

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 30/2013

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE P WILLIAMS JA (AG)
THE HON MISS JUSTICE EDWARDS JA (AG)**

DWIGHT ROBINSON v R

Michael Lorne for the applicant

Leighton Morris for the Crown

24, 27 May 2016 and 28 September 2018

P WILLIAMS JA

[1] On 25 April 2013, the applicant, Mr Dwight Robinson, was convicted in the High Court Division of the Gun Court held in the parish of Kingston for the offences of illegal possession of firearm, illegal possession of ammunition and assault. He was sentenced to nine years imprisonment in respect of the illegal possession of the firearm, six years imprisonment in respect of the illegal possession of the ammunition and three years imprisonment in respect of the assault. The sentences were ordered to run concurrently.

[2] The applicant's application for permission to appeal against the convictions and sentences was considered by a single judge of this court, who refused his application.

He renewed his application before us and, on 27 May 2016, having heard submissions, we granted the application for leave to appeal and announced that we would treat the hearing of the application as the hearing of the appeal. The appeal was allowed, the applicant's convictions quashed and the sentences set aside. We directed that a judgment and verdict of acquittal be entered.

[3] We promised, then, to reduce into writing our reasons for the decision. This is a fulfilment of that promise, with apologies for the delay.

The evidence before the court

[4] The convictions arose from an incident that occurred on 15 November 2011. Detective Corporal Heather Forrest, Detective Constable Wayne Bucknor and Detective Special Sergeant Marcel Bedward, who at the time of the incident was a Detective Special Corporal, were on patrol along Septimus Street in the Jones Town area on that day. They were in an unmarked police vehicle. They were dressed in vests marked 'Police'. Detective Corporal Forrest was sitting at what she described as the 'observer seat' behind the passenger seat. Detective Sergeant Bedward was the driver.

[5] At about 3:45 pm they came upon the applicant and another man sitting on what appeared to be a log along the side of the road. The applicant and the man were smoking. Detective Corporal Forrest saw the applicant with a lit paper cigar in his mouth. She pointed this out to her colleagues and Detective Sergeant Bedward brought the car to a stop. The officers all exited the vehicle and confronted the two men. The accounts of what happened thereafter differ.

The prosecution's account

[6] Detective Corporal Forrest said that, upon exiting the police vehicle, she saw the applicant pull a firearm from his waist. She shouted "police". She had exited the police vehicle holding her firearm but it was only when she saw him pull his firearm that she pointed hers at him and fired two shots in his direction. She did this because she was in fear for her life and those of her colleagues. Detective Corporal Bucknor also had a firearm in hand, when he exited the police vehicle. She agreed under cross-examination that it was a "long gun".

[7] Detective Corporal Forrest testified that she saw the applicant's firearm fall from his hand before he ran off. She said that at the time she shot at the applicant, he was facing her. She did not recall firing at him when he ran off. The officer said she then recovered the firearm that had fallen. Detective Sergeant Bedward gave chase while Detective Corporal Forrest re-entered the vehicle with Detective Corporal Bucknor now driving in the direction the applicant had gone.

[8] Detective Sergeant Bedward's version was that, upon exiting the vehicle, he heard Detective Corporal Forrest shout "Police. Don't move". He observed that she had her firearm in her hand but that she was not then pointing it at anyone. As Detective Corporal Forrest shouted, Detective Sergeant Bedward saw the two men look in the direction of the police jeep. He then saw one of the men pull a firearm from his waistband and point it in the direction of the police. Detective Sergeant Bedward heard two explosions and saw the firearm fall from the man's hand.

[9] Detective Sergeant Bedward testified that he was unable to say where the explosions came from, neither did he see if Detective Corporal Forrest shot the applicant. He therefore had no idea how the applicant was shot. He however saw that the applicant had been facing Detective Corporal Forrest and that, after the two explosions, the firearm fell from the applicant's hand and the applicant ran off. He alone gave chase.

