JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 134/87

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

WAYNE LOCKE

E. Hamilton for the Appellant

Miss Y. Sibble for the Crown

April 18, 1988

ROWE P.:

The Court proposes to treat the application by Wayne Locke for leave to appeal as the hearing of the appeal and we propose to allow the appeal and to enter a verdict of acquittal.

The appellant Wayne Locke was convicted before Mr. Justice Patterson in the Gun Court Division of the Circuit Court of Clarendon on the 20th of July, 1987, for illegal possession of firearm and shooting with intent.

The incident is alleged to have taken place on the night of the 2nd of November, 1984 in Clarendon and the sole witness as to fact for the Crown, Mr. Johnson, gave evidence of the incident of the shooting at his house and he produced evidence that pellets were found in the door and on the window of his house, in support of the allegation that there was a shooting.

What the case was about however, was whether or not the appellant, Wayne Locke was one of the assailants. In giving his evidence Mr. Johnson said that the appellant was known to him. He had seen him in the area of May Pen, now and then. He said:

> "I mostly see him on the street in May Pen Town and so forth."

Later on he was asked:

> "How did you come to know him."

and he said:

> "That is a good question. Wayne Locke attacked me before.
>
> Q: How did you come to meet him?
>
> A: I come to meet Wayne Locke - me and Miss Smallseed bought a truck from Canada."

So When he was giving evidence-in-chief he spoke about meeting the appellant in May Pen from time to time. At the end of the examination-in-chief he said that the appellant had attacked him before on an occasion when he was in the company of Miss Smallseed. It transpired that Mr. Johnson knew Wayne Locke very well. He knew Miss Smallseed for some time. They had been in business together and they had fallen out. Miss Smallseed is also known as Mrs. Thomas. On one occasion there was an incident wherein it was alleged that Mr. Johnson had attempted to attack Mrs. Thomas. A number of people had gone to the rescue of Mrs. Thomas and as a result the appellant was detained by the police. It was also alleged that Mr. Johnson was detained at the same time. Both were released together.

The defence alleged that when both men were released from custody they travelled together in Mr. Johnson's car and on the journey Mr. Johnson suggested to Wayne Locke that Locke should poison Mrs. Thomas for which he would be paid a thousand dollars by Mr. Johnson.

Evidence was led to show that Mrs. Thomas and Mr. Johnson having fallen out with each other, they were disputing their differences in Court and were then bitter enemies.

The Crown alleged that at the time the shooting was done Mr. Johnson was sitting in his living-room and two men were at his gate. Light was there, so he was able to see the people who were one-and-a-half chains away from the living-room. In that position Mr. Johnson said he was able to see the appellant hiding behind a post. Then he straightened up while the other man was talking to him, and having straightened up the appellant fired a shot from a gun towards him in the house. Mr. Johnson was in no doubt at all that it was Wayne Locke who fired at him. But Mr. Johnson had given a statement to the police and in that statement to the police had said that he saw Wayne Locke hiding behind a post and then he saw Wayne Locke hand a sawn-off shot-gun to another man and that it was this other man who fired the shot at him.

This statement was put to Mr. Johnson who kept on insisting at trial that it was Wayne Locke who had fired at him. When we examined the transcript we found that on page 5 thereof, Mr. Johnson gave an answer in examination-in-chief which clearly showed that he was at that time saying, it was this second man and not the appellant who had fired at him. There was therefore some confusion in his own testimony at trial as to who did the firing at him.

The learned trial Judge attempted to find an explanation for the different accounts given by Mr. Johnson, by saying that if both persons were together, if both ran away after a shot had been fired at Mr. Johnson, therefore they must have been acting in concert. But that we think is not to the point. The real question was: Was Mr. Johnson in a position to see and identify who it was who had fired at him? Given the fact that he knew the appellant well, if he had said on that very night that it was not the appellant who fired at him, but at trial he insisted that it was the appellant who fired the shot, the likelihood is that for some reason of his own he had determined to improve upon his case by telling a deliberate lie and there was no

other way, in our view, that the learned trial Judge could have interpreted the conduct of Mr. Johnson. It seems that he had doctored his evidence with a view to making it stronger in relation to the appellant. We therefore think that the evidence of identification was insufficient and that the verdict is unreasonable and not supported by the evidence. As we said earlier on, the application for leave to appeal is treated as the hearing of the appeal, the appeal is allowed, the conviction quashed, the sentence set aside and a verdict of acquittal is entered.