

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 144/89 .

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

JANVO SUTHERLAND v R

Dr. Paul Ashley for the Appellant

Mr. Patrick Cole for the Prosecution

October 14, 1991

WRIGHT, J.A

On the 10th of October, 1989, this appellant, Janvo Sutherland, was convicted for illegal possession of firearm, and sentenced to imprisonment at hard labour for five years which was suspended for three years. Against this conviction and sentence he has appealed.

The facts are very simple. On the 25th June, 1989, a police officer travelling on patrol along Windsor Avenue, St. Andrew saw one Robert Dobson walking in the opposite direction with a bulge in his pocket. It was noticed that he turned into a gate and so the vehicle stopped then turned around. By the time the officer got into the home where he had seen Dobson go there was he standing beside a bed on which the appellant was lying with a gun in his hand. That was within a minute or a minute and a half after the police had seen Mr. Dobson go through the gate. Promptly, on the entry of the police, Sutherland said that Dobson had found the gun and was

showing it to him. In those circumstances, both were charged for illegal possession of firearm and came before His Lordship Mr. Justice Parkin (Ag.). In his summation of the evidence it is observed that he concentrated on whether to believe the defence but did not really make any finding on the prosecution's case. It was as if he expected the appellant to prove his case. The one statement that he really made stands out on page 34 of the record, viz, "I do not accept their story that they intended to hand over the gun to any legal authority, and in the circumstances I find them both guilty." This was against the background of Dobson's evidence that he had just found the gun and had taken it there to hand over to Sutherland's sister who is indeed a soldier.

It is obvious that the defence of this appellant was confined to the statement that the gun had just been shown to him and it was in the short compass of time that the prosecution's case admits of, that it was really shown to him. So whereas the Crown is contending that there were the requisites of custody, knowledge and control, the evidence certainly does not support that contention. We think, in the circumstances, this is not a case in which the conviction has any leg to stand on.

The appeal therefore succeeds, the conviction is quashed, the sentence set aside and a verdict and judgment of acquittal is entered.