[10] Detective Sergeant Bedward further testified that after a chase of about 20 to 30 seconds duration he was able to hold on to the applicant. The applicant at the time had fallen to the ground with a woman holding him. Detective Corporal Forrest witnessed this when she eventually arrived at the location with Detective Corporal Bucknor.

[11] Detective Sergeant Bedward said it was he and Detective Constable Bucknor who succeeded in separating the applicant from the woman who was holding on to him. He was unable to say where Detective Corporal Forrest was at that time.

[12] Detective Corporal Forrest said that it was she and Detective Sergeant Bedward who tried unsuccessfully to separate the two persons. She said a crowd converged on the scene and she radioed for assistance. It was after several units had arrived on the scene that the applicant was eventually placed into a marked service vehicle and transported to the hospital.

[13] Detective Sergeant Bedward testified that, before the applicant was taken away, Detective Corporal Forrest showed the applicant a firearm and asked him if he had a firearm permit in respect of it. The applicant answered no. Detective Corporal Forrest

said she did not show the applicant the firearm. She later that day handed the firearm over to Detective Sergeant Michael Fraser at the Denham Town Police Station.

[14] Detective Sergeant Fraser testified, that while on supervision duty at the Denham Town Police Station, he received a transmission that caused him to proceed to the Jones Town area. On his arrival there, he saw police personnel and a large crowd that was behaving in a boisterous manner. He said that he spoke with Detective Corporal Forrest who, after making a report of the incident to him, handed over the firearm. He made a physical check of the firearm that revealed that it was a Berretta 9mm pistol. He removed eleven 9-millimetre cartridges from the pistol. The applicant was not present when this handing over of the firearm took place.

[15] After leaving the scene at Jones Town, Detective Sergeant Fraser said he proceeded to the Kingston Public Hospital accompanied by Detective Corporal Forrest who pointed out the applicant to him. Detective Corporal Forrest testified that she had gone to Admiral Town Police Station before going to the hospital with Detective Sergeant Fraser, who she had seen and to whom she had made a report at the Denham Town police station.

[16] Detective Corporal Forrest spoke of seeing blood coming from the applicant's right arm although she could not say specifically where. Detective Sergeant Bedward testified to having observed a wound to the applicant's right hand. Detective Sergeant Fraser testified that, at the time the applicant was pointed out to him at the hospital, he noted that the applicant was being treated for what appeared to be a gunshot wound.

The injury was to his right arm but Detective Sergeant Fraser could not recall if the wound was to the front or back of the arm.

[17] All three officers were cross-examined about another injury to the applicant, specifically to his legs. They all denied seeing any such injury or any blood on the legs of the applicant.

[18] Detective Corporal Forrest maintained that she was the only officer who fired at the applicant. She denied shooting the applicant in his right leg or in the back of his arm when he was running away from her.

The case for the defence

[19] The applicant gave an unsworn statement in which he denied committing the offences for which he was charged. He agreed that he and a friend were sitting along Septimus Street smoking when a private vehicle came and stopped in front of him. However, he said it was one of the two men who came from the vehicle who first held him and then handed him over to Detective Corporal Forrest.

[20] He said that after she held on to his shirt, he removed his phone and other belongings from his pocket, gave them to his friend and then "ran off". It was then that the man who had first held him "open up fire". The applicant explained how he fell, got back up and continued running until he saw his mother and his cousin. The police caught up with him and he somehow ended up on the ground with his cousin holding him.

[21] His mother enquired of the police what he had done. The following exchange is then recorded as having taken place, at page 59 of the transcript :

"A. Same time mi mother reply seh like how oonuh hold him oonuh can carry him in, there is no reason fi kill him, you get mi.

His Lordship: Anything else?

A: Same time them shove mi mother and stamp her backward, kick her.

His Lordship: Oh dear. Anything else?

