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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS: 18, 19 & 20/87

BEFORE: The Hon. Mr. Justice Rowe, - President
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

R. v. JUNIOR LINTON
LLOYD LINTON
ANTHONY KING

Bert Samuels for Appellants

Ms. Vinnette Grant for Crown

18th November, 1987

ROWE: P.

This is an application by Anthony King, Lloyd Linton and Junior Linton for leave to appeal from a conviction in the Gun Court before Mr. Justice Walker sitting alone, on the 5th of February this year. They were convicted of illegal possession of firearm and shooting with intent and were each given long sentences of fifteen years at hard labour on each count to run concurrently.

The case for the prosecution was a very, very simple one. A lady by the name of Lena Harriot was in her shop at a place called Savannah in Clarendon, on the morning of the 24th of July, 1986. While she was there she saw a crowd of men approaching her and in this group were the three applicants whom she had known for very very many years. Each one had a gun, and when they were about a chain away from her, while the shop was open and she was looking through the open shop door, one of them opened fire at her. She said that when she saw the men approaching, her first thought was to try to close the shop, but as they ran at her she could not manage to close the shop and so she jumped over the counter and ran away. She identified the person who actually fired the shot as the one they called "Ten Year" one of the applicants in this case. She said

that when she returned to the shop she found a number of the articles inside the shop with holes in them as if they had been bored by gunshots and she also said that she found shells inside the shop and outside the shop. When the police came along they found a number of M16 shells in the vicinity of the shop. The only question before the learned trial judge was therefore one of identification. All three applicants gave defences of alibi which the learned trial judge rejected.

The single ground of appeal argued was that the trial was unfair. Mr. Samuels grounded himself upon a passage which appear in the learned trial judge's summation at page 89 of the Record where he made the positive finding of fact that "the accused Lloyd Linton that is the one called 'Ten Year' pointed his gun at Lena Harriot before he fired it, and then the trial judge went on to say that the fact that Lena Harriot was not injured could have been due to a number of circumstances and he expressed his own belief that these men did not go there to kill Lena Harriot particularly, otherwise he said they would have pursued her after she had run from the shop. This is pure speculation on the part of the trial judge. Significantly he went on to say that he believed that the men acted recklessly and that all of them acted with the same degree of recklessness that it would'nt have mattered whether anybody was shot that day or injured and killed. He said that the crowd of men went to shoot up the place and if anybody got shot in the rush it would'nt matter to them, and that he found was the state of mind of these three accused and the others who were there with them. In our view although the learned trial judge used the words "reckless" as depicting their state of mind, if in fact these men had gone to that shop and had shot up the place in the manner described and somebody had got killed it would have been in any event murder. We think that this is what would be called universal malice. On his findings of fact the learned trial judge said that the applicant Lloyd Linton pointed his gun at Lena Harriot before he fired it. On that finding there was absolutely no room on which he could have gone off to find recklessness.

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We find therefore that there is no merit in this particular ground although the judge in a fanciful plight left himself wide open for the point attack which Mr. Samuels made.

The applications for leave to appeal are refused. The convictions and sentences are affirmed with sentences to run from the date of convictions.