JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 166/06

BEFORE: **THE HON. MR. JUSTICE SMITH, J.A.**
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.

REGINA v RICKAL BARRETT

Applicant unrepresented
Miss Deneve Barnett for the Crown

December 9, 2008

ORAL JUDGMENT

MORRISON, J.A.

This is an application for leave to appeal against conviction and sentence after a trial before Sykes J in the Western Regional Gun Court held in the parish of Saint James. The applicant was convicted on 14 September 2006 on three counts of an indictment charging illegal possession of firearm, wounding with intent and shooting with intent. He was sentenced to 10 years imprisonment on counts 1 (illegal possession) count 3 (shooting with intent). He was sentenced to 15 years imprisonment on count 2 which charged him with wounding with intent.

In this matter the evidence for the Crown came almost entirely from a single witness, Mr. Benzley Manderson, who told the court that he was a carpenter and a mason and that on 13 May 2006 he was at a house in

Savanna-la-mar where he was making a mailbox. He was measuring and bending up a sheet of tin sheeting to make the mailbox. He was sitting with two other men. While he was there he heard an explosion. His back was towards the gate and he felt, to use his words, "like something pushing me to the ground." He tried to get to his feet and just as he was about to run he heard a second explosion, after which he saw blood coming from his right hand. He ran between a house and a kitchen. He was trying to escape but found that his hands were "helpless", which the learned judge took to mean that his hands were numb. He could not feel anything, he could not use his hand. Trying to find another means of escape, he saw the applicant Ricardo Barrett whom he knew before. The applicant was charged as Rickal Barrett also known as Ricardo Barrett.

He saw the applicant shake his right hand and heard a loud explosion, while seeing some white flashes, then he got "down low." He then used his head to "buck" the zinc to try to make his escape. The zinc, he said, " reply", whereupon he jumped over two zinc fences and ran to the main road, where he made good his escape. When he first saw the applicant, he saw him with something in his hand looking like a gun. He was not certain, but then he heard an explosion coming from the direction of the gate, which was when he saw the applicant. At that time the applicant was about 18-20 feet away from him and he saw the

applicant's face for about 5-8 seconds. There was nothing obstructing his view from seeing the applicant's face. Those are the circumstances in which he purported to identify the applicant as the person who fired shots at him that day.

Among the things which were put to the complainant, Mr. Benzley Manderson by Counsel for the applicant was that he was malicious and he was making up all of this to frame the applicant because of some previous matters between them. The learned trial judge considered this carefully and formed the view that Mr. Manderson was truthful when he described the incident that the identification was made in circumstances in which it was reliable. He formed the view that this was a recognition case because Mr. Manderson gave evidence of having known the applicant for about 4-5 years and said in fact that he knew his mother and father. He added that he used to see him often, but 2-3 years he had not seen him until recently. As it turned out, when the applicant gave evidence he himself volunteered that he had been in prison over a period that coincided with the 2-3 years during which Mr. Manderson had not seen him.

One of the matters that Miss Barnett very properly brought to our attention as potentially causing concern was the disclosure of the applicant's having been to prison. However, this case was unusual in

that is it was actually volunteered by the applicant so as to explain something about where he was at that time.

The applicant's defence was an alibi. On the particular day, a Saturday, at about 12 o'clock in the afternoon, he was at his friend's yard. It was the last night for the "wake yard and I was cleaning up... some conk and fish". His friend's yard is near to the ball ground. He went there after 10 o'clock and left about 12:30 to go over to the ball ground to buy some food, and remained there for a couple of minutes before returning to his friend's yard. He stayed at his friend's yard about ½ hour playing some dominoes before he borrowed a bicycle to go downtown to the sea side. This was his alibi and he maintained that he knew nothing about the incident described by Mr. Manderson. He volunteered that he had come from prison on 29 March 2006, but had not seen Mr. Manderson since that time.

The learned trial judge dealt very carefully with the issue of identification. He gave himself a full direction on identification and he distinguished very carefully the issues of honestly and reliability. He directed himself fully and properly in accordance with the authorities. He also acknowledged that it was a recognition case and said the better you know a person the more unlikely it is that you are going to make a mistake. Nevertheless, experience had shown that in cases such as that mistakes were made. As far as we are able to see the learned trial judge

considered the issue very carefully and at the end he felt satisfied according to the requisite standard that the charge had been made out.

We agreed with crown counsel on this and we are of the view that the application for leave to appeal cannot succeed in this case, the judge having rejected the applicant's version of what took place and looked back at the crown's case and found that the case had been made out to his satisfaction. On the question of sentence there is nothing to suggest that the sentence imposed was manifestly excessive. The judge took into account that the applicant had four (4) previous convictions, two (2) of them involving the use of a firearm and had previously spent some time in jail. In those circumstances in our view, this application for leave to appeal cannot succeed and it is therefore dismissed. Sentence is to commence from 14 December, 2006.