

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 25/2010

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

LEON SCHROETER v R

Dr. Randolph Williams for the appellant

Dirk Harrison, Nigel Parke and Miss Keisha Prince for the Crown.

28 June 2010

ORAL JUDGMENT

MORRISON, J.A.:

[1] This is an appeal from a conviction and sentence in the High Court Division of the Gun Court on 29 August 2006. This is a matter in which the appellant, Mr Leon Schroeter was jointly charged with Mr Omar Shaw for the offences of illegal possession of a firearm and robbery with aggravation in respect of an incident which took place on 16 February 2006 in the Westminster Road area in the parish of St Andrew.

[2] The complainant in the matter, who lost his motor vehicle and a cellular telephone, made a complaint to the police. As a result, certain enquires were carried out and the appellant, Mr Shaw and others were arrested in the parish of Portland, where the complainant identified a cellular phone and a Honda Motor Car, in which certain persons, including the appellant and Mr Shaw, were found at that location somewhere close to Buff Bay in the parish of Portland.

[3] When Mr Shaw's appeal came on for hearing before this court on 11 December 2009, Dr Williams, who now appears for Mr. Schroeter, appeared for Mr Shaw and on that occasion, his appeal was allowed on a concession from the Crown that the conviction could not be supported, on the basis that there was no evidence to link the appellant in that case that is, Mr Shaw, with the robbery for which he was charged.

[4] Mr Dirk Harrison, who appears for the Crown, quite properly pointed out, that it is also clear that there was insufficient evidence in fact to ground the jurisdiction of the Gun Court to try this case and so it is for this reason that Mr Harrison has taken the position that he cannot support the conviction in this matter, on identical facts, and we entirely agree with him. As we did in the previous case, we have also given some consideration to whether it would be a proper exercise of the court's discretion to remit the matter to the Resident Magistrate's Court, given

that this is an incident which is alleged to have taken place in 2006. We again entirely agree with Mr Harrison that it is not an appropriate case in which to exercise that discretion.

[5] In the result, we consider that this appeal must also be allowed. The order of the court therefore is that the appeal is allowed. The convictions are quashed and the sentence set aside and a judgment and verdict of acquittal is entered.