A: My Lord, mi have the whole of these things on phone, it was a large crowd gather round, you get me, a lot of people videoing it.

His Lordship: Anything else?

A: No, my Lord.

His Lordship: Are you sure? Are you sure you have nothing else to tell me?

(Prodding from Miss Dodd)

A: Them shot me two times into one of my foot when me was running.

His Lordship: You mustn't do that you know, Miss Dodd. Oh dear. Them shot you in your foot two times when you were running?

A: Into my hand and my foot.

His Lordship: Them shot you in your foot two times when you were running?

A: Shot me into my hand and my foot.

His Lordship: While you were running?

A: Yes, Sir."

[22] Miss Hazelyn Manning, the mother of the applicant, testified on his behalf and spoke of coming outside after hearing "two gunshots." She saw her son lying down on the ground with his cousin, Simone Hamilton, on top of him. She "saw blood on the upper part of his body and down at his foot part".

[23] She testified of things that happened between the police officers and her as well as of things that were done to her son. She said she received injuries as well. Both she and her son eventually ended up at the Kingston Public Hospital.

[24] When asked if she was able to say where on his upper body she saw blood on the applicant, the following exchange took place, at page 66 of the transcript:-

"A: His hand like somewhere towards here and it come somewhere towards the elbow part.

Q: Now you have indicated, you have demonstrated --- indicate your left hand.

A. Yes

Q: Was that the hand you saw blood coming from?

A: Yes."

[25] After she was subjected to a brief cross-examination by the Crown Counsel, the learned trial judge then asked the witness a number of questions of his own. He explored further what she said had transpired between the police and herself. Then the following exchange took place, at page 73 of the transcript:-

"His Lordship: All right, just want to find out, by the way, you saw the lady with a gun?

A: No, Your Honour.

His Lordship: You didn't see the lady with any gun?

A: No, Your Honour.

His Lordship: Let me ask you again, did you see the woman police officer with a gun?

A: Well her gun...

His Lordship: Mi just ask you if you see her with a gun, how you know it is her gun?

A: I see she had it in her waist and she take it out.

His Lordship: When she come up to the crowd she had a gun in her waist and she took it out?

A: Yes.

His Lordship: So you know it was her gun, so when asked you first if you saw her with a gun you said no.

A: That time she didn't have it in her hand she had it in her waist.

....

His Lordship: Now, what she take it out and do with it?

A: Took it out and I see she tell the other person fi hold it fi me.

His Lordship: You know the police officer she gave it to hold?

A: No, Your Honour."

[26] The learned trial judge also questioned Miss Manning about the circumstances under which her son had been shot.

[27] One other witness was called in support of the case for the applicant. Jacqueline McDonald Douglas, the Director of Patient Services at the Kingston Public Hospital and the Victoria Jubilee Hospital, was called to produce the records of relevance to the applicant. She also testified that the doctor who had attended to him was no longer employed to the Kingston Public Hospital and to the best of her knowledge had returned home to Barbados. The learned trial judge conducted the examination of this witness before eventually admitting the photocopies of the applicant's medical records into evidence.

[28] The report that was admitted into evidence was missing from the transcript provided to this court. Mr Lorne supplied copies, which were not challenged by Crown Counsel as not being copies of those admitted. The records stated that there were four gunshot wounds observed on the applicant, two to the right forearm and two to the right leg. Significantly, the report included a diagram detailing where on the body the injuries were located. On this diagram, the injuries to the right arm are described as being located at the extensor surface and on the lateral aspect of the forearm. The injuries to the right leg are described as being 8cm distal to the right knee and at the lower level of calf on medial aspect.

The appeal

[29] Before us, Mr Lorne abandoned the original grounds of appeal that had been filed by the applicant. He was granted leave to argue 13 supplementary grounds, and he noted that the original grounds were largely subsumed by the supplementary ones.

