COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

MCCrApp No. 128 of 2023

BETWEEN

FRED CHRISTOPHER PAUL

Applicant/Intended Appellant

AND

THE COMMISSIONER OF POLICE

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**

The Honourable Mr. Justice Isaacs, JA

The Honourable Madam Justice Charles, JA

APPEARANCES: **Mr. Geoffrey Farquharson, Counsel for the Applicant/Intended Appellant**
Mrs. Jacqueline Forbes-Foster, Counsel for the Respondent

DATES: **25 January 2024, 7 March 2024**

****

Magistrate's Court Civil Appeal- Application for Extension of Time- Possession of an unlicensed firearm- Possession of dangerous drugs- Prospects of Success

This case concerns a police pursuit that took place on 16 July 2019, in the vicinity of Taylor Street, Nassau Village. The intended appellant, the driver of a blue Honda Accord with heavily tinted windows, accelerated as Officers Miller and Seymour sought to stop it, starting a chase. During the pursuit, the intended appellant threw a bag of marijuana from the vehicle. After briefly losing sight of the car, the officers found the vehicle reversed into an apartment yard. As they approached on foot, the intended appellant fled, and Officer Miller chased him. The intended appellant, armed with a firearm, ignored commands to stop, and Officer Miller discharged his weapon, injuring the appellant. The intended appellant admitted to throwing drugs from his vehicle and attempting to

evade the officers but denied ownership of the firearm. He was subsequently charged with possession of an unlicensed firearm and possession of dangerous drugs. The intended appellant was convicted on June 12, 2023 and sentenced to two years' imprisonment for possession of an unlicensed firearm and fined $500 or an additional six months' imprisonment for possession of dangerous drugs. The intended appellant failed to appeal within the required time frame but filed an application for an extension of time to appeal. The intended appellant appeals on the grounds of misdirection, internal contradictions in the prosecution's case, unreliability of witnesses, failure to exercise proper discretion, and insufficient evidence to support conviction**.**

Held: The application for extension of time is refused. The decision of the Magistrate to convict the intended appellant and the sentences he imposed, are affirmed.

The intended appellant failed to appeal within the required time but applied for an extension of time to appeal. In considering the application for an extension of time (EOT), the Court assessed various factors, including the reason for the delay and the prospects of success of the appeal. Despite the intended appellant's arguments challenging the evidence and handling of the case, the Court found the evidence credible and the chain of custody of the firearm adequately established. As a result, the Court refused the EOT application, affirming the conviction and sentence. The Court determined that there was no merit in any of the proposed grounds and concluded that the intended appellant's case had no prospect of success.

Attorney General v Omar Chisholm MCCrApp No. 303 of 2014
Damian Hodge v R HCRAP 2009/001
Danny Walker v R [2018] JMCA Crim 2
Miller v Commissioner of Police [1992] BHS J No.112
Rodriguez Jean Pierre v The King [2023] UKPC 15
Sean Wright v The Queen MCCrApp No. 194 of 2015
Sherry v The Queen [2013] UKPC 7
Suculoo Miller v The Commissioner of Police MCCrApp. No. 91 of 2020
Watt (or Thomas) v Thomas 1947 SC HL 45

JUDGMENT

Judgment delivered by the Honourable Mr. Justice Jon Isaacs, JA:

1. On 12 June 2023, Stipendiary and Circuit Magistrate Samuel McKenzie sentenced the intended appellant to two years' imprisonment for possession of an unlicensed firearm and a fine of five hundred ($500) dollars or an additional six months' imprisonment for possession of dangerous drugs.

2. The intended appellant did not appeal his conviction and/or sentence within seven days of 12 June 2023 as required by section 235(2) of the Criminal Procedure Code. On 27 June

2023, he filed an application for an extension of time within which to appeal, pursuant to section 9 of the Court of Appeal Rules ("EOT application").

