THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

MONTSERRAT

MNIHCRAP2022/0001

BETWEEN:

LERON BRADE

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini	Justice of Appeal

Appearances:

The Appellant appearing in person
Mr. Oris Sullivan, Director of Public Prosecutions for the Respondent

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2026: February 9;
July 13.

Criminal appeal – Appeal against conviction – Possession of a firearm without a licence – Carrying a firearm in a public place – Sections 4(1)(a) of the Firearms Act of Montserrat, Cap 10.02 (Revised Edition 2019) – Homemade weapon – Whether ordinary household items can be classified as a firearm within the statutory definition – Judicial bias – Porter v Magill test – Interventions by the trial judge on behalf of the accused – Unqualified expert witness – Police officer testifying as a firearms expert – Failure of trial judge to give specific directions to the jury on how to approach and evaluate expert evidence – Miscarriage of justice – Section 39(1) of the Supreme Court Act of Montserrat, Cap 2.01 – Whether a properly directed jury must inevitably have convicted the appellant

On 7th July 2020, police officers acting on information stopped the appellant while he was driving a motor vehicle along the Soldier Ghaut public road in Montserrat under the suspicion that he was in possession of a controlled drug. While an initial cursory search of his person yielded nothing illegal, both the appellant and his vehicle were transported to the local police station for a more thorough search. A secondary search of his person exposed a white napkin containing dried vegetable matter resembling cannabis.

Additionally, the searching inspector noticed a distinct weight dragging down the crotch of the appellant's boxer brief which, when retrieved, was discovered to be a 12-gauge shotgun cartridge. Concurrently, a vehicular search recovered several disconnected items: a six-inch metal pipe, an aluminium female coupling, a round piece of wood wrapped electrical tape fitted with a screw, and a silver hammer. These components were transferred to Antigua and Barbuda for forensic examination.

The forensic examination was carried out by Inspector Stevon Warner, a certified firearms examiner with the Royal Police Force of Antigua and Barbuda. Inspector Warner deduced that when the seized items were assembled together, they effectively comprised a functional, homemade shotgun device. He successfully test-fired the assembled weapon using two independent cartridges, noting that when the firing pin (the screw) was struck by the hammer, it successfully discharged and exploded the ammunition, proving that the device was operating correctly and dangerously. The appellant was subsequently indicted on four counts: Count 1: Possession of ammunition without a licence; Count 2: Possession of a firearm without a licence; Count 3: Carrying a firearm in a public place; and Count 4: Possession of cannabis sativa with intent to supply. On 15th March 2022, a jury found the appellant guilty on Counts 2 and 3 only, and he was sentenced on 22nd March 2022 to concurrent terms of 27 months' imprisonment. The appellant appealed his conviction on a myriad of grounds, later condensed by the Court of Appeal into six procedural and substantive arguments, namely: (i) bias of the judge; (ii) wrongful conviction; (iii) failure to disclose transcript; (iv) misleading of the jury; (v) irrelevant considerations by the judge; and (vi) unqualified expert witness.

Held: dismissing the appeal and affirming the conviction, that:

1. The threshold for establishing apparent bias on the part of a trial judge is whether a fair minded and informed observer, having considered all the relevant facts, would conclude that there is a real possibility that the judge was biased. An allegation of judicial bias cannot be established simply because a defendant is aggrieved by the outcome of his trial; the asserting party must present cogent and objective evidence showing the appearance of bias is real and substantial, rather than fanciful or hypothetical. A comprehensive review of the transcript indicated that because the appellant was unrepresented, the trial judge actively intervened on his behalf and did all in his power to assist the appellant as best as he could, ensuring that he was given a fair opportunity to present his defence. There was no apparent of bias disclosed on the facts presented.

   Porter v Magill [2001] UKHL 67 applied.

2. A firearm under the Firearms Act (Montserrat) Cap. 10.02 (Revised Edition 2019) is explicitly defined as a "lethal barrelled weapon of any description from which any shot, bullet, or other missile can be discharged" and expressly encompasses "any component part of such lethal or prohibited weapon". When drafting this legislation, Parliament not only intended to prohibit a person from having a complete weapon that is capable of firing a projectile or missile that is lethal. It also intended to prohibit a person from having in possession any part of such weapon that is capable, if put into place, to assist in the assembly of such a weapon. The expert's evidence and physical testing established that the

items found in the vehicle formed a lethal barrelled weapon of the homemade variety. It is therefore of no assistance to the appellant that the items were discovered in separate, unassembled component parts which might individually appear innocent. Furthermore, while video evidence of ballistics testing may be useful, it is not mandatory for there to be video evidence that the firearm was capable of actually discharging a projectile or missile.

Sections 4(1)(a) and **19** of the **Firearms Act (Montserrat) Cap. 10.02 (Revised Edition 2019)** applied**; Leroy Clint v The State** (2001) 62 WIR 366 applied; **Quincy Duncan v Chief of Police** SKBMCRAP2004/0001 (delivered 28th July 2004, unreported) applied.

3. There is no question of a police officer being prevented from giving evidence as an expert if the subject in which he is giving evidence as an expert is a subject in which he has expert knowledge and if it is restricted and directed to the issues in the case. Where a witness extensively sets out his specialised training, qualifications, and decades of practical experience during examination-in-chief, "a formal declaration of expertise was unnecessary." The witness satisfies the threshold requirements by explaining his specific testing procedures and detailing his personal observations, making his evidence legally admissible as expert testimony.

R v Oakley (1980) 70 Cr App R 7 applied; **Myers v R*;* Brangman v R; Cox v R** [2015] UKPC 40 applied.

4. The trial judge fell into error because, while he gave general directions on the jury's role as the exclusive judges of fact, he failed to properly direct the jury on how to treat with the evidence of the expert. A trial judge has a duty to provide instructions reminding the jury of the specific nature of expert testimony, its relative weight, making clear that they are not bound to accept an expert's opinion as conclusive. However, the failure to provide the standard warning on expert evidence does not automatically render a conviction unsafe or the trial unfair. While it is good practice and strongly encouraged that appropriate directions dealing with expert witness testimony ought to be given, the key consideration is whether the failure to do so adversely affected the overall fairness of the trial. Where a trial judge has otherwise properly directed the jury on the main issues they must resolve and the adequacy of the judge's summing up is such that it can be said that the defence was clearly put to the jury in light of all of the relevant arguments and evidence, the omission may not be fatal to the safety of the conviction.

