

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 67/89

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. BERES BOWEN

Carlton Williams for the Applicant

Michael Palmer for the Crown

April 23, 24 & June 4, 1990

CAMPBELL, J.A.

On Monday December 29, 1986 about 9.00 a.m., Eric Young who operated a grocery shop at Longfellow Avenue, Duhaney Park, Kingston 20 was seated in the driver's seat of his van which is a right hand drive van. In the van he had \$43,800.00 in a carton box under the dash board on the passenger side for lodgment in the bank. His longtime friend Barma Mack, the deceased, occupied the passenger seat. It was customary for him for the past five or six months to make weekly lodgments on Mondays about that time. As he moved off the van in first gear, he heard two gun shots from the direction of his driving side. He looked in that direction and saw a man whom he had earlier seen at his gate, but had never known before, armed with a gun running beside the van on his driving side. This man was ordering him to hand over the money accompanied with threats to kill him if he did not respond appropriately. Mr. Young endeavoured to make a get away by attempting to change the van into a higher gear but realised that he was

disabled from doing so as his left arm had been shot through and all that happened was that the gear moved into neutral and the van stopped on Baldwin Crescent which was nearby and which leads into Duhaney Drive. Disabled as he was, Mr. Young struggled to disarm the gunman and protect his money. But this was to no avail. The gunman grabbed the carton box with the money and fled with it and his gun on Baldwin Crescent towards Duhaney Drive. Mr. Young at the time wondered why his friend Barma Mack had not joined in the struggle. Mr. Mack could not, because from the irresistible inference drawn from the evidence, he had been struck dead by a bullet fired by the gunman which entered his right chest. No other person was in the vicinity who could have fired the bullet which killed Mr. Mack save the gunman who was seen running by the van armed with a gun with which he menaced Mr. Young and demanded the money. This was immediately after two shots had been fired at Mr. Young in the van.

Mr. Young came out the van in an effort to get transportation to be taken to hospital. One Mr. Todd gave him a lift in his car and on emerging from Duhaney Drive Mr. Young saw the gunman with the box and Mr. Todd manoeuvred the car and knocked the gunman down. The evidence from one Mr. Thompson is that this was done as the man was crossing Washington Boulevard. Mr. Young retrieved his carton box with his money intact. Presumably, an alarm had earlier been raised, because on being knocked down, the gunman got up and fled and was chased by Mr. Thompson who had seen him alight from a bus on Washington Boulevard and was crossing it when Todd's car knocked him down.

He was caught by a crowd, beaten and rescued by a police officer. Mr. Young identified the applicant as the gunman who had shot and robbed him. Mr. Thompson identified him as the man who came off the bus with a box and was knocked down and whom he had chased. The police officer who was investigating the matter in the course of his investigation asked the applicant what had become of the rifle which he had to which the applicant responded that he had dropped it while making his escape with the money.

The applicant made an unsworn statement denying any shooting and robbery. He said he was lawfully in Waterhouse Drive when he was wrongfully accused of shooting and robbing a man and was set upon and beaten by the crowd until rescued by the police. He denied telling the police anything about any rifle.

The summation to the jury by Ellis J., highlighted the issue of mistaken identification and carefully analysed the evidence relative to this issue. We considered that the summation was full, adequate and balanced. In our view the verdict of guilty of murder on the evidence was inevitable.

We found no merit in the application for leave to appeal which we accordingly refused. We promised then to put our reasons in writing for refusal of the application which is now done.