

## **JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATE CRIMINAL APPEAL NO: 43/02**

**BEFORE: THE HON. MR. JUSTICE BINGHAM, J.A.  
THE HON. MR. JUSTICE PANTON, J.A.  
THE HON. MR. JUSTICE SMITH, J.A.**

**R v. NEVILLE WILLIAMS  
OWEN PORTER**

**Ravil Golding** for Neville Williams  
**Pierre Rogers** for Owen Porter  
**Georgianna Fraser** for the Crown

**3<sup>rd</sup>, 4<sup>th</sup> December, 2002 and 3<sup>rd</sup> July, 2003**

**SMITH, J.A.:**

The appellants were members of the Island Special Constabulary Force. On the 29<sup>th</sup> March, 2000 they were convicted in the Half Way Tree Resident Magistrates' Court on an indictment containing two counts. The first count charged them with Wilful Neglect of Duty and the second with Conspiracy to Pervert the Course of Justice. The learned Resident Magistrate, Mr. Maurice James, found them guilty on count 1 and entered "no verdict" on count 2. Each appellant was fined \$4,000.00. Each gave verbal notice of appeal.

In a trial which spanned a year, 5<sup>th</sup> March, 1999 to 29<sup>th</sup> March, 2000, and occupied some fourteen days, the prosecution called five (5) witnesses.

**Prosecution's case**

The main witness for the prosecution was Steve Brown, a contractor who used to work with Metropolitan Parks and Markets. At the time of the alleged offence he was unemployed. On September 22, 1995 about 2:00 p.m. Brown was at a bar in Franklyn Town when a man whom he knew as "Ever" approached him. "Ever" told him he wanted to buy a gun. Brown agreed to get a gun for him.

Pursuant to that agreement "Ever" gave Brown \$35,000.00 and Brown promised to contact him the following day at a place called House of Dread on Deanery Road. According to Brown it was never his intention to supply "Ever" with any gun. His intention was to defraud him.

The following day Brown went to Harmon Barracks to see the appellant Corporal Neville Williams whom he had known for about three (3) years. While he was at the gate he saw the appellant Constable Owen Porter, whom he also knew before as a policeman but did not know his name. Just as he was about to speak to the appellant Porter, the appellant Williams arrived in his motor vehicle. At this point Brown's evidence is:

" I went to Mr. Williams after he parked and told him that a man came to me and told me that he wanted a gun to buy. I told Williams that I wanted the money but I did not have any gun to sell. Mr. Williams introduced me to Porter and another policeman by the name of Ellington."

The witness Brown proceeded to tell the Court that he had a long conversation with appellant Williams and then he continued:

"Mr. Williams told Mr. Porter that he wanted Mr. Porter to assist me in a little matter. Mr. Williams and I were planning how to get the money without the man suspecting that we just take it away from him. Mr. Williams said he was going to get another policeman to assist in getting the money from the man, but at that time I had the money. Mr. Porter said that he was going to pretend that he held me with some gunshots and ammunition. I told Williams and Porter I would get two of my friends to be there when they accosted me. Either Mr. Williams or Mr. Porter gave me a telephone number to call them when I reached the spot where they were supposed to meet me. The spot was on Deanery Road. Mr. Ellington came into the office in police uniform and Mr. Williams said he would let Mr. Ellington assist Mr. Porter in carrying out what he had planned".

Brown went to his two friends and together they went to his house. Brown telephoned the appellant Williams. Pursuant to the plan he and his friends went to the intersection of Deanery Road and Albert Street. Brown and his friends were accosted by Constables Porter and Ellington. Brown told the Court:

"Mr. Porter started to search me. He pushed his hands in my pocket and took out the money first. Porter said 'wah dis you have pon you.' Mr. Porter opened a little package and threw out some shots i.e. cartridges in his hand. Porter said to all three of us 'unu going jail today'."

According to Brown his two friends protested saying they knew nothing about the gun shots. All three of them were being escorted to Mobile

Reserve by the appellant Porter but before they reached Porter told Steve Brown's friends that they should go home. Steve Brown and the appellant Porter were joined at Mobile Reserve by the appellant Cpl. Williams. The appellant Porter returned the money he had taken from Brown. The money was to be shared among them. Brown gave the appellant Williams \$10,000. They were interrupted by Brown's brother and a counsellor. They had heard of the "arrest" of Brown and had gone there to make enquiries. The appellant Cpl. Williams spoke to them and they left.

