

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 30/87

BEFORE: THE HON. MR. JUSTICE CARBERRY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

REGINA

V

TREVOR EDWARDS

Mr. Horace Edwards Q.C. and Mr. Walter Scott for the applicant

Mr. Courtney Daye for the Crown.

October 14, 1987

BINGHAM, J.A. (Ag.):

This is an application for leave to appeal by the applicant Trevor Edwards, who was convicted in the Gun Court by Mr. Justice Orr, in the parish of Manchester after a trial which lasted two days, the 19th and 20th February, 1987. The applicant was convicted on two counts which charged him with Illegal Possession of a Firearm and Wounding with Intent, and he was sentenced to terms of imprisonment of seven years at hard labour each on the two counts, the sentences to run concurrently.

The facts on which the applicant was convicted can best be summarised by looking at the ~~summary~~ ^{summing-up} of the learned trial judge. It was to the effect that on the 8th September 1986, the virtual complainant, one Mr. Vincent Lodge, who lived with his wife upstairs a two-storey building, where

they operated a club downstairs and lived in a section of the premises upstairs. The remainder was used as a Guest House. They had retired to bed earlier that night, and at about 1:50 o'clock in the early morning of the 8th September, while asleep, Mr. Lodge heard sounds of footsteps going down the staircase and believing that there was a guest who was about to leave the premises, as was his practice, he got up, opened the door of his bedroom, opened another door to go into the hall, and as he opened this door he was greeted by a bang, an explosion, he then saw a man standing right in front of him. This man had a gun in his right hand, and said to him that he had come for the money, using a well known Jamaican expletive. Mr. Lodge replied to the effect "You not getting none." The man was pointing the gun at him, and Mr. Lodge used his left hand to catch at the gun, The gun caught his right hand. He staggered and fell on his back and in the process, a second shot had been discharged which caught Mr. Lodge on his right thumb. While he was in that position the man addressed him enquiring where his wife was. Mr. Lodge said "she is inside the bedroom." The man walked towards the bedroom and tried to kick the bedroom door open. During this period Mr. Lodge was still lying on his back. The man having failed in his attempt to get into the bedroom, he then turned around, pointed the gun at Mr. Lodge and fired a third shot which caught Mr. Lodge in his chest. The man then ran through the door and towards a door leading to a verandah upstairs.. After the man had left, Mrs. Lodge came outside and observed her husband who was then bleeding from his chest and from his right thumb. Mr. Lodge was taken to the hospital at Spauldings where he was admitted and he remained in hospital until the 22nd September. However, to continue the narrative the police was summoned. The police from Christiana, one Constable Wishart, was the first officer to come on the scene and based upon certain information which had been given to Mrs. Lodge by her husband, which she relayed to the Constable, he along with other policemen went to the home of the applicant at Sedborough District, which is the same district where Mr. Lodge and his wife lived. They took the

applicant and his twin brother Stanford Edwards into custody. Stanford was detained at Porus Police Station, while the applicant was detained at Christiana Police Station.

After Mr. Lodge was released from Spauldings Hospital on the 22nd of September, and was recuperating at home, he on the very day of his release gave a statement to Sergeant Pinnock who was the investigating officer in this case. Based upon the statement that he gave, Sergeant Pinnock that same day released Stanford Edwards and the applicant Trevor Edwards was arrested upon these two charges.

It may be convenient at this stage to mention that according to Vincent Lodge, the virtual complainant, he had known the applicant for three and a half years prior to the incident on the early morning of the 8th September. He described the incident as one which took place very very quickly, but stated that he had sufficient opportunity to recognise the applicant. The applicant was someone who was well known to him. The applicant had made several visits to his club. That there was go-go dancing in the club which seems to be a very popular pastime in Jamaica these days, and one in which the applicant seemed to be very much interested and that on one occasion the applicant had gone upstairs and spent the night with one of the go-go girls, who danced at this club. Apart from this the applicant had also visited a Chinese gentleman who sold chochos on these premises from time to time, a man who went by the name "O'Kay." Furthermore, the complainant Mr. Lodge who also sells jerk-pork and needs to purchase pigs from time to time said that the applicant had ^{once} come to him and enquired as to whether he was interested in purchasing a pig, and this transaction was subsequently completed and that the money for the purchase of the pig was paid over to the applicant. Now, Mr. Lodge said that although the applicant was one of twins and his brother bore a close resemblance to him, he knew them separately because the applicant was of a larger frame and had broader shoulders and a cut or scar over the eye, and he knew him by the name "Big John", while the other twin Stanford Edwards was known by the name "Little John." It also emerged at the trial that subsequent to the release of the

