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IN THE MATTER OF THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA #39/93

PETER O'NEIL GOODEN V. REGINA

Mr. Furniss for appellant
Mrs Escalante for Crown

REASONS FOR JUDGMENT

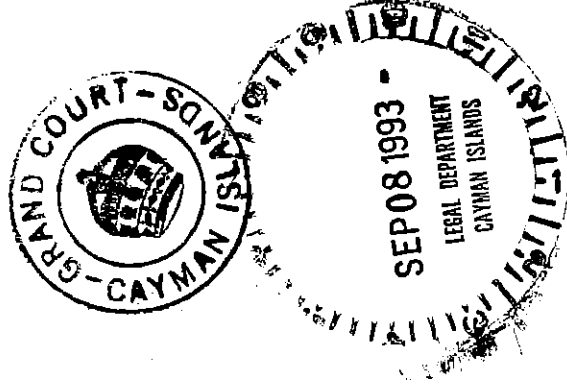
Schofield J.

On the 16th July, 1993, I allowed this appeal, and I now give my reasons for so doing.

Peter O'Neil Gooden, the appellant had been convicted in the Summary Court on two counts, possession of an unlicensed firearm, contrary to section 15 of the Firearms Law, and discharging a firearm, contrary to section 18 of that Law.

The main evidence against the appellant came from two Jamaican musicians Mark Anthony Myrie, otherwise know as Buju Banton, and Von Wayne Charles, whose stage name is Wayne Wonder. After a performance of their music at Mingles Night Club in West Bay Road on the evening of Friday the 26th March, 1993, they went to a dance at the Rockett residence just off Crewe Road, George Town. Their evidence was that they left the dance at about 3 O'clock in the morning and asked the appellant for a lift in his van, which was parked next to the Texaco Service Station in Crewe Road, to the Island Pines complex where they were staying.

Myrie testified that as they got in to the van the appellant pulled out a gun and fired a shot in the air. The appellant then handed Myrie the gun and invited him to fire it. This Myrie did, firing up in the air through the open window from inside the van before giving the gun back to the appellant. Myrie had appeared in the Summary Court and pleaded "guilty" to a charge of discharging a firearm before he testified. The van moved off



carrying the appellant, the two entertainers and several other people. Myrie testified that as they were driving along the appellant opened the door of the van, put his hand outside and fired three more shots in the air. The two musicians were driven to the Island Pines complex and were arrested the next morning.

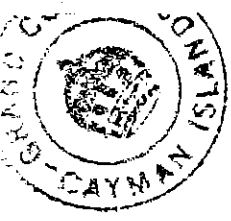
Charles testified that after they had got into the van the appellant asked Myrie if he wanted to fire the gun and handed the gun to him. Myrie stepped outside the van and fired about two shots. Myrie handed the gun back to the appellant who then fired three shots. On the way back to their condominium the appellant fired two more shots from inside the vehicle as it was on the move.

Detective Inspector Brady testified that he was on duty in the Mary Street area of George Town at about 3:20 a.m. on that Saturday morning. He heard about five gunshots, three in rapid succession as from an automatic weapon and two more after a ten to twenty second pause. He went to the Texaco Service Station in Crewe Road and there found three spent cartridges. Near to the Block Factory about 50 to 65 yards away he found two more spent cartridges.

The next morning D.I. Brady arrested Myrie and Charles and later arrested the appellant. On being shown the statement of Myrie and Charles the appellant said that it was a bunch of foolishness. He was asked to hand over the gun and said that if he were to do so that would be like robbing a bank and handing back the money. He said it would be difficult for him, but he would fight it in Court.

Detective Sergeant Marlon Bodden was with D.I. Brady throughout these events and supported his evidence.

Both officers were cross-examined about whether Myrie, Charles and the appellant were tested for traces of gunpowder or residue. In answer to a direct question D.I. Brady said he





instructed Myrie and Charles to be so tested but he did not check for the results of the tests. Although not asked directly whether the appellant was tested, from the tenor of his answers when questioned in regard to the procedure for samples to be sent abroad it appeared that the same procedure had been requested in respect of the appellant. Sergeant Bodden would go no further than to say he was not present when the appellant was tested. He did say it would be the procedure for a swab to be taken from the appellant.

The appellant testified that he saw Myrie and Charles perform at Mingles night club. He took his girlfriend to the dance at Rockett's residence in his Nissan Cedric motor car. He saw the two performers and Douglas Gibson walking along the road as if going to the dance. The appellant left the dance to take his girl friend home to West Bay. On the way back to town he was stopped by a police officer and he was told that a firearm had been discharged and word was out that he, the appellant, had been there. His car was searched but nothing was found. He went home and was arrested by the police from his house. Nothing was found in the house when it was searched.

The appellant said that at the Police Station he agreed to give a swab test after he had spoken to his attorney. This he did.