[30] The supplementary grounds of appeal, which were filed on 22 May 2016, set out some material sufficient to give the gist of the submissions in support of some of the grounds. It is felt best to reproduce the grounds in full:-

- “1 That the Learned Trial Judge completely ignored the medical evidence adduced in Exhibit 4 which was the medical records for the accused and which medical records substantially contradicted the evidence of one of the ‘main witness’ for the Crown: Heather Forrest.

Corporal Forrest states quite clearly that she was the only one who fired shots at the accused and she fired two shots only, while facing the accused. Yet the medical evidence shows that he had four gunshot injuries 1) which was 8cm distal to the right knee, 2) gunshot injuries to his lower level of calf on medial aspect, 3) gunshot injuries to his right hand, located 2 cm on the exterior surface, 4) gunshot injuries 9cm from olec tip located on lateral aspect of right forearm. [Please see page 3 of Exhibit 4].

The latter two injuries are showing to the back of the arm from the diagram displayed in Exhibit 4. From the medical evidence, much more than two gunshots must have been fired by the police officer and would therefore put a lie to the story that only two shots were fired in the direction of the Appellant.

The Learned Trial Judge made no mention of gunshot injuries to the foot of the Appellant during his Summation when this was glaring from the medical records.

2. The Learned Trial Judge continuously throughout the trial interrupted the cross-examination by Counsel for the Appellant as it related to crucial questions as to how and where the Appellant was shot; the evidence being materially related to the issue of the Appellant being in possession of a firearm when he was shot, or seeking to run from the police, as he has purported. For example, in cross-examination of the

Director of Patient Services, Jacqueline McDonald, Counsel was prevented from asking certain questions.

At pages 28-30 of the transcript, the Learned Trial Judge even suggested to Counsel *'you might find favour with the Court of Appeal too'*.

3. That the Learned Trial Judge erred in accepting the firearm and ammunition as Exhibits 1 and 2 respectively, when in fact they were never identified to the Court by the police officer, Forrest, as the items that were dropped by the accused man before he ran off and which she recovered.
4. That the Learned Trial Judge must have appeared in favour of the Crown in allowing the Prosecution to amend the indictment to add the **Count of Assault** after hearing the evidence of Detective Forrest, and refusing there and then to dismiss the count of **'Shooting with Intent'** when clearly the two could not have occurred and the Appellant had to carry the weight of a non-charge, over his head, throughout the trial and answer to same.
5. The Learned Trial Judge at times interrupted the Appellant whilst he was providing his unsworn statement and even gave exclamations such as 'oh Dear!' [Page 59] after the Appellant described how his mother was kicked, which would give the impression that what he said was incapable of belief.
6. The Learned Trial Judge erred in using the mother of the accused, Hazelyn Manning's evidence to contradict the accused when in fact, she was not an eye witness to the firing of the gunshots. So when the Court says that 'so that having regard to the statement of the accused this court could have attached no weight to it regarding the evidence of the mother of the accused, as she was not present at the initial confrontation'.

Where the mother contradicts the appellant, she is not being an eyewitness to the firing, it would have been more credible to accept the statement of the appellant.

Further, this defence witness was subjected to a gruelling cross-examination on issues before the court, or relevant, [sic].

7. The Learned Trial Judge throughout his Summation has misdirected himself in law where he states at page 91 *'now this court knows that the policeman does not have to prove, there is no duty on him to prove anything but it must be borne in mind that after the prosecution has closed its case the accused elected to give unsworn statement...'*, clearly this is a misdirection in law as the policeman, being a witness for the prosecution, there is a duty on them to prove their case.
8. That the Learned Trial Judge made no reference at all in his Summation of the material inconsistencies and discrepancies which came out of the prosecution's case, for example:

A) Bedward was unable to say where Forrest was when Bucknor and himself were attempting to separate the appellant from his cousin [Page 12] whereas Detective Forrest testifies that she was engaged in the endeavour to separate the appellant from his cousin [Page 5].

B) Bedward did not know who fired shots although he was in close proximity to the action [Page 11].

C) Fraser said that Forrest handed the firearm to him at the crime scene [Page 21], whilst Forrest says that she gave Fraser the firearm at the Denham Town Police Station [Page 43].

D) Forrest [Page 40] when asked *'Did you ever show that firearm to him (Accused)?'* Ans: *'No-no, I didn't'*

Whereas Bedward [Page 12 & 13] in examination in chief stated quite clearly that Miss Forrest showed the accused man a firearm and asked him if he had a firearm permit to which he replied 'no'.

These discrepancies become real issues in the case when the Appellant is saying no firearm was taken from him.

9. The Learned Trial Judge reduced the submission of the Crown Counsel to that of a ballistic expert by accepting her theory that it was one shot that caused both injuries to the right arm of the Appellant when the medical report does not support this.
10. That the Learned Trial Judge failed to warn himself sufficiently and adequately that where he disbelieved the Appellant and his witness, in this case his mother, that is not sufficient to find the accused guilty but must look back at the Crown's case and be sufficiently sure before he can find a verdict of guilty.
11. That throughout his Summation the Learned Trial Judge misinterpreted the facts where he states:
 - a) That Sergeant Fraser was one of the officers in the unmarked police vehicle who saw the accused man sitting by the roadside [Page 89].
 - b) He also misinterpreted where he states at Page 90 of his Summation *'But funny enough when the mother came she gives a different story but she was heartened because she was at the scene at the time when the incident took place.'* That it would appear that the discrepancy of the accused man and his mother weighed heavily on the Judge's mind in arriving at a guilty verdict.
12. These errors by the Learned Trial Judge coupled with the inconsistencies and unreliability of the witnesses for the Prosecution makes the conviction and sentences unsafe and the Appeal ought to be allowed.
12. The verdict against the Applicant is unreasonable and cannot be supported having regard to the evidence and circumstances of the case." (Emphasis as in original)

[31] In advancing his submissions in support of the grounds of appeal Mr Lorne referred to what was held by this court in **Donald Reid v R** (1981) 18 JLR 422. He also referred to the guidance given by Harrison P as to how to deal with inconsistencies

and discrepancies in **Lloyd Brown v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 119/2004, judgment delivered 12 June 2008.

The response of the Crown

[32] Mr Morris took a proper and realistic approach to this application and admitted that he was not able to resist it on some of the grounds advanced by Mr Lorne.

[33] Crown Counsel acknowledged that there had been a lack of attention to the medical evidence as to the injuries suffered by the applicant. This evidence, he noted, gave rise to conflicting evidence that had not been resolved by the learned trial judge. He also stated that on the face of it, this piece of evidence put forward by the defence did not appear to have been considered at all by the learned trial judge.

[34] Mr Morris also identified the main issue to be that of credibility. He admitted that there were differences that arose in the evidence that he was unable to say were immaterial. He accepted that they assumed some importance and thus affected this issue of credibility.

[35] Mr Morris referred to two decisions from this court that supported the concern that the learned trial judge erred in the manner in which he dealt with this issue. The decisions were **Nkomo Clarke v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 55/2006, judgment delivered 20 December 2007 and **Denhue Harvey v R** [2011] JMCA Crim 22.

Analysis and finding

[36] The requirements of a judge sitting as judge and jury in the Gun Court are well established. It is sufficient for the purposes of this case to revisit the decision of this court in **R v Locksley Carroll** (1990) 27 JLR 259. In delivering the decision, Rowe P said at page 265 the following:

"...In a long line of cases...this Court has consistently maintained that a trial judge is required to give a reasoned decision in the cases determined by him. We said in **R v Dacres** (supra) that:

'By virtue of being a judge, a Supreme Court Judge sitting as a judge of the High Court Division of the Gun Court in practice gives a reasoned decision for coming to his verdict whether of guilt or innocence. In this reasoned judgment he is expected to set out the facts which he finds to be proved and when there is a conflict of evidence his method of resolving the conflict.'

