BARBADOS.

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No. 38 of 2001

BETWEEN:

ROANN CHRISTOPHER BOVELL

Appellant

AND

THE QUEEN

Respondent

BEFORE: The Honourable SirDavid Simmons, K.A. BCH, Chief Justice, The Honourable Justice Errol DaCosta Chase, CHB., Justice of Appeal and The HonourableElliott Fitzroy Belgrave, CHB., Justice of Appeal (Acting)

2002: October 17

2003: January 30

Mr. Randall Worrell for the Appellant.

Mrs. Wanda Blair for the Respondent.

JUDGMENT

Belgrave JA.(Ag.) The appellant, Roann Christopher Bovell, wasconvicted on the 13th July 2001, on an indictment on which he was [1] chargedwith having ninety-three (93) rounds of ammunition in his possession on 27thNovember, 2000, without a valid licence issued by TheCommissioner of police, in contravention of section 3(1)(b)(1) of the FirearmsAct 1998 - 32.

[2] The appellant has appealed against hisconviction and the amended grounds will be dealt with in due course.

[3] The facts of this case are simple in the extreme:

[4] On the 27th November 2000, at about10:30 am, a teamof police officers went to the home of the appellant at 1st avenue Fairfield, Black Rock,St. Michael. The police were armed witha warrant to search that house which was occupied by the appellant and his girlfriend Karen Layne, and their infant daughter.

[5] The police informed the appellant of thereasons for their visit. The warrant wasthen read to him by Sergeant Sylvester Louis.

[6] The evidence of constables CameronGibbons and Alwyn Austin is that the search of thehouse was carried out in the presence of the appellant. The bedrooms were searched first, then theliving or dining room. Nothing was foundin either of these rooms. The kitchenwas searched next and the 93 rounds of ammunition were found in [2] separate plastic bags, which wereall in another plastic bag, which was in a tray in the kitchen.

[7] Theappellant was present in the kitchen when the ammunition was found. After the plastic bags were opened theammunition was shown to the appellant and he was asked to account for itspresence at his home by P.C. Gibbons who cautioned him.

[8] The evidence of P.C. Gibbons is that theappellant made several oral statements to him and he recorded them in hisnotebook at the time. The case for theappellant was that the ammunition was not found inside his house or kitchen. It was found somewhere outside of the houseby the police. He said that he told thepolice that he knew nothing about the ammunition when they showed it to him.

[9] The police however maintained that thesaid ammunition was found in a tray in the kitchen and that the appellant wasin fact present when it was found. Theytestified that when the appellant was asked to account for the presence of theammunition on his premises he said "me and the men from the Red Sea at war,so I got them to protect myself".[3]

[10] When asked if he had a licencefrom the Commissioner of Police to have or carry ammunition, after beingcautioned, the appellant is alleged to have said: "No - you like you making sport atme".

[11] When told that he would be arrested for havingthe ammunition in his possession the appellant is alleged to have said, "Iknow it is an offence, but I trying to behavemyself". When told of his rightsto consult counsel, the appellant is alleged to have said “you got me good, I ain't want no lawyer" and, later on when he wasreminded of his rights to consult a lawyer", and was asked if he waswilling to give a statement in writing he is alleged to have said "I ain't giving no statement to get lock up. You found me with too much rounds"

[12] Evidence was led on behalf of theProsecution to show that the appellant did not have a licencefrom the Commissioner of Police to have or carry ammunition. There was also evidence that the 93 roundsof ammunition fell within the definition of ammunition as defined in theFirearms Act 1998-32.

[13] The case forthe Prosecution rested on the fact that the ammunition was found in the kitchenof the appellant's home and the several oral statements alleged to have beenmade by the appellant. These severaloral statements when taken together constituted evidence of [4] knowledge of the presence of the ammunitionon his premises and admission of its possession and control by the appellant.

[14] The appellant made a very short statementfrom the dock. It was the evidence ofthe prosecution witnesses given under oath which was properly tested by themost searching cross-examination as against the short statement of theappellant given unsworn and therefore not subjectedto any cross-examination. Where thetruth of the matter lay was a question of fact to be determined by thejury. The Jury accepted the case forthe Crown.

