

IN THE PRIVY COUNCIL

No. 19 of 1981

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

ROY DILLON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL

Solicitors for the Respondent

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

RECORD OF PROCEEDINGS

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ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN :

ROY DILLON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

NO. 1

Indictment

In the Resident
Magistrate's
Court

IN THE RESIDENT MAGISTRATES COURT

THE QUEEN V. ROY DILLON

No. 1

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH
OF KINGSTON HOLDEN AT SUTTON STREET ON THE 13TH
DAY OF SEPTEMBER, 1976

Indictment
13th September
1976

IT IS HEREBY CHARGED on behalf of Our Sovereign Lady
the Queen:

Roy Dillon is charged with the following offence:-

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.

Roy Dillon is further charged with the following offence:-

STATEMENT OF OFFENCE - SECOND COUNT

Permitting an escape.

PARTICULARS OF OFFENCE

Roy Dillon, on the 25th day of April, 1976, in the parish of

In the
Resident
Magistrate's
Court

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.

Nos. 2617/76; 2618/76
26-9/76; 2620/76

No. 1

Indictment
13th
September
1976
continued

In the Resident Magistrate's Court for the parish of Kingston
Holden at Sutton Street on the 13th day of September, 1976.

- WITNESSES: 1. Dervin Walker
2. George W. Jarrett 10
3. Paul Bryan
4. Howard Atkinson
5. David Bryan
6. Leslie Grant
7. Albert Richards
8. Arthur Henderson
9. Sylbourne Foster
10. S. I. Tulloch

THE QUEEN

v.

ROY DILLON

For - Permitting an escape
(Counts 1 and 2)

BEFORE HIS HONOUR A. J. LAMBERT, ESQUIRE Resident Magistrate

Arranged : 13th September, 1976 20

Plea : Not Guilty

Tried : 26/11/76
3/ 1/77

Verdict : Guilty both Counts

Sentence: Six (6) months h.l. on each Count. Sentence to run
concurrently. (Sgd.) A. J. Lambert, Resident Magistrate,
3/1/77

No. 2

NO. 2

Proceedings

Proceedings

30

26th
November
1976

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF
KINGSTON HOLDEN AT SUTTON STREET BEFORE HIS HONOUR
MR. A. J. LAMBERT RESIDENT MAGISTRATE FOR THE
AFORESAID PARISH ON THE 26TH DAY OF NOVEMBER, 1976
AND 3RD DAY OF JANUARY, 1977.

R E G I N A) INF. NO. 2619-20/76
VS)
) PERMITTING PRISONER TO ESCAPE
) COUNTS 1 and 2
R O Y D I L L O N)

PLEA: NOT GUILTY TO BOTH COUNTS

40

MR. STEWART FOR CROWN

MR. FRANK PHIPPS, Q.C. FOR DILLON

PROSECUTION EVIDENCE

NO. 3

DERVIN WALKER

DERVIN WALKER (SWORN)

Superintendent of Police in charge Kingston Central Division.

In the Resident Magistrate's Court

Prosecution Evidence

No. 3

Dervin Walker

Examination

10 On 25th April, 1976 I was in charge of Kingston Central Division, Kingston. One hundred and twenty-four persons were in custody at Central Police Station Lock-ups including Paul Bryan and Robert Blackwood. Record shows that they were in custody. Corporal Jarrett now Sergeant Jarrett was in charge of cells. He had Policemen assisting him.

I have Jamaica Gazette Supplement dated 21st August, 1958. I see list of places designated as lock-ups. I see reference to Central Police Station, Kingston. Gazette dated 21st August, 1958 particular reference to No. 177 tendered as Exhibit 1.

Persons who are on charges of Murder, Shooting and serious offences would not be used as Orderly.

20 During time I was in charge of Central Division, I usually deal with Constable Dillon in his capacity as Police Constable. He is assigned duties by my Divisional Inspector who is directly responsible to me.

If person in custody is to be taken out of cell there is recognized procedure how this is to be done. Whenever cell is to be opened, two Constables would go to cell, one would remain at main gate, other goes to cell itself. The one at main cell block would open cell. It is not permitted for one Constable to take person in custody from cell alone.

30 CROSS-EXAMINED BY PHIPPS

Cross-Examination

I was not in charge of lock-ups at Central Police Station on 25th April, 1976, Sergeant Jarrett was in charge of lock-ups. I was Divisional Officer. I don't recall who was Officer in charge of Central Police Station on day in question.

The rule I mentioned that one Policeman should not open cell is given at lectures and circulated to Divisional Inspectors to be passed on to men.

Jarrett was Sub-officer in charge of lock-ups on day in question.

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 3

Dervin Walker

Cross-
Examination

continued

No. 4

George Jarrett

Examination

A record is kept for each person in lock-ups. Sub-officer in charge and his staff would write up cards. Card is started when person is brought in custody.

NO. 4

GEORGE JARRETT

GEORGE JARRETT (SWORN)

Sergeant Police stationed at Central Police Station, Kingston.

On 25th April, 1976 I was Corporal in charge of lock-ups at Central Police Station, Kingston. I took over duties 8:00 a.m. to 4:00 p.m. Before I relieved Corporal Bryan who was also in charge of lock-ups, I made physical checks of persons in custody. I checked the body of prisoners in custody with the cards. For each person in custody there is a record. I checked records against person. 10

On 25th April, 1976, one hundred and twenty-four persons were in custody. Among those persons were Paul Bryan and Robert Blackwood. Corporal Bryan assisted me that day. After I took charge of cell blocks other Policemen were with me. They are Constable Dillon, Special Constable Henderson, Constable L. Bailey, Special Constable Dorant. 20

Constable Dillon is here today. He is in dock.

Cell blocks at Central Police Station has two storeys. I posted Constable Dillon on Cell duty downstairs cell blocks. Blackwood and Bryan were in downstairs cell blocks. Henderson was in charge of prisoner's cash and properties. 30

Cell blocks downstairs are entered from west to east where there is gate. On southern side of this gate there is passage. On northern side is the office and charge

office of lock-ups. On eastern section of lock-ups there are female cells. On south-eastern side there is kitchen. Between female section of cells blocks and kitchen, there is a passage which leads to a wall towards Hanover Street. This wall runs from north to south of door to Male Adult Section of lock-ups, there is gate which is locked. Juvenile Section is on eastern side of passage which leads to Male Adult Section. Gates with grills and locked with padlocks separate the three main sections.

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 4

George Jarrett
Examination
continued

10

On day in question I kept keys for padlocks for these gates.

In morning at 9:15 a.m. I received clothes for prisoners. I along with other Constables and male attendant Phillip Gilzene handed clothes to prisoners in cells after the clothes were searched. After prisoners received these clothes, they were allowed out in passage to have their baths and have cells and passage washed down. After cells were washed down Constable Dillon and I had prisoners locked in their cells. This was about 11:50 a.m. The broom, hose and shovel were taken from Male Adult Section and placed over Juvenile Section.

20

Constable Williams of Gold Street came to cell blocks at Central at 1:40 - 1:55 p.m. He spoke to me. As a result I went upstairs to Male Section of cells.

Before going upstairs I handed main entrance gate keys to Constable Dillon. Keys for cells downstairs were in possession of Constable Dillon who was the sentry.

30

I remained upstairs about 10-15 minutes. Dillon was left downstairs.

When I came downstairs, I saw Constable Dillon, he spoke to me. He said, "Corporal after you left for upstairs, I opened gate, which leads towards kitchen to allow attendant Gilzene to take in food for prisoners, I then opened entrance gate to Male Adult Section downstairs, I opened one of cells to allow two prisoners to take out rubbish, after looking around I did not see the two prisoners". Immediately I made roll call. I then discovered that Paul Bryan who was charged with Shooting with Intent and Illegal Possession of Firearm and Robert Blackwood, prisoner who was detained in custody re case of Murder, were missing. I informed Sergeant Foster, the Station Officer, Constable Dillon was present. Dillon

40

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 4

George Jarrett
Examination
continued

asked me for a little time to go out to make some checks. I told him that I cannot give him any permission to go. Dillon said that he is just going to Station Office to speak with Sergeant Foster. I said to Dillon, "Inform Sergeant Foster to telephone me at lock-ups". Sergeant Foster telephoned me.

I never gave Dillon permission to leave compound.

I know that there is a system where some prisoners are used as Orderly. Bryan and Blackwood were only used as Orderly on 25th April, 1976 to wash down their own cells, nothing else. There are other types of Orderly who serve other prisoners' food. These Orderlies are used in passage where gates are locked.

10

Cross-
Examination

CROSS EXAMINED BY PHIPPS

I was senior sub-officer at cells on 25th April, 1976. Four men were working under me on day in question.

