

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO: 24/05**

**BEFORE: THE HON. MR. JUSTICE HARRISON, P.  
THE HON. MR. JUSTICE SMITH, J.A.  
THE HON. MRS. JUSTICE McCALLA, J.A. (Ag.)**

**YANDELL CAMPBELL & v. R  
FRANCIS THOMAS**

**Garth Lyttle instructed by Garth Lyttle & Co. for Campbell  
Ms. Diane Jobson for Thomas  
Mrs. Caroline Williamson-Hay, Assistant Director of Public Prosecutions  
(Ag.) and Ms. Anne-Marie Nembhard, Crown Counsel (Ag.) for the Crown**

**15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> February, 2006 and 20<sup>th</sup> December, 2007**

**SMITH, J.A.**

The appellants are members of the Jamaica Constabulary Force. They were tried on an indictment containing 8 counts. Each count charged them jointly for the offence of negligently permitting the escape of a prisoner. The particulars of offence in respect of the first count read:

"Yandell Campbell and Francis Thomas on the 13<sup>th</sup> day of May, 2000 being members of the Jamaica Constabulary Force and having Everton Bailey, a person arrested under a lawful warrant for the offence of rape, lawfully in their custody at the Remand Centre, negligently permitted the said (name of prisoner) to escape out of their custody."

The other seven counts are similarly worded, the only difference being the names of persons in custody and the offences for which they were charged. The trial commenced on the 17<sup>th</sup> May, 2004 and concluded on the 4<sup>th</sup> November, 2004. At the end of the Crown's case, they were not called upon to answer count 8. They were eventually convicted on counts 1 to 7. A fine of \$25,000 or 3 months imprisonment in default of payment was imposed on each appellant in respect of each count. The learned Magistrate ordered that if the fines were not paid the "sentences in the alternative to run concurrently."

The appellants appealed their convictions and sentences. In February 2006, we heard the arguments and allowed their appeals. We now put in writing our reasons for so doing.

There is no dispute that the appellants were members of the Jamaica Constabulary Force - an Inspector of Police and a Corporal respectively. The Magistrate found as a fact, indeed, it was not disputed, that the persons named in the particulars of the offences were at the material time in lawful custody at the Remand Centre and that they escaped from custody at the Remand Centre.

The Police Remand Centre is located at 42 Metcalfe Street, Kingston 12. The sole purpose of the Remand Centre is for the safe custody of prisoners. The premises are surrounded by a concrete wall

which is about 8ft in height. Atop this wall is a barbed wire fence and at the four corners are security boxes perched high above the fence.

At the entrance of the premises there is a high gate. Beyond this gate there is a driveway. On entering the premises to the right of the driveway are upstairs buildings. Straight ahead are cell blocks. There are 3 cell blocks. Cell blocks A and B are for male prisoners and cell block C for females. An area adjacent to these cell blocks is used to house aliens awaiting deportation. The cell blocks constitute one building. There is one entrance to this building. Each cell block has its own grill gate. The grill gates for blocks A and B are near the main entrance to the blocks; this entrance is a large metal door. The grill gates are about 25 feet from the entrance to the blocks. Blocks A and B are not contiguous. About 15 meters away from these blocks is block C. There is a desk at the entrance to blocks A and B which is usually manned by a diarist (police personnel). The grill gates are locked with a locking mechanism using a large key. From this entrance there is a passage way leading to the various cells which are on either side of this corridor. Block A has 13 cells. Each cell has its own locking system. All the cells are opened with one key. Cell block B is similar to cell block A. Each cell has a toilet and a concrete structure for sleeping. A concrete wall separates one cell from the other. The front of each cell is made entirely of grill. There is an opening for

ventilation at the back of each cell. Each ventilation opening has metal bars.

In May, 2000, Deputy Superintendent Devon Field was an Operations Officer in charge of the Remand Centre. His responsibilities included the supervision of the safe custody of prisoners at the centre, the assignment of police personnel and the general running of the facility.

There are two shifts - 8:00 a.m. to 6:00 p.m. and 6:00 p.m. to 8:00 a.m. each day. The Inspector in charge has overall responsibility over the premises. He has to ensure that the prisoners are kept in safe custody. The sub-officer in charge of the cell block also has to ensure that the prisoners are in safe custody, that the prisoners honour court dates and that records are made of movements of prisoners. It is also the duty of the sub-officer to bring to the attention of the Inspector in charge of the shift any unusual occurrences.

