

C.A. CRIMINAL LAW - Illegal possession of firearm - Shooting with
intent - whether verdict unreasonable and cannot be supported
by the evidence - Appeal dismissed.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL # 64/83

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA VS DELROY BRACKETT

Mr. Delroy Chuck for appellant

Mr. Canute Brown for Crown

May 18, 1987

WHITE, J.A.:

Leave to appeal against his conviction for the offences of illegal possession of firearm, and shooting with intent, was granted by a single judge to Delroy Brackett.

On the hearing of the appeal, Mr. Chuck was granted leave to argue a supplementary ground of appeal: that the verdict is unreasonable and cannot be supported by the evidence. In support of that ground, he submitted that the findings of the learned trial judge highlighted numerous discrepancies and rejection of major portions of the Crown's case, whereby it is suggested that any tribunal of fact so directed would have had no difficulty to acquit the accused. And, therefore, in the circumstances of this case, the trial judge, Harrison, J., should have acquitted the accused.

The facts are that at about 4:30 - 5:00 a.m., on the 15th day of June, 1982, two police officers, Detective Corporal Llewellyn Blake and Constable McKenzie, went to a one apartment house occupied by the appellant

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at Salt Spring, in the parish of Hanover. According to them, each took up a position on either side of the door into that house. Detective Corporal Blake called out 'police'. He said that he was able to see into the room by means of a crack in the wall of that room; he saw when the accused got up off the bed on which he was lying, began walking towards the door, at the same time taking a firearm out of 'his brief waist' which he was then wearing. There was no enquiry as to the nature of this brief. It was just left at that. Anyhow, he came to the door, flung the door open, fired at the police. Corporal Blake said he fired at the appellant hitting him. Brackett fell to the ground. Corporal Blake said that he took up the .38 Smith & Wesson revolver bearing serial No. 12646 which the man had in his hand. The accused was arrested on the above-mentioned charges. He was taken to the Lucea Hospital where he was cautioned by the corporal who asked him where he got the firearm. The appellant replied "Officer, when me did live a town, dem did have a shoot-out, and one boy run lef' him gun and me take it up."

During the judge's assessment of the evidence, it is clear that he did not place much reliance, or any reliance at all, on the evidence of Constable McKenzie, who had given a written statement which ^{he} indicated that from his position by the door, he also saw when the appellant got up off the bed on which he was lying, saw him take a gun from his brief as he came towards the door, and then flung it open, and fired two shots in quick succession in the direction of himself and Detective Corporal Blake. But at the trial he seemed to have changed his evidence, in that, he saw the appellant get up off the bed, walking towards the door, but he did not see the appellant again until the door was flung open. He said he could not see the appellant because he, the witness, had stooped down, not knowing the intention of the appellant. He heard two explosions, followed by about three or four. He then saw the appellant fall at the door-way. He saw the detective corporal standing over the appellant, and saw the former take what

turned out to be the firearm in exhibit. His explanation for the change in his account, drew from the judge the following comment: "Then when he was asked by the Court to give an explanation as to the divergence in his narrative, what he has told at separate instances, he said I think they are the same thing." The judge goes on to say, "I do not accept that as a reasonable explanation. It means that Constable McKenzie is, in fact, changing his evidence for reasons known best to himself, because whereas in the statement he said that he saw the accused man pull something from his brief, in evidence-in-chief today he says that the flinging open of the door was that which caused him not to see anything further until he saw the accused man falling outside and saw the detective over him."

The judge did not accept Constable McKenzie as a reliable witness, describing him as "not quite an accurate person." At another stage, it should be added, during the summing-up, the trial judge spoke about certain evidence that Detective Corporal Blake had given as to the distance he was from the door which was stated to be $2\frac{1}{2}$ yards. And at that distance from the door, he said he pulled his service revolver and fired shots at Brackett. Under cross-examination, he said that he had his firearm out on approaching the house. The judge described that "as a bit of evidence to my mind, where he said he pulled his service revolver and fired shots at Brackett, at that stage, really does not seem to be what transpired."

On page 73 in his summing-up, the judge began his final assessment of the evidence by referring to the narrative of what had happened. He said, "I cannot accept Constable Blake", which, we are all agreed, should really be Constable McKenzie. So down to the last point of deciding the case, the trial judge repeated that he did not accept Constable McKenzie as someone he could rely on. But he goes on to say this, at page 73:

"That was the prosecution's case and as far as Detective Blake is concerned, I accept his evidence as to what transpired on that date. I do not accept the evidence of the accused man that Detective Blake came to his house with vengeance, called out 'Police' and shot him in the circumstances he the accused said he was shot. I do not accept his evidence that Detective Blake then went over him and shot him in his side. I do not accept his evidence that a neighbour called out to Detective Blake and the other police officers about Detective Blake shooting the accused in circumstances, which the defence say Detective Blake shot him, and that they went to his neighbour's house and kicked down the neighbour's door. I do not accept that he was taken to the morgue and that there was an attempt to put him in the refrigerator."

Incidentally, the appellant said that that attempt was made and he had to call out that he was not dead yet.

Continuing with the judge's assessment -

"In any event, this aspect of the case exonerates Detective Blake that he did not do this, nor was he there, as suggested in cross-examination by the defence. I do not accept his evidence that he came out of the house with his hands in the air and that Detective Blake shot him, and that he did not have a revolver on him on that date."

So what has happened is, in fine, that the trial judge has accepted Detective Corporal Blake as a reliable witness, and in fact, he goes on to say that the appellant did in fact say that he had been living in Kingston; that he had come from Kingston four to five years ago before the date of the incident the 13th of June, 1982, and not returned to Kingston since he had gone back to Hanover.

The judge further said he did not accept the evidence of the appellant that he did not say to Detective Blake that he had got this gun in Kingston after a shoot-out when a boy ran and left it. And he ended -

"I find overall that Detective Blake's credit, which was sought to be challenged and massively challenged, was not, in fact, sullied and is supported in many respects by the evidence of the accused man. So for these reasons I find the accused man guilty on both counts."

We have gone through the sections of the evidence which are relevant, not only on the submissions of Mr. Chuck, but also by the

submissions made by Mr. Brown for the Crown, and we have come to the conclusion that the learned trial judge was correct in his findings: correct in finding that the appellant was in possession of a firearm illegally, and that he was also guilty of shooting with intent.

Accordingly, the appeal is dismissed and the conviction and sentence affirmed, sentence will run from the date of conviction.

Continuing with the Judge's assessment

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