JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO.78/95

COR: **THE HON. MR. JUSTICE CAREY, J.A.**
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.

STEVE SMITH V REGINAM

Mrs. J. Samuels-Brown for appellant

Bryan Sykes & Anthony Armstrong for Crown

December 14 & 15, 1995, February 19, 1996

PATTERSON, J.A.

On 20th February, 1995, in the Resident Magistrate's Court at Kingston, the appellant was convicted of unlawful wounding, and was sentenced to a fine of $4,000.00 or six (6) months imprisonment at hard labour. He appealed against conviction only. On 15th December, 1995 we dismissed the appeal and our reasons for so doing follow:

The facts on which the prosecution relied are quite simple, and may be briefly stated. On the morning of the 8th September, 1992, a number of persons mounted a demonstration by blocking the roadway along Marcus Garvey Drive at its junction with Industrial Terrace. The police came on the scene, cleared the roadblock , and left. At about 9:00 a.m. the demonstrators were in the act of blocking the road again, when the appellant drove his van through from the direction of Spanish Town and stopped some

distance beyond the trouble spot. He alighted from his van and walked back towards the crowd of persons gathered on Industrial Terrace and Marcus Garvey Drive. He attempted without success, to disperse the crowd. He then discharged two shots from his firearm into the air. At that time, the complainant was walking along the sidewalk on Industrial Terrace towards Marcus Garvey Drive. The demonstrators took evasive action, and the appellant pointed his firearm at the crowd of persons on Industrial Terrace and discharged a third shot, which wounded the complainant in both legs. Persons in the crowd informed the appellant of the injury to the complainant, whereupon he ran to his vehicle and drove off towards Kingston. The complainant was treated at the Kingston Public Hospital for the gunshot wounds, and she later reported the matter at the Denham Town Police Station. Neither the complainant nor an eyewitness who gave evidence for the prosecution knew the appellant before that morning, but the police were supplied with the registration number of the vehicle the appellant was driving and their investigations led them to the appellant. The appellant admitted to the police that he had discharged shots at the relevant time. The eye witnesses for the prosecution rejected a suggestion that the crowd beat on the appellant's van and that they threatened to attack him before he discharged two only shots in the air.

At the close of the prosecution case defence counsel submitted that there was no case for the defence to answer. He based his submissions on two limbs. Firstly, he said there was not a sufficient basis upon which the identity of the accused had been established and secondly that the complaint's evidence in court was inconsistent with a written statement which was admitted in evidence but which she denied giving to the

police. The Court rejected the "no case" submission. That gave rise to the first ground of appeal couched in these terms:

> "1. The Learned Resident Magistrate ought to have allowed the submission on behalf of the appellant that no prima facie case had been made out against him."

Mrs. Samuels-Brown did not base her submissions on the two limbs which counsel had advanced before the resident magistrate without success. She contended that the evidence adduced by the prosecution was so manifestly unreliable as to render it unsafe. She submitted further that the evidence clearly negatived mens rea in that it revealed that the appellant discharged the shots in the air and therefore did not intend to harm anyone. She also submitted that the appellant, being a district constable, was acting in the due execution of his duty as such. The demonstrators were on the highway "committing numerous breaches of the common law and the statute, inclusive of breaches of the peace and that the appellant had a duty to disperse the crowd to prevent further breaches." Her final submission on this ground was to the effect that the prosecution case made it clear that the appellant was in imminent danger of an attack to his person and damage to his property, and that he acted in self-defence. She submitted that for all those reasons advanced, the "no case" submission should have been upheld and the appellant should not have been called on to state his defence.

Although the arguments advanced by counsel were quite attractive, we did not agree with her. We formed the view that this ground of appeal was without merit. A resident magistrate, in the exercise of his special statutory summary jurisdiction, is the judge both of the law and the facts, and when at the close of prosecution case a "no case"

submission is made, all that he is required to decide then is whether the prosecution has adduced sufficient evidence on which he might (not will) convict. A resident magistrate is guided by the Practice Note issued by the Divisional Court [1962] 1 All ER 448 which clearly sets out when a submission of "no case" may properly be upheld, namely.

> "(a) when there has been no evidence to prove an essential element of the alleged offence; or (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it."

On the evidence adduced by the prosecution, we were unable to say that it was manifestly unreliable as to render it unsafe. There was undoubtedly evidence that the appellant had discharged three shots from his firearm, two in the air and one at the crowd, and it was that third shot which wounded the complainant. It was not alleged that the appellant discharged that third shot with the specific intention of wounding the complainant, but on a charge of unlawful wounding, no such specific intention need be proved. On the evidence, there can be no doubt that the appellant was quite aware of what he was doing, and that someone was likely to be injured by his action, and that is sufficient proof of his intention on a charge of unlawful and malicious wounding.

There was no evidence at the close of the case for the prosecution even to suggest that the appellant may have been acting in the execution of his duty. It was never suggested that he was wearing the badge which identifies district constables nor that he made any disclosure of his identity as a district constable or otherwise. But even so, that would not have been justification for shooting the complainant or anyone. The question of self-defence did not arise on the case for the prosecution.

We were referred to the evidence of the investigating officer who testified that the appellant told him in the course of his investigations, that "he had to fire, first of all two shots from his firearm and then two more because the crowd was coming down on him and he feared for the life of his son, himself and the damage to his vehicle." Counsel submitted that this was a "mixed" statement by the appellant, and that it gave rise to self-defence on the prosecution case. We were of the view that the statement was purely exculpatory and therefore was not evidence of what was stated and did not give rise to the issue of self-defence. It is interesting to note that counsel in the court below objected to the admission of this bit of evidence. The resident magistrate, however, over-ruled the objection, and the only value that it has, is to show the appellant's reaction to the enquiries directed at him by the officer, and in the circumstances of this case, its weight would be negligible. The resident magistrate would have been wrong to take into account a wholly self-serving statement when considering the submission of "no case".

