CA Criminal 223 — Gun Court - Trial (Illegal possession of firearm, wounding with intent, robbery with aggravation) - Identification — Visual identification — whether judge misled himself in law - Visual identification - Application for leave to appeal dismissed. Case referred to: R v Whylie 15 J.L.R 163.

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 223/87

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

Crim Practice
Evidence

R. v. RONALD MASTERS

Application for leave to appeal

Messrs. Kent Pantry and Hugh Wildman for the Crown

March 6, 1989

CAREY, J.A.:

In the High Court Division of the Gun Court on the 4th December, 1987, before Reckord, J., sitting alone, the applicant was convicted on an indictment which charged him with the following three offences, namely, illegal possession of a firearm, wounding with intent and robbery with aggravation. In respect of these convictions, he was sentenced to concurrent terms of five years, ten years and seven years imprisonment at hard labour and he now applies for leave to appeal his conviction and sentence.

The short facts in the case are that on the 25th August, 1985 the victim in this case, a district constable, had been dispatched for duty at Area 4 Headquarters which is situated at South Camp Road. He left from the Elletson Road Police Station and while journeying to his assignment, he arrived at a point between Wild Street and James Street when he heard a peremptory order, "don't move". When he looked it was the applicant whom he knew as "Musky". The applicant was armed with a revolver and that revolver was pointed some four inches from

his nose. Upon seeing this, he endeavoured to pull his own firearm. There was an explosion; he felt a numbness in his face and although he was able to get one round off himself, he lost consciousness. When he came to, he was lying in a gully covered in blood. He had received some wound to the right side of his face. He also missed his service revolver. In his semi-conscious state he was able to walk a short distance and again he lost consciousness. When he again recovered consciousness he was at the Kingston Public Hospital, and there he stayed for some two weeks, receiving treatment. He next saw the applicant some two years later when he reported once again for duty at Area 4 Headquarters. Curiously enough, he did not make any alarm at seeing the applicant, but the evidence showed that a warrant had been issued for this applicant from the time of the commission of the offence. It would appear that the warrant was in the name of "Musky" and that may have contributed to the delay in apprehending this man. The opportunity for identification was for a short time only, a comparatively short time - we think the injured man said in a matter of seconds. But this could hardly be regarded as a fleeting glance case. The defence was, of course, an alibi and a denial of the offence. The sharp issue in this case was one of identification.

It is true that the learned trial judge in this case did not state in terms that he warned himself of the dangers inherent in visual identification by one witness. But from the tenor of his language it was clear that he had, in his mind, the definitive authority of R. v. Whylie 15 J.L.R. 163, because he adverted to the opportunity for identification, the distance between the victim and assailant and previous knowledge of the applicant. In our view, therefore, there was ample evidence on which the learned trial judge could have come to the decision at which he arrived and we cannot fault him in the approach he took to the law that was properly applicable in the circumstances of this case.

Insofar as sentences imposed are concerned, we can see no reason whatever for interfering with them. For these reasons the application for leave to appeal is refused and the Court directs sentence to commence on the 4th of March, 1988.