

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 74/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE HIBBERT JA (Ag)**

RUEL MUTHRA v R

Cecil J Mitchell for the applicant

Miss Paula Llewellyn QC, Director of Public Prosecutions and Miss Michelle Salmon for the Crown

30 and 31 May 2011

ORAL JUDGMENT

HIBBERT JA (Ag)

[1] The applicant Ruel Muthra was on 4 June 2010 convicted in the High Court Division of the Gun Court for the offences of illegal possession of firearm and illegal possession of ammunition. For these offences, he was sentenced to be imprisoned and kept at hard labour for a period of seven years and five years, respectively.

[2] At his trial, the prosecution led evidence from Sergeant Rohan Ritchie and Constable Derrick Francis, who supported each other, that on 20 February 2010, at about 2:40 p.m. while they were on mobile patrol they saw the applicant standing in front of premises number 15 Yvette Crescent, Edgewater, in the parish of St Catherine. On the approach of the police vehicle the applicant ran into premises 15 Yvette Crescent and into a house situated there. The police officers gave chase but lost sight of the applicant after he entered the house. The officers also entered the house and encountered two other men in separate bedrooms. These men were taken from these rooms to the living room. A bathroom adjacent to one of the bedrooms was found to be locked. Sergeant Ritchie, suspecting that the applicant was in that bathroom, ordered him to come out. The applicant came from the bathroom while pulling up his shorts and having flushed the toilet.

[3] Sergeant Ritchie who knew the applicant before as "Kirlew" informed him that he suspected that he had hidden a firearm in the house. Sergeant Ritchie then began a search of the house in the presence of the three men, commencing with one of the bedrooms. In the bathroom from which the applicant emerged, Sergeant Ritchie discovered that the counter top could be lifted, revealing a compartment below. In this compartment was also another secret compartment in which Sergeant Ritchie found a Browning 9mm pistol loaded with 13 rounds of ammunition. Sergeant Ritchie cautioned the applicant and the other two men. The applicant said, "Officer, a my ting nuh bother charge mi bredda, him kind a soft, him can't handle jail". This firearm was

subsequently found by the ballistic expert to be in good working condition and the ammunition to be live ammunition.

[4] During the cross examination of Sergeant Ritchie, counsel for the applicant elicited evidence from him, that he came to know the applicant as a result of a report which was made that the applicant had discharged a firearm in the community in January of that year. It was suggested that it was because of that report that Sergeant Ritchie concocted the story that the applicant ran into the premises and later admitted that the firearm was his. It was also suggested that the firearm was found in an area in the bathroom that was exposed to the use of others.

[5] The applicant gave evidence on his own behalf. He stated that on 20 February 2010 at about 2:40 p.m. he was at home in his room when he saw police officers run into the house and Sergeant Ritchie asked for "Kirlew". He told Sergeant Ritchie that he was Kirlew and Sergeant Ritchie said he came to search. Sergeant Ritchie took him and another man from another room to the living room. Sergeant Ritchie then went to the applicant's brother's room and took his brother out also. He said Sergeant Ritchie then searched his room and his brother's room. After the search, the police officers took him from the house and when he was at the gate, he saw Sergeant Ritchie with a firearm. He denied running into the house, he denied being in possession of the firearm or making any admission to Sergeant Ritchie. He stated that he conducted business at his home and several persons have access to the bathroom there.

[6] After hearing submissions from counsel for the prosecution and the defence, the learned trial judge embarked on the summation and thereafter found the applicant guilty of the charges laid against him. Leave to appeal having been refused by a single judge of this court, the applicant renews his application to the full court. Mr Mitchell, for the applicant, abandoned the application as it related to the sentence. He also abandoned the original grounds of appeal filed, and sought and obtained leave to argue the supplementary grounds.

[7] The supplementary grounds of appeal are as follows:

"Ground 1

That the verdict was unreasonable and against the weight of the evidence in that:

- (a) The evidence of the Crown witness Sergeant Ritchie was that he chased the applicant and was 3-4 four seconds behind the applicant yet lost sight of the Applicant in a house in Portmore;
- (b) That it taxed credibility to the extreme to accept that within the short span of time that arose from the evidence that the Applicant could have fled into the house; locked himself in the bathroom; hid the firearm in the secret compartment; and still have time to attend to the needs of nature;
- (c) Conversely, that if the firearm was already hidden in the bathroom then custody and control of the firearm could not be attributed to the Applicant.