3. In determining EOT applications, the Court would normally take into account a number of factors and criteria. For example, in **Attorney General v Omar Chisholm** MCCrApp No. 303 of 2014, the Court, differently constituted, identified four factors to be considered: a) length of the delay; b) reason(s) for the delay; c) prospects of success; and d) prejudice to the respondent.

4. However, in **Rodriguez Jean Pierre v The King** [2023] UKPC 15, the Privy Council found that there were other matters for the Court to consider than those mentioned in **Chisholm**, when they said at paragraph 27:

> **"27. Furthermore, it should not be thought that the four criteria identified in Williams are the only relevant criteria when considering an extension of time. It will be necessary to consider the overall justice of the case. In the Board's view, further relevant considerations will normally include the gravity of the offence and the severity of the sentence imposed. Considerations of legal certainty will also be highly relevant. There is an important public interest in the finality of legal proceedings, the efficient use of judicial resources, good administration and the interests of other litigants (Liburd v The Queen (Court of Appeal of the Eastern Caribbean) per Barrow JA at para 4; R v Thorsby [2015] 1 WLR 2901 per Pitchford LJ at para 13). It will also be necessary to take account of the interests of victims of crime and their families, and of witnesses."**

5. The takeaway from **Chisholm** and **Rodriguez Jean Pierre** is that the Court should consider the factors and criteria to arrive at a decision which reflects the "**overall justice of the case**".

6. The length of delay is not unduly long. I estimate it to be seven days. In his affidavit filed on 15 November 2023, the intended appellant endeavoured to explain the reason for the delay when he averred at paragraphs 4 and 5:

> **"4. Upon my conviction and sentence, I immediately sought the assistance of the Prison authorities to receive the papers to file an appeal.**
>
> **5. But due to the fact that the administrative arrangements at the prison are not designed to respond to such requests within the 7-day period set by law, I never received the relevant**

documents until well after the time limited for appeal had passed."

7. Although the intended appellant has not provided a specific date when he received the relevant documents, he has informed the Court that their receipt was "after the time limited for appeal had passed". I am satisfied, therefore, that as the length of the delay was short, that his explanation for the delay is acceptable.

8. There is nothing to suggest that the intended respondent would suffer any prejudice if the intended appellant was given leave to appeal out of time. So, the main issue with which the Court must wrestle is the probable success of the proposed grounds of appeal. Indeed, this was confirmed by Mrs. Forbes-Foster, Counsel for the respondent.

9. In delivering the judgment of the Privy Council in an appeal from the Court of Appeal of Guernsey, that is, **Sherry v The Queen** [2013] UKPC 7, Lady Hale held, inter alia, at paragraph 14 that:

> **"14. The Board accepts that the merits of any proposed appeal are relevant to an application to extend time. At the very least, it must be shown that there is some merit in the proposed appeal before a court will consider whether the delay can be excused. If the appeal has no prospect of success, then it is in no-one's interest to allow it to proceed, however short or understandable the delay. Conversely, if the appeal is bound to succeed, the court may look more kindly upon the reasons for the delay. But even in such a case it is by no means inevitable that permission will be granted…."**

10. Thus, I turn to address each ground's prospects of success.

11. The intended appellant's proposed grounds of appeal are as follows:

> **"1. The learned Magistrate misdirected himself when he found that the evidence presented against the Appellant was sufficient, on its own. To justify the conviction of the Appellant.**
>
> **2.The learned Magistrate erred by failing to consider the weakness and tenuousness of the evidence supporting the allegations against the Appellant.**
>
> **3. In particular, the Learned Magistrate gave no consideration or no proper consideration whatsoever to the fact that the Appellant could not possibly be convicted for the offence as charged given the internal contradictions contained in the**

prosecution's case and the unreliability of its witnesses which this revealed.

4. The learned Judge failed to exercise his discretion judicially by failing or refusing to consider the issues required to be considered and by considering matters which were not relevant to the issues being tried.

5. The learned Judge erred in failing to acquit the Appellant when there was in fact produced no sufficient evidence to support his conviction.

