C.A CRIMINAL LAW — Wounding with intent — Verdict warranted on facts — Whether sentence excessive — Appellant policeman who unlawfully used firearm against defenceless citizen — Sentence warranted on facts — Appeal against sentence dismissed.

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JAMAICA

No case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL # 60/86

COR: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

REGINA

V.

WILBERT BROWN

Mr. Kent Pantry for the Crown

No appearances for the Appellant

9th March, 1987

CAREY, J.A.:

In this application, the single judge granted leave to appeal against sentence only. Wilbert Brown was convicted in the Hanover Circuit Court before Mr. Justice Panton and a jury, on a charge of wounding with intent and sentenced to a term of 5 years imprisonment at hard labour.

In so far as the conviction is concerned, we have carefully considered the facts and circumstances and the summing-up and we can see no reason to interfere with the verdict of the jury which was eminently warranted on the facts before them. It is necessary, however, to state shortly what the facts are, in order to see whether the sentence imposed, was an appropriate one.

Hirving Grant, the victim, was standing by a window of a billiard room watching, apparently, persons playing billiards, at a club called the Clipper Club on Seaview Drive in Lucea, Hanover on

the 25th November, 1984. It was about 11:45 at night. According to the injured man, he saw six men enter this billiard room, one of whom he recognised as being a policeman. That policeman who was the accused was armed with a hand-gun. It appeared that the other men with him were also police officers. When the officers entered the room, they did not identify themselves as being police officers: none were in uniform. What was heard, were the following words: "Nobody blood-cloth move; one line." Upon this order, everyone lined up. Presumably, on the basis of that order persons therein were to understand that these were police officers. When the persons in the club lined up, one of the customers in that shop said "oonu is who? Declare oonuselves." One would think that request, justified. At all events, one of the persons who entered the shop, described as dressed as an Immigration Officer, turned to this young man and said "This boy too ....." using an expletive, "bright and facety" and then he began to assault this young man. All this time the accused was standing at the door-way while he, Grant, stood at the window facing the accused man. Two young men, it was said, then came to the window and jumped through the window, whereupon the appellant came around to where the injured man remained standing with his hands folded. Nothing was said by either the appellant of the injured man, and the next thing that occurred, according to Grant, was that the gun held by the appellant was pointed at him, something like sparkle or star-light seemed to emerge from that gun and the result of all this was "his foot start drawing-up and he saw blood coming from it." He had been shot in his right foot. Whereupon the injured man said, "Officer what me do mek you shoot me?" The appellant is recorded as saying "Me bwoy, a no mi shoot you, you know, bwoy a no mi."

In so far as the appellant's story went, he said that he had entered the shop, where he saw "two dreads" standing in a corner. As he approached, one of them, being the injured man, pulled a knife,

stabbed at him and he shot him. He was, therefore, acting in self-defence. As was said, there were two stark mutually exclusive stories, and the jury clearly rejected that suggesting self-defence.

On the Crown's case, what was shown was a police officer exceeding his duty. He had come to make a search on premises; he had failed to identify himself, and for reasons that are difficult to comprehend, had turned his gun upon a man and shot him. This was a most serious case indeed. The learned trial judge adjourned sentence, the better to be able to give it careful consideration. He heard evidence of character which he considered, and listened to a very long address from counsel who appeared below, and as I said, having taken time to consider, he imposed a sentence of 5 years imprisonment. This is what the learned trial judge said, and we think it is right to quote his words:

> "This shooting and wounding was clearly unnecessary. To my mind it was a demonstration of the high and mighty power that you perhaps felt you had and could exercise willy nilly. But then you couldn't legitimately and honestly feel that you had such power because your experience of ten years in the force will tell you that the majority of policemen and policewomen do not behave in that way.
>
> Almost every Circuit Court throughout the Island seem incomplete unless there is a policeman before it charged with an offence due to the unlawful use of a firearm against a defenceless citizen, and many are eventually convicted."

In our view, this is clearly an unhealthy situation. We entirely agree with those words of the learned trial judge. We cannot over-emphasize the importance of police officers realising what their function is and it plainly is not to use firearms in the manner in which this police officer did. The learned trial judge took into consideration all the circumstances that he was entitled to do and the sentence, we think, was eminently warranted on the facts.

The appeal against sentence is, therefore, dismissed. Sentence will run from the date of conviction.