	(GEORGE McKENZIE	**APPELLANTS**
	(EUGENE NEAL	
BETWEEN	**(**	
	(AND	
	(	
	(P.C. 105 KAREEM FULLER	**RESPONDENT**

Supreme Court
Appeal No. 7 of 2000
3rd May, 2000.
Meerabux, J.

Mr. Lutchman Sooknandan, for the Appellants.
Mr. Rory Field, Director of Public Prosecutions, for the Respondent.

*Inferior Court Appeal - Firearms Act - Charge of possession of prohibited firearm and unlicensed ammunition - Inferior Court convicting Appellants - Appellants appealing on the grounds that the decision of the Inferior Court was unreasonable or could not be supported having regard to the evidence - Whether Appeal Court could lightly disturb a finding of fact by trial Court - Possession of prohibited firearm and unlicensed ammunition - **actus reus** - What constitutes **actus reus** - Meaning of a joint charge - Meaning of aiding and abetting a person to commit an offence.*

J U D G M E N T

The Appellants and one Kareem Gentle were charged on the 24th of October, 1999, with possession of a prohibited firearm, i.e., a 9 mm sub-machine gun and possession of unlicensed ammunition i.e., 33 9 mm rounds of ammunition, contrary to secs. 37(1) (a) and 3(1) of the Firearms Act, as amended. The charges against Kareem Gentle were withdrawn and the Appellants were convicted on the 1st February, 2000, and each sentenced to four years and six months imprisonment in respect of the two charges, sentences to run consecutively.

The facts of the case are as follows: On October 24th, 1999, at about 1:35 a.m. P.C. 105 Kareem Fuller and Special Constable Alfonso Bennett were on mobile patrol in a marked police motor vehicle when they came upon a taxi stationary at the Texaco Gas Station on the Northern Highway which was well lit. In the front seat of the taxi sat the taxi-driver in the driving seat, in the middle sat the second-named Appellant and the first-named Appellant sat by the door, three other persons were in the rear of the taxi. As the Police Officers approached the second-named Appellant sitting in the middle of the front seat touched the first-named Appellant who immediately reached between his feet and came up with a black object which looked like a firearm which he passed back to one of the men sitting in the back seat of the taxi. The taxi was searched and a Tec 9 mm machine gun with magazine and 33 rounds of 9 mm ammunition were found beneath the seat where the first-named Appellant sat in the front seat. There were six occupants in the taxi including the driver and the two Appellants, two of the occupants in the back seat of the taxi ran away during the search of the car.

The following grounds of appeal were filed on behalf of the Appellants:

1. The decision was unreasonable or could not be supported having regard to the evidence.

2. The decision was erroneous in point of law.

3. The decision was based on a wrong principle or was such that the inferior court viewing the circumstances reasonably could not properly have so decided.

4. Some specific illegality, other than herein before mentioned, substantially affected the merits of the case were committed in the course of the proceedings therein or in the decision.

During the hearing of the Appeal ground 3 was abandoned.

Before the commencement of the Appeal on the resumed hearing on 7th April, 2000, both Appellants stated that they wished the case to be heard by another judge because they did not feel they would get justice. Attorney for the Appellants informed the Court that he was not appraised of this and had nothing to do with the application.

The learned D.P.P. stated that no good reason had been given for this request and wondered why the application was not raised on the previous occasion when they appeared with their attorney and had the opportunity to do so and submitted that this was an attempt to delay the hearing of the Appeal and to waste the Court's time. This Appeal came up for hearing on the 30th March, 2000 in the presence of both attorneys. No such application was made. However, on the resumed hearing on the 7th April, 2000 the application was made. I held that no good reason was given for the matter to be transferred to another judge and was an attempt to delay the hearing of the matter and was a time wasting exercise.

