JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS.

164/77	-	R.	v.	MARK SAWYERS
168/77	-	R.	v.	LLOYD KNIGHT
70/77	-	R.	v.	DERRICK BROWN
99/78	-	R.	v.	MICHAEL RILEY
173/77	-	R.	v.	VINCENT HARVEY

BEFORE: THE HON. MR. JUSTICE LEACROFT ROBINSON - PRESIDENT.
THE HON. MR. JUSTICE HENRY, J.A.
THE HON. MR. JUSTICE KERR, J.A.

Mr. Frank Phipps, Q.C. and Mr. Williams for Sawyers and Brown.

Mr. Richard Small instructed by Miss Gloria Jones for Knight and instructed by Miss M. Stewart for Riley and for Harvey.

Mr. G.R. Andrade, Deputy Director of Public Prosecutions and Mr. M.J. Dukharan for the Crown.

April 30; May 1 and 2, 1979: February 8, 1980.

KERR, J.A.

These applications for leave to appeal from convictions for "firearm offences" Breaches of the Firearms Act in the High Court Division of the Gun Court were consolidated, heard together and treated as the hearing of the appeals as there was in the grounds filed an important point of law common to all.

This was to the effect that the learned Trial Judge wrongly admitted in evidence the certificate of the Ballistics Expert without there being sufficient proof that there was service on the accused of a written notice of the intention of the prosecution to tender in evidence the certificate and of a copy of the relevant certificate as required by Section 46A - Subsection 2 of the Firearms Act.

The certificate of the Ballistics Expert was tendered and admitted in evidence to prove that what was alleged to be in possession was a firearm in the cases of Sawyers, Knight, Brown and Riley and ammunition in the case of Harvey.

Section 46A of the Firearms Act provides as follows:-

> "(1) Notwithstanding anything to the contrary, but subject to the provisions of subsection (2), any certificate signed by a ballistics expert shall, in any criminal proceedings, be admitted as evidence of the matters so certified, without the ballistics expert being called upon to attend and to give evidence on oath.
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> (2) where, in any criminal proceedings, it is intended to put in evidence a certificate as provided in subsection (1), the prosecution shall, at least three clear days before the proceedings, serve upon the person charged a written notice of such intention, together with a copy of the certificate, and that person may, before the commencement of the proceedings, by written notice served on the prosecution, object to the admission of the certificate, and may require the attendance of the ballistics expert to give evidence on oath.
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> (3) any document purporting to be such a certificate as is mentioned in this section shall be deemed to be such a certificate, unless the contrary is proved."

The question raised herein was debated and a considered decision given by this Court in Supreme Court Criminal Appeal No. 199/77 - R. v. Hudson, delivered February 2, 1979.

Notwithstanding, Mr. Phipps sought from this Court a reconsideration and review of R. v. Hudson on the following grounds:-

> 1(a) That in so far as that judgment dealt with the peculiar facts of the case it was not a binding precedent; and, therefore
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> (b) The general proposition stated therein ought not to be regarded as a binding precedent; and
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> 2. Further or in the alternatite, if Hudson's case is to be regarded as stating with finality a general proposition of law such decision was wrong.

On this aspect of these applications there was a division of labour: Mr. Phipps in the main dealt with the question of stare decisis while Mr. Small endeavoured to show that in Hudson's case the reasoning of the Court was erroneous and the decision wrong.

Mr. Phipps submitted in effect that where a decision is demonstrably wrong this Court has power to review and reverse that decision; a fortiori where such a decision involves the liberty of the subject. In support he referred to the following passage from the recent judgment in Resident Magistrate's Criminal Appeal No. 163/77 - Regina ats. Daphne Thorpe vs. Eustace Molyneaux - delivered January 31, 1979 - page 73:-

> "This Court should reserve the power to correct its own mistakes and to refuse to follow previous decisions when they are manifestly wrong, and it is in the public interest that they should be corrected. I think that this Court has already said as much in relation to the Old Court of Appeal in the Hanover Agencies case."

