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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR DECISION**

SUPREME COURT CRIMINAL APPEAL NO 87/2017

KENRICK THOMAS v R

TAKE NOTICE that this matter was heard by the Hon Miss Justice Edwards JA, Mr Justice D Fraser JA and Mr Justice Brown JA on 29 and 30 October 2024, with Ravil Golding instructed by Lyn-Cook Golding & Company for the appellant and Ms Tamara Merchant for the Crown.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by the Hon Mr Justice D Fraser JA, is as follows:

[1] On 14 July 2017 the appellant Kenrick Thomas was convicted by Tie J (the learned trial judge) following his trial in the High Court Division of the Gun Court holden at King Street in the parish of Kingston, for the offences of illegal possession of firearm (count one) and shooting with intent (count two). On 28 July 2017 he was sentenced to six years and six months on count one and 15 years on count two. The sentences were ordered to run concurrently.

[2] On 21 April 2023 his application for leave to appeal conviction was granted by a single judge of appeal, on the basis that the learned trial judge appeared to have misdirected herself regarding the good character direction to which the appellant was said to be entitled. Leave was not granted to appeal sentence.

[3] A summary of the relevant facts found by the learned trial judge, are that, on 12 August 2015 at about 6:20 pm, the complainant Constable Omar Watson, dressed in plain clothes, was walking alone along Barry Street, Down Town, Kingston. The complainant heard explosions sounding like gunshots coming from West Street. He went towards West Street and, at the intersection of Barry and West Streets, he saw

to his left beside each other, two men whom he knew before — the appellant as “Pops” and the other man as Ryan Moses otherwise called “Little Thugs”. The appellant, who was armed with a firearm, pointed it in the direction of the complainant and fired. The complainant pulled his firearm and fired four to five shots in the direction of the men. Ryan Moses ran off and the appellant fell to the ground. There was an exchange of gunfire between the appellant and the complainant, who took cover. The appellant then hopped into a premises. Subsequently, several police units arrived and, with the assistance of other police personnel, the complainant conducted a search of the area. The appellant was found in a dark passage with an injured leg. The firearm was not recovered.

[4] In his sworn testimony the appellant said that on the day in question he was at the corner of West and Barry Streets having an argument with his baby mother. A crowd had gathered. He heard shots, the crowd scattered, and he felt his leg burning while he was running. He went into a yard to seek help and was hiding as he feared for his life. He denied having any gun, firing any shots or knowing the complainant. The appellant’s baby’s mother, Jonelle Bennett, gave evidence on the appellant’s behalf indicating that they had an argument that day, a crowd had gathered, she heard gunshots, and she ran out of the crowd.

[5] The learned trial judge rejected the evidence of the appellant and Ms Bennett. The learned trial judge acquitted Ryan Moses, who had been jointly charged with the appellant, on the basis that there was no evidence that he was acting in common design with the appellant.

[6] The grounds on which the application for permission to appeal was based were as follows:

“Misidentity by the Witness: That the prosecution witness wrongfully identified me as the person or among any persons who committed the alleged crime.

Lack of Evidence: That the prosecution failed to present to the court any ‘concrete’ piece of evidence (material, forensic or scientific) to link me to the alleged crime of which I was wrongfully convicted for.

Unfair Trial: That the evidence and testimonies upon which the learned trial judge relied on for the purpose to convict me lack facts and credibility thus rendering the verdict unsafe in the circumstances.

Conflicting Testimonies: That the prosecution witness present to the court conflicting and contrasting testimonies which amount to perjury, [sic] thus call into question the soundness of the verdict.

Miscarriage of Justice: That the prosecution failed to recognised [sic] the fact that I had nothing to do with the alleged crime for which I was wrongfully convicted for an alleged crime I knew nothing about and could not have committed.”

[7] In written and oral submissions before the court, Ravil Golding, counsel for the appellant, frankly conceded that he was unable to find any credible grounds of appeal to argue. He noted that the evidence of recognition was strong and submitted that the learned trial judge adequately addressed the main issues of identification and credibility, and was entitled to reject the evidence of the appellant and his witness. Further, in response to the court’s inquiry he agreed that, as a matter of law, the evidence given by the appellant was insufficient to entitle him to a good character direction. Counsel also accepted that the sentences imposed could not be challenged as manifestly excessive. Counsel indicated the appellant had accepted his advice regarding the absence of any meritorious grounds of appeal and that he had obtained the appellant’s written instructions to make that concession.

[8] Ms Tamara Merchant, counsel for the Crown, agreed with the position adopted by Mr Golding, including that the appellant’s evidence did not entitle him to a good character direction. Counsel also submitted that there was a clear error in the transcript regarding the good character direction, which did not comport with its overall tenor.

[9] Having perused the transcript, we agree that the main issues that arose for determination were identification and credibility. The learned trial judge adequately assessed the identification/recognition evidence of the complainant and found it to be reliable and credible. The learned trial judge also addressed the inconsistencies and concerns related to omissions in the evidence of the Crown, but found that they did not affect the overall credibility of the complainant.

[10] Evidence that could tend to suggest that the appellant had a bad character was elicited by counsel for the appellant at trial (who was not counsel who appeared before us). Through the intervention of counsel for the Crown (who was also not counsel who appeared before us), and also the learned trial judge, the possibility that further prejudicial material could have been elicited was avoided. Although the learned trial judge did not explicitly state that she disregarded the negative evidence, that is implicit in her summation; as, on the basis of her hearing the appellant mumble something about how his mother raised him, which is not recorded on the transcript, and that he was caring for his children, she determined that he was “somewhat of a good character”. She is then recorded, at page 215 of the transcript, as giving the following direction:

“Good character is *not* regarded when it comes to considering credibility, and whether he is likely to have behaved the way the Prosecution says he did. Of course, good character by itself cannot provide a defence to a criminal charge, but it is evidence which I have taken into account in his favour.” (Emphasis added)

[11] Regarding the word “not” in the first line of the quotation, it is obvious that the learned trial judge either inadvertently misspoke or was mis-recorded. Its inclusion is wholly in conflict with the tenor and meaning of the entire quotation. With the “not” being removed the learned trial judge gave a correct though abbreviated version of the two limbs of the good character direction, and it is clear that she was aware of, and applied, the correct principles in that regard.

[12] In any event, the appellant suffered no prejudice. Firstly, apart from the negative evidence elicited, as recognised by both counsel, what the appellant was heard and recorded to have said was insufficient to establish his good character and require a direction thereon (see **Marlon Campbell v R** [2023] JMCA Crim 9 at para. [18] i) and iii)). The appellant, therefore, benefitted from a good character direction to which he was not entitled, perhaps *ex abundantia cautella*. Secondly, given the overwhelming evidence against the appellant (conceded by counsel for the appellant) even if the appellant had been entitled to a fulsome good character direction, it would not have affected the outcome of the case (see **Marlon Campbell v R** at para. [18] x).

[13] Accordingly, we agree that there is no basis on which the convictions of the appellant should be disturbed.

[14] In respect of the sentences imposed, we are also in agreement they are by no means manifestly excessive, as they fall within the range of sentences normally imposed for offences of this nature. They should not be disturbed.

[15] Accordingly, we make the following orders:

1. The appeal against convictions is dismissed.
2. The application for leave to appeal against sentences is refused.
3. The convictions and sentences are affirmed.
4. The sentences, which are to run concurrently, are to be reckoned as having commenced on 28 July 2017, the date on which they were imposed.