Williams was leaving Mobile Reserve, Harman Barracks, with Brown in his car when he was stopped by Supt. Calvin Benjamin. Thereafter, according to the learned Resident Magistrate, "the whole scheme crashed." Brown testified that Supt. Benjamin said to the appellant Williams "me hearsay you hold man with gunshot and let them go". Williams asked Brown, "Steve Brown them hold you with gunshot?" Brown said his reply was "no". Supt Benjamin ordered Williams and Brown to go into his office. He said that the Superintendent called the appellant Porter, and asked him "whey the shot them whey you recover from the man?" Porter handed the Superintendent a packet. Supt. Benjamin then summoned Constable Ellington to his office. He took the appellants Williams and Porter, Constable Ellington and the witness Brown to the Elletson Road Police Station. There, the witness said, Supt. Benjamin

charged him with illegal possession of ammunition. Brown handed over \$20,000 to the police - he had spent \$5,000 and according to him had given \$10,000 to the appellant Williams.

Constable Melvin Ellington's evidence is as follows. He was stationed at Mobile Reserve. He knew both appellants who at the time were stationed at Harmon Barracks. On September 22, 1995, the appellant Special Corporal Williams told him that he (Williams) wanted "a little assistance" and that he (Ellington) would be the ideal person as he was in uniform. Williams told him that he wanted him to assist in holding a man dressed in a red 'T' shirt whom he was told would be walking on Albert Street and Deanery Road and who would have several rounds of ammunition on his person. The witness Ellington was told that he should seize the rounds and take the man and the ammunition to Williams. He said the appellant Cpl. Williams then left him and about forty minutes after Williams phoned him and told him he (Williams) was ready.

The appellant Williams returned to Mobile Reserve driving a Nissan van. Ellington entered the van and was introduced to the appellant Porter who was in the van. Williams told him that Porter was the man he would be assisting. All three left in the van with Williams driving. He drove and stopped along Deanery Road. He told Porter and Ellington that they should walk from there and that they would see the man. Williams drove off leaving them. They walked along Deanery Road. On reaching

the intersection of Deanery Road and Albert Street, Porter said "see the boy deh." Porter drew his revolver and ordered the man (who was Steve Brown) to face a nearby wall. The man was wearing a red T-shirt. Two other men who were with Brown were ordered by the witness Ellington to face the wall also. While Ellington was searching these men, he heard Porter say "the boy have rounds pon him". He saw a "little black plastic package" in Porter's hand. Porter continued to search the man in the red T-shirt and removed money from the man's pocket. Porter asked the man "Boy whey you get so much money from, you a drugs man? Whey you get so much rounds from you a gun man?" The man replied "a no my rounds boss".

The appellant Porter and Ellington were taking the men to the police station when the appellant Williams drove up and asked what was happening. Williams said he knew the man in the red T-shirt. This man had earlier given his name as Steve Brown.

The appellant Williams asked if they could do anything for him, that is, Steve Brown. Ellington insisted that the man be taken to the station. Williams drove off. At Harman Barracks, Ellington asked the appellant Porter if he had anything against the other two men. Porter said he had nothing against them; they were therefore released. Porter took Steve Brown to the appellant Williams' office and Ellington returned to his office.

The evidence of Detective Winston Grant is to the effect that on September 22, 1995 he recorded a caution statement from the appellant Special Constable Porter. Detective Grant gave this statement to Supt. Benjamin. This statement was received in evidence.

