

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

ROY DILLON

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE APPELLANT

RECORD

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1. This is an Appeal from the Judgment and Order of the Court of Appeal of Jamaica (Criminal Jurisdiction) (Leacroft-Robinson, P., Watkins J.A. and Robotham, J.A. (Ag.)) dated the 5th day of March, 1977 dismissing the Appellant's Appeal against his conviction before A.J. Lambert, Esq., a Resident Magistrate for the Parish of Kingston, upon two Counts of negligently permitting an escape.

Pp. 21-38

Pp. 17-18

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2. The principal question which falls for decision in this Appeal is whether or not the Judgment of Robotham J.A. (Ag.), (with which Leacroft-Robinson P. concurred and from which Watkins J.A. dissented) was correct in holding that because a person is being kept in custody that it is to be presumed that such detention is lawful. This decision was reached upon the basis of the application of the maxim "omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium" and it will fall for decision in this Appeal whether or not this maxim can be relied upon to prove that a person is in lawful custody.

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3. The Appellant was charged upon the Indictment which in its material parts reads as follows:-

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Pp. 1-2	"STATEMENT OF OFFENCE - FIRST COUNT Permitting an escape. PARTICULARS OF OFFENCE Roy Dillon, on the 25th day of April, 1976, in the parish of Kingston, being a member of the Jamaica Constabulary Force and having Paul Bryan a person arrested for Shooting with intent, lawfully in his custody, negligently permitted the said Paul Bryan to escape out of his custody.	10
	STATEMENT OF OFFENCE - SECOND COUNT Permitting an escape. PARTICULARS OF OFFENCE Roy Dillon, on the 25th day of April, 1976, in the parish of Kingston, being a Constable in the Jamaica Constabulary Force and having Robert Blackwood a person lawfully detained in his custody, negligently permitted the said Robert Blackwood to escape out of his custody."	20
Pp. 3-4	4. That the evidence called by the Prosecution in support of the Indictment consisted of nine witnesses. It is not proposed to summarise their evidence in any detail as the findings of fact set out by the learned Resident Magistrate are sufficient, in the Appellant's submission, for the purpose of disposing of this Appeal. The first witness Dervin Walker deposed that he was the Superintendent of Police in charge of the Kingston Central Division which included the Central Police Station Lock-ups. He dealt with the procedure for taking prisoners from the cells.	30
Pp. 4-8	George Jarrett had been at the material time the Corporal in charge of the lock-ups at the Central Police Station and he stated that the Appellant had reported to him that the prisoners Bryan and Blackwood had escaped. David Bryan was the Corporal of Police on duty immediately before Corporal Jarrett and he stated that he had handed over prisoners Blackwood and Bryan to Corporal Jarrett. Leslie Grant was a Constable stationed at the Central Police Station and he deposed that on the 28th February, 1976 he had arrested Paul Bryan, who he said was "charged for Shooting with Intent". It is not clear from the Record whether Bryan had been taken before a Magistrate or a charge had merely been	40
P. 9		
Pp. 9-10		
P. 9, 1.34		
P. 10		

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10 preferred. Albert Richards, a Detective Assistant Superintendent of Police attached to the C.I.D. Headquarters in Kingston, stated that he was looking for Blackwood in connection with cases of murder which he was investigating. He said that on the 16th April, 1976 he had found Blackwood at the remand section of the General Penitentiary but had had him transferred to the lock-ups at the Central Police Station, Kingston. It is to be observed that the witness did not state either pursuant to what power the prisoner Blackwood was in the remand section of the General Penitentiary or pursuant to what power he had been transferred to the Central lock-ups. Neither Constable Grant nor Detective Assistant Superintendent Richards produced any documentation relating to the keeping of Bryan and/or Blackwood in custody. Arthur Henderson was a Special Constable attached to the Central Police Station at Kingston and had been on duty together with the Appellant on the relevant day. Sylbourne Foster was the Sergeant of Police on duty at the Central Police Station on the material date. Paul Bryan, the prisoner the subject of Count 1 of the Indictment, gave evidence but was treated as a hostile witness. His evidence was, it is respectfully submitted correctly, disregarded by the learned Resident Magistrate. Sylvester Tulloch a Detective Inspector of Police gave evidence of the arrest of the Appellant and the taking of the statement upon which Paul Bryan had been treated as a hostile witness.