Damian Hodge v The Queen BVIHCRAP2009/001 (delivered 10th November 2010, unreported) applied.

5. The Court of Appeal may dismiss an appeal if it considers that no actual miscarriage of justice has occurred. The correct test is normally whether the appellate court is satisfied that any jury acting properly must inevitably have convicted the defendant if the flaws in the proceedings had not occurred. In this instance, the case was straightforward, and the expert's evidence involved direct factual demonstration rather than dense scientific opinion. The jury's

decision to find the appellant not guilty of the separate ammunition count despite the expert's contrary opinion proved that they fully appreciated that they were not bound to the opinion of the expert. As this was a strong case against the appellant and ample evidence on which the jury was entitled to convict him, the judge's omission to give an expert direction and to direct the jury on how to treat the evidence of an absent witness did not render the trial unfair and was not fatal. It was for the jury to evaluate the evidence before them and none of the matters urged upon the court by the appellant provides any ground for thinking that the conviction is unsafe. Further, having assessed all the facts and circumstances, there is nothing from the general feel of the case as experienced by this court to engender a lurking doubt about the conviction or uneasiness about whether an injustice has been done. The application of the proviso would in any event have been appropriate.

Section 39(1) of the **Supreme Court Act of Montserrat, Cap 2.01** applied**; Cassell and another v R** [2017] 4 LRC 1 applied.

JUDGMENT

[1] **ELLIS JA**: The appellant, Mr. Leron Brade, was convicted on 15th March 2022 for the offences of possession of a firearm without a licence contrary to section 4(1)(a) of the **Firearms Act** of Montserrat,[1] and carrying a firearm in a public place contrary to section 19 of the **Firearms Act**. He was sentenced on 22nd March 2022 to 27 months imprisonment for each offence with the sentences to run concurrently. The appellant was granted leave to appeal his conviction on 21st June 2023 by order of the Court and was directed to file a notice of appeal setting out the grounds of appeal by 13th July 2023. The appellant filed his notice of appeal on 10th July 2023 setting out 12 grounds of appeal. In summary, the appellant contends that his conviction is unsafe and unsatisfactory and ought to be quashed. At the time of the hearing of the appeal, the appellant had completed serving his sentence.

Background

[2] The facts underpinning this appeal are uncontested and can be set out briefly. On 7th July 2020, police officers acting on information that the appellant was in possession of a controlled drug, stopped him while he was driving a motor vehicle along the Soldier Ghaut public road. A cursory search of his person

[1] Cap 10.02 of the Laws of Montserrat.

revealed nothing illegal however the appellant and his vehicle were taken to the police station for a more thorough search. The appellant was subjected to a search of his person which revealed a white napkin that had a quantity of dried vegetable matter which appeared to be cannabis. The inspector who conducted the search also observed something weighing down the crotch of the appellant's boxer brief which when retrieved appeared to be a shotgun cartridge. Upon searching the motor vehicle, the police recovered a six-inch pipe; a female coupling; a round piece of wood wrapped in electrical tape with a screw; and a hammer. These items were subsequently sent to Antigua and Barbuda for forensic examination.

[3] The examination was conducted by Inspector of Police, Stevon Warner, a certified firearms examiner, who concluded that the items, when fitted together, could form a firearm, which when struck with an object such as a hammer would be capable of discharging a cartridge.

[4] The appellant was thereafter indicted on 4 counts, 3 of which related to firearm offences contrary to the **Firearms Act**, namely, Count 1: Possession of ammunition without a licence; Count 2: Possession of a firearm without a licence; Count 3: Carrying a firearm in a public place. The 4th count related to possession of cannabis sativa with intent to supply, contrary to the **Drug (Prevention of Misuse) Act**.[2] The appellant was found guilty on counts 2 and 3 only.

The Appeal

[5] The appellant's notice of appeal filed on 10th July 2023 set out a myriad of grounds of appeal which continued to evolve prior to the hearing of his appeal[3]. They, however, can be summarised as follows:

> "Ground (1) Bias Jurors
> Ground (2) Bias Judge
> Ground (3) Wrongful Conviction

[2] Cap 4.07 of the Revised Laws of Montserrat.

[3] A document titled submissions filed on 6th July 2022; a document titled additional further grounds filed on 16th November 2022; a document titled additional further grounds filed on 17th November 2022; a document titled submissions filed by the appellant on 4th August 2023.

Ground (4) Unlawful procedure in stopping and restarting a trial
Ground (5) Using previous transcript during a trial
Ground (6) Judge misled jury
Ground (7) Nullity
Ground (8) Judge took into account irrelevant consideration
Ground (9) Firearm expert testifying with expired ID
Ground (10) Conviction unfair & unsafe in all circumstances
Ground (11) Convicted under wrong section by law
Ground (12) Convicted under wrong charges"

[6] At the hearing of the appeal on 9th February 2026, the appellant informed the Court that he would no longer rely on the ground dealing with juror bias. The remaining grounds of appeal, due to significant overlap and duplication in the arguments presented in support, can be helpfully condensed and addressed under the following broad headings: (i) bias of the judge; (ii) wrongful conviction; (iii) failure to disclose transcript; (iv) misleading of the jury; (v) irrelevant considerations by the judge; and (vi) unqualified expert witness.

[7] I am of the view that grounds (i) – (v) hold no merit and can be dismissed summarily for the reasons which follow. I will address ground (vi) later in this judgment.

Bias of the Judge

[8] The crux of the appellant's submissions is that the learned trial judge appeared to be biased and that this made his conviction unsafe. In support of this ground, the appellant identified a number of reasons which he contends supported this conclusion. First, he noted that the crime scene investigation expert, Mr. Mataniah Antoine, explained in his evidence that the reason he took photos of the seized items were simply to demonstrate the nature of the items. It follows, the appellant argued, that the photographic evidence would carry no weight and yet the judge was convinced that the items were a shotgun. Second, the appellant also noted that there was no video evidence (which he says is important in ballistics) and yet the judge turned down the appellant's no case submission. Third the appellant argued that the judge employed an unlawful procedure and exhibited bias in 'stopping and restarting the first trial' without sufficient evidence to do so which effectively 'jumped the powers of the appeal

court' by restarting the trial without sufficient evidence. The appellant further submitted that the judge's repeated interventions during the trial meant that he had descended into the arena.