Supt. Calvin Benjamin also gave evidence. At the time he was stationed at Elletson Road. On September 22, 1995 he received information and consequently went to Harman Barracks, the Headquarters of the Island Special Constabulary Force. He wanted to see the appellant Special Corporal Williams. He saw Williams' vehicle leaving the compound. The vehicle had tinted glass and the window glasses were fully wound up. Supt. Benjamin sounded the horn of his vehicle and signalled the driver of the other car to stop. Both vehicles stopped. The appellant Williams emerged from his vehicle and so did Supt. Benjamin. The latter enquired, "where is Steve Brown that I hear unu catch with ammunition?" "See him in a mi van deh", Williams replied. The Supt. went up to the van in which he saw Steve Brown drinking from a beer bottle. He asked Williams to say where he was going with Steve Brown. Williams said, " Mi assisting him". The Supt., in Williams' hearing, asked Brown where he was going. Brown replied that Mr. Williams was carrying him home. Thereupon Supt. Benjamin directed Brown to go into his car. He instructed the appellant Williams to follow him and they both drove to the Island Special Constabulary Force Headquarters. There,

Supt. Benjamin questioned Brown and the appellant Williams. Along with Brown, Williams and another policeman Supt. Benjamin went to an office where the appellant Special Constable Porter was. The Superintendent asked Porter "where is the ammunition that you took from Steve Brown today"? Before Porter answered, the appellant Williams interposed the question "You find any ammunition?" The Superintendent immediately intervened by directing the appellant Williams to leave the office. The appellant Porter exclaimed, "You see what Williams get me in now !" He then opened a drawer and took therefrom a "newspaper parcel" which he handed to Supt. Benjamin.

The appellant Williams was then summoned to return to the office. When he returned the Superintendent opened the "newspaper parcel". In it were six rounds of 9mm cartridges. Thereupon the appellant Porter told Supt. Benjamin that his supervisor the appellant Williams had sent him and Constable Ellington to apprehend Steve Brown and that he had found the ammunition on Brown's person. Supt Benjamin then took Steve Brown and both appellants to the Mobile Reserve Headquarters. Thereafter they were taken to the Elletson Road Police Station where Steve Brown was charged with illegal possession of ammunition. At the station the Superintendent recorded a caution statement from the appellant Williams.



The final witness for the prosecution was the investigating officer Detective Sgt. Samuel Bartley of the Internal Affairs Division. He testified that he received information, he spoke with Supt. Benjamin and investigated the matter. A file was submitted to the Director of Public Prosecutions. Subsequently, the appellants were arrested and charged with Wilful Neglect of Duty. He said Steve Brown stated that he had received \$25,000 to buy a gun. No case submissions made on behalf of both appellants were rejected by the learned Resident Magistrate.

#### **The Defence of the appellant Williams**

Williams gave evidence on his own behalf. His defence in sum is this. He knew Steve Brown who was his informer. On September 22, 1995 he saw Steve Brown at Harman Barracks. Brown told him that a man he knew wanted to buy a gun and he had arranged to meet the man on Deanery Road. Brown wanted him to arrest the man "during the purchase of the gun." The appellant told Brown he could not because he was well known in the area. However he promised to get someone else to do it. The appellant told Ellington and Porter what Steve Brown had said to him. He gave them the description of Brown and took them to Deanery Road where he left them. Sometime later he drove along Deanery Road and saw Constables Ellington and Porter searching Steve Brown and two other men. He stopped and alighted from his vehicle. He heard one of the Constables say that he found "rounds". Steve Brown, he

said, asked him if he knew him and he replied affirmatively. He said he could not have done anything because of the "informer relationship" with Steve Brown, and so he left them and went about his personal business. However, he had intended "to make enquiries later". On his return to Harman Barracks he saw Steve Brown sitting at the entrance to his office. Brown approached him and told him that he did not want the two men to whom he had agreed to sell the gun to know that it was a "set up". Brown asked him to take him to the main road. While he was taking Brown to the main road he was stopped by Supt. Benjamin. The appellant came out of his vehicle and approached the Superintendent who asked him where Brown was. The appellant pointed to his pick-up. Supt. Benjamin ordered Brown out of the pick-up and escorted him back to Harman Barracks. The appellant denied getting any money from Steve Brown or any one else. In his evidence the appellant was at pains to explain his conduct in dealing with Steve Brown, his so called "informer".

#### **The Defence of Owen Porter**

He was attached to the Investigating Unit of the Island Special Constabulary Force at Harman Barracks. At the time of the incident he had known the appellant Special Corporal Williams for about three years.