P. 10-11

P. 11

Pp. 12-13

P. 14

5. On 3rd January, 1977 the learned Resident Magistrate recorded the following findings of fact and reasons for Judgment

"The above-named accused was tried before me on an indictment containing two counts.

Pp. 17-18

I find the following facts proved beyond a reasonable doubt:-

40 1. On the 25th April, 1976 the accused was a member of the Jamaica Constabulary Force and that he was posted on duty in that capacity downstairs the cell blocks at Central Police Station lock-ups in the parish of Kingston.

2. One of the accused's duty was to guard the cells as assistant to Sergeant Jarrett

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and ensure that the persons in custody were not allowed to escape.

3. Accused was specially assigned as sentry to guard the downstairs section of the lock-ups. He had as his immediate assistant Special Constable Dorant and Special Constable Henderson was also available to render assistance if his services was required.

4. Among the persons in the downstairs section of the lock-ups were Paul Bryan who was charged with Shooting with Intent and Illegal Possession of Firearm and Robert Blackwood who was detained in custody in connection with cases of Murder. Blackwood was to have been the suspect on an identification parade which was scheduled for 26th April, 1976.

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5. There is a rule and/or regulation regarding the Central Police Station Lock-ups, that one Constable, acting alone, must not take person in custody from cell. If person in custody is to be taken from cell, or cell is to be opened, two Constables must go to cell. One Constable would remain at main gate while the other goes to cell itself. Accused was fully aware of this rule on day in question.

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6. On the day in question, when Sergeant Jarrett was away with Constable Williams, accused, it is inferred from the evidence, opened the cells of Robert Blackwood and Paul Bryan and negligently permitted their escape from lawful custody.

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7. When accused opened the cells of Blackwood and Bryan alone, at least Special Constable Henderson was willing and able to accompany accused to the cells if accused had solicited such assistance.

8. Accused had no valid reason for opening the cells of Blackwood and Bryan at the material time as the persons in custody in that section of the lock-ups had already had their baths, had their cells washed down and were already fed.

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9. In arriving at my findings I have ignored the evidence of the witness Paul Bryan, as in my opinion, he was a hostile witness.

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10. I was particularly impressed with the testimonies of Sergeant Jarrett, Special Constable Henderson and Sergeant Foster.

11. I therefore find that the accused was guilty as charged on both counts of the Indictments."

10 6. That the Appellant was sentenced by the learned Resident Magistrate to six months imprisonment with hard labour on each count with the sentence for each count to run concurrently.

P. 17, 11.11-13

20 7. The Appellant respectfully submits that it is germane at this stage to observe that the learned Resident Magistrate made no specific finding as to the legality of the detention of either Paul Bryan or Robert Blackwood. The learned Attorney who appeared for the Appellant before the learned Resident Magistrate had, at the conclusion of the case for the Crown made a submission of no case to answer. It is to be observed that in the course of these submissions, according to the Notes of the learned Resident Magistrate the Attorney had submitted

Pp. 14-15

"(e) It is incumbent on Prosecution to prove lawful custody of persons."

P.14,11.31-32

and

30 "4. If escapees were not in lawful custody and they escaped there is no charge of permitting prisoners to escape can arise. (sic)"

P.15,11.20-23

It is also convenient to notice at this stage that the Attorney appearing for the Prosecution submitted to the learned Resident Magistrate, according to his Notes,

"Requirements of proving charges are three:-

P.15,11.28-36

1. Prove that person who had detained in his charge was a Police Constable.
2. Prove that he was under lawful custody, under a lawful warrant or otherwise lawfully detained.

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3. Prove escape - Archbold 38th Edition para. 3428. It is not necessary to prove negligence on part of accused, Law implies it."