Dorant's duty was to work as sentry with Dillon. Bailey was posted upstairs as sentry. At times Dorant would be assistant to Constables Dillon and Bailey. Bailey was upstairs when I went up with Williams. Dorant was having his lunch downstairs. This is permissible. Dillon was only sentry downstairs at that time.

20

Key I handed Dillon were keys to entrance gate of lock-ups. There is another bunch of keys for cell blocks. For each individual cell there is a key. The two sets of keys that would permit access to cells were handed to Dillon when I went upstairs.

There is rule that one man should not open cell blocks. If anyone was to go in cell, I would have to give that person permission. Dillon already had keys for cells downstairs. Keys I gave Dillon was to allow him to open entrance gate if he wanted to.

Cell block keys are on bunch with cell keys and were already in possession of Dillon. By regulation Dillon should not go in cell unless accompanied by another Policeman.

Card for Blackwood was taken out of 'dip' and placed on wire in office of lock-ups. Bryan's card was similarly placed. On the cards I marked "Escaped".

40

I can't remember if I was present when Blackwood was brought into custody. Whoever receives the prisoner in custody or his assistant writes up charge book. Only charge book and card I had as authority for detaining Robert Blackwood and Paul Bryan.

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 4

George Jarrett
Cross-
Examination
continued

Blackwood was in custody for three days before incident and Bryan was in custody for about three weeks before incident.

I remained with Williams about 10-15 minutes.

10 Entrance gate to cell blocks was locked on day in question. It is opened to admit persons.

When I returned from Williams, Dillon was standing in gate as passage. Only gate I saw opened when I returned was gate to kitchen. This gate is normally kept locked. At time I saw kitchen gate open, Dillon had those keys.

When I went upstairs, Dillon had all the keys for downstairs.

20 After prisoners had their wash and had cells washed, they were placed back in cells. I personally saw to that with Constable Dillon but there was no roll call at this stage.

Prisoners are fed at 1:00 p.m. When I went upstairs all downstairs prisoners were fed but some prisoners upstairs were not fed.

Dillon had to open kitchen door to permit Gilzene to get food to feed prisoners upstairs. This was quite proper.

Cell doors are kept locked when prisoners are in cells.

30 After rubbish is swept to entrance door of cells, orderly sweeps it to cell blocks door, where it would be removed by an attendant or a short term prisoner, not a man awaiting trial. All this was done downstairs when I went upstairs. Gilzene and "Cushew" had removed rubbish from cell block entrance (gate).

While I am on duty, prisoner do not remove rubbish from cell block gate.

I did not see female prisoner before I went upstairs. On day in question female prisoners were in custody. I can't say if female prisoners were having bath while I was

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 4

George Jarrett
Cross-
Examination
continued

going upstairs.

After prisoners had their baths I can't say which prisoner went into which cell. Prisoners were not checked after bath. I did not remember to make sure that prisoners went back in same cell from which they had come before bath.

I was from office over to entrance gate when prisoners were having baths. Gilzene, McIrvin, Jennings and Gordon took clothes to prisoners. They handed clothes through grills. I only checked bodies when I assumed duties in morning in question. I had no roll call. I did not check as to identity of each prisoner. First time I checked as to identity of prisoners is time I discovered that two were missing.

10

It is a necessary part of my duty when I assume duty to see that bodies and document correspond. I took over duties from Corporal Bryan on day in question.

After I got report, I checked and found two cards for which I could not find two prisoners. Whatever is on card should be in charge book. If prisoner is freed at Court, card and prisoner go downstairs. I don't know what happens to card after that.

20

If there is roll call and you find prisoner for which you have no card, you make another card.

Dillon reported to me that prisoners were missing.

Re-Examination

RE-EXAMINED BY STEWART

I checked prisoners physically after they had bath in morning in question.

Downstairs is Male Adult Section, had twenty-six prisoners. That was amount when I took over. When Dillon made report, he did not call names to me. When I made roll call I had one hundred and twenty-two prisoners. I recognize quite a few of prisoners while I was on duty on day in question. I recognize Paul Bryan whom I know before, he was placed in custody. Howard Atkinson and other whom I knew by pet names as such as "Finger", "Snow Cone" and "Icy".

30

Special Constable Henderson would be available to assist any Constable on duty on day in question.

NO. 5

DAVID BRYAN

DAVID BRYAN (SWORN)

Corporal of Police, now stationed Area 4, Police Headquarters, Kingston.

On 25th April, 1976 I was stationed at Central Police Station, attached to lock-ups.

On night of 24th April, 1976 I was on duty at lock-ups. I went on duty 12 midnight until 8:00 a.m. on 25th April, 1976. One hundred and twenty-four persons were in custody. I handed over duty to Corporal Jarrett, now Sergeant, at 7:50 a.m. on 25th April, 1976. At time I handed over one hundred and twenty-four prisoners were in custody. Robert Blackwood and Paul Bryan were in custody when I handed to Jarrett and they were among the persons handed over.

CROSS-EXAMINED BY PHIPPS

I don't remember how many prisoners were in Male Adult Section downstairs. I don't remember how many prisoners upstairs. I don't remember names of any other prisoner who was in lock-ups. Not true to say that I mentioned Blackwood and Bryan because they are involved in this case. I had no roll call when I handed over to Jarrett. I only checked number in cells.

I did not ascertain identity of prisoners I handed over.

Showers are in cell blocks downstairs, prisoners don't have to come out of cell blocks to have a wash. He only comes out of his cell into passage and along passage way to bathroom.

NO. 6

LESLIE GRANT

LESLIE GRANT (SWORN)

Constable stationed at Central Police Station.

On 28th February, 1976, I arrested Paul Bryan, charged for Shooting with Intent. I placed him in custody at Central Police Station lock-ups.

In the Resident Magistrate's Court

Prosecution Evidence

No. 5

David Bryan

Examination

Cross-Examination

No. 6

Leslie Grant

Examination

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 6

Leslie Grant

Examination
continued

No. 7

Albert Richards

Examination

On 2nd March, 1976 I heard something.

On 24th March, 1976 Police and I went to premises on Orange Street, Kingston, we saw Bryan and took him back in custody. The offence of Shooting with Intent with which Bryan was charged has not yet been disposed of.

NO CROSS-EXAMINATION BY PHIPPS

NO. 7

ALBERT RICHARDS

ALBERT RICHARDS (SWORN)

10

Detective Assistant Superintendent of Police
attached to C.I.D. Headquarters, Kingston.

I know Robert Blackwood.

In early part of this year, I was looking for Blackwood in connection with cases of Murder which I was investigating.

On 16th April, 1976 I found Blackwood at remand section of General Penitentiary. I had Blackwood on 23rd April, 1976 transferred to Lock-ups at Central Police Station, Kingston. Blackwood was taken to Central with view of holding I.D. parade which was put for 26th April, 1976. Parade was not held. I got information as a consequence I.D. parade was called off. 20

NO CROSS-EXAMINATION BY PHIPPS

No. 8

Arthur Henderson

Examination

NO. 8

ARTHUR HENDERSON

ARTHUR HENDERSON (SWORN)

Special Constable attached to Central Police
Station, Kingston.

On 25th April, 1976 I was on duty at lock-ups at Central. My hours were from 8:00 a.m. to 4:00 p.m. Corporal Jarrett was in charge of lock-ups. Cell blocks is divided into upstairs and downstairs. I was in charge

30

of cash downstairs. I was assisting Constable Dillon. While there, Constable Williams came there and spoke to Corporal Jarrett. Williams and Jarrett went upstairs. Dillon and I remained downstairs. After Jarrett went upstairs, I saw Dillon left me at desk but I don't know where he went. After that Jarrett and Williams came back. I saw Dillon speaking with Jarrett.

In the Resident
Magistrate's
Court

Prosecution
Evidence

No. 8

Arthur Henderson

Examination
continued

10 During time when Dillon went away from desk to time when he spoke with Jarrett, Dillon did not ask me to assist him in doing anything. I was present in building all the time.

NO CROSS-EXAMINATION BY PHIPPS

NO. 9

SYLBOURNE FOSTER

SYLBOURNE FOSTER (SWORN)

No. 9

Sylbourne Foster

Examination

Sergeant of Police stationed at Gold Street Police Station, Kingston.

20 On 25th April, 1976 I was on duty at Central Police Station. I was Station Officer. I was on duty from 8:00 a.m. to 4:00 p.m. Sergeant Jarrett was in charge of lock-ups. Jarrett made report to me at 1:20 p.m. that day. After report I saw Dillon at lock-ups Dillon spoke to me at lock-ups, Dillon told me that he had two prisoners fatiguing the cells, they went to dispose of garbage at back of cell. Dillon told me names of prisoners but I don't remember. I again saw Dillon at guards room. There he told me that Jarrett give him permission to leave station but that Jarrett told him to report to me
30 before he left. Dillon left guard room immediately. I never gave Dillon permission to leave premises.

