[2010] JMCA Crim 91

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 35/2009

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McINTOSH JA

COLLIN GENTLES v R

Applicant unrepresented

Mrs Diahann Gordon-Harrison and Miss Michelle Salmon for the Crown

8 October 2010

ORAL JUDGMENT

PANTON P

[1] This applicant for leave to appeal was convicted in the Western Regional Gun Court before Mr Justice Bertram Morrison after a trial which commenced on 19 February 2009 and ended on 3 March 2009. Mr Gentles was convicted of the offences of illegal possession of firearm and wounding with intent. The particulars of those offences, which were laid in one indictment, are that in respect of count one, on 26 September 2008, in the parish of St James, he unlawfully had in his possession a firearm not under and in accordance with the terms and conditions of a Firearm

User's Licence. In respect of count two, the particulars read that, he, on 26 September 2008, in the parish of St James wounded Patrick Christie with intent to cause him grievous bodily harm.

[2] The incident occurred at about 1:00 p.m. on the day in question and it took place at the intersection of Dapper Lane and Bottom Pen main road in Montego Bay, St James. The complainant Mr Christie was a taxi operator and the evidence indicated that he knew the applicant for over 20 years and had last seen him on the Wednesday of the previous week. Indeed, Mr Christie regarded the applicant as a friend and when seen on that day Mr Christie greeted the applicant by saying "Wa a gwaan mi youth?", whereupon the applicant responded, "Mi nuh de yah mi daddy". Mr Christie continued the dialogue by saying, "So everything criss". The applicant responded, "Everybody good mi daddy", whereupon Mr Christie closed the conversation by saying, "All right mi youth, nuh say a word everything level". Shortly after this exchange, according to the evidence, the applicant, unprovoked, pulled a firearm from his waist and proceeded to chase Mr Christie, firing shots from the firearm at him and indeed the shots found their mark, because Mr Christie received injuries to his left arm, the upper part of his left thigh, and his buttocks. The bullet he received in his buttock exited his right inner thigh. He received injuries to the right side of the scrotum, to his back, to the left

of the spinal cord, and to the left index finger. There was also an exit via the palm.

[3] He was taken to the Cornwall Regional Hospital where he spent approximately two days while receiving treatment. As said earlier, this incident occurred at 1:00 p.m., broad daylight and the distance between the parties ranged between 10 and 25 feet during the chase.

[4] The evidence given by the applicant is to the extent that he knew nothing about this incident. In fact, the applicant did not give evidence. He made the customary unsworn statement in which he simply said that he was doing upholstery work with his uncle in Mount Salem.

[5] The learned trial judge enquired of the applicant, "That's it?" The applicant said, "Yes your Honour" and took his seat. The learned trial judge proceeded to sum up the case. In his summation he dealt with the question of the identification of the applicant by the witness, giving particular attention to the fact that no identification parade had been held and also that the police had been (as happens from time to time) tardy in recording statements from the complainant.

[6] The question of a dock identification having been made was raised by learned attorney for the applicant Mr Ho-Lyn and the learned trial judge dealt appropriately with that aspect of the law. He took into

consideration the fact that the witness Christie knew the applicant for 20 years prior to the incident and having given himself the appropriate directions he convicted him.

[7] A single judge of this court, on reviewing the record after the applicant had filed notice of intention to appeal, stated in her ruling:

> "The issues in this case relate to visual identification and dock identification in circumstances where the complainant's evidence was that he knew the applicant well for over 20 years. The learned trial judge indicated cogently in his summation that he had warned himself of the dangers of the failure to hold an identification parade and the dock identification. He also showed that he had applied the ***Turnbull*** warning. The summation cannot be faulted."

[8] We have considered the circumstances under which the identification was made and we have considered the summation by the learned trial judge. We are of the view that there is absolutely no merit in this application for leave to appeal. We agree with the single judge that the summation cannot be faulted. The circumstances show that these convictions were properly recorded.

[9] The application for leave to appeal is refused and the sentences of 10 years and 15 years imprisonment to run concurrently as ordered by the learned trial judge are affirmed and they shall commence as of 3 June 2009.