There is a sentry at the entrance to admit people to and from the premises after being identified. There is a compound patrol to patrol mainly the cell blocks to ensure that prisoners are kept safe within their cells. The officers at the cell block are to periodically enter the cell blocks to observe and to ensure that prisoners are kept in safe custody.

On the 13<sup>th</sup> May, 2000, the appellant, Inspector Campbell was the officer in charge of the 8:00 a.m. to 6:00 p.m. shift. Sergeant George

Anderson was the next senior person there that day. He was the sub-officer in charge of lock-ups. His duties were to supervise the staff and to make checks of the prisoners in custody. The 2<sup>nd</sup> appellant, Corporal Francis Thomas, was Anderson's assistant. There were nine (9) other police personnel on duty at that time. These eleven (11) persons were under the supervision of the appellant Campbell.

The 13<sup>th</sup> May, 2000 was a Saturday, a day when prisoners were allowed visitors. Visiting began at 11:00 a.m. and ended just after 2:00 p.m. During the visiting period one Constable Collins was posted at the "A" block. Constable Bryan was posted at the "B" block. The appellant Corporal Thomas, was working between blocks A and B and also at the alien's section. The appellant, Campbell, was moving between the guardroom and the lock-ups.

Sixty-six (66) male prisoners were on Block A. In all 142 prisoners were in custody at the Remand Centre. At about 2:30 p.m., Sergeant Anderson, with the permission of the appellant Campbell, left the premises to attend a funeral.

In the absence of Sergeant Anderson, the appellant, Corporal Thomas, who was next in rank, was in charge of cell block A. The key to open the main gate to block A was in his custody. Constable Collins had the key to open the individual cells from the start of the visiting period to

the end. Sergeant Anderson could not recall who had the keys before they were given to Collins.

Between 3.00 p.m. and 3:30p.m. Sergeant Doreth Shaw, who was the sub-officer in charge of the female prisoners on block C, was at the front of the compound at the guardroom on her way to the cell block. She saw people on the verandah of buildings next to the Remand Centre pointing in the direction of the Centre. She went to the passage between the male and female blocks. She looked through the decorative wall between these cell blocks and saw a piece of iron jutting out from the ventilation area of a cell on block A. She saw clothes on this piece of iron. Sergeant Shaw alerted her colleagues. She saw the appellant Corporal Thomas open the cell and heard him say that prisoners had escaped from cell number 4.

On the same day, 13<sup>th</sup> May 2000, at about 5:00 p.m., Detective Inspector Samuel Bartley from the office of Professional Responsibilities, went to block A of the Centre. He examined the register of prisoners in custody and made a physical check of the cells. There were 66 names in the register for Block A. He counted 16 prisoners in the Block. Superintendent Lloyd Haley of the Office of Professional Responsibilities went to the Remand Centre at about 8:00 p.m. There he saw Supt. Ellington who is the commander of the Remand Centre. Superintendent Haley took charge of the investigation of the jail break. He visited cell

block A where he saw a disjointed metal bar in the ventilation hole of number 4 cell. He observed that two perforated ventilation platings were cut. The steel bars were also cut and the concrete at the bottom of the ventilation hole was dug out. The expanding metal, which was embedded into the concrete, was removed. He also observed a molded substance, which appeared to be toothpaste, on the end of the steel bars. The remnant of the steel bars at the extreme was rusting. The debris from the concrete appeared to be stale. The edges of the 2 platings appeared freshly cut.

Superintendent Haley saw two (2) clothes lines made of wire stretching from the perforated platings across the cell to the door of the cell where they were attached to the grill. There were clothes on the lines at the end where the hole was. The clothes obstructed the view of the hole from the position of the door of the cell. There were two bunk beds below the ventilation in cell number 4. There was no lighting in cell number 4. On the top bunk bed, Superintendent Haley found a piece of half inch steel with one end sharpened. In the courtyard the Superintendent observed a hole between the barbed wire and the concrete fence. This hole was large enough to admit an adult. He formed the opinion that the prisoners escaped through the hole in the ventilation. They did not, he said, escape through the main gate at the front of the cells.

