

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 10/2011

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE MANGATAL JA (Ag)**

CHRISTOPHER CAMPBELL v R

Mrs Carolyn Reid-Cameron for the applicant

Miss Maxine Jackson for the Crown

22 and 23 January 2014

ORAL JUDGMENT

BROOKS JA

[1] This is an application by Mr Christopher Campbell for permission to appeal against his conviction and sentence in the Western Regional Gun Court held in Saint James on 11 January 2011. A single judge of this court refused Mr Campbell permission to appeal but he has renewed his application before the court. Mr Campbell was convicted on an indictment charging him with illegal possession of firearm and shooting with intent. He was sentenced, on 17 January 2011, to serve 15 years imprisonment on each count. The sentences were ordered to run concurrently.

[2] The convictions arise out of allegations, which were accepted by the tribunal of fact, that on 11 June 2010, at about 3:00 in the afternoon, a party of police officers went to premises at Long Wall, Glendevon, in the parish of Saint James. They had gone there in search of Mr Campbell, whom they had known before. On entering the premises, three of the officers saw Mr Campbell, whom they described as being dressed in a white merino and orange shorts. He was then standing in the yard to the rear of the premises. Mr Campbell, they noticed, had a firearm in his hand.

[3] The police say that they called to him and he fired in the direction of two of them and ran. He fired more shots after running. They heard the explosions at the time that he fired. The two officers who were closer to him returned the fire but he made good his escape. The police then left the scene.

[4] At about 5:00 on the same afternoon, two of the same police officers, acting on information, went to the Cornwall Regional Hospital. They were accompanied by an officer who was investigating the shooting incident. The trio went to the Accident and Emergency Department of the hospital where they saw Mr Campbell dressed in the same clothing that he was wearing when they saw him earlier in Glendevon. He was then lying on a stretcher suffering from gunshot injuries to the chest. Upon being cautioned by the investigating officer, Mr Campbell denied having fired at the police and said that he had been shot by a man at Green Pond in the said parish of Saint James. He was then arrested and charged for the offences mentioned above.

[5] At his trial, Mr Campbell made an unsworn statement. He said that he was a welder. He said that he did not know those policemen and that he never fired any shots after any police officers. That was the extent of his statement to the court.

[6] In his application before this court, Mr Campbell has advanced two grounds on which he contended that his conviction ought to be set aside. The first, is that the learned trial judge, D O McIntosh J, erred in law in failing to warn himself in accordance with the guidelines set out in **R v Turnbull** [1976] 3 All ER 349, concerning the dangers of relying on visual identification. The second, is that the learned trial judge failed to consider the weaknesses in the identification evidence.

[7] Mrs Reid-Cameron, who appeared for Mr Campbell in this application, argued both grounds together. Her submissions may be summarized as follows:

1. The warning that the learned trial judge gave himself in respect of visual identification was deficient.
2. In light of the inadequacy of the warning he did not take into account that honest witnesses may be mistaken.
3. He did not take into account the weaknesses and did not assess them.
4. He therefore did not adhere to the guidelines set out in the **Turnbull** case.
5. The learned trial judge only rehearsed evidence in a round-about and global way and therefore did not demonstrate that he applied the full content of the **Turnbull** warning as he should have.
6. He erroneously determined that the witnesses were corroborating each other in the circumstances where the requirements of the **Turnbull** warnings were not met.

[8] In addition to **Turnbull**, Mrs Reid-Cameron relied on **R v Balasaland Anor**(1990) 27 JLR 507 in support of her submissions.

[9] In response to those submissions, Miss Jackson, on behalf of the Crown, made submissions along two basic lines. Firstly, she argued that there is no requirement laid down in **Turnbull** for any specific formula of words to be used by the learned trial judge who is sitting alone. Miss Jackson also submitted that the learned trial judge did in fact address all the requisite issues that should have been addressed in respect of the question of visual identification.

[10] Learned counsel said that the learned trial judge made it clear that he recognized that two separate issues, namely, credibility and visual identification had been raised during the trial. Miss Jackson said the words used by the learned trial judge in his summation concerning identification evidence were sufficient for this court to be satisfied that the learned trial judge did give himself the requisite warning. In the circumstances, Miss Jackson submitted that the conviction ought not to be disturbed. She relied on, among others, **Raymond Hunter v R** [2011] JMCA Crim 20, in support of her submissions.

