

IN THE CAYMAN ISLANDS COURT OF APPEAL

Criminal Appeal No. 16 of 2009

Indictment No. 57/08)

C#05379/08

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

LANCE JUSTIN MYLES

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that LANCE JUSTIN MYLES having sought leave to appeal against *his* CONVICTION & SENTENCE passed upon *him* by the Grand Court on the 12th day of June, 2009 as set out below:

**Ind 57/08 Attempted Murder – Count 1
20 years imprisonment**

**Possession of an Unlicensed Firearm– Count 3
15 years imprisonment.**

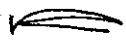
**Sentences to run concurrent
Total term to serve 20 years
Time spent in custody to be accounted**

**Causing Grievous Bodily Harm with Intent – Count 2
Alternative - Left on file**

The Court of Appeal has finally determined the said appeals, and has this 12th day of March, 2010 given judgment therein to the effect following:

- 1. Legal aid transferred to John Furniss.**
- 2. Appeal dismissed.**
- 3. Conviction and sentences affirmed.**
- 4. Reasons to be put into writing.**

Dated this 26th day of March, 2010


Registrar



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**Criminal Appeal No. 16 of 2009
(Indictment No. 57/08)
Case No: 05379/08**

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

LANCE JUSTIN MYLES

Appellant

Before:

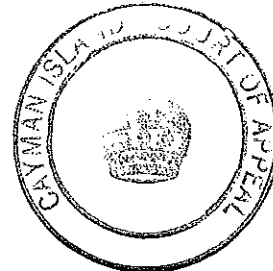
**The Rt. Hon. Sir John Chadwick, President
The Hon. Mr. Justice I. Forte, J.A.
The Hon. Dr. A. Conteh**

Appearances:

**Mr. John Furniss for the Appellant
Mr. Trevor Ward for the Respondent**

Date heard and Judgment given: 12th March, 2010

Reasons for Judgment delivered: 18th March 2010



Reasons for Judgment

Forte, J.A.

1. The appellant was charged on an Indictment containing three Counts. Counts 1 and 2 were presented as alternative counts, Count 1 charged the attempted murder of Adolphus Myrie committed on the 31st May 2008; and Count 2 charged (in the alternative) causing grievous bodily harm with intent, to the said Adolphus Myrie. The third Count charged the appellant with possession of an unlicensed firearm contrary to section 15(1) of the Firearms Law (2006 Revision).
2. On the 4th June 2009 after a 4 day trial before Pusey J sitting alone, the appellant was convicted on Counts 1 and 3. No verdict was taken on Count

2. He was sentenced to 20 years on Count 1 and 15 years on Count 3 to run concurrently. It was also ordered that time spent in custody should be taken into account. From those convictions and sentences, the appellant now appeals. A brief summary of the evidence follows:
3. On the night of the 30th May 2008, Adolphus Myrie and his friend Kevin Moore visited several clubs where they had drinks. After they left the clubs, they went to Moore's house at School House Lane, otherwise called Rock Hole. They arrived at the house, somewhere between 2:00 a.m. and 3:00 a.m. They sat in front of the house conversing. Soon after they arrived at the house, other friends, including Gary Oliver joined them. Gary Oliver became a significant witness in the case, as he had had an altercation earlier that night, with the appellant. 'Words' passed between them, ending in Oliver 'boxing' the appellant, who did not retaliate. He merely walked away.
4. It was while these gentlemen were assembled at School House Lane, that this incident occurred.
5. Adolphus Myrie, Kevin Moore and Gary Oliver all described the incident in their evidence.
6. While they were there, a car passed up the street, came back down and stopped in front of the yard. There was a street light in front of the yard, which enabled them to see in front of the house.
7. Myrie testified that at one point, he heard Moore say "run" and then he heard shots fired. He was shot several times, causing him to fall. The shots were

fired from the car which he described as a black Mazda car which he had seen before. The shots had come from the passenger side of the car but he was unable to identify who fired the shots. After he was shot, he called out to the others and he was subsequently taken to the hospital.

8. Kevin More testified that before this incident he had seen a car just like the one that stopped at the yard that night. The one he had seen belonged to "a girl from East Side". He described the car as having the same colour and shape. When the car came back down, it stopped in front of the house. Moore's back was turned to the car at that time, but he turned around, and stepped towards the car. He then saw "a gun come out from the front passenger seat". The window of the car was half-way down and the gun pointing out of the car was a .38 revolver. The passenger had a scarf or bandana over his face and consequently Mr. Moore could not see his face clearly. He made an alarm and ran behind a Land Rover which was parked there. He heard four shots. After the shots, he saw Mr. Myrie on the ground and it appeared that he had been shot. Mr. Moore then "made as if to pelt something at the gun-man", who then drew back, into the car.

