

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 60 of 1989

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

VS.

STEVE GRIFFITHS

Application for leave to Appeal

B. Sykes for the Crown

October 25 and November 30, 1989

WRIGHT, J.A.:

On October 25, we dismissed this application for leave to appeal against conviction and sentences of 3 years and 5 years imprisonment at hard labour respectively, on an indictment charging the Applicant with Illegal Possession of Firearm (Count 1) and Shooting with Intent (Count 2). The following are our reasons for so doing.

The single judge who considered the application and refused it on September 29, 1989 had indicated his reasons thus:

"The only issue was the veracity of the complainant. The learned trial judge dealt adequately with the evidence and accepted the complainant as a witness of truth."

Against this background we considered the evidence and the treatment thereof by Cooke J. the trial judge.

The evidence disclosed that at about 7 p.m. on December 7, 1988 one Primrose Reid was walking up Pryce

Street, Jones Town in the parish of St. Andrew with two children when the applicant whom she knew for a long time accosted her and uttered the most vulgar language to her. (She said he had been to her home on many occasions). She responded to him and continued on her way but he would not let her alone. He went after her and chucked her into a corner and demanded sex. She remarked at the strangeness of the demand following his vulgar abuse and walked away. Obviously angered at being rebuffed he threw a bottle at her which caught her and inflicted a wound to her left calf. (The scar was seen by the learned trial judge). She sought refuge at the home of one Joan but the applicant continued the assault by stoning the house and threatening her.

"You ca' an come out here; you think
you can call me name at any station?
No police can hold me."

Joan bandaged the bleeding leg and thereafter she left to her brother's home. The applicant appeared at the brother's gate with an object in his hand covered with a towel with which he menaced her. She had in fact gone into her brother's home twice and he was there but did not intervene.

In an effort to get to the Police Station she left her brother's home via an adjoining church yard but no sooner had she entered the church yard than she saw the applicant atop the wall surrounding the church yard and he challenged her again:-

"Whey yuh a go gal, a station?
You believe yuh can go a station
go call up my name?"

He then pointed the object at her. She took cover behind the church building just in time to hear an explosion and when she looked a portion of the wall had been dug out by the bullet which missed its mark. She, however,

succeeded in getting to the police station and lodging her report. But it was left to her, while still suffering from the injured leg to take the Police to find the applicant in the early morning of January 26, 1939 when he was arrested and charged. Before he became aware of the presence of Miss Reid, he, according to her evidence enquired "Officer, whay mi do, whay mi do?" However, when he saw her he said "Prim, me tink sey you nah badder with it. Prim, let me go nuh? let me go nuh? Please, please, nuh mek mi go prison." But the arresting officer, whom the prosecution would not trust to rely on, when offered for cross-examination testified that what the applicant said was "Is lie the girl a tell pon mi." The prosecution called no other witness apart from the prosecutrix at the trial before Cooke J. on April 11, 1939.

The applicant testified in his own behalf and called as well Harry Lee, the brother of the prosecutrix and Delores Lindsay, a worthy remnant of that infamous breed known as "professional witnesses". The applicant admitted knowing the prosecutrix very well and, with appropriate amendments, the earlier part of the encounter which ended with him throwing the bottle which broke and cut her after she had resented his "spotting her on her bottom." But according to him after she sustained the injury he realised there would be trouble so he went home and was nowhere in the area at the time that the prosecutrix alleged she saw him at her brother's gate and specifically he was not on the church wall and had no gun.

Harry Lee admitted seeing his sister looking upset and with a bandaged leg but he carried the defence so well he testified the Church wall in question was non-existent since hurricane 'Gilbert' and he did not see the applicant anywhere around on the one occasion in the evening in

question when he saw his sister.

In "professional" style Delores Lindsay walked off with the prize for being the Champion liar. The trial had been adjourned from Tuesday April 11 to Thursday, April 13 to facilitate the attendance of the two defence witnesses. Miss Lindsay is a devotee of the Jehovah witness religion and was higglering not far from the Gun Court where the trial was held. Equipping herself with her "holy book" and matching piety she testified that at about 9.30 a.m. on Thursday, April 13, before the sitting of the Court for that day had begun, the prosecutrix whom she had not known before came to her in a distressed state and told her that her conscience was bothering her because she had misinformed the court that the applicant had shot her at a spot where she had a scar on her right ankle when in fact it was a bottle he had used to inflict the injury and how in the face of evidence from a defence witness who had testified contrary to her evidence she was afraid of what the Court would do to her because the judge was threatening to lock her up. She reprimanded the prosecutrix and then advised her of the proper approach to the trial judge to secure a retraction of the evidence which she had given to support a charge which she had made in a fit of passion but which was not true.

The fact is that up to the time of this alleged revelation the defence had not yet called the other defence witness Harry Lee nor had the Court been told that the applicant had shot the prosecutrix. Further, the injury was to the left calf of the prosecutrix - not her right ankle.

The learned trial judge made a careful analysis of the evidence taking note of such inconsistencies as appeared in the prosecution's case. He rejected the defence. The arresting officer who testified for the defence he found

unworthy of credit. He had no difficulty in dismissing Miss Lindsay as "a witness of a forked tongue." He accepted Primrose Reid as a witness of truth and accordingly convicted the applicant on both Counts. The sentences of 3 years and 5 years imprisonment with hard labour respectively for such atrocious conduct reflect extreme clemency. There is no basis for interfering with the convictions nor will we interfere with the sentences. We order that the sentences will commence from July 11, 1989.