[9] The arguments advanced in support of this ground demonstrate the appellant's lack of familiarity with the practice and procedure in a criminal trial and the respective roles of the judge and the jury. There can be no doubt that the judge who has conduct of a criminal trial is tasked to manage the proceedings, and to assist the jury on the law. He is not, however, the fact-finder. That role falls within the purview of the jury which must consider and weigh the evidence and after applying the legal guidance arrive at factual determinations which will ultimately inform the guilt or innocence of the accused. In this particular context, the role of the judge was to decide whether, in the light of the firearm expert's description of the object, it is capable of falling within the statutory definition of a firearm, but it was for the jury to decide whether it in fact did.

[10] It follows therefore that it would be for the jury (and not the judge) to determine whether the prosecution had demonstrated that he was effectively in possession of a firearm. In relation to the rejection of the submission of no case to answer, the question was whether, taken at its highest, the prosecution's case could be said to have advanced a case from which a reasonable jury, properly directed, would have been entitled to draw the inference, beyond a reasonable doubt, that the appellant committed the offences with which he had been charged.

[11] It is apparent that there was an initial trial which commenced on 13th July 2021 and which appeared to have been aborted. Unfortunately, a copy of the transcript of these proceedings was not placed before the Court and so the Court is not sufficiently clear as to the basis upon which the judge would have brought an end to that first trial. The appellant contends that the first trial was 'illegally stopped' by the trial judge but has provided no proper basis which supports this contention. What is clear is that any such finding could have no relevance in this appeal as this issue would not have been the subject of any challenge in the court below and would not have been the subject of an appeal.

[12] The relevance of the first trial arises only in the context of the appellant's contention that the transcript of the proceedings in this first trial would have been utilised in the new trial despite the fact that it would have been unreliable. At the commencement of the retrial, the appellant would have advanced his concerns about the accuracy of the transcript highlighting instances where he contends that words would have been omitted or added by the transcriber.

[13] Again, the appellant's submissions demonstrate his lack of appreciation of the criminal process. At page 11 (lines 19 – 26) of the transcript, the following exchange is recorded:

> "**Ms. Moore:** My Lord if I may assist, I don't know if Mr. Brade is aware that the transcript is not something in evidence that would go to the jury if that is a concern of his. I don't think that's clear to him that it was really made to assist him and is not being used as evidence.
> **The Court:** Thank you for saying that. Did you know that?
> **Mr. Brade:** Yes sir, that's what I was querying about also.
> **The Court:** Did you know that the transcript will not be going to the jury?
> **Mr. Brade:** No, I didn't know that, now I hear. That's what I was wondering."

[14] The utility of the transcript is again prescribed at page 12, lines 17-19 to page 13, line 8 of the transcript where the following exchange is recorded:

> "**The Court:** ….The short point is Mr. Brade the transcript is as it is and it is what we are going to use if you need to use it as a general record of what was said previously we can always listen to the recording but there is no further point to be taken, it seems to me, about the transcript at this point.
> **Mr. Brade:** Just what I'm saying I know what you're saying but what I just heard it said you're saying it's a homemade but do you know any shotgun.
> **The Court:** Any type of shotgun.
> **Mr. Brade:** And this says homemade, that's all I was saying earlier it's homemade.
> **The Court:** Mr. Brade I'm quite alive to how this case could get played out endlessly by an overargumentative presentation. Now on the subject of the transcript, the transcript is in my view adequate for the purposes of showing any previous inconsistent statement by witnesses. If there is any problem about the exact language that's been used in the record in the transcript we are going to be able to listen to the audio recording. On the two points you have raised on page 19 and 24 in my judgment you have not raised a point of any substance or any weight. The word female does not appear on page 19 at the question you've identified and on the subject of reference to the expression homemade

> you were saying there was no reference to homemade shotgun, I was saying it's in my notes and we just heard reference at the beginning of the question to homemade shotgun and that was the context in which the evidence was being examined. I remember it and you can hear it and that's the end of this discussion Mr. Brade."

[15] It is not at all clear to me how this could be demonstrative of bias on the part of the judge.

[16] The threshold for establishing bias on the part of a trial judge is well established in a myriad of cases from this Court and in England and Wales. As correctly submitted by the learned Director of Public Prosecutions, the test for bias as enunciated in the case of **Porter v Magill**,[4] - is, whether a fair minded and informed observer, having considered all the relevant facts, would conclude that there is a real possibility that the judge was biased.

[17] Judicial bias is therefore not established simply where a defendant is aggrieved by the outcome of his trial. The party alleging judicial bias must present evidence from which it can be discerned, objectively, that the appearance of bias is real and substantial and not fanciful or hypothetical. In this case, the appellant has only made bare assertions and has not presented any cogent evidence to support his contention that the judge was biased.

[18] Counsel for the respondent submitted that, if there was any apparent bias, it would have operated in the appellant's favour because a comprehensive review of the transcript of the hearing reveals that the learned judge made several interventions on the appellant's behalf and did all in his power to assist the appellant as best as he could as the appellant was unrepresented, ensuring that he was given a fair opportunity to present his defence. I therefore find no merit in this ground of appeal. Applying the **Porter v Magill** test, I am unable to conclude that there was any apparent bias exhibited by the judge which ultimately led to the appellant's conviction being unsafe and unsatisfactory.

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[4] [2001] UKHL 67, since applied in Multibank FX International Corporation v Von der Heydt Invest S.A. BVIHCMAP2022/0001 (delivered 29th April 2022, unreported); Stuart A. Lockhart v Valentina Nonini and Maurizio Pandini et al ANUHCVAP2019/0004 (delivered 27th May 2020, unreported); Sonya Young v Vynette Frederick SVGHCVAP2011/022 (delivered 31st May 2012, unreported).

Wrongful Conviction

[19] Despite the rather broad terms of this heading, the challenge raised by the appellant here is rather specific. Effectively, he contends that he was wrongfully convicted for firearm offences because, the items recovered from the motor vehicle he was driving were legal everyday items which cannot be classified as a firearm within the statutory definition prescribed under sections 19 and 4(1)(a) of the **Firearms Act.** Additionally, the appellant submits that there was no video evidence of a ballistics test done by the firearms expert which is an important feature for a conviction under section 4(1)(a) nor was there any evidence of the appellant himself using the items to create a firearm. I am satisfied that there was no meritorious misdirection of the law disclosed in these arguments.