Both witnesses for the prosecution denied an attack by the demonstrators on the appellant and his property. At the close of the case for the prosecution there was sufficient evidence which could entitle a reasonable tribunal to convict, and accordingly, the resident magistrate acted correctly in rejecting the "no case" submission.

The next ground of appeal argued was this:

> "The Appellant was denied a fair trial having regard to the Learned Resident Magistrate's manifest and demonstrated hostility towards him during the conduct of the case."

We were referred to the notes of evidence in support of this ground. The appellant gave sworn testimony and during the course of the examination in chief, he was asked to

"show us how you held the firearm - how it was pointing?" the answer to that and what was recorded there-after was relied on by counsel, and it is this:

> "As I said, it was in the air (witness indicates pointing with two fingers up in air) (Court asks accused now giving evidence if he has his firearm on him. The accused replies in the affirmative - Court orders him to hand over his firearm- sends for the sub-officer in charge Kingston. Superintendent arrives after witness gives evidence in chief- told court had confiscated loaded firearm.)"

Counsel submitted that there was no rule that the firearm ought to be taken from the accused, and that the resident magistrate had no power to order that it be confiscated. The judge's reaction to the discovery of the loaded firearm while the appellant was giving evidence demonstrated, so counsel said, that the resident magistrate had formed an opinion adverse to the appellant and particularly, his sense of responsibility. The use of the word "confiscate" suggested punishment and revealed subjectively that the resident magistrate was hostile to the appellant and had come to a conclusion. Counsel argued that the remarks of the resident magistrate recorded in his findings of fact lends weight to her submission.

In our view, there was no ground for the contention of counsel. No person accused of a crime should be allowed, as a matter of judicial policy, to enter a courtroom with any sort of offensive weapon in his possession. A Resident Magistrate's Court is a court of Record, and the resident magistrate is the judge in the court and as such he is charged with the paramount duty to regulate the proceedings before him and to maintain the integrity of the court. No one could doubt for a moment that he has a discretion to

exclude from the court a member of the public who is armed with an offensive weapon. In the same way he may exclude the offensive weapon from the court. In the instant case, the resident magistrate became aware of the firearm which the appellant had in his possession while giving evidence, and in the exercise of his discretion, he ordered the appellant to hand over the firearm to the police. We found nothing wrong with the exercise of his discretion. Later in the day when he told the Superintendent that the court had "confiscated" the loaded firearm, having regard to what had transpired earlier, we formed the view that he used the word "confiscated" in a loose sense, and not in its strictly legal sense. Legally, he had no power to "confiscate" the firearm, but undoubtedly he had power to deprive the appellant of the physical possession at the time he did. In the circumstances, bias could not be attributed to his action. There was no "departure from the standard of even-handed justice which the law requires from those who occupy judicial office" (per **Lord Thankerton in Franklin v Minister of Town and Country Planning** [1948] A.C. 87).

The contention in the final ground was "that the verdict of the court was unreasonable having regard to all the circumstances of the case". This ground did not comply with the provisions of Practice Direction No. 4 of 1985. The relevant section reads as follows:

"Criminal Cases
Grounds of Appeal"

'The President, with the concurrence of the Judges of the Court, directs the issue of the following Practice Direction:

1. Where it is intended to argue at the hearing of an appeal that the verdict is unreasonable or cannot be supported having regard to the evidence, counsel are required to file in support of that ground, particulars of the basis or bases on which they intend to rely."

However, we did not dismiss this ground of appeal without a hearing as we are empowered to do, but instead we allowed counsel to state the necessary facts to fill the breach. She reiterated the appellant's lack of intention but recoiled in light of the resident magistrate's finding that the appellant's act " was one of wanton carelessness, firing at a crowd without caring whether persons may or may not get shot" and his acceptance of the evidence of the prosecution eye witnesses.

We were asked to consider the evidence of the appellant which it was submitted was confirmed by the evidence of the prosecution. The appellant testified that he was a district constable and on the morning in question, he was driving his van and came upon a road block which caused him to stop. A number of persons were gathered on Marcus Garvey Drive and on Industrial Terrace. He asked the crowd to remove the roadblock so that he could continue. They refused, and about four men stood in front of his van. He moved forward and they threatened to kill him, and started hitting his van. A large crowd was approaching from Industrial Terrace "jumping up". He was in fear, so he reached for

his firearm, put his hand out the window of the vehicle and fired two shots in the air. The crowd dispersed and he came out his van, cleared the roadblock then he "went into the van and drove away quickly." He said that having discharged his firearm, he knew that he should make a formal report of that incident, so he went to the Central Police Station and reported the matter to Detective Inspector Cole. He said that when he fired the shots "there were no women in the immediate area they were coming up". He was not aware that anyone was injured by the shots he fired. When cross examined, he said he was "afraid for my life, my son's life and any damage to my vehicle." He denied leaving his vehicle, but said it was four shots that he fired from the vehicle in the air.

The resident magistrate who saw and heard the appellant, rejected the defence, and we saw no reason to interfere. We found no merit in this ground.

We had no hesitation whatsoever in coming to the conclusion that the resident magistrate had ample evidence before him in arriving at the verdict he did and that the appeal should be dismissed and the conviction affirmed. Undoubtedly, the appellant acted in a manner which clearly indicated that he is not a fit and proper person to be the holder of a firearm user's licence, nor is he fit to be a district constable. We endorse the resident magistrate's recommendations in that regard.