[15] The appellant was accordingly convictedand sentenced to seven years' imprisonment.

THE APPEAL

[16] Six grounds of appeal were filed but theappeal against sentence was abandoned at the outset.

GROUND 1

[17] It was submitted on behalf of the appellant that the trialjudge failed to properly direct the jury in relation to the issue of oralstatements allegedly made by the appellant and, more particularly, he failed towarn the jury in respect of these orals as required by section 136 (2) of theEvidence Act. [5]

[18] At page 68 of the record, the trial judgegave this direction to the Jury:

"Now, you have had evidence of oral statements attributedto the accused. The police have told youthat he said certain things, like when asked about this ammunition,he said something to the effect that he was keeping them to protect himself orsomething like that. The accused hasdenied making any such statements. Soyou have to determine whether those statements were made. If you are satisfied that those statementswere made, then you have to determine well, what did he mean? What do those words mean? What does that tell us? You have to interpret what those words mean,but if you are not satisfied that those words were spoken; that thosestatements were made, well then you will reject them entirely. You will disregard it."

[19] We are satisfied that the above directionconstituted a proper direction with respect to the oral statements.

[20] We are, however, of the view that the trialjudge did not give the jury a warning in respect of the said oral statements ashe was required to do by Section 136(2) of the Evidence Act. Cap. 121.

[21] The Crown in its reply to this ground ofappeal concedes that the Section 136(2) warning was not given; but submitted that the failure to givethe warning should not be regarded as fatal in as much as there was otherevidence in the case which was capable of establishing beyond reasonable doubtthat the ammunition in question was in fact found in the kitchen of theappellant who was aware of its presence. [6]

[22] The question of the failure to give thewarning to the jury as directed by Section 136(2) of Cap. 121 has come before this court on several occasions since thecoming into force of the Act.

[23] This Court had the opportunity to considerthe said question in the case of Jerome O'Neale Bovell v The Queen,Criminal Appeal No. 23 of 2000. Inparagraphs [33] to [48] of the judgment Sir David Simmons C.J. said:

[33] "Hereit is said that the judge erred in law in failing to warn the jury with regardto the alleged oral statements of the appellant as required by section 136 ofthe EvidenceAct, Cap.121.”

Thiswas the direction of the trial judge – p.4:

“Now concerning those oral statements allegedly madeby the accused. The accused has deniedthat he made those statements so you must decide that. You must decide whether or not the accused infact made those statements. If you arenot sure that he did, you must ignore them but if you are sure that he madethem, then you must determine what they mean. In doing so you must draw theinference most favourable to the accused.”

[34] Counsel says that this is a properdirection at common law. But, since the commencement of the Evidence Act, Cap. 121,on September 2, 1994, it is Counsel’s casethat a trial judge must now do more. Hemust give a warning. Counsel submitsthat oral statements are often vital to the defencecase and proof of their falsity is a matter of crucial [7] importance. Thejudge should have given a direction in compliance with section

136 of the EvidenceAct.

[35] The Evidence Act is, in some parts, avery difficult piece of legislation to comprehend. In other parts there are errors; in stillother parts, it seems as though such unusual burdens are now put upon trialjudges that the legislation has become a virtual minefield. It cries out for urgent amendment.

[36] Section 136 also appears as section 137 insome volumes of the Laws of Barbados. Whatever may be the correct numbering, the substance of the section isas follows:

"136. (1) this section appliesin relation to the following kinds of evidence:

(a) evidence inrelation to which Division 1 or 3 of Part IV applies;

(b) identificationevidence;

(c) evidence thereliability of which may be affected by age, ill health, whether physical ormental, injury or the like;

(d) in criminal proceedings

(i) evidence given bya witness called by the prosecutor, being a person who might reasonably besupposed to have been concerned in the events giving rise to the proceeding; or

(ii) oral evidence ofofficial questioning of a defendant,[8] wherethe questioning is recorded in writing that has not been signed or otherwiseacknowledged in writing by the defendant;

In the case of a prosecution for anoffence of a sexual nature, evidence given by a victim of the alleged offence;

(e) in the case of proceedings against the estate of adeceased person, evidence adduced by or on behalf of a person seeking relief inthe proceedings, being evidence about a matter about which the deceased personcould, if he were alive, have given evidence.