On reflection however, it is my considered view that I should for future guidance set out what the law states when dealing with applications of this nature. I find that in the public interest there should be confidence in the integrity of the administration of justice echoed in the words of Lord Hewart C.J in **R v Sussex Justices *ex parte* McCarthy (1924) 1 K.B. 256** at **259** that it is:

> "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

However, this issue of bias or apparent bias examined by the House of Lords in **R v Gough (1993) All E.R. Vol 2 p. 724** which, having examined the learning on this issue, held that:

> "Except where a person acting in a judicial capacity had a direct pecuniary interest in the outcome of the proceedings, when the Court should assume bias and automatically disqualify him from adjudication, **the test to be applied in all cases of apparent bias, whether concerned with justices, members of other inferior tribunals, jurors or arbitrators, was whether, having regard to the relevant circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard or have unfairly regarded with favour or disfavour the case of a party to the issue under consideration by him …"** (my emphasis)

I have no pecuniary interest directly or indirectly in the Appeal before me. This is the first occasion in which the Appellants are appearing before me, and I have no views favourable or unfavourable against the Appellants. My duty is to deal dispassionately with the law and facts of the Appeal and to render a decision conscientiously and impartially without fear or favour, affection or ill will in accordance with my oath of office.

APPELLANTS' SUBMISSIONS

In support of ground 1 was submitted that there were the following inconsistencies in the prosecution's evidence:

(a) **Variation of distance** as to where both Police Officers were in relation to the taxi in which the Appellants were found, in that Fuller's evidence was that he was about **10 ft**. (p. 3 line 15) and Bennett's evidence was that he was **5ft.** (p. 11 line 2) whereas both Appellants testified that the taxi was 15 - 20 ft. from the Officers (p. 21 line 10 and p. 24 line 10 respectively).

(b) **Location of the black object**

(i) **Fuller's evidence** was that he was 10 ft. from the Appellants (p.3 line 15);

(ii) He saw while approaching the taxi George McKenzie take something from between his legs which fit the description of a firearm and pass it over his left shoulder to someone behind him (p. 3 line 19);

(iii) He found the firearm directly beneath the seat of George McKenzie (p.3 line 28).

Under cross-examination - Fuller (at p. 7 line 16) admitted he searched the back seat of the taxi and found a firearm, ammunition and magazines but stated that he found them under the front seat (p. 7 lines 26 - 31);

(iv) Fuller could not say with certainty that the Defendants passed the specific gun or ammunition behind him. (p. 8 line 15)

Bennett's evidence was that -

(i) He saw McKenzie go down between his feet in the back seat of the car and pass a black object which looked like a firearm (p. 11 lines 15 - 25);

(ii) Accused passed a dark object to the back seat of the car (p. 15 line 15).

Furthermore, the windows of the taxi were tinted and no photos were taken of the taxi to assist the Court.

(c) **Where the exhibits were found in the taxi**

Fuller claimed the firearm and ammunition were found under the front seat (p. 7 line 31) whereas Bennett's evidence was that it was found in the back section of the car. In support of ground 2, it was submitted that the learned magistrate erred in law in finding that the Defendants were in possession or in joint possession of the firearm and ammunition.

None of the Police Officers saw the Defendants with any firearm or ammunition.

The cases of **R v Bovesen (1982) A.C. 2 ALL E.R. 161; Richard Leslie v P.C. Wilworth Archer Belize Crim. App. No. 6 of 1985 and Halsbury's Laws 3rd Ed. Vol. 29**- "meaning of possession", were to referred to.

In support of ground 3, it was submitted that:-

(i) There is no evidence of participation whatsoever by either Appellants nor of aiding and abetting or procuring the commission of the offence of possession of a firearm and ammunition.

(ii) The mere tapping of the first-named Appellant by the second-named Appellant could not be joint enterprise in law and there was no evidence to connect the Appellant in any joint enterprise to possess the firearm and ammunition.

(iii) There was no evidence that the second-named Appellant had the intent to possess.

The following cases were referred to in support of this ground. **Anderson v Morris (1966) 2 Q.B. 110; (1966) 2 W.L.R. 1195; Robert Galeano Aguilar, Abel Martinez v The Queen Belize Crim. App. Nos. 5 and 6 of 1992; Orceneo Flores v The Queen Belize Crim. App. No. 16 of 1980 and Archbold 42nd Ed. para. 16 - p. 1143 - "meaning of accomplice".**

D.P.P's SUBMISSIONS

The following submissions were made by the learned D.P.P. in respect to ground 1.