8. The learned Resident Magistrate's attention was, it is respectfully submitted correctly, drawn to Archbold's Criminal Pleading, Evidence and Practice. In many editions the law has therein been stated as

"Prove that A B is a police constable and that he had J N in actual custody under a lawful warrant. See 2 Hawk, c. 19 ss. 1, 4 And lastly, prove the escape." 10

(See 40th Edition; paragraph 3428).

Hawkins observes, in the passage cited, that an actual arrest is an essential ingredient. In the premises the Appellant respectfully submits that the learned Resident Magistrate fell into error in failing to hold that it was incumbent upon the Crown to prove a lawful detention. The best evidence rule, it is respectfully submitted, requires that the actual orders, if any were ever made, of a court justifying the detention of the prisoners Blackwood and Bryan should have been produced. This point, it is further submitted, was clearly taken by the Attorney for the Appellant in his submission of no case to answer. If the learned Resident Magistrate should have felt that this was a technical point and one that could be met by production of the appropriate orders, if they existed, then the learned Resident Magistrate ought to have invited the Prosecution to apply for an adjournment in order to produce such orders to the Court. By the Prosecution's failure to prove an essential ingredient of the crime of permitting an escape the Appellant became, it is submitted ex debito justitiae, entitled to a finding being made that there was no case to answer. Alternatively the learned Resident Magistrate ought to have dismissed the charge when the Appellant's Attorney adduced no evidence for the Defence. 20 30 40

P.17,1.8

P.17,1.14

Pp. 19-20

9. Consequent upon his aforesaid conviction the Appellant gave oral notice of Appeal immediately to the learned Resident Magistrate. On the 11th January, 1977 written Grounds were filed on the Appellant's behalf. Ground 3 of the said Grounds of Appeal reads as follows:-

"The learned Resident Magistrate was wrong in law in holding that it is possible to have an escape from custody by a person who is detained pending investigations.

10 It is submitted that the prisoner in a lock-up can only be guilty of escaping from custody at Common Law in circumstances where he is held on a criminal charge, by virtue of a warrant or where there is statutory provision deeming such detention as being legal custody."

10. When the Appellant's Appeal came on for hearing before the Court of Appeal of Jamaica (Leacroft-Robinson, P., Watkins J.A. and Robotham, J.A. (ag.)) on 4th March, 1977 it appears, according to the Judgment of Robotham J.A., the only two matters raised by the Attorney for the Appellant were

20 "(1) was either Bryan or Blackwood in lawful custody at the time when they left the Central lock-up.

P.24,11.1-5

(2) were they at that time in the custody of Constable Dillon, or were they in the custody of Sergeant Jarrett, the officer in charge of the lock-up."

30 11. Insofar as the second of the two matters is concerned it appears from both written Judgments of the Court of Appeal of Jamaica that the Court unanimously considered that the Crown had proved at the material time that both Bryan and Blackwood were in the custody of the Appellant and that they escaped therefrom through negligence of the Appellant. It is not proposed at the hearing of the Appellant's instant Appeal to seek to re-open this matter. In these circumstances it is not proposed to advert in the Appellant's Case to any matters in the written Judgments of the Court of Appeal of Jamaica concerned solely with the second matter raised before the Court of Appeal of Jamaica.

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12. Insofar as the first question, namely, whether either Bryan or Blackwood was in lawful custody at the time when they left the Central lock-up, is concerned the Court of Appeal of Jamaica was divided. Robotham, J.A. (Ag.) delivered a reasoned Judgment with which

Pp. 22-39

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Leacroft-Robinson, P. concurred for dismissing the Appellant's Appeal. Watkins, J.A. dissented in another reasoned Judgment.

Pp. 22-29  
Pp. 22-23

13. In the course of his Judgment Robotham, J.A. recounted the charges against the Appellant and summarized the facts. After, as adverted to hereinbefore, summarizing the issues raised by the Attorney for the Appellant, the learned Judge of Appeal stated

P.24,11.1-5  
P.24,11.6-19

"It will be necessary therefore to examine how these men came to be in custody at the Central lock-up. Constable Leslie Grant, a Constable stationed at the Central Police Station testified as to having arrested Paul Bryan, charged for shooting with intent and as to having placed him in custody at the Central Police lock-up. This evidence was not challenged.