6. And such other grounds as may appear appropriate once the learned Magistrate condescends to provide a written ruling setting out his reasons for the conviction."

Grounds 1, 2, 3 and 5

12. Grounds 1, 2, 3 and 5 appear to raise the identical issue, to wit, the Magistrate was wrong to convict the intended appellant based on the paucity of and conflicts in the Prosecution's evidence.

13. There were essentially three pillars supporting the intended appellant's complaint. They were: 1) contradictions in the Prosecution's witnesses' evidence; 2) failure to show the chain of custody of the firearm; and 3) failure to produce any fingerprint evidence.

Contradictions/Inconsistencies

14. There were two main inconsistencies pointed out by Mr. Farquharson. The first was the evidence as recorded by the Magistrate that, "My passenger screwed down the passenger's window and threw a package out the window through the driver's side of the car". Mr. Farquharson argued that the record is incorrect and that instead of "threw" we should accept that:

> **"The transcriber or the magistrate, or whoever it was, confused threw, as in T-H-R-E-W, with through T-H-R-O-U-G-H. The witnesses' testimony - - the defendant's testimony at trial was that the defendant put down the window on his side of the car - - the passenger put the window down on his side of the car and threw the object over to the driver side of the car. In other words, instead of throwing it in the middle of the road, he threw it over the roof to the side of the road."**

15. He argued further, that to believe otherwise would be irrational.

16. With all due respect to Counsel, his argument is irrational and not soundly grounded on the facts. Local Constable 5026 Benson Miller testified that: **"A clear plastic baggie was**

tossed from the driver's side of the vehicle." (Pg. 6 line 162 of the Magistrate's record) Constable 2823 Lathario Seymour testified that, **"I then observed a little package thrown out of the driver's window"**. (Pg. 1 line 11 of the Magistrate's record)

17. At page 19 of his notes the Magistrate records the following as a part of the intended appellant's evidence in chief:

> **"My passenger screwed down the passenger's window and <u>threw a package out the window through the driver's side of the car</u>."** (line 548)

18. It cannot be gainsaid, therefore, that when the Magistrate recorded that the package was thrown through the driver's side of the vehicle, that note accurately captured what was said by the witnesses and by the intended appellant himself. It is significant that in his cross-examination of the two officers, Miller and Seymour, Mr. Nathan Smith, Counsel for the intended appellant, never put to them that they were mistaken and that the package was thrown over the roof of the vehicle onto the driver's side. I am satisfied, therefore, that the Magistrate did not err in his recording of the word "threw" and he could not be faulted in finding that the package was thrown through the window on the driver's side of the vehicle.

19. For the sake of completeness, I set out a portion of paragraph 40 of **Suculoo Miller v The Commissioner of Police** MCCrApp. No. 91 of 2020:

> **"40. Continuing the analogy, the magistrate's record is the document on which the Court relies in an appeal from a magistrate. Given the great numbers of cases heard by magistrates, pandemonium and gridlock would ensue if persons were allowed to augment a magistrate's record with their own account of what transpired before the magistrate. …"**

20. I did go on to say at paragraph 41:

> **"41. I would accept that where both parties to the appeal are in agreement that a magistrate's record is incomplete, the Court should be mindful of their views. However, where, as in this case, there is a conflict of affidavits as to what transpired before the magistrate, the Court must be guided by the magistrate's record. To hold otherwise invites resolution of factual issues by affidavits, a course of action discouraged by the courts due to the unsuitability of that procedure in adversarial proceedings."**

21. Appellants cannot impugn the written record of a magistrate unless they follow the procedure laid down in sections 245 and 246 of the Criminal Procedure Code ("the CPC"); and this the appellant has singularly failed to do.

