

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS: 156 - 162/87

BEFORE: The Hon. Mr. Justice Kerr, J.A.  
The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Wright, J.A.

R. v. GLENROY WILSON, ALLADNEY WILLIAMS  
VICTOR BLOOMFIELD, DEVON MONCRIEFFE  
DEVON BARTLEY, MERRICK BARTLEY AND  
MICHAEL MCGAW

H. G. Edwards, Q.C., for Appellants

E. Usim for Crown

March 8, 9 & 25, 1988

CAMPBELL, J.A.:

The appellants were convicted in the Gun Court Division of the St. Thomas Circuit Court on July 31, 1987 by Walker, J., of the offences of illegal possession of firearm and assault occasioning actual bodily harm. Wilson, Williams and Moncrieffe were each sentenced to three years imprisonment at hard labour on each count to run concurrently, while the others were sentenced to eighteen months imprisonment at hard labour on each count to run concurrently.

Leave to appeal was granted for arguments to be advanced on the sole question as to whether, having regard to the facts of the case, a firearm offence or offences had been committed thereby conferring Gun Court jurisdiction on the trial judge.

"Firearm offence" is defined in the Gun Court Act, section 2 as hereunder:

"firearm offence" means -

2.

"(a) Any offence contrary to section 20 of the Firearms Act;

(b) Any other offence whatsoever involving a firearm and in which the offender's possession of the Firearm is contrary to Section 20 of the Firearms Act; ....."

Section 20 of the Firearms Act prohibits possession of a firearm except under and in accordance with the terms and conditions of a Firearm User's Licence.

The case presented by the prosecution was that Constable Caleb Faulkner who was attached to the Seaforth Police Station was on reserve duty between 6.00 p.m., on Friday 26th June, 1987 and 6.00 a.m., on Saturday 27th June, 1987.

At about 3.00 a.m., on 27th June, 1987 he had occasion to proceed to an enclosed bamboo booth adjacent to a snack counter operated by Glenroy Wilson, because of loud noise and indecent language emanating therefrom. On his approach, he saw persons playing cards and smoking ganja. All the persons fled save and except Wilson. He requested of Wilson that the latter ensure a discontinuance of the noise, gambling and smoking of ganja on the premises. Wilson promised to do so. Later that day at about 3.15 p.m., while on foot patrol duty, he observed a large crowd in the same bamboo booth. He noticed that men in the crowd were smoking ganja and playing cards. He proceeded to the inside but near to the entrance of the premises and called out loudly to Wilson who was further inside, reminding him of the earlier direction that he Wilson had undertaken to implement. Wilson who was seated, got up, used expletives and told Constable Faulkner to get out of the premises. Wilson approached him menacingly whereupon he Faulkner stepped backwards. In the meantime other men who were seated, got up and encircled Faulkner. He said that among the men who were encircling him were the appellants. He told the appellant Williams that he Williams was wanted by the Morant Bay Police and that he Faulkner was going to arrest him. Wilson responded to this by saying that the premises was a named political party

headquarters, presumably implying that no arrest would be tolerated therein. Williams responded in these words "mek we grab the - man and mash down him ...." Thereupon Wilson grabbed Faulkner from behind and held the latter's revolver, endeavouring to remove it from its holster. Faulkner held onto the revolver in the holster and wrestled with Wilson for the latter to let go his hold on the said revolver. In the course of the wrestling they both fell. The other appellants who had encircled Faulkner together with other men, pounced upon him and started to kick him all over his body. One of these other appellants namely Moncrieffe held on to Faulkner's neck with both hands and was squeezing his throat while Wilson was wrestling with him for the Gun. Faulkner in order to remove Moncrieffe's hand from his throat was constrained to release his hold of his gun. Wilson thereupon took out the service revolver, stood up, and with Faulkner prostrate on the ground pointed the revolver at him. Williams shouted to Wilson saying "shoot the ..... bwoy." Williams continued his assault on Faulkner by dragging him on the dirt ground and kicking him. All the appellants joined in, kicking and beating Faulkner while he was on the ground. He was left bruised, bleeding, dishevelled and unconscious in the bamboo booth from which he was revived and assisted to the Seaforth Police Station by one Dawkins. The appellants meanwhile had fled.