In his defence, the appellant Inspector Campbell testified that Superintendent Ellington was in charge of the Remand Centre on the 13<sup>th</sup> May, 2000. He was the next in rank to Superintendent Ellington. He arrived at the Centre at about 10:00 a.m. He had 11 persons under his command. There should have been 22 persons. Because of the shortage of staff, he took the responsibility to do a preliminary search of visitors at the main gate. He was assisted by the station guard as he had no one else to assist him. All other personnel were sent to the cell blocks A, B and C and the area for aliens. One of the officers was later sent to the National Chest Hospital to guard a prisoner. At the time only one of the six bulbs in the passage at block A was functional. This bulb was about half way down the passage. As a consequence, the inside of the cells was dark. When he resumed duties that morning, Sergeant Anderson reported to him that there was a physical check of the cells. With his permission Sergeant Anderson, who did not take his lunch break, left the premises at about 2:30 p.m. After the visiting period, at about 2:45 p.m., Inspector Campbell sat in his office on the ground floor. From there he could see the cell blocks. It was while he was there that Constable Bryan informed him that some of the prisoners had escaped.

Under cross-examination, he agreed that the prime duty of all officers was the safe custody of all prisoners. However, he insisted that his primary duty was not to ensure the safe custody of those prisoners to

whom he had assigned officers. The safe custody of those prisoners was the primary duty of the officers to whom the delegation was made, he said.

On the 13<sup>th</sup> May, he checked the diary which indicated that a physical check of the cell blocks was done. The record indicated that everything was in order. Persons charged with murder are checked every hour; those charged with less serious offences are checked every two hours. He said that it was usual for clothes lines to be stretched across a cell. For over (2) months there had only been one working bulb in the passage way in cell block A. He brought this to the attention of the Administration Inspector. As an Inspector he did not have the authority to call for additional supplies. That was the prerogative of Supt. Ellington to whom he had spoken about the situation.

The appellant, Corporal Francis Thomas, testified that on the 13<sup>th</sup> May, 2000, he started to work at about 8:00 a.m. His duties on that day included the safe custody of prisoners. This entailed the counting of the prisoners on the cell blocks. Sergeant Anderson was the sub officer in charge that day. Sergeant Anderson left the premises at about 2:30 p.m. and he (Corporal Thomas) took over. After the visiting period had ended, Constable Bryan informed him that all the prisoners were in their cells. Constables Bryan, Soman, Collins and Woman Corporal Shaw were deployed to ensure that the prisoners on block A were secured.

Sometime after 4:00 p.m. he was informed that there was a jail break. Along with Inspector Campbell, Constables Bryan and Shaw, he went to the cell area. On entering block A he noticed that about 3-4 cells were open. No one was in any of these cells. In cell No. 4 he observed that the steel plating of the ventilation was cut. The ventilation opens into a courtyard between two cells. The appellant Thomas swore that he had done everything that he should have done.

In cross examination he said that after Sergeant Anderson left, the keys for the individual cells were in the possession of Constables Bryan and Collins. The keys were later handed to him. He said that when Constable Bryan gave him the keys, he asked Bryan if everybody was locked down and Bryan answered in the affirmative. He did not himself check the cells. His duty he said, involved the supervision of Constables in his charge. After the alarm was made he checked the cells and noticed that about fifty (50) prisoners had escaped from cell block A. He only had five (5) male officers working on the cell block. There should have been fifteen (15). He had informed the Inspector of the shortage.

#### **Findings of Fact and Reasons for Decisions**

The learned Magistrate, after referring to the custody and escape of the prisoners, stated:

"1. It is not being contested and the Court finds that both accused are police officers who had the prisoners named in the indictment among others, in their lawful custody at the

Remand Centre – an area with its prime purpose being the keeping of prisoners in safe custody.

2. The prisoners named in the indictment did escape from custody at the Remand Centre.

3. The issue to be determined is did the accused negligently permit their escape?

4. A common element of the defence of each accused is that the facilities and/or the circumstances which existed on that day were the real cause of the escape namely:-

- (i) Poor lighting
- (ii) Increased risk due to one (1) key opening all cells
- (iii) Shortage of staff of approximately 50% that day that is eleven (11) instead of twenty two (22). The Crown did not challenge these findings.

5. The law implies negligence in the escape, nevertheless, the Court finds that despite the weaknesses inherent in the physical plant and/ or security procedure and shortage of staff, the escape would not have happened without negligence in this case.

6. The Photographs compiled in Exhibit 1 are instructive. The ventilation area had a perforated metal sheet on the outside which was cut at points between holes. If cut before the accused's tour of duty the previously cut portion would be visible and detectable on checking, if checked at the commencement of the accused's tour of duty (Number sixteen (16) see photos from inside and number seventeen (17)).

