[2018] JMCA Crim 12

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 7/2014

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE P WILLIAMS JA

SEAN THOMPSON v R

The applicant is unrepresented

Miss Paula Llewellyn QC, Mrs Natiesha Fairclough-Hylton and Miss Natallie Malcolm for the Crown

16 January 2018

MORRISON P

[1] On 9 October 2013, after a trial in the High Court Division of the Gun Court in May Pen, the applicant was convicted by F Williams J (as he then was) ('the judge') of the offences of illegal possession of firearm ('count one'), and two counts of wounding with intent ('count two' and 'count three').

[2] On 18 October 2013, the judge sentenced the applicant to seven years' imprisonment on count one, 10 years' imprisonment on each of counts two and three, and ordered that these sentences should run concurrently.

[3] The applicant's application for leave to appeal was considered on paper by a single judge of this court on 14 June 2017, and refused. The single judge considered that the issues which arose in the case, which primarily had to do with the issues of identification by recognition and credibility, had been adequately dealt with by the judge and that the sentences which he imposed could not be said to be manifestly excessive.

[4] Before us this morning is the applicant's renewed application for leave to appeal. Although the applicant is unrepresented, we have had the benefit of very helpful and conspicuously fair submissions from Miss Natalie Malcolm of the Office of the Director of Public Prosecutions ('the respondent'). This had greatly assisted us in dealing with the matter on the basis of the material before us.

[5] We take the summary of the facts of the case from the respondent's skeleton argument. The case for the prosecution was that on 19 December 2011 the applicant shot and injured Mr Sheldon Stewart and Miss Anna Lisa Brown ('the complainants'). The first and the second-named complainants were boyfriend and girlfriend and the applicant, who was well known to both of them, was in fact the cousin of the first-named complainant.

[6] The evidence was that, on the day in question, the applicant entered the shop operated by the second-named complainant at Eden District in Mocho, in the parish of Clarendon and shot and injured both complainants. Very shortly afterwards, the

complainants went to the Mocho Police Station where they made reports and from whence, having done so, they were thereafter taken to hospital for treatment.

[7] The applicant gave his defence in a brief unsworn statement, in which he denied any involvement in the incident. He attributed a motive to the first-named complainant for having identified him as the shooter, which was that they were not on good terms with each other.

[8] In the grounds of appeal filed with his original application for leave to appeal, the applicant complained of: (a) "misidentity [sic] by the witness"; (b) 'unfair trial' (in that the evidence on which the judge relied in convicting the applicant lacked credibility and therefore rendered the verdict unsafe); (c) 'lack of evidence' (in that the prosecution failed to present any 'concrete' piece of evidence material, forensic or scientific evidence to link the applicant to the crime); and (d) 'miscarriage of justice' (in that the applicant was wrongfully convicted for a crime he knew nothing about).

[9] As the judge rightly considered, identification was the principal issue in the case. This was a case of identification by recognition, in circumstances in which there was no dispute that the applicant and the complainants were previously known to each other. In addition to the correctness of the complainants' purported identification of the applicant, the overall issue of credibility was, of course, the other important matter for the judge's consideration.

[10] In our view, the warnings which the judge gave himself on the question of identification were detailed, perfectly accurate and fully in keeping with the well-known

dictates of **R v Turnbull and others** [1977] QB 224. The judge carefully reviewed the circumstances of the regulation. He directed his mind to the duration of the period over which the complainants had their attacker under observation and the general circumstances of the purported recognition. He pointed out that the complainants would have been frightened at the material time and that the events which they described would have unfolded relatively quickly. Having considered all the circumstances, the judge expressed the view that the evidence was sufficient to render the identification by recognition reliable. We agree. In our view, notwithstanding the fact of what must have been the terrifying circumstances of the offence, the complainants' opportunity to make a reliable identification of an assailant who was well known to them were more than sufficient for this purpose.

[11] In the light of this conclusion, the other applicant's other grounds of complaint must necessarily fall away to a large extent and it seems to us that nothing more needs be said about them. It suffices to say that, in our view, the evidence relied on by the prosecution was in all respects entirely sufficient to enable the judge to have come to the conclusion to which he did.

[12] There is, however, one matter which has caused us some concern, as it did the judge. Despite the fact that the applicant's hands were swabbed at a time fairly soon after the offences were said to have been committed, the results were not available for use at the trial. So the court was unfortunately deprived of evidence which may, on the one hand, enhanced the case for the prosecution, or, of equal importance on the other hand, supported the case for the applicant. Though not conclusive, forensic results can

provide an objective and potentially helpful test of the evidence of visual identification. But, having said this, we consider as the judge did that, because of the overall cogency of the case presented by the prosecution on the question of identification, the absence of the results of the swabbing of the applicant's hands would have caused no miscarriage of justice in this case

[13] We turn finally to the issue of the sentences imposed on the applicant. Notwithstanding the unfortunate and unexplained absence from court of the applicant's counsel on the actual date on which the judge passed sentence on the applicant, we are clearly of the view that the sentences imposed by the judge were well within the normal ranges of sentences for similar offences in like circumstances. The sentences cannot therefore be said to be manifestly excessive. The application for leave to appeal against conviction and sentence is accordingly dismissed and the sentences are to be treated as having commenced on 18 October 2013.