

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 70/2008**

**BEFORE: THE HON. MR. JUSTICE HARRISON, JA  
THE HON. MR. JUSTICE MORRISON, JA  
THE HON. MISS JUSTICE PHILLIPS, JA**

**MARVIN WALKER v R**

**Applicant unrepresented**

**Mrs Sharon Milwood-Moore for the Crown**

**1 February 2010**

**ORAL JUDGMENT**

**HARRISON, JA**

[1] This applicant was tried before Mr Justice Hibbert in the High Court Division of the Gun Court on an indictment containing two counts. In respect of count one, he was charged with illegal possession of a firearm and was sentenced to 10 years imprisonment at hard labour, and on count two he was charged with the offence of assault with intent to rape and was sentenced to two years imprisonment at hard

labour. The single judge who dealt with the matter in this court refused the application seeking leave to appeal so Mr Walker has renewed his application to this court.

[2] The facts are fairly straightforward. At the trial, both counsel for the prosecution and for the applicant agreed that the issues rested squarely on the question of credibility. As the learned trial judge indicated, the virtual complainant said she was assaulted by the applicant who at the time of this assault was in possession of either a real or an imitation firearm. From his defence, it is alleged that there was an intimate relationship between the complainant and himself. He also stated that a promise was made to give her money and that when that promise was not fulfilled she indicated to him that "mi ago f... you up" if he did not give her the money.

[3] The facts reveal that the complainant was at her grandmother's house on 14 March 2008 when the applicant came there. They spoke for a while and then he left at about 11:00 a.m. She also left her grandmother's house at about 1:30 p.m. to go home but to return to the grandmother's house and thereafter to go to work at 2:00 p.m. On her way home she felt when somebody held her in the back of her neck and then she heard this voice which she recognized to be that of the applicant. He showed her some items in his hand and asked her if she knew what they were. She said no, and he informed her that they were gunshots. He then started to push her towards a lake. He held her hand and pulled her and she was trying to get away from him. At one stage, she said he lifted her and carried her towards the lake and threw her on the ground on her back. He pulled a ratchet knife and put the blade at her neck. She

heard as if a car was passing when she bawled out and he told her to keep quiet. He then pushed his hands down in the front of her shorts and realized that something was not too right where she was concerned so he quickly withdrew his hands. He then took his penis from his pants and told her to suck it. She resisted and he held her head trying to force it against his penis. She turned her head and he boxed her in the face. She told him a lie that she wanted to urinate and when he eased up off her she used the opportunity to grab her phone and made her escape. She ran through the bushes onto a construction site and sometime later she went to the St. Ann's Bay Police Station and made a report.

[4] Constable Trudy Jarrett, who was the investigating officer, carried out investigations and arrested and charged the applicant with the offences of illegal possession of firearm and indecent assault.

[5] The applicant made a statement from the dock. He said that he went to the home of the complainant's grandmother where he saw the complainant. They spoke and then went outside. There was a conversation about \$5,000.00 which he said he had promised her because they were having an intimate relationship. He said that she was telling lies on him because she did not get that \$5,000.00 and that he had a witness who could testify on his behalf as to his whereabouts at the time of the incident. He called Oraine Higgins, who gave evidence as to his whereabouts on that day. Higgins said that he had known the applicant for about five months and that on

March 14 the applicant came to his place between 11:00 a.m. and 11:30 a.m. and remained there until late afternoon.

[6] The learned trial judge stated that she was not impressed with the witness Higgins and that he did not strike her as a witness of truth. She did not believe him when he told the court that the accused man went to his home between 11:00 a.m. and 11:30 a.m. and remained there until late and therefore rejected his testimony. The learned trial judge said that having seen the complainant and heard her, she accepted her as a witness of truth and found that the accused man did in fact hold a gun at her head, push her down and attempt to put his hands in her shorts. In the circumstances, she accepted the prosecution's case and found the applicant guilty on both counts of the indictment.