(2) Where there is a jury the Judge shall, unless thereare good reasons for not doing so,

(a) warn the jurythat the evidence may be unreliable;

(b) inform the juryof matters that may cause it to be unreliable; and

(c) warn the jury of the need for caution in determiningwhether to accept the evidence and the weight to be given to it.

(3) It is not necessary that a particular form of words beused in giving the warning or information.

(4) This section does not affect any other power of theJudge to give a warning to, or to inform the jury." [9]

Counsel draws our attention tosubsection (1) paragraph (d)(ii). He argues that the oral statements recordedby the police officers in their official notebooks "were not signed orotherwise acknowledged in writing" by the appellant. That would indeed appear to be the case.

Counsel submits that the judge was under a duty towarn the jury in compliance with subsection (2).

[37] Before examining the effect of Counsel'ssubmissions, we ought to point out that the phrase "official questioning" isdefined in section 2 of the Evidence Act as follows:

"official questioning meansquestioning by an investigating official in connection with the investigation ofthe commission or possible commission of an offence."

[38] Typically,section 136(1)(d)(ii) will apply to a police officergiving oral evidence of a question and answer exchange between himself and adefendant, which exchange was recorded in an official police notebook. It is not the common practice that theserecords are signed or even initialed by the defendant unlike the practice inrelation to the statement of a defendant recorded on a statement form. Invariably, the police officer will say thathe needs to "refresh [his] memory" from his notebook and, if allowed, will giveevidence of an oral statement made by the defendant.

[39] This practice of giving oral evidence of adefendant's response purportedly recorded in an official notebook is known as "verballing" in the vocabulary of policing. Where an entry in a notebook is not signed,initialed or otherwise acknowledged by the defendant, the possibility ofinjustice is real. For such "verbals" are vulnerable to fabrication and may truly beunreliable in the absence of any non-police support of a defendant's account ofthe nature and content of police questioning.

[40] The policy of section 136(1)(d)(ii) clearly is aimed at providing safeguards againstthe police inaccurately recording or inventing words allegedly used by adefendant. It is designed to minimise opportunitiesfor "verballing" and to promote fairness in the trialof defendants in criminal cases.

[41] Thus, the section does not exclude thereception of the oral evidence but it casts a duty upon the trial judge to warnthe jury that such evidence not signed or acknowledged by the defendant may beunreliable. Further, the judge mustexplain to the jury why the evidence may be unreliable as we suggestabove. The warnings should be in simple,ordinary language, stripped of legalese and the jury should be advised to

treatthe evidence with caution when they come to weigh and evaluate it.

[42] The section does not identify the stage atwhich official questioning starts. It isconceivable, however, that what is envisaged is thatstage of an interrogation which brings Rule 2 of the Judges' Rules into play.It is at the Rule 2 stage that practice requires a suspect to becautioned.

[43] In this appeal there are two occasions onwhich, according to P.C. Brewster, the appellant made oral statements. The first was when he searched the appellantat the shop, found a gun and asked him to account for it. The second occasion was during "theinterview" at Central Police Station. [12] We have already referred tothese "orals" at paragraphs [2] to [4] of this judgment.

[44] The record of appeal shows that P.C.Brewster only sought the permission of the court to refer to his notebook(pages 63-71) in respect of those statements made during the course of theinterview at Central Police Station. – See paragraphs [3] and [4] supra. There was no objection to his application to refer to his notebook norwere the statements challenged in cross-examination. There is, however, no evidence that the officer'snotebook was signed or otherwise acknowledged in writing by the appellant.

[45] We can find no evidence also that the jury were warned in accordance with section 136(2) and (3).

[46] The question which therefore arises is whatis the effect of a failure to warn? Wethink that the omission is an error of law but, in so far as the judge haddirected the jury to be sure of the oral statements before acting upon themand, if in doubt, give the benefit of such doubt to the appellant (seeparagraph 33 supra), it seems to usthat the omission to give the warning in terms of section 136(2) and (3) shouldnot be held to be fatal to the convictions.