NO CROSS-EXAMINATION BY PHIPPS

Part Heard - Trial 26th November, 1976

ON 26TH NOVEMBER, 1976 Mr. Stewart unable to attend, adjourned to 17th December, 1976.

ON 17TH DECEMBER, 1976 Mr. Phipps unable to attend, adjourned to 3rd January, 1977.

Prosecution
Evidence

PAUL BRYAN (SWORN)

No. 10

On 25th April, 1976 I was living at 14 Eden Lane,
Kingston.

Paul Bryan
Examination

On the day in question I was at Allman Town at
place called '50'.

I know Central Police Station Lock-ups, Kingston.
I know Robert Blackwood and saw him in 1976 at
Central Police Station Lock-ups. I was in custody at
the lock-ups, I was charged with Shooting. I saw
accused - in dock - I don't know him. I have seen him
at lock-ups at Central Police Station. I see accused
come to the lock-ups over and over. Accused was in
police clothes at lock-ups. I don't remember seeing
accused on Sunday morning. He never spoke to me.
He never instructed me to anything. I never cleaned
out the cells. While in custody for Shooting, I got out
of prison by jumping over wall. Officer came there
and opened gate. I don't remember that officer
(Witness told to look around Court), I don't see that
officer here. Two picked up broom and shovel. The
two men were Jahman and Blackwood (that is Robert
Blackwood) I held a broom and began to sweep. I
swept to back towards Hanover Street. It was Blackwood
and Police who let men out of cell was sitting on chair
reading Gleaner at that time.

10

20

When I reached side of Hanover Street, I put down
broom and went over wall. Blackwood did same thing
too. I went up Georges Lane and boarded bus at
Church Street. About 2 weeks after I got out Police
caught me and took me back to lock-ups and charged
me for 'Escaping Custody'. I went to Court on that
charge and was sentenced to nine (9) months
imprisonment hard labour.

30

I used to see man who opened cell. I don't see him
here today.

I don't remember if I gave statement to Police.
I was well set up, otherwise brainwashed.

I know Detective Inspector Tulloch. On 9th July,
1976 I spoke to Inspector Tulloch and he wrote it down.
I don't remember if Inspector Tulloch read it back to me.

40

I don't remember if I signed my name but it is not impossible. (Witness shown statement). I see my signature on it. I don't remember what I said in statement.

In the Resident
Magistrate's
Court

QUESTION - Did you in statement say, "Shortly after an officer, Mr. Dillon o/c 'Steel', came to me and give me a broom and a shovel and said to me, take out the rubbish and dump it in corner in passage".

Prosecution
Evidence

No. 10

Paul Bryan

Examination
continued

ANSWER - I don't remember a thing sir.

10 I don't remember if I said that passage was clean before I took shovel and broom from Dillon. I don't remember if I said he opened lock-up and let me out. I don't remember if I said Blackwood was already in passage, I went for hose and came back. I don't remember if I said Mr. Dillon told me to wash the corridor. I told him I needed another man to hold the hose. I don't remember if I said the corridor was clean but he told us to wash it off. I don't remember if I said Mr. Dillon let out Blackwood and he come and took the
20 hose and started to rub also. I can't remember saying - statement - "We started rubbing until we came to step that leads to Women Cells". I don't remember if I said when we came to women cell door, in passage outside women cell was already opened. I don't remember if I said we pushed things in gutter until we came to corner near to wall. I don't remember saying when we came to wall Blackwood jumped up and said is street you know Left-hand and I followed him.

MR. STEWART applies to treat witness as adverse.

30 COURT RULES under circumstances witness can be said to be hostile.

Application granted.

CROSS-EXAMINED BY PHIPPS

Cross-
Examination

I see prisoners sweeping lock-ups every day. I don't know men who asked them.

SYLVESTER TULLOCH

Prosecution
Evidence

SYLVESTER TULLOCH (SWORN)

No. 11

Detective Inspector of Police in charge of C. I. D.
Central Police Station, Kingston.

Sylvester Tulloch
Examination

On 29th April, 1976 I was in C. I. D. Office,
accused came in office, he said to me, "Inspector,
I hear you want to see me". I said, "Yes", I have
two warrants for your arrest". I read warrants to
him. I cautioned him, he made no statement.

10

These are two warrants. Two warrants together,
tendered as Exhibit 2.

On 9th July, 1976 I went to Central Penitentiary,
I saw Paul Bryan, I took a statement from him in
writing. I did not threaten or beat him or made any
promises to him. To my knowledge nobody else did
that also. I took statement in writing from Bryan.
I read it to him and told him to make corrections or
make alterations if he wished, he made none. Accused
then signed statement, I also signed it.

20

(Witness shown statement) This is statement I took
from Paul Bryan.

Statement taken from Bryan tendered as Exhibit 3.

NO CROSS-EXAMINATION BY PHIPPS

No. 12

CASE FOR CROWN

Defence
Submissions

NO. 12

3rd January 1977

Defence Submissions

MR. PHIPPS SUBMITS:-

- (a) No Prima Facie case on both counts.
- (b) Indictment alleges Common Law offence.
- (c) It is incumbent on prosecution to prove lawful
custody of persons.
- (d) Prosecution must prove negligence on part of
accused.

30

Allegation is that accused had both prisoners in his personal custody as distinct from allegation that both prisoners were in custody at lock-ups and he negligently permitted them to escape from lock-ups.

In the Resident
Magistrate's
Court

No. 12

Defence Submissions

3rd January 1977

continued

SECTION 16(2) OF PRISONS ACT:- Person in custody at lock-ups is in custody of person in charge of lock-ups who was Sergeant Jarrett. Bryan and Blackwood were in custody of person in charge of lock-ups.

- 10 2. No evidence of negligence on part of accused and Jarrett said that prisoners are used to clean up place.

For negligence there must be duty of care and breach of that duty.

Evidence of Paul Bryan.

3. By evidence of Paul Bryan - Crown attempted to prove negligence but has failed. If Bryan's evidence is accepted, it needs corroboration.

If Bryan is hostile, his evidence cannot be relied on and if of no value.

- 20 4. If escapees were not in lawful custody and they escaped, there is no charge of permitting prisoners to escape can arise.

Archbold 36th Edition para. 3421.

Blackwood was only detained not charged (Count 2).

NO. 13

No. 13

Prosecution Submissions

Prosecution
Submissions

MR. STEWART SUBMITS:-

3rd January 1977

Requirements of proving charges are three:-

- 30 1. Prove that person who had detained in his charge was Police Constable.
2. Prove that he was under lawful custody, under a lawful warrant or otherwise lawfully detained.
3. Prove escape - Archbold 38th Edition para. 3428. It is not necessary to prove negligence on part of accused, Law implies it.

In the Resident
Magistrate's
Court

No. 13

Prosecution
Submissions

3rd January 1977

continued

It has not been challenged that accused was a
Constable on day in question.

Was Bryan and Blackwood in accused's custody?

Answer is yes. Every Policeman at a station
when on duty has custody of every person in lock-ups
there.

Accused was detailed to assist officer in charge of
lock-ups. Sub-officer and other officers have custody
individually and collectively.

SECTION 16(2) OF PRISONS ACT is a deeming
section and does not alter the responsibility of person who
has actual custody of persons in lock-ups.

10

SECTION 16(2) OF PRISONS ACT:- Person who can
be charged with "Negligently permitting an escape",
moment Dillon opened cells and took out the two
prisoners he had them under his personal custody and
control.

Was Blackwood in lawful custody? Constabulary
Force Act empowers Police to detain and arrest etc.
Blackwood was in lawful custody of Police - Detained
on Murder charge - Once in cell there is presumption
that Blackwood was in lock-ups lawfully.

20

There would have been sufficient evidence to ground
both counts even if Bryan's evidence is discarded.

Corroboration in case of an accomplice is required
not by Law but as a matter of practice.

There is case to answer.

No. 14

Reply for Defence

3rd January 1977

NO. 14

Reply for Defence

MR. PHIPPS

30

Bryan has been discredited as his evidence is
unreliable - must not be relied on.

Paragraph 3428 of Archbold 38th Edition applies
only to a case where Police Constable has a man in
his custody under a warrant. Paragraph 3421 is one
applicable to Common Law offences.

No presumption that man in lock-ups is there lawfully. That must be established.

In the Resident Magistrate's Court

When did Dillon effectively assume custody of Bryan and Blackwood? Was it when he opened cell door?