On September 22, 1995 he was on duty at Harman Barracks. The appellant Williams was also there. Williams told him that he had received

information from an "informer" about a "deal to purchase a gun". He testified that the appellant Williams gave him details of the "deal". He described how the man who was "supposed to buy the firearm" would be dressed and where the would-be-purchaser would meet the seller. Cpl. Williams, he said, told him that he should go and apprehend the man dressed in red and blue shorts and take him to Cpl. Williams who would take it from there.

The appellant Porter told the appellant Williams that he would need assistance. Williams told him he had already identified a police officer to go with him. Constable Ellington was the person whom Williams referred. The appellant Williams took them (Porter and Ellington) to the intersection of Deanery Road and Albert Street. Constable Ellington and the appellant Porter walked down Deanery Road. The appellant Porter saw a man who fitted the description he was given. This man was walking in front of two other men. Porter stopped this man, placed him against a wall and searched him. His evidence at this point is:

"In the front of his shorts waist I found a parcel wrapped in some form of paper like newspaper. I opened it and saw some rounds of ammunition... I searched him further and found a plastic bag in his left side pocket. I saw money inside this bag. I did not know how much money was in the bag".

He asked the man where he got the "rounds". The man said he found them. When asked what he was doing with so much money the man said

he was a businessman. The other two men were held and searched by Constable Ellington. The appellant Williams returned to the scene. Porter identified Steve Brown as the man he held and searched. Cpl. Williams gave instructions that Brown be taken to his office and then he drove off. The other two men were released after they were interrogated. The appellant Porter and Steve Brown proceeded to Harman Barracks. Shortly after they arrived there, the appellant Williams joined them. Porter said he told Williams that he found money on Steve Brown but did not get the opportunity to tell him about the rounds of ammunition. He handed over the money to Williams who left with Steve Brown in his vehicle. Shortly after Williams left, Supt. Benjamin arrived and questioned Porter about his apprehension of Steve Brown. He told the Supt. that he found ammunition and money on Brown and that Williams had left with Brown and the money. He said he did not charge Steve Brown because of the instructions he got from Special Corporal Williams. He denied that he had entered into any agreement with Steve Brown and Special Corporal Williams to "cook up an arrest".

### **Grounds of Appeal**

Counsel for both appellants sought and obtained leave to argue supplemental grounds of appeal. The submissions of counsel before us mainly centred on the evidence of the prosecution's star witness Steve Brown and the learned magistrate's approach to that evidence.

**The status of the witness Brown**

The particulars of count 2 of the indictment aver that the appellants “conspired together and with Steve Brown to pervert the course of justice...” It was contended for the defence that the practice had been for judges not to admit the evidence of accomplices who could be influenced by continuing inducements. The practice, they further contended had become a rule of law. For this contention they relied on **R v Pipe** 51 Cr. App. R17.

However, in **R v Turner** (B.J) 1975, 61 Cr. App. R 67 the English Court of Appeal ~~rejected a similar submission and held~~ that the matter was basically one of judicial discretion. Lawton, L.J said in **Turner** that it could not always be irregular to call an interested witness on behalf of the prosecution. He instanced a case in which a reward would be due to an informant on the conviction of the person against whom he testified. As was said by their Lordships’ Board in **Chan Wai-Keung v The Queen** [1995] 1WLR 251 circumstances may justify the calling of a witness who stands to gain by giving false evidence. What is required in such a case is that the potential fallibility of the witness’ evidence should be put squarely before the jury.

In the instant case, where there was no jury, the magistrate must demonstrate, “in language that does not require to be construed that he has acted with the requisite caution in mind and that he has heeded his

own warning." The magistrate's mind upon the matter must be clearly revealed. See **R. v. McKenzie** and **R v. Powell** SCCA Nos. 151/88 and 71/89 unreported February 5, 1992.

At the end of the case for the defence, Counsel for the Crown made the unusual request that "no verdict (be entered) on the charge of conspiracy to pervert the course of justice". The magistrate obliged – see pages 57 and 69 of the record. In the absence of submissions we will not venture to pronounce on the propriety of such a course save to say that we can think of no authority which permits such a course in such circumstances. However, there being no verdict on count 2 this appeal only concerns count 1. Accordingly, we need say no more than what has already been said in respect of admissibility of Brown's evidence in so far as it relates to count 2.

