CA. CRIMINAL LAW – Gun Court – ① Illegal possession of firearm ② Shooting with intent – whether sufficient evidence of firearm – whether prosecution witness – witness of truth – whether sentence excessive – Application for leave refused.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 27/86

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA v. DONOVAN HALL

K. Pantry, Deputy Director of Public Prosecutions and Donaree Banton for the Crown.

H. Edwards, Q.C. for the applicant.

15th January, 1987

ROWE, P.:

The applicant in this case Donovan Hall was convicted before Mr. Justice Malcolm in the High Court Division of the Gun Court on the 12th March, 1986, of illegal possession of firearm, and of shooting with intent, and he was sentenced to serve imprisonment of 8 years at hard labour on the count for illegal possession of firearm, and inexplicably, he was given a smaller sentence of 6 years for shooting with intent. However, the two sentences were set to run concurrently, and consequently, there really was no harm done.

The prosecution's case was a rather simple one. It came from district constable Rodney Ellis, who said that on the 12th October, 1984, he along, with two other district constables, one by the name of Thompson, were sent out on

foot-patrol in the City Centre Police area. They were proceeding along Princess Street and then they observed a group of men, some eight in all, described by district constable Ellis as some having high-powered weapons, some hand-guns, one a knife and something looking like an apron, and in this group of men, said district constable Ellis, was the applicant Hall. When first observed, the men were some five chains away. The district constables continued walking. The streets were lighted with street lights but when the district constables were about 1½ chains away from the men, the men opened fire and they, the district constables, returned fire, but did not remain in the roadway as sitting targets. It appears that on the side-walk of Princess Street, at that particular time, were a number of higgler stalls occupied by their owners. The district constables took cover by going onto the side-walk between the stalls and from those positions district constable Ellis kept an eye on the men, and the firing continued.

District constable Ellis said the men scattered, one ran up Princess Street and he chased that man, caught him some distance up, and that man turned out to be the applicant Hall.

At the time when Hall was taken, the district constable said, he asked Hall, "Where is the gun that you had," and Hall said, he had thrown it between the stalls, and the higglers them. Hall was taken to where the other district constable was and it was observed that there was some person injured lying on the road. The district constables approached, intending to see what was wrong with this person lying on the road when another burst of gun-fire started and they had to retreat. They called for reinforcement which eventually came. In the meantime,

however, district constable Thompson complained of having been shot and he showed the wound to his hand. He was taken to the hospital. The man who was injured on the road was also taken to the hospital.

A prosecution was laid against the applicant and at his trial the defence, firstly, was that he was not there at all, that the police had held on to him without any reason and that he had nothing to do with any incident concerning a shooting. The defence further was that the trial could not succeed in the absence of a firearm, there being no proper description given by district constable Ellis. Further, it was said that Ellis was not the person who laid hold of the applicant at all, and this was shown up because of some discrepancies which appeared in the statement of Hall, as given to the police officer who investigated.

The learned trial judge resolved all the difficulties in the case and found the applicant guilty as charged.

On appeal, Mr. Edwards has taken a large number of points which he summarized by saying there was no sufficient evidence to prove that Hall had a gun within the meaning of the Firearms Act, that district constable Ellis ought not to have been accepted as a witness of truth because Ellis in his evidence said that he chased the applicant, never lost sight of him, and yet at the time when the applicant was caught and held by Ellis the applicant had no gun. So, said Mr. Edwards, if the applicant had been in the view of district constable Ellis all the while, "How is it that he did not see when the gun was ditched or what happened to the gun?"

The inference which he asked the court to draw was that at no time did the applicant have any gun, and secondly, that Ellis could not be believed when he said the applicant

was in his sight all the while. Mr. Edwards further submitted that Ellis ought not to have been believed because in the statement which he gave to the police he was alleged to have said that the applicant was handed over to him Ellis. Then he said, as a matter of law, the judge was wrong when he said that Thompson's allegation that he had been shot somewhat undermined the innocence of the accused because Thompson's allegation was but an allegation and not evidence that the wound which he received was a gunshot wound.

We have found no merit in any of the submissions made by Mr. Edwards. In the first place, his reliance upon R. v. Purrier [1976] 14 J.L.R. 97, decided by this court was mistaken. In Purrier's case the only evidence given was evidence from a woman who said that the person who assailed her had a gun. In this case, the evidence before the court was that a number of men with high-powered weapons and one with a hand-gun were seen by two police officers who were themselves armed. Therefore, these witnesses were not just members of the general public but persons who not only had knowledge of firearms but were actually carrying firearms. There was also evidence from the police officer that when the guns were fired, he heard explosions and saw fire indicating that these were gunshots and not sling-shots or fire-crackers. There was also evidence of two people being injured after the shooting had ceased.

We are of the view, that the learned trial judge had ample evidence from which he could infer that whatever weapons the persons had on that occasion were firearms capable of discharging lethal missiles within the meaning

of the Firearms Act. We are guided by the decision of R. v. Jarrett, [1975] 14 J.L.R. 35 at 42D, where the full court said in all these cases where the weapon has not been recovered much will depend upon the nature of the evidence given at the trial.

We did not accept Mr. Edwards' submissions that Ellis was an untruthful witness in relation to his statement to the constable, because it was clear that the constable in writing the statement wrote, in a moment of inattention as if he, the constable, were the person giving the statement and it would make nonsense of the statement for the district constable to say, "I Ellis handed over the accused person to district constable Ellis."

We think also that there is no merit in the suggestion that the district constable must have lost sight of the accused person while he was chasing him. What we think that district constable Ellis was saying was that the group of men was there; he kept observing the men, although he was going in between the stalls, and when the applicant ran from the scene up to then he had him under observation. We do not think he is purporting to say that from the moment he saw the applicant he did not take his eyes off him personally until he caught him. And when Mr. Edwards criticizes the police for not going to search for the firearm, we think he was doing so, not recognizing the dynamic situation which existed. People were all around; two persons had been shot, and for the police to go searching for a firearm in those circumstances would have been dangerous.

In those circumstances, we do not think that the prosecution witness could in any way be impugned for honesty for not having searched for the weapon. All in all,

therefore, we find no merit, as we have said before, in any of the complaints made by Mr. Edwards on behalf of the applicant and his application for leave to appeal is refused.

We are of the view, that the sentence of 8 years is within the range approved by this court for illegal possession of firearms, even for a person 18 years old. We will, however, having regard to the circumstances of this case allow the sentence to run from the date of his conviction, the 12th March, 1986.