JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 187/88

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

REGINA vs. CLINTON SKEENE

Application for leave to appeal

Miss Marcia Hughes for the Crown

October 29, 1990

MORGAN, J.A.:

This is an application for leave to appeal against the conviction and sentence by the applicant in the High Court Division of the Gun Court held in Hanover on the 9th August, 1988, before Wolfe, J. The applicant was convicted and sentenced to five years imprisonment with hard labour on one count of an indictment for illegal possession of a firearm.

Mr. Cunningham, the complainant, is a goat farmer at Woodsville in Hanover and on the 15th April, 1987, he lost some goats. Having received some information, he went with a machete about 8:30 on the morning of the 16th to the home of the applicant, who was well known to him and lived in close proximity. As he entered, the applicant rushed out and said to him, "What yuh doing here, yuh lost anything?". He pushed his hand into his waist, came out with a gun saying,

"Yuh want mi just lick off yuh head?". In his fright, Mr. Cunningham dealt the applicant a severe blow on his head causing an injury which subsequently kept him in the hospital for six days. They wrestled for the gun, Cunningham got hold of it and the applicant fled. Mr. Cunningham took the gun and handed it to the Sandy Bay Police Station where he made a report. He was supported in almost every particular by Mr. Ruddock, who had accompanied him to the applicant's house but had stopped at the gate and saw what occurred. The gun was handed over to Detective Smalling, who took it to the ballistics expert for examination and this revealed that it was a home-made pistol not capable of firing a cartridge as the firing pin was missing but it could easily be made functional and discharge a deadly missile. It was thus a firearm within the meaning of the Firearms Act.

The applicant denied the charge. He said that Mr. Cunningham and Mr. Ruddock had come about a ganja deal that they had, and that Mr. Cunningham had not come to investigate a missing goat. They pretended they were going to pay him for the ganja when he presented it, instead Cunningham "jooked" him on his head and as he held on to the bag, Cunningham and Ruddock both chopped him on his head with machetes. He ran away and they returned and stole his ganja. He had no gun.

The learned trial judge had before him two opposing stories. It was purely a question of fact and having heard the witnesses, he made a very careful analysis of the facts before coming to a conclusion. His reasoning cannot be faulted and we see no reason to interfere with the verdict. In the circumstances, the application for leave to appeal is refused, the Court directs that the sentence commences to run from the 9th November, 1988.