Judgement Book

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 50/87

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. ROY HALL

Mr. Michael Lorne for the appellant

Mr. Earl Wright for the Crown

23rd February, 1988

WHITE, J.A.:

This application is for leave to appeal against convictions for illegal possession of a firearm on Count 1; for burglary on Count 11 and on Counts111 and IV for wounding with intent.

The Crown's case depended principally on the evidence of Maurine Lovelock, who lived with her mother and step-father at Tryall Heights, Spanish Town in the parish of St. Catherine. She said that at about 1:30 in the morning of Tuesday the 12th of March, 1986, she was awakened from her sleep by the sensation of somebody shaking her by the shoulder. When she got awake she saw two men in her bedroom; each had a flashlight in his hand and each man had a gun. She told of the accused holding the gun in her mouth, while the other man was holding the gun to her forehead, "Conking me on it." As a result of certain enquiries and instructions which were made by them, she got out of bed and called out to her mother, who, later at the trial, spoke of her daughter calling in a distressed manner. After she called to her mother, the witness observed that her mother had come to the door which separates the two bed-rooms, and, as she put it, 'cracked the door'. Having partly opened

the door, the mother called out to her husband that thieves were in the house.

Apparently, as Miss Lovelock saw it, her mother and her step-father braced the door to prevent it being opened. This impression was confirmed as a fact by the evidence of Mr. & Mrs. Bretton, the other two persons who gave evidence regarding the action at Tryall Heights. Because of the resistance put up by the husband and wife, the applicant and his partner engaged in this criminal act started to kick the door and beat it down. The continued resistance encouraged the criminal intruders to fire shots from their firearms into the door. During this episode, the witness Maurine Lovelock said she ran from the house towards a neighbour's house. When she returned to her house she saw her mother injured, bleeding from wounds to her body; and her step-father was in a similar condition.

Both husband and wife spoke of bracing against the door; each spoke of receiving gun shot wounds while in the act of bracing the door to prevent its being opened. They were taken to the Spanish Town Hospital; treated and hospitalized for some time, because of the serious wounds which they had received.

At the trial that was the substance of the evidence which was given; it was and repetitiously attacked in detail especially on the question of identification, which of course was the most important issue in the whole case. According to the evidence given by Maurine Lovelock, she described both men who had intruded into her bedroom; described the clothes and shoes which each man had on; described each of them as having high cheek bones. As regards the appellant in particular she said when he talked, she observed that two of his teeth were longer than the rest, she said she was able to observe them, because when and after she was awakened, she was lying on her back, and was able to see them, as they spoke with her and gave her orders.

In addition to that, as said before, they had two flash-lights which were turned on, and more importantly, she said that light from a neighbour's house reflected through her window into the room, and it gave sufficient light for her to see the men who were in there. In addition she turned on the light in her room "quick, quick, to see more clearly because I could even identify the shoes." Interestingly, enough she said that the accused was the man who was doing all the talking; the other man didn't talk at all; he just held the gun, when she first saw them in the room.

Now, when one looks further on the evidence, especially on the issue of identification, Miss Lovelock said that on the Sunday, the 16th March, 1986 while she was at the hospital waiting to see her parents, she saw the appellant coming along the passageway going towards the ward where her mother was. He was accompanying a woman who used to wash clothes for her family. When she saw the appellant she spoke to her Uncle who is a policeman; she didn't leave the hospital premises, but apparently her Uncle went across to the police station in Spanish Town made a report there. He returned with two policemen, the two policemen spoke to the appellant, and took him away to the police station.

Certainly, the learned trial judge had to take all that into account. He had to take into account the description that she gave of this man's physignomy; take into account the fact that she said that the other man had a mask on his face; the mask was made from a stocking foot with the space for the eyes and the mouth cut out. And the judge in assessing her evidence asked what opportunity did she have of really seeing the appellant in the light that was in the room. Having rehearsed the evidence which he had heard, and which I have set out earlier on, he came to the conclusion that, not only could he accept the evidence given by her and her mother that the light from next door shone into her room, but also that it gave a sufficient illumination for her to be able to see who was in the room. He gave weighty consideration to Miss Lovelock's evidence

that from the time she was awakened until the time she left the room it was a good forty minutes. He also accepted that she saw the accused at the hospital and recognized him as the man who came into her home.

Questions were put to her to fault her identification but as the judge puts it, in the following quotation from his judgment:

> "....it must be remembered that the accused man went at the police station only because Miss Lovelock pointed him out, the only reasonable inference that can be drawn from the evidence as presented is that she recognized this accused man at the hospital, she told her Uncle to go and fetch the police. She drew the screen to keep the applicant there until the police arrived, then the police took him away. So what would all this questioning, how could she at the police station now be saying she was not sure about this man?"

That was a pertinent observation made as a result of the suggestions to her that she had questioned the applicant at the police station because she wasn't certain of his identity.

The learned trial judge found that she was not mistaken in her identifying the applicant as one of the men who had entered her room, and who fired shots into that room which resulted in the wounding of her parents. The learned trial judge rejected the alibi which the applicant set up, and he also found, which was open to him, that the two men who invaded the house of the Brettons, on this occasion, were acting together; that they committed the offence of burglary, in that the Brettons had locked up their house the night before they went to bed. There is a grill door to the rear of the house which had been locked when the family retired to bed the night before. When Miss Lovelock ran from the house during the shooting, she went through this grilled door which was then opened. The police officer who visited the scene gave evidence that he saw two pad-locks on the ground near to the grill gate which was opened.

So, that upon the evidence which was presented to the Court, there was more than ample evidence upon which the learned trial judge could have come to the conclusion that this applicant had committed the offences for which he had been charged on this indictment.

We were asked to consider whether the sentence imposed was not too excessive. Well, for the illegal possession he was sentenced to 8 years imprisonment; for burglary, 5 years imprisonment on each count for wounding with intent, he was sentenced to 10 years imprisonment at hard labour. The sentences are to run concurrently. In no way were we attracted by any argument put by Mr. Lorne so that we could reduce any of those sentences. The circumstances as disclosed by the evidence marked out really serious offences. Certainly, if those men went in there not to kill or to injure but just to get property, it didn't end up that way; people who invade other people's houses at that hour of the morning, armed with firearms, can't say that they will never use the firearm because that is why they took them in there in the first place.

The upshot of our consideration of all the evidence as disclosed on the records and as argued by Mr. Lorne, is that we refuse the application and the sentences will remain as imposed. The sentences are to start from the date of conviction.