

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 33/2009

**BEFORE: THE HON. MR JUSTICE PANTON, P
 THE HON. MR JUSTICE MORRISON, JA
 THE HON. MR JUSTICE BROOKS, JA (Ag)**

NEVILLE HUMES v R

Applicant unrepresented

Miss Kathy-Ann Pyke on Fiat and Greg Walcolm for the Crown

12 April 2010

ORAL JUDGMENT

PANTON, P

[1] The applicant Neville Humes was convicted in the High Court Division of the Gun Court of the offences of illegal possession of firearm, unlawful wounding and robbery with aggravation. His trial was presided over by Mr Justice Bertram Morrison. The sentence imposed in respect of the illegal possession of firearm was 10 years imprisonment; for unlawful wounding four years imprisonment and for robbery with aggravation, 15 years imprisonment. The sentences were ordered to run concurrently.

[2] The applicant had initially been indicted for wounding with intent. However, the learned trial judge in his summation indicated that he was not convinced that there was an intent to commit the wound as charged in the indictment.

[3] The circumstances were that Mr Orlando Samuels, who was 24 years old at the time of the incident which occurred on 21 October 2008, at about 8:20 p.m. was at his home at Mount Eagle, Grange Hill in the parish of Westmoreland. He had in the house with him, his girlfriend and their 10 month old baby. He was in the process of preparing a meal. This house is what they called a room and hall house; where there is a room and there is a hall. He was preparing a meal when the back door was pushed open and coming through that open back door was the applicant, who was known to Mr Samuels as "History". The applicant entered uninvited, smiling, with gun in hand. The witness Mr Samuels, quite naturally, became frightened and he ran into the room and proceeded under his bed. In the process, he heard what he described as a gunshot. He received injury in the area of the scrotum and also the leg. The applicant "History" demanded money. He was directed to the dressing table, he proceeded to search and found and left with money US\$70.00 and J\$470.00. He also made away with Mr Samuels' Motorola cellular phone.

[4] In his unsworn statement, the applicant denied the allegations. The learned trial judge addressed all the issues that needed to be addressed in terms of identification and in terms of the ingredients of the offences. He came to the conclusion that the witness Samuels was a witness of truth and that there was no error being made in relation to the identification. However, the learned trial judge said at page 113 of the transcript, that there was no medical evidence to support the injuries. He said at lines 9 - 23:

"So, here we have the officers speaking to four injuries where the complainant speaks to one. The police officer is not a doctor so this evidence that there appears to be gunshot wounds has to be discarded, but at the very least this person had injuries occasioned by the actions of the accused, that cannot be said, so although the Crown is obliged to prove that there was an intention on the part of the accused to cause grievous bodily harm or serious bodily harm to this person, the evidence does not support it. In the absence of those medical certificate or medical evidence does not support it; but the fact is, that the complainant ended up having an injury."

On the basis of that reasoning the learned trial judge found that wounding with intent had not been proven and convicted of the lesser offence of unlawful wounding and imposed the sentences mentioned earlier.

[5] So far as the sentence of four years imprisonment for unlawful wounding is concerned we are guided by section 22 of the Offences

Against the Person Act which provides that the maximum sentence for unlawful wounding is three years imprisonment.

[6] The conviction we find, cannot be faulted and in the circumstances, we are obliged to refuse this application for leave to appeal against the convictions. There is no merit we find, in the grounds which have been filed, which are –

(a) unfair trial;

(b) the verdict is unreasonable having regards to the evidence.

However, so far as the sentence for unlawful wounding is concerned, that is reduced to one of three years and in all other respects the sentences are merited. Here we have a gentleman who actually removed, without permission, food for the baby.

[7] The application for leave to appeal against conviction is refused. The application for leave to appeal against sentence is granted in respect of count two and that appeal in respect of count two is allowed and substituted for the sentence of four years is one of three years imprisonment. The sentences on counts 1 and 3 are affirmed and all sentences shall commence as of 18 May 2009.