

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 138/89

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Gordon, J.A. (Ag.)

R. v. ALBERT KING

Application for leave to appeal

Miss Carol Malcolm for Crown

4th June, 1990

FORTE, J.A.

On 21st of September, 1989 the applicant was convicted in the St. James Circuit Court for the offence of wounding with intent. The prosecution's case can be put succinctly in a few words.

On the 24th of November, 1986 at about 11.00 a.m., the complainant was walking along a track. While doing so he stopped to await two of his companions who had stopped behind. At that time he saw the applicant coming towards him. The applicant came up to him with a machete in his hand; he then chopped at the complainant, severing his hand. Having done so the complainant noticed that the machete then had blood on it and the applicant when asked by the complainant what happened replied thus:

"The weed whay you an you friend
come tek whay last night, whay the
weed whay you and you friend come
tek whay last night."

He then ran away. The complainant ran to a friend's home, received first-aid and then was taken to the hospital where he was treated.

In his defence, the applicant said that on the night before the incident, his house in which he lived with his brother-in-law and his sister was broken into and that the complainant was one of those three men who broke in and robbed them of five hundred dollars. After the men had left, his brother-in-law, his sister and himself went into the village, aroused relatives and apparently friends and then a search commenced for the complainant and the other two men. He stated that they searched until dawn the following morning, when he, finding that the search was unsuccessful, abandoned the search. The search however continued in his absence. He left them, went to look after his animals and returned home at about 1.00 p.m., the following day and it was at that time that he heard that the complainant's hand had been chopped off by a man called "Fire Red" who was a stranger in the district and who had since the incident and before the trial left the district. The defence therefore was one of alibi.

A warrant was issued for the arrest of the applicant but was not executed until the 4th of April, 1987. On his arrest and having been cautioned the applicant said "a him cause it". The defence was one of alibi which put the question of identification into issue. The evidence revealed that the applicant was known to the complainant for 5 years before, a fact which was not in dispute, one of the defences being that the complainant was telling a deliberate lie upon the applicant. The learned trial judge dealt with the issue of identification satisfactorily and adequately; he considered

all the issues raised by the defence and directed the jury on all the issues that arose in the case, on the law in a very adequate and satisfactory manner. For those reasons we find no reason for upsetting the conviction. The application for leave to appeal is refused and the convictions and sentences are affirmed. We order that the sentence be commenced from December 21, 1989.