[7] We have gone through the transcript very meticulously and we agree with counsel for the prosecution that there is nothing that could be urged on behalf of the applicant to support the grounds of appeal which complained that the trial was unfair and that the sentence of 10 years was "harshly" excessive. In the circumstances, the application for leave to appeal is therefore refused. The sentences should commence as of 15 August 2008.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 9/2009

BEFORE: THE HON. MR JUSTICE PANTON, P.  
THE HON. MR JUSTICE MORRISON, J.A.  
THE HON. MR JUSTICE BROOKS, J.A. (Ag)

DEMAR WATSON v R

Dwight Reece for the Applicant

Ms Kathy-Ann Pyke and Greg Walcolm for the Crown

12 April 2010

ORAL JUDGMENT

MORRISON, J.A.

[1] This is an application for leave to appeal against conviction and sentence in the High Court Division of the Gun Court held at May Pen in the parish of Clarendon on 1 December 2008. Having found the applicant guilty of two counts on the indictment namely: illegal possession of firearm and shooting with intent, Daye J sentenced him to eight years imprisonment on count one and 15 years imprisonment on count two. The sentences were ordered to run concurrently.

[2] From this conviction, the applicant's application for leave to appeal went firstly before a single judge of this court, who considered that the matter turned entirely on issues of identification and credibility and that there was no basis to grant leave to appeal. As is his right, the applicant has renewed the application before this court.

[3] Before us, counsel for the applicant Mr Dwight Reece, who appeared for the applicant at the trial, again appeared and quite candidly and, if I may say so, properly, indicated to the court that, having perused the transcript of the evidence and the learned trial judge's summation, he was unable either to support the grounds originally filed by the applicant himself, or to advance any further argument on behalf of the applicant. On the basis of the material that appeared in the transcript, we share Mr. Reece's assessment of the situation.

[4] The allegations were that on 6 April 2008, the applicant unlawfully had in his possession a firearm without a licence and that on that day he shot with intent to causing serious bodily harm at Mr Phillip Dawkins.

[5] The sole eye witness for the prosecution to that incident was Mr Phillip Dawkins who was the virtual complainant. Mr Dawkins' evidence was that, on the day in question, he was in the vicinity of Canaan Heights, in the parish of Clarendon, when the applicant came upon him and fired a shot at him. He was able to recognize the applicant because

he was someone well-known to him. He had known him for at least 17 years. He gave evidence that he knew his family, his mother, and a brother of the applicant who attended Bustamante High School.

[6] The learned trial judge assessed the issue of identification very carefully, particularly in the light of the defence put forward on behalf of the applicant in his unsworn statement in which he basically denied any involvement in the incident for which he was charged. He told the court in his unsworn statement that he lived in Canaan Heights. He was a higgler. He said: "I didn't shoot at him, I didn't have any gun. He is telling lie on me sir, because of his brother's death. He is trying to frame me sir".

[7] The learned trial judge accepted that the issue was one of identification. He gave himself a very careful and full direction on the question of identification. He also took into account a suggestion in the case which was borne out by the unsworn statement given by the applicant himself, that there were issues of motive involved in the case, that the applicant might have had a motive to fabricate these charges against him because of the death in an alleged incident of gang warfare of brothers of the complainant.

[8] The learned trial judge accepted the evidence of the complainant. He also, having taken into account the warning which he had given

himself as to identification, accepted that on the Crown's case there was a sufficient opportunity to identify the applicant. He also considered the issue of motive and credibility in the light of alleged gang warfare in the Canaan Heights area. He took that into account and came to the conclusion that the applicant was guilty as charged.

[9] The learned trial judge devoted a fairly long time to the question of sentencing and it is obvious that he considered this very carefully as well and at the end of the day, he came to the conclusion that the appropriate sentence for illegal possession was eight years and for shooting with intent was 15 years imprisonment. As he told the applicant, "I can't do much more than that, it should be 18", but taking into account the fact that he had two previous convictions, which were irrelevant to the offences for which he was charged, he gave the sentence of 15 years imprisonment.

[10] It has not been contended, that this sentence was manifestly excessive and Mr Reece has not contended that this morning.

[11] In the result, the application for leave to appeal is dismissed and the sentences are to run from 1 March 2009.