

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 223/06

**BEFORE: THE HON. MR JUSTICE PANTON, P
THE HON. MRS JUSTICE McINTOSH, JA (Ag)
THE HON. MR JUSTICE BROOKS, JA (Ag)**

BRIAN SHAW v R

Robert Fletcher for the applicant

Mrs Caroline Williamson-Hay and Miss Melissa Simms for the Crown

14 June 2010

ORAL JUDGMENT

PANTON, P

[1] This applicant for leave to appeal, Mr Brian Shaw, was convicted in the Western Regional Gun Court Montego Bay, St. James, before Mrs Justice McDonald-Bishop of the offences of illegal possession of firearm and wounding with intent. The convictions were recorded on 18 December 2006 and the applicant was subsequently sentenced on 20 December 2006. In respect of illegal possession of firearm, he was sentenced to 12 years imprisonment and in respect of wounding with

intent, he was sentenced to 18 years imprisonment. The sentences were ordered to run concurrently.

[2] The facts found by the learned trial judge were to the effect simply that on a street awkwardly named "Gunn's Drive" in Granville, St. James, the complainant Mr Harold Kurling was shot by this applicant and two other men. He was hospitalized and has virtually been crippled as a result of the injuries that he received at the hands of the applicant and his cohorts.

[3] The incident took place at night. However, the applicant was well-known to the witness. The learned trial judge gave a thorough assessment of the evidence. The applicant advanced an alibi in his defence and as is customary in this jurisdiction, he gave an unsworn statement. The learned trial judge gave that statement the treatment she thought fit, and as it deserved.

[4] We are in full agreement with learned counsel Mr Fletcher that all the issues in the case were properly addressed by the learned trial judge and that there is absolutely nothing that he, as counsel, could advance which would be of any benefit to Mr Shaw. We are also of the view that counsel for the Crown would not have found anything either to assist the applicant. Indeed, on 29 May 2009 a single judge of this court, having addressed her mind to the matter, concluded that the learned trial judge

had dealt with all aspects of the matter that required attention and that she demonstrated a cautious approach in her analysis of the evidence on identification. The single judge also concluded that the trial judge had assessed the defence of alibi and arrived at conclusions which are well supported by the evidence.

[5] In the circumstances, we have no choice but to refuse this application for leave to appeal and order that the sentences run from 20 March 2007.