We will now turn to consider the status of Brown in respect of count

1. The particulars of count 1 read :

"Neville Williams and Owen Porter on the 21<sup>st</sup> and 22<sup>nd</sup> days of September, 1995... being members of the Island Special Constabulary Force wilfully neglected to perform their duty as police officers by failing to conduct thorough appropriate and complete investigations to determine whether a breach of the law was, is, or about to be committed".

Clearly the witness Steve Brown was not an accomplice since there is no evidence that he participated in the actual crime charged. However, Mr. Brown was charged for illegal possession of ammunition arising out of

the same incident. This charge against him was adjourned sine die. In his evidence he said:

"I am testifying mainly because I think that the Gun Court charge may be brought back against me."

The contention of the defence was that the magistrate erred in that he failed to:

"appreciate that the evidence of Steve Brown was not given voluntarily and may have been tainted by a desire to prove his innocence in a related charge. Consequently, he failed to address his mind to consider and warn himself of this special danger associated with Steve Brown's evidence."

Counsel for the Crown, conceded that the learned Resident Magistrate had not shown that he had adverted his mind to the fact that Steve Brown had a case pending against him and that there was the possibility that his evidence might be tainted and that he might have nurtured some hope of advantage or clemency in respect of the pending charge against him in exchange for the evidence which he gave. However, Counsel for the prosecution submitted that the evidence placed Steve Brown in the category of a person with an interest to serve and that the warning the magistrate administered to himself in respect of accomplices would have cured this defect.

The learned magistrate in his analysis said:

"In admitting the evidence of Steve Brown the court reminds itself that whereas a judge is

presumed to know the law, there is no such presumption that the law has been applied – **Vince Stewart v R** and it must be shown that the law has been applied. The Court regards Neville Williams, Owen Porter and Steve Brown as accomplices, to be treated as such.

The Court reminds itself of the ancient rule of practice which has become a rule of law that judges should warn jurors (and themselves) of the dangers of convicting on uncorroborated evidence of these accomplices.

Nevertheless there seems to be an abundance of corroboration of the evidence of Steve Brown".

After considering whether "a lie" and "circumstantial evidence" can amount to corroboration the magistrate said:

"The court has warned itself of the dangers of convicting on the uncorroborated evidence of an accomplice".

We agree with Mrs. Fraser, for the Crown, that it cannot be said that the magistrate failed to apply the required criteria when he treated Brown as an accomplice instead of merely a witness with an interest to serve, since the accomplice warning is a higher test than that to which Brown's evidence should have been subjected: see **R v Mark Phillips** SCCA No. 68 of 1996 (unreported) delivered February 27, 1998. We therefore hold that the learned magistrate adequately warned himself of the potential fallibility of Brown's evidence. However, the important question is: did he demonstrate in language that does not require to be construed that he has heeded his own warning or caution? Counsel for the defence



submitted that he did not. Counsel for the Crown with commendable frankness, conceded that the learned magistrate did not in his findings demonstrate what his thought process was in respect of the many discrepancies in Brown's evidence and whether Brown's evidence was voluntarily given.

The Resident Magistrate in his first two findings of fact stated:

- "(1) The court accepts the evidence of Steve Brown in its entirety and finds as a fact that Steve Brown is a witness of truth.
- (2) That Steve Brown testified voluntarily without fear of the resurrection of the charge pending against him which charge was adjourned sine die."

We agree with counsel on both sides that the Magistrate seemed to have forgotten or to have completely ignored the evidence of Steve Brown that he was testifying mainly because he thought that the Gun Court charge may be resurrected. Clearly Brown was saying that his reason for giving evidence was motivated by the fear that if he did not then the Gun Court charge would be brought back against him. Having failed to appreciate this, the magistrate must have failed to address his mind to the potential fallibility and unreliability of Brown's evidence. The probability that Brown had an improper motive in giving evidence or that his evidence was tainted was not addressed by the learned Resident Magistrate. The Magistrate's finding that Brown's evidence was given voluntarily is in our view inconsistent with Brown's evidence that he was

testifying mainly because he thought that the Gun Court charge might be resurrected. It seems to us that having said that he had accepted Brown's evidence "in its entirety" and that he found Brown to be a witness of truth, the magistrate placed himself in a quandary. His finding that Brown gave evidence voluntarily would indicate that he had not accepted Brown's evidence as to the reason why he was testifying. Yet at the same time his finding that Brown is a witness of truth would suggest that he accepted Brown's evidence as to the reason for his testimony. This situation lends force to the submissions of counsel that the magistrate did not address his mind to the significance of Brown's evidence as to his reason for giving evidence.