In Molyneaux's case the Court was concerned with an earlier decision given by the former Court of Appeal and this Court has firmly expressed the opinion that judgments of that Court are not binding but of respectable persuasiveness. Accordingly strictly speaking those observations of Carberry, J.A. made after an industrious review of many cases from this and other Commonwealth jurisdictions are obiter but they do accurately reflect the attitude of this Court as illustrated in such cases as R.M. Cr. App. No. 53/74 - R. v. Jackson delivered December 5, 1974 where this Court entertained arguments on questions of law and came to a decision contrary to that in the earlier case of Hinds et al R.M. Cr. App. 43/74 delivered August 22, 1974, which had dealt with similar

questions. This is an unhappy precedent since at the time a further appeal in the Hinds case was pending before the Privy Council. No such situation exists here as there has been no further appeal in Hudson's case.

The Deputy Director of Public Prosecutions quite properly did not challenge these submissions but confined his arguments to contending that R. v. Hudson was correctly decided.

Because of the position of this Court in the jurisdictional hierarchy of the Courts of this Country and the binding effects of its judgments the Court ought not lightly to interfere with a previous decision given not per incurian but upon due consideration of arguments presented and authorities cited.

On the other hand it would be contrary to reason and good sense, would perpetuate an injustice, were this Court inescapably bound to follow a decision that was palpably wrong in a matter involving the liberty of the subject.

Accordingly, full and careful consideration was given to the arguments presented and in particular to the submissions in relation to certain decided cases which were not cited or considered in Hudson's case.

It is noted that -

(a) The arguments proceeded on the basis that at the trial there was no proof of service on the defence of the notice of intention to tender in evidence the certificate and of a copy of the relevant certificate.

(b) From the records no objection was taken by the defence at the trials to the tendering and admission of the certificate in evidence.

(c) It is not being contended that in fact there was no proper service of the relevant

> documents, but rather that there was no "proof" by the prosecution of proper service.

Mr. Small in his critical analysis of Hudson's case submitted that the Court was in error in holding -

> "If therefore a matter goes to trial and the certificate is put in evidence without any objection being taken by the accused or by his Attorney, then it must be presumed that the procedure laid down by Section 46A had been followed, and an applicant cannot be heard to complain successfully in this Court that the certificate was wrongly admitted in evidence."

He further submitted in effect that the principle "omnia praesumuntur rite et solemniter esse acta" is inapplicable to the failure of the prosecution to comply with the requirements of the statute. More positively, he contended that it was not competent for the prosecution to prove a fact in issue against an accused by producing a document without calling the maker. The prosecution may only do so if it falls within one of the exceptions to the hearsay rule or the situation is specially provided for by the statute; that the certificates do not fall within the common law exceptions and it is only by means of Section 46A of the Firearms Act, that the certificate was so admissible and accordingly the requirements of the Act must be strictly followed; that a failure to prove the circumstances which fall within the statutory presumption means any attempt to put in the document must be in breach of the hearsay rule. See per Devlin J. in Bowskill v. Dawson et al (1953) 2 A.E.R. 1393 at p. 1394 and Ogle Co. Ltd. v. Mangri Rajarine (1971) 17 W.I.R. p. 530. Therefore, he concluded the requirements in subsection(2) create a condition precedent to the admissibility of the certificate; that it is therefore immaterial whether or not objection was taken at the time

since the Court had no discretion to admit inadmissible evidence. In support he referred to a number of cases including - R. v. Nichols (1977) C.L.R. p. 673 - Re Koscot (1972) 3 A.E.R. 829 at p. 833 - R. v. Henry Wilson 8 C.A.R. p. 20. He also drew a distinction between pre-trial matters such as the fiat of the D.P.P. (R. v. Waller (1909) 3 C.A.R. 213) and the more fundamental question of the admissibility of evidence which went to "proof of guilt." He further submitted that had the legislature intended that proof of service of the relevant documents was not a condition precedent, the provisions would be differently worded and for illustration he compared this enactment with other statutory provisions facilitating proof and in particular Section 27 of the Dangerous Drugs Act in which there was no requirement for service of any documents on the defence.