(i) **No inconsistency about the object passed back** by the first-named Appellant.

Fuller's evidence who was 10 ft. away from the taxi was that the first-named Appellant passed something to the back which fit the description of a firearm. (p. 3 line 20).

Bennett's evidence - first-named Appellant came up with a black object which looked like a firearm and passed it back.

(ii) **No inconsistency about the location in the taxi where the firearm and ammunition were found.**

The prosecution's evidence shows that the gun was handed to the back and then placed in the foot well area under the front seat which is accessible to a rear seat passenger which is the obvious place to hide a small machine gun.

Fuller's evidence was that the firearm and ammunition were found directly beneath the seat of the first-named Appellant.

Bennett's evidence was that he saw Fuller find the items in the taxi.

(iii) Did **the prosecution's witnesses** see any of the Defendants **with the** exhibits?

Both Bennett and Fuller saw the first-named Appellant pass something to the back - nothing found in the car except the firearm and ammunition.

The inescapable conclusion is that what was passed to the back was the firearm and ammunition.

(iv) **Distances officers stood from the taxi**. No inconsistency in the distances the Police Officers stood from the taxi.

(v) **No photographs of taxi**. Its absence not raised before the trial court and no evidence that its description different from the prosecution's description.

Ground 2.

Counsel for the Appellants has failed to point out the law that supports his arguments. The case of **R v Anderson & Morris** has no bearing on the facts of this case. **Orceneo Flores** and **R v Roberto Aguilar and Abel Martinez** appears to be off point.

Ground 3 was abandoned.

Ground 4 - **Whether the second-named Appellant was an accomplice and participated in a joint enterprise.**

Joint enterprise occurs when two or more people act together in pursuance of a common design. It is for the magistrate to decide whether what was done was part of a joint enterprise as a matter of fact. The Appellants were close together in the taxi, the firearm would have been visible, the second-named Appellant warned the first-named Appellant by touching him, setting in train the hiding of the firearm. See Bennett's evidence p. 11 lines 14 - 15 and p. 13 lines 18 - 20. On the question of aiding and abetting, the court was referred to **Archbold 1999, para. 18-7 p. 1547.**

I shall now deal with the grounds of appeal.

GROUND ONE

THE DECISION WAS UNREASONABLE OR COULD NOT BE SUPPORTED HAVING REGARD TO THE EVIDENCE.

I find that the issues raised by attorney for the Appellants in this ground are substantially questions of facts to be determined by the magistrate as a judge of the facts.

This issue was lucidly answered by the Belize Court of Appeal in **Civil Appeal No. 15 of 1983 Luke Espat and H.L.C. Engineers Limited paras. 2, 3 and 4p**.

1 as follows:

> "The only real issue before the learned Chief Justice was: who owned the stone crusher, the Appellant or the Respondent? Each of the parties claimed ownership. The finding was that the Respondent was the owner.
>
> The Appellant challenges that finding on the ground that the decision of the learned Chief Justice was unreasonable and could not be supported having regard to the evidence.
>
> It is, of course, **trite law that the court will not disturb a finding of fact of a trial judge unless it is apparent from the record that it was unreasonable or is not supported by evidence".** (my emphasis)

In the case of **Peters v Peters 14 W.IR. p.457** Fraser J.A. also made the following pertinent remarks at **p. 459** paras. C and D -

> "In a case dealt with earlier today the learned Chief Justice referred to the judgment of Lord Sumner in **SS. Hontestroom v. SS. Sagaporack (2)**. I refer again to that case because this court has been pressed time and again with the proposition that we have a right, in examining every appeal from the magistrates' courts, to make our own findings on the facts. That is not so. **Where a magistrate, whose function it is to make findings of fact, has done so and there is evidence which clearly shows that his findings may be justified, it is not the function of the court to take another view and accordingly interfere by substituting our view for that of the magistrate"** (my emphasis)
>
> I shall now deal with the alleged inconsistencies.
>
> (a) Variation of the distances as to where the Police Officers were in relation to the taxi.