other twin Stanford Edwards, the police arranged to hold an identification parade, to which Mr. Lodge was requested to attend. Mr. Lodge refused to attend the identification parade, giving as his reason that as he knew the applicant very well, no useful purpose would be served by him going on this identification parade, further that, had he attempted to go on an identification parade this would have indicated that he didn't really know who his assailant was. Now, apart from the evidence of Mr. Lodge, there was also the evidence of Constable Wishart, that when he went to the home of the applicant, within a matter of some two and a half hours, following the incident, in question, he observed that the applicant was perspiring profusely, that he had mud on his shoes and also mud on his pants, and that based on the description which the complainant gave as to how his assailant was attired, that the clothes which the applicant had on bore a very striking resemblance to this description of the applicant's attire. Constable Wishart, when he went to the complainant's premises, and prior to going to the home of the applicant had observed mud on the staircase and he stated in his evidence that the mud which he saw on the staircase matched the mud that he saw on the pants and shoes of the applicant.

The applicant in his defence gave sworn evidence which amounted to an alibi. He stated that earlier on the night in question, he and his twin brother had gone down to the Christiana Square. He had gone into Mr. George Kirby's restaurant while his twin brother, Stanford, went to see a Movie Show at the Bevo Theatre in Christiana. They then met subsequently at the restaurant and returned home together arriving home sometime shortly after ten o'clock where on arrival they watched the International News on the television after which the applicant's mother who had awakened requested that they turn off the television and go to their bed. They went off to bed in the same room where they both slept in separate beds, and he never left the house for the remainder of that night until the police came and detained both of them at about 5 o'clock that morning.

The applicant in cross-examination first denied having ever gone to this club. Subsequently, however, he admitted that he did go to the club. He seemed to have been somewhat reluctant to admit going there as he said he was now a christian, he had been baptised from 1984. He was now a devout christian, but subsequently he admitted that he (and his twin brother) used to visit the club, and that although they didn't like to see the naked women performing that they did see the go-go girls in operation.

Of course, the complainant Mr. Lodge had said that although he was accustomed to seeing the applicant at that go-go club very often, he never saw the twin brother Stanford Edwards there, he only saw Stanford Edwards coming to visit "O'Kay" to buy chochos/^{as}also other members of the family.

The learned trial judge in a very careful summing-up adverted his mind to what before him and also before us was the critical issue in the case, the question of identification.

The learned trial judge in dealing with the issue of identification, was not unmindful of his duties as both the judge of the law and the facts. Although he did not follow any ritualistic incantation or the verbal formulae laid down in R v Turnbull [1976], 3 A.E.R. 549 and R v Oliver Whyte [1979] 15 J.L.R. 163 in so far as the guidelines laid down for judges to adhere to in directing juries in jury trials, he fully adverted his mind to these authorities as the following passage from his summing-up will indicate. For at pages 128 to 129 of the transcript he observed that:

"Now the question is the identity of the person who committed this offence. Well, of course, as I reminded the attorneys, I sit here as judge and jury, and I direct myself in accordance with the authorities and give myself the warning which I give to jurors, the extra caution which should be applied in the case of identification, and in this case it is all the more necessary because the accused's brother, Stanford Edwards, has

been referred to as an identical twin. He was called into court by the Defence more than once and I had the opportunity of observing him.

Now the Defence says that because of the close resemblance between these two brothers, he, Mr. Lodge, in all the circumstances was not in a position to make out the person; he wasn't sure who it was.

