GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEALS NOS. 1, 2, 3 and 4 of 1976

BETWEEN: GODFREY BRIDGEMAN)
HENSLEY WILLIAMS) Appellants
MALCOLM POMPEY)
CLARENCE FERGUSON)

Vs.

THE QUEEN

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Lloyd Noel and K. Radix for appellants

E.A. Heyliger and E. John D.P.P. for respondents.

1976, Sept. 29; Oct. 8

J U D G M E N T

ST. BERNARD, J.A. delivered the Judgment of the Court:

These four appellants were all tried together and convicted on three counts of an indictment containing six counts and were sentenced to terms of imprisonment with hard labour. They have appealed on three grounds which are substantially the same in each case and the appeals are heard together by consent.

On the 29th July, 1975, police constables Payne Thomas and Jerome were on duty in Hillsborough Street in the town of St. George from midnight onwards to 6 a.m. At about 2.25 a.m. they received some information and went up Melville Street. On reaching the Shopping Centre of Nicholas Sleeman, Payne Thomas recognised appellants Bridgeman and Williams whom he knew before coming from the Centre with crocus bags which appeared to be filled. They walked up to a gas station about 50 yards away. The constables went to the Centre and observed it was broken into, the iron gate was open and a quantity of

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empty cardboard boxes scattered on the floor. Payne then saw two men pushing a greenish Holden car from the gas station towards River Road direction. When the engine started they jumped into the car and moved off. He did not recognise the men who pushed the car. In a few minutes he was joined by other policemen and Corporals Daniel and Louison and constables Renaud, Henry and Clement left in a car towards the River Road direction. On reaching about 250 yards from the round-about Renaud saw a greenish Holden car No. 5299 parked on the side of the road. By the aid of the electric lighting he recognised all four accused standing on the left side of the car. The driver of the police car stopped about 15 ft. in front of the parked car. Renaud got out of the car and fired his pistol. Immediately there was gun fire from the direction of the car and Renaud received gun shot wounds for which he was hospitalised for 38 days. When he received the wound he shouted "so Sultan, all you shoot me" and a voice replied "the so and so man ain't dead, he talking". Appellant Pompey is sometimes called Sultan.

Corporal Daniel recognised the first and third appellants by the parked car. He too was fired by gun fire. After the shooting the men went in the Queen's Park direction and disappeared. They left the car which was found to contain a quantity of shoes and clothing in crocus bags. These goods were identified by Nicholas Sleeman as goods which were stolen from his Shopping Centre the same night.

There was another witness, Lloyd Grant, who gave evidence at the preliminary inquiry but who at the time of the trial had left the state. He was an accomplice but the trial judge exercised his discretion and admitted his deposition as evidence at the trial. Although one of the grounds of appeal was against the admission of this deposition no complaint

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was levelled at the directions given to the jury in dealing with the evidence of this witness.

The grounds of appeal are --

1. The decision of the Jury is unsafe and unsatisfactory and should be set aside or a new trial ordered.

2. The learned trial Judge was wrong in law when he held (a) That the witness Lloyd Grant was outside the Jurisdiction of the Court (b) That the Deposition of the said Lloyd Grant was admissible in Evidence in his absence.

3. The conviction of the accused is wrong in law because it was based on a majority verdict of Eight to One after the jury retired for only 1 hour and 45 mins. and not after Two hours as provided by section 30 of the Jury Ordinance CAP. 151 of the Revised Laws of Grenada and in this regard the accused persons were deprived of the protection given by an essential stipulation in Criminal Procedure.

Counsel argued ground 3 first. On this ground he submitted that the jury gave a majority verdict before the expiration of 2 hours as provided for such verdicts in section 30 of the Jury Ordinance, Cap. 151 of the Revised Laws of Grenada. The record shows that the jury retired at 10.23 a.m. and returned at 11.45 a.m. with a verdict which was not unanimous. The verdict was not accepted and the trial judge without any further direction asked them to retire and further consider their verdict. A majority verdict of 8 to 1 was taken at 1.37 p.m. Counsel argued that the time should be counted as from 11.45 a.m. and not at 10.23 a.m. He cited a case in support but this case showed that the jury returned and the trial judge gave further directions to them in explanation of the summing up. It was held that the time the summing up ended was when the directions were last given. We are of the view that this case does not apply to the instant case and this ground of appeal fails.

/Grounds.....