Mr. Small was equally critical of the English case of R. v. Banks 1 A.E.R. (1972) p. 1041 - on which the prosecution relied to support the decision in Hudson's case; albeit that the Court of Appeal in England arrived at their decision by a way of reasoning different from this Court. Mr. Small contended that having regard to the nature of the requirements of Section 46A(2) no question of waiver arose since the evidence was inadmissible for non-compliance with the statute.

But another interpretation of Section 46A based upon the aims and objects of the Section is tenable. The provision is clearly for the purpose of facilitating proof in relation to the Ballistics Expert's findings as contained in his certificate and which are not being challenged.

Although in authoritative works and decided cases this certificate would fall under the exclusionary "hearsay rule" yet it is not hearsay in the narrower sense of being secondhand or reported evidence since the facts therein contained are of the declarent's own knowledge and of his opinion on matters on which his learning and experience render him competent. Therefore the true bases for inadmissibility would normally be (1) the statement was not on oath and (2) the party affected had no opportunity of challenging it by cross-examination or otherwise. Accordingly, admissibility is expressly conferred by subsection (1) of Section 46A of the Firearms Act in the words "shall be admitted" and subsection (2) merely restricts or cuts down the otherwise absolute nature of the provisions in subsection (1). In that regard the purpose of subsection (2) is clearly:-

(i) To inform the accused that the prosecution intends to put the certificate in evidence.

(ii) To inform him precisely of what is alleged therein by serving him with a copy of the certificate.

(iii) To provide him with sufficient opportunity to take objection or require the expert to be called as a witness by the prosecution.

In our view whether the conduct of the defence in not raising an objection at the trial is to be considered as a waiver as in the case of Banks - (supra) or as a basis for the presumption that the Section was complied with as in Hudson's case, in determining the question raised in these appeals, such conduct is of cardinal importance. In that regard, we are not prepared to accept without reservation the statement in Banks' case at page 1044 - "that

there is no room in a case such as the present to apply the principle of presumed regularity." On the contrary we accept as a correct view that compliance with the section is the serving of the relevant documents on the defence and not "proof of the service." The defence is in the best possible position to know whether or not there was proper service of these documents and it would be very easy to show if it were not so. Neither in the Court below nor in this Court has there been any suggestion that the requirements of the subsection had not been met - nor was objection taken at the trial.

In every one of these applications there was no challenge to the correctness of the matters contained in the certificates but the nature and conduct of the defences in effect were that the applicants were never ever in possession of any of the exhibits referred to in the certificates. With the facility with which the issue of service could be raised and no objection being taken when the certificate in each case was being tendered it was open to the Court to infer a waiver in respect of proof of service and to make a further judgment of fact by drawing the secondary inference that this was indicative that there had been compliance with the statute.

On the other hand the question of waiver of the entire requirements of the statute can only arise if it has been shown that there was in fact a procedural irregularity. In Banks' case it is not clear what was in fact held to be waived but from the language used a fair interpretation is that the waiver extended to non-compliance with the requirements of the Act and not merely to dispensing with the proof of service of the relevant documents. We can see no objection to the accused admitting in open Court service

of the documents and so obviate the necessity of calling a witness to that fact. Indeed, proof of service was not expressly required by the Act. If this interpretation of the waiver in Banks' case is correct then the reasoning in Hudson's case is to be preferred.

It was further contended that the Court was wrong in Hudson's case in holding that the endorsement of service on the certificate tendered in evidence was sufficient proof of service by virtue of Section 59(1) of the Evidence Act "as the notice required by Section 46A(2) of the Firearms Act was not "Process of the Court."