When cross-examined he said his mother has a van but he was not driving it. Mitchell Hurlston drove the van to the Texaco Service Station that night.

Douglas Gibson testified for the defence. He went to see Myrie and Charles perform that night and, he said, gave them a lift to Champion House restaurant where they had a meal and thereafter walked across the road with them to the dance. On their way to Champion House they had come across a police road block and Charles asked if the police did a body search because he had a gun with him. He asked if he should throw it away, but

on Gibson's advice they went safely through the road block. Charles also asked if it was safe to go into the dance with a gun. Gibson also said that Myrie had a long knife with a black handle which he left in the car. Gibson also said he was still in possession of that knife.

Gibson testified that he did not stay at the dance very long because he did not want to be involved. By that he presumably meant he did not want to be involved with men who were carrying weapons.

Mitchell Hurlston testified that he went to the dance at Rockett's residence in the van of Vivian Thompson, the appellant's mother. Six of them left the dance together and he was giving the other five a lift in the van. The five included Myrie and Charles, a young lady and two other men he did not know. The appellant was not among them, but Hurlston had seen him and a lady together and they appeared to be going into the dance.

As they were about to get into the van Hurlston said he saw Charles hand Myrie a gun and Myrie fired it. On cross-examination he said there were five shots, all fired in the service station premises. He then drove Myrie and Charles to the Island Pines complex.

Initially the appellant faced three charges, two of unlawfully discharging a firearm and one of possession of an unlicensed firearm. The first alleged act of discharging a firearm was at the Texaco Service Station and the second such alleged act was near to the Block Factory. The learned Magistrate reviewed the evidence of D. I. Brady that three gunshots were fired in quick succession as from an automatic weapon followed by a gap and then two more gunshots, which evidence was supported by the officers' finding three spent cartridges at the service station and two near to the Block Factory. The Magistrate concluded that this evidence put the lie to the evidence of Myrie and Charles that both Myrie and the

appellant fired the weapon at the service station and the gun was passed between them between shots. Accordingly the learned Magistrate acquitted Myrie on the count which involved the allegation of discharging the weapon at the service station.

Having made that finding, thus doubting the veracity of the two prosecution witnesses, the learned Magistrate should have looked more carefully and analytically at the rest of the prosecution case. There were major inconsistencies between the evidence of Myrie and Charles both as to the number and order of shots fired, the sequence of the evidence and relating to where Myrie fired the weapon. Furthermore these witnesses had every reason to lie. Myrie's hands were tested for traces of gunpowder residue so he had to admit he fired the gun. But if he admitted the gun was his or belonged to Charles then these two men would be facing far more serious charges than the one put to Myrie, charges which could involve them in potentially lengthy trials, possible imprisonment and a destruction of their immediate careers as entertainers. They were embarked on a tour to various countries including Japan and the United States of America. It was in the interests of these two witnesses to minimise their own involvement and cast the blame on another person.

In this light the evidence of the defence witnesses Gibson and Hurlston did not fall to be swept aside. Gibson's evidence was disbelieved because the learned Magistrate found it incredible that Charles would inform Gibson, a stranger, of the existence of the gun and, furthermore, that a gun is difficult to get through Customs. On the latter point, if the appellant had possession of a gun unlawfully the gun had to reach the Island through one of the ports, as such weapons are not manufactured in Cayman. The same consideration as to the difficulty encountered at Customs would apply to any gun so unlawfully held, no matter who held it. The learned Magistrate disbelieved Hurlston because of his testimony that he gave a lift to two complete strangers after he left the dance. Neither the evidence of Gibson nor that of Hurlston was in itself inherently implausible and, in the

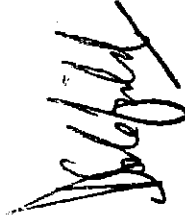
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the light of the evidence as a whole, fell to be believed.

Then we have the evidence of the forensic test to ascertain if the gun was fired by the appellant. The appellant said his hands were swabbed to detect traces of gunpowder residue. Neither police officer denied that; neither said in so many words that the appellant was so tested and their evidence was vague in that connection. The tenor of Brady's evidence under cross-examination was that such a test was carried out but he had nothing to do with the results. Bodden said he was not present when the appellant was tested but could not bring himself to answer the question whether it was within his knowledge that the appellant was tested. He did go so far as to say that it would be the usual practice for him to be tested. From all this it is reasonable to conclude that the appellant was tested for the presence of gunpowder residue on his hands. Where then were the results? If they were positive that would be a major piece of evidence in the prosecution case. One is left to draw a conclusion that if there were results then they were negative.

The prosecution did not prove its case even on a balance of probabilities let alone to the standard required in a criminal trial. I drew the reluctant conclusion that the learned Magistrate did not give the evidence balanced consideration.

For these reasons I allowed the appeal.




Judge

Dated this 8th day of September, 1993