NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 100/07

BEFORE: THE HON. MRS JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MISS JUSTICE G. SMITH J.A. (Ag)

FLOYD SCHLOSS v R

Applicant unrepresented

Mr. Vaughn Smith and Keri-Ann Kemble for the Crown

December 15, 2008

ORAL JUDGMENT

MORRISON, J.A.

This an application for leave to appeal against conviction and sentence for illegal possession of firearm and wounding with intent in the Gun Court Division of the St. Elizabeth Circuit Court held in Black River on 11th July 2007. In this matter leave to appeal was refused by the single judge and the application for leave to appeal has been renewed before this court.

The case for the prosecution in this very unusual case, as Mr. Smith indicated, rests almost entirely on the credibility of the evidence of the complainant, Mr. Joselyn Sanderson, who from the evidence was an elderly man. He was described as such more than once by the learned

trial judge. The complainant was working at the material time in a ganja field not belonging to him at Hounslow in the parish of St. Elizabeth. His evidence is that while he was working on 18 October 2006, he heard a voice shouting "police! police!" and when he looked up he saw a man, whom he identified as the applicant, standing with another man who is not before the court, and pointing a "short gun" at him. He decided to run and he heard a loud explosion and he felt a burning sensation in his left foot. Shortly after that the man, whom he identified as the applicant, came over to him and asked him if his foot was broken. He looked at his foot and realised that it was bleeding and he told the applicant that it did not look as if it was broken. He had heard it said that when one's foot is broken one's toes can't move and, since his toes could move, he took it that his foot was not broken. The applicant told him that he was to work with him and he needed to comply with him. And that if he didn't comply he was going to cut down the ganja and bring him down to the police station and presumably have him prosecuted for ganja. They then made their way down out of the ganja field with the applicant helping the complainant to walk with a stick and at one point actually carrying the applicant on his shoulder. The applicant told him that when they got to the hospital he should tell the doctor that he was walking on the Hounslow main road when two men on a motor bike came up and robbed him and shot him. They arrived at the hospital in Black River,

having been carried there in a blue Nissan motor car by the applicant who saw to his registration and left him there. The applicant, having changed his clothes then came back to the hospital while the complainant was still there later in the afternoon.

The upshot of all of this was that Mr. Sanderson positively identified the applicant as the person who shot him and who had been there with him that day. He said that the applicant not only left him at the hospital and came back, but also helped him to get some medication which he was due to get. He subsequently went to an identification parade held at the Black River police station where he identified the applicant as the man in question. The identification parade was conducted by Sgt. Thomas who gave evidence. Although there was some suggestion in cross-examination that an attempt was made to make the applicant distinguishable, in fact that he was the only person on the parade whose shirt was "crushed up," it is clear that the applicant was represented on the parade by experienced counsel, Mr. Cecil July, who made no objection to the conduct of the parade. The complainant himself gave an answer in relation to what happened on the parade which clearly impressed the trial judge. It was put to him that the applicant was the only person who looked like he did on the parade and the answer which was given was that "the only person looked just like Mr. Schloss was Mr. Schloss," which the learned trial judge took to be an extra positive

identification. It was certainly a most emphatic identification. The applicant was arrested and charged.

The defence, after a very brief no-case submission which was rejected by the learned trial judge, was supported by the sworn evidence of the applicant himself. In his evidence the applicant denied the offence but said that on the day in question he had in fact reported to work at the Black River Police station at about 9:00 a.m. but that he fell ill with a stomach problem. At about 10:30 a.m. he went to a pharmacy in Black River, got some medical attention from the proprietor and proceeded to his home in Good Hope, a district in the Santa Cruz area.

On the way home, he stopped at the home of a female acquaintance of his in Bethany, where he spent approximately 1 hour. When he left her home in Bethany, he was now on his way home when he observed two men on the road carrying two (2) crocus bags on their shoulders. He saw one of the men travelling to and from the bushes. He parked his car and followed the track that led him to the Mountainside hills. He went for about a mile into the bushes and observed a large ganja cultivation. It was a total of six acres of full grown ganja. He returned to his car and drove in the direction of the Black River Police Station to report this piece of intelligence, when he said he saw a man on the right hand side of the road, fanning down his car, he pulled over

and stopped and he observed on his left foot there was blood, and the man had his pants rolled up on the left side and the man told him that he had injured himself coming out of the bushes. He assisted the man to the Black River hospital where he left him and then he went to the Black River Police Station where he made a report about the finding that he had made.

The evidence of the applicant was that this man he had found on the road was in fact Mr. Sanderson who, on his account, was not injured by any action of his. The applicant called as witness a Spl. Inspector Gwenita Robinson of the Black River police station who, it is fair to say, did not support his case. She gave evidence of having heard the applicant protesting loudly in the police station one morning that he had made a report to the Commander about a major ganja find and he did not see that anything was being done to investigate it.

The learned judge fully considered the evidence and gave himself appropriate directions, particularly on the question of identification which, by virtue of the defence put forward by the applicant, arose on the evidence. He analysed very carefully, as Crown Counsel has pointed out, the circumstances of the identification, he took into account that on the Crown's case, Mr. Sanderson the witness, had been in the company of the applicant for some considerable time, from the time of the actual shooting through the journey back down out of field, on to the road to

the motor car and to the Black River hospital. He took into account that applicant had actually come back to the hospital. At a certain stage on the journey the applicant had carried Mr. Sanderson on his back out of the field. The evidence of identification was particularly strong and notwithstanding the warning which he gave himself, he felt able to accept the evidence of Mr. Sanderson. The matter turned purely, as Mr. Smith has submitted, on the credibility of Mr. Sanderson's version of what took place.

The learned trial judge rejected the evidence of the applicant. He looked back at Crown's case and found that it had been proved to the requisite standard. Mr. Smith submitted that there is no basis on the printed record to disturb the findings of the learned trial judge and that the verdict of guilty of the offences of illegal possession of firearm and wounding with intent was fully justified by the evidence.

We fully agree with this submission. In respect of sentence, the applicant was sentenced to seven years imprisonment for illegal possession of firearm and ten years imprisonment for wounding with intent. In the circumstances we consider that the learned trial judge did in fact keep his promise to be lenient to the applicant. There is no basis for disturbing the sentence which cannot be said to be manifestly excessive.

In the result the application for leave to appeal is refused. The sentence is to commence from the 4th October 2007.