[20] A firearm is defined in the **Firearms Act** as far as is relevant, as follows:

> "**'firearm'** means a lethal barrelled weapon of any description from which any shot, bullet, or other missile can be discharged and includes –
>
> (a) any prohibited weapon, whether it is such a lethal weapon or not;
> (b) any component part of such lethal or prohibited weapon;"

[21] In **Leroy Clint v The State**[5] de la Bastide CJ, giving the judgment of the court said this:

> "It is incumbent on an expert who sets out to establish, either by a written report or by viva-voce evidence, that an object is a firearm within the meaning of the Firearms Act to indicate by what 'door' the object enters the definition... If one leaves aside components and accessories, there are two categories of object that fall within the definition of firearm. One is a lethal barrelled weapon from which ammunition can be discharged and the other is a prohibited weapon... More often than not, a firearm will fall into the first category, that is a lethal barrelled weapon from which ammunition can be discharged…. In the case of a homemade weapon, it is necessary for the expert to go further and to point to the individual components of the gun which match the features of a firearm as described in the definition, and explain the capabilities of the gun by reference to what the definition requires for classification as a firearm. If it is safe for the gun to be fired, it would be helpful for the armourer to have fired it and to include in his report the effect which this produced, although this is a matter which is best left to the direction of the armourer. He should confine himself, however, to describing the

[5] (2001) 62 WIR 366.

> object which he has examined, although of course with an eye to the statutory definition. He should leave it to the judge to decide whether in the light of his description the object is capable of falling within the statutory definition of firearm, and to the jury to decide whether it in fact does."

[22] In the present case, it is readily apparent from a review of the transcript of proceedings, that the evidentiary requirements set out in **Clint** as it relates to a homemade weapon were satisfied such that the items can be properly classified as a firearm within the statutory definition of the **Firearms Act**. At page 157 of the transcript, the firearms expert, Inspector Stevon Warner says this:

> "One the day in question I received 5 exhibit bags... I received another item which number SW 4. This item was a metal pipe which represented the barrel of the homemade device. Evidence number 3 is a piece of white tissue with a piece of round wood wrapped in black tape with a screw in the middle. The screw represents the firing pin of the device. I also received a next evidence bag containing aluminium coupling... and the other is a silver hammer... This hammer is actually the hammer for the homemade device which would strike the firing pin."

[23] At page 158, Inspector Warner continues:

> "It's a yellowish 12-gauge Gevelot cartridge.
>
> ....
>
> I placed it in the assembled device and it fit snugly."
>
> ...
>
> I removed that cartridge and I tested 2 independent cartridges. One, a black smokeless powder 12-gauge cartridge and I put in place to lock it and I hit the firing pin with the hammer and it exploded. This is an indication that the device is working correctly. Why I used the blank cartridge first is so that in case it malfunction it would not damage me. After that I place the number 4 cartridge in the device, hit it with the hammer and it also exploded... This cartridge have in 27 pellets. I managed to get back 20 of the 27 pellets and I aimed it at a cardboard box with a piece of white paper to the front (sic) it. I hit it and it exploded causing damage to the white paper, causing damage to the cardboard..."

[24] Later, at page 164 of the transcript, he confirmed during cross-examination: "I fired a blank round a blank smokeless cartridge and I fired a live 12-gauge cartridge at that box".

[25] The learned judge below was clearly satisfied that the items when assembled were capable of forming a lethal barrelled weapon of the homemade variety from

which ammunition can be discharged, which is captured by the definition of a firearm. I am not satisfied that there would be any basis upon which this Court could interfere with this conclusion. It is of no assistance to the appellant that the items were found as separate items which were unassembled.

[26] The law has had to keep step with the increasing ingenuity of offenders who constantly come up with ways of fashioning ordinary household items and implements so as to do harm. A firearm under the **Firearms Act** is defined as any "lethal barrelled weapon" capable of discharging a shot, bullet, or other missile. Lethality is generally defined as the ability to discharge a projectile with a kinetic energy of more than one joule at the muzzle of the weapon. This definition encompasses traditional rifles and pistols, as well as shotguns, antique replicas, and certain air weapons but the definition also applies to the component parts of such weapons (e.g., barrels, chambers, and firing mechanisms). As explained by Rawlins JA [Ag.], as he then was, in **Quincy Duncan v Chief of Police**,[6] where he examined the definition of a firearm under the Saint Christopher and Nevis Firearms Act, which is similar to the definition in the Montserrat **Firearms Act**:

> "Parliament not only intended to prohibit a person from having a complete weapon that is capable of firing a projectile or missile that is lethal. It also intended to prohibit a person from having in possession any part of such weapon that is capable, if put into place, to assist in the assembly of such a weapon. Parliament further intended to prohibit the possession of even an accessory such as a silencer."

[27] I therefore agree with the respondent that the court was entitled to rely on the viva voce evidence of the expert, along with the reports and photographs exhibited in support of his conclusions.

[28] Moreover, while it may well be useful, it is not mandatory for there to be video evidence that the firearm was capable of actually discharging a projectile or missile. The appellant has not presented any judicial or other authority to convince this Court otherwise. This is more so when there are actual photographs presented which would assist the juror in illustrating the relevant

[6] SKBMCRAP2004/0001 (delivered 28th July 2004, unreported).

actions taken in assembling the firearm and its eventual application. This ground also fails.

Misleading The Jury and Irrelavant Considerations

[29] The appellant complained that the judge misled the jury by indicating that a gun does not have to have a trigger but then later commented that the hammer represented the trigger and further by showing the jury a demonstration of the 12-gauge Gevelot ammunition that was allegedly 'planted' into the pipe, deeming the firearm a shotgun.

[30] The definition of a firearm has been set out above in this judgment at paragraph [20]. Additionally, at paragraph [22] above, while the expert's evidence did not expressly state that the 'hammer' was the trigger, he did indicate that this was the device used to strike the firing pin. In any event, the appellant has not advanced any substantial arguments on this point that would arouse a lurking doubt that justice may not have been done.

Failure To Disclose the Transcript

[31] The appellant strenuously objected to the use of the transcript from the first trial of this matter during the proceedings in the second trial. He argued that the transcript from the first trial was not disclosed to him.

[32] This issue may be disposed of shortly. The transcript of proceedings reveals the following exchange which took place between the appellant and the court at the start of the trial on 8th March 2022:

"**The Court:**	Is there any reason you think the trial shouldn't start today?
Mr. Brade:	Yes. I still haven't completed going through the transcript and so far as I reach I still seeing errors...
Mr. Brade:	Just back to the transcript and I haven't completed it and one should be aware of what's taking place in the case cause remember it started and then stop so and there has been a long time.
The Court:	Sure but you've had the transcript for little time now?
Mr. Brade:	Just over a month but one has to work and back and forth and so and so I haven't completed.

