

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 13/2009

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MISS JUSTICE PHILLIPS JA**

ANDREW CROSS v R

Akin Adaramaja for the applicant

Jeremy Taylor for the Crown

13 June 2011

ORAL JUDGMENT

PANTON P

[1] The applicant Mr Andrew Cross was convicted in the High Court Division of the Gun Court holden in Montego Bay in the parish of Saint James presided over by Mr Justice Hibbert in January 2009. He was convicted of the offences of illegal possession of firearm and wounding with intent and sentenced to 10 and 15 years imprisonment, respectively. There was an order for the sentences to run concurrently.

[2] The circumstances are as narrated by Mr Adaramaja for the applicant, and we agree with him that there is really no basis for the court to interfere with the convictions.

[3] A single judge of this court refused leave to appeal stating that the main issue in the case was the credibility of the witnesses and that the learned trial judge had made a careful analysis of the evidence before accepting the witnesses for the prosecution as being truthful.

[4] The complainant was a police officer who was on duty at approximately 9:00 o'clock in the morning on the main road at Long Hill in the parish of Saint James. The applicant was a passenger in the front seat of a motor car which was signalled to stop. The car stopped on the opposite side of the road and was ordered onto the other side by the complainant, Constable Mitchell. The driver was one "Olley". He kept revving the vehicle while the constable stood on the outside looking at him and the applicant in the vehicle. Seated behind the applicant was another male. For reasons best known to the applicant, he produced a firearm and shot Mr Mitchell in the region of his arm and abdomen and then the car sped off.

[5] Corporal Findlay, who was then a constable and who was on duty along with Constable Mitchell, took him (Constable Mitchell) to the Cornwall Regional Hospital where he was treated. The applicant was known to the constable before that day, he having seen him on two previous occasions. He knew him as Mr Bean. The constable

also knew the driver "Olley". A warrant was issued for the arrest of the applicant and it was duly executed.

[6] The defence of the applicant was that the shooting had been done by someone else and that he, the applicant, was the person driving the vehicle and that he was under orders to drive after the shooting had taken place. When he was arrested and charged this was what he said, "Officer, a me did a drive the car, a nuh me shoot him and him know that". The learned trial judge accepted the evidence of the prosecution which was clear, and duly convicted. As conceded by Mr Adaramaja, the convictions are unimpeachable.

[7] The application for leave to appeal is refused. The sentences are ordered to commence on 4 March 2009, that being the date which had been set by the single judge in refusing leave to appeal.