Further, it was not disputed that there were material inconsistencies in Brown's evidence. There were also material discrepancies between his evidence and the written statements he gave to the police. The magistrate in his findings made no mention of these discrepancies and inconsistencies, neither did he reveal his thought process in relation thereto. There is therefore no basis for this court to hold that the magistrate has properly applied the relevant legal principles. We agree with counsel on both sides that the magistrate has not left this court in a position to say that it is safe to act on the evidence of Brown who had an obvious and powerful motive to ingratiate himself with the Crown.

However, Mrs. Fraser submitted that there was other evidence which could ground a conviction. She referred to the evidence of Superintendent Benjamin and the conduct of the appellants which she contended pointed to their guilt. She also submitted that the evidence of the appellants served only to buttress the Crown's case.

We must therefore examine the evidence of Supt. Benjamin to see whether a prima facie case is made out against the appellants or any of them. Before doing so, it would be convenient at this point to state the ingredients of the offence of wilful neglect of duty.

#### **Wilful Neglect of Duty**

In ***R v. O'Connor and Woods*** R.M.C.A. No. 11/92 (unreported) delivered May 18, 1992 this Court per Carey JA. accepted as a correct statement of the law the headnote of ***R v Dytham*** [1979] 1QB 722 which reads:

"... the offence of a public officer wilfully neglecting to perform a duty which he was bound to perform by common law or by statute involved that the neglect had to be wilful and not merely inadvertent, and had to be culpable in a sense of being without reasonable excuse or justification; that the element of culpability was not restricted to corruption or dishonesty but had to be of such a degree that the misconduct impugned was calculated to injure the public interest so as to call for condemnation and punishment; that it was for the jury to decide whether the evidence revealed the necessary degree of culpability."

Section 13 of the Constabulary Force Act reads:

**"13.** The duties of the Police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence or whom they may reasonably suspect of having committed any offence, or who may be charged with having committed any offence, to serve and to execute all summonses, warrants, subpoenas, notices, and criminal processes issued from any Court of Criminal Justice or by any Justice in a criminal matter and to do and perform all the duties appertaining to the office of a Constable, but it shall ~~not be lawful to employ~~ any member of the Force in the service of any civil process, or in the levying of rents, rates ~~or taxes~~ for or on behalf of any private person or incorporated company."

The learned Resident Magistrate was required to determine whether the appellants were under a duty to conduct an investigation with a view to determining whether a breach of the law was or was about to be committed and if so whether they had wilfully neglected to perform that duty.

We must therefore examine the evidence to determine whether apart from the evidence of Steve Brown, there was sufficient evidence to support a prima facie case against each appellant. We will examine the evidence against the appellants separately.

**The appellant Owen Porter**

In our view one does not have to think hard to conclude that without Steve Brown's evidence there is insufficient evidence to make out a prima facie case against Porter.

There is nothing in Supt. Benjamin's evidence to implicate him. The sum total of the Superintendent's evidence in this regard is as follows:

- (i) When the Superintendent asked him for the ammunition that he took from Brown and Williams who tried to intervene was sent out of the office, Porter said "You see what Williams get me in now".
- (ii) Porter took from his desk drawer a "newspaper parcel" in which ~~were six rounds of 9mm cartridges.~~
- (iii) After handing over the ammunition to Supt. Benjamin, Porter told him that the appellant Williams had sent him (Porter) and Constable Ellington to apprehend Brown and that he (Porter) had found the ammunition in Brown's waist.