The Court:	Some might say having it overnight is enough but you had it certainly longer than a week and it only runs 85 pages... Anything else you want to say?
Mr. Brade:	Yes cause mainly what I'm saying so far what I see on the transcript some words that in there that never transpired, nothing was said like that. So what I'm saying there are some errors not true and correct.
The Court:	Well you'll be able to make that point if needed. This often happens with transcripts, its a common problem. It wouldn't be any different for your case. Ever so often there is a word that doesn't get transcribed because it's indistincts (sic) and I'm afraid no transcript is 100% exactly what was said."

[33] It is evident from this excerpt of the transcript that contrary to the appellant's contention, the transcript of proceedings from the first trial had been made available to him and was at the material times within the possession of the appellant. Further, at page 11 of the transcript[7] it is revealed that it was made clear to Mr. Brade that the transcript from the previous trial is not entered into evidence and would not be placed before the jury but rather that it was provided to assist him in his defence. Therefore, it cannot be said that the appellant was unfairly prejudiced in any way that would make his conviction unsafe and unsatisfactory. Accordingly, this ground fails.

Unqualified Expert Witness

[34] I turn now to consider what I believe to be the appellant's main ground of appeal. This ground takes issue with the testimony of Inspector Stevon Warner.

Appellant's Submissions

[35] On this ground, the appellant submits that the firearms expert presented an expired identification of his expertise at trial. This, the appellant submits, goes to the heart of the proceedings in that in those circumstances, the expert's

[7] At lines 19-26.

evidence was not legally acceptable and proves that the firearms expert was a fraud.

Respondent's Submissions

[36] The respondent submits that Inspector Warner, the firearms expert, was a duly certified firearms examiner with 23 years of experience. The respondent contends that although, the record does not reflect that the prosecution made a formal application to have Inspector Warner declared an expert, this omission does not render his evidence inadmissible. The respondent relies on **R v Oakley**[8] in support of this contention. The respondent submits that Inspector Warner at the start of his examination-in-chief spoke to his qualifications and experience. Later in the trial, his certifications were also admitted into evidence by formal admission at the request of the appellant, further establishing to the jury his expertise.

[37] Additionally in relation to the appellant's assertion that the expert witness presented an expired ID card, the respondent submits that when the appellant asked the expert witness for his North America School of Firearm badge, what the expert presented was his ID used to enter the airports in Antigua. According to the respondent, this was unrelated to his expertise.

Discussion

[38] This ground of appeal raises pertinent issues concerning the treatment of expert witnesses in criminal trials, namely: a) whether Inspector Warner was admitted as an expert; b) whether Inspector Warner's evidence was in fact treated as expert testimony, and if so; c) whether the learned judge properly assisted the jury in assessing the Inspector's evidence i.e. were the appropriate directions given and if not, whether such failure was fatal.

Admission as an Expert

[8] [1979] 6 WLUK 43, (1980) 70 Cr App R 7, [1979] RTR 417, [1979] Crim LR 657, [1979] CLY 458, applied Myers v R; Brangman v R; Cox v R [2015] UKPC 40.

[39] It is not in dispute that Inspector Warner was not formally admitted as an expert. The question then becomes whether the evidence of Inspector Warner ought to have been admitted. In this regard, the case of **R v Oakley** is instructive. In that case, the appellant's car collided with another vehicle, killing the driver. He had no recollection of the circumstances and there were no effective witnesses. The prosecution called an experienced police officer to give expert evidence, and the appellant was convicted. He appealed on the ground that part of the officer's evidence, concerning his opinions on the causation of accidents, was wrongly admitted. The Court of Appeal, dismissing the appeal, held that the police officer was not prevented from giving evidence as an expert if the subject was one in which he had expert knowledge and it was relevant to the case. The court concluded that the officer kept within his expertise.

[40] In those circumstances, the police officers available, including PC Robinson, did their own work of reconstruction to see to what extent the cause of the accident could be explained. There was no doubt that PC Robinson was highly qualified and experienced in accident investigation/ reconstruction. His qualifications were extracted from him by counsel for the Crown at the beginning of his evidence in chief. PC Robinson indicated, inter alia, that he was with the police force 'just one month shy of 24 years'; that he had attended well in excess of 400 fatal accidents and; that he was a qualified accident investigator, having passed the examination that was required of him. The appellant however contended that the learned judge wrongfully admitted that part of PC Robinson's evidence which related to his opinion evidence as an expert. In addressing this ground of appeal, the English Court of Appeal unequivocally stated that:

> "... we would like to make it quite clear straight away that there is no question of a police officer being prevented from giving evidence as an expert if the subject in which he is giving evidence as an expert is a subject in which he has expert knowledge and if it is restricted and directed to the issues in the case."

[41] Indeed, police officers have been accepted as expert witnesses in several different contexts and in many common law jurisdictions including Montserrat. This is reflected in the recent Privy Council judgment in **Myers v R; Brangman**

v R; Cox v R (in which Oakley was applied) where at paragraph 57, the Board observed:

> "…In such a case the expertise in question is as to the behaviour of motor cars, the effects of road surfaces and the like. In other cases, however, a police officer has been permitted to give expert evidence about criminal behaviour. An example is evidence of the customary practices of drug users, in relation to such matters as packaging, methods and quantities of usage and supply, and prevailing price: see R v Hodges [2003] EWCA Crim 290, [2003] 2 Cr App R 247, in which this type of evidence was held admissible. Evidence of the practices, mores and associations of gangs, whether general or particular, is in a similar category. It has been received in several jurisdictions and there can in principle be no objection to it being given by a police officer, providing that the ordinary threshold requirements for expertise are established, and providing that the ordinary rules as to the giving of expert evidence are observed."

