

J A M A I C A.

IN THE COURT OF APPEAL.

R. M. CRIMINAL APPEAL NO. 33/1973.

BEFORE:           The Hon. Mr. Justice Luckhoo, Ag. P.  
                  The Hon. Mr. Justice Edun, J. A.  
                  The Hon. Mr. Justice Grannum, Ag. J. A.

R. v. MOSSOP.

Counsel: F. M. Phipps, Q. C. for the appellant.  
          H. Downer for the Crown.

May 18 & 31, 1973.

LUCKHOO, Ag. P. :

The appellant Mossop and one Lyn Henry were convicted on January 19, 1973, by a resident magistrate for the parish of Kingston on informations charging them jointly (i) with illegal possession of a firearm and (ii) with the illegal possession of ammunition. Henry, who was put on probation for two years, has not appealed. Mossop has appealed against his convictions on three grounds, two of which were not pursued at the hearing of his appeal. The sole ground advanced on his behalf is that having regard to the evidence adduced at the trial the learned resident magistrate erred in convicting him on the joint charges.

The evidence for the prosecution discloses that on June 17, 1972, a police road block was set up at the intersection of Marcus Garvey Drive and Darling Street, Kingston. The place was floodlit. Police Constables Cole and Thompson with other policemen were at this road block at 11 p. m.

when a motor car came up. Despite being signalled to stop, the driver of the car drove on and then commenced to reverse. The car stopped. Cole and Thompson went towards it and observed five persons sitting therein. The appellant and Henry were sitting on the rear seat, Henry being in the middle with the appellant on her right and Dorothy Adamson on her left. As he went up to the car Cole saw the appellant put a revolver into Henry's lap. Henry

held the revolver in both hands between her legs. She came out of the car with her hands between her legs and said, "Me want piss." She ran towards an open plot of land pursued by Thompson who held her. She then dropped the revolver which on being picked up was found by Cole to contain five live cartridges. It was common ground that neither the appellant nor Henry had a firearm user's licence which would enable them lawfully to have possession of the revolver and cartridges the subject matter of the charges.

In his defence the appellant denied that he had the revolver in his possession or that he placed it in Henry's lap. Henry testified to the effect that while sitting in the left rear seat of the car with Adamson beside her the car came towards the police barrier. She then felt something drop into her lap but did not try to discover what it was. She eventually put her hand on the thing and then discovered it was a revolver. She became afraid and felt as if she wanted to urinate. She came out of the car, went past the policemen to some open land a few yards away from the car and then pushed the revolver out of her lap. A female police officer picked up the revolver. She said she did not see who had thrown the revolver into her lap. The learned resident magistrate convicted the appellant and Henry on the informations as laid.

For the appellant it was contended before us that the evidence does not disclose a joint possession of the revolver (with cartridges) in the appellant and Henry but rather, if the evidence of Cole is believed, successive and distinct possessions in them, assuming that the evidence in relation to Henry supports a finding of possession of the revolver in her as distinct from her being an accessory after the fact to the illegal possession of the revolver (and cartridges) in the person who had placed the same in her lap.

In convicting the appellant the learned resident magistrate must have accepted and acted on the evidence of Cole who alone testified that he saw the appellant put the revolver into Henry's lap. At the time the appellant placed the revolver in Henry's lap the car had been signalled by the police to stop and the driver after appearing to ignore that signal had obeyed by

reversing and stopping the car. It seems clear that in those circumstances the appellant's action in putting the revolver into Henry's lap was prompted by a desire to avoid being found with that weapon on his person if he were searched by the police. There is nothing to suggest that in putting the revolver into Henry's lap the appellant was seeking to abandon his possession of it. Even though manual possession ceased he was in constructive possession of the revolver. When Henry realized the nature of the article which had been placed in her lap and decided not to get rid of it there and then while still in the car but rather to leave the car with it in the manner she did she assumed joint control of the revolver with the person who had placed it in her lap. At no stage can it be said that she intended to assume exclusive control of the revolver. There was therefore evidence upon which the learned resident magistrate could hold that the appellant and Henry were jointly in possession of the revolver and of the cartridges in it and the conviction therefore cannot be disturbed.

Even if the view might be taken that there were successive and distinct possessions in the appellant and in Henry it was open to the resident magistrate to find the appellant guilty on the informations charging them jointly those acts having been sufficiently coincident in time and place of their commission to constitute one offence. One has only to refer to the opinions of the judges of the House of Lords in D. P. P. v. Merriman (1972) 56 Cr. App. R. 776 to appreciate that this is so. To hold otherwise would be to invoke the decision in the case of Scaramanga (1963) 47 Cr. App. R. 213 and the cases following that decision. Those cases have all been overruled by Merriman's case.

Lastly, even if it were possible on the evidence to conclude that Henry's part in the transaction was merely to assist the possessor of the gun to avoid detection, a conclusion which we do not think the evidence can support, there is no reason, in law or in logic why the appellant's convictions should be disturbed. For in such a case Henry's exculpation in respect of the offences charged against her would have proceeded on the sole basis that she never at any time

acquired possession of the articles and it would follow that the articles would remain in the possession of the person who had placed them in Henry's lap. Any error on the part of the resident magistrate in finding that Henry acquired possession of the articles could not possibly cause any miscarriage of justice in so far as the appellant is concerned.

The appeal is dismissed. The convictions and sentences are affirmed.