

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 100/09**

**BEFORE: THE HON MR JUSTICE MORRISON JA  
THE HON MR JUSTICE DUKHAHRAN JA  
THE HON MR JUSTICE HIBBERT JA (Ag)**

**LIVINE COWAN v R**

**Miss Gillian Burgess for the applicant**

**Miss Sanchia Burrell for the Crown**

**10 and 12 May 2011**

**ORAL JUDGMENT**

**HIBBERT JA (Ag)**

[1] On Tuesday, 10 May 2011, we refused the applicant's application for leave to appeal against his conviction and sentence for the offences of illegal possession of firearm and illegal possession of ammunition in the High Court Division of the Gun Court held at Mandeville in the parish of Manchester. As promised, we now give our reasons.

[2] On 10 March 2007 police officers, acting on information they received near mid-day, caused a Toyota minivan which was being driven by the applicant along the

Sunberry main road in the parish of Clarendon to stop. In this vehicle were two passengers, Richard McTaggart who was seated in the left front passenger seat and Shane Eccleston who was seated in the rear seat. The police ordered the three men from the vehicle and a search of the vehicle revealed a .38 revolver with three live rounds and two spent shells on the floor in front of the left front passenger seat. All three persons were charged for the offences of illegal possession of firearm and illegal possession of ammunition. Sergeant Michael Berry, who was then a Corporal, who retrieved the firearm, stated in evidence that upon the firearm being found Eccleston pointed to McTaggart and said, "A fi him gun." The applicant said, "Officer, a hold dem hold mi up." McTaggart said the gun was not his.

[3] Constable Canute Walters, the other witness called by the prosecution, supported Sergeant Berry as to the finding of the firearm. He however stated that McTaggart said the gun belonged to the applicant. At the close of the case for the prosecution, the learned trial judge upheld a no case submission made on behalf of Eccleston. McTaggart gave sworn testimony that he had known the applicant as Marlon Shaw for over five years as an itinerant vendor and that the applicant picked up Eccleston and himself in May Pen on 10 March to assist him. He stated that after the police signalled the applicant to stop the vehicle, the applicant threw a gun on him, and he threw back the gun on the applicant. He then exited the vehicle. He denied being in possession of the firearm.

[4] McTaggart's evidence was supported by Eccleston who was called as a witness on his behalf. Evidence was also adduced on behalf of McTaggart to show that the hands of the three persons in the vehicle were swabbed in testing for gun powder residue. The result showed that no gun powder residue was found on the hands of McTaggart or Eccleston but gun powder residue at trace level was found on the swab used on the palm of the applicant.

[5] The applicant gave evidence on his own behalf. He stated that while he was making his rounds delivering goods and making collections he was held up by McTaggart who was armed with a firearm. He further stated that McTaggart ordered him to drive to a point where he, McTaggart, could get a taxi to take him to Mandeville. He said that on the way McTaggart spoke to another person using a cellular phone, telling that person to look out for the vehicle in which he was travelling. The applicant further said that he later came upon a motor car which was blocking his path and there Eccleston boarded his vehicle. He stated further, that on being stopped by the police he told Sergeant Berry that one of the men had a gun and that he was held up. The police later found the firearm on the floor in front of the left front passenger seat. He denied being in possession of the firearm or that he had known McTaggart or Eccleston before that date. He however admitted that he was called Marlon Shaw.

[6] The learned trial judge after reviewing the evidence and taking into consideration the applicable law, in particular, section 20(5) of the Firearms Act, found the applicant guilty on each count of the indictment and imposed sentences of nine years and seven

years at hard labour for the offences of illegal possession of firearm and illegal possession of ammunition respectively.

[7] The applicant sought leave to appeal on two grounds namely, unfair trial and insufficient evidence. Miss Gillian Burgess, who represented the applicant before this court, advised the court that having perused the transcript she could find nothing to urge upon the court to cause the court to disturb the conviction or sentence. We have perused the transcript and can find nothing of substance to assist the applicant. Miss Burrell for the prosecution was also of this view. As a consequence, we found that there was nothing on which we could grant the application sought by the applicant and therefore for these reasons we refused the application. Having refused the application, we indicated that the sentences on each count would run from 19 November 2009.