

were joined by the appellant. The policemen proceeded to Jubilee Street by different routes. According to P.C. Roberts he and the appellant passed through George Fifth Street to get to Jubilee Street and when they got there they met a crowd of persons. At this time the appellant was about 40 feet in front P.C. Roberts. P.C. Roberts said that when he was about 50 feet from the crowd he "saw persons in the crowd went in diving motion - as though someone wants to pick up something on the ground". He saw the appellant holding a young man while he was passing and as his back was turned away from the appellant he heard an explosion which sounded like that of a firearm. P.C. Roberts ran away from the crowd and when he got to Mr. Bhola's shop he held a young man and spoke to him and after he had finished speaking to him he let him go. While there, he heard a second explosion about two minutes after the first, and on looking back he saw people running in different directions. He returned to the station with P.C. Gittens and P.C. James. A quarter of an hour later he again left the station and went back to Jubilee Street where he noticed a young man lying in front of Rita's Restaurant. Blood was coming from his head. He did not recognise the man who appeared to be dead. He left and went back to the station.

The evidence of P.C. Dennis James is substantially to the same effect as that of P.C. Roberts, He too saw the crowd. It consisted of 20 boys near Mr. Bhola's shop and they were going in the direction of the Grenville Cinema. Suddenly, the men in the crowd began to run in different directions and he saw when one of them threw a stone at P.C. Gittens who ducked it and gave chase as the man ran away. He then heard two explosions "like a gun" and there was a three minute interval between the two explosions. He walked up to Jubilee Street with other policemen and when he got to Rita's Restaurant he saw a man lying in front of the restaurant. He was lying in blood and appeared to be dead. He returned to the Grenville Police

Station and left again between 11 or 11:30 p.m. with Inspector Belmar and went to Pearls Airport where they met Police Constables Mignon and Granger. He said that Inspector Belmar inspected the .38 revolver which Granger had. He also stated that P.C. Mignon did not have a revolver.

P.C. Gittens also testified to the fact that on reaching the junction of Jubilee and Sendall Streets he saw a crowd of about 20 persons on Jubilee Street and a man from the crowd threw a stone at him, that he ducked and chased the man who ran away. While chasing this man he heard two explosions which sounded like the explosion of a gun, and heard bottles and stones falling on the road at the junction of Sendall and Jubilee Streets. He then returned to the station. About ten minutes later he left the station and returned to Jubilee Street where he saw a man lying in front of Rita's restaurant, he observed blood flowing from one of his ears and he appeared to be dead. He and other policemen took up the body and carried it to the Princess Alice Hospital mortuary.

One Felicity Chitan who lives in a house overlooking Mr. Bhola's supermarket in the vicinity of which the dead man was found does not assist the Crown case to any material extent. She said that she heard three gun shots, she looked out of a window and saw two persons - one ten rods from her and the other 16 rods away. Of these two persons one was tall and the other short and the short one was holding on to the taller one. She left her house and went into Jubilee Street near to one Miss Rita shop where she saw a young man lying on the pavement in front of a shop.

Then there is the evidence of the witness Lennie Lewis. His evidence was to the effect that he had gone to the cinema at 8:30 p.m. and had left at 11 o'clock to go home. On his way home someone pelted a piece of wood at him. He went back to the cinema and on his way there he saw a crowd of men running towards him. These persons came from the direction of the Public Works Department.
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His evidence continues as follows:

"... I hear two bullets fire. The boys and them start to run. I spoke. The bullets fire from the men and them who was coming towards us. I made out one of the men. I don't know him by name but I could point him out right now - I see him in court (P.C. James, witness identified).

When they meet us they walk up by the boys that run in front of the shop. The boys who run in front of the shop were Jeremiah, Anselm, Alson, Elijah. I hear a bullet go off. In front of the shop. Besides the boys in front of the shop, they had a man. I couldn't see the man face he was giving me his back. I was about 3 - 4 rods from the man. I see Jeremiah was dragging down on the door on his back. The man hand was at his collar. Jeremiah collar. The man leave and he run. I was standing in the midst of two policemen - P.C. James pointed at - This man was one. He spoke to me. We move off. We was going to the station. We did not reach the police station. On the way I see that man - (P.C. James pointed out) speak to the next policeman. They walk about half rod. They then spoke to me. I left. I go back where Jeremiah was dragging on the door. He was lying on the concrete on the ground. I saw blood under his head. He didn't say anything and when I go back he didn't move. I heard the gun go off in front of the shop where the man was holding Jeremiah by his collar. There were lights. A light by Mr. Bhola shop at the junction. One in front Mr. Chitan shop. Street light. A big bulb. Yes electric."