9. At this point he was able to see the driver of the car, who had turned towards his (Moore's) direction. He recognized the driver as the appellant whom he had know for some years by the name "Lance" and who lived at Palm Dale.

He observed his face for 10 seconds, during which time he was able to recognise him . He was sure that the driver of the car was the appellant.

10. Mr. Oliver also testified. He spoke of (i) the altercation he had with the appellant earlier that night (ii) seeing the car pass up and that it came back whereupon five shots were fired, and, (iii) there being two street lights in front of the house. Mr. Oliver described the car as "a black Mazda a new type, four door car".

In his estimation the incident took about 7 seconds before the car drove away.

He also spoke to the fact that Mr. Myrie was shot and injured.

11. The prosecution also called a Mr. Anthony Williams, a car dealer, who testified that the black Mazda was one of two of its kind that were brought into the island. The other was white. The black-one had been sold to the appellant.

Ms. Sherin Goff, testified as to the fact that there was only one black dark coloured 2008 Mazda registered in the Cayman Islands.

12. The prosecution therefore based its case on the following factors:

(i) The identification by Mr. Moore of the appellant as the driver of the car. He had seen his face for 10 seconds. He knew him before and there was no obstruction between the driver and himself when he made the recognition, the passenger having withdrawn, into the car, and the driver at that point having looked in his direction; and

- (ii) The identification of the car as a car belonging to the appellant.
- (iii) The car which was found subsequently, was examined for gun shot residue (GSR) by the expert Mr. McHardy who gave evidence by video-link. He found moderate levels of GSR "between the rear of the front passenger seat and the front passenger seat back seat " (*sic*) and low levels between the rear passenger seat back and the front passenger seat squab which he describes as the area that you sit on. He came to the conclusion that because of these findings, he would say that a firearm could have been fired in proximity to this car.

13. The appellant gave no evidence, nor did he offer any statement in his defence. He called no witnesses. In this appeal, he offers two grounds of appeal as follows:

- 1. The verdict is unreasonable and unsafe in that the quality of the identifying evidence is poor;
- 2. The learned trial Judge erred in law in failing to accept the submission of no case to answer made at the conclusion of the Crown's case.

14. In the circumstances of this case, we will consider these two grounds of appeal together, given the fact that the evidence which existed at the end of the Crown's case was the same that was left to the jury, the appellant not having offered any evidence in his defence .

15. We begin, by noting that evidence of visual identification is supported by other evidence in the case. In so far as the second ground is concerned we need only mention the following passage from the case of *R v Turnbull* (1977) QB 224 at 228

“When in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance, or on a longer observation made in difficult conditions, the situation is very different. The judge then withdraws the case from the jury and direct an acquittal UNLESS THERE IS OTHER EVIDENCE WHICH GOES TO SUPPORT THE CORRECTNESS OF THE IDENTIFICATION.” (Emphasis added)

16. The underlined words clearly demonstrate that the evidence in the case (as outlined above, in summary form) was sufficient to require the learned judge to leave the case for the jury's consideration.
17. The witness who purported to identify the appellant as the assailant had known him before for some years. He was able to see him for a period of 10 seconds, in circumstances which offered good lighting. He had an unobstructed view of the appellant's face, at a time when the assailant looked in his direction. The identification was made at a reasonably close distance.

18. The visual identification evidence is supported by the evidence of the identification of the car. There was only one car of its type and colour which had been imported into the island and that car was sold to the appellant and registered in the name of the appellant. In addition, gun-shot residue was found in the car. It could be said that the visual identification was made in difficult conditions as shots were being fired from the car at the time. However, in our view 10 seconds in the circumstances cannot be described as "a fleeting glance". In any event the Turnbull principle (*supra*) applies when the case is dependent solely on the visual identification. In this case, there was other evidence which supported the visual identification, and when taken together with it, provided a strong case against the appellant.
19. Consequently we concluded that there is no merit in the grounds of appeal. For these reasons we dismissed the appeal on the 12th March 2010 and affirmed the convictions and sentences.

Chadwick P

Forte JA

Conteh JA