22. Mr. Farquharson made heavy weather of the police officers' evidence that the appellant ran in an easterly direction after he had exited his vehicle but there was evidence from the Crime Scenes Officer, 2381 Paul Adderley ("the CSO") that, according to Mr. Farquharson's submission to us, was:

> **".. the appellant's car was packed on the eastern side of this apartment building. And the weapon was found on the western side of this building. And the – on the basis of the evidence of Officer Seymour, of the crime scene investigator, Officer Adderley, the appellant was arrested on the eastern side of the building, never ran anywhere."** (pg. 19 of the transcript dated 25 January 2024)

23. I enquired of Mr. Farquharson whether Officer Adderley was present at the time of the appellant's pursuit and arrest and Mr. Farquharson responded that the officer was not there. That is all it takes for this argument to be scuttled. Anything said by Officer Adderley pertaining to the pursuit and arrest of the intended appellant can only be inadmissible hearsay and can in no way be used to discredit the evidence of the arresting officers.

24. Furthermore, Officer Adderley testified that the blue Honda Civic Licence #AR3579 - the intended appellant was said to have been driving - was seen by Officer Adderley on "the south eastern side of the building" and on "the western side of the duplex there was an open lot with low venation (sic)" where he observed "black pistol on the ground".

25. Given the evidence Officer Seymour in cross-examination that: **"Yes. I along with Officer Miller pursued the defendant. I lost sight of him for about three seconds after he ran around the building"**, it is reasonable that there was a change of direction by the intended appellant in his bid to elude the police.

26. There is also the evidence of Officer Miller who testified that after the male exited the vehicle, **"In an attempt to cut him off, I ran back to the front of the apartment complex where I came face to face with the male who at the time was armed with a black pistol."** Again, this is evidence from which it was reasonable to infer that the intended appellant did not remain by the vehicle and had run around the building.

27. Furthermore, the intended appellant testified that:

> **"I ran to the back of the residence where I was parked. The officer ran to the front of the residence. When I reached to the back of the residence, I saw a big open lot. The officer told me to stop running."** (pg. 20 of the Magistrate's record)

28. He also testified under cross-examination as follows:

"Were you aware that a firearm was found?

Yes.

Where was the firearm found?

Behind me."

29. It is evident, therefore, that the Magistrate had ample material on which to ground a finding that the police officers were credible witnesses and such inconsistencies as Mr. Farquharson was able to cull from the evidence before the Magistrate could not derogate from a finding that the intended appellant had committed the offences charged. This complaint lacks merit.

30. Mr. Farquharson also complained that the Magistrate failed to examine the Prosecution's evidence properly, fairly and in an unbiased manner as had he done so he would have discovered contradictions which would have led the Magistrate to conclude that the evidence arrayed against the intended appellant was tenuous and unable to support a sound conviction.

31. The Magistrate had rehearsed the evidence led in the case in his ruling and in the course of doing so discussed aspects of the intended appellant's evidence. He stated at paragraph 21 of his ruling that he found the intended appellant's evidence of the package being thrown out of the driver's side window by the passenger "unbelievable". Further, after considering the testimony of the intended appellant about a passenger in the vehicle who he was giving a ride but whose last name he did not know nor the exact address of the passenger, the Magistrate said:

> **"The court does not believe and rejects the defendant's evidence when he testified under oath that at the time of the incident he was accompanied in his vehicle by someone else."** (Para. 29 of the ruling)

32. The Magistrate concluded that the intended appellant was alone in the vehicle as he was the only one the officers saw run away from the vehicle and went on to say at paragraph 36 and 37 of his ruling:

> **"36. The court has had the opportunity to see, hear and observed the witnesses for prosecution as they gave their evidence from the witness stand. The court found the witnesses to be credible and truthful. None of the witnesses was shaken during cross examination or discredited.**
>
> **37. The court prefers the evidence of prosecution witnesses over that of the defendant and finds that prosecution proved its case to the requisite standard, beyond reasonable doubt, that on**

July16, 2019, Fred Christopher Paul, the defendant, possessed an unlicensed firearm and a quantity of dangerous drugs without the requisite authority."