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As regards Blackwood, the evidence was that he had been in the remand section of the General Penitentiary and was transferred on the 23rd April, 1976, to the Central lock-up with a view to his being placed on an identification parade in connection with cases of murder which were being investigated."

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P.24,11.19-21

The Appellant would accept that this is an accurate summary of the evidence as to the detention of Bryan and Blackwood. The learned Judge then proceeded to deal with the first of the two questions raised, that is to say, whether or not the two men were in lawful custody on 25th April, 1976. The learned Judge then proceeded to review the statutory provisions relating to arrest and detention in Jamaica. The Appellant respectfully submits that whereas the bare recital of the statutory provisions may in itself be accurate they are not relevant to the question posed. As appears hereinafter the Appellant will respectfully submit that merely because a person is found in a place which is authorised for the detention of prisoners in pursuance of lawful orders no presumption can be made that the mere finding of a person in such a place shows that he has been lawfully detained there.

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P.24,1.22-  
P.25,1.40

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P.25,1.41-  
P.27,1.9

14. Robotham, J.A. continued his Judgment by stating the law in relation to the crime of escape. He concluded his examination of the law by stating



"A consideration of these various propositions quoted above seems to show that the real test of whether or not a person can be said to be in lawful custody is -

- (1) was the arrest or detention lawfully carried out, and
- (2) was he thereafter confined in a legal place of detention."

10 The Appellant respectfully submits that thereafter the learned Judge of Appeal fell into error. He went on to state that it was a presumption of law, albeit a rebuttable presumption, that a man who has acted in a public capacity or situation was duly appointed and had properly discharged his official duties. He developed that presumption to make the following conclusions in relation to each of the prisoners. In relation to Bryan he said

P.17,11.17-20

20 "... the evidence that he was arrested for shooting with intent and placed in custody at the Central lock-up is quite clear. I do not consider that the Crown need have gone any further to establish that he was on the 25th April 1976 a person lawfully in custody."

P.28,11.1-6

30 It will be recalled that, according to the evidence of Police Constable Leslie Grant, Bryan had been originally arrested on 28th February, 1976, but had escaped from custody on 2nd March and he was then recaptured on 24th March. The Appellant however respectfully submits that Bryan's detention either in pursuance of the original arrest or his further detention on recapture could not have been lawful by 25th April 1976 more than a month after his recapture. It is incumbent, it is respectfully submitted, to take a person charged with crime in Jamaica before a Magistrate as soon as reasonably practicable. In default of any explanation  
40 detention of over a month without a person being taken before a Magistrate cannot, it is respectfully submitted, be presumed to be lawful. If Bryan had been detained pursuant to an order of a Magistrate consequent upon his original arrest for shooting with intent, then as respectfully submitted hereinbefore, the Crown was bound to produce the order or an appropriately certified copy thereof proving the legality of the detention of Bryan.

Pp. 9-10

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15. The learned Judge dealt with the case of Blackwood in the following terms

P.28,11.7-20

"... he was located in the remand section of the General Penitentiary, a place declared a prison for the imprisonment or detention of persons in custody. Whilst there he was deemed under section 16(1) of the Prisons Act to be in the legal custody of the Superintendent of the prison. When he was transferred to the Central lock-up he was deemed under section 16(2) to be in legal custody of the person in charge of that lock-up."

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It is respectfully submitted that the learned Judge of Appeal fell into error in his reasoning in two respects. Firstly, as in the case of Bryan, Blackwood could not be presumed simply because he had been found in the General Penitentiary to have been lawfully detained there. It is submitted that it was incumbent upon the Crown to produce the order by which Blackwood was allegedly detained in the General Penitentiary. Secondly, it is respectfully submitted that Section 16(2) of the Prisons Act cannot validate Blackwood's detention in the way suggested by the learned Judge of Appeal. It is to be observed that that Section relates only to persons confined in lock-ups in which they may "lawfully be confined". Even if, contrary to the submissions made hereinbefore, the detention of Blackwood in the General Penitentiary should be presumed to be lawful his detention in the Central lock-up would not be covered by such a presumption. The General Penitentiary is for imprisonment or detention of persons in custody whereas lock-ups are for the confinement of persons awaiting trial, remanded in custody or sentenced to a short-term sentence. The authority for Blackwood's removal by the order of Detective Assistant Superintendent Albert Richards was not revealed.