Grounds 1 and 2 are substantially one ground of appeal and were argued together. Counsel for the appellants submitted that the judge was wrong in law when he held that the witness Lloyd Grant was beyond the jurisdiction of the court.

The record shows that Lloyd Grant left the state for Trinidad and Tobago on the 10th February, 1976 and was out of the jurisdiction at the time of trial. We do not feel that it could be seriously argued that he was not out of the jurisdiction.

The other limb of the argument was that Lloyd Grant's evidence was the only evidence that placed the guns in the hands of the appellants and his evidence was more prejudicial than probative and the trial judge exercised his discretion wrongly.

It is true that Lloyd Grant's evidence was highly prejudicial but there is no doubt that it was relevant and by virtue of section 132 of the Evidence Ordinance, Cap. 109, he was a competent witness. If there was no other evidence but Grant's connecting the appellants with the commission of the crime, then we think that in view of the importance of this evidence and the absence of cross-examination it should have been excluded. There is however other evidence connecting the appellants with the offences charged and the trial judge in his direction to the jury told them that they should not accept his evidence at all unless it was corroborated in some material particular by independent evidence. Although, it may be that if we were the trial judges we might have exercised our discretion in a different manner, in the present circumstances we see no reason to find that the discretion was not exercised judicially.

A further point was taken that no witness had proved that the deposition was taken in the presence of the appellants

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and they had an opportunity to cross-examine in accordance with section 201 (1)(d)(i)(ii) and (2) of the Criminal Procedure Code Cap. 77 of the Laws of Grenada and therefore the deposition was inadmissible. In support of this contention the case of John Bramble V. Regina (1958) 1 W.I.R. 473 was cited.

Section 201 (1)(d)(i)(ii) and (2) reads as follows:-

> "(1) A deposition taken against or for an accused person may be produced and given in evidence at his trial if it is proved, to the satisfaction of the Judge--
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> (d) that the deponent is beyond the jurisdiction of the Court; and if
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> (i) the deposition purports to be signed by the Magistrate before whom it purports to have been taken; and
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> (ii) it is proved by the person who offers it as evidence that it was taken in the presence of the accused person or the prosecutor, as the case may be, and that he, or his counsel, had a full opportunity of cross-examining the witness; or, in cases where the deposition was taken after committal, that notice of the examination was given, as provided in this Code, to the party against whom the deposition is proposed to be given in evidence.
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> (2) If the deposition purports to be signed as aforesaid, it will be presumed, in the absence of evidence to the contrary, to have been duly taken, read and signed."

We have read Bramble's case and think it was decided correctly but would like to point out that the legislation which governs the procedure for the admission of depositions in Antigua is different from the above section. This is found in section 192 of the Magistrate's Code of Procedure Ordinance, Cap. 48 of the Laws of Antigua. It reads:-

When depositions may be read at the trial.

> "If upon the trial of the person accused it be proved on the oath of any reliable witness that any person whose deposition has been taken is dead, or so ill as to be unable to travel, or is absent from the Colony, and if it be also proved that such deposition was taken in the presence of the accused and that he or his counsel or solicitor had a full opportunity of cross-examining the witness then if the deposition

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> purports to be signed by the Magistrate by or before whom the same purports to have been taken it shall be read as evidence in the prosecution without further proof thereof unless it be proved that such deposition was not in fact signed by the Magistrate purporting to have signed the same."

It will be observed that according to this section evidence on oath is required to prove certain things. It is quite different from subsection (2) of section 201 cited above. Counsel for the respondent drew the court's attention to this subsection and submitted that there was a presumption that the deposition was duly taken if on the face of it, it so purports to be taken.

The forms in the schedule to this Ordinance which are used in the taking of depositions refer to section 105 of the Criminal Procedure Code Cap. 77. This section provides that the evidence must be taken in the presence of the accused and that he or his counsel should have the opportunity to cross-examine. It also provides for the signing of the depositions by the Magistrate and the accused in the presence of a witness, all being present together. Paragraph (ii) of subsection (1) of section 201 substantially repeats some of these provisions and we feel that when the words "duly taken" are read in subsection (2) of this section the presumption is that all these requirements of section 105 and paragraph (ii) of subsection (1) of section 201 are complied with if the deposition so purports on the face of it and becomes admissible without further proof. Under these circumstances we are of the opinion that the deposition in the instant case was admissible and this ground of appeal also fails.

Accordingly the appeal is dismissed.

/E.L. St. Bernard.....

(E.L. St. Bernard)
JUSTICE OF APPEAL

(N.A. Peterkin)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE