

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 87/2011

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McDONALD-BISHOP JA (AG)**

WINSTON WYNTER v R

Applicant unrepresented

Miss Paula Llewellyn, QC, Director of Public Prosecutions and Mrs Lori-Anne Cole-Montaque for the Crown

9 February 2015

ORAL JUDGMENT

PANTON P

[1] The applicant was convicted in the Circuit Court Division of the Gun Court sitting in Saint Ann's Bay and presided over by Donald McIntosh J for the offences of illegal possession of firearm and unlawful wounding. He was sentenced on 31 October 2011 to 15 years imprisonment in respect of the firearm offence and three years imprisonment in respect of the unlawful wounding, with an order that both sentences are to run concurrently.

[2] The facts as found by the learned trial judge are unusual but straightforward, in that, the applicant who operated a bar in the parish of Saint Ann was involved in an altercation with Detective Corporal Rose, the complainant. On 7 October 2007 at approximately 7:45 am Detective Corporal Rose saw the applicant with a white paper cigar in his left hand. The applicant said that the cigar contained ganja and when Detective Corporal Rose asked him for it he refused. The applicant dropped the cigar on the ground and grabbed Detective Corporal Rose. The applicant ran into the bar and he was chased, held by the Corporal and a struggle ensued. In the process the corporal's firearm was discharged in the bar injuring no one. Eventually, the magazine and its contents were dislodged from the firearm and in that process, as a result of that happening, the applicant seized the firearm from the corporal and proceeded to use it to inflict injuries to the corporal's head. Evidence of such injuries was still visible before the learned trial judge in 2011 when the case was being tried. Eventually, they reached outside and by that time the corporal had reloaded his firearm. The applicant tried to run away but he was chased and caught by the corporal and another struggle ensued. Another shot was discharged. Happily no one was injured.

[3] Sergeant Whittaker then arrived on the scene and defused the situation and the applicant was ushered away by onlookers in a motor car and remained at large for a while before he was eventually arrested. The applicant gave sworn evidence during the trial. His account to the learned trial judge was that he and two ladies were in the bar when the corporal in plain clothes, came up with a gun which he pointed at him and said "[g]ive me what you have fi Babylon" then proceeded to discharge his firearm at

him, He, the applicant, was able to dodge the bullet which went over his head and through the back door apparently following the two ladies who had themselves gone through that door. The learned trial judge did not accept the applicant's version. He found the corporal to be highly intelligent and highly credible and so he had no doubt in convicting the applicant as charged.

[4] The single judge of appeal who reviewed this matter quite properly, we think, stated that the main issue in the case was credibility, which was a matter for the learned trial judge's determination. Like the single judge we see absolutely no reason to disturb the findings of the learned trial judge. The application is therefore refused and we confirm that the sentences are to run from 31 October 2011.