

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 109/91

COR: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

R. v. DEVON SIMPSON

Mr. Lowell Marcus for applicant

Miss Sheryl Richards for Crown

27th July, 1992

FORTE, J.A.

This applicant was convicted in the High Court Division of the Gun Court on the 5th of September, 1991 for the offence of illegal possession of a firearm and was sentenced to 3 years imprisonment at hard labour. The application comes before the Court from a refusal by a single judge of leave to appeal. The conviction arose out of the following facts.

On the 21st of October, 1990, Detective Sergeant Walker in the company of other policemen including his senior officer Inspector Small, went to the premises 15 Leith Road in the parish of St. Andrew. The purpose of so doing was to carry out a raid on the premises. The house was surrounded by the policemen, Detective Walker taking up a position to the front of the house near to a door that led into the house. Detective Acting Corporal Robinson, a member of the party took up his position to the rear of the house. Immediately as the policemen surrounded the house, Detective Robinson was heard to shout - "see a man a point a gun through the window," and then an explosion was heard, an explosion described by the witness Det. Sgt. Walker as a gunshot. As he heard that gunshot, Det. Walker rushed into the house where he saw

two men running from the direction from whence the explosion had come. They were running towards another room and at that stage were in what Det. Walker described as a little passage. The man in front who was identified at the trial as the applicant had a gun in his hand. Det. Walker pointed his own firearm at the men and ordered them not to move but nevertheless the appellant threw the gun he was carrying onto the floor under a bed in the room. The gun was recovered by the Detective who thereafter took them and the gun out of the building to Inspector Small and reported to him what had happened. The applicant was then arrested, and on being cautioned said - "a him did in a de room." This was an obvious reference to the other man who was later identified as Paul Lawrence and who was jointly tried with the applicant and convicted.

The gun was later sealed in an envelope and taken to the ballistic expert who certified that it was a .38 Smith and Wesson revolver and in good working condition and that it came within the definition of a firearm under the Act.

In his defence, in sworn testimony, the applicant denied that any occurrence took place in the house that morning and in particular that he was found in possession of the firearm. He testified that he was leaving home for work when he was stopped **at his gate**, by a group of policemen and asked if he had seen some named fugitives. On his denial of knowledge about the whereabouts of these men, he was severely beaten by the policemen who thereafter searched the house. He was taken to the police station and handed over to Det. Sgt. Walker who he asserted was not at his house that morning. He was again beaten at the station and taken to the Superintendent. It was not until he had left the Superintendent's office that he was told that he was being charged for illegal possession of a firearm which he was then told had been found in his house. He denied all knowledge of the firearm and denied that it was ever in his possession.

The applicant was supported by his mother, who he called as a witness, to the extent that she stated that he was stopped at his gate, asked about the whereabouts of other men and thereafter beaten when he could not give the required information. She also corroborated him that he was then taken away to the police station.

Before us, Mr. Marcus in pursuing the application for leave to appeal, argued one ground of appeal and that is that the verdict was unreasonable and cannot be supported by the evidence. He pointed to several discrepancies which he says occurred in the evidence of Det. Sgt. Walker on whose evidence, he quite correctly maintained, the prosecution's case rested.

The discrepancies to which he referred were in our opinion, adequately dealt with by the learned trial judge who was the proper tribunal to determine whether Det. Sgt. Walker should be accepted as a witness of truth. The learned trial judge considered all the discrepancies and in the end found that Det. Sgt. Walker spoke the truth. He rejected the testimony of the applicant and his witness and found quite properly, in our view, that the evidence amply supported the conviction of the applicant.

Mr. Marcus tentatively argued the question of sentence. The applicant was sentenced to 3 years imprisonment at hard labour for the offence of illegal possession of firearm, a sentence which we find is quite below the norm that is usually imposed for offences of this kind. The sentence could easily have been in excess of what was imposed. We, however, in the circumstances feel that there is nothing that has been advanced to convince us that we should interfere either with the conviction or the sentence in this case. The application for leave to appeal is therefore refused. We however order that the sentence should commence on the 5th of December, 1991.