Fuller's evidence was that "I was about ten feet away from the defendants" (p.3 line 15) **whereas Bennett's** evidence in answer to the following question -

> "Q. How far from the car were you?
>
> A. 5 Feet." (p. 11 line 2).

On the other hand the first-named Appellant in evidence in chief stated "They pulled up and hauled an angle - feet away (15 - 20 feet)" (p.21 line 10).

The second-named Appellant "It was (15-20 feet) from us where the police motor vehicle stopped".

I find that the differences in distance both Police Officers were in relation to the taxi could reasonable be explained by their exiting the car by different doors; Bennett was the driver and Fuller the occupant of the police vehicle and further having exited the car they stood in different places.

> (b) **Location of the "black" object**

Fuller's evidence - "I was about 10 feet away from defendants" (p. 3 line 15). "1 saw while approaching the taxi, George McKenzie took something from between his legs and pass it over his left shoulder to behind him. The something fit the description of a firearm.

The driver of the Police motor vehicle, P.C. Bennett, who was directly in front of the taxi stated that "I saw the person directly behind Junie Balls receive the object. He later made his escape" (p. 3 lines 19-24).

Again, Fuller testified that "I found the firearm directly beneath the seat George McKenzie was sitting on. It was on the floor under the passenger side of the taxi where Junie Balls was seated" (p.3 lines 28 - 30).

In cross-examination Fuller answered:

> "Q. You searched the back seat that night?

A. Yes.

Q. You found anything?

A. A firearm, ammunition and magazines.

Q. Where exactly in the back seat were the items?

A. I found them under the front seat". (p. 7 lines 26 - 31)

"Q. You cannot say with any amount of certainty if that is the specific gun defendant passed behind him?

A. No, I cannot say.

Q. You cannot say the magazines here today were those passed by defendant?

A. No, I cannot say specifically, no". (p.8 lines 15 - 20) Bennett's evidence on this issue was as follows:

Q. What did you see happen or who did what?

A. I saw one of the persons sitting at the middle front seat touch Mr. McKenzie and on doing so I saw McKenzie go down between his foot and come up with a black object and he passed back to one of the guys sitting in the back seat of the car.

Q. What distance was it between you and McKenzie?

A. I was 3 inches from the door. I was at the door.

…

…

Q. What the object resembled, to you?

A. It looked like a firearm". (p. 11 lines 13 - 19 and 22 - 23)

Under cross-examination Bennett stated:

"Q. What accused pass?

A. A dark object to the back seat of the car. I say it is a black object". (p. 15 lines 15 - 17)

I find that there was overwhelming evidence that the "black" or "dark" object was located and found under the front seat of the first-named Appellant which "black" "dark" object was the firearm, ammunition and magazines.

THE TINTED WINDOWS

Bennett's cross-examination on the tinted windows of the taxi is revealing:

> "Q. Is the car not tinted?
>
> A. Yes, but the glass was down.
>
> Q. Is it not true when P.C. Fuller said Police etc. defendant (1) used his elbow to bring the glass down?
>
> A. No, the glass was already down". (p. 17 lines 19 - 23)

I therefore find from an examination of the Appeal Record that although the windows of the taxi were tinted the windows were down when the Police Officers approached the taxi.

LIGHTING CONDITIONS

Furthermore, there was evidence of the lighting conditions at the time. Fuller's evidence - "The taxi was directly under the light of the gas pump and the area was well lighted". (p. 3 lines 12-13)

I find the learned magistrate's finding of facts on these issues were fully justified and it is not my duty to interfere by substituting my view for that of the magistrate who saw the demeanour of the various witnesses and carried out his function as a judge of the facts.

I find no merit in this ground of Appeal.