He further said that he had taken Brown and handed him over to Williams and that Brown should have been arrested and charged for the ammunition. No doubt this evidence raises suspicion but it does no more. Constable Ellington described the role Porter played in the apprehension and search of Brown. He heard Porter say "the boy have rounds pon him". He then, saw a "plastic package" in Porter's hand. He saw Porter remove money from Brown's pocket and heard Porter ask: "Boy why you get so much money from, you a drugs man? Why you get so much rounds from you a gun man?" Ellington's evidence in our view does not

take the case against Porter any further than the suspicion which Supt. Benjamin's evidence raised.

Accordingly, we cannot agree with Counsel for the prosecution that there was sufficient evidence apart from that of Brown, to found a prima facie case against the appellant Porter for the offence of Wilful Neglect of Duty.

### **The appellant Williams**

There is evidence from Supt. Benjamin to the effect that:

- (i) Williams had sent the appellant Porter, who was under his supervision, and Constable Ellington on a mission to apprehend Brown.
- (ii) Brown was apprehended and taken to the appellant Williams at Harman Barracks.
- (iii) Porter removed ammunition and money from the person of Brown.
- (iv) The appellant Williams attempted to leave Harman Barracks with Brown in his vehicle. He was assisting Brown to get home.
- (v) At Harman Barracks, Williams denied knowledge of the recovery of ammunition and sought to intervene when Supt. Benjamin asked Porter for the ammunition he (Porter) took from Brown.

The testimony of Constable Ellington is also relevant in this regard. His evidence indicates that:

- (i) The appellant Williams told him that he (Williams) had information that a man who would be travelling on Deanery Road and Albert Street would have ammunition in his possession. Williams described the clothes that the man would be wearing.

- (ii) The appellant Williams enlisted the assistance of Ellington to apprehend the man, seize the ammunition and take the man and the ammunition to him.
- (iii) The appellant Williams transported Porter and Ellington to Deanery Road near its intersection with Albert Street and left them there.
- (iv) Steve Brown was subsequently apprehended and searched by Constable Porter who removed money and apparently a "black plastic package" from Brown's person.
- (v) After the search the appellant Williams re-appeared in his pick-up motor vehicle and enquired as to what was happening. He said he knew Steve Brown and asked if he could do anything for Steve Brown.
- (vi) Ellington insisted that Brown should be taken to the station. ~~Williams drove off leaving them behind.~~
- (vii) At the station Porter and Brown went into Williams' office.

The evidence of Supt Benjamin and Constable Ellington indicates that the appellant Williams knew that it was alleged that ammunition was taken from the body of Steve Brown. Yet Williams was seen assisting Brown to get home. We are of the view that the appellant Williams was in the circumstances, under a duty to conduct an investigation to ascertain whether or not Brown's alleged possession of ammunition was in breach of the Firearms Act. Accordingly we hold that the magistrate was correct in finding that there was a prima facie case against him for Wilful Neglect of Duty.

**Was the verdict unreasonable?**

The defence of the appellant Williams was that Steve Brown was his informer. Steve Brown, he said, had given him information that a man had approached him wanting to buy a gun. He (Brown) had made arrangements to sell this man a gun. Steve Brown wanted him to arrest this man "during the purchase of the gun". The appellant Williams said that because he was well known in the area he got Porter and Ellington to effect the arrest.

Williams' evidence did not make sense. His description of the man and instructions to Porter and Ellington led to their apprehension of Steve Brown and not the "purchaser" .

In our view the finding of fact which reads:

"Except where it coincides with the case for the Crown the court rejects every and all aspects of the evidence of Neville Williams given by him in his defence and finds as a fact that his evidence consisting of tissues of lies... "

is reasonable and is supported by the evidence .

**Conclusion**

1. The appeal of Owen Porter is allowed. His conviction and sentence are set aside and a verdict of acquittal entered.
2. The appeal of Neville Williams is dismissed. His conviction and sentence are affirmed.



3. The court wishes to express its disapproval of the course adopted by the magistrate in relation to the "no verdict" on count 2 which charged the appellants with conspiracy to pervert the course of justice.

It is this court's view that the conduct of the appellants does not benefit the Constabulary Force. They have not incurred the sanctions of the Court in respect of count 2 because of the mistakes the magistrate made in assessing the evidence of the prosecution's main witness and the manner in which he dealt with the verdict on the said count.