

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 62/89

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

R. v. ERROL SHAKESPEARE

N. Palmer & P. Cole for Crown

Applicant not represented

11th February, 1991

GORDON, J.A. (AG.)

This is an application for leave to appeal from conviction on an indictment in the High Court Division of the Gun Court sitting in Clarendon on 13th April, 1989 before Harrison J. The applicant was convicted on three counts, the first two for illegal possession of firearm and the third for shooting with intent. The sentences imposed were seven years at hard labour on each of the counts for illegal possession and fifteen years for shooting with intent.

When the applicant was arraigned in the afternoon of the 11th April, he was represented by Mr. Noel Edwards Q.C. and Mr. Evon Lyn-Cook. He pleaded not guilty and the Crown Counsel Mr. Dennis opened. At this stage Mr. Edwards craved an adjournment of 10 minutes to consult with his client. After a break of over 30 minutes, court reconvened and Mr. Edwards sought an adjournment until the 12th as he intimated he had to continue his consultations. This was granted.

On the morning of the 12th the applicant was pleaded on the first count he pleaded not guilty. Mr. Edwards then informed the court he could not participate in the trial beyond that point and he sought the Court's permission to withdraw. He said it was impossible for himself and his junior to continue to represent the applicant because of want of instructions. With the court's permission Mr. Edwards and Mr. Lyn-Cook withdrew and the applicant was advised he had to conduct his defence. Counsel for the defence had appeared on assignment on legal aid under the Poor Prisoner's Defence Act. It is rare in these courts that eminent counsel accepts assignment of this nature and Mr. Edwards regretted the course he felt he was obliged to adopt.

The evidence adduced by the prosecution was that on the 11th September 1987 a party of policemen including Constables Bennett, Reid, Whitworth, Detectives Arscott and Bartley was on patrol in a district called Farm in Clarendon. The applicant was seen walking through the district and on seeing the police he ran. The police gave chase and he disappeared over a cliff and into a cave by the (Rio Minho) River. Constables Reid and Whitworth followed him and on approaching the cave they saw a hand holding a .38 revolver protrude from the cave pointing at them, a voice from the cave enquired "Hey Boy whey uno a do". Two shots were fired from the revolver at them and they took cover. The cave was tactically a very sound defensive position. The police could not approach it without grave risk so the area was cordoned off and further police reinforcement summoned. The police sought to persuade the applicant, who gave his name as Jingles and indicated he was alone, to surrender. The applicant said he had in addition to the .38 an M16 rifle.

The applicant threw out the .38 S & W revolver which was recovered by Constable Bennett, said it was the gun that had been used to kill the constable on Glenmore Road May Pen and demanded that a pastor be fetched and children be provided as a protection before he surrendered. His sister Pamela Boothe came on the scene and pleaded with him to surrender. Reverend Wilfred Alexander of the May Pen Methodist Church was summoned and when he arrived he along with Pamela Boothe and Constable Bennett went to the cave and the applicant surrendered to them. Constable Bennett removed from the cave a home made shotgun. Rev. Alexander saw Constable Bennett enter the cave empty handed and emerge therefrom with the shotgun. Det. Supt. Linton, the Ballistic expert found that 3 chambers of the .38 firearm had been recently fired and that the home made shotgun satisfied the definition of a firearm under the Firearm's Act.

The applicant in his defence admitted having the .38 in his possession but said he had obtained it with the intention of handing it over to the police and to this end had asked one Rosetta Martin to write a letter to the police for him. He denied possession of the home made shotgun but admitted saying to the police that he had with him in the cave a M16 rifle. He denied firing shots at the police. Ms. Martin admitted writing a letter to the police for the applicant but said it contained no reference to the surrender of any gun. She destroyed the letter when the applicant failed to collect it.

The applicant was ably assisted by the learned trial judge in the presentation of his case and there was no denial of justice. The facts are overwhelming and the learned trial judge in a concise summation dealt with the relevant facts adequately.

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We accordingly refuse the application as being without merit and order that the sentences commence on 11th July 1989.