

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 8/2009**

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

**SOLOMON WILLIAMS v R**

**Dwight Reece for the appellant**

**Miss Maxine Ellis for the Crown**

**20 January 2010**

**ORAL JUDGMENT**

**HARRISON, JA**

[1] The appellant was tried in the High Court Division of the Gun Court for the parish of Clarendon held at May Pen before Mr Justice Pusey on an indictment containing five counts. Count one charged him with illegal possession of a firearm, and on count two he was charged with wounding with intent. On count one he was sentenced to a term of seven years imprisonment at hard labour and on count two he was sentenced to a term of 12 years. The sentences were ordered to run concurrently. The appellant had succeeded on no case submissions in respect of counts three, four and five.

[2] The facts reveal that Mr Miller, the complainant, was at his home on 3 September 2006 at about 6:30 p.m. when the appellant came to his gate. They had an argument, the appellant pulled a firearm and according to Mr Miller, "buss couple shot" after him. One of the shots caught him. He felt a burning sensation in the area of the foot and he was taken to the hospital where he was treated for gunshot injury.

[3] The ground of appeal complained that the learned trial judge erred as a matter of law in relying solely on the issue of credibility in order to determine the correctness of the complainant's identification. Crown counsel has conceded that there is merit in this ground of appeal.

[4] We are of the view that there is merit in the arguments raised by Mr Reece for the appellant. There are several cases from this court which state that where credibility is an issue, the learned trial judge ought to give the usual **Turnbull** warning even when he sits as a single judge.

[5] In the circumstances, we do believe that there is merit in the ground filed. We further believe that in the interests of justice a new trial should be ordered. The appeal is allowed, therefore the conviction is quashed and the sentence is set aside. The new trial should take effect as early as possible.