Section 59(1) of the Evidence Act reads -

> "Notwithstanding anything in this or any law contained where any summons or other process of a Court is served by a Constable or other Peace Officer, or by a Bailiff of any court, the service may be proved by endorsement on the original or a copy of the summons or process under the hand of any such person effecting the service, showing the fact and mode of the service of such summons or process....."

In Stroud's Judicial Dictionary - 4th Edition Vol. 4 page 2129 - 2130 -

> "Process" has been defined narrowly as -
>
> (2) "..... the doing of something in a proceeding in a civil or criminal court, and that which may be done without the aid of a court is not a "Process"....."
>
> and widely -
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> "..... in its broader sense, may include all proceedings in the course of litigation ....."

See also "Words and Phrases legally defined" - 2nd Edition page 185 - "Process of Law."

The term "other process of a Court" in the Section may generously be interpreted to include all process issued by or

under the authority or order of the Court, or by an officer of the Court, or any process which required routing through the Court to be effective.

There is nothing in Section 46A of the Firearms Act which expressly requires the notice to be issued out of the Court and in the absence of evidence of it being so issued we would be unwilling to hold that it was a "Process of the Court." This finding of the Court of Appeal in Hudson's case was however in respect of the peculiar facts of that case and did not in any way affect the general proposition considered above.

Finally in these circumstances may we say it would be unrealistic to ignore the probabilities that the notice with copy certificate was served in each case as required by the statute and an absurdity to allow these appeals on grounds which fail to present any real factual basis from which it could be held that there was any prejudice or injustice to the applicants at their trials.

As was said in Banks' case at page 1046:-

> "We think it important to observe that the object of the proviso to S. 2(2) of the 1962 Act is twofold, first, to let the defendant know precisely what is alleged as to the alcohol content of his specimen and secondly, to provide a sufficient opportunity to enable him, by requiring the analyst to be called, to challenge the relevant allegation. It is clear that if the defendant's complaint at the hearing is that he is ignorant of that aspect of the prosecution's case, or that he has had an insufficient opportunity to challenge the contents of the certificate, he is under an obligation to object to the admission of the contents of the certificate before it is put in evidence. If he does not do so there is no indication that he has been prejudiced by the prosecutor's failure to satisfy the requirements of the proviso to S. 2(2); and the absence of such prejudice is revealed in the present case."

In coming to this conclusion, it must not be taken as any encouragement or approval of laxity on the part of the prosecution or of obviating the necessity for complying with the requirements of the provisions of the Section.

For these reasons we hold that Hudson's case was correctly decided and this common ground of appeal in each case fails.

Re: 164/77 - R. v. MARK SAWYERS.

168/77 - R. v. LLOYD KNIGHT.

The appellants were charged jointly on an indictment containing five counts.

Counts 1 and 4: - Illegal possession of a firearm.

Count 2: - Robbery with aggravation.

" 3: - Wounding with intent.

" 5: - Shooting with intent.

Sawyers was convicted on counts 4 and 5 and sentenced to imprisonment for life and 15 years hard labour respectively - and Knight was convicted on all five counts and sentenced:- on counts 1 and 4 - imprisonment for life; counts 2 and 3 - on each 10 years imprisonment with hard labour; count 5 - 15 years imprisonment with hard labour.

The facts:- Allen Mitchell on February 4, 1977, about midnight drove and parked his mini-bus in his yard at Yancy Place, St. Andrew. As he was about to leave the vehicle he saw three men approaching - his suspicion aroused - he turned up the glass

and locked the driver's door on right side - the other doors having been already locked. The three men came to the driver's side and one pointed a firearm at him and said open up - he identified that man as appellant Knight. When he didn't obey gun shot shattered the glass and another shot hit him in the leg.