No. 14

Reply for Defence

3rd January 1977

continued

Custody must exist prior to act which led to escape.

COURT RULES - Case to answer on both counts.

MR. PHIPPS - informs Court then that defence rests.

VERDICT : Guilty on both counts of Indictment

10 RECORD: No previous convictions.

SENTENCE: Six (6) months imprisonment hard labour on each count.

Sentence for each count to run concurrently.

VERBAL NOTICE OF APPEAL GIVEN BY MR. PHIPPS.

NO. 15

No. 15

Findings of Facts and Reasons for Judgment

Findings of Facts and Reasons for Judgment

R E G I N A

3rd January 1977

V S

ROY DILLON

20 FINDINGS OF FACTS AND REASONS FOR JUDGMENT

The abovenamed accused was tried before me on an indictment containing two counts.

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

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.

30 2. One of accused's duty was to guard the cells as assistant to Sergeant Jarrett 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. 10

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. 20

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.

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. 30

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.

10. I was particularly impressed with the testimonies of Sergeant Jarrett, Special Constable Henderson and Sergeant Foster. 40

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

(Sgd.) A. J. Lambert
A. J. Lambert, Resident Magistrate,
Kingston (Criminal Division)

NO. 16

Grounds of Appeal

In the Resident
Magistrate's
Court

IN THE RESIDENT MAGISTRATE'S COURT

FOR THE PARISH OF KINGSTON
HOLDEN AT SUTTON STREET

No. 16
Grounds of Appeal
Undated

REGINA

V

ROY DILLON

For Permitting an Escape

10 TAKE NOTICE that the Defendant in the abovementioned case having given verbal notice of appeal in the Kingston Resident Magistrate's Court on the 3rd day of January, 1977 the following inter alia are his grounds of appeal:-

1. The verdict was unreasonable and cannot be supported having regard to the evidence.

(a) in particular the indictment alleged that the defendant being a member of the Jamaica Constabulary Force and the escapee in his custody and negligently permitted the escape from his custody.

20 (b) The evidence which was unchallenged at the trial was to the effect that the applicant along with other police constables was on duty at the Sutton Street lock-ups on the 25th April, 1976 and he opened the cell doors to allow prisoners to dispose of garbage, this being duties required of prisoners. During the process two prisoners escaped.

30 (c) It is submitted that the prisoners at the lock-ups including those who escaped were never in fact or in law in the custody of the appellant. Section 16(2) of the Prison Act provides that prisoners in the lock-up are deemed to be in the custody of the person in charge of the lock-up.

(d) Neither of the escapees was being held on a warrant in which case, for the appellant to be criminally responsible for their escape there had to be proof of negligence which was never established in this case. This is quite distinct from the situation in which a prisoner escapes from the custody of a police constable

In the Resident
Magistrate's
Court

No. 16
Grounds of Appeal
Undated
continued

who has such a prisoner in custody by way of
a warrant.

2. The learned Resident Magistrate was wrong in law when he ruled that the witness for the Crown, PAUL BRYAN, had not been treated as hostile. In this case Crown Counsel applied to treat the witness as hostile and thereafter proceeded to cross examine the witness and finally tendered in evidence a police statement allegedly given by the witness to Detective Inspector Tulloch on the 9th July, 1976.

10

It is submitted that the course adopted by the Counsel for the Crown is only possible in law in circumstances where he had in fact treated his own witness as hostile.

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

It is submitted that the prisoner in the lock-up can only be guilty of escaping from 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.

20

WHEREFORE THE APPLICANT HUMBLY PRAYS:-

1. That his appeal will be allowed
2. Conviction quashed
3. Sentence set aside
4. or such other relief as the Court seems fit.

(Sgd.) Frank Phipps.

Appellant's Attorney at Law

FILED by FRANK PHIPPS Q. C. of Duke Street,
Kingston, Attorney-at-Law for and on behalf of the
Defendant.

30

NO. 17

Additional Ground of Appeal

R.M. CRIMINAL APPEAL

IN THE COURT OF APPEAL

R E G I N A

V

ROY DILLON

- FOR PERMITTING AN ESCAPE -

10

TAKE NOTICE that at the hearing of the above-mentioned appeal the appellant will seek leave to argue the following additional Ground of Appeal :

GROUND 4:

The Court had no power to award a term of imprisonment for the offence of negligent escape as distinct from voluntary escape.

It is submitted that the only sentence the Court can impose for negligent escape is to impose a fine.

FRANK PHIPPS, Q. C.

Attorney-at-Law for the Appellant

20

DATED the 25th day of February, 1977.

FILED by FRANK PHIPPS, Q. C. of 18a Duke Street, Kingston, Attorney-at-Law for and on behalf of the Appellant herein.

NO. 18

Judgment of Robotham, J.A. (Ag.)

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES COURT'S
CRIMINAL APPEAL No. 7 of 1977

30

BEFORE: The Hon. President

In the Court of
Appeal

No. 17

Additional Ground
of Appeal

25th February 1977

No. 18

Judgment of
Robotham, J.A.
(Ag.)

5th March 1977

In the Court of
Appeal

The Hon. Mr. Justice Watkins, J.A.
The Hon. Mr. Justice Robotham, J.A. (Ag.)

No. 18

R E G I N A

Judgment of
Robotham, J.A.
(Ag.)

V

ROY DILLON

5th March 1977
continued

MR. F.M.G. PHIPPS, Q.C. for the Appellant.

MR. R. STEWART for the Crown.

March 4 and 5, 1977

ROBOTHAM, J.A. (Ag.)

The appeal herein having been dismissed on 4th March, 10
1977, I now set out herein our reasons for so doing.

The appellant was convicted before the Resident
Magistrate for the parish of Kingston on the 3rd day of
January, 1977 on two counts charging him in each case
with permitting a prisoner to escape. The particulars
of the first count were that :

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. 20

The second count was that :

Roy Dillon having Robert Blackwood a
person lawfully detained in his custody negligently
permitted the said Robert Blackwood to escape out
of his custody.

The facts are that on the 25th day of April, 1976,
both Paul Bryan and Robert Blackwood were each detained
at the Central lock-up in Kingston, and the appellant was
one of the Constables on duty on the cell block in which
these prisoners were then confined. Corporal Jarrett
(now Sergeant Jarrett) was actually in charge and the
appellant and other policemen were assisting him. It
was a recognised practice that if a person in custody had
to be taken out of a cell, two Constables were to proceed
to that cell, whereupon one would remain at the main gate
of the cell block and the other would proceed into the cell. 30

On this day in question there were one hundred and twenty-four prisoners including Bryan and Blackwood detained in those cells. Assisting Sergeant Jarrett were the appellant, Special Constable Henderson, Constable Bailey and Special Constable Dorant. The cell block has two stories and Constable Dillon (the Appellant) was posted on duty in the downstairs section. There were three main sections into which the cell block was divided, namely the female section, the Juvenile section, and the male adult section. Grilled gates locked with padlocks separated these three main sections, and the keys for these gates were kept by Sergeant Jarrett. All the cells are individually locked within these main sections and Constable Dillon, who was the sentry in the downstairs block had the keys for those cells, the occupants of which included both the escapees Bryan and Blackwood.

In the Court of
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No. 18

Judgment of
Robotham, J.A.
(Ag.)

5th March 1977

continued

At about 1:40 - 1:55 p.m. on that day Sergeant Jarrett had occasion to go to the upstairs section of the cell block, as a result of something which was told to him by one Constable Williams. Before going upstairs, he handed the main entrance keys to Constable Dillon, who was already in possession of the individual cell keys for the downstairs section of the block. The Sergeant remained ten to fifteen minutes upstairs and on his return downstairs Constable Dillon said to him :

" Corporal (as he then was) after you left for upstairs I opened (the) gate which leads towards (the) kitchen to allow attendant Gilzene to take in food for prisoners. I then opened entrance gate to male adult section downstairs, I opened one of (the) cells to allow two prisoners to take out rubbish, after looking around I did not see the two prisoners. "

Constable Dillon sought no assistance in performing this task. An immediate check by the Sergeant revealed that the two missing prisoners were Bryan and Blackwood. Corporal David Bryan testified that when he handed over the charge of the lock-up at 8:00 a.m. on 25th April, 1976, to Sergeant Jarrett, both escapees were then in custody.

Counsel for the appellant at the outset advised the Court that he was not making any issue on the facts surrounding "the flight" of the two detainees. Bryan was recaptured about two weeks later. It is a fact that he was then charged with escaping from custody, and was sentenced to nine months imprisonment with hard labour. The two questions which Counsel for the appellant posed for consideration were -

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

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. 10

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.