[47] Moreover, although the language ofsubsection (2) is mandatory, provision is made for exceptions to the generalrule. If a Judge has "good reasons", itis not obligatory upon him to follow the subsection to the letter. The latitude implicit in the subsectionitself suggests to us that the effect of a failure to give a warning has to beevaluated in each case, having regard to the totality of the evidence. It will not be automatic in every case that afailure to comply with subsection (2) will cause a conviction to be quashed.[12]

[48] Without the evidence of the oralstatements, there was ample other evidence for the prosecution which could haveled to a finding by the jury that the appellant was in possession of thefirearm and ammunition. There was theunchallenged evidence of Sergeant Husbands that the appellant had no licences validating his possession of either the firearm orthe ammunition. If the jury accepted theevidence of officers Brewster and Gittens, they wouldhave had to find that the appellant was in possession of the firearm and theammunition. They could have ignored theoral statements and still have come to findings of unlawful possession. It all depended upon what view of theevidence the jury accepted. It seems tous that on the whole of the evidence and with the correct direction, the onlyreasonable and proper verdict would have been one of Guilty. This is classically a case to which the proviso in section 4 of the CriminalAppeal Act should be applied. Wedo not construe the omission on the part of the trial judge to be a substantialmiscarriage of justice."

[24] This court agrees with and supports theviews expressed by the Learned Chief Justice as set out above, and in light ofthis court's reconsideration of the matter fully in Ian McClaren Gill v. R. Criminal Appeal No. 18 of 1998 in whichjudgment is also delivered today, we say no more anddirect attention to the decision in Gill.

[25] We are therefore of the opinion that thefailure by the trial judge to give the warning in the instant case is notfatal. The trial judge did give the jurya proper direction on how they should approach the question [14] of orals. They were directed that they could disregard them if they did not findthat the appellant had made them.

[26] It should be noted that the appellant hadstated in his statement unsworn from the dock that heknew nothing about the ammunition and it was his opinion that the policeofficers had fabricated their evidence.

[27] The evidence of the police constables,Austin and Gibbons, was that the appellant had initialledat his home, the several plastic bags in which the several quantities ofammunition were found.

[28] It should also be noted that Karen Laynethe girl friend of the appellant who was a witness for the Crown had said inher evidence that she did not see the police with the plastic bags when theywere searching the house. She had alsosaid that the ammunition did not belong to her and that she was not presentwhen it was found and she therefore could not say where the police had foundit.

[29] We are of the opinion that there has beenno miscarriage of justice owing to the failure of the Judge to give the section136(2) warning and we would apply the proviso. Ground 1 therefore fails.[14]

GROUND 2

[30] This ground alleges that the trial judgefailed to properly direct the jury on the issue of discrepancies andcontradictions in the evidence of the two police witnesses, Austin and Gibbons,in that there was no attempt to relate the said discrepancies andcontradictions to the defence of the appellant.

[31] There were in fact discrepancies andcontradictions in the evidence of the two constables, Austin and Gibbons. The trial Judge properly directed the Jury'sattention to these in his summation. Atpage 68 of the record beginning at line 32 he said:

"The next thing I will say to you is this: Do not losesight of what this case is all about. You are trying Roann Bovellwho is charged with possession of 93 rounds of ammunition. Two Police Officers told you that they foundit in his home, in his kitchen which he denies. He denies that it was foundthere, and if you are left in any reasonable doubt, then you will find him notguilty.

There are a number of discrepancies and inconsistencies inthe evidence of P.C. Austin and sometimes he contradicts the other officer

P.C.Gibbons. I will point out thesediscrepancies and inconsistencies to you as far as I can; and thus I told you you have to determine whether he was lying or whether hewas confused or mistaken or what.