[42] The Board, however, went on to carefully consider these provisos, noting at paragraphs 58 – 59 that:

> "58. …. But the officer must have made a sufficient study, whether by formal training or through practical experience, to assemble what can properly be regarded as a balanced body of specialised knowledge which would not be available to the tribunal of fact. The police witness in Oakley had passed an examination and had attended and analysed thousands of road accidents. The officer in Hodges had analysed prices over a period of 12 years and checked every drugs file in his area. In both cases the necessary expertise was easily established. But care must be taken that simple, and not necessarily balanced, anecdotal experience is not permitted to assume the robe of expertise. An example is given by the Canadian case of Sekhon v The Queen [2014] 1 SCR 272, where in the course of otherwise perfectly permissible expert evidence as to drug practices, there was adduced from the officer the fact that he had never encountered an innocent courier. That was clearly not a balanced, tested or researched proposition as to the methods of drug importers, but simply his personal experience. It was not admissible and indeed proved nothing about the particular defendant on trial.
>
> 59. Secondly, whilst a police officer may be an expert, by training or experience or both, if he is then he comes under the same duties to the court as does any other expert. Those duties were helpfully set out by Cresswell J in the commercial case of The Ikarian Reefer [1993] 2 Lloyds Rep 68 at 81 but apply equally in the criminal context: R v Harris [2005] EWCA Crim 1980, [2006] 1 Cr App R 55, paras 271-272, where they were summarised as including the following:
>
> > "(1) Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

> (2) An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate.
> (3) An expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider material facts which detract from his concluded opinions.
> (4) An expert should make it clear when a particular question or issue falls outside his expertise.
> (5) If an expert's opinion is not properly researched because he considers that insufficient data is available then this must be stated with an indication that the opinion is no more than a provisional one.
> (6) If after exchange of reports, an expert witness changes his view on material matters, such change of view should be communicated to the other side without delay and when appropriate to the court."

60. Compliance with these exacting standards can be difficult for a police officer who is effectively combining the duties of active investigator (if not of the current case) with those of independent expert. It is particularly important that such a witness should fully understand that once he is tendered as an expert he is not simply a part of the prosecution team, but has a separate duty to the court to give independent evidence, whichever side it may favour. In particular a police expert needs to be especially conscious of the duty to state fully any material which weighs against any proposition which he is advancing, as well as all the evidence on which he has based that proposition. When considering an application by the Crown to adduce the evidence of a police expert, it is incumbent upon the judge to satisfy himself that these duties are recognised, and discharged."

[43] Applying this learning to the matter at hand, I agree that the evidence of Inspector Warner was admissible in relation to the issue of whether the items found in the appellant's motor vehicle could be classified as a firearm, although he had not been formally admitted as an expert. His qualifications were extracted by counsel in examination-in-chief and recorded at pages 156 -157 as follows:

"**Answer:** My name is Stevon Warner.
Question: And your occupation?
Answer: Insp. Of Police in the Royal Police force of Antigua and Barbuda for the past 39 years. I am a certified firearm examiner and also a gun expert a firearm expert.
Question: What qualifications do you have pertaining to firearms examination?
Answer: I completed a course in the North American School of Firearms. I also completed courses in Barbados with firearms

> examination and lately the last course I did was a course in Trinidad with the UNLIREC the United Nations Regional Center for Peace Disarmament and Development in Latin America and the Caribbean.
> **Question:** How long have you been a firearms expert?
> **Answer:** 23 years exactly. I have since completed 222 firearms examinations."

[44] The issue would have been put beyond doubt during the appellant's cross-examination of Inspector Warner. At pages 162 – 166 of the transcript, the appellant would have taxed Inspector Warner as to his qualifications in the presence of the jury. At line 19 of the transcript the Inspector would have made plain that he is the only firearms expert in Antigua and Barbuda, and he would also have confirmed his position at line 30 and page 157, lines 5 – 9.

[45] Furthermore, in his summation, the trial judge made reference to the different exhibits including exhibit 17 which were 'the Stevon Warner documents being 11 pages containing a CV, his identification and some certificates.'[9] I therefore find merit in the respondent's submissions that where the witness demonstrates sufficient specialised knowledge or experience, a formal declaration of expertise was unnecessary. The inspector had not only to set out his qualifications to give expert evidence, by training and experience, but at pages 157 – 159 of the transcript, he provided a detailed explanation of the testing procedures which he applied in arriving at his conclusions and he confirmed that this was based on his personal observations. His conclusions are succinctly set out at page 159 of the transcript in the following terms:

> "**Answer:** I came to the conclusion that the homemade device is a firearm, a shotgun that is prohibited operating a (sic) weapon as defined by the Firearms Act cap 10.02 of the laws of the British Overseas Territory of Montserrat. I also came to the conclusion that the yellow Gevelot cartridge is an ammunition as defined by the Firearm Act 10.02 of the laws of the British Overseas Territory of Montserrat. I concluded that the assembled device is a shotgun as the Firearm Act Cap 10.02 of the British Overseas Territory of Montserrat. The assembled device is a shotgun and is capable of firing the yellow Gevelot ammunition that was presented with the exhibit on the day that Mr. Charles came to me at the police headquarters under the Firearm Act Cap 10.02 of the laws of the British Overseas Territory of Montserrat."

[46] On this basis coupled with the testing conducted and the report prepared on his findings, I am satisfied that Inspector Warner sufficiently demonstrated expertise

[9] Transcript of proceedings, page 224, lines 7- 8.

in these areas to give evidence about them, and I find no fault in the learned trial judge allowing and accepting his evidence as a firearms expert.

[47] Having regard to these findings, it goes without saying that I am satisfied that at all relevant times, the court treated the evidence of Inspector Warner as expert testimony. Certainly, it is clear that throughout the course of the proceedings, as recorded in the transcript the court referred to Inspector Warner as "the firearms expert" and it would have been pellucid to the jurors[10] as well as the appellant that he, (Inspector Warner) was being offered up as an expert in this field.[11]

Directions to Jury on How to Treat Expert Evidence

[48] The above findings, however, bring into sharp focus the next issue, which is whether the learned judge failed to properly assist the jury or at all in assessing the evidence of the expert witness by giving insufficient directions to that effect, and if so, whether such failure is fatal to the appellant's conviction.

[49] While expert witnesses are highly trained, educated and specialised in their particular field of expertise, it is prudent that a trial judge reminds the jury that they are the sole arbiters of fact and that the role of an expert witness is simply to assist the court by furnishing and/or explaining scientific or highly technical information which is relevant to the issues in the case that may be used by the jury to make an independent determination of the facts. The role of a judge in this regard, is to provide directions to the jury to ensure that such evidence is properly understood, evaluated and weighed alongside other evidence in the case. The directions must address the role of the expert evidence, its weight and the jury's discretion in accepting or rejecting it.