I now come to deal with the first of the two questions raised, viz: Were the two men in lawful custody on 25th April, 1976? 20

Sections 13, 15 and 16 of the Constabulary Force Act give the powers of arrest to a Police Constable. In so far as Bryan was concerned, no evidence was led as to whether he was arrested on a warrant, or on suspicion of having committed an offence, or because he was found committing the offence. As I have mentioned however, the evidence of his arrest and his being lodged in custody went unchallenged and indeed, when it was sought to use Bryan as a witness for the Crown, he said at the outset of his examination-in-chief: 30

" I know Central Police Station lock-up Kingston. I know Robert Blackwood and saw him in 1976 at Central Police Station lock-up. I was in custody in the lock-up. I was charged with shooting. "

I mention this only in passing as Bryan subsequently was found to be a hostile witness and was allowed to be treated as such. The learned Resident Magistrate in his reasons for judgment specifically stated that he ignored the evidence of Paul Bryan as he was in his opinion a hostile witness. 40

Section 4(1)(a) of the Prisons Act states :

"The Minister may, by order published in the Gazette -

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- (a) declare any house, building enclosure, or place, or any part thereof, to be a lock-up for the confinement of person awaiting trial, remanded in custody, or sentenced to a short term sentence. "

No. 18

Judgment of
Robotham, J.A.
(Ag.)

5th March 1977

continued

10

By an order No. 177 made under section 4 of the Prisons Act published in the Jamaica Gazette Supplement (Proclamations, Rules and Regulations) dated the 21st August, 1958, entitled "The Lock-Up (No. 2) Order, 1958" the Central lock-up in Kingston was declared -

" to be a Lock-Up for the confinement of persons awaiting trial remanded in custody or sentenced to a short term sentence. "

20

Order No. 176 made under section 3 of the Prisons Act published in the same Gazette entitled "The Prisons (No. 1) Order, 1958" declared the General Penitentiary to be -

" a prison for the imprisonment or detention of persons in custody "

This Gazette was put in evidence as Exhibit 1 by Superintendent Dervin Walker albeit that at the time particular reference was made to Order No. 177.

30

It would seem therefore that both the Central lock-up and the General Penitentiary were places in which persons could be lawfully confined, remanded, imprisoned or detained as the case may be.

Section 16(2) of the Prisons Act reads -

40

" Every person whenever he is confined in any lock-up in which he may lawfully be confined or whenever he is being taken to, or from or is working in the custody or under the control of any person in charge of any lock-up beyond the limits of such lock-up shall be deemed to be in the legal custody of the person in charge of such lock-up. "

Russell on Crime Cap. 19, 12th Edition, page 322 states

the general rule on escapes thus :-

" An escape is where one who is arrested gains his liberty before he is delivered by due course of law. "

It deals with escapes as three kinds; the one with which we are here concerned is dealt with at III on page 323. There it is stated that an escape of this kind must be from lawful custody, and there must have been an actual arrest for :

" If a man is arrested for a supposed crime when no such crime has been committed and the party is neither indicted or charged, or for such slight suspicion of an actual crime and by such an irregular process as will not justify arrest or detention the officer is not guilty of an escape by suffering the prisoner to go at large. " 10

In the 37th Edition of Archbold's Criminal Pleading, Evidence and Practice, paragraph 3421, it is stated: 20

" Escape proper is where a person having a prisoner lawfully in his custody voluntarily or negligently suffers him to go at large. "

Halsbury's 3rd Edition, Volume 10, states the matter thus in paragraph 1210 page 636:

- " At common law every person is guilty of an escape who
- (1)
- (2) being an officer intentionally or negligently allows a prisoner to escape from his custody; 30
- (3)

In all these cases it is immaterial whether the escape is before or after conviction, or whether the prisoner was guilty or not, or whether he was at the time of the escape actually in prison or on his way there or detained for the purpose of being sent there. " 40

Paragraph 1211 continues -

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" To render an officer guilty of an escape there must first have been an actual and lawful arrest. If the arrest was of such a nature that the prisoner would have been justified in escaping, the officer is equally justified in releasing him. "

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Judgment of
Robotham, J.A.
(Ag.)

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continued

10 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.

20 It is not unreasonable to presume that a constable who arrests a man for shooting with intent acted regularly in performing that function. It is a presumption of law, albeit a rebuttable presumption, that a man who has acted in a public capacity or situation was duly appointed and has properly discharged his official duties. See Paragraph 1156 of Archbold - 37th Edition. In the instant case, no attempt was made to rebut the presumption that the arresting constable had acted properly. If at a later stage it turns out he was activated by malice or any other false motive, the person so arrested has his remedy in the Civil Courts. In my view once a man has been arrested or remanded and is restricted to a place of legal confinement such as the Central lock-up the question in such a case to be considered in so far as culpability for his escape goes is not whether he is guilty or not of the charge; not what false or misconceived motives may or may not have caused the charge to be initiated, but whether having been so arrested, and confined, and not having been delivered by due course of law, he was in legal custody at the time of his escape.

30
40 It would lead to nothing short of chaos if in every case in which a constable makes an arrest and places his prisoner in a place of lawful confinement, an officer in charge of such a place would have to stop and satisfy himself that a person who was attempting to walk out of the lock-up (without having gained his liberty by due course of law) had been justifiably arrested. In many cases it could easily be ascertainable e.g. if he had been arrested on a warrant but there would be cases in which it might not be so easily discoverable.

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(Ag.)

5th March 1977

continued

In the case of Bryan, 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.

In the case of Blackwood, 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. 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.

10

20

I now deal with the second question, viz: Were they at the time lawfully in the custody of Constable Dillon as the indictment charged?

Sergeant Jarrett's evidence on this was that when he went upstairs Constable Dillon was the only sentry on duty downstairs at the time, his assistant Constable Dorant having gone for lunch. He handed Dillon the keys to the entrance gate of the lock-up, at a time when Dillon was already in possession of the other bunch of individual cell keys. Both sets of keys which Dillon now had permitted him access to, and sole control of the cells and of the occupants therein.

30

His evidence further shows that there was no necessity for Dillon to have opened the cell door in which these two prisoners were, because when he left for upstairs at about 1:50 p.m. all the prisoners downstairs had already been bathed and fed by 1:00 p.m. The cells had been washed from 11:50 a.m. The prisoners therefore escaped at a time when Dillon was in sole possession of all the keys for the downstairs section of the block. I had no hesitation, therefore, in coming to the conclusion that at the time when Bryan and Blackwood were negligently allowed to escape, they were in the lawful custody of Constable Dillon the appellant.

40

For the reasons which I have set out we concluded

that the appeal on both counts should be dismissed, and the convictions and sentences of six months hard labour on each count to run concurrently affirmed.

In the Court of
Appeal

No. 18

Judgment of
Robotham, J.A.
(Ag.)
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continued

NO. 19

Judgment of Watkins, J.A.

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL
APPEAL NO. 7/77

10 BEFORE : THE HON. PRESIDENT
 THE HON. MR. JUSTICE WATKINS, J.A.
 THE HON. MR. JUSTICE ROBOTHAM,
 J.A. (AG.)

R. v. ROY DILLON

Mr. F.M.G. Phipps Q.C., for the appellant

Mr. R. Stewart for the Crown

March 4 and 5, 1977

WATKINS, J.A.

20 The appellant, a police constable, was on January 3, 1977, convicted before Mr. A. J. Lambert, a resident magistrate for the parish of Kingston, on two counts of an indictment which charged him at common law with negligently permitting the escape from custody of Paul Bryan and Robert Blackwood respectively. By a majority his appeal was dismissed on March 5, 1977. I had the misfortune to differ from the learned President and Robotham, J.A. and inasmuch as the appeal raises some important questions of law it seems appropriate that the grounds of my dissent should be stated.

30 Count one of the indictment charged that "Roy Dillon on the 25th day of April 1976 in the parish of Kingston, being a member of the Jamaica Constabulary Force and having

In the Court of
Appeal

No. 19

Judgment of
Watkins, J.A.
5th March 1977
continued

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." Count two was in these terms:

"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."

10

These charges clearly raised the allegations:-

- (i) that Bryan had been lawfully arrested and that Blackwood had been lawfully detained;
- (ii) that they had been in the actual and lawful custody of the appellant; and
- (iii) that through negligence on the part of the appellant they had been permitted to escape.

These allegations are necessary constituents of the crime of escape at common law (See Archbold's Criminal Pleading Evidence and Practice 37th ed. para. 342 and Halsbury's 3rd ed. Vol. 10 paras. 1210 and 1211). Did the prosecution adduce evidence in proof beyond reasonable doubt of them?