In cross-examination this witness said -

"....I did not point out the policeman yesterday who fired the two shots. The policeman I pointed out was one in the crowd from which the bullets came. The crowd began to run when the bullets were fired. No Sir I was not annoyed that they were running. Yes Sir I told them not to run. No Sir I did not run. No Sir I was not annoyed with the police. No Sir I did not bounce any policeman. Yes Sir later on two policemen held me. Yes Sir I made a statement to the police that night. I never said that I saw Lydon Mignon shoot Jeremiah. Yes Sir I said he held him and cornered him on a wall with a gun in his hand. I heard the gun went off. I did not say I saw Jeremiah was drifting until he fell on the ground. I said dragging.

Yes Sir I made this report to the officer who was on diary duty. Yes Sir he wrote it down in the diary."

Then lower down on page 96 he said -

"... I tell the policeman that if Jeremiah dead I know who shoot him. When I said "he held him" I meant the man. I did not know the man."

On page 97 of the record in answer to the jury he said -

"... I signed the statement which was written down in the diary. Yes Sir the statement was read over to me before I signed it. I knew the accused by face. I know Lydon Mignon by name and by face. The man who shoot Jeremiah was giving me his back.

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When I said "I know who shoot him" I meant I see the man that was holding Jeremiah."

In answer to counsel for the accused this witness said -

"I told the police: I saw some people running, some towards me and some from behind me. I can remember there was a group of us numbering about six to seven walking up in just a casual manner. When they come close to us I saw Lydon a policeman. He fired a bullet up in the air and said Stand up. He walked up to Jeremiah Richardson of Paradise and he hold him in front of his shirt with a gun in his hand. I knew it was a gun because I heard it fired and I heard it go off. The bullet fired. I saw Jeremiah Richardson was going down his back was dragging against the wall of the shop where Lydon held him."

I just know the policeman by Lydon. I don't know his other name."

The witness Lennie Lewis proved to be a most unsatisfactory witness and his evidence was rather evasive. It is therefore not surprising that the trial judge told the jury that he considered it his duty to direct them that very little weight should be given to his testimony. At one stage in his evidence he seemed to suggest that P.C. Mignon had shot the man Jeremiah Richardson, but later on he said "I never said that I saw Lydon Mignon shoot Jeremiah."

Inspector Belmar later that night read the statement in the station diary which Lennie Lewis had made and as a result he went to Pearls Airport where he met Police Constables Mignon and Granger. He inspected the .38 service revolver which P.C. Mignon had with him and found that it contained six rounds of live ammunition and he stated that this was the maximum number of rounds that type of revolver could carry. He was thus implying that P.C. Mignon's revolver had not been discharged that night.

So far, none of the witnesses to whom reference has been made gave any evidence implicating the appellant in the death of the man Jeremiah Richardson. However there is one witness who quite definitely testified that he saw the appellant shoot the deceased and this is a 17 year old student who attends the St. Andrew's Anglican Secondary School. His name is Alson Douglas. His evidence is to the effect that he went to the DeLuxe Cinema on the night of February 20, 1973 at about 10.30. After the cinema he went to a place called the Pool with other boys. These

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included Valan, Stanley, Whisper and the deceased man Jeremiah. When they got to the Secondary School they stood up talking and after a little while they left and returned in the direction of the cinema. From this point on it is desirable that the evidence of this witness should be stated in his own words. He said -

"When we reach by Ritz Restaurant I saw police coming down the street and they fire a few bullets in the air. I recognise one of the police - Zephrin because he was standing by me. About two to three police take Lennie and went away with him. We four - me, Anselm, Elijah Lewis and Jeremiah went by Ritz Restaurant. Then they the police come there. Zephrin is the police who come. He hold Elijah by the collar - indicates. Elijah said he was doing nothing. They were arm's length apart. He let go Elijah and he hold Jeremiah and he fire bullet and take Jeremiah in he head. Mr. Zephrin had a gun. I saw the gun. When he held Jeremiah, Zephrin was about the same arm's length.

Witness indicated what Zephrin did.

