

JAMAICA

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SUPREME COURT CRIMINAL APPEAL NO: 131/88

CONFIDENTIAL

anna f. d. :

Application for leave to appeal

Ms. Paula Llewellyn for Crown

13th March, 1989

CAMPBELL, J.A.

The applicant Derrick Waugh was convicted of illegal possession of firearm and wounding with intent by Mr. Justice Wolfe on July 27, 1987. He was convicted in the High Court Division of the Gun Court held in Montego Bay, St. James. The offences were committed on July 3, 1986. On that morning Constable James had completed duty about 12.50 a.m., and was returning home, he was walking on Creek Street and on reaching a pedestrian crossing he saw the applicant known to him as "Shim Shook", the applicant was standing under a street light, he walked up to the applicant who had a small army-type bag in his hand. He enquired of the applicant as to what he had in the bag, the applicant responded that he had just been released from jail and he was not doing anything wrong. He proceeded close to the applicant and on reaching about 7 feet from him, the latter took a revolver from the bag, pointed it in the direction of Constable James fired a shot from the revolver which hit and wounded the police officer on his left forearm, just prior to firing the shot

the applicant had said "Back off bwoy," after firing the shot he ran across a bus park and escaped.

On April 10, 1987 the applicant was arrested on a warrant dated 4th July, 1986 which charged him with illegal possession of firearm and wounding with intent. On caution he said "me never mean fi hurt the police, Mr. Frater." The applicant gave sworn evidence denying involvement in the incident, he said he was living in Logwood Walk, Duncans in Trelawny since March 1986, and he had not returned to St. James until he was brought there from Falmouth Police Station on April 3, 1987.

The learned trial judge carefully considered the evidence supporting Constable James' evidence that he knew the applicant before and concluded that such evidence was credible, he then considered the evidence relative to identification such as lighting and found as a fact that there was sodium vapour street light under which the applicant stood. The applicant was alone and there was no obstacle which impeded recognition. He found that the witness came to within seven feet of the applicant, then spoke to him. We agree with the learned trial judge that the circumstances were altogether ideal for the witness to observe the features of the applicant and to recognize him as a person whom he knew before. In addition the learned trial judge in our view, correctly and properly accepted the evidence of Acting Corporal Frater who said that the applicant when cautioned said he never meant to hurt the police. This in our view amounted to an admission that the applicant was the person who was in possession of a firearm on July 3, 1986 and that he fired at Constable James. There is no merit in the application for leave to appeal and the same is refused, the sentence is ordered to commence from October 27, 1987.