[50] In **Damian Hodge v The Queen**,[12] Baptiste JA stated at paragraph 38 that:

> "The purpose of expert evidence of fact (e.g. observation, test, calculation) and opinion is to assist the jury in areas of science or other technical matters upon which they cannot be expected to form a view without expert assistance. <u>Nevertheless, the ultimate decision on the</u>

[10] Transcript of proceedings, page 237, lines 14 – 24 and page 238, lines 7 - 22

[11] See for example: Transcript of proceedings, page 206 and page 218, line 6 and line 25.

[12] BVIHCRAP20009/001 (delivered 10th November 2010, unreported).

> <u>matters about which the expert has expressed an opinion remains one for the jury and not for the expert.</u> It is always for the jury to decide the facts in light of the evidence as a whole. Whilst they must, of course, pay due regard to the expertise of an expert witness, they are neither obliged to agree with him, nor obliged to share doubts or reservations expressed by him." (Underlining added)

[51] Similarly in **R v Oakley**, the court agreed with the submissions of the appellant as being the correct in law that "the judge should have directed the jury that an expert, however skilled or eminent, cannot usurp the function of the jury; and that the duty of an expert is to furnish information and scientific criteria for testing the accuracy of his conclusion to enable the jury to form their own independent judgment as judges of fact upon their retirement."

[52] Upon a review of the transcript, I am satisfied that the learned judge erred in that he failed to properly direct the jury on how to treat with the evidence of the expert. The learned judge at the beginning of his summation gave preliminary directions to the jury as to their role. The learned judge stated:

> "You are the judges of the facts... You on this jury decide the facts. I direct you as to the law. You take the law from me as presented here in these directions, we take the facts as found by you. It is entirely for you to decide what evidence you accept and what you reject."

[53] However, apart from this general direction, there is no record in the transcript of any specific direction tailored to instructing the jury on what is expected of them in treating with the evidence of an expert witness. Although there is no standard format, the judge must ensure to emphasise or remind the jury of the role of the expert evidence, the nature of the evidence, its weight, that they are not bound by the evidence of the expert and that they have the discretion to accept or reject it. The typical direction would usually include the following elements:

> "You have heard testimony from [Expert Name], who has testified as an expert in the field of [Field of Expertise]. Expert witnesses like [Expert Name], provide the courts with evidence and opinions in specific areas where we do not have specialist knowledge. Experts carry out examinations and some conduct tests to see whether they yield results which are relevant to the issues you have to consider. They are permitted to interpret those results for our benefit, and to express opinions about them, because they are used to doing that within their particular area of expertise. Experts are not here to argue the case for

> one side or the other but to assist you to understand how they have reached the opinions they have expressed.
>
> In determining whether to accept this witness's testimony, you should consider their education, training, experience, and knowledge in the discipline. You may also consider the reasons given for their opinion, the facts or other matters upon which it was based, and whether the opinion is supported by logical reasoning. You will need to evaluate expert evidence for its strengths and weaknesses, if any, just as you would with the evidence of any other witness. Unlike ordinary witnesses who testify about what they saw, heard, or did, an expert is permitted to give an opinion. However, this opinion is not binding upon you. You are not required to accept an expert's opinion as conclusive. You should give it the weight you believe it deserves. You may reject it entirely if, in your judgment, the reasons given for the opinion are not sound or are outweighed by other evidence. Remember that while experts deal with particular parts of the case, you receive all the evidence and it is on all the evidence that you must make your final decisions."

[54] The Judge's summation in this appeal does not demonstrate that similarly appropriate guidance would have been given to the jury and it is clear that the preliminary general directions given by the judge would not operate as a catch-all and would fall short of what would constitute sufficient guidance to a jury from the trial judge on how to approach expert evidence.

[55] What then is the effect of this regrettable circumstance? Was the failure by the judge to give directions on how to treat with the expert evidence fatal to the fairness of the trial? The Court is obliged to consider the consequential effects of this error on the safety of the conviction.

[56] The failure of a trial judge to direct the jury on evidence of an expert witness was considered in the case of **Damian Hodge v The Queen**. There, this Court observed, although not canvassed as a ground of appeal that the learned judge failed to direct the jury on how to treat the evidence of the DNA expert, Mr. Noppinger and the expert evidence of Dr. Bell. The Court noted that the DNA evidence linking the appellant to the crime was critical to the prosecution's case and considered whether the omission of an expert witness direction was fatal. The Court found that it was not. The Court noted that while a direction as to how the jury should treat the expert evidence of Mr. Noppinger would have been

most desirable, the omission was not fatal as the judge's directions on the defence were quite adequate.

[57] Critical to the Court's reasoning was the strength of the case against the appellant. The Court held as follows:

> "The omission to give an expert direction and to direct the jury on how to treat the evidence of an absent witness did not render the trial unfair. The purpose of expert evidence of fact (e.g. observation, test, calculation) and opinion is to assist the jury in areas of science or other technical matters upon which they cannot be expected to form a view without expert assistance. Nevertheless, the ultimate decision on the matters about which the expert has expressed an opinion remains one for the jury and not for the expert. It is always for the jury to decide the facts in light of the evidence as a whole. Whilst they must pay due regard to the expertise of an expert witness, they are neither obliged to agree with him, nor obliged to share doubts or reservations expressed by him. The directions on the defence were quite adequate. This was a strong case against the appellant and ample evidence on which the jury was entitled to convict him."[13]

[58] The Court therefore opted to apply the proviso and dismiss the appeal.

[59] The judgment in **Damian Hodge** suggests that while it is good practice and strongly encouraged that appropriate directions dealing with expert witness testimony ought to be given the omission or failure of a trial judge to comply does not automatically render the conviction unsafe. The key consideration is whether the failure adversely affected the overall fairness of the trial. Where a trial judge has otherwise properly directed the jury on the main issues they must resolve and the adequacy of the judge's summing up is such that it can be said that the defence was clearly put to the jury in light of all of the relevant arguments and evidence, the omission may not be fatal to the safety of the conviction.

[60] In this appeal it is clear that despite the judge's omission to give a specific expert evidence direction, the judge did make clear to the jury what they were required to be sure of when considering each charge. In relation to counts 2 and 3 on the indictment which related to the firearm offences for which the appellant was convicted, the judge reminded the jury of the definition of a firearm; that the first

[13] BVIHCRAP20009/001 (delivered 10th November 2010, unreported) [38].

question was whether they were satisfied the items are components which, when assembled creates a lethal barrelled weapon; he reminded them of the evidence of 'firearms expert Stevon Warner', that he reported that "the items when assembled represent a shotgun as a prohibited weapon under the **Firearms Act** capable of firing a Gevelot cartridge as he says he demonstrated by firing other 12-gauge shells", emphasised inter alia that if the jury accepted what Inspector Warner said, so that they were sure, then the items formed a firearm even though in component parts which individually might be innocent, if they were not sure then the appellant was not guilty. The learned judge also went on to consider the other components of the offences, that is, possession and whether the appellant had a licence. The judge further embarked on a recital of the evidence witness by witness and laid out the appellant's defence.