20

(II) and (iii) may be briefly disposed of. The learned resident magistrate found that both Bryan and Blackwood had at the material time been in the actual custody of the appellant and that through failure on his part to observe the security rules of the lock-up in which they had been in custody, a dereliction of duty amounting to negligence, the escape of the prisoners had been facilitated. No cogent arguments were advanced by counsel for the appellant why these findings of the trial judge were ill-founded and in my view the evidence before the court of trial were sufficient to ground the findings of actual custody and negligence on the part of the appellant.

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

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10 which might have facilitated it. "To render an officer
guilty of an escape there must first have been an
actual and lawful arrest. If the arrest was of such
a nature that the prisoner would have been justified
in escaping, the officer is equally justified in releasing
him." (See Halsbury's 3rd. edition Vol 10 para. 1211).
It is necessary therefore to turn to the evidence, which
disclosed the following facts. The escapee Paul Bryan
had been in incarceration since February 28, 1976, had
20 escaped on March 2 and re-captured on March 24 and
Police Constable Leslie Grant testified that "on 28th
February 1976 I arrested Paul Bryan, charged for
shooting with intent. I placed him in custody at Central
Police Station lock-up". This was the sum total of the
relevant evidence and with reference to it the learned
resident magistrate made no finding whatever concerning
the lawfulness of the arrest. The presence on the other
hand of escapee Robert Blackwood in the Central Police
Station Lock-up on the date charged was accounted for in
evidence by Detective Assistant Superintendent of Police
Albert Richards in these words. "On 16th April, 1976
I found Blackwood at remand section of General
Penitentiary. I had Blackwood on 23rd April, 1976
transferred to lock-up at Central Police Station, Kingston.
Blackwood was taken to Central with view of holding ID
parade which was put on for 26th April, 1976. Parade
was not held. I got information as a consequence ID
Parade was called off." The learned resident magistrate
likewise made no express finding with reference to the
30 legality of this detention.

Was such evidence sufficient to establish the lawfulness
of the arrest of Bryan? The argument for the Crown which
found favour with the majority was that the act of arrest by
the Constable raised a presumption in favour of the
prosecution of the legality of such arrest and that it was
for the appellant to rebut the same, if he could, but did
not in the circumstances; and Archbold's 37th edition para.
1156 was cited in support. The learned authors in the
paragraph under reference state:-

40 " It is also a maxim of law that omnia praesumuntur
rite et solemniter esse acta donec probetur in
contrarium upon which ground it will be presumed,
even in a case of murder, that a man who has acted
in a public capacity or situation was duly appointed,
and has properly discharged his official duties. "

Numerous cases are cited in support of this statement
and the more important ones must now be examined to determine
whether the statement of the rule is true, and if so, whether

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5th March 1977

continued

it applies to the instant circumstances. R. v. Gordon et al (1 Leach 515 and 168 E.R. 359) was a case in which a constable in the course of executing a warrant upon the accused parties was fallen upon by them and shot to death. That the constable had been duly appointed as such was not proved by the prosecution. The witness merely stated in evidence that he was a constable and the question referred for the consideration of the judges was as to whether such proof was not requisite to which they replied that they were all of the opinion that "these circumstances were sufficient evidence and notification of his being a constable although there was no proof of his appointment or of his having been sworn into his office." Reference also was made to Berryman v. Wise (4 Term Rep. 368) in which Buller J. said:-

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" In the case of all peace officers, justice of the peace, constables etc. it is sufficient to prove that they acted in those characters, without producing their appointments and that even in the case of murder. "

20

In R. v. Rees et al (6 C.T.P. 606) one of the accused parties was charged with embezzling a letter containing a bill of exchange, he being at the time employed under the Post Office. To the question whether it was necessary for the Crown to prove that the prisoner had been actually appointed it was answered by the Court that it was sufficient only to show that the prisoner had acted as servant of the Post Office. R. v. Verelit (3 Camp 431) raised the question whether it was sufficient proof that a person held the office of surrogate merely to show that he had acted therein. The question was answered in the affirmative, though in the circumstances of the particular case the presumptive evidence was successfully rebutted by other evidence. R. v. Murphy (8 C and P 297) re-affirms the *omnia praesumuntur* rule that proof that a person has acted as a public officer on one occasion, before the occasion in question, is evidence to go to the jury that he is such officer. In R. v. Catesby (2B and C 814), the respondents exhibited a certificate purporting to be signed by one church-warden and one overseer of the poor and certifying that certain persons were inhabitants legally settled in their parish. An ancient statute of England required that such certificates should be signed by a majority of church-wardens and overseers. On the question whether such a certificate was valid it was held that it must be taken to have been a good certificate, because it may be intended in favour of such an instrument (now sixty

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years old) that by custom there was only one church-
warden in the parish and that two overseers had been
originally appointed but that one of them died, and
that the certificate was granted before the vacancy
in the office was filled up. R. v. Townsend (C. and
Mar 178) re-asserts the principle that proof that a
person has acted in a capacity is sufficient proof
that he holds that situation. In R. v. Creswell (1876)
P.Q.B.D. 446), it was proved against the prisoner
charged with bigamy that the first marriage was
solemnised, not in the parish church of the parish,
but in a chamber in a building a few yards from the
church, while the church was under repair. It was
further proved that divine service had several times
been performed in the building in question. It was
held by the Court for Crown Cases Reserved that the
building must be presumed to have been licensed, and
therefore the first marriage was valid, and that the
prisoner was properly convicted of bigamy. In R. v.
Manwaring (Dears and B. 132) in which the prisoner
was charged with bigamy the question was whether the
first marriage was solemnised in a duly registered
place. Wightman J. said:-

" The presence of the registrar at the marriage,
the fact of the ceremony taking place, and the
entry in the registrar's book, of which a copy
was produced at the trial, seemed to me at the
time to be circumstances which afforded, and
I now think, aided as they are by the presumption
omnia rita esse acta, they do afford prima facie
evidence that the chapel was a duly registered
place in which marriage might be legally celebrated."

None of these cases support the principle for which the
learned authors or counsel for the Crown contend in this
matter. They uniformly and consistently establish the
scope of the omni praesumuntur rule to be no more than
that where it is shown by evidence that a person, including
a constable, has acted in a capacity there arises a
rebuttable presumption that he holds the relevant situation.
The cases do not support the existence of the further
presumption that the person who is shown to have acted in
a public capacity or situation in addition to being duly
appointed thereto, "has properly discharged his official
duties." In Brown's Legal Maxims 10th edition p. 642
the statement is made that:-

" Where acts are of an official nature, or require
the concurrence of official persons, a presumption
arises in favour of their due execution. In these

In the Court of
Appeal

No. 19

Judgment of
Watkins, J.A.

5th March 1977

continued

cases the ordinary rule is, *omnia praesumuntur rite et solemnito esse acta donec probetur in contrarium*, that is to say everything is presumed to be rightly and duly performed until the contrary is shown. The following may be mentioned as general presumptions of law illustrating this maxim:-

"That a man, in fact acting in a public capacity, was properly appointed and is duly authorised so to act; that in the absence of proof to the contrary, credit should be given to public officers who have acted, *prima facie*, within the limits of their authority, (my emphasis) for having done so with honesty and discretion."

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For this latter statement of the rule Derby v. Bury Imp. Commrs. L.R. 4 Ex. 222 is cited. In that case the defendants had statutory power, whenever any drain or watercourse became a nuisance and could not be rendered innocuous without the laying down of a sewer or some other structure along the same, or part thereof or instead thereof, to lay down such sewer or other structure and to keep the same in good serviceable repair. A drain on the plaintiff's land had become a nuisance whereupon upon proper notice served in accordance with the statute, the defendants constructed a new sewer, partly along the line of the old drain, but cutting diagonally across the plaintiff's land. The question was whether the defendants were justified in making the new sewer through the plaintiff's land. At trial it was held that they were not, despite the fact that it was established that the respondents had constructed the new sewer in the most inexpensive and convenient course and it was not alleged that any alternative method was either feasible or advisable. On appeal the decision was reversed by the Court of Exchequer Chamber, Wills J. stating :-

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" There is no suggestion of excess or abuse in the statement of facts upon which our judgment ought to be founded. In the absence of any proof to the contrary credit ought to be given to public officers who have acted *prima facie* within the limits of their authority, for having done so with honesty and discretion. "

Neither this case nor any of the preceding ones 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 to 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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continued

I come now to 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? Dealing with detention first, it is trite law that save in circumstances of a state of public emergency whereunder statute is enacted or regulations are promulgated giving the State power to detain without accusation of the Commission of a criminal offence, there is no power either at common law or under any statute simply to detain or imprison anyone against whom no criminal charge is pressed relating to that detention or imprisonment. The locus classicus is Kenlin and Another v. Gardiner and Another (1966) 3 ALL E. R. p. 931. There two policemen in plain clothes saw two schoolboys going from house to house in a street. Becoming suspicious of their movements, which were in fact quite innocent, the policemen showed them their warrant cards and sought to take hold of them with a view to questioning them at the police station. The boys violently resisted, but were subdued. Later charges of assaulting the constables in the execution of their duty were laid against the boys and they were convicted. In allowing their appeals Winn L.J. in the Queen Bench Division said:-

" Assuming that the policemen had a power of arrest it is to my mind perfectly plain that neither of the respondents purported to arrest either of the appellants. What was done was not done as an integral step in the process of arresting, (my emphasis) but was done in order to secure an opportunity, by detaining the appellants from escape, to put to them or to either of them the question which was regarded as

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continued

the test question to satisfy the respondents whether or not it would be right in the circumstances, and having regard to the answer obtained from that question, if any, to arrest them. I regret to say that I think that there was a technical assault by each of the respondents " (at 934).