Now, he admits that the entry in his notebook, commencementof search, appears before the entry, warrant read. He said that P.C. Gibbons informed theaccused of his right to an Attorney before the [15] ammunition was found, butP.C. Gibbons said that this was done after the ammunition was found. Austin said that the ammunitionwas found near the end of the search, even though he maintained that it wasfound at about 11 o'clock and he said the search lasted three hours and hehasn't been able to articulate to us why he called that near the beginning ofthe search. He said that Sergeant Mooreis who read the search warrant. P.C.Gibbons said it was Station Sergeant Louis that read it. Austin seems to say that the yardwas not searched; Gibbons said that the yard was searched. Austin said that Gibbons invitedthe accused to initial his notebook and what's more he did not consider that tobe necessary. All of that is entirely amatter for you to resolve in accordance with the directions I have given you.

Now, I will turn to the evidence of P.C. Gibbons:

I think that you will find P.C. Gibbons the more reliable ofthese two witnesses, but as I said, that is a matter for you."

[32] Earlier in his summation the Trial Judgegave this direction to the Jury.

(See page 67 Line 10 - page 68line 2)

"I must give you directions on the law but you are thesole judges of the facts and you may draw inferences from the facts you findprovided always that those inferences flow logically and necessarily from thefacts you find, and where two or more inferences may be drawn, you must adoptthe inference most favourable to the accused. You must return a true verdict in accordancewith the oath that you have taken and a verdict solely on the evidence led inthis Court. You must not allow yourselvesto be swayed by sympathy, either for the accused man or for anyone else. [16]

Now, when you come across discrepancies or inconsistenciesin the evidence, you have to ask yourselves and determine whether thesediscrepancies and inconsistencies arise because a witness is telling lies orbecause the witness is nervous, or confused, or forgetful. Now, if the witness is deliberately lying,well then you can't rely on his evidence at all and it is open to you to rejecthis evidence entirely, but if the witness is nervous, or confused or mistaken,well then in that case you have to consider his evidence carefully along withall the other evidence in the case, and use your experience as men and women ofthe world and determine what the truth is. You would know from your experience that people would always have adifferent recollection or different perceptions of an experience which they allshared if they try to recount that experience sometime after. You would know people usually have differentperceptions and recollections, the details of that instance but that is amatter for you."

[33] This was avery short case. It was made clear tothe jury what their function was; they were reminded in detail of thediscrepancies and contradictions in the evidence of the two policewitnesses. The Jury would have seen andheard these two witnesses. The jury'sfunction was to assess and evaluate the evidence. It is our view that the trial judge gavethem the necessary assistance and guidance that was required and left the matterentirely to them. P.C. Austin actuallytold the jury during cross-examination that he was confused. He was subjected to a most thorough andsearching cross-examination by Mr. Randall Worrell but at the end of the day hemaintained that the [17] ammunitionwas found in the kitchen of the appellant's home. There was no confusion in his mind as to thatfact.

[34] It is very true that the accused hadnothing to prove. But when his veryshort unsworn statement was weighed and contrastedwith the evidence of constable Gibbons whose evidence was in no waydiscredited, the issues left to the jury were not such as to present them withany difficulties whatsoever.

[35] We are of the opinion that the summationof the judge when taken as whole, was fair. It was adequate . In the circumstances we holdthat this ground is without merit and it therefore fails.

GROUND 3

[36] In this ground it is alleged that thetrial judge failed to deal adequately with the defenceof the appellant in his summation to the jury.

[37] The case against the appellant was that 93rounds of ammunition were found in the kitchen of his home in hispresence. That theappellant was shown this ammunition and asked to give an account of itspresence in his home. Theappellant is alleged to have made several oral statements which when takentogether amount to an admission of guilt by him. [18]

[38] At his trial the appellant was representedby experienced counsel and when he was informed of his rights to make his defence he elected to make a statement from the dock inwhich he said that he knew nothing about the ammunition and that it was notfound in his home.

[39] At page 72 of the record beginning at line27 the trial judge dealt with the defence thus:

"I will now turn tothe Defence in this case. The accused made a statement from where he isand you must give it your due consideration and this is what he said:

"Sir, on the morning of 27th November, thepolice came to my place - my residence and produced a search warrant to searchmy premises. They searched, theysearched the entire house. They foundnothing. They went outside searched'round the premises, searched the yard and they comeback with a plastic bag and asked me if I know anything 'bout it. I denied it. I tell them I know nothing 'bout it. They asked my girlfriend. She says she knows nothing 'bout. The police asked sheto initial them and asked me to initial them and I did and they carried me tothe station. They charged me. I asked to speak to a lawyer and I seeRandall -- Andrew Pilgrim later on in the day. I have nothing further to say, sir."

