

JAMAICA

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CDM Practice  
C.D. 10/10/10

VS.

STEADMAN -RANKINE  
DELOY MCKENZIE  
DALTON MCKAY  
AUSTIN BARNES  
GILBERT ROBINSON

Winston Spaulding Q.C. and Miss Leila Parker for Rankine  
Canute Brown for McKenzie, McKay, Barnes and Robinson  
Lloyd Hibbert and Martin Gayle for the Crown

November 2, 3 and 4, 1993

RATTRAY P.:

In the case of the appellant Steadman Rankine the evidence relied upon by the prosecution came from two witnesses, Paul Kelly and Nathan Meredith and both stated that Paul Kelly was shot by the appellant Steadman Rankine. There arose the question of what firearm was used in the shooting because Mr. Rankine denied that he had shot Paul Kelly.

In her findings the Learned Resident Magistrate said:

"Mr. Fairclough said that the evidence of the shooting leaves much to be desired, since Defendant Rankine denies that he did any such thing. However, when Defendant Rankine was confronted with his statement he admitted

"that he handed over a .38 Revolver with five (5) cartridges and one (1) spent casing to Detective Constable Clive Aitkens at Coral Gardens Police Station."

It has been admitted by the Deputy Director of Public Prosecutions, Mr. Hibbert, in this Court, that the .38 revolver handed over by the defendant Rankine to Detective Constable Clive Aitkens at Coral Gardens Police Station had nothing to do with the alleged shooting of Paul Kelly by Mr. Rankine but had to do with an earlier shooting by someone else in which a person was killed.

When therefore, the Learned Resident Magistrate links the revolver with Mr. Fairclough's comments that the "evidence of the shooting leaves much to be desired, since defendant Rankine denies that he did any such thing", it seems clear to us that the Learned Resident Magistrate could have been confused into believing that that .38 revolver was the one which was used by Mr. Rankine to shoot Paul Kelly and was saying that that revolver had come from the possession of Mr. Rankine. This could well have been what influenced her in coming to a conclusion at Finding No. 18 that accused Rankine used his gun and shot Paul Kelly in his hip.

Since we now know that it was not in this connection at all that the accused Rankine had this .38 revolver but in relation to the earlier incident in which he was not involved, it could well be that the finding that Rankine used the gun to shoot Kelly may have been triggered by the finding that he handed over this .38 revolver. Mr. Rankine had given evidence that he did not carry a gun on that occasion.

In that state of the findings we believe that a miscarriage of justice could have taken place in finding Rankine guilty of the charge. For these reasons we will allow the appeal

of Mr. Rankine and we will quash the conviction and we will set aside the sentence and enter a verdict of acquittal in his case.

In the case of the other four accused persons we find that there was sufficient evidence on which the Learned Resident Magistrate could have relied to come to a conclusion which she did of guilty in relation to those four persons. The appeals therefore in relation to the appellants Delroy McKenzie, Dalton McKay, Austin Barnes and Gilbert Robinson are dismissed. The convictions are affirmed. However we will allow their appeals against sentence.

The question of sentence is always a difficult one and although we expect the police at all times to set a very high standard with respect to their relationship with the citizen, in view of their subordinate roles in the unfortunate incidents of that particular night, we believe that justice would be done by imposing on each appellant the maximum fine permitted, that is a fine of \$4,000.00 or six months imprisonment instead of the custodial sentence originally imposed.

In doing so we take into account, of course, the fact as pointed out by learned counsel for these appellants that six years have elapsed since the incident has taken place, and also the adverse effect on their careers of these convictions.

It is for these reasons that we think it appropriate that we should vary the sentence as we have done. With respect to payment of the fines we will allow each appellant six weeks to pay in his own recognizance. Their travel documents will not be returned to them until the payment of their fines.