[11] In assessing the submissions of both counsel and the summation by the learned trial judge, it is necessary to examine some of the evidence which was adduced at the trial. On the question of identification, it is important to note the following:

- (a) The police officers had gone in search of Mr Campbell, whom they had known before.
- (b) The officers saw him from a distance ranging from 25 feet to 12 yards.
- (c) They saw him for a period ranging from seven seconds to 15 seconds.
- (d) This was at 3:00 in the afternoon on a June day, which the learned trial judge concluded, at page 85 of the transcript, as being "broad daylight".
- (e) Mr Campbell was seen two hours later at the Cornwall Regional Hospital wearing the same clothes that he had been seen wearing earlier that afternoon.
- (f) He was suffering from gunshot wounds.
- (g) One of the police officers testified that Mr Campbell was facing him at the time that he fired at Mr Campbell (page 10 of transcript).

[12] We agree with Miss Jackson that the learned trial judge drew a distinction between the issue of credibility and that of visual identification. At page 79 of the transcript he spoke about counsel for Mr Campbell testing the credibility of the witnesses. Later in his summation (at page 84), the learned trial judge specifically dealt with the issue of visual identification. He said:

"Now the courts have over the years directed that the tribunal of fact must not convict on visual identification unless the evidence of that visual identification is so strong that the court can have no doubt as to the identity of the person before the court. The court is asked to look carefully at all the evidence relevant to the issues of identification.

And it does not matter whether the person was known before. It is an issue of identification.

And from [sic] all the circumstances relating to that identification must be thoroughly explored....”

[13] The learned trial judge then went on to examine the evidence concerning the circumstances of the sighting, that is the lighting and the fact that Mr Campbell was known before to the police officers. At pages 87-88 of the transcript, the learned trial judge said:

“So, when one looks at the totality of the evidence on identification coming from three police officers and there is no challenge to their evidence that they knew him before, there is no challenge to their evidence that they all were there...And it is their evidence, however challenged, that they, all three, saw him in **what was apparently very good conditions of lighting, and at reasonable distance to be able to recognize him.** It would seem to me that the evidence of identification is insurmountable. When one takes that and puts it with the circumstantial evidence...that rating [sic] of his clothing; of him being shot; of him being shot in his front region, and of him being in hospital within hours of this incident, it seems to me that there can be absolutely no doubt that on the 11th of June in the year 2010 in the parish of St James, this accused man, Christopher Campbell, was armed with an illegal firearm and that he used this firearm to fire at police officers Campbell and Shorter...” (Emphasis supplied)

It is to be noted that Mr Campbell did deny knowing those policemen before. It may therefore be said that there was a challenge to their assertions that they knew him before.

[14] It is true that the learned trial judge did not warn himself of the reason for the need to carefully examine the evidence of visual identification. However, it is clear from

his examination of that evidence that this very experienced judge had those issues in mind. In the circumstances, we find that despite the omission, this summation was not so flawed that Mr Campbell's conviction should be set aside.

[15] The circumstances of this case are, despite Mrs Reid-Cameron's submission to the contrary, very similar to those in **R v Hunter**, cited by Miss Jackson. In that case, this court stated that "identification was clearly an issue" (paragraph 26). Nonetheless, the trial judge gave "a laconic and unhelpful warning to the jury (which, it seems...may have just barely complied with the sense and spirit of the Turnbull guidelines)" (paragraph 30). The court was however, of the view that the "evidence identifying the appellant [in that case] could be described as being of exceptionally good quality".

[16] A similar comment may be made in this case. It would be a proper case in which to apply the proviso contained in section 14 of the Judicature (Appellate Jurisdiction) Act on the basis that no substantial miscarriage of justice has been occasioned by the defect in the summation.

[17] We respectfully agree with the learned trial judge and Miss Jackson that the evidence concerning the identification, combined with the elements described by the learned trial judge as "circumstantial", was sufficient for the learned trial judge to arrive at his verdict. It is noted that this is not a case that, as described in **Turnbull**, wholly depends on the correctness of the identification of the witnesses as to fact. The additional evidence of the clothing, the injury and the close time frame in which Mr

Campbell was seen at the hospital are powerful bits of evidence supplementing the visual identification.

[18] Mr Campbell's application for permission to appeal is, therefore, refused and his sentence should be reckoned as having commenced on 17 January 2011.