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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 127/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA vs. BENJAMIN REID

Application for leave to appeal

Miss Carol Malcolm for the Crown

October 8, 1990

MORGAN, J.A.:

The applicant was convicted of illegal possession of a firearm and shooting with intent in the High Court Division of the Hanover Gun Court on the 30th May, 1988, and sentenced to ten years imprisonment at hard labour on each charge. He now applies for leave to appeal his conviction and sentence.

The short facts are that Patrick Miller was asleep in the house of his step-father, Albert Levy, when the applicant knocked at the door. He was told that Levy had left instructions that he was to remove his clothes and should not return. The applicant became abusive, entered the room, took out his clothes, went outside but returned to the closed door and dared Patrick Miller to come outside. On going out, Miller saw the applicant with what appeared to be a "long gun" secreted in one foot or a pair of pants. He immediately ran and when about six yards away, heard an explosion.

Notwithstanding this, he ran back quickly to the applicant and grabbed him. Thereupon the applicant stabbed him with a knife and left. Patrick Miller then looked for and found the spent shell which he took to the police at Ramble Police Station and made a report. The police visited the scene, retrieved pellets and later went to the home of the applicant where they found a pair of pants with holes in it. On examination, the ballistic expert found gunpowder residue in the left front leg of the pants, which, in his opinion, was deposited through the muzzle of a firearm which he believed to be a home-made handgun. He also found that the firearm, from which the pellets were fired, was of the same type.

The defence was in the nature of an alibi - that because of a fuss with Mr. Levy, who threatened to do him "a displeasure", he had left the premises on the 1st July, some four weeks prior to the incident, had not returned and that this charge was occasioned by malice.

Identification was the main issue. The learned trial judge alerted himself to all the areas in proof of identification and in particular to the fact that they knew each other well; he knew his voice when he spoke; that the applicant went into the room, where Miller was, to remove his clothes and Miller had seen his entire body.

But the Crown's case did not depend wholly on visual identification but also on other evidence, viz. the ballistic report which showed that the pellets exhibited were of a type used in a firearm which produced gunpowder deposit as was found in a leg of the pair of pants found at the applicant's home.

Having carefully examined the record, we can find no reason to interfere with the verdict or sentence at which the learned trial judge arrived.

The application for leave to appeal is refused,
and we order the sentence to commence on the
30th August, 1988.