In response to their demands he took off his watch and handed it to them. He then open the left hand door and ran - while running he was shot in the back - he took refuge in a house on the premises. At the time there was electric light on the outside of the house and his motor vehicle headlights were on and reflected from the walls. He identified Sawyers as another of the men and that he too was armed with a firearm. The fire-arms he saw were short guns. The third man's body he subsequently saw at the Kingston Morgue. He was hospitalized until February 7. That day he went to the Olympic Gardens Police Station and on entering he saw both appellants among others sitting on the floor and he went and spoke to Lumley - and in their presence and hearing he identified them to Lumley as two of the men who held him up. He had not known them before the night of the incident. Junior Hurd, Mitchell's mechanic found a bullet in the mini-bus. Mitchell was cross-examined at length as to the conditions existing at the time of the hold-up and of his subsequent identification at the Police Station. Detective Keith Gardner on February 7, accompanied by Constable Jacent Edwards and another Officer went to 2½ Dewdney Road, St. Andrew as a result of certain information they had. After parking their motor vehicle Gardner said he entered the premises on foot followed by his companions.

On entering he saw three men - two together and the other about 2 - 3 yards away. They were looking through holes in a wall which divided the premises from a park. Appellant Knight who was one of the men shouted "Police" - the two men looked around and one had a gun in his hand. Appellant Sawyers and Knight then said "Clap the boy Mooney." He Gardner had his service pistol in his hand and in the exchange of gun fire he shot Mooney in the neck. He fell and Gardner took from his hand a .38 Webley and Scott revolver - it had in one spent shell and four live rounds. From his pocket he took ten rounds of .38 ammunition. He also took from him two gold rings and a wrist watch. Mooney died from injury. Gardner arrested them both for illegal possession of a firearm and shooting with intent. Both men were then taken to the Olympic Gardens Police Station. The gun and bullets were submitted to the Ballistics Expert Rupert Linton who found that the revolver was in working order and was of the opinion that it had recently been fired and that the rounds of ammunition were live.

Constable Jacent Edwards gave evidence generally corrobative of Gardner. Both Officers were extensively cross-examined as to the layout of the premises. They denied the suggestion that Knight and Sawyers entered the premises after them or that Mooney was alone when he was shot by Gardner.

Detective Corporal Lumley then of the Olympic Gardens Police Station gave evidence to the effect that he spoke with complainant Mitchell at the Kingston Public Hospital on Feburary 5, at 8:00 a.m. On Feburary 7, at about 5:45 p.m. Mitchell came to

the station. At that time both appellants who had been brought there earlier by Detective Gardner with others, in their presence and hearing Mitchell identified them as two of the men who held him up and shot and robbed him. When they were identified they were among a group of about fifteen fellows brought in and they were not at that time in handcuffs. Appellant Knight in his sworn testimony denied knowing Mooney and ever being in his company. He is a welder and in February 1977, he was working with West Indies Home Contractors. Appellant Sawyers, he knew as a tailor. On Feburary 7, he met Sawyers on Dewdney Road and both of them set out for Sawyers' home at Rhoden Crescent for a pair of trousers Sawyers had made for him. They were taking short-cut through premises on Dewdney Road when he saw a Policeman with a gun in his hand and he heard an explosion from the Park side of the premises. The Policeman ordered them to go to the fence and when he went there he saw a man lying on the ground. They were searched. Nothing incriminating was found on them. Corporal Gardner, however ordered them to be taken out to the lane and from there they were taken to Olympic Gardens Police Station. There they were put to sit on the ground by themselves. Lumley, Mitchell and another came to the room where they were. Mitchell asked Lumley where they were and he Lumley pointed them out. He had never seen Mitchell before then. In cross-examination he denied being with Mooney or saying "Clap him Mooney." Mark Sawyers gave evidence along similar lines. He denied knowing or ever being associated with "Mooney." Allen Mitchell when he pointed out Knight did not say anything about him and it was only after Lumley's prompting that he included him.

