

NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 99/90

BEFORE: THE HON. MR. JUSTICE CAREY, P (AG.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

R. v. ASTON WILLIAMS

Application for leave to appeal

Miss Paula Llewellyn for Crown

28th October, 1991

FORTE, J.A.

On the 8th of June, 1990 the applicant was convicted on four counts on an indictment, the first count charging him with illegal possession of firearm for which he was sentenced to five years imprisonment, the second count for robbery with aggravation for which he was sentenced to 10 years, the third count for illegal possession of firearm for which he was sentenced to 5 years and the fourth count for robbery with aggravation for which he was sentenced to ten years. All sentences to run concurrently.

There are two complainants in these four counts, one Rupert Smith and the other Mr. Wint. The evidence in relation to counts 1 and 2 concern, offences committed against Rupert Smith who on the 11th of March, 1990 at about 2.30 in the morning had already retired to bed and at that time heard sounds as if his door was being kicked off. He jumped out of bed and began to shout "thief". At that time, he saw four men enter his room, three of whom were armed with guns and the other with a knife. Three of them were masked and one unmasked.

He knew none of them before. There was an electric light shining in his room and with the aid of that light he was able to identify the applicant as one of those men. In fact he identified him as the one who did not wear a mask. He testified that the applicant had a short shine gun. When he was calling "thief", the man with the knife slapped him in his face and ordered him to shut up. One of the gunmen then threatened to kill him if he did not stop. As a wise man, he stopped shouting, the men then began to search his room. He testified that the applicant participated in that search and put him to lay face down on his bed. While he was in that position, his billfold which was on the buffet was taken and from it one of the men removed a hundred dollars. Nothing else was taken from Mr. Smith. The men then left and went next door where Mr. Wint resided and the incident that occurred in Mr. Wint's room was the subject-matter of the other two counts. Wint testified that he was in his bed also at three o'clock in the morning when his door was kicked off and five men entered his room, one man had a long gun and another a short gun. They ordered "don't move" and then immediately they started to search his room. They took from his room a television set and other appliances which form the subject-matter in the indictment. Among the men, he testified, was the applicant who was armed with a shine gun which he described as a .38 gun. In his room also the electric lights were on and he testified that the lights were on because there was a young baby in his room. Also in the room with him was his baby's mother. He said the applicant came as near as four feet from him and did not join the search but stood over his baby's mother with the gun. The men after remaining there for about one hour, tied him up and left. He got free and went to the

police station, where he made a report. On his return home, he saw Mr. Smith, and both men again went back to the police station. While returning from the police station both complainants saw the applicant sitting on a wall in the company of four other men and recognized him right away as one of the men who had come into their room earlier that morning. They again went and made a report to the police who came and took the applicant into custody.

The applicant's defence was one of alibi. He stated that he was at home from 11.00 p.m. on the night before the incident and that he remained there until the following morning. He called his mother in support of his alibi. He said that on the morning he was taken into custody, he was walking along the road when he saw police searching four men, and for some unexplained reasons the police took him also into custody. Those were the facts on which the applicant was convicted.

The issue therefore was one of identification. The learned trial judge examined the evidence in relation to the opportunity that the witnesses had for identifying their assailant. In the case of Mr. Smith, the applicant remained in the room for half-an-hour. As we said before the room was amply lit by electric lights and though he was lying on his belly, Mr. Smith testified that he was able to look up and see the face of the applicant who was unmasked. In relation to the case, of Mr. Wint, he testified that the men were there for one hour. There was, as we said before, electric light in the room, and the applicant stood over his baby's mother with the gun just about four feet away. In both cases, the identification was made on the same morning of the incident, just a few hours after it had occurred.

The learned trial judge giving his reasons for his judgment analysed all the evidence in the case, particularly the evidence in relation to identification. He gave himself the required warning and expressly stated that he was well aware that he had to be very cautious before acting upon the evidence of visual identification. In those circumstances we find that the evidence was abundant against both applicants, that the learned trial judge dealt adequately and satisfactorily with the evidence and came, in our opinion to the right conclusion.

For those reasons the applications for leave are refused, convictions and sentences are affirmed. Sentences to run from 8th of September, 1990.