That is his statement and you must give it your dueconsideration.

So he said that the police searched his house and foundnothing. He said they searched the yardand came back with this plastic bag. Sohe knows nothing about this ammunition. The police then are trying to plant it on him. It was not found in his house and he nevermade any of those statements to the police about having this [19] ammunition. He said that he told them that he knowsnothing about it."

[40] No witnesses were called by the defence. The defence was not complicated. It was put to the jury fairly and squarelyand they were directed to acquit if they accepted that the appellant knewnothing about the ammunition.

[41] We are of the opinion that the defence was put adequately to the jury. They rejected it asthey were entitled to do. There is nomerit in this ground and it must accordingly fail.

GROUND 4

[42] It is alleged in this ground that theverdict of the jury is against the weight of the evidence and that in all thecircumstances that the conviction is unsafe or unsatisfactory. It was argued by Mr. Worrell that theevidence of constables Austin and Gibbons was so discredited bycross-examination that a reasonable jury properly directed would have acquittedthe appellant. It was also submittedthat this court should entertain a doubt about the safety of the appellant'sconviction.

[43] An examination of the several issuesraised in this ground of appeal will assist in their clarification.

[44] It is true that the cross-examination ofP.C. Austin by Mr. Worrell left the evidence of P.C. Austin in a state ofdisarray. The evidence of [21] P.C. Gibbons remained intact after asimilar piece of searching cross-examination. The evidence of these police constables was led to prove that theammunition in question was found in the appellant's kitchen and that theappellant was present when it was found and that he placed his initials on theplastic bags at the request of P.C. Gibbons. There is no rule of law, which required that the validity of Gibbons'testimony depended upon the support or corroboration of another witness.

[45] It follows therefore that, if the jury wereminded to disregard the evidence of P.C. Austin on the grounds that he wasconfused and therefore unreliable, there was nothing in Gibbons' testimony towarrant the jury in treating his evidence as unreliable. Indeed the trial judge suggested to the jurythat it was possible that they could find that P.C. Gibbons was more reliablethat P.C. Austin, but he told them, that was a matterfor them to determine.

[46] At the end of the day the question whichfell to be determined by the jury was where the truth of the matter lay. It was the sworn testimony of the prosecutionwitnesses as against the statement of the appellant unswornand unsupported by any other evidence. Was it sufficient to create a doubt in the minds of the jury? The unanimous verdict of the [21] jury arrived at within 1 hour 17 minutes ofretirement does not suggest that the case presented them with any seriouschallenges.

[47] It was submitted by Mr. Worrell that the failure by the judge to give thewarning as required by section 136(2) of the Evidence Act coupled with theunsatisfactory evidence given by P.C. Austin should cause this court toentertain a lurking doubt about the soundness of the appellant's conviction.

[48] It is true that the evidence of P.C.Austin was shaken by cross-examination and that the trial judge erred in notexplicitly giving the jury a warning under section 136 of the Evidence Act.

[49] As pointed out earlier the weaknesses inthe evidence of P.C. Austin were drawn to the jury's attention by the trialJudge. The jury werealso given proper directions as to how they should approach the oral statementsalleged to have been made by the appellant. In our view the failure to give the section 136(2) warning was a minor blemish and should be approached inthe manner enunciated by Scarman L.J. in Wright [1974] 58 CR. APP. R 444.

[50] The approach of this Court to a similarquestion which arose in Franklyn McGline Yarde vs. The Queen,Criminal Appeal No. 22 of 2000 is relevant here, as it provides useful guidanceas to how [22] questionsraised in this ground should be resolved. In paragraph 47 of that judgment Sir D. A. C. Simmons C.J. said:

[47] "However, asking ourselves the same question as the EnglishCourt of Appeal in Wright; namely, do these matters loom so large that thiscourt takes the view that the verdict reached in this case was unsafe andunsatisfactory? We must assuredly answerthat question in the negative."

