

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 279 & 294/77

BEFORE: The Hon. Mr. Justice Henry J.A.
The Hon. Mr. Justice Melville, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

REGINA

v.

LAWRENCE SAMUELS
RUPERT EDWARDS
COLIN ROBINSON

Mr. Roy Taylor for the Applicants

Mr. A. Soares for the Crown

June 25, July 12, 1979

Henry J.A.

The applicants were convicted in the High Court division of the Gun Court for unlawful possession of a firearm and, in the case of Edwards, for unlawful possession of ammunition. The sole prosecution witness, Constable Patterson gave evidence to the effect that at about 9:15 p.m. on January 14, 1977 he alighted from a mini bus in Central Village. He was in plain clothes and having received certain information he waited as he says "in a sort of ambush" behind a column of a bridge. When the three applicants approached he stopped them, identified himself to them and searched them. He found nothing on Samuels but Robinson had a machete "sticking in the back of his shirt" while Edwards had what appeared to be a home made gun in his right trousers waist with a cartridge in it and other cartridges in his right trousers pocket.

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His explanation was that he had found the gun while sitting along the canal bank earlier that night. The certificate of the ballistics expert which was put in evidence contains the following information in respect of the gun:

"I have analysed the same and find as follows:

One sealed envelope marked "A" containing:-

One home made hand gun (pistol) made up from a piece of metal tubing 4-3/8 inches long, diameter 3/8 inch, as barrel. Barrel mounted on top of a shaped piece of board as frame, receiver and stock and strapped to frame by a metal strap marked "BREEZE UNION N.J. PAT. Nos. 2386629, 2395273 M12". Hinged metal strap screwed down top of stock with portion extending upward behind chamber as breechblock. Piece of screw through hole in breechblock with point centre of chamber and held in front by a nut as firing pin. Two coil springs right and left sides of receiver hooked over two screws right and left sides of receiver and two holes right and left sides of breechblock. Chambers .38 calibre revolver cartridge copper and nickle plated finish, no trigger.

TESTS

Exhibit "A" was test fired with one cartridge from Laboratory stock and the cartridge case retained. The load was first removed as a safety measure.

REMARKS

Exhibit "A" was found to be in proper working order and capable of discharging deadly missile from its barrel. Exhibit "A" was designed to be fired when a cartridge is chambered in the rear end of the barrel the breechblock pulled backward to extend the coil spring, then is allowed to fall forward for the firing pin to strike primer of cartridge and fire cartridge. It was fired as designed."

Counsel for the applicants submitted that the evidence contained in this certificate was insufficient to prove that the gun was a fire-arm within the meaning of the Firearms Act. For this submission he relied on passages from the judgment of this Court in R. v. Elliston Watson S.C.C.A. 129/77 which indicated:

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- (a) that more evidence will generally be required in respect of a home made gun to enable a court to draw inferences as to its capability to discharge deadly missiles
- (b) that a court is not entitled to act on the opinion of a ballistics expert that a weapon is capable of discharging deadly missiles if it appears from the evidence that there is no sound foundation for that opinion
- (c) that a test firing in which no missiles are discharged might not by itself justify the opinion that a weapon is capable of discharging deadly missiles.

In our view the certificate of the ballistics expert contained sufficient evidence to justify the conclusion expressed in the certificate that the weapon was capable of discharging deadly missiles from its barrel and it therefore qualifies as a firearm. It is apparent from the certificate that the expert examined and analysed the weapon in addition to carrying out the test firing described. As was pointed out in R. v. Elliston Watson a ballistics expert may upon examination of a weapon and without test firing it be able to express a valid opinion as to its potential ability to discharge deadly missiles. If after examination analysis and test firing the ballistics expert expressed the opinion that the weapon was capable of discharging deadly missiles, the learned trial judge was in our view entitled to act on that opinion, particularly since it remained unchallenged. We do not accept the submission of counsel for the applicants that a plea of not guilty constitutes a specific challenge to all the evidence led by the prosecution including, in this case, the contents of the certificate of the ballistics expert which was tendered in evidence. Such a plea does of course make it **incumbent** on the prosecution to prove every fact and circumstance constituting the offence charged but this is not to say that it goes further and constitutes a challenge to all the evidence led by the prosecution in proof of those facts and circumstances.

Counsel for the applicants further submitted that there was no reasonable ground for rejecting the explanation given by Edwards as to

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how he came to be in physical possession of the gun. According to the police officer that explanation was that "all three of them were at a certain point along the canal bank and while they were sitting down he saw the gun." In his unsworn statement Edwards said that he was tying up his shoe lace and fixing his clothes when he looked and saw "that ammunition the gun" and he sought to make the tale more plausible by saying that he saw two boys running. In our view the learned trial judge could consider the manner in which the firearm was being carried and the presence of other cartridges in Edwards' pocket and was fully justified in rejecting the explanation.

Finally as regards Samuels and Robinson it was submitted that the Crown had failed to prove circumstances which raised a reasonable presumption that the firearm was intended or was about to be used in a manner prejudicial to public order or public safety so as to bring the case within the provisions of Section 20 (5) (a) of the Firearms Act. The circumstances were that at 9:15 p.m. the three applicants were together. One had a machete stuck in the back of his shirt and one had a loaded unlicensed firearm in his waist and other ammunition albeit designed for use in a different type of firearm in his pocket. The learned trial judge concluded that this was "a case of a party either going a hunting or going defending". We see no reason to differ from this conclusion or from the further conclusion that the firearm was intended to be used in a manner prejudicial to public order.

At the outset Counsel for the applicants very properly conceded that the conviction of Edwards for unlawful possession of ammunition ought not to be disturbed.

Accordingly the applications for leave to appeal were refused on June 25, 1979.