- (d) That Learned Trial Judge fell into error in concluding that the Applicant had exclusive control of the bathroom. The evidence that arose in the case negated such a finding of fact; and
- (e) That the Crown relied heavily upon the alleged admission of the Applicant that the firearm belonged to the Applicant. However if such an admission were real and genuine then there would have been no need to arrest or detain the other persons who were in the house.

Ground 2

That the then evidence, led by the Crown of a previous situation where the Applicant had been detained and questioned about a firearm offence by the Police was highly prejudicial to the Applicant and without any probative value and ought not to have been allowed. Further, that the Learned Trial Judge when arriving at his verdict adverse to the Applicant, did not disabuse from his mind that portion of the highly prejudicial evidence.

Ground 3

That the matter of malice or improper motive on the part of the Crown witness, Sergeant Ritchie, was raised by the Defence. However, the Learned Trial Judge failed to properly consider the impact of malice or improper motive on the part of the Crown witness and peremptorily dismissed the matter of malice or improper motive thereby depriving the Applicant of a proper consideration of his case.

Ground 4

That the matter of malice and improper motive arose fairly [sic] on the evidence as a whole as there was no dispute that Sergeant Ritchie was the person who had caused the Applicant to be taken into custody and questioned by the police on a previous occasion; that it was Sergeant Ritchie who had caused the motor vehicle to be driven at the applicant while the Applicant was at his, the applicant's gate;

that it was Sergeant Ritchie who led the chase of the Applicant into his house; that it was Sergeant Ritchie who claimed to have found the firearm; that it was Sergeant Ritchie who claimed that the Applicant assumed responsibility for the gun under caution. Further, that Sergeant Ritchie admitted that he, Sergeant Ritchie, regarded the Applicant as a wanted man.

Ground 5

That in all the circumstances the Learned Trial Judge ought not to have, without more, accepted the testimony of the Crown witness that the Applicant had taken responsibility for the firearm after having been cautioned.

[8] In relation to ground one, Mr Mitchell argued that the learned trial judge failed to properly analyse the factual evidence in the case and as a consequence arrived at a verdict which was unreasonable and cannot be supported by the evidence. We cannot agree with this submission, we find that there was sufficient credible evidence adduced by the prosecution to support the verdict. We find also, that, there was sufficient time for the applicant to hide the firearm after entering the house. Even if the firearm was already hidden before the applicant entered the house, the admission which the learned trial judge found that he made would be sufficient to establish his guilt, even if other persons had access to the bathroom. In our view, the fact that all the men were also detained after the admission was made, cannot be said to render the evidence of the admission incredible, especially in light of the explanation given by Sergeant Ritchie. For these reasons we think that this ground must fail.

[9] In ground two, it was submitted that the learned trial judge admitted into evidence, highly prejudicial evidence against the applicant and failed to indicate that he

had disabused his mind of such prejudicial evidence. It must be noted that this evidence was adduced by counsel for the applicant in spite of the caution given by the learned trial judge. The learned trial judge made no mention of this in his summation of the evidence concerning the events of 10 January 2010. This, in our view, indicates that this was not in his contemplation in arriving at his verdict. Furthermore, he clearly stated that this decision was based on the acceptance of the witnesses for the prosecution as witnesses of truth, after carefully observing their demeanour. We therefore find that this ground also has no merit.

[10] Grounds three and four were argued together. In relation to these grounds, it was submitted that the learned trial judge failed to properly assess the evidence and the complaint regarding malice and improper motive held by Sergeant Ritchie and to consider the effect of such malice or improper motive in the case for the Crown. Although Sergeant Ritchie gave evidence that he suspected that the applicant hid the firearm in the house, because of the reported incident in January and his sudden flight and he considered him to be a wanted person by the police, there was no evidence before the court that he acted out of malice or with any improper motive. Neither was there any evidence from which a reasonable inference of malice or improper motive could be drawn. Sergeant Ritchie denied the suggestions put to him and noticeably no mention of malice or improper motive was made in the evidence of the applicant. These grounds therefore must also fail.

[11] In relation to ground five, Mr Mitchell submitted that the learned trial judge ought not to have accepted the evidence of the witnesses for the prosecution that the applicant admitted possession of the firearm. The learned trial judge clearly in his summation stated that he accepted the witnesses for the prosecution as witnesses of truth based on his assessment of them. Undoubtedly, it was for the learned trial judge to make his assessment and we can find no fault with the conclusion he arrived at. This ground must also fail.

[12] For these reasons, we refuse the application for leave to appeal against the conviction. The sentences imposed by the learned trial judge are to commence on 4 September 2010.