

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 25/2006

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

FITZROY REID v R

Fitzroy Reid unrepresented

Ms. Meridian Kohler for the Crown

26th May, 2008

ORAL JUDGMENT

COOKE, J.A.

1. The applicant Fitzroy Reid, was on the 2nd February, 2006 convicted in the Western Regional Gun Court in Montego Bay in the parish of St. James. The case was presided over by the Honourable Miss Justice Straw. He was convicted on two counts namely: illegal possession of firearm and illegal possession of ammunition. He was sentenced to seven years at hard labour in respect of each count.

2. The circumstances fall within a very narrow compass in that on the 7th October, 2005, Det. Cpl. Deron Anthony Cross, Cons. Denton Burt and Cons. O'Brian Scarlett were on a Special Operational Duty in Falmouth in the parish of

Trelawny. While on patrol they received information which directed their course to Water Square, which is the place where motor vehicles (taxi) would gather for transportation to Clarke's Town. When the party arrived on the scene there was a group of five men, two of whom had guns, one Denmark Clarke who is not before the court and the appellant. The police ordered the men to drop the guns and the men fled. The appellant darted down Officers Alley and onto Harbour Street in Falmouth where he disposed of what turned out to be a homemade firearm in the bushes. Within an eight meter range after he had disposed of the firearm he was held. Within the firearm was a 12 gauge cartridge and two more rounds of ammunition were found on his person. On his apprehension his response was "a Moola and Pepsi dem a run me down fi kill me." Moola and Pepsi were among the five persons there.

3. With these circumstances it was all an issue of the assessment of the credibility of the witness for the prosecution and the learned judge was satisfied. There can be no fault with her approach in the assessment of the evidence and accordingly this court refuses the application for leave to appeal against conviction.

4. The single judge granted leave to appeal against the sentence of seven years imposed on count 2. This count pertained to the illegal possession of three rounds of ammunition. We are not of the view that this sentence was manifestly excessive. Firstly, in the overall circumstances the sentence taken in a global

sense cannot be said to be manifestly excessive. Further, it is not a case where a person was found with three rounds in his pocket. It is impossible to divorce those three rounds from the firearm which he had. In totality, it cannot be said that the sentence on count 2 is manifestly excessive.

5. Hence, for those reasons the application for leave to appeal against conviction is refused. The appeal against sentence on count 2 is dismissed. Sentences are to run concurrently and commence on 2nd May, 2006.