In R. v. Abdul Alif Lemsatif Times 3/7/76 Lord Justice Lawton, sitting with Mr. Justice Cusack and Mr. Justice Slym said:-

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"Helping with inquiries" is a phrase that came into use because of the need for the press to be careful how they describe events when somebody has been arrested but not charged. If the idea has got around among either customs or police officers that they can arrest or detain for this purpose the sooner they disabuse themselves of that idea the better."

The evidence tendered by the Crown against 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 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 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 have been that Blackwood had been quite legally arrested and that pursuant to an order of a competent court had been duly and properly remanded into custody awaiting 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.

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Turning now to the case of Bryan one must consider what are the ingredients of a valid arrest? The answer is succinctly given in the 1954 Criminal Law Review pp. 6 - 7 where the stated ingredients are:-

- (a) the existence of legal power to arrest which may derive either from statute or common law;

- (b) the deprivation of the liberty of the person arrested, that is to say, he must be imprisoned;
- (c) the imprisonment must be intended as a step in a criminal process, and the intention must be made known by the officer to the person arrested; and
- (d) the reason for the arrest must, subject to certain qualifications, be communicated to the person arrested.

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continued

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Now with reference to (a) the first ingredient, it needs no citation of decided cases to state that where a power to arrest is given whether by statute or by common law, the validity of the exercise of the power depends upon strict compliance with the terms and qualifications of the power. Thus by section 80 of the Offences against the Person Act power is given to a constable without warrant, to arrest any person whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned (e. g. section 20 - shooting with intent at any person) and shall take such person, as soon as reasonably may be, before a Justice, to be dealt with according to law. Again by section 15 of the Constabulary Force Act power is given to a constable, without warrant to apprehend any person found committing any offence punishable upon indictment (e. g. shooting with intent at any person) and to take him forthwith before a Justice who shall enquire into the circumstances of the alleged offence and is empowered either to commit the offender to jail, or to take bail with or without surety, conditioned on his appearance before a competent court to be dealt with according to law. As in the case of the statutes abovementioned so at common law where a person arrests another without warrant he is required to take that person before a Justice of the Peace, not necessarily forthwith, but as soon as reasonably possible. To fail to do so renders the arrest invalid and the consequential imprisonment false - see John Lewis and Co. v. Tims (1952) 1 All E. R. p. 1203. Now no evidence whatever was adduced by the Crown calculated to establish that Bryan had been taken at any time after arrest before a Justice of the Peace. Indeed no evidence was adduced to show that he was ever taken before a court throughout

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continued

the period of his detention which was punctuated by attempts to escape. Whether bail was sought but refused by any competent authority does not appear. Finally the evidence discloses that Bryan was informed merely that he was charged with shooting with intent. The arrester, so far as the evidence is concerned, made no attempt to advise him as to the identity of his victim or intended victim. Both at common law and under our Constitution a person arrested has a right to be informed not only that he is being arrested but also of the reason for the arrest, the reason being that "it is desirable that the arrested person be given notice as soon as possible of the charge against him, in order that he may clear himself, if he can." Christie v. Leachinsky (1947) A.C. 573 at p. 588 per Viscount Simon L.C.). Without being told whom he had shot at, Bryan would have been deprived of any opportunity of clearing himself. If this rule in Christie v. Leachinsky is not complied with the whole arrest is unlawful. Here again it may well have been that Bryan had been told all that the common law or the Constitution required him to be told. Be that as it may, it does not so appear from the evidence and yet another cardinal requirement of a valid arrest was not established. 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. In Punshon v. Leslie 14 English and Empire Digest p. 194, a constable having been informed by his wife that P had indecently exposed himself to her and another woman, went in search of P and then without warrant arrested P who resisted, but without unnecessary violence. P. was charged with and convicted of assaulting L in the discharge of his duty. On appeal the conviction was reversed, for the arrest by the constable being illegal, the prisoner was justified in freeing himself. Lastly, section 16(2) of the Prison Act was prayed in aid by the Crown. That subsection reads:-

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" Every person whenever he is confined in any lock-up in which he may lawfully be confined, or whenever he is being taken to or from or is working in the custody or under the control of any person in charge of any lock-up beyond the limit of such lock-up shall be deemed to be in the legal custody of the person in charge of such lock-up, "

and the argument was to the effect that having been confined

10 in the Central Police Station which is a lock-up in which they could lawfully be confined, both Bryan and Blackwood were deemed to be in lawful custody. That argument seeks to construe the subsection to mean that irrespective of the illegality of an initial arrest or detention, once the arrested or detained person has been placed in a lock up in which he may lawfully be confined, the illegal arrest and imprisonment are covered with the mantle of legality. Such a construction could be entertained only upon the most express assertion of it by the Legislature and in the absence of such a declaration, a court is bound to lean in favour of a construction which is consistent with liberty.

For the reasons above stated I hold that essential ingredients of the charges against the appellant were not proved and that accordingly the convictions were wrong in law. I would therefore allow the appeals and set aside the convictions and sentences.

20 NO. 20

Order granting Special Leave to Appeal to Her Majesty in Council

AT THE COURT AT BUCKINGHAM PALACE

The 23rd day of May 1979

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 10th day of May 1979 in the words following viz:-

30 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Roy Dillon in the matter of an Appeal from the Court of Appeal of Jamaica between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of Jamaica dated the 5th March 1977 dismissing the Appeal of the Petitioner against his conviction in the Resident Magistrate's Court for the Parish of Kingston upon two counts of negligently permitting a person to escape out of his

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In the Court of Appeal

No. 19

Judgment of Watkins, J.A.

5th March 1977

continued

In the Privy Council

No. 20

Order granting Special Leave to Appeal to her Majesty in Council

23rd May 1979

In the Privy Council

No. 20

Order granting
Special Leave to
Appeal to her
Majesty in Council

23rd May 1979

continued

custody: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Jamaica dated the 5th March 1977 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Jamaica dated the 5th March 1977:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same. "

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Jamaica for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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N. E. LEIGH

Exhibit 1

The Prisons Law.

The Prisons (No. 1) and Lock-up
(No. 2) Order 1958

THE JAMAICA GAZETTE SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

Vol. LXXXI Thursday, August 21, 1958. No. 77

No. 176

THE PRISONS LAW

10

(Cap. 307)

The Prisons (No. 1) Order, 1958

In exercise of the powers conferred on the Governor by section 3 of the Prisons Law Chapter 307 the following Order is hereby made:-

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1. This Order may be cited as the Prisons (No. 1) Order, 1958.
2. The places described in the Schedule hereto together with all buildings thereon are each hereby declared to be a prison for the imprisonment or detention of persons in custody and to be known as described in the fourth column of the said Schedule

SCHEDULE

<u>Place</u>	<u>Parish</u>	<u>Area</u> Acres	<u>Name by which</u> <u>Prison to be known</u>
Rae Town	Kingston	24	General Penitentiary
Fort Augusta	St. Catherine	39	Fort Augusta Prison
Spanish Town	St. Catherine	226	St. Catherine District Prison
30 Richmond	St. Mary	424	Richmond Farm Prison
Bamboo	St. Ann	11	Hill Top Prison

Dated this 12th day of August, 1958.

By His Excellency's Command.

