

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 114/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

KEVIN BROWN v R

Applicant unrepresented

Miss Claudette Thompson and Miss Keri-Ann Gillies for the Crown

31 July 2013

ORAL JUDGMENT

BROOKS JA

[1] This is an application for leave to appeal by Mr Kevin Brown against his conviction in the High Court Division of the Gun Court, held in Mandeville in the parish of Manchester, where he was charged with the offences of illegal possession of firearm and shooting with intent. On 29 October 2010, he was sentenced in respect of the offence of illegal possession of firearm to serve seven years imprisonment at hard labour and in respect of the charge of shooting with intent, to serve 10 years imprisonment at hard labour. The sentences were ordered to run concurrently.

[2] He applied for permission to appeal against both the convictions and the sentences. A single judge of this court considered his application but refused to grant permission. Mr Brown has renewed his application before the court, and although he is not represented at this hearing by counsel, we have perused his application and agree with learned counsel for the Crown, who has also perused the material, that in all the circumstances, this renewed application ought to be refused.

[3] The evidence on which Campbell J relied in his decision to convict Mr Brown for the offences is that on 18 March 2010, at about 3:00 pm, Deputy Superintendent of Police, Steve Green, was on his farm at Silent Hill District in the parish of Manchester, when he heard explosions sounding like gunshots, coming from the back of his land. He went to investigate and saw the applicant, whom he knew before for two years, standing at the rear of the said land.

[4] The applicant, according to Deputy Superintendent Green, had a 9mm firearm in his hand. The deputy superintendent used a wall to shield his approach and went within 50 feet of the applicant, but when the deputy superintendent showed himself, the applicant pointed the firearm at him and fired one shot. The deputy superintendent returned the fire from his own firearm, but the applicant ran away and made good his escape.

[5] The deputy superintendent made a report to the police, and in April 2010 the investigating officer saw the applicant in the custody of the police. The investigating

officer had also known the applicant before. On 10 May 2010, he arrested and charged the applicant for the offences mentioned above.

[6] The applicant's defence at his trial was one of alibi. He said, in an unsworn statement, that he was in Spanish Town at the time of the alleged shooting.

[7] The learned trial judge, in his summation, properly identified the issues of identification and credibility as having been raised during the trial. In respect of both issues, he stated that he believed the evidence of the deputy superintendent, whom he accepted as reliable and credible, and he rejected the unsworn statement of the applicant.

[8] There was one issue which arose during the course of the trial which merits specific mention. It was that the deputy superintendent, on two occasions, made a prejudicial statement about having known the applicant before, because the applicant had previously been in police custody. The learned trial judge properly considered the matter and gave himself the appropriate warning concerning the prejudicial statements. He stated that he rejected the prejudicial statements and did not contemplate them in the arrival of his decision.

[9] Based on all the above, and based on the fact that the sentences are within the usual range for these offences, we found that there was no basis to disturb either the convictions or the sentences. The application for leave to appeal is, therefore, refused and the sentences shall be reckoned as having commenced on 29 October 2010.