In their defence the last five appellants said that they were not involved in the incident because they were not there. The first appellant said that Faulkner came to the premises about 3.00 a.m., on the 27th June, 1987 and asked him for money to buy liquor. He told Faulkner that he had no money then, but he would find some to give him later that morning. He said Faulkner left. Later that day Faulkner came to the booth and commenced jesting with persons therein. Faulkner thereafter molested Williams who was in the booth, by pushing a staff which he had, into the nose of Williams. He heard Faulkner speaking to Williams about "something like the summons or arrest or case, or something like that" but he Wilson

does not recall clearly what was being said. Faulkner disrupted a game of draughts which was being played by two small boys. Ultimately Faulkner came to him and asked for the money which he had promised to give. He, Wilson, said he still did not have any money. There was accusation and counter accusation between them of political affiliation. Faulkner thumped him in his mouth twice. Faulkner then stepped back and drew his gun. He was in the course of thumping him in his mouth again when he Wilson held on to the hand of Faulkner. They wrestled and fell. He got up before Faulkner, and saw the revolver on the ground about a half yard from where Faulkner was lying, apparently in a drunken stupor as he "was stink, smelling of rum - alcohol." He Wilson took up the revolver and was taking it to the Seaforth Police Station to hand it over. He was informed "enroute" that police officers at the station had M16 rifles trained on him and awaiting his approach. He accordingly deposited the revolver at a light post, beat a hasty retreat and gave information on the location of the revolver.

Williams in his defence substantially corroborated the evidence of Wilson. However, from his account, though he was present, he did nothing to Faulkner.

The learned trial judge found as a fact that Constable Faulkner was assaulted. That as a result he was left bleeding from his nostril, his mouth, and from a cut under his eye.

Of the defence evidence the learned judge after considering the same said:

"So I reject the defences of all the defendants: the five whose defences are alibis and the two, that is, Williams and Wilson. I reject their defences as well.

Of the prosecution case the learned judge said:

"I believe that Constable Faulkner was a witness of truth. Mr. Dawkins spoke the absolute truth, and so did Corporal Burnett. There can be no doubt that it was the accused Wilson who came out of that lawn with the gun that day. Even he said so, but he said he picked it up off the floor because the people said 'if you leave it there it is going to bring down trouble on you, take it out.' And I believe that he came out of the lawn with the gun but he didn't get the gun off the floor. He took the gun out of the holster just as Constable Faulkner said he did."

Further on in his summation, he said:

"I believe the accused Wilson went behind him just as he said. I suppose you could say 'gallowsed' him around the neck and held on to try to get away the gun, because they could not leave the gun with Constable Faulkner because he might use it against them, so they had to dispossess him of the gun in order to be safe. You couldn't beat a policeman with a gun on him. You have to take away the gun first because he might use the gun to shoot you, and that was what they decided to do - to take away his gun to immobilise him and subdue him, neutralise him.

Everybody else in there, the other accused, know because they stood around and they must have seen when Mr. Wilson grabbed on to the gun and they must have realised that the whole intention was to get away the gun so that the constable could not use it against them. Everybody joined in and when the gun was taken from the constable then you went to town on him for he had nothing now with which to defend himself.

I find that you were all acting together with a common design to relieve him first of the gun, and then to assault him after that, to beat him, to use the words 'to mash him down' I find that when Mr. Wilson held on to the gun .... all the other accused knew what was Mr. Wilson's intention; that was, to take away the gun, and everybody was consenting, everybody agreed and everybody assisted ..... by encircling the

"constable, in that way assisting Mr. Wilson to take away the gun. And of course the accused Moncrieffe, squeezed the constable's neck, thereby forcing him to let go of his gun so that Mr. Wilson could just take it. I find as a fact that Moncrieffe did that, well knowing that the effect of his conduct would be to let the constable release the gun so as to get his hand from around his neck, and once that was done I find that the gun was pointed at the constable in order to intimidate him and subdue him, and I find that all the accused kicked him after that as they liked, just like a football."

