

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 54/04

**BEFORE: THE HON. MR. JUSTICE P. PANTON, J.A.
THE HON MR. JUSTICE K. HARRISON, J.A.
THE HON. MRS. JUSTICE McCALLA J.A. (Ag.)**

RANSFORD BOWMAN

V

R

Applicant unrepresented

Chester Crooks for the Crown

Oral Judgment

6th February, 2006

McCALLA, JA.(Ag.):

The applicant Ransford Bowman was convicted of the offences of illegal possession of firearm and wounding with intent in the Western Regional Gun Court held in St. James on the 4th February, 2004. The sentences imposed were ten (10) years at hard labour on count 1 for the offence of illegal possession of firearm and on count 2 a sentence of 18 years was imposed. The sole witness of fact for the prosecution was one Constable Everton Lawrence and he gave evidence that on the 3rd of December, 2003 he went to his girlfriend's house at Barbary Hill, Lucea, in Hanover. Having parked his vehicle he went to the side of the house and spoke to his girlfriend and then he went to the verandah where he

looked and saw the applicant approaching. He said that this applicant was known to him before as "TV" and he observed him with a black gun which he described as a pistol and at that point the applicant faced him and demanded whatever he had.

Subsequently, the applicant fired his weapon hitting him in the shoulder. The complainant said that he took evasive action by moving around and at one point he went behind the column of the verandah and observed the applicant who had the weapon pointing at him. Now he received further injuries to his thumb and also an injury to his chest after he had manoeuvred himself by putting a piece of furniture over him in an effort to conceal himself from the applicant.

At that point he said he was watching the applicant and he was able whilst he was under this piece of furniture he was able to take up a piece of board and he threw this board at him and the applicant ran away. He later made a report to the Police and was hospitalized for some three days.

As Crown Counsel has correctly said, the main issue in this case is that of visual identification and in that regard the learned trial judge gave herself the appropriate warning. Now with regard to the evidence adduced as to the circumstances in which the applicant was able to see and identify the applicant, the learned judge accepted that the identification was made under difficult circumstances with the witness

moving around in order to conceal himself from the applicant. So having accepted that the circumstances were difficult, she considered also the credibility of the witness. She found that he had the opportunity to see and identify the applicant as his assailant and that in fact the witness was making no mistake in respect of his identification which was by way of recognition. The appellant denied any involvement in the incident. Indeed he said that as a result of some conflict with someone in the community he had gone away and was not at the time residing at Barbary Hill. He denied knowing the complainant or his girlfriend and curiously, under cross examination by Crown Counsel he said that the incident took place some twenty five chains away from where he (the applicant) lived.

The learned trial judge gave careful consideration to his defence of alibi and she rejected it. She found that the applicant had been correctly identified, the witness was making no mistake. We are in agreement with Crown Counsel that there is no merit in this application. We have also given careful consideration to the question of the sentence of 18 years imposed in the circumstances of this case where this complainant received serious injuries.

In the circumstances outlined we are of the view that the sentences could not be considered to be manifestly excessive. Therefore,

the application for leave to appeal is refused. Sentences are to commence as of the 5th of May, 2004.