

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 43/2008

**BEFORE: THE HON. MR JUSTICE PANTON, P
THE HON. MISS JUSTICE PHILLIPS, JA
THE HON. MRS JUSTICE McINTOSH, JA (Ag)**

LESLIE McDONALD v R

Leroy Equiano for the applicant

Miss Meridian Kohler & Alwayne Smith for the Crown

19 April 2010

ORAL JUDGMENT

PANTON, P.

[1] This is an application for leave to appeal against conviction and sentence. The applicant was convicted in the High Court Division of the Gun Court held at King Street, Kingston on 1 and 2 April 2008. The offences of which he was convicted are illegal possession of firearm and shooting with intent. On the count for illegal possession of firearm he was sentenced to seven years imprisonment and for shooting with intent, he was sentenced to ten years imprisonment. The sentences were ordered to run concurrently.

[2] The circumstances of the case indicate that Det. Cpl. Rohan Lawrence found himself in the Portmore area at about 4:00 p.m. on 26 October 2005, at an establishment where apparently there were persons who were up to no good, positioned with firearms. Indeed, on his arrival Det. Cpl. Lawrence saw two men whom he recognized; one of them alerted him to the fact that there were men at the establishment who were armed with guns. Immediately thereafter, the Corporal saw a group of men, two of whom produced firearms from their waist bands and fired shots at him. He took cover, returned the fire, chased them but was unsuccessful in apprehending any of them. He made a report at the nearby police station. He did not give the description of these men. However, about three months later he received information which caused him to go to the Mobile Reserve Police Station where he saw a group of men who had obviously been detained by the police, sitting in the waiting area. He proceeded to identify one of them, the applicant, as one of the men who had fired at him.

[3] Learned counsel, Mr Equiano filed two grounds of appeal of which, the main one was to the effect that the learned trial judge ought to have ruled that there was no case to answer. The second ground was to the effect that the learned trial judge having given himself the requisite

warning failed to apply the **Turnbull** principles in the process of adjudicating on the evidence.

[4] Mr Equiano submitted that the evidence fell far short of what would have been required for there to be a finding by the trial judge, that the applicant had been properly identified. He said that the period of time which was in his view, less than 15 seconds, based on the evidence, the lack of any outstanding or peculiar features on the applicant and the fact that the police officer did not know the applicant before, made the circumstances for identification extremely difficult. He further submitted that the learned trial judge did not demonstrate that he had taken all these into consideration in ruling that there was a case to answer.

[5] Miss Kohler for the Crown informed the court that, having considered the matter, the Crown found itself unable to do anything other than to concede that there was no case to answer.

[6] We, having examined the matter and having borne in mind the submissions of Mr Equiano, are satisfied that (1) the evidence of identification was insufficient and (2) it was clear that the officer was invited to the police station with a view for there to be identification by confrontation. We see no other inference to be drawn on the evidence, there being no explanation offered as to why there was no identification

parade in a situation where obviously somebody felt that the applicant was one of the two men who had traded gunshots with the officer.

[7] In the circumstances, we agree with the position taken by the Crown and find that the convictions are flawed and ought to be quashed. The application for leave to appeal is granted. The hearing of the application is treated as the hearing of the appeal. The appeal is allowed. The convictions are quashed and the sentences are set aside. Given the lack of sufficient evidence, we enter a judgment and verdict of acquittal.