Mr. Edwards, Q.C., on behalf of the appellants filed grounds of appeal attacking the intrinsic merit of the conviction in relation to which no leave to appeal had been given. He failed to direct any ground of appeal to the question of jurisdiction for which leave to appeal had been given as meriting submissions. The grounds of appeal attacking the merit of the conviction are wholly misconceived and without merit. Accordingly, nothing more will be said thereof.

We granted leave to Mr. Edwards to argue the appeal on the issue of jurisdiction even though no such ground was, specifically directed thereto. At the end of his submissions Mr. Edwards was constrained to admit that, even if as he submitted, Wilson was entitled to eject Faulkner from the booth, a view which we do not share, he would still be guilty of an assault because he used more force than in the circumstances was reasonably necessary. On the issues whether (1) Wilson was in unlawful possession of a firearm based on the facts in evidence, (2) the other appellants were equally in unlawful possession on the basis of common design and (3) did the assault involve the use of a firearm, we received absolutely no assistance from Mr. Edwards who appeared to be totally consumed by a statement of the learned judge in his summation which Mr. Edwards construed erroneously as meaning that the learned judge had made a specific finding that Wilson was never in unlawful possession of Faulkner's firearm. The statement in the learned judge's summation on which Mr. Edwards relied related to Wilson and was to the following effect:

"He didn't intend to keep the gun either; he intended that it should go back to the police. I believe that when he went outside with the gun and saw policemen lining up with M16s, he thought it wise to put it down quickly, and that was a wise thing to do, and he put it down."

Had the learned judge accepted Wilson's evidence that the firearm had been retrieved from the ground where it had fallen, there might have been some basis for submitting that by the above statement he meant that Wilson was not in unlawful possession of the firearm. But the learned judge rejected the defences of all the appellants. He made a specific finding that Wilson took the gun out of the holster 'just as Constable Faulkner said he did.' Thus he meant in the above statement no more than that Wilson did not intend permanently to deprive Faulkner nor the Police authority for that matter of the firearm. Certainly he did not mean that Wilson was not in unlawful possession of the firearm when he dispossessed Faulkner and "so instantl" possessed himself of it.

The recited excerpts of the learned judge's summation disclose that he found that Wilson possessed himself of the firearm. His possession was not innocent namely as a mere conduit to pass it over to the police. He possessed it in order to intimidate and subdue Faulkner. Wilson had no licence to render lawful his possession. He was accordingly in illegal possession of the firearm.

The learned judge found that the other appellants actively assisted Wilson in his effort to possess himself of Faulkner's firearm. They encircled Faulkner so preventing him from having elbow room to defend himself and his property. One of their numbers namely Moncrieffe disabled him from continuing his hold on his firearm. They all knew that Wilson was endeavouring to dispossess Faulkner of the firearm so that they could thereafter beat him up with impunity. There was thus ample evidence from which the learned judge could have found, as he rightly did, that they all acted together with the common purpose of obtaining possession of Faulkner's firearm with which to intimidate and subdue him and to prevent him from using it to defend himself from the brutal assault which was intended thereafter to be effected upon him.

The learned judge found that the appellants all joined in kicking Faulkner who was lying prostrate on the ground. Wilson at the same time had the firearm pointing at Faulkner, with Williams inciting Wilson to shoot Faulkner. Though mercifully Wilson did not respond to Williams' incitement, there could be no doubt that the firearm played its part in the assault. Intimidated by the firearm which was pointed at him, coupled with the incitement from Williams that he be shot, the hapless constable could do nothing but suffer the indignity of being kicked about "just like a football."

Having carefully perused the evidence which the learned trial judge accepted, and his reasoning thereon in his summation, we were satisfied that firearm offences had been committed by all the appellants acting in concert and that accordingly the learned judge had the necessary Gun Court jurisdiction to adjudicate as he did.

It was for the above reasons that we on March 9, 1988, dismissed the appeal in relation to the issue of jurisdiction, refused the applications for leave to appeal on the merit of the conviction and confirmed the convictions and sentences.