UMCS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 156/90

COR: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. JOEL HALL

Application for leave to appeal

Terrence Williams for Crown

25th November, 1991

FORTE, J.A.

On the 5th of November 1990 the applicant was convicted in the High Court Division of the Gun Court sitting in Trelawny for the offences of illegal possession of firearm and shooting with intent. He was sentenced on count 1 to five years and on count 2 to ten years imprisonment at hard labour, sentences to run concurrently. His application for leave to appeal was considered by a single judge sitting in chambers and was refused. It now comes before us for review.

The facts out of which the conviction arose occurred on Saturday the 10th of August 1990. At about 9.30 p.m. on that day Det. Trevor Gooden, while at home, received some information and as a result he went under a tree in the front of his home at Hague in Trelawny. While there, he saw the applicant walking alone along the road coming towards him. The Detective then went out in the road and when the applicant reached about a chain away he drew his service revolver and shouted to the applicant "police, don't move. The applicant immediately pulled a revolver from his waist pointed it at the Detective and fired at the Detective who flung himself to the ground to avoid being hit. At that time the Detective then fired a shot at the applicant who ran in the direction from whence

he had come making good his escape. Detective Gooden testified that he had heard an explosion which, because of his experience as a police officer, he identified as caused by a shot being fired from the gun. He had also observed a flash of light coming from the gun at the time he heard the explosion. Upon his evidence, the learned trial judge correctly in our view concluded that the applicant possessed a firsarm and tht he fired it at the Detective with intent to do him serious harm. The Detective, however was fortunate to escape injury. The defence was two-fold. Firstly, the applicant alleged that he had been arrested in 1989 for receiving two motor car mag rims belonging to the Detective, the witness. He testified to having pleaded guilty to that charge and being sentenced to three months imprisonment. The Detective, he alleged, had not been satisfied with the sentence that he had been given and thereafter threatened that he will have to "live up in the sky." The applicant also maintained at the time, that on the day of the incident he was no where in Trelawny but was in fact in Rio Nuevo in St. Mary. His defence therefore was an alibi. As to his first conviction, the defence counsel who appeared for the applicant at the trial never suggested to the Detective that the incident in relation to the stealing of the mag rims and the applicant's subsequent trial was the reason for his identifying the applicant as his assailant. It was however put to the Detective at the trial that Detective Gooden was carrying out a vendetta in relation to the applicant and that his account of the incident for which the applicant has now been convicted was a fabrication. Those suggestions were denied by the Detective.

The learned trial judge found the Detective to be a credible and reliable witness. In doing so he used the following words:

> "I have taken into account the way in which Cpl. Gooden gave his evidence, how he responded to questions both in chief and under cross-examination and after examining his evidence, and bearing in mind the manner in which he gave it, I come to the conclusion that Cpl. Gooden was a truthful witness."

The learned trial judge also accepted the Detective's evidence of the identification of the applicant. In doing so he examined the opportunity which that witness had to identify his assailant. The evidence revealed that when Detective Gooden first saw the applicant, the applicant was then 2½ chains away from him and coming towards him, he observed him while he covered the distance to one chain away where he stopped on the command of Detective Gooden. Up to the time the applicant pulled the revolver, he had been observed by the Detective for 1½ minutes, that the condition of the lighting was good, because just about where the applicant stood, as he pulled the revolver there was a street light. The Detective also had known the applicant for 12 years and was accustomed to seeing him at least twice per week, but had not seen him up to a period of three months. The learned trial judge also expressed himself as being aware of the dangers of acting upon the evidence of visual identification and of the reasons therefor and in the end found that the Detective was not only credible but his identification of the applicant was accurate and unmistaken.

The applicant filed without benefit of counsel, several grounds of appeal, none of which having regard to what I have outlined as the evidence in this case and the manner in which the learned trial judge dealt with the case can be said to be of any merit. The case depended solely upon a finding of fact. There was evidence which, if believed justified the conviction. The learned trial judge clearly analysed the evidence and expressed correct principles of law and in the end convicted the applicant. We see no reason for which to interfere with this conviction, the

application for leave to appeal is therefore refused. We ordered however that the sentence be commenced from 5th February, 1991.