Now what are the circumstances under which Mr. Lodge purported to identify his assailant? He says this thing took place on the top of the stairs; there were three lights on the verandah - electric lights which shone all around and there was also a light on the post on the top of the staircase. He says he saw the face of this person. They were about a foot apart. He says it happened very, very quickly, not long - not less than a minute, but during that time he says he was able to observe this person and it was this accused.

Now he says he had known the accused for a period of over three and a half years. The accused man had visited his club on several occasions. At this club he has what is called "Go-Go" girls who are dancing and the accused was particularly interested in these girls, and on one occasion he had taken one of them upstairs to spend the night. In addition to that he had spoken to him. He says he had never spoken to the accused's twin brother; he had business with him; he had bought a pig from him and the accused man came there to buy chochos from an old man on the premises."

In this regard therefore, the judge directed his mind to the fact that in determining this question of identification, because the case for the crown as it was presented, stood or fell on the evidence of the sole eyewitness Mr. Lodge, that there was the need for caution. He was also not unmindful of the fact that there was need for even greater care in examining this question of identification because the applicant was one of twins. He had an identical twin brother. With all this in mind, the learned trial judge dealt with the factors which went to make up what would have amounted to good quality identification in coming to a verdict adverse to the applicant. He was not unmindful of the distance that the applicant was from the complainant during the incident, of the state of the lighting on these premises at the time of the incident, of the length of time that the appli-

cant was known to the complainant, and of even greater significance any peculiar feature in the identification evidence which in this case was a scar which the applicant had over his right eye. In addition to the build of the applicant as distinct from his brother: the broad shoulders which the complainant mentioned.

There was the question of the refusal of the applicant to go on the identification parade which the learned trial judge also considered and he accepted the explanation which was given by the complainant, and based on the evidence and the demeanour of the complainant when examined and balanced against the demeanour of the accused who gave sworn evidence, the learned trial judge accepted the complainant as a witness of the truth. He rejected the alibi raised by the applicant and convicted him on the two charges.

Of course, so far as the law was concerned, there was no issue but that a firearm was used bearing in mind Section 25 of the Firearm's Act, and also that there was a Wounding with Intent from the fact that the complainant received an injury to his right thumb, and also a very serious wound to his chest, which caused him to be hospitalised for some fourteen days.

Before us, Mr. Horace Edwards for the applicant, with his usual vigour has urged what was in effect one ground of appeal, the question of identification, and he contended that the learned trial judge based on the evidence that he had before him, did not advert his mind to the circumstances under which the purported identification of the applicant by the complainant was made - that having regard to the evidence as indicated by the printed record, it was quite clear that when one examined that evidence, that the complainant's attention during this incident, which on his own evidence took place very very quickly, would have been directed at the gun in the hand of the applicant, rather than at the complainant and he would not have had sufficient time within that time span to be able to make a proper and positive identification of the applicant.

However, the learned trial judge had all ~~this evidence~~ before him, he saw and observed the complainant, he was able to weigh and assess his demeanour and he accepted from the findings to which he came, the complainant as a witness of truth and as this Court has said repeatedly, that provided there was material below upon which the learned trial judge could properly have come to the conclusion to which he came, this Court will not interfere with that verdict. Moreover, there is nothing from the evidence to suggest that on the material ~~that~~ the learned trial judge had before him, he came to a conclusion that was unreasonable.

When one examines the evidence of Mr. Lodge, and one also examines the evidence of Constable Wishart which is of no little significance, because when one looks at it, in the light of this alibi raised by the applicant, it clearly ~~negatives~~ the fact that the applicant as he stated was in his home from 10 o'clock, had gone off to bed and slept until about 5 o'clock when the police came. In effect it went towards supporting the contention of the Crown that the applicant it was who had gone to these premises and committed this offence, and having shot the complainant then took flight and this would have accounted for the condition in which he appeared when the police got to his home.

In the circumstances, we see no merit in this appeal. The application for leave to appeal is treated as the hearing of the appeal. The appeal is dismissed and the conviction and sentence is affirmed. The sentence is to run from the date of the conviction, that is from the 20th February, 1987.