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P.28,11.15-20 16. The conclusion of Robotham, J.A.

"Bryan on the 25th April was, therefore, a person awaiting trial for the offence of shooting with intent and Blackwood was a person on remand firstly in the General Penitentiary and then in the Central lock-up. I therefore hold that both were lawfully in custody at the relevant time."

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is, it is respectfully submitted, a conclusion that he was not entitled to make. The remainder of the Judgment of Robotham J.A. deals with the question of whether or not Bryan and Blackwood were in the custody of the Appellant at the material time and is not germane to this Appeal.

P.28,1.21-  
P.29,1.3

10 17. The reasoning and conclusions of Watkins J.A. are, it is respectfully submitted, to be preferred to those of the majority of the Court of Appeal. Watkins J.A. began his Judgment by briefly summarizing the charges and the issues raised thereon. He considered, it is respectfully submitted correctly, that these charges clearly raised these three issues.

Pp. 29-39

"(i) that Bryan had been lawfully arrested and that Blackwood had been lawfully detained;

P.30,11.12-18

(ii) that they had been in the actual and lawful custody of the Appellant; and

20 (iii) that through negligence on the part of the Appellant they had been permitted to escape."

He held, and the Appellant does not propose to dispute the validity of his finding thereon, that on issues (ii) and (iii) the evidence was sufficient to ground the findings of actual custody and negligence against the Appellant made by the learned Resident Magistrate. The learned Judge of Appeal then went on to consider the substantive issue which he summarized as follows

P.30,11.24-37

30 "It remains therefore only to consider whether the initial arrest of Bryan and the initial detention of Blackwood were lawful and were so established by the evidence to be lawful, for unless both the arrest and detention were lawful, the subsequent actual taking into custody would be unlawful, and there could be no crime of escape, whatever the circumstances of negligence which might have facilitated it."

P.30,1.37-  
P.31,1.1

40 18. Watkins J.A. then proceeded to review the evidence in relation to the detention of Blackwood and Bryan as given by Police Constable Leslie Grant and Detective Assistant Superintendent of

P.31,11.1-30

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P.31,11.15-17 Police Albert Richards. The learned Judge of Appeal noted, it is respectfully submitted correctly, that in relation to Bryan's detention

"... the learned resident magistrate made no finding whatever concerning the lawfulness of the arrest."

and with regard to Blackwood

P.31,11.28-30 "The learned resident magistrate likewise made no express finding with reference to the legality of this detention".

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The learned Judge of Appeal then posed the following question

P.31,11.31-32 "Was such evidence sufficient to establish the lawfulness of the arrest of Bryan.?"

Pp. 31-34 The learned Judge then recalled that the majority of the Court had considered that the maxim omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium was applicable; he then went on to consider whether or not previous instances of the invocation of this maxim demonstrated its applicability in the instant case. The learned Judge of Appeal concluded after a copious citation of the authorities that no decided case could

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P.35,11.2-15 "... support the proposition that evidence simpliciter of an arrest or detention made by a constable gives rise to a rebuttable presumption that the arrest or detention was lawful. I am therefore constrained to reject it. Furthermore it is to fall into error to think that for a constable to effect an arrest or detention is to discharge an 'official' duty. To arrest or detain is a power that flows either from the common or the statute law and although there are some few statutes which in particular circumstances oblige a constable to arrest and it therefore becomes a statutory not an official duty on him so to do, in neither of the instant cases is there such a statutory duty."

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The Appellant respectfully adopts these conclusions reached by the learned Judge of Appeal.

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P.35,11.15-19

19. Watkins J.A. then went on to ask what he termed to be the second and final question namely "How does the Crown prove a valid arrest or detention or alternatively what are the requisites of a valid arrest or detention?". The Appellant respectfully submits that in fact this question is, in effect, another way of putting the first question namely whether the evidence was sufficient to establish the lawfulness of the arrest of Bryan.