...

10. The shortage of personnel combined with the weaknesses in the physical plant of the

Remand Centre, necessitated compensatory action by the person or persons in charge of the cells to prevent the opportunity of escape.

...

14. The court finds that the failure of both accused to initiate compensatory measures resulted in either:

(a) Prisoners having a partially cut ventilation which was not discovered thereby facilitating further cutting, or,

(b) Prisoners having the opportunity to cut or further cut the vent and open it to a size which could facilitate without early detection.

....

17. The Court finds that even with a staff compliment of ten (10) or nine (9) if there had been regular compound patrols of the cell block including the area of the ventilation opening, the cutting would have been discovered and the prisoners would not have been able to escape.

...

20. The Court finds negligence on the part of the accused, Corporal Thomas who had direct control of the cells and was the sub-officer in charge after Anderson left.

21. The Court finds negligence on the part of Inspector Campbell by virtue of his position as head gaoler after Superintendent Ellington left and by his conduct of weakening an already short staff by permitting a Sergeant and main sub-officer in charge to stay away longer than break of lunch to attend a funeral.

22. It is also important to the Courts findings that this escape occurred during daylight hours, when the condition of the vent outside would

be visible and would not have been affected by poor lighting inside ."

### **The Law**

As Mrs. Hay for the Crown correctly submitted, to establish the offence of negligently permitting escape, the Crown must prove:

- (1) That the arrest and detention of the inmate were lawful. These facts cannot be presumed – see **Dillion v R** [1982] A.C. 484 P.C.
- (2) That the accused was a police officer.
- (3) That the accused had the inmate in his "actual custody," and
- (4) the escape,

It is not necessary to prove negligence on the part of the police officer, the law implies it. However, if the escape was not in fact negligent, the defence must prove it – see **Archbold** 2003 Edn. para 28-204.

### **The appellant Campbell**

In respect of the appellant Campbell (1), (2) and (4) above are not in dispute. The complaints raised in the grounds filed on his behalf are:

- (1) That the Magistrate ought to have found that the prisoners were not in his "actual custody "; and
- (2) That the learned Magistrate erred in finding negligence on his part by virtue of his position as head gaoler,

### **Actual Custody**

The evidence is that Inspector Campbell was second in charge of the Remand Centre on the 13<sup>th</sup> May, 2000. He assumed duties at 10:00 a.m., Superintendent Ellington was in charge of the Centre. Superintendent Ellington left the premises at about 10:00 a.m. leaving Inspector Campbell in charge. Inspector Campbell had eleven (11) persons under his command - nine (9) police personnel and two attendants. The keys for the grill gate at the entrance of the cell blocks and for the individual cells were in possession of two policemen, namely, the appellant Corporal Thomas and Constable Collins. One key was used to open all the cells on a cell block. Inspector Campbell could only enter the cell block if let in by either Corporal Thomas or Constable Collins. The appellant Thomas, as the sub-officer on duty, was directly in charge of the prisoners and had the primary responsibility and control of the prisoners in cell block A.

The learned Magistrate found that both appellants had the prisoners in their lawful custody –(see finding 1). As stated before it is not disputed that the prisoners were in lawful custody. Counsel for Thomas also conceded that the prisoners were in the actual custody of Thomas who had the keys for the cells at the material time. However, counsel for Campbell contended that the prisoners were not in the actual custody of Campbell.

Counsel for the Crown referred to the case of **R v Dillion** (supra) in support of her contention that "actual custody" means custody "within the premises for which he was responsible."

In the **Dillion** case their Lordships' Board construed section 16 of the Prison's Act, which has been replaced with section 17 of the Corrections Act of 1985. This section provides as follows:

"17.- (1) Where an inmate is confined in any adult correctional centre in which he may lawfully be confined, or where he is being taken to or from, or is working in the custody or under the control of, any member of the adult correctional centre staff beyond the limits of any such adult correctional centre, he shall be deemed to be in the legal custody of the Superintendent of such centre.

(2) Where a person is confined in any lock-up or remand centre in which he may be lawfully confined, or where he is being taken to or from, or is working in the custody or under the control of, any person in charge of any lock-up or remand centre beyond the limits of such lock-up or remand centre, he shall be regarded as being in the legal custody of the person in charge of such lock-up or remand centre, as the case may be."

