

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 72/2007**

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

**MARVIN STEWART v REGINA**

**Applicant unrepresented**

**Miss Maxine Ellis for the Crown**

**January 18, 2010**

**Oral Judgment**

**COOKE, J.A.**

1.     On the 17<sup>th</sup> May 2007 in the Western Regional Gun Court in Montego Bay, the applicant was convicted on an indictment which contained four counts. Counts 1 and 2 pertained to an incident in Flankers, where he was charged with illegal possession of firearm and shooting at police officers. Counts 3 and 4 pertained to a shooting and illegal possession of firearm at a place called 'Providence Heights' which is within the immediate proximity of Flankers.

2.     Both incidents took place around mid-day. In the first incident (the one pertaining to the shooting in Flankers), a policeman, one Constable Robinson

who was on a spot check operation with other police personnel, signaled a car travelling in Flankers to stop. The car, at his signal, made a u-turn which resulted in a chase being made. There were two persons in the car being chased and it was the passenger, who, at that time, was dressed in a yellow striped t-shirt, who fired. He escaped. The second incident took place in Providence Heights, within a short time afterwards, when a person dressed in similar apparel, yellow striped t-shirt, shot at one Constable Grant.

3. The evidence against the applicant in respect of the first incident, that is, the Flankers incident, was visual identification. In addition, he was apprehended on the 3<sup>rd</sup> August which is some months after the 23<sup>rd</sup> April 2006, which is the date of the offence, and taken to the Savanna-la-mar Police Station and then to Montego Bay Police Station. And, whether by coincidence or otherwise, Constable Robinson saw the person who shot at him at the Police Station in Montego Bay, the latter being escorted there by Sergeant Sirjue and it is the constable's evidence that the applicant said to him "Boss mi sorry bout everything, mi just want a chance fi change". The tenor of that statement, which could be interpreted as an admission, was buttressed by Sergeant Sirjue who took the applicant from the Savanna-la-Mar Police Station and who gave evidence of being used to the same effect.

4. In respect of the second shooting, (that is, the one involving Constable Grant), Grant was in plain clothes when he saw the applicant approaching him,

sweating profusely. There was some sort of confrontation between the applicant and this constable and the upshot was that the applicant shot at him not once, but twice. In analysing the evidence, the learned trial judge rejected the identification evidence that was given by Robinson. He refused to accept that the alleged confession made both to Sirjue and Robinson was made, so we discount and reject that identification. However, what we find significant is that the ballistic evidence seemed compelling, in that, at the Flankers scene expended bullet cases were recovered and in the Providence Heights expended bullet cases were recovered and the ballistic evidence is to the effect that they were fired from the same gun. It follows that the learned trial judge was able then to come to the conclusion that the same person who fired in Flankers, was the same person who fired in Providence Heights.

5. Further, although he rejected the identification evidence as to the features of the person who fired, he accepted that the person who fired, was dressed in a yellow striped t-shirt, and the person who fired at Grant in Providence Heights was that same person. He accepted that the identification evidence of Grant, and I take this from his summation:

“Corporal (sic) Grant and the man went towards each other from a distance of 25 feet, Corporal (sic) Grant recognized him as the accused whom he knew before as ‘Jodi’, although he had not seen him since 2004. After they passed each other, the accused turned back and directed words to Mr. Grant, who was then dressed in civilian clothes. The man faced Constable Grant and pulled a firearm and fired at him. Constable Grant returned the fire and the man ran.

Constable Grant had reason to carefully look at the man as the man approached him in an aggressive manner.”

So, the learned trial judge was satisfied so that he felt sure pertaining to the correctness of the identification of the person who shot him and since, as he found, that the person who fired the shots in Flankers was the same person who fired the shots in Providence Heights, he was able to pronounce a conviction on all four counts in the indictment.

6. In the event, the application for leave to appeal is refused and the sentences are to commence on the 17<sup>th</sup> August, 2007. Before departing from this case, the court wishes to say that the summing-up by the learned trial judge and his treatment of the evidence before him was comprehensive and portrays a discriminating and quite a discerning quality.