

CA CRIMINAL LAW - Trial - Gun Court - ^{Evidence - joint enterprise} Illegal Possession
off firearm - robbery with aggravation - whether judge
erred in holding that appellant in joint enterprise
JAMAICA
Appellate dismissed ✓ Comp
No Case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 237/87

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

REGINA

v

ROBERT WHITTAKER

K.D. Knight for the Appellant

Kent Pantry for the Crown

November 13 and December 20, 1988

MORGAN, J.A.:

In the High Court Division of the Gun Court on the 18th of December, 1988 the appellant, Robert Whittaker was convicted on an indictment which charged him with Illegal Possession of a Firearm and Robbery with Aggravation. He was sentenced to terms of 5 years and 7 years at hard labour, respectively, and was granted leave to appeal with a view to having the scope of the joint enterprise considered.

On the 31st of July, 1986 about 11.00 a.m., Mr. Hall was walking on the train line towards Spanish Town when he saw a group of men sitting to the side of the road. One of them whom he knew as "Ruddy" got up, walked across to him with a gun in hand and pushed it into his side. As "Ruddy" spoke the appellant came across from the same side as "Ruddy" with a knife in his waist, held Mr. Hall in his shirt front and asked, "Bwoy a whey unoo P.N.P. bwoy a do ya" and then also "Wha yuh have unda yuh shirt", with the gun still at his side. Then some 13 others armed with various offensive weapons came, and in his own words "drape him up". There followed a chorus entreaty "Beat him, a P.N.P. bwoy, beat him". The

appellant drew his knife as "Ruddy" gave the order to draw him into the cemetery. They did, and there the appellant tried to take money from Mr. Hall's pocket. He resisted and received cuts with the knife from the appellant and a gun-butt on his hand from "Ruddy". He held the gun, a tussle ensued during which "Ruddy" relieved him of money from his pocket and the appellant of his wrist-watch and ring. "Ruddy" ran, whereupon the appellant and others followed after him. The complainant having heard on a subsequent date that several persons were held in a curfew, curiously visited the Police Station and there he saw this appellant whom he pointed out to the police.

The appellant denied all knowledge of the charge, said he was a watchman at a garage and was at his work at the time, one mile from the incident. Mr. Henry, his boss, was however unable to support him as he was away from the garage between 10.30 a.m. and 2.30 p.m.

The ground argued by Mr. Knight was that the learned trial judge erred in finding that the appellant was in joint enterprise with the robbers. He agreed that an agreement had come into being to assault the complainant, but not to rob and argued that the Robbery with Aggravation was outside the scope of the agreement as whatever occurred after the assault could be an individual activity and not a joint enterprise to rob.

This was clearly unarguable in the face of the evidence as accepted by the learned trial judge. Indeed, they were altogether on a joint enterprise and liable for unusual consequences arising from it - the very clear evidence albeit being that this appellant himself pulled the wrist-watch and ring from the complainant's hand.

In the event, the appeal is dismissed, the conviction and sentence are affirmed and the sentence will run from the date of conviction.