When I saw the gun it was in Mr. Zephrin hand. He held Jeremiah by his collar and he put the gun to his ears. Then the bullet explode. (Indicates with right hand) Then Jeremiah was falling down by his back. He was falling on Anselm. Anselm let him go. Anselm held Jeremiah. Mr. Zephrin leave and go as soon as Jeremiah get the bullet. He run off. When he fall on the ground I go over him and two drop of blood fell on my pants. Blood was coming from his head. Yes Sir I know a Police Constable by the name of Lydon Mignon. No Sir I did not see him there."

In cross-examination he said -

"..We left together going back to the cinema. Including Lennie. I saw policemen by the Anglican School when I was going back. I saw policemen coming from both sides - behind and in front. About three from in front. About two from behind. Policemen were dressed in ordinary clothes. No I did not run when I saw the police. Yes some of them start running. I saw this policeman - accused grab Jeremiah. Yes I saw him put a gun to his ear. Witness demonstrates with finger very near or touching pinna of ear - right ear. Then I heard the gun go off. It is not true that I am mistaken. I saw the accused with a gun. Not true I did not see him put a gun at anybody's ear. No Sir the accused was not speaking to Elijah Lewis when a gun went off. Not true Jeremiah then collapsed. I saw Jeremiah collapse on the pavement. Yes Sir, Jeremiah was a good friend of mine. Yes Sir when he collapsed I left and went back to the cinema. I sat in the cinema for another hour until the end of the program.

I saw Jeremiah bleeding. No Sir I did not try to get any assistance for him. Yes Sir when Jeremiah went down, I did not see Lennie Lewis. I saw him after the cinema over...."

/Dr. Charles...

Dr. Charles said that he was called to the Ritz Restaurant on Friday 20th April, 1973 and when he got there about 11 p.m. he saw a dead body lying close to a pool of blood. It was a male body. There was a wound on the right side of the face, blood was oozing from this wound and from the mouth and nostrils. He gave certain instructions to the police. It will be remembered that P.C. Gittens said in his evidence that he met Dr. Charles outside the restaurant where the dead body was lying and that he Corporal Lewis and other Constables took the body to the Princess Alice Hospital mortuary and left it there; so that when Dr. Charles said he had given certain instructions to the police it may reasonably be assumed that these instructions were to take the body to the hospital mortuary. Dr. Charles saw the same body again the next morning at the said mortuary where he performed the post mortem examination. His findings on the post mortem examination are as follows:-

"There was a circular wound about $\frac{1}{2}$ inch diameter on the right side of his face from which blood was oozing. A probe directed into the wound went upward easily into the base of skull. When the skull was opened and brain removed from the base of the skull a small opening was found at the base of skull from which blood was also oozing. As the brain was being sectioned a bullet was found in the left cerebral hemisphere. When the chest and abdomen were opened the heart, lungs, liver, kidneys and all other internal organs appeared in tact and healthy.

In my opinion cause of death was due to:

- (1) shock due to haemorrhage from the bullet wound of face and fracture of base of skull, and
- (2) from cerebral damage of brain tissue due to the bullet."

The appellant made a short unsworn statement from the dock in which he said he did not have a gun on the night in question and he does not own one. From this statement one has to infer that he is saying that he was in no way connected with the shooting of Jeremiah Richardson. His statement is as follows:

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"On the night in question I was up by the annex sir; three policemen was running up to me. I ask them what happen. They told me they was beating Constable Joseph somewhere out by Mr. Bhola. I did go along with them. Me and Constable Roberts pass through by Mr. Munro Garage the junction by Miss Bell house. Then we swing left. I saw a crowd of boys was running coming towards us. I put up my hand like this - indicates - and said Stand up. Some run past me some go in a diving position, some standup. This time I heard about two sounds as bottles mash up. By this time I saw a fella by-passing me. I did not know him. He stand up. I stand up. I was speaking to him. I said Why you all can't behave you all self? By this time I heard about two explosions. The crowd then began to run. Crowd run in all directions. I run too. I did not have no gun. I don't own any gun. I run and went up home. The morning I came down to work as usual. Nobody tell me anything. I was arrested few months after Sir. That's all."

The first ground of appeal argued on the appellant's behalf related to the witness Elijah Lewis who gave evidence at the preliminary inquiry. He however did not appear at the trial nor was his deposition read. The Director of Public Prosecutions gave the Court an explanation for his absence and the trial judge recorded this explanation as follows:

"2.54 p.m. Mr. Lambert: Witness Elijah Lewis' name appears on back of indictment. Informed that witness is not in state. Informed that no record of his leaving the state. Witness is not here. Cannot produce him. Not applying for deposition to be read as cannot comply with requirements of section 201.