33. In **Watt (or Thomas) v Thomas** 1947 SC HL 45 Viscount Simon offered the following incisive remarks pertaining to the approach an appellate court should adopt when reviewing a lower tribunal's conclusion based on the evidence led in the trial:

"Before entering upon an examination of the testimony at the trial, I desire to make some observations as to the circumstances in which an appellate court may be justified in taking a different view on facts from that of a trial judge. For convenience, I use English terms, but the same principles apply to appeals in Scotland. Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law (for example, on a Case Stated or on an appeal under the County Courts Acts) an appellate court has of course jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given. What I have just said reproduces in effect the view previously expressed in this House—for example by Viscount Sankey in Powell and Wife v. Streatham Manor Nursing Home [1935] A.C.243 at p. 250, and in earlier cases there quoted. Lord Greene M.R. admirably states the limitations to be observed in the course of his judgment in Yuill

> **v. Yuill [1945] P.15 at p. 19. Lord President Clyde, in Dunn v. Dunn's Trustees (1930) S.C. 131 summarised the scope of appellate correction, with copious citation of earlier authority, and I agree with him that the true rule is that expounded by Lord President Inglis in Kinnell v. Peebles, 17 R. 416, that a Court of Appeal should "attach the greatest weight to the opinion of the judge who saw the witnesses and heard their evidence" and consequently should not disturb a judgment of fact unless they are satisfied that it is unsound.**
>
> **It not infrequently happens that a preference for A's evidence over the contrasted evidence of B is due to inferences from other conclusions reached in the judge's mind, rather than from an unfavourable view of B's veracity as such: in such cases it is legitimate for an appellate tribunal to examine the grounds of these other conclusions and the inferences drawn from them, if the materials admit of this; and if the appellate tribunal is convinced that these inferences are erroneous, and that the rejection of B's evidence was due to the error, it will be justified in taking a different view of the value of B's evidence."**

34. I have read the record of the witnesses' evidence and the Magistrate's ruling and I am satisfied that his conclusion as to the guilt of the intended appellant cannot be faulted.

Chain of Custody

35. Mr. Farquharson sought to impugn the Magistrate's decision to enter the firearm into evidence because, he asserted, the Prosecution failed to establish that the firearm produced in court was the firearm found by the police officers and subsequently examined by the Firearms Examiner. In other words, he questioned the history and provenance of the firearm.

36. Mr. Farquharson cited the case of **Sean Wright v The Queen** MCCrApp No. 194 of 2015 in support of his position. In **Wright**, an officer was at Indigo Café when he observed the appellant with what appeared to be the handle of a firearm in the appellant's right front pocket. The officer followed the appellant and observed him entering a silver Land Rover. The officer recorded the license plate number and contacted the Cable Beach Police Station with certain instructions. Officers located the appellant at another establishment and advised him that they had information that the he was in possession of an unlicensed firearm. They got the key to the appellant's vehicle and searched it. A firearm was retrieved from the vehicle along with ammunition. The appellant was arrested and subsequently convicted for possession of a firearm and ammunition.

37. Wright appealed on the grounds, inter alia, that the firearm and ammunition should not have been entered into evidence by the magistrate because they were not shown to have

been the firearm and ammunition allegedly recovered by the police and subsequently examined. The basis for this contention was an unexplained difference in the serial number of the firearm found by the officers and the firearm tested by the Firearms Examiner and the police witness not confirming that the items in court were the same ones he found and marked for identification.

38. In rendering the majority judgment, and finding that the magistrate erred in exhibiting the items into evidence, Evans, JA stated at paragraph 37:

> **"37. In the circumstances which pertained it was of the utmost importance that the Crown be able to trace the items from the hands of Anthon to that of Mr. Bain. If this was done the difference in the serial numbers would be of less significance. As noted earlier the evidence is that Charles Bain received the purported firearm and ammunition from 3098 Gray. However, there is no evidence as to who Anthon passed the items to which were found by him. Likewise there is no evidence as to from whom Gray received the items which he passed to Bain to be examined. It follows then that in my view the Prosecution failed to establish that the items tested by Bain were the same ones found by Anthon."**

39. In my view, the facts in **Wright** are far removed from what obtained in the case before the Magistrate. Constable Lathario Seymour testified that after he arrived to the spot where he saw a male – later identified as the appellant – lying on the ground:

> **"I observed a black .9mm Tarus <u>with serial number TJN75586</u> and a magazine on the ground."** [Emphasis added] (pg. 11 of the Magistrate's record)

40. Officer Seymour stated that he placed his marking on the firearm. The officer identified the firearm by his marking during the trial without any objection by the appellant's lawyer.