H. McD. White,
Acting Chief Secretary

Exhibits

Exhibit 1

The Prisons Law

The Prisons (No. 1)
and Lock-up (No. 2)
Order, 1958

12th August 1958

Exhibit 1THE PRISONS LAW

(Cap. 307)

The Lock-Up (No. 2) Order, 1958

The Prisons Law
 The Lock-Up
 (No. 2) Order 1958
 12th August 1958
 continued

In exercise of the power conferred on the Governor by section 4 of the Prisons Law Chapter 307, the following Order is hereby made:-

1. This Order may be cited as The Lock-up (No. 2) Order, 1958.
2. The places described in the Schedule hereto together with all buildings thereon are each hereby declared to be a Lock-up for the confinement of persons awaiting trial, remanded in custody or sentenced to a short term sentence. 10

SCHEDULE

<u>Place</u>	<u>District</u>	<u>Parish</u>	
Central	Kingston	Kingston	
Denham Town	Kingston	Kingston	
Halfway Tree	Halfway Tree	St. Andrew	
Cross Roads	Cross Roads	St. Andrew	20
Hunts Bay	Hunts Bay	St. Andrew	
Stony Hill	Stony Hill	St. Andrew	
Gordon Town	Gordon Town	St. Andrew	
Morant Bay	Morant Bay	St. Thomas	
Bath	Bath	St. Thomas	
Cedar Valley	Cedar Valley	St. Thomas	
Yallahs	Yallahs	St. Thomas	
Port Antonio	Port Antonio	Portland	
Buff Bay	Buff Bay	Portland	
Manchioneal	Manchioneal	Portland	30
Hope Bay	Hope Bay	Portland	
Port Maria	Port Maria	St. Mary	
Annotto Bay	Annotto Bay	St. Mary	
Richmond	Richmond	St. Mary	
Gayle	Gayle	St. Mary	
St. Ann's Bay	St. Ann's Bay	St. Ann	
Brown's Town	Brown's Town	St. Ann	
Claremont	Claremont	St. Ann	
Moneague	Moneague	St. Ann	
Cave Valley	Cave Valley	St. Ann	40
Ocho Rios	Ocho Rios	St. Ann	
Falmouth	Falmouth	Trelawny	

SCHEDULE

Exhibits

	<u>Place</u>	<u>District</u>	<u>Parish</u>	<u>Exhibit 1</u>
	Ulster Spring	Ulster Spring	Trelawny	The Prisons Law
	Clark's Town	Clark's Town	Trelawny	The Lock-Up (No. 2)
	Duncans	Duncans	Trelawny	Order 1958
	Montego Bay	Montego Bay	St. James	12th August 1958
	Cambridge	Cambridge	St. James	
	Spring Mount	Spring Mount	St. James	
	Adelphi	Adelphi	St. James	continued
10	Lucea	Lucea	Hanover	
	Green Island	Green Island	Hanover	
	Sandy Bay	Sandy Bay	Hanover	
	Ramble	Ramble	Hanover	
	Savanna-la-Mar	Savanna-la-Mar	Westmoreland	
	Bluefields	Bluefields	Westmoreland	
	Whithorn	Whithorn	Westmoreland	
	Bethel Town	Bethel Town	Westmoreland	
	Little London	Little London	Westmoreland	
	Black River	Black River	St. Elizabeth	
20	Malvern	Malvern	St. Elizabeth	
	Balaclava	Balaclava	St. Elizabeth	
	Santa Cruz	Santa Cruz	St. Elizabeth	
	New Market	New Market	St. Elizabeth	
	Mandeville	Mandeville	Manchester	
	Christiana	Christiana	Manchester	
	Porus	Porus	Manchester	
	Spaldings	Spaldings	Manchester	
	Cross Keys	Cross Keys	Manchester	
	Cottage	Cottage	Manchester	
30	May Pen	May Pen	Clarendon	
	Chapelton	Chapelton	Clarendon	
	Frankfield	Frankfield	Clarendon	
	Lionel Town	Lionel Town	Clarendon	
	Spanish Town	Spanish Town	St. Catherine	
	Linstead	Linstead	St. Catherine	
	Old Harbour	Old Harbour	St. Catherine	

Dated this 12th day of August, 1958

By His Excellency's Command.

H. McD. WHITE,

Acting Chief Secretary.

Exhibits

Exhibit 2

Exhibit 2

Warrant on Information

Warrants on
Information

Petty Sessions - (Form G).

Warrant on Information

28th April 1976

JAMAICA SS.

Parish of

and to all other Peace

To the Constables of Kingston

Officers of the Parish of Kingston

WHEREAS Information hath this day been laid before the undersigned, one of Her Majesty's Justice of the Peace in and for the said parish of Kingston for that Roy Dillon of the said parish, to wit, on the 25th day of April in the year of Our Lord one thousand nine hundred and seventy six at the said parish and within my jurisdiction without lawful authority did aid and abett a prisoner namely Paul Bryan in escaping from legal custody. 10

Contrary to Sec. 62(E) of the Prison Act.

and oath being now made before me, substantiating the matter of such Information.

THESE are therefore to command you in Her Majesty's name, forthwith to apprehend the said Roy Dillon and to bring him before some one or more of Her Majesty's Justices of the Peace in and for the said parish to answer to the Information, and be further dealt with according to Law. 20

Given under my hand this 28th day of April in the parish of Kingston in the year of Our Lord One thousand nine hundred and Seventy Six aforesaid.

?

J. P., Kingston.

Petty Sessions - (Form G)

Warrant on Information

JAMAICA SS.

30

Parish of

and to all other Peace

To the Constables of Kingston

Officers of the Parish of Kingston

WHEREAS Information hath this day been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said parish of Kingston for that Roy Dillon of the said parish, to wit, on the 25th day of April in the year of Our Lord one thousand nine hundred and seventy six at the said parish and within my jurisdiction without lawful authority did aid and abett a prisoner namely Robert Blackwood o/c Errol Codlin in escaping from legal custody.

Exhibits

Exhibit 2
Warrants on
Information
28th April 1976
continued

10 Contrary to Sec. 62 (E) of the Prison Act.

and oath being now made before me, substantiating the matter of such Information.

THESE are therefore to command you in Her Majesty's name, forthwith to apprehend the said Roy Dillon and to bring him before some one or more of Her Majesty's Justices of the Peace in and for the said parish to answer to the Information, and be further dealt with according to Law.

20 Given under my hand this 28th day of April in the parish of Kingston in the year of Our Lord one thousand nine hundred and seventy six aforesaid.

?

J. P. , Kingston

Exhibit 3

Statement of Paul Bryan

Exhibit 3
Statement of
Paul Bryan
9th July 1976

PAUL BRYAN STATES,

I am a Farmer residing at 14 Eden Lane off Orange Street, Kingston.

30 On Sunday the 25/4/76 I was a prisoner in the Central Lock-ups charged with Shooting with Intent. Robert Blackwood o/c "BOWHAWK" was in the same cell with me downstairs.

On the said Sunday morning Blackwood said to me, " A thing a work". I asked him, "Who a work the thing? " He replied "That cool", you will see". Shortly after an Officer, Mr. Dillon o/c "Steve", came to me and gave me a broom and a shovel and said to me, "Take out the rubbish and dump it in the corner by the passage". The passage was cleaned before. I took the shovel and the

Exhibits

Exhibit 3

Statement of
Paul Bryan

9th July 1976

continued

broom, he opened the Lock-up door by the passage and let me out. Blackwood was already in the passage. I went to the back for the hose and came back. Mr. Dillon told me to wash the corridor, I told him I need another man to hold the hose. The corridor was clean, but he told us to wash it off.

Mr. Dillon let out Blackwood and he came and took the hose and started to rub also. We started rubbing and came to the step that leads to the Women Cells. When we came in the outer passage the door by the women cell to outside was already opened. We pushed the things along the gutter until we were further outside around to the corner near to the wall. It was now after one o'clock in the day. When we reached the back, Blackwood climbed over the wall, him jump up first and said, "Is street you know Left-hand". Him went over first and I followed him.

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We went up Hanover Street, on Sutton Street, then up Georges Lane, then to East Street, Duke Street, Church Street. Blackwood took a taxi and left me at Church Street. I took a J.O.S. bus by Charles Street and Church Street and came off at North Street. I then went to Fletchers Land.

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On the 7/5/76 I was shot and taken back to Central Station. I was later taken to Court where I pleaded guilty for Escaping and sentenced to nine (9) months h.l.

When Blackwood said to me "a thing a work", I expected him to mean that officer Dillon was arranging our escape.

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We had done orderly work before but the doors to the passage and the one to the Women Cell was never open for us to do any work.

On the 9/7/76 I gave this statement to the Police.

Paul Bryan

Taken by me this 9/7/76 10:35 a.m. at the G.P.
Read over to witness who signed his name.

S. C. Tulloch, D/Insp.
9. 7. 76

IN THE PRIVY COUNCIL

No. 19 of 1981

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

ROY DILLON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL

Solicitors for the Respondent