

*Criminal Law - Gun Court - ① Illegal possession of firearm ② Wounding  
with intent - Evidence - Identification - Visual identification  
Application for leave to appeal refused. ✓ comp*

JAMAICA

*No cases referred to*

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 52/89

*Evidence*

*CRIMINAL LAW*

COR: THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. MICHAEL RILEY

Application for leave to appeal

Lloyd Hibbert for Crown

13th November, 1989

FORTE, J.A.

The applicant was convicted in the Gun Court on the 4th of April, 1989 for the offences of illegal possession of firearm and wounding with intent. He was sentenced to eight years and twelve years respectively.

On the 6th of December, 1987 at about 12.20 a.m. the complainant was on his way home walking on the August Town Road when he was confronted by two men both of whom were armed with guns. One of the men he identified as the applicant whom he had known for about ten years, the other he was unable to identify as he was masked. The applicant grabbed him by his hand then placed the gun at the back of his neck and threatened at that time to kill him. Asked by the complainant the reason for his intended act, the applicant repeated the threat several times, then he offered him his life if he would agree to steal some lumber for him. This incident the complainant testified, took place under a street light from which he had a good opportunity to identify the applicant. After making the offer of his life the applicant showed him a wall and told him to go over the wall. He then placed a piece of stump and indicated

that he should use it to get on the wall. Complainant then climbed on to the wall and asked for further instructions but the applicant hissed his teeth and fired a shot hitting the complainant in his left hand. Complainant then held his left hand and just then the applicant fired another shot hitting him in his left leg causing him to fall from the wall. He laid still for five minutes, happy to be alive. He heard the applicant saying "him dead, the boy dead." He got up and ran and on his way, he came upon a police jeep which he stopped and made a report to the police therein.

On 11th of October, 1987 while travelling in a car with a police officer, he saw the applicant and pointed him out to the officer who took him into custody. The applicant gave sworn evidence in his defence, admitting that he was on the road on the night in question. He had passed the two gunmen who had asked him for a light. The shooting had been done by those men and he denied that he participated in the incident. He alleged that the complainant had identified him as one of the men because he would not reveal the identity of the two men. In any event he said he did not know the two men.

The issues in the case were solely in relation to the facts and depended on a determination by the learned trial judge as to what version of the two accounts he should accept as factual. The learned trial judge rejected the defence. With regard to the prosecution's case, he stated thus:

"I was impressed with the evidence of Clive Bryan, not only from what he said, but from the manner in which he said it and his demeanour as a whole."

His acceptance of the Crown's case is revealed in that passage which I just read. In the event therefore, it is the opinion of this court that the learned trial judge was correct in coming to the conclusions which he did, as there was ample evidence to support the convictions. We find no merit in the appeal, the application for leave is therefore refused and the convictions and sentences are affirmed. The sentences are to commence from the 4th of July, 1989.