

CA. CRIMINAL 100 - Gun Court Trial (Blame for ...
firearm, wounding with intent - Evidence of identification
Moral identification. Application for leave to appeal
refused. No compensation. ✓comp

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 100/88

Evidence
Crown v. Harte

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Gordon, J.A. (Ag.)

R. v. JUNIOR PENNANT

Application for leave to appeal

Mr. K. Pantry & H. Wildman for Crown

6th March, 1989

CAMPBELL, J.A.

The applicant was convicted on April 27, 1988 in the Gun Court Division of the Clarendon Circuit Court by Mr. Justice Walker for the offences of illegal possession of firearm and wounding with intent. He was sentenced to concurrent terms of imprisonment of seven years and 10 years at hard labour respectively. The offences were committed on November 3, 1987, they were committed at York Town in the parish of Clarendon. The complainant was one Mr. Lloyd Christian who said that on the 3rd of November, 1987 in the early hours of the morning he was in his one apartment nouse, he was dozing off when he heard a stumbling on the door of his house, shortly thereafter the door was kicked open. There was a kerosene oil lamp which was burning brightly in the room. By the aid of this light he saw the applicant who was then standing by the doorway. In the room was Mr. Christian's baby then 17 months old, she was lying on the bed. Mr. Christian's evidence is that the applicant who was still by the doorway, had a gun in his hand, he

fired the gun at Mr. Christian who fortunately escaped being hit, however the bullet hit his baby causing a fracture injury to the baby's index finger. This applicant, on the evidence of Mr. Christian was well known to him from about the year 1970. He gave evidence that there had been a dispute between himself and the applicant from about 1983. A bullet was recovered from the baby's pillow in the room. The applicant gave sworn testimony, he called witnesses to establish his alibi, in his evidence he admitted knowing Mr. Christian, he also admitted that there had been differences between them, though the basis of the difference differed from that stated by Mr. Christian.

The real issue in this case as in most of the cases before us, is one of identification in the special case of recognition. This issue was clearly isolated by the learned trial judge, he considered the factors which were relevant namely: that the applicant on his own admission was well known to the eyewitness, there was adequate lighting to facilitate recognition of the applicant by the witness, they were in close proximity because they were separated only by the bedroom door which had been opened, the view of the applicant was a frontal view, he observed his face. The learned trial judge further found, though it was not specifically stated, that there was adequate time within which the witness could have sufficiently observed the features of the applicant so to recognize him as a person whom he had known for many years before. We confirm the learned trial judge's view of the physical circumstances on the basis of which this witness was able to recognize the applicant. On this basis the learned trial judge was justified in coming to the conclusion to which he came. The conviction was justified, the sentences are appropriate and we see no reason to differ from the learned trial judge. Accordingly the application for leave to appeal is refused, the sentences are ordered to commence from the 27th of July, 1988.