P.31,11.31-32

10 The learned Judge of Appeal then proceeded to discuss in general terms the law relating to the ingredients for a valid arrest. Although the Appellant does not contend that Watkins J.A. stated the law other than correctly this point, it is respectfully submitted, that it is not germane to the instant Appeal. This case concerns, in the Appellant's submission, the obligation of the Crown to prove the existence of an arrest or a valid detention rather than the law  
20 pertaining to the requisites of a valid arrest or detention. The essential question in the Appellant's submission is not one posed in the words of Watkins J.A.'s "second and final question" but is "has the Crown here proved a valid arrest and/or detention?" The Appellant does however submit that the conclusion reached by the learned Judge of Appeal in his observation

P.36,11.19-40

30 "The evidence tendered by the Crown against [the Appellant in relation to the detention and/or arrest] of Blackwood indicates no more than that he was found at the remand section of the General Penitentiary when he was taken to the Central Police Station for the purposes of an identification parade in relation to a capital offence of the commission of which he was apparently suspected. The circumstances of the detention were not  
40 proved. Whether for instance, Blackwood had been arrested and charged with any offence whatever concerning which he had been brought before a court whence he was remanded into custody to be brought at a later stage before the Court was not established. It is clear therefore that the Crown has failed to establish the validity of the initial restriction placed upon the liberty of Blackwood. It may well  
50 have been that Blackwood had been quite legally arrested and that pursuant to an

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order of a competent court had been duly and properly remanded into custody awaiting a re-appearance before the court. Whether this is so or not is not known. The Crown has failed to adduce this evidence which constitutes an essential ingredient of the charge of escape. A legal detention was not proved."

is correct.

Pp. 36-39 20. The learned Judge of Appeal proceeded to 10  
P.36,1.42- consider the Count in the Indictment relating to  
P.38,1.39 Bryan. The learned Judge of Appeal reiterated the ingredients of a valid arrest and discussed the law relating thereto. The learned Judge of Appeal held that no valid arrest of Bryan had been proved because

P.37,1.20- (a) there was no evidence to show Bryan  
P.38,1.4 had been taken before a Justice of Peace

P.38,11.4-26 (b) there was no evidence that the 20  
requirement of stating the reason for arrest had been complied with.

The Appellant respectfully adopts the reasoning of the learned Judge of Appeal insofar as may be necessary. In the case of Bryan, the Appellant respectfully submits that the case can be dealt with more simply upon the basis adverted to in paragraph 14 above, i.e. that because Bryan had been detained, according to the evidence, for a period in excess of a month such detention, without further explanation, could not possibly be lawful. 30

P.38,11.26-30 21. Watkins J.A. stated in conclusion of this aspect of the case, in the respectful submission of the Appellant correctly,

"In both cases therefore I hold that the prosecution failed to establish either a valid arrest of Bryan or a valid detention of Blackwood. Failure to prove a valid arrest is fatal to a charge of escaping or of permitting escape." 40

P.38,1.40- 22. Finally the learned Judge of Appeal  
P.39,1.15 considered the argument put forward by the Crown that the deeming provisions of Section 16(2)

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of the Prisons Act meant that both Bryan and Blackwood were to be deemed to be in lawful custody. The learned Judge of Appeal rejected this argument on the basis that such a construction was inconsistent with the liberty of the subject. The Appellant adopts this but nonetheless respectfully reiterates his submission made in paragraph 15 above that such a construction can only operate when an original lawful confinement has been proved and that this statutory provision is irrelevant to the instant case.

P.39,11.3-15

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23. Although Watkins J.A. stated that he would himself have allowed the Appeal against the convictions the Court of Appeal of Jamaica on 5th March, 1977 dismissed the Appellant's Appeal.

P.39,11.15-18

24. The Appellant lodged a Petition for Special Leave to Appeal to Her Majesty in Council on 5th April, 1979 and by Order dated 23rd May, 1979 was granted Special Leave to so Appeal.

