

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 34 OF 2009

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

STEVEN PAGE v REGINA

Gladstone Wilson for Appellant

Ms. Maxine Ellis for the Crown.

20 January 2010

ORAL JUDGMENT

MORRISON, J.A.:

[1] This is an appeal from a conviction and sentencing in the High Court Division of the Gun Court on 5 March 2009 after a trial before Mr. Justice Marsh. The appellant was charged on 3 counts: one, Illegal possession of firearm, two, Illegal possession of ammunition, and three, shooting with intent. He was found guilty on all 3 counts and was sentenced to 7 years on count 1, 2 years on count 2 and 12 years imprisonment on count 3. The sentences were ordered to run concurrently.

[2] He filed an application for leave to appeal against this conviction and the single judge granted leave to appeal, so he appears before us today as an appellant. Mr. Gladstone Wilson has filed 5 grounds of appeal which basically challenged the evidence of identification against the appellant, and complained, in particular, that, as the single judge observed, the judge's directions on identification were deficient in that he did not give himself the required warning, neither did he analyze the identification evidence in the context of that warning.

[3] The brief facts of the case are that four (4) Police Officers were on patrol in a marked police vehicle in the Central Village Area, when they noticed a group of men ahead of them. The men fired shots at them and a shoot-out ensued. At the end of the day, the appellant, who was subsequently found suffering from gunshot injuries at the Spanish Town Hospital, was charged with the offences to which I have referred. In the light of the decision we have reached as to the disposal of the case, which we will in due course announce, I do not propose to go any further into the facts of the case.

[4] Suffice it to say that Ms. Maxine Ellis for the Crown, quite properly in our view, conceded that the appeal could not be resisted. The learned trial judge's directions were wholly deficient in a number of respects and on that basis alone, the appellant is entitled to succeed. The question

that has exercised our minds is whether in the circumstances of the case, a verdict of acquittal should be entered, or whether the court should order a retrial in the interests of justice.

[5] Having considered the matter carefully and having taken into account Mr. Wilson's detailed and spirited submission in this regard, it is our view that this is a case in which an order for a retrial would be appropriate in the interests of justice. It seems to us that there is evidence upon which a jury, properly directed, could come to a verdict of guilt and, on that basis, it seems to us that this is a matter that should return to the trial court for a reconsideration. In the circumstances, the appeal is allowed and the conviction is quashed and the sentences are set aside. A new trial is ordered in the interests of justice as early as it is convenient.

[6] It would be remiss of me if I were to leave this judgment without commending Mr Gladstone Wilson for the admirable detail in which he set out his grounds of appeal and his arguments in the skeleton argument. I should commend him as well for having filed his grounds of appeal and the skeleton arguments on 4 January 2010, which is a full two (2) weeks in advance of the hearing. This is a great improvement over the norm which we have come to see, whereby these papers are sometimes handed up the day before, or on the day of the hearing itself.

I should finally commend Mr Wilson on the manner in which he has presented this case before us.