In **Leroy Sawyers and Others v The Queen** [1980] RMCA 74/80 (unreported), we endeavoured to give some of the practical reasons why a reasoned judgment was necessary. An accused person, we said, was entitled to know what facts were found against him and when there were discrepancies and inconsistencies in the evidence, just how the trial judge resolved them. We did not then refer to the public which has an equal interest in understanding the result of a trial so that it can have confidence in the trial process. Ultimately the Court of Appeal which has the duty to re-hear the case based on the printed evidence and the judgment of the trial judge wishes to be assisted by the thought processes of the trial judge."

[37] A judge sitting alone, as judge and jury, in a criminal trial, is assumed to be aware of the applicable legal principles and must demonstrate that he applied them.

He must also demonstrate that he properly assessed and treated with all the issues that arose from the evidence. He must demonstrate that he appreciated the evidence presented by both the Crown and the defence and must not appear to misrepresent them in arriving at his decision.

[38] The learned trial judge correctly identified the most important issue in this case as that of credibility. The applicant could hardly deny that he was shot at the end of the confrontation he had that day with the police and hence the circumstances under which he was injured had to be determined. The fact that there was medical evidence was therefore critical. Unfortunately, the learned trial judge failed to consider that evidence in totality.

[39] At page 95 of the transcript, the learned trial judge had this to say:

"Now, here is the medical certificate or medical record which defence had been at pains to have accused [sic] at this court the doctor having left the country, and this court didn't make every effort to have the medical evidence adduced or reduced into evidence, and it is before the court as Exhibit 4.

Suffice to say that Crown Counsel Prince has dealt with in her submissions adequately which purports [sic] the medical evidence. She has indicated that it accords with the evidence of the prosecution witnesses that the bullet to the arm is at a position where it is clear that somebody had been pointing a gun on somebody else, that the bullet could have reached quite easily that portion of the arm exposed, that is outside the right side of the arm and that the injuries could be caused by both entry and exit holes. Suffice to say that he did express the view that the bullet had entered in front of the arm whereas the Doctor is saying it is to the (inaudible) section but it indicates why somebody holding a firearm would have shot or would have been shot there or the bullet would have reached there in that position."

[40] This demonstrates the attempt of the learned trial judge to consider the injury to the arm. In the absence of the doctor to fully explain the records, it is appreciated that there may have been some difficulty in understanding the report. There was, however, no indication as to which was the entry or exit wounds on the records provided. It is however clear that one of the wounds was to the posterior area of the right arm and the other along the side. Even if the learned trial judge cannot be faulted for accepting the explanation that seemed to have been proffered by Crown Counsel to account for those two injuries, there is no indication that the learned trial judge considered the injuries to the applicant's foot.

[41] The officers who testified to having seen injuries to the applicant spoke of seeing the injuries to the arm, although none of them could recall where on the arm the injuries were. None of the officers spoke of the injuries to the leg. The location of those injuries could well have supported the applicant's contention that he received them as he ran off. The learned trial judge was obliged to resolve this issue and his failure to do so rendered his decision that the Crown's case was proven beyond any reasonable doubt unsafe.

[42] We were satisfied that the significance of the medical report required far more attention than that which was given to it by the learned trial judge.

[43] It was also clear that the learned trial judge failed to appreciate that there was in fact some material discrepancies in the evidence, presented by the prosecution. On the

issue of how the incident commenced, Detective Corporal Forrest testified that on exiting the vehicle she saw the applicant pull a firearm at which point she shouted 'Police' and fired two shots in the direction of the applicant. Detective Sergeant Bedward said that while exiting the vehicle he heard Corporal Forrest shout "Police. Don't move" and it was then that the men looked in their direction. He said that it was at that time that the applicant proceeded to pull the firearm from his waist and point in their direction.