[61] In the circumstances, having found that the fairness of the trial had not been negatively affected, I am of the view that this is an appropriate case to apply the proviso set out at section 39(1) of the **Supreme Court Act** of Montserrat.[14]

[62] Section 39(1) of the **Supreme Court Act** provides:

> "The Court of Appeal on any such appeal against conviction shall subject as hereinafter provided allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal:
>
> Provided that the court may, notwithstanding that it is of the opinion that the point raised in the appeal may be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred."

[63] The board of the Privy Council in **Cassell and another v R**,[15] a matter on appeal from Montserrat, explained the test for miscarriage of justice in this way:

> "[28] The test for whether a miscarriage of justice has actually occurred is not simply whether the appellate court is itself persuaded of guilt. That would be to substitute trial by appeal judges for trial by jury. True it is that the responsibility for applying or rejecting the proviso is laid squarely on the appellate court. That the appellate court is satisfied of

[14] Cap 2.01 of the Laws of Montserrat.

[15] [2017] 4 LRC 1 [28].

> guilt is certainly necessary, but is not by itself sufficient. **The test is normally whether the appellate court is, further, satisfied that any jury acting properly must inevitably have convicted the defendant if the flaw(s) in the proceedings had not occurred**."
>
> …
>
> [30] However, short of such unusual cases of a wholly perverted trial process, it is plainly true that the more minor the error the easier it is likely to be for the appellate court to address and answer the question whether any jury must inevitably have convicted if the error had not occurred. Conversely the more extensive the error(s) at the trial, the more difficult it is likely to be to be sure that any jury must have convicted, and indeed there sometimes comes a point where the appellate court does not even embark on an analysis of the proviso question, the answer being obvious and/or the view being taken that it would plainly be a miscarriage of justice, because unfair, to sustain the conviction." (Emphasis added)

[64] The evidence of Inspector Warner goes to the fundamentals of the charges in respect of which the appellant was convicted. Applying the test in **Cassell**, the question is whether no jury, acting properly, would have convicted the appellant had the flaws in the judge's summation not occurred. I am not convinced that the answer to this question is in the affirmative.

[65] The case was relatively straightforward, and the evidence did not involve highly technical or scientific matters. Moreover, the nature of the firearm, being homemade, required detailed evidence of fact (testing) as explained in the **Clint** case cited above, as opposed to mere reliance on expert opinion in order to satisfy the court that the items were a firearm. This in my opinion contributed to the cogency of the evidence and made for a strong case against the appellant. The judge would have summarised the respective cases adequately making it clear that the appellant's defence was multifaceted. He also gave the jury a detailed summing up of the relevant evidence and reminded them of the terms in which the evidence was given by the expert. He specifically addressed the treatment of Inspector Warner's evidence in regard to the firearm in the following terms:

> "**The Court:** …So, for both counts, the first question is are you satisfied so you are sure the pipe, coupling, cork with screw, plus hammer exhibits 4, 5, 6, 7 are each components which if assembles as respectively barrel, grip, firing pin and trigger create a lethal barreled prohibited weapon. The firearms expert Stevon Warner reports at exhibit 10a on page 2 that these items when assembled represent a

> shotgun as a prohibited weapon under the Firearms Act capable of firing the Gevelot cartridge as he says he demonstrated by firing other 12-gauge shells. If you accept what he says so you are sure then these items form a firearm even though unassembled and even though in component parts which individually might be innocent. If you are not sure it may be the reasonably possible the items do not form a lethal barreled weapon capable of discharging shot (sic) from 12-gauge ammunition, then the defendant is not guilty of counts 2 and 3."[16]
>
> "**The Court:** … As for the shotgun the police have fitted together these tools to concoct a weapon about which he was unaware; can you be sure this is not true. The cork with screw being merely to host black tape for electrics and the pipe and couplings just for lugs. Have they proved he knew the items made a shotgun and do you trust the evidence of Insp. Warner whose pass was out of date, who pretends to have conducted a firing pin, who did not video it says Brade."[17]

[66] Furthermore, despite the lack of a specific direction, I am satisfied that the jury was sufficiently cognizant of their role. Having reviewed the totality of the summation, it is apparent that the members of the jury would not have been in any doubt that the expert's opinion was not binding or conclusive and that they were entitled to reject it entirely if they were not satisfied as to his qualifications or the veracity of his testing evidence or the opinion formed as a consequence. The transcript reveals that Inspector Warner not only gave evidence in his report on the items being a firearm but also that he considered the Gevelot cartridge to be ammunition. The jury however disagreed, as reflected by the verdict, and the appellant was found not guilty of the offence of possession of ammunition without a licence. In my view this is indicative of the fact that the jury fully appreciated that they were not bound by the opinion of the expert.

[67] I am therefore satisfied that while the omission or failure of the judge to give the jury the standard warning on how to approach the expert evidence occurred, that failure would not be fatal and would result in no miscarriage of justice. In any event, in the circumstances, I find that this is an appropriate case to apply the proviso. This was a strong case against the appellant and ample evidence on which the jury was entitled to convict him

[16] Transcript of proceedings: page 218, lines 21-31 to page 219, lines 1-2.
[17] Transcript of proceedings: page 245, lines 33-39.

[68] Ultimately it was for the jury to evaluate the evidence before them and none of the matters urged upon the court by counsel for the appellant provides any ground for thinking that the conviction is unsafe. Further, having assessed all the facts and circumstances, there is nothing from the general feel of the case as experienced by this court to engender a lurking doubt about the conviction or uneasiness about whether an injustice has been done.[18]

Disposition

[69] For the foregoing reasons, the appeal is dismissed and the appellant's conviction is affirmed.

I concur.
Esco L. Henry
Justice of Appeal

I concur.
Cadie St. Rose-Albertini
Justice of Appeal

By the Court

Chief Registrar

[18] R v Criminal Cases Review Commission Ex p. Pearson [2000] 1 Cr. App. R. 141; Dookran