Subsection (2) is relevant. By this subsection a person confined in a Remand Centre shall be regarded as being in the legal custody of the person in charge of the Remand Centre. Thus, it may be said that the prisoners were in the legal custody of Inspector Campbell, since he was in charge of the centre. However, in my view, it would not be correct to say that they were in the actual custody of Inspector Campbell. "Actual

custody" in my opinion means custody in actual fact as opposed to constructive custody. It means de facto custody as opposed to de jure custody or legal custody. In **R v Dillion** (supra) their Lordships expressed the view that "the purpose of section 16 (now section 17 of the Corrections Act) is to define the person in whose custody a person confined in a prison or lock-up is deemed to be and who is legally responsible for his custody, so that any proceedings by way of habeas corpus or for any other remedy can be properly directed."

Section 16 of the Corrections Act provides that every person sentenced to imprisonment other than a short term sentence shall be committed to and detained in a correctional centre. It also provides that every person awaiting trial or remanded in custody may be committed to and detained in a correctional centre, lock up or remand centre.

It is important to note the difference between subsections (1) and (2) of section 17 (supra). Under subsection (1) persons sentenced to imprisonment shall be deemed to be in the legal custody of the Superintendent of such centre. For the purposes of the Act, the Superintendent, whether he has actual custody or not, is deemed to have legal custody of the inmates at the correctional centre. This is a kind of legal fiction. In English law legal fictions are used in order that some difficulty may be overcome.

Under subsection (2) a person awaiting trial or remanded in custody and confined to a lock-up or remand centre shall be regarded as being in the legal custody of the person in charge of such lock-up or remand centre. The words underlined are also employed to create a legal fiction. By virtue of this subsection, the person in charge of that remand centre or lock-up is regarded as having legal custody of the persons confined thereto, whether or not such persons are actually in his custody. These legal fictions are intended to facilitate habeas corpus proceedings, the release of persons immediately on their becoming entitled to be released and the discharge of persons detained by due course of law.

It is my view that it is not correct to say that, by virtue of section 17, the prisoners in question were actually in the custody of the appellant Inspector Campbell without more. On the evidence before the magistrate it certainly cannot be said that the prisoners who escaped on the 13<sup>th</sup> May, 2000 were actually in his custody.

Accordingly, in my view, the convictions cannot stand.

In light of the foregoing, it is not necessary for me to consider the second issue raised by Counsel on behalf of the appellant Campbell. However, I will briefly address this issue. Did the learned Magistrate err in finding negligence on Campbell's part by virtue of his position as head gaoler? The evidence is that at the time leading up to the escape of the prisoners, the appellant Campbell was at the main gate conducting

searches of visitors and their bags. There was a grill gate which was kept locked and at which two (2) policemen were posted. The appellant Thomas was directly in charge of the prisoners. The prisoners escaped through the ventilation opening at the back of cell no. 4. The Magistrate was of the view that "the shortage of personnel combined with the weaknesses in the physical plant necessitated compensatory action by the person or persons in charge of the cells to prevent the opportunity of escape."

The Magistrate found that the appellant's failure to initiate compensatory measures, his failure to direct regular compound patrols of the cell blocks including the area of the ventilation opening and his granting of permission to Sergeant Anderson to be absent at that time, resulted in the escape.

The evidence of Campbell is that, because of the shortage of personnel to guard the prisoners and to deal with visitors, he left his office and posted himself at the gate. When he took up duty at 10:00 a.m. the available personnel had already been assigned by Superintendent Ellington to undertake particular tasks. There was no one available at that time to patrol the compound. It is, in my view, unreasonable to blame him for what the Magistrate described as "his failure to direct regular compound patrols." It is equally unreasonable, in my opinion, to accuse him of "failing to take compensatory measures." The Magistrate

(at finding number eleven (11)) stated that "other than manning the gate the appellant Campbell did not institute any compensatory measures." It is not clear what "compensatory measures" the learned Magistrate had in mind. However, in findings numbers 10,14,15,16,17 and 18 the Magistrate seemed to be identifying the failure to have regular patrols as the causa causans of the escape. The Magistrate was of the view that, as the head gaoler, after Superintendent Ellington left, the appellant, Campbell, should have directed regular patrols. In my view, Campbell has shown that in all the circumstances he took reasonable steps to compensate for the shortfall in personnel by leaving his office and taking up duty at the gate. In doing this the other officers would remain in the positions to which they were assigned by Superintendent Ellington after the departure of Supt. Ellington and after the departure of Sergeant Anderson. Even if his granting Anderson leave of absence was probably an error of judgment, it was certainly not negligent conduct. It is unreasonable, in my view, to conclude that by not directing "regular patrols", he, by virtue of his office as head gaoler, negligently permitted the prisoners to escape. The prisoners escaped by their own artifice. There is merit in defence counsel's contention that in the circumstances he could not be said to have shut his eyes to the obvious or to have allowed matters to go on without caring whether or not prisoners escape.