41. L/C Benson Miller testified to shooting a male – later identified as the appellant – and a firearm dropping from the male's hand. The officer said it was a Tarus pistol with a magazine which he later marked for future identification purposes. The officer identified the firearm during the trial by his marking, again without any objection by the appellant's lawyer.

42. Tereah Thomas, Firearms Examiner, submitted a report of her examination of a Taurus 9mm Luger caliber model PT70 firearm bearing the serial number TJN75586.

43. At paragraph 31 of his decision the Magistrate wrote:

> **"1. Further, the defendant acknowledged seeing a firearm on the ground behind him after he was shot by one of the pursuing officers. It was daylight at the time of the incident. Constable Seymour testified under oath that he saw the defendant ran from his vehicle with a firearm in his hand as L.C. Miller approached it. The firearm that the arresting officers testified seeing in the defendant's possession at the time of the incident was sufficiently identified by both officers before being tendered into evidence."**

44. He continued at paragraph 33:

> **"33. Ms. Tereah Thomas, a firearm examiner in the public service, carried out testing and examination of the submitted firearm in this case. According to the firearms examiner, after testing and examining a .9mm Taurus Luger Caliber model Remington Luger model RPY autoloading pistol serial PT709 serial number TJN75586, she found it to be in satisfactory mechanical condition and capable of chambering and discharging the 9mm Luger caliber cartridge.**
>
> **The firearm examiner further stated that the submitted pistol when fired using ammunition of like caliber is capable of inflicting injury. The submitted detachable box magazine submitted along with the firearm was found suitable for use in the submitted pistol said the examiner."**

45. It is true that there may be gaps in the handling of the firearm, but as Hall, J (as he then was) said in **Miller v Commissioner of Police** [1992] BHS J No.112:

> **"The other ground of appeal as to the handling of the exhibit is, again a matter of fact as the magistrate would have found it. Despite the frequency with which it is invoked, <u>there is no rule of evidence of which I am aware that the prosecution must prove an "unbroken chain of custody" before an item can be exhibited in court</u>. What the prosecution does have to prove is that there is a nexus between the item sought to be exhibited and the offence with which the accused person is charged. When, as here, there is a question as to the analysis of an item, the prosecution has to prove that what the analyst examined was the substance the accused is being charged in relation to."** [Emphasis added]

46. In the conjoined appeals **Noel Lionel Cash v The Commissioner of Police** MCCrApp No. 47 of 2013 and **Tito Davis v The Commissioner of Police** MCCrApp No. 68 of 2013, John, JA addressed a submission about a break in the chain of custody at paragraph 16 as follows:

> **"16. Ms. Mason-Smith submitted that the learned magistrate erred when she relied on the testimony of Police Constable Hall who testified that he received the firearms and ammunition from Detective Corporal Francis on 1ª December, 2009. Detective Corporal Francis did not give evidence at the trial. Counsel submitted that the failure of Detective Corporal Francis to give evidence was a break in the chain of custody.**
>
> **We do not agree with that submission. Danny Wight testified that on the day in question he was on mobile patrol with Officer Albury when, as a result of information received, they followed the appellants' vehicle ending in a high speed chase. He further said that he retrieved the firearms and placed his name on both the firearms and ammunition. He identified the firearms and ammunition in court by his marking.**
>
> **Counsel's submission must fall to naught in the light of the evidence of Officer Wright who retrieved the items, marked them and when called upon at a later date to identify them did so by his markings and the serial numbers. <u>What must be proven is that the firearms that were seized and tested were the same ones tendered in court. There is no legal requirement that every individual who came into contact with the exhibits must testify</u>. This ground of appeal therefore fails."** [Emphasis added]