THE SECOND AND FOURTH GROUNDS ARE ESSENTIALLY QUESTIONS OF LAW WHICH I SHALL DEAL WITH TOGETHER THAT THE DECISION WAS ERRONEOUS IN POINT OF LAW AND SOME SPECIFIC ILLEGALITY OTHER THAN HEREIN BEFORE MENTIONED SUBSTANTIALLY AFFECTING THE MERITS OF THE CASE WERE COMMITTED IN THE COURSE OF THE PROCEEDINGS THEREIN OR IN THE DECISION.

I must state that the fourth ground of appeal is vague in that it fails to state what is the specific illegality contrary to the accepted rules, practices and law on this matter. However, I shall deal with the submission made under this ground.

Sec. 37(1) of the Firearms Act, Chapter 116, as amended, provides that:

> "Subject to section 35, no person including a gun-dealer, shall own, keep, carry, use or have in his possession any firearm of the following description:
>
> (a) rifle of 7.62 or higher calibre;
>
> (b) revolver of .44 or higher calibre;
>
> (c) magnum revolver or .357 calibre;
>
> (d) sawed-off shotgun of any calibre;
>
> (e) machine gun of any calibre"

(2) …

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable -

> (a) upon summary conviction, to imprisonment for a term which shall not be less than three years but which may extend to seven years;
>
> (b) upon conviction on indictment, to imprisonment for a term which shall not be less than five years but which may extend to ten years".

Section 35 of the Act provides exemption categories of persons in the Naval, Military, Air or Volunteer Forces of Her Majesty or in the Police Force, etc.

Sec. 3(1) of the Act provides that:

> "Subject to subsection (2), no person shall own, keep, carry, discharge or use any firearm or ammunition unless he has been granted a gun licence".

The question of the definition of possession was raised before the Belize Court of Appeal in **Leslie v Archer (1986) 34 W.I.R. 59** and the Court adopted the following definition of Lord Diplock in the **Director of Public Prosecutions v Brooks (1974) 21 W.I.R. 412** at **p. 415** -

> "The technical doctrines of the civil law about possession are irrelevant to this field of criminal law. The only *actus reus* required to constitute an offence . . . is that the dangerous drug **should be physically in the custody or under the control of the accused"**. (my emphasis)

I find this to be a very useful definition to be applied also to possession of firearm and ammunition.

In the **Director of Public Prosecutions v Merriman (1972) 3 ALL E.R. 42** the House of Lords set out the proper approach to joint charges for joint offences.

Lord Morris of Borth-y-Gest said at p.46:

> "But in answering the question it is important to consider what is meant by a 'joint charge'. In my view, it only means that more than one person is being charged and that within certain rules of practice or convenience it is permissible for the two persons to be named in one count. Each person is, however, being charged with having himself committed an offence. All crime is personal and individual though there may be some crimes (of which conspiracy is an example) which can only be committed in co-operation with others. The offences charged in the present case were individual charges against each of the brothers. Each is a separate individual who cannot be found guilty unless he personally is shown to have been guilty."

Lord Diplock said (at page 59):

> "The source of the confusion lies, I believe, in the equivocal use of such expressions as 'joint offence' and 'joint charge of one offence'. It is hornbook law that, as Hawkins put it: . . . the offence of one man cannot be the offence of another, but everyone must answer severally for his own crime . . .' But when two men are aiding one another in doing physical acts with criminal intent, though the *mens rea* of the

> separate offence of each is personal to the individual charged, the physical act of either one of them is in law an *actus reus* of the separate offence of each. A 'joint offence' of two defendants means no more than that there is this connection between the separate offences of each, so that as against each defendant not only his own physical acts but also those of the other defendant may be relied on by the prosecution as an *actus reus* of the offence with which he is charged."

Lord Diplock concluded as follows:

> "I conclude, therefore, that whenever two or more defendants are charged in the same count of an indictment with any offence which men can help one another to commit it is sufficient to support a conviction against any and each of them to prove either that he himself did a physical act which is an essential ingredient of the offence charged or that he helped another defendant to do such an act, and, that in doing the act or in helping the other defendant to do it, he himself had the necessary criminal intent. This was held to be the law by Street CJ and Owen and Herron JJ in the Supreme Court of New South Wales in **R V Fenwick (1953) 54 SR (NSW) 147** - a case of rape. I respectfully agree with their reasoning."