**The appellant Thomas**

The undisputed evidence is that Corporal Thomas was, at the material time, the sub-officer in charge of the cell blocks. It is also not disputed that at the material time he had the keys for the main entrance to the cell blocks. When Constable Collins went for lunch, the key to the individual cells was handed to Sergeant Thomas.

Counsel for Thomas, quite properly, I think, conceded that her client had actual custody of the prisoners. Once the Crown had established that the prisoners were in lawful custody, that the appellant Thomas was the sub-officer, that he had actual custody of the prisoners and that the prisoners escaped, the law implies negligence on the part of the officer. It is for the defence to prove that the escape was not negligently permitted – see **Archbold 2003 Edn. Para 28-204.**

In his defence Corporal Thomas testified that he was in charge of the cell blocks after Sergeant Anderson left at 2:30 p.m. At this stage he, Corporal Thomas, had the keys for the main entrance gate to Block A. The keys to the individual cells on block A were in the possession of Constable Collins and the keys for cell block B were in the possession of Bryan. Shortly after the departure of Sergeant Anderson, both Constables Bryan and Collins left for lunch. They left the keys with the appellant Thomas. He said he asked Bryan if "everybody was locked down" and the reply was "yes".

The learned Magistrate found that the appellant Thomas negligently permitted the escape in as much as he had direct control of the cells and was the sub-officer in charge of the cells after Anderson left. It was the Magistrate's opinion that the cutting of the ventilation bars was "visible and detectable" and should have been discovered by the appellant on his tour of duty. The Magistrate also held that the failure of the appellant Thomas to initiate compensatory measures facilitated the escape.

As Miss Jobson submitted, the finding of the Magistrate, that if the ventilation bars were cut before the appellant's tour of duty "the previously cut portion would be visible and detectable on checking", is unreasonable and not supported by the evidence. The evidence indicates that even if the appellant had gone into the cell corridor to check the cells he would not have seen the ventilation area as it was obstructed by clothes hanging on makeshift clothes line. The undisputed evidence is that "it is usual for there to be clothes lines running across the cells." Further, due to the poor lighting, someone standing at the front of the cell doors could not see inside the individual cells. Also, the evidence is that the prisoners used toothpaste to conceal the cuts to the bars.

The Magistrate's conclusion that the appellant Thomas ought to have checked the cells at the commencement of his tour of duty is also unreasonable. The appellant was made to understand that at 2:30 p.m.,

when Sergeant Anderson left, the cells were checked. According to the evidence, a check should have been made every hour on persons charged with murder and every two hours on persons charged with other offences. Thus, the next hourly check should be made at 3:30 p.m. The escape was discovered sometime between 3:00 p.m. and 3:30 pm. Clearly, there was no negligence on Thomas' part in this regard.

I have already dealt with the Magistrate's findings as regards the failure to direct regular compound patrol (findings 16-18). As stated before, there was simply no one available for compound patrol. Further, there is no evidence that Corporal Thomas had the authority to re-deploy personnel already deployed by his superiors.

It has been said that negligence is a fluid principle which has to be applied to the most diverse conditions. In the instant case both appellants are charged jointly with negligently permitting escape. The escape might well have been due to the negligence of someone. This is not enough. There must be evidence of negligence on the part of each defendant. The basis of the joint charge is not clear. However, no complaint was made of this joinder. The Crown's case was clearly based on the omission to act on the part of each appellant. The appellant Thomas has in my view, rebutted the presumption of negligence by showing that, in the circumstances of the poor lighting, the shortage of staff, the increased risk due to one key opening all the cells, the non-

functioning look-out towers, and the fact that the particular day was a "visiting day", he did all that he could reasonably be expected to do.

### **Conclusion**

It was for the above reasons that we allowed the appeals, quashed the convictions, set aside the sentences and entered judgments and verdicts of acquittal.