47. Indeed, in the Jamaican case **Danny Walker v R** [2018] JMCA Crim 2 cited by Mr. Farquharson, the decision of Baptiste, JA in **Damian Hodge v R** HCRAP 2009/001, a case coming from the Virgin Islands, is mentioned. At paragraphs 12 and 13 of **Hodge** the following appears:

> **"[12] The underlying purpose of testimony relating to the chain of the custody is to prove that the evidence which is sought to be tendered has not been altered, compromised, contaminated, substituted or otherwise tampered with, thus ensuring its integrity from collection to its production in Court. The law tries to ensure the integrity of the evidence by requiring proof of the chain of custody by the party seeking to adduce the evidence. Proof of continuity is not a legal requirement and gaps in continuity are not fatal to the Crown's case unless they raise a reasonable doubt about the exhibits integrity. There is no**

> **specific requirement neither is it necessary, that every person who may have possession during the chain of transfer be called to give evidence of handling of the sample while it was in their possession. It is a question of fact for the jury whether or not there is a reason to doubt the accuracy of DNA results because of the possibility that security or continuity of samples was not maintained. See R v Stafford at paragraph 116, where the case of R v Butler is cited for that proposition.**
>
> **[13] In R v Larsen, Romily J speaks to the chain of custody in a criminal matter by suggesting that "there is no specific requirements as to what evidence must be lead or by whom to establish continuity. There is also no specific requirement that every person who may have possession during the chain of transfer should himself give evidence. If there is a gap in continuity and if the trier of fact is not satisfied beyond a reasonable doubt that substances taken from the accused were substances analyzed, the evidence may still be admissible but the weight given to the exhibit and evidence would be affected."**
>
> **In Barry v NZ Police the Court cited with approval a passage from Cameron v Police HCWN CR1 2005-485-187, 14 March 2006 in which Mackenzie J stated: "… It is not necessary that every person involved in the chain of communication be called to give evidence of the handling of the sample while it was in their possession. There must be evidence from the officer administering the procedures to establish that he caused it to be conveyed by adopting a system which is sufficient to satisfy the judge dealing with the particular case that any opportunity for interfering with the sample is eliminated so far as that can humanly be done."**

48. In my view, there was sufficient evidence adduced by the Prosecution for the Magistrate to be satisfied beyond a reasonable doubt that the firearm found by the police officers and tested by the Firearms Examiner was the same firearm tendered at trial and could be exhibited into evidence. This complaint is without merit.

49. Mr. Farquharson submitted that the Magistrate should have delved into the issue of fingerprint evidence because although the firearm was tested for fingerprints, no results from those tests were produced. This submission may be given short shrift because the CSO testified as follows:

> **"I collected the firearm and took it to Scenes of Crime unit where it was photographed and processed for fingerprint**

impression. Due to the texture of the firearm no fingerprint impression was recovered."

50. No useful purpose could have been served by the Magistrate probing any further. There is, therefore, no merit in this complaint.

51. Ground 4 does not condescend to set out or particularise what the Magistrate failed to consider or what irrelevant matters the Magistrate considered. Thus, this ground fails because it does not raise any justiciable issue.

52. Similarly, ground 6 is dismissed because the intended appellant did not advance any other grounds subsequent to the Magistrate providing his written ruling.

Conclusion

53. I am satisfied that there is no merit in any of the proposed grounds and that the intended appellant's case has no prospect of success. Thus, the EOT application is refused. The decision of the Magistrate to convict the intended appellant and the sentences he imposed, are affirmed.

The Honourable Mr. Justice Jon Isaacs, JA

54. I agree

The Honourable Sir Michael Barnett, P

55. I also agree

The Honourable Madam Justice Indra Charles, JA