JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 66/2008

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE McINTOSH, J.A.(Ag.)

ANTHONY CROSSFIELD
v
REGINA

Applicant unrepresented.

Mesdames Deneve Barnett and Keisha Prince for the Crown

June 8, 2009

Oral Judgment

COOKE, J.A.

1. The applicant in respect of leave to appeal against conviction, Mr. Anthony Crossfield, was on the 15th May 2008 convicted in the High Court Division of the Gun Court sitting in May Pen in Clarendon. He was convicted on an indictment which charged him with illegal possession of firearm and shooting at Nicola Murray. By the time of the trial, Nicola Murray had died, and her statement was admitted into evidence by virtue of Section 31A of the Evidence Act. It follows that this statement needed a particular judicial treatment. Before the court goes on to

outline the factual circumstance as contained in that statement, the court will demonstrate that the learned trial judge was guided, and properly so, in his judicial approach. The court will rehearse what he said on page 84:-

> "Now the statement having come in, the question is what does it mean and what weight is to be attached to it? The court has to bear in mind that the witness was not before the court to be cross-examined and was not tested by cross-examination and to that extent the court is operating under a disability, and so it means then that the statement has to be examined with great care for two reasons, (1) it is a statement not tested by cross-examination, neither here nor in some other judicial proceedings, and (2) it is dealing with the critical question of identification."

Then he proceeded to show that he was conscious and cognizant of what may be compendiously termed the **Turnbull** guidelines.

2. The statement is to the effect that the virtual complainant, Nicola Murray, at about 8:00 o'clock on the 18th January 2007, had just returned from evening classes to her home at Duke Street in Clarendon. She was outside her house leaning against a cart belonging to her baby's father when she saw the applicant who is known as "Ratty" who, from some six feet away, fired at her. Trembling, she sought the refuge of her house, and more shots were fired. She had known Ratty from he was a baby. Ratty lived in the area and there can be no dispute as to the fact that the parties were well known to each other. She said the lighting was

adequate, and this the learned judge accepted. So the evidential base for the identification was more than adequate.

3. The applicant gave an unsworn statement, that he was in a bar nearby and he heard an explosion. 'Nicky' as he called the virtual complainant expressed or shouted words to the effect that he needed to go to prison and he was in this bar being falsely accused. He called a witness who was the owner of the bar to support him in respect of his alibi. Perhaps the court should have stated that on the night of the incident the virtual complainant went for the police and pointed out the applicant to the police. To return to the alibi, the alibi witness gave evidence seeking to support the unsworn statement of the applicant and the learned trial judge rejected that alibi.

4. We find that the judicial approach embarked upon by the learned trial judge was entirely in harmony with the proper approach to be adopted. His analysis of the evidence bearing in mind the ***Turnbull*** guidelines was amply demonstrated and there is no reason why this court should interfere with the verdict to which he arrived. The sentences imposed by the learned trial judge are as follows: 7 years on count 1 and 8 years on count 2; eight years being pertinent to the shooting with intent.

5. The single judge who first perused these papers granted leave to appeal in respect of these sentences. The leave to appeal was granted on the basis that perhaps it would not be proper in these circumstances to give consecutive sentences, and that this issue should be canvassed in this court. Well, we have canvassed it, and we are of the view that when you look at the sentence in its totality, in a global sense, 15 years is not manifestly excessive in respect of the shooting with intent.

6. Accordingly, the appeal against sentence is dismissed. Sentences are to commence on the 15th May 2008.