[44] The officers also differed in their accounts as to what happened when they came upon the applicant after he had run off and was on the ground being held by his cousin. Detective Corporal Forrest said it was she who assisted Detective Sergeant Bedward in the failed attempts to separate the applicant from his cousin. Detective Sergeant Bedward testified that Detective Constable Bucknor assisted him to successfully separate the two persons and further that he was unable to say where Detective Corporal Forrest was at the time.

[45] One other area in which the accounts of the officers differed was in relation to what happened to the firearm that Detective Corporal Forrest allegedly recovered after it had fallen from the applicant's hand. Detective Corporal Forrest herself said she never showed it to the applicant. She testified that she handed it over to Detective Sergeant Fraser later that day at the Denham Town Police Station. Detective Sergeant Bedward testified that Detective Corporal Forrest had shown the applicant the firearm before he was taken to hospital. The Sergeant further testified that not only did Corporal Forrest show the firearm to the applicant but she also enquired of him if he had a permit for it.

Detective Sergeant Fraser testified that Corporal Forrest had handed the firearm to him but not at the police station. He testified that it had been handed to him at Septimus Street after the applicant had already been taken away.

[46] It is clear that the learned trial judge attached some significance to the presence of the firearm at the scene, where the applicant was held, in resolving the case. The learned trial judge persisted in questioning Miss Manning about a gun in Detective Corporal Forrest's possession (see paragraph [25] above). In his summation he had this to say, at page 94 of the transcript:

"So that, having regard to the statement of the accused this court could attach no weight to it regarding the evidence of the mother of the accused as she was not present at the initial confrontation but she having command did give valuable insight in that she says quite reluctantly that the policewoman did produce a gun, so that there was a gun which at a time it was allegedly taken from the accused even on the defence case so that the defence does not raise a reasonable doubt nor does it prove the innocence of the accused but saying this court cannot on that account find the accused man guilty. The court has to look at the case brought by the prosecution to say whether it satisfies the burden of proof –That's proof beyond a reasonable doubt."

[47] This analysis of the evidence does not properly represent what the witnesses for the Crown had in fact said. The only policewoman on the scene did not testify to having produced any gun there. The evidence of the production of a gun was given by another officer, which therefore meant there was conflicting evidence on this area. The learned

trial judge failed to acknowledge this discrepancy and therefore did not demonstrate his method of resolving the conflict.

[48] The learned trial judge did not acknowledge the existence of any discrepancies in the prosecution's case. At page 91 of the transcript he said the following:

"The prosecution witnesses have given evidence, supporting evidence corroborating each other's evidence which tends to show what Heather Forrest said took place that day is the correct sequence of events."

[49] After considering the evidence and the case presented by defence, the learned trial judge had this to say at page 94 of the transcript:

"As I said before when I started the witnesses for the prosecution corroborated each other in every material particular of this case and this court finds proof beyond all reasonable doubt that on 15th day of November in the year 2011, the accused man when he was sitting down smoking his spliff and saw the police approaching didn't [sic] take the firearm Exhibit 1 now, the bullets Exhibit 2, from his waist and pointed it at the Officer who prudently, and fear of the offence [sic] shot him."

[50] There is therefore merit to the complaint that the learned trial judge failed to mention or refer to the discrepancies. The learned trial judge's determination that the prosecution witnesses corroborated each other in every material particular in this case was clearly wrong. There was conflicting testimony that affected the cogency of the

evidence, which the learned trial judge was obliged to at least acknowledge and if necessary, determine if it affected the prosecution's case.

[51] The learned trial judge did not direct his jury mind at all to this issue and therefore failed to apply his mind correctly to all the circumstances of this case. For this reason also, the conviction of the applicant is unsafe.

[52] After considering the submissions made in relation to the other grounds we were satisfied the findings on these grounds were sufficient to deal with this application. The convictions were therefore found to be unsustainable. This conclusion led to the orders, which are out at paragraph [2].