

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 54/06

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE HARRISON, JA.
THE HON. MISS JUSTICE G. SMITH. J.A. (Ag.)

COLLIN CAMPBELL v REGINA

Collin Campbell unrepresented.

Miss Paula Llewelyn Q.C, Director of Public Prosecutions and Mrs. Karen Seymour-Johnson, Crown Counsel for the Crown

24th June, 2008

ORAL JUDGMENT

SMITH, J.A:

The applicant Collin Campbell was convicted in the High Court Division of the Gun Court held at May Pen in the parish of Clarendon on the 15th of March, 2006 and sentenced on the 16th March, 2006. The indictment charged two counts. The first- Illegal Possession of Firearm, contrary to section 20 (1) (b) of the Firearm's Act and the second -Assault.

The particulars are:

Count 1: Collin Campbell on the 9th day of December, 2005 in the parish of Clarendon, unlawfully had in his possession a firearm not under and in accordance with the terms and conditions of the Firearm Users' Licence.

Count 2: Collin Campbell on the 9th December, 2005, in the parish of Clarendon unlawfully assaulted Kemar Shields.

He was sentenced on count 1 to seven years imprisonment at hard labour and on count 2 to two years imprisonment at hard labour. The sentences were to run concurrently. His application for leave to appeal was refused by the single judge on the 18th March, 2008 and he has now renewed his application before the court.

On the 9th December 2005, at about 5:15 pm, a report was made to Constable Shield. The constable went to an old farm house in Monymusk where he saw two men run from the house into nearby bushes. One of these men had a machete in hand. Constable Shield entered the old building and therein he saw another man who is the Applicant. Constable Shields ordered him not to move. The applicant told the Constable "not to come, any closer to him because he had his gun". The applicant pointed a firearm at the officer. Constable Shield fired twice at the applicant. Officers from the Lionel Town Police Station who came on the scene found a homemade hand gun and a 12 gauge cartridge in the old building.

Constable Shields and officers from the Lionel Town Police Station visited the hospital where Constable Shields identified, the applicant, who had gunshot wounds, as the man who had pointed the firearm at

him. The applicant, when cautioned, said he did not know anything about the firearm; "mi in a the ole house a bun mi coke and this man come shot mi," he complained. He was arrested and charged. Mr. Kirk Tulloch, a witness also gave evidence. He supported Constable Shields in the material aspect of his evidence. The applicant gave evidence and admitted that he was in his own house smoking a spliff, but he vehemently denied having a firearm in his possession.

The learned judge accepted the evidence of the prosecution witnesses over and above that of the applicant. Credibility is a matter for the trial judge and this court will not interfere with the learned judge's findings of fact so far as they relate to credibility, unless it is shown that those findings are perverse. The ground filed is that the trial was unfair.

We have examined the evidence given and we agree with counsel for the crown that it cannot be said that the findings of fact of the learned judge were obviously and palpably wrong. Accordingly, leave to appeal is refused. Sentences must commence as of the 16th June, 2006.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 145 & 146/06

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MISS JUSTICE SMITH, J.A. (AG.)**

**NKOMO BECKFORD
ANTHONY GREEN V R**

Applicants unrepresented

**Miss Paula Llewellyn, Q.C., Director of Public Prosecutions &
Mrs. Sharon Millwood-Moore for the Crown**

02nd June 2008

ORAL JUDGMENT

PANTON, P.

These applicants were convicted by Mr. Justice Donald McIntosh sitting in the High Court Division of the Gun Court between August 14 and 16, 2006. The convictions were in respect of the offences of illegal possession of firearm, illegal possession of ammunition, wounding with intent and shooting with intent. In all, there were seven convictions recorded and in respect of these convictions, on count 1, they were each sentenced to 15 years imprisonment at hard labour, count 2, 10 years, count 3, 20 years, count 4, 20 years, count 5, 15 years, count 6, 10 years and count 7, 5 years imprisonment; all the sentences were ordered to run concurrently.

In the early morning of the 14th of September 2005, the two applicants and two other men were at Portmore in St. Catherine, at 1:30 in the morning to be exact, and there in a parking lot they were holding hostage, one Michelle Abrahams, who happens to be the girlfriend of Constable Mitchell Gordon. The couple's residence was next to this parking lot. Somehow, it appears that Miss Abrahams made contact with Mr. Gordon as to her plight and he responded by going on the scene.

There he saw Miss Abrahams standing between two men who were clearly not in any amicable position in relation to her, and there was another man not far from where those were positioned. The men had guns, one of them in fact had what was described as an intra-tech sub-machine gun. The sum total of the scene that Mr. Gordon saw was that Miss Abrahams was clearly in danger. He challenged the men and there was the usual burst of gun fire between the police and these hoodlums.

Deputy Superintendent Maurice Mattis who lives nearby heard the exchange of gun fire and, exiting through his back door, he approached the scene and he also had an exchange of gun fire with these men. Cpl. Junior Grant who lives nearby came along, and he too had an exchange, particularly with the applicant Green who was seen running away from the scene.

In the end, two of the men laid dead and Miss Michelle Abrahams was seriously injured, injured to the point that at the time of the trial of this matter, by the learned judge, she was still unable to speak. Constable Gordon himself was also injured; he was shot in his shoulder. All the injured were taken to the hospital and the dead to the appropriate place.

The applicants gave evidence indicating that they were not on the scene. It turned out that one of the deceased men was a relative of the applicant Green and all these persons, the applicants and the deceased, shared what appeared to be a common address.

The learned trial judge took note of the evidence of the aunt of Mr. Green who testified that he was at home all night. She said she was up most of the night sewing until in the region of 4:00 o'clock in the morning and thereafter proceeded to journey to Falmouth to the famous market there and was on her feet all day. Needless to say the learned judge rejected this evidence. It was clearly a concoction.

We having examined the transcript, and having examined how the learned judge dealt with the issues of credibility, identification and the alibi we are satisfied that there can be no good basis for it to be said that the convictions were not in order.

Accordingly, we are in agreement with the view of the single judge who on the 13th of December, 2007 had indicated that he had seen no reason for the grant of leave to appeal. We have looked at the sentences that were imposed by the learned judge and bearing in mind the nature of the allegations and the facts that the learned judge found proven, it is our view, that the sentences are most appropriate.

The applications for leave to appeal against the convictions and sentences are without merit and are accordingly refused. The sentences are to run from the 16th November 2006.