On some subsequent date viz., on the 15th of December that witness accompanied the police to Kingston where he saw the applicant and pointed him out to the police who duly apprehended him.

The defence was that this was all a concoction, motivated by malice. The accused made a statement in the following form:

"Me and him did fight one time over ball game, Your Honour, and I thump him in his face, sir, and from that me and him become enemy, sir, and I leave and go to Kingston"

This incident which the applicant related had taken place some considerable time ago, some ten years previous to that. Plainly, it was being suggested that the rancour from that fight held over or persisted for this continuous period of time.

The learned trial judge who saw and heard the witnesses was not impressed by that statement and obviously gave it no weight whatever. This was not a true case of visual identification being really crucial, what was important was the credit of the witnesses who gave evidence because there was no question that the other intruder and this applicant were well-known to the main eye-witness for the prosecution. This was eminently a question of fact to be determined by the tribunal charged with that responsibility. We have been deprived of that opportunity and we are quite unable to say having read the transcript that the learned trial judge erred in the decision at which he arrived.

So far as sentences are concerned, they are well within the range for offences of this nature and in the circumstances the application for leave to appeal is refused and the court directs sentence to commence on the 22nd of September, 1988.