

# **JAMAICA**

## **IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO: 143/05**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A. (AG.)**

**SADIKIE HARVEY V R**

**Applicant unrepresented**

**Ms. Meridian Kohler, Assistant Director of Public Prosecutions (Ag.)  
for the Crown**

**26<sup>th</sup> May 2008**

### **ORAL JUDGMENT**

**PANTON, P.**

In this matter of an application for leave to appeal by Mr. Sadikie Harvey, the application was first made to a single judge of appeal, as is customary, and that judge, having considered the primary issue in the case, one of visual identification, concluded that the issue had been adequately dealt with by the learned trial judge. The latter judge, Mr. Justice Brooks, sitting in the Western Regional Gun Court held at Montego Bay after a trial held on the 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> of September 2005, convicted the applicant of the offences of illegal possession of firearm and assault. In respect of the illegal possession of firearm the applicant was sentenced to 10 years imprisonment and so too on count 2. Both sentences were ordered to run concurrently.

The circumstances are that on the 5<sup>th</sup> day of July 2005 at Glendevon in the parish of Saint James, the applicant shot at Constable Calbert Welch and District Constable Winston Campbell. The applicant ran after the incident and was chased but was not apprehended at that time.

The learned judge took into consideration the fact that this incident occurred at 5:00 p.m., that there was adequate lighting and he concluded that the constables, particularly Constable Welch, had more than sufficient opportunity to observe the assailant whom they knew before. The learned judge gave himself the appropriate directions bearing in mind the case of ***The Queen v Turnbull*** and having perused those directions, we are, like learned Counsel for the Crown, unable to see on what basis we would have been in a position to disturb the conviction. The applicant advanced an alibi but the learned judge concluded that it was a false one and that the testimony given by him and his supporting witness a Mr. Finn was untrue.

The Appellate Court is not in a position in these circumstances to place itself in the place of the trial judge. The learned judge was the person who was in a position to see and to assess the demeanour of the witnesses. There were discrepancies between the evidence of Constable Welch and Constable Campbell so far as the exact positioning of the applicant was concerned and also in terms of distance. However, the learned judge dealt with that by indicating that he preferred the evidence of Constable Welch wherever there was a difference in

terms of the position and in terms of the distance. He was of the view that Constable Welch was the person who was best placed to view the applicant and, given the fact that he knew the applicant before, the learned judge concluded that the evidence of Constable Welch not having being shaken in cross-examination was reliable and so he accepted it.

In the circumstances the application has to be refused and that is the conclusion of the court and the sentences are to run from 9<sup>th</sup> of December 2005.