Pp. 34-40

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25. In summary the respectful submission of the Appellant is that this case is not governed by the maxim omnia praesumuntur rite et solemniter esse acta donec in contrarium but by the application of the best evidence rule. It appears, in the submission of the Appellant, that there was some confusion in the Courts below as to the process by which a lawful detention from which a person could commit the crime of negligently permitting a person to escape from could take place. Taking the Count concerning Bryan first, the Appellant respectfully submits that there are three theoretical situations from which an unconvicted person can be negligently permitted to escape. The first situation arises where a prisoner has been arrested simpliciter. The second situation arises where a person has been arrested and taken to a police station and a charge has been laid before a senior police officer. The third situation arises when a person has been produced before a magistrate and formally remanded in custody pursuant to a court order. The first situation, that of a mere arrest, can be carried out either by a constable or any person aggrieved. Such a person who effects an arrest is bound to invoke the assistance of a senior member of the constabulary as expeditiously as possible. It is clear from 2 Hawk. Chapter 19 that even a private individual can negligently suffer a person to

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P.9,1.35

escape at this stage. Clearly in the submission of the Appellant this stage of mere arrest could not have applied to Bryan because he had reached the stage of being detained in the Central lock-up. So far as the second position is concerned - that of a person who has been formally charged before a senior police officer but has not been taken before a magistrate - this situation might have been held to apply to Bryan had the best evidence rule been complied with. According to the evidence of Police Constable Leslie Grant, Bryan was "charged for shooting with intent". This infers that the charge had formally been reduced to writing. Accordingly in the respectful submission of the Appellant the actual Charge Sheet should have been produced in evidence by its maker or in the event of it being impossible to do this secondary evidence, upon the proper basis for adducing the same being laid, have been adduced thereof. Even if this had been done however the Prosecution ought not to have succeeded because of the lapse of time it being incumbent, in the respectful submission of the Appellant, to take the Appellant before a magistrate within a reasonable time, detention pursuant to such a charge would only be lawful for a reasonable period of time. The Appellant further submits that detention of more than a month cannot be a reasonable period or, failing that, that it can only be a reasonable period in exceptional circumstances and such exceptional circumstances need to be proved by evidence. Such evidence was not called in the instant case and thus Bryan's detention even if initially lawful had become by 25th April, 1976 unlawful. The third situation - namely that Bryan had been detained pursuant to a lawful order of a court of justice - does not arise on the facts of the instant case. Such detention should, in the Appellant's submission, be proved by production of the appropriate order or duly certified copy thereof. The Courts below, it is respectfully submitted, fell into error by assuming that Bryan had not only been lawfully arrested but was still lawfully detained on 25th April, 1976. The detention of Bryan was not a matter in the respectful submission of the Appellant that could be the subject of any assumption (or presumption of law) but was a vital matter to be proved in evidence and the Crown's failure to prove it was a lacuna in the case that entitled the Appellant to be acquitted upon the Count relating to Bryan.

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26. So far as the Count concerning Blackwood was concerned, there was similar confusion in the Courts below in the respectful submission of the Appellant. Blackwood having been found in the General Penitentiary, according to the evidence of Detective Assistant Superintendent of Police Albert Richards, the legality of his remand there should have been proved by producing the order of the court committing him to the General Penitentiary. Furthermore in the respectful submission of the Appellant it was incumbent upon the Crown to further produce the order for other lawful authority for his removal to the lock-ups at the Central Police Station.

P.10

27. The Appellant respectfully submits that he has suffered substantial and grave injustice and that this Appeal should be allowed with costs and that his said convictions should be set aside for the following among other

R E A S O N S

- (1) BECAUSE there was no evidence that Bryan and/or Blackwood were lawfully detained.
- (2) BECAUSE the maxim omnia praesumuntur rite et solemniter esse acta donec in contrarium is in applicable in the proof of lawful custody in the common law offence of escape.
- (3) BECAUSE Section 16(1) of the Prisons Act is irrelevant.
- (4) BECAUSE the Judgment of Robotham J.A. (Ag.) was wrong.
- (5) BECAUSE the Judgment of Watkins J.A. was right.

NIGEL MURRAY.