[51] The Crown's case against the appellant wassimple. It depended upon whether thejury accepted that the appellant had made the oral statements. There was no suggestion that any force orcoercion was used to obtain the admissions. The suggestion made by the appellant was that the police had fabricatedthe oral statements and had alleged that he had made them.

[52] These were pure matters of fact which wereproperly left by the judge for the jury to determine. The jury convicted the appellant and we havefound nothing in the record which would cause us to entertain any doubt aboutthe verdict. In our view there wasample evidence to support the conviction, and this ground also fails.

GROUND5

[53] This ground alleges that the trial Judgefailed to properly deal with the evidence of Karen Layne. That he merely related the cross-examinationof this witness and said to the jury "I leave that entirely [24] as a matter for you" it is submittedthat this was insufficient and that the

jury were not assisted thereby indealing with the issues which fell to be determined by them.

[54] The witness Karen Layne is the girlfriendof the appellant and she was residing with him at 1st avenue, Fairfield Black Rock, St. Michael. She was at home when the police arrivedthere and when the search of the premises was carried out.

[55] When she was shown the ammunition by thepolice, she is alleged to have said: "them ain't mine". When she gave evidence before the jury she said that she had told thepolice "I don't know nothing about them". In her evidence in chief on behalf of theCrown she stated further that she was the mother of an infant female childwhich was 6 days old at the time of the search. That she and the appellant were living at that addressas man and wife from January 2000 and that the appellant was the father of herchild.

[56] She said that the housein which they lived, was a three bedroom wooden house. She and the appellant occupied the firstbedroom. She said that the appellantwas with the police when they carried out the search of the various rooms inthe house. She did not follow thepolice from room to room but the appellant did. [24]

[57] Under cross-examination by Mr. Worrell shesaid that the police came to the house that morning around 10 o'clock; she was not certain of the time.

[58] She agreed that the house was searched bythe Police. She was questioned by Mr.Worrell thus:

Q. "And the truth is that they did not find anything inthe house is that not true?"

A. I ain't sure what they find".

Q. Did you see them with any bags in the house.

A. Because I was with him when I was coming from the door, theywere coming in and before I get back through the front house, which part theytell me to sit down, one of the officers called me and then showed me thebullets.

Q. This is after they had searched outside, is that not correct?

A. Pardon me.

Q. Afterthey had searched the outside

A. Yes. When they were coming from outside

[59] The evidence of this witness Karen Layne onlyprovided some back ground to the Prosecution's case and, in addition, shedenied any knowledge or ownership of the ammunition in question. She also [25] statedthat she, the appellant, and their infant daughter were the only occupants ofthat house.

[60] The defence tothe charge was that the police fabricated the oral statements in order toincriminate the appellant who had told them that he knew nothing about theammunition which was not found in any part of the house. The case for the appellant was that thepolice searched his house thoroughly and came up empty handed. They then went outside and came back in withbags in which were the 93 rounds of ammunition. They showed it to him and he denied knowing anything about theammunition.

[61] Miss Layne said that she could not saywhere the police had found the ammunition. She said that she was shown the ammunition after the police came fromoutside.

[62] Her evidence, such as it was, wasunhelpful to the defence and almost neutral as far asthe case for the Crown was concerned.

[63] Her evidence was very brief and thecross-examination of her by Mr. Worrell was likewise brief.

[64] The jury had an ample opportunity to see and observe this witness and toassess her testimony. She was a "defence" witness called by the Crown in the trueinterest of justice. TheLearned trial Judge read [26] to the jury herevidence under cross-examination without any comment. It is submitted that his handling of hertestimony in that manner was most favourable to theappellant. The judge did not suggest tothe jury that her evidence was in any way slanted to assist the appellant. She was not criticized in any way as beingbiased or partial to her reputed husband.

[65] Notwithstanding the foregoing, the trialjudge was apparently expected to do more than he did.

[66] We do notagree. This ground of appeal wasclearly misconceived and it fails for lack of merit.

[67] In the result the appeal is dismissed andthe conviction and sentence are affirmed.

[68] The sentence will run from a date 6 weeksafter the conviction. [27]

Chief Justice

Justice of Appeal. Justice of Appeal (Ag.)