Orr, J. sitting without a jury in his summation said:-

> "I have listened to the addresses very carefully, and as I have always directed the Jury, where more than one person is charged, each case must be considered separately. Taking; the first three counts, in respect of the accused Lloyd Knight, I am satisfied so that I feel sure that Knight was one of the persons who held up Mr. Mitchell that night and robbed him of his watch.
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> As regards the accused Sawyers, different considerations apply. On Mr. Mitchell's own evidence, he had the least opportunity of observing Sawyers. I also have to take into account his appearance; he said he did not notice his hair that night, I think if anybody looks at him that is the first thing that would strike them; so on those counts, Sawyers is not guilty.
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> Identification. The evidence is that Mr. Mitchell went there, at the hospital, he had been advised to do so at any time; he left. Sergeant Lumley said he did not know, he did not expect him and he was surprised when Mr. Mitchell came and saw him, and I am satisfied that this was not any contrived identification, but just one of these things. It may have been more desirable if they had other accommodation for persons waiting to be processed, and I don't find that there is any impropriety in the manner of identification. So on the first three counts Knight is guilty.
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> Now, the fourth and fifth counts deal with the event at Dewdney Road or Dewdney Lane. Again I have taken into account all the discrepancies in the Crown's case, chiefly between Corporal Gardener and Constable Edwards, and I prefer Corporal Gardener's evidence because he has quite frankly admitted 'yes, I did not park the car there, I went there.' I want to utilise the element of surprise. I find that these two accused were there, they were looking through this wall into the park. I don't know what was happening there but something was, and I accept that they did say 'Clap him Mooney', and that the meaning of 'Clap him Mooney' was 'to shoot him Mooney.'
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> I reject all these alternative suggestions that have been put forward. I think that this was the right one and I find them both guilty for possession of the firearm and for shooting with intent. I hold that those words were sufficient encouragement for them to be held as participants in the offence, and of course under Section 19 of the Gun Court Act, they are also guilty of possession of the firearm."

These findings are amply supported by the evidence. We find no merit in the other grounds of appeal filed on behalf of these applicants.

Accordingly, the appeals are dismissed and the convictions

and sentences affirmed.

Re: 70/77 - R. v. DERRICK BROWN.

On December 22, 1977, about 10:00 a.m. the appellant was the pillion rider on a Honda motor cycle driven by one Roy Williams along the main road from Carawina to Sweet River in Westmoreland. Detective Inspector Garnet Daley who was in a Toyota motor car stopped them at Pipers Corner. Brown had with him a black bag. According to Daley in his evidence he took the bag from Brown and opened it. As he did so, a twelve gauge cartridge fell from it - he looked in it and saw another cartridge and a home-made shot-gun. He cautioned both men and asked to whom the articles in the bag belonged. Brown said "I and I" and Williams echoed the phrase "I and I." Brown further said "Free up black man."

Both were arrested and jointly charged for illegal possession of firearm and ammunition. Daley denied the suggestions (i) that he had previously threatened appellant to trim and send him back to where he came from because he has a bad influence on the youth; (ii) that there was no gun in the bag.

The appellant gave evidence to the effect that on the morning in question he had the black bag. A fellow rice farmer asked him to take some rice to feed his birds and fowls and gave him the bag to carry it. He placed a towel in bag. There was nothing else in the bag. He was arrested for a small quantity of ganga. There was no mention of a firearm up to when he was taken to the Savanna-la-mar

Police Station. No firearm was taken from the bag when he was stopped at Pipers Corner. He denied seeing a twelve gauge cartridge fall from the bag. He called as a witness to his good character and his work with the Youth Corps Robert Carr.

Both appellant and Williams were convicted by the learned Trial Judge who held that they were in joint possession. This Court however, allowed the appeal of Roy Williams and quashed his conviction. Apart from Williams' echo of the mystic phrase "I and I", the evidence pointed to the bag being in the exclusive possession of the appellant.

On the evidence, we find no merit in the original grounds of appeal which complained generally that the verdict was unreasonable.

Accordingly, the appeal is dismissed and the convictions and sentences affirmed.

