

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 3/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE HIBBERT JA (AG.)**

SELVIN THORPE v R

Applicant unrepresented

Miss Paula Lewellyn, QC Director of Public Prosecutions and Miss Michelle Salmon for the Crown

31 May 2011

ORAL JUDGMENT

PANTON P

[1] The applicant Selvin Thrope was convicted in the High Court Division of the Gun Court by Miss Justice Mangatal of the offences of illegal possession of firearm and assault at common law. In respect of the first count, illegal possession of firearm, he was sentenced to 15 years' imprisonment and in respect of the second count for assault, he was sentenced to one year's imprisonment. Both sentences were ordered to run concurrently.

[2] The trial took place on 11 May 2009 and sentence was postponed to 21 May 2009.

[3] The circumstances here, were that the main witness for the prosecution Mr Richard Gill who operates a cook shop in Bryce Hill, August Town in the parish of Saint Andrew was at his business place on 15 November 2007, at about 12:40 in the afternoon when the applicant, who was known to him before that day, came into the shop and ordered him to close down the shop and to leave Bryce Hill. Mr Gill told him that he would do so when he was finished selling for the day. This response was not pleasing to the applicant, because, he then pulled a firearm from his waist pointed it at Mr Gill across the counter and, according to Mr Gill, the applicant selected a shot by pulling back the top of the gun. He, Mr Gill, could see the shot which had been selected in the chamber of this firearm. The applicant repeated his demand by saying "lock it up right now". He added that if he, the applicant, were to see Mr Gill back in Bryce Hill gunshots would fire. Mr Gill, understandably, said that he was quite intimidated. He closed the shop, took a taxi and proceeded to the police station and made a report. Subsequently, he identified the applicant at an identification parade held at the Half-Way-Tree Police Station. It should be pointed out that during the evidence, Mr Peter Champagnie who then appeared as counsel for the applicant, indicated that identification was not an issue. The learned trial judge recognized that because in her summation she indicated that the real issue was one of credibility.

[4] The applicant as is customary in this jurisdiction gave an unsworn statement and the learned trial judge gave it the weight that it deserved. In that statement, he said that Mr Gill had feelings for him because of an incident with his nephew. This had been explored in cross-examination and Mr Gill had indeed admitted that there was an incident involving the applicant and his nephew. However, he stressed that that incident had nothing to do with the evidence that he was giving. The applicant went on in his unsworn statement to inform Miss Justice Mangatal that he didn't "back any gun" and that Mr Gill is one of the main distributors in August Town who contributes to the war and crime that go on in August Town.

[5] The learned trial judge having considered all that had been placed before her accepted Mr Gill as a witness of truth. She was most impressed by his demeanour and found the applicant guilty. Having examined the summation and the evidence, we agree with the single judge that there is no basis for granting this application for leave to appeal.

[6] As regards the sentence, the applicant had previous convictions of note. Consequently, the sentence of 15 years on the charge of illegal possession of firearm is justified. It seems that the applicant was also serving a sentence at the time of his trial. We find that the sentence imposed was appropriate, and we note that the learned judge was most merciful in ordering that these sentences were to run concurrently with the sentence that was being served.

[7] The application for leave to appeal is therefore refused and the sentences are to run from 5 July 2009.