

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 102, 103, 104 of 1989

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA
vs.
ANTHONY GARDENER
CLIFTON LAWRENCE
AARON LAWRENCE

Applicants unrepresented

Brian Clarke for the Crown

April 30 and May 28, 1990

CORDON, J.A. (Ag.):

On April 30, 1990, we refused the applications for leave to appeal, affirmed the convictions and ordered that the sentences should commence on 29th September, 1989. We promised then to give reasons and this we now do.

The applicants were convicted on 29th June, 1989, by Pitter, J. in the High Court Division of the Gun Court on an indictment which contained six counts, two for illegal possession of a firearm, two for robbery with aggravation and one each for shooting with intent and wounding with intent. The incidents on which these charges are founded commenced in the early morning of the 19th October, 1987, near Four Paths in Clarendon and ended at Bushy Park in St. Catherine later that said morning. About 1:00 a.m. on 19th October, 1987,

the home of Mr. Carlton Gordon, Misses Sheila Wanliss, Cynthia Roache and Anette Sherman was burgled and articles stolen therefrom. Awakened from slumber by the intruders, Mr. Gordon and Miss Wanliss raised an alarm and the intruders shot at them. One shot lodged in a wardrobe beside which Mr. Gordon stood and another wounded Miss Wanliss in her head as she hid in the bathroom.

Miss Roache and Miss Sherman were accosted by gunmen as they entered the premises of their home on their return from a function. Miss Roache ran, unmindful of threats to shoot her, but Miss Sherman, not so fortunate, was robbed of two gold chains and ordered to enter the house and fetch out money. Miss Sherman was not allowed to leave the house after she entered and the intruders left when neighbours aroused began to converge on the scene. The gunmen stole various electronic equipment including a Black Magic component set.

Mr. Fitz Daley, who lives some seven miles east of Four Paths, awoke about 2:00 a.m. and realised that his house had been broken into and electronic equipment stolen therefrom. He set out in search of the burglars and on the Bustamante Highway - May Pen By-Pass - he saw three men walking towards Kingston. He trailed them for some distance and when he considered it safe he held the applicant Gardener, who then carried in his hands a Black Magic component set. This applicant, when he was held, called to the other two men who escaped. Gardener was taken to the May Pen Police Station. The Black Magic component set was later identified as the one stolen from Mr. Gordon's home.

Detective Acting Corporal Samuel Dawkins at Old Harbour Police Station about 7:00 a.m. received a report. He went to Bushy Park with other policemen and lay in ambush. He saw Aaron and Clifton Lawrence and another man approach along

the train line from May Pen direction. Clifton carried a box and Aaron a radio cassette recorder. On discovery, they dropped what they carried but they were held and the articles recovered. The box Clifton carried was found to contain electronic equipment and a .38 Colt revolver.

The firearm was examined by the ballistic expert and found to be in good working order. Two bullets recovered from Mr. Gordon's home were found by the expert to have been discharged from the Colt revolver found in the box Clifton Lawrence carried. Clifton Lawrence was searched when he was held and two gold chains were found in his pocket. These chains were identified and claimed by Miss Sherman and the electronic equipment found in the box and that which Aaron Lawrence had were identified as articles taken from Mr. Gordon's home.

At the conclusion of the evidence for the prosecution, Mr. DeLisser, for Gardener, submitted that there was no case for his client to answer as the evidence on which the Crown relied was that of recent possession and that in law was insufficient to found the charges. This submission was properly rejected by the learned trial judge.

Anthony Gardener then gave evidence and said he was on his way from Amity Hall where he had gone to visit his baby-mother when the van on which he travelled broke down. He got out and was walking along the May Pen By-Pass in search of alternative transportation when he was held by citizens about 5:30 a.m. He denied involvement in the crimes. He said he had no component set when he was held.

Aaron and Clifton Lawrence each took the witness stand. They corroborated each other in saying that they had gone to St. Elizabeth the night of the 18th to buy ganja. On their way into Kingston the van on which they travelled

stopped at Old Harbour at a gas station. There they were held by the police with the ganja in their possession. They denied the charges laid against them.

The learned trial judge, in a very careful and detailed summation, analysed the evidence and dealt with common design and circumstantial evidence of which recent possession was but a component part. We entirely agree with his findings. Although none of the witnesses purported to identify any of the applicants, we find that the inferences that arose to be drawn from the circumstantial evidence were inescapable and pointed conclusively to the guilt of the applicants. There was, therefore, no merit in the applications.