Re: 99/78 - R. v. MICHAEL RILEY.

Constable Ronald Watson gave evidence that on January 21, 1978, at about 1.15 a.m. while on mobile patrol along Windward Road in Kingston, along with Constable Lawrence and Military personnel - saw the appellant and another man who were walking along the road turned into Portland Road. He turned his vehicle said into Portland Road - stopped and searched appellant and found in his right trousers waist, a revolver - which according to the Ballistics Expert, Rupert Linton - was "a .22 Calibre (short) "Elig" blank revolver, model "Mondial" 999, 2 7/16 inches barrel, double action, 8 shot smoothe bore missing backstrap, screw and extractor rod

head nut, paper tape wrapped around grips, blue finish, serial no. A-64204." ..... "Further examination and test conducted on Exhibit "A", disclosed that it was converted and adapted to chamber and fire .22 calibre firearm ammunition loaded with bullet and to discharge deadly missile through its barrel, by the drilling of the blockage out of its barrel and the drilling out of the chambers in the rear and of six to the front, adapting the chambers for the loading and chambering of .22 calibre ammunition loaded with bullet and the passage of bullet from the six chambers drilled out in front."

Watson denied the suggestions (i) that no gun was found on the appellant (ii) that the gun was first shown to the appellant at Elletson Road Police Station. Watson's account was corroborated by Constable Roy Lawrence in every important particular. Riley in his unsworn statement from the dock said in effect that he and another youth were on the road when Police stopped them and questioned him as to where he was coming from and where he was going. Notwithstanding his answer they took him to the Police Station - produced a gun and framed him for possession of it.

We find no merit in the original grounds which were in general concerned with the probative value of the evidence for the prosecution.

Accordingly, the appeal is dismissed and the conviction and sentence affirmed.

Re: 173/77 - R. v. VINCENT HARVEY.

In evidence Constable Hemmings said that on March 22, 1977, at about 7:00 p.m. he was at a restaurant part of a snacks-and-bar business on East Street, Old Harbour when the appellant came in there and was walking towards the bar. His movements aroused his suspicion so he stopped him, identified himself to the appellant and proceeded to search him. In the course of the search as he took off the appellant's cap he heard the sound of objects falling on the ground - he looked and saw three cartridges which he took up, showed to the accused and charged him for unlawful possession of ammunition. The Ballistics Expert, Rupert Linton, to whom they were submitted, for ammunition - certified that they were live ammunition. In cross-examination he said there was fluorescent lighting in the building and there were five other persons in the snack bar - three on the customers' side and two around the serving counter - that he picked up the cartridges about a foot from where appellant stood and all in a radius of 1½ feet, and appellant was about five yards from the counter where the customers were drinking. The appellant's case was to the effect that he was never in possession of any ammunition. In his sworn testimony said he went in the shop to buy pine juice when the constable came behind him and started to search him - he was then by the counter. The constable took off his cap and then took up some things off the floor and asked, "Where you get these things from?" He told the constable that it was the first he was seeing them. In support of the original ground of appeal

that the verdict was unreasonable having regard to the evidence, appellant's Attorney submitted that in the existing circumstances as described in the evidence the inference of possession was unreasonable. In particular the constable admitted that notwithstanding the lighting he did not see the objects falling from the appellant but it was only after he heard them hitting the floor he looked and saw them and there were other persons in close proximity. Accordingly, the inference that the cartridges might come from some person other than the appellant could also be drawn.

The learned Trial Judge, sitting without a jury made the following findings:-

> ....."I believe the Constable's story as to the facts, that when he pulled off the hat off your head he heard the sound of the bullets falling and also that the nearest person was five yards, these other persons. I am compelled by an irresistable inference that the bullets fell from your head, whether from the hat or somewhere on your head and that they were in your possession."

We do not share Counsel's view that such a finding is unreasonable.

Accordingly, the appeal is dismissed and the convictions and sentences are affirmed.