

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 135/2009

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE HIBBERT JA (AG)**

LEON DAVIS v R

Robert Fletcher for the appellant

Jeremy Taylor and Mrs Suzette Whittingham-Maxwell for the Crown

16 January 2012

ORAL JUDGMENT

MORRISON JA

[1] The appellant was charged on an indictment containing four counts, viz, (i) illegal possession of firearm, (ii) robbery with aggravation, (iii) wounding with intent, and (iv) shooting with intent. On 20 November 2009 he was convicted after a trial in the High Court Division of the Gun Court before Sykes J. The learned judge sentenced the appellant to 10 years imprisonment on count one and seven years imprisonment on count two. These sentences were ordered to run concurrently. On count three, he was sentenced to 12 years imprisonment and, on count four he was sentenced to 10 years imprisonment. The learned judge ordered that the sentences on counts three and

four should run consecutively to the sentences on counts one and two. The net effect of this was that the appellant was sentenced to 22 years imprisonment, in circumstances in which, as Mr Fletcher has pointed out, notwithstanding that as a matter of law he falls to be treated as if he were a full participant on the Crown's case, he was not actually the person who discharged the firearm.

[2] Before us this morning, Mr Fletcher indicated that there was nothing that he could urge upon us in respect of the conviction, a view with which we fully agree. The evidence against the appellant was compelling. The learned trial judge dealt at great length and in great depth with all the principles surrounding the issues of identification, common design, how to treat inconsistencies and discrepancies and all other matters having a bearing on the issue of credibility.

[3] However, as regards the question of sentence, Mr Fletcher sought and was given leave to argue a single ground of appeal, which is that the learned trial judge applied the wrong principle in arriving at the consecutive sentences handed down, as a result of which, the sentence is manifestly excessive. This ground in fact mirrored the basis on which the single judge of this court had granted leave to appeal.

[4] On this point, we also agree with Mr Fletcher. The matter is now completely and comprehensively covered by the judgment of this court in **Kirk Mitchell v R** [2011] JMCA Crim 1, where after a full review of the principles involved and the relevant authorities, Brooks JA (Ag) (as he then was) said this (at para. [56]):

"In the circumstances of the ordinary case, therefore, where the offences arise from a single transaction, there is, in our view, no need to resort to imposing consecutive sentences."

[5] So, in the circumstances, the appeal against sentence is allowed and the judge's order that the sentences on counts one and two should be consecutive to those on counts three and four is set aside, and the court substitutes an order that all the sentences are to be concurrent.

[6] These sentences are to commence from the date of conviction, that is, 20 November 2009.