Mr. Heyliger: does not wish to be heard."

From the remarks of the Director of Public Prosecutions it was obvious that the prosecution was not in a position either to produce the witness or to satisfy the conditions whereby it might apply for his deposition to be read, and the Court is clearly of the opinion that counsel for the appellant appreciated this fact for, after having been given an opportunity to make any representations or comments which he may have thought fit he said that he did not wish to be heard. Before this Court he has however submitted that it was the duty of the prosecution to have the witness before the court, that it had taken no reasonable steps to do so, and that by reason of the fact that the witness was not produced nor his deposition read the

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appellant was prejudiced as he was deprived of two possible defences which were open to him on the evidence of the missing witness. In support of his submission he prayed in aid s. 201(3) of the Criminal Procedure Code Cap. 77. Subsections (1) and (2) of s. 201 of this Code contain the usual provisions which, if complied with, would permit a deposition taken against or for an accused person to be admitted in evidence at the trial. S. 201(3) reads as follows:

"(3) If it is made to appear to the Judge that the witness who made the deposition may, within a reasonable time, be capable of attending to give evidence, and that the ends of justice require that the witness should be examined personally before the jury, the Court may postpone the trial on such terms as may seem proper."

In the opinion of this Court it was not open to counsel for the appellant to say that the Crown had taken no reasonable steps to ensure the attendance of the missing witness for when the Director of Public Prosecutions made his statement to the Court he must have done so advisedly and in the light of the information at his disposal about the witness. Counsel for the appellant admittedly made no attempt to challenge the correctness of the Director's statement and it must be assumed that he was in no position to do so. The position with regard to the witness therefore was that he had disappeared, the prosecution could not account for his whereabouts nor was there any record of his having left the State; and so, the conditions prescribed by s. 201(1) and (2) of the Criminal Procedure Code could not be fulfilled and, as a result, his deposition could not in any circumstances be read at the trial. In the light of these facts we are of the opinion that the provisions of s. 201(3) do not apply to the circumstances of this case. This subsection gives the trial judge power to postpone the trial on such terms as may seem proper but before he can do this two conditions must be satisfied: (a) it must be made to appear to him "that the witness who made the deposition may, within a reasonable time,
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be capable of attending to give evidence". Obviously, in the existing circumstances the prosecution could never satisfy this condition; and (b) it must also be made to appear to the judge "that the ends of justice require that the witness should be examined personally before the jury ". Even if the ends of justice so required it was not possible to examine the witness because he could not be produced as his whereabouts were unknown; so this second condition also could not be fulfilled. It is to be noted that under s. 201(3) all that the appellant would be entitled to was the postponement of the trial and nothing more. This Court therefore cannot accept the submission that failure to produce the missing witness or to read his deposition in the circumstances of this case amounted to an irregularity which could affect the trial or prejudice the appellant. This ground of appeal therefore fails.

It was also submitted that the distance from which the gun was discharged at the deceased was important in determining the question of intent. Counsel's argument ran along the following lines. He said that if the gun was fired at the deceased at point blank range, as the witness Alson Douglas said, then he submitted that the jury would have little difficulty in concluding that there was an obvious intention to kill the deceased. If on the other hand it was fired from a greater distance, say 12 inches then the question would arise whether this act involved anything more than mere negligent user of the firearm. It was contended that the fact that Dr. Charles said he saw no powder marks on the body, that powder marks would tend to disappear at 12 inches, and finally that it was not usual to find powder marks up to 3 feet according to Professor John Glaister whose opinion on this point he accepted, would lead to the inference that the doctor was saying that the gun was not fired at point blank range but at a minimum distance of at least 12 inches from the deceased; and as a consequence

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it was urged that the evidence^{of}/Alson Douglas would become suspect. It is true that the doctor at one stage in his evidence did give the impression that he was saying that the gun was not fired at point blank range, but after giving his opinion in examination in chief and cross examination on this matter, and after being asked a question by the jury as to how distances in this context might be affected by the type of gun used, the judge finally asked him for his views as to distance at which the gun was fired and he said: "I cannot form any opinion as to the distance away the gun was in this case." He thus crystallised his opinion on this issue and made it clear that he was not prepared to go on record as giving any definite distance from which the gun was fired.

