

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO: 121/07**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE MORRISON, J.A.  
THE HON. MRS. JUSTICE McINTOSH, J.A. (Ag.)**

**MICHAEL HIBBERT v R**

**Applicant unrepresented**

**Miss Paula Llewellyn, Q.C., Director of Public Prosecutions & Ms. Keisha Prince for the Crown**

**22<sup>nd</sup> April 2009**

**ORAL JUDGMENT**

**PANTON, P.**

1. The applicant Mr. Michael Hibbert was found guilty by Mr. Justice Dukharan sitting in the High Court Division of the Gun Court of the offences of illegal possession of firearm and shooting with intent. The date on which these offences were allegedly committed was the 25<sup>th</sup> of October 2005. The convictions were recorded on the 14<sup>th</sup> of August 2007 when he was sentenced to 10 years imprisonment on the count for illegal possession of firearm and 15 years imprisonment on the second count for shooting with intent.

2. The persons at whom he is alleged to have shot were officers in the Jamaica Constabulary Force, namely, Mark Williams, Gilbert Brown and Devon Simpson. The witnesses Mark Williams, Gilbert Brown and Sgt. Daniel Albert, who effected the arrest of the applicant, gave evidence before the learned trial judge.

3. At the hearing the applicant made an unsworn statement. The single judge in dealing with Mr. Hibbert's application for leave to appeal, said that the issues which arose for the learned trial judge's consideration were identification and the credibility of the witnesses. In the view of that judge, these issues were adequately dealt with, the directions were fair and well-balanced and no fault was found with them thus the application for leave to appeal was refused.

4. The facts in brief are that the applicant was among a group of six men who, in broad daylight, that being 7:20 in the morning, while the police officers were conducting an operation in West Kingston, pulled firearms from their waist and fired at the officers. The police, as is customary, returned the fire and one of these six men was shot and ended up in the Kingston Public Hospital, suffering from wounds from which he died. The applicant was, according to the evidence given to the court, more fortunate in that he suffered merely the injuries to his left hand. Incidentally, a firearm was retrieved from the man who was shot and killed. The applicant, according to the evidence, ran along with the

others after they had shot at the police officers and the police officers had returned the fire.

5. In the end the applicant took a taxi and ended up in the Kingston Public Hospital where he was immediately spotted by two of the officers who were involved in this operation. Evidence was given by the officers that they had known him before. On one occasion he had actually accompanied a man named "Nesbett" who had gone to the Denham Town Police Station to make a report. At the hospital when he was accosted, he was being attended to by his mother who had accompanied him there. When he was accosted, the mother was heard by the officer to say, and I quote, "You f..... you, see how long me tell you fi come out a bad company". He, the applicant in his response said to the officer, "Officer me naw violate". In his unsworn statement he said that he was on his way to the shop when he heard explosions. He said he turned back to his house and when he turned back he felt something hit him on his left hand, he felt a burning and his mother came and took him to the Kingston Public Hospital for dressing and treatment.

6. One feature of the case is that his hands were swabbed but there was no evidence given as to the result of the swabbing, something that the learned judge commented on in his summation. Apparently, there was a report from the authorities on the swabbing but no live witness to give the evidence of it. One will not speculate as to what that evidence might have been.

7. When he was arrested and cautioned, he made a statement which was similar to what he said in his unsworn statement. He had said then "A shop me did a go. Me no shoot after anybody, me no have no gun." The learned trial judge warned himself as to the dangers involved in respect of evidence of identification. He took into consideration the fact that it was daylight and the fact that there was evidence of the applicant having been known before. He expressed himself as being satisfied that both witnesses for the prosecution had spoken the truth as to what had happened and that there had been correct identification made and that the applicant was one of the six men who had fired at them.

8. The evidence, as to the antecedents after the conviction had been recorded, although this applicant had the benefit of attending Trench Town High School having passed through Trench Town Primary School and having gone to the H. E. A. R. T. Training Centre in Hannah Town and having done well in the course, is that he is illiterate. At the time of his arrest he was engaged as a painter on a construction site earning \$8,000.00 per fortnight.

9. In our view, the conviction cannot be disturbed nor can the sentences be, given the seriousness of the act of shooting at persons who are peace officers sworn to protect and to serve. The application is therefore refused and the sentences are to commence as of the 14<sup>th</sup> of November 2007.