

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 95 & 97/2007

BEFORE: THE HON. MR JUSTICE HARRISON, J.A.  
THE HON. MR JUSTICE DUKHARAN, J.A.  
THE HON. MISS JUSTICE PHILLIPS J.A.

RYAN RICHARDS  
DELROY KNIGHT

v  
R

Applicants unrepresented.

Miss Maxine Ellis, Crown Counsel for the Crown.

21 September 2009

ORAL JUDGMENT

PHILLIPS J.A.:

The applicants, Delroy Knight and Ryan Richards, were charged on an indictment containing two counts. Count 1 charged them with illegal possession of firearm and Count 2 charged them with wounding with intent. They were tried in the High Court Division of the Gun Court by her Ladyship Miss Paulette Williams. Both were convicted and sentenced to 9 years imprisonment at hard labour on Count 1 and 15 years imprisonment at hard labour on Count 2. The sentences of both applicants were to run concurrently. Both applicants were refused leave

to appeal against conviction and sentence by a single judge of this Court. They have now renewed their applications before us.

The facts of the case are that on the 17<sup>th</sup> November 2004, the complainant Mr. Lawrence Halliman was at his premises in the Jacks Hill area with a group of people. While he was in his yard, he saw a group of men all armed with firearms enter the premises. The two applicants were among this group of men. Upon entering the premises, the men fired shots and the complainant received an injury to his leg which, according to the Crown's case, was as a result of the shots fired at him.

The incident occurred in the night at approximately 7:15 p.m. A report was made by the police officer who recovered 7.62 mm spent shells, 5.9mm spent shells and 2 rounds of 9mm cartridges from the scene. There was no dispute that the officer was familiar with these objects and there was no challenge that the spent shell cartridges were really found there. There was also no issue as to the jurisdiction of the court. There is no issue that Mr. Halliman was injured and that it was caused by a firearm.

The Crown was unable to prove who fired the shots that caused the injury to Mr. Halliman, but relied on common design and joint enterprise that these men were part of a group of men, all of whom were armed.

The major issue was in relation to identification, and the Crown alleged that it was a recognition case. The evidence was that Mr. Haliman was standing with some people by a mango tree on the premises when these men came through the gate. When he first saw them, they were about 40 yards away and then they came 25 feet into the yard and started firing shots. The entire incident took about 6 minutes. He was able to observe the men because of the lighting on the premises which was good. There was a street light at the gate and it shone all around the house and also there was light on his house. It was an electric light bulb. He was looking at them and he saw them when they walked towards him. He saw the applicant, Richards, from head to foot. He could see their faces. He recognized the applicant Richards as well as the applicant Knight whom he also knew as "Platinie". He could also see the guns in their hands. After the shots, there was a scattering of all the people and he threw himself down. He said he then felt a burning in his leg, and people were running and chasing this person called "Screchie". While that was occurring, the applicants were about 20 feet from him and he said he was able to see the hands, feet and sides of their faces, and he was sure that the men he saw were the applicants Richards and Knight.

Much evidence was adduced in examination-in-chief as well as in cross-examination as to the complainant's knowledge of the applicant

since this was a recognition case in respect of both applicants. The complainant said that he had known Richards for 10-15 years; he had lived in his community and he knew Richard's mother, grandmother, aunt and niece. They had lived in the same community for some time and he used to see Richards practically every week, in the mornings and the evenings. In fact, Richards used to buy blocks from him. He said Richards had purchased blocks from him about six months before and at that time he had spoken to him for about 2-3 minutes. In relation to Knight, the complainant said they grew up as infants and he had known him for over 30 years. He had known him in the community and had spoken to him. At one time they used to speak to each other practically two or three times a day. He had seen Knight four or six times before the incident. He said the incident took place over 6 minutes but he had been able to observe them for over 2 minutes. His knowledge of both applicants was clear and the ability to observe in terms of the light and the timing was clear.

Both applicants indicated that their defence was alibi, that they knew nothing about the shots being fired. In his sworn evidence, Knight said that he did not live in Jacks Hill anymore although he had lived there at one time. He said that he was in Maryland at the time of the incident. Richards gave evidence that he lived at 3 ½ Milk Lane in Denham Town.

He said that at one time he had lived in Jacks Hill but at the time of the incident he was in Denham Town.

The learned trial judge gave herself the requisite **Turnbull** warning. She examined the time that the complainant had to view the persons who had entered the premises and fired the shots. She warned herself about the fact that people can make mistakes. She went through the defence, particularly the fact that both applicants raised the defence of alibi, and she reminded herself of the burden and the standard of proof.

In our view, the learned trial judge's summing up of the case and the decision that she arrived at cannot be faulted. We are also of the view that the sentences were not manifestly excessive. Therefore, the applications to appeal against conviction and sentence on the counts of illegal possession of firearm and wounding with intent are refused. The sentences are to commence on the 28 September 2007.