JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 169/06

BEFORE: **THE HON. MR. JUSTICE PANTON, P.**
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.

TARICK MERCURIUS v R

L. Jack Hines for the Applicant/Appellant

Miss Kathy-Ann Pyke & Miss Kamar Henry, Crown Counsel for the Crown

21st July 2008

ORAL JUDGMENT

PANTON, P.

This appellant, Mr. Tarick Mercurius was convicted on the 7th September 2006 by Mr. Justice Dukharan, sitting in the Gun Court, of the offences of illegal possession of firearm, illegal possession of ammunition and shooting with intent. In respect of the firearm, he was sentenced to imprisonment for 10 years, the ammunition, 2 years and for the shooting with intent he was sentenced to 20 years imprisonment.

A single judge of this Court granted Mr. Mercurius leave to appeal against sentence on the 3rd count, for shooting with intent but refused leave to appeal in

respect of the other aspects of the case, in that, he felt that the central issue being identification had been adequately dealt with by the learned trial judge.

The situation is that learned counsel, Mr. Hines for the appellant filed two supplemental grounds of appeal. One in respect of identification which would have challenged the conviction, and the other in respect of the sentence on the third count.

Before us, Mr. Hines has, in our view, quite properly abandoned any thought of seeking leave to appeal against the conviction. He was granted leave to argue the supplemental ground as filed in relation to sentence. That ground reads:

> "The learned trial judge erred in imposing a sentence of 10 years for illegal possession of firearm and in particular a sentence of 20 years for shooting with intent which sentences were excessive in the circumstances of the case."

What are the circumstances of the case? The circumstances of the case are simple, but very familiar in this country. Superintendent of Police Delroy Hewitt in uniform accompanied by two constables who were not in uniform;" were all in a vehicle which was unmarked. They went into an area of the Corporate Area in broad daylight where they saw the appellant. The superintendent came out of the vehicle, the appellant moved off from where he was standing and in short order he shot at the superintendent. There was a chase, during the chase the firearm fell and happily it was retrieved. The appellant escaped. This took place in May 2005. Nine months later he was spotted by the Superintendent of Police

who radioed the police for help and the appellant was held and subsequently identified by the Superintendent. The firearm that the appellant had was a 9mm semi-automatic pistol, a Ruger.

At trial the appellant denied this encounter and secured his girlfriend as a witness. Alas, she did not do what he wanted, in that, her evidence did not help. She could not account for his whereabouts at a time when he had said he was with her and as said earlier the learned judge convicted him.

Mr. Hines has sought to persuade us that in the circumstances, the appellant would not ordinarily have shot at the superintendent because the evidence by the Crown was to the effect that when the appellant was held he said that he did not know that the persons shot at were police officers. Mr. Hines has sought to suggest that, that is a mitigating factor. He also sought to suggest that because the car was unmarked and the other officers were not in uniform, the learned judge should not have treated the offence as seriously as he did. Although not totally expressed in those terms, he tried to say that the sentence was manifestly excessive.

To be accurate learned counsel has not really stressed that the sentence was manifestly excessive. He has merely said that it was excessive.

In accordance with the principles that guide us at this stage, we cannot disturb the sentence unless we are of the view that it is manifestly excessive.

In the circumstances that have been proven here, the shooting at a superintendent of police in uniform in broad daylight deserves a sentence of 20 years imprisonment and so the appeal against sentence is dismissed. The sentences that were imposed are affirmed and they are to run from the 7th of December 2006.