In the circumstances the only direct evidence of distance was that given by the school boy Alson Douglas as against the circumstantial evidence on this issue based on the absence of powder marks on the body. The jury had all the facts relating to distance before them and it was their function to draw such conclusions therefrom as they saw fit. The Court therefore cannot accept that there is any substance in the criticism that the trial judge dealt with this aspect of the case in a manner which was prejudicial to the appellant, and, accordingly this ground of appeal also fails.

Counsel for the appellant further contended that the directions of the trial judge on the issues of provocation and self-defence tended to confuse the jury and direct their attention from the real issues in the case, because those pleas did not arise on the evidence. Admittedly it was somewhat difficult to see how the issues of provocation and self-defence arose on the facts of this case, but in saying this, the Court is by no means agreeing with counsel's submission that the jury were by reason of this fact confused in their deliberations. The Court has noted with some concern the increasing tendency of
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counsel to allege almost as a matter of ritual that when a trial judge leaves to a jury an alternative case not put forward by the defence and probably not arising on the evidence this automatically leads to confusion on the part of the jury. There are of course cases in which a direction on matters not arising on the evidence might tend to confuse the jury, but each case must be looked at in the light of its particular facts. In our view no confusion could possibly arise in this case because the jury were fully aware of the fact that the material evidence in this case was that of the witness Alson Douglas and they had to decide whether or not his evidence was worthy of credence. This was the cardinal issue before them and we are satisfied that they were not deflected from the proper performance of their duty by the directions which the trial judge gave them in relation to provocation and self-defence.

It was also submitted that if the appellant, with knowledge of the information which had been received at the police station, had gone out with the other policemen and had pulled his gun in discharge of his duty, this was not in itself an unlawful act ab initio because as a police officer he was entitled to carry a gun. Counsel in support of this submission referred to s. 5 of the Police Ordinance No. 38 of 1966 which provides inter alia that in the performance of their duties as prescribed by this section "police officers may carry arms in accordance with any regulations made under this Ordinance". Counsel was unable to bring to the attention of the Court any regulations made under this Ordinance which authorise police officers to carry arms, and the Director of Public Prosecutions said there were none. A careful search by the Court through all legislation from 1966 up to the present time has failed to reveal the existence of any valid regulations authorising members of the Police Force to carry arms in this State.

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In this connexion the Court wishes to refer to the Police Regulations No. 26 of 1960 which were made under the authority of section 42 of the Police Ordinance 11 of 1940. We observe that these Regulations are being treated as though they are still in force, but they are not as will be shown hereunder. Regulation 152 of the 1960 regulations provides that police officers may be supplied with a "police pattern revolver", and regulation 155 specifies that the articles of equipment which may be issued to members of the police force of the rank of Inspector and under should include the "appointments, arms and necessaries" set out in the 4th, 5th and 6th Schedules to the Regulations. In the 4th schedule to the 1960 Regulations it is stated that a pistol holster for a .38 revolver may be issued to such ranks.

It is to be noted however that Ordinance 11/1940 under which the Police Regulations 26/1960 were made was with other ordinances, consolidated to form the Police Ordinance Cap. 222 which is to be found in the 1958 Edition of the Laws of Grenada. Cap. 222 was repealed by section 81 of the Police Ordinance No. 38 of 1966,^{and} no provision was made in this ordinance for saving the Police Regulations No. 26 of 1960. Accordingly, there being no regulations in force in this State authorising the police to carry arms, the argument founded on section 5 of the Police Ordinance No. 38 of 1966 is without any basis in law and must therefore fail.

Finally, counsel submitted that his arguments with respect to the deposition were enough to create a lingering doubt in the mind of the Court that a verdict of murder was correct, and relying on R.v. Cooper (1969) 1 Q.B. 267 he asked the Court to set aside this verdict as being unsafe and unsatisfactory.

In the opinion of the Court the arguments adduced in relation to the deposition of the missing witness are not of such

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a nature as to lead it to entertain any lingering doubt as to the correctness of the jury's verdict. For whatever view counsel may hold as to the value of the deposition to the defence, the fact remains that in the peculiar circumstances of this case it could not have been admitted in evidence and accordingly the Court cannot say what weight the jury might have attached thereto. In any event we do not think this is a case where the principle enunciated in R. v. Cooper can be applied.

This appeal is accordingly dismissed.

P. Cecil Lewis
Acting Chief Justice

E.L. St. Bernard
Justice of Appeal

Neville Peterkin
Justice of Appeal (ag.)