JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 40/05

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, JA. (Ag.)

ROHAN OATES v R

Applicant unrepresented.

Mesdames Meridian Kohier and Dahlia Findlay for the Crown.

10 April 2008

ORAL JUDGMENT

SMITH,J.A.

The applicant Rohan Oates was indicted in the High Court Division of the Gun Court, May Pen in the parish of Clarendon. The indictment contained three counts. Count 1 charged illegal possession of firearm, count 2 - assaulting Nickesha Barrett and count 3 - assaulting Jasett McLean.

The particulars of the offences state that they were committed on 21 October 2004. At the end of the Crown's case a no case submission was made in respect of count 2. The learned trial judge upheld those

submissions but the accused was called upon to answer counts 1 and 3. At the end of the day the learned trial judge convicted him on those two counts.

The facts are:

Jasett McLean was the virtual complainant in respect of count 3. In October, 2004 Miss Mclean lived with the brother of the applicant, one Ralston Oates. They lived as common-law wife and husband. The applicant had another brother who also lived at the same house in Four Paths Settlement. The applicant's young daughter, Nickesha Barrett also lived at the house. Miss Mclean told the court that on 21 October there was a quarrel. She said that the applicant was cursing her young daughter Nickesha and telling her that she had to leave the house. She said sometime that day at about 1:20 p.m. she was inside of her room, her daughter was in the bathroom. She heard her daughter shout out "Sandy", that is Miss McLean's alias. She said she rushed to where the daughter was and the daughter came to her.

She saw the applicant with a gun in hand. She gave a description of the gun. The learned trial judge considered that description carefully and concluded that what the applicant had was a firearm as defined by the Firearm Act. Miss Mclean said when she saw the gun she was frightened and began to tremble. She said the applicant said to her "Hey

gal, yuh see all yuh, gal you know how long man a swear fi rape yuh". Miss McLean said she rushed back inside her room along with her daughter, she put on some clothes, locked the door and with her daughter she hurried to the police station where she made a report.

In cross examination she said that her room was next to the applicant's room and her daughter and the applicant had an argument that very afternoon. She reported that the applicant was cursing her daughter telling her that they have to leave the yard.

Constable Headley Powell also gave evidence. He said that he received a report at about 1:40 p.m. from Miss McLean and her daughter. He obtained a search warrant to search the dwelling of the applicant and went to the applicant's home in Four Paths Settlement. The applicant was there. He read the warrant to him and started to search his room. He didn't make mention of searching the person of the applicant at that stage. He said during the search the applicant ran out of the room. The applicant was chased but that chase was to no avail. He testified that nothing incriminating was found in the applicant's room.

On 3l January 2005 the applicant was arrested and charged and when cautioned he said, "Officer, a report dem make to yuh". That in short is the evidence of on which the prosecution relied.

The applicant gave evidence. He called one witness, one Mr. Barrington Rose, to give evidence on his behalf. The applicant denied having a gun and denied pointing a gun at Miss McLean. He said that_the police was searching his room and when they produced handcuff he "said into his mind" he should run, and he did run. He is denying this charge and he swore that persons wanted to get him out of the yard and that was the reason he said why they lied on him.

The learned trial judge found that his witness Mr. Rose was not relevant. The learned trial judge carefully examined the evidence that was adduced and, as he correctly said, the real issue was one of credibility. He looked carefully at the complainant's evidence and also examined the applicant's sworn evidence and he concluded that the applicant was not speaking the truth. Having said that he turned to the complainant's evidence. He found her to be a witness of truth, a witness on whose evidence he could rely and, having said that, he found verdicts adverse to the applicant on counts 1 and 3. The applicant as mentioned before was acquitted on count 2. The learned trial judge then proceeded to sentence him on count 1 to five years imprisonment and count 2, three years and directed that the sentences should run concurrently.

We looked at the sentences and concluded that it could not reasonably be argued that the sentences were manifestly excessive bearing in mind the charges that were before the Court. One must also bear in mind that the applicant had four previous convictions. In August 2000, he was sentenced to 18 months hard labour for house breaking and larceny, on 8 November 2001 he was fined $2,000 or three months for praedial larceny, on 22 November 2001 he was sentenced 18 months hard labour and six years for malicious destruction of property and larceny from a dwelling house respectively.

The sentences cannot be described as manifestly excessive. What we will do though is that, having refused leave, we will direct that the sentences run from the date of conviction. The upshot is that leave to appeal is refused, sentences are to run as of the date of conviction.