In this case the question to be decided is whether the learned magistrate properly directed himself on the law relating to the possession of a prohibited firearm, unlicensed ammunition, the law relating to joint charges, and the law relating to complicity in a crime.

The first question which the learned magistrate had to decide is whether the Appellants had control of the firearm and ammunition in the taxi.

The taxi driver could properly be regarded as having physical control of the taxi which give rise to the strong inference of fact that he was in control of everything in the car including the firearm and ammunition. I am surprised that he was not charged with these offences and disagree with the Police Officer who stated "I didn't see any reasonable suspicion to arrest the driver of the motor vehicle". The case of **R V Haye & Hamilton (1972) 18 W.I.R. 360** is very instructive on this issue.

THE FIRST-NAMED APPELLANT

In respect of the first-named Appellant, the prosecution's case was that he was a passenger in the taxi sitting in the front seat sitting by the door. The Police Officers in a marked vehicle blocked the path of the taxi and he took something which fit the description of a firearm **from between his legs** and passed it over his left shoulder behind him. So after the taxi was searched on the spot by the Police Officers in the presence of the Appellants they found the firearm with a loaded magazine measuring about one foot in length beneath the seat of this Appellant. Nothing else was found in the taxi except this firearm.

What was this "something" or "dark" object which this Appellant passed from between his legs over his left shoulder behind him? Nothing was found in the back seat area of the taxi.

In his sworn evidence at the trial he admits that the second-named Appellant is his neighbour, that they were drinking beers, took a taxi, three male persons also got into the taxi and denies that the second-named Appellant touched him, denies that he passed anything from the front seat to the back seat, and denies that he told the Police that the gun belonged to the men who ran from the taxi. He did not know how the firearm got there and admitted they were in the taxi two hours before the Police arrived.

I find that it is difficult to conceal this loaded firearm about one foot in length in a taxi for some two hours and equally difficult to conceal or hide except under the front seats which are easily accessible from the back seat. It is quite incredible that the first-named Appellant did not know how this loaded 9 mm high tech machine gun, one foot in length, this "something" or "dark object" got into the taxi which was between his legs.

The only reasonable inference that could be drawn from the facts as found by the magistrate was that this "something" or "dark" object which the first-named Appellant passed from beneath his legs to the back was the loaded firearm which was found under the seat on which he was seated.

I find that the magistrate on the evidence before him rightfully found that the first-named Appellant was in physical custody of the firearm and ammunition - the *actus reus* - and had knowledge that it was a firearm and ammunition - *mens rea*.

THE SECOND-NAMED APPELLANT

Although the two Appellants are jointly charged with the offences of unlawful possession of firearms and ammunition, the magistrate had to consider the case against each of the Appellants separately. The prosecution had to prove their case against each of the two Appellants.

The prosecution's case against the second-named Appellant was somewhat different. He was seated in the middle front seat of the taxi between the driver and the first-named Appellant. He was therefore very close to the first-named Appellant. Bennett's evidence is revealing. He was about three inches from the door of the taxi. He stated - "I saw one of the persons sitting at the middle front seat touch Mr. McKenzie and on so doing I saw McKenzie go down between his foot and come up with a black object and he passed it back to one of the guys sitting in the back seat of the car which looked like a firearm" (per p. 11 lines 14 -23), and p. 13 lines 18 - 20 - "I assumed what I saw as a touching of the person I spoke of touching Mr. McKenzie was a deliberate touch in my opinion".

Under cross-examination by attorney for the Appellants he said that it was a deliberate touch (p. 15 line 23). The following Q & A followed:

> "Q. Do you know the motive?
>
> A. Yes, to alert him.
>
> Q. Alerted him of what?
>
> A. He alerted him of the police coming".

In his evidence he admits that the first-named Appellant is his neighbour and friend for ten years, denies that he touched the first-named Appellant, denies that he and the first-named Appellant had any loaded firearm and did not know how it got into the car.

From a perusal of this evidence it is quite clear that the second-named Appellant was not only present sitting very close to the first-named Appellant who had this "something" or "black" object "between his foot" "which looked like a firearm": some one foot in length, but the learned magistrate accepted the prosecution's evidence that on seeing the approaching Police Officers the second-named Defendant touched the first-named Appellant to alert him of the imminent presence of the officers, who reacted immediately by going down between his feet and passed this "something" or

"black" object behind him which looked like a firearm and which was the only object found under the seat of the first-named Appellant which was a 9 mm sub-machine gun.

The learned magistrate further found that the second-named Appellant in so doing provided cogent evidence that he aided, assisted and encouraged the first-named Appellant, that is, the principal, in the commission of the offences of possession of a firearm and ammunition and was liable to be charged, tried and punished as a principal offender.

Lord Diplock's lucid words on this issue set out earlier in the judgment are worthy of repetition **supra** -

> "I conclude, therefore, that **whenever two or more defendants are charged in the same count of an indictment with any offence which men can help one another to commit it is sufficient to support a conviction against any and each of them to prove either that he himself did a physical act which is an essential ingredient of the offence charged, or that he helped another defendant to do such an act, and, in so doing the act or in helping the other defendant to do it, he himself had the necessary criminal intent".** (my emphasis)

The following cases referred to by the attorney for the Appellants are completely irrelevant.

> (1) **R v Bovesen (supra)** was concerned with unlawful possession of a minute quantity of dangerous drugs, that is, 5 mg. of cannabis resin and has no relevance whatsoever to possession of a loaded firearm measuring some one foot in length.
>
> (2) **Orceneo Flores and The Queen (supra)** was a case of murder and dealt with the interpretation of an accomplice in sec. 90(4) of the Evidence Act - whether it includes a witness with an interest of his own to serve and whether his evidence should be corroborated. This case has no relevance whatsoever to the issue before this Court of possession of a loaded firearm.
>
> (3) **Anderson and Morris (supra)** deals with non-capital murder where two persons took part in a concerted attack and one of them departs completely from the scope of the common design and forms an intent to kill or cause just grievous bodily harm using a weapon - not a case of possession of a firearm and ammunition. This case is also completely irrelevant to the issues before this Court.
>
> (4) J**ohn James Rivas & Anor and The Queen (supra)** is a case of rape and forcible abduction and the issues raised on appeal have nothing to do with just possession of a firearm and ammunition. It is also completely irrelevant to the issues before this Court.
>
> (5) **Richard Leslie v Archer (supra)** is a case dealing with possession of 33 packages containing 712 lbs. of Indian Hemp found on a skiff and has nothing to do with joint possession of a firearm and ammunition in the peculiar facts of this case. It is therefore completely irrelevant to the issues before this Court.

I therefore find that the learned magistrate applied the right principles of law in finding the second-named Appellant guilty as charged. I therefore find no merit in this ground of appeal. The Appeals are dismissed and the sentences imposed by the Court are hereby affirmed.

It would be remiss of me not to mention a matter of grave concern to me in this Appeal. I am very disturbed that both attorneys appearing in this Appeal failed to assist the Court with meaningful and

relevant legal authorities on this issue of judges' bias, findings of fact by magistrate, joint possession and legal concepts of aiding and abetting. Both attorneys were given adequate time to prepare written submissions. It is not enough to speak of "trite" law which seems to be an excuse for lack of proper research and judicial scholarship. "Trite" law is always based on accepted legal principles and legal authorities. I lament the present difficulties judges have to face in writing decisions based on their own research without the assistance and industry of some attorneys appearing before us who need to learn from the outstanding senior counsels in this jurisdiction whose contribution in this regard is excellent and exemplary. We cannot build our jurisprudence in this manner and it is a disservice to the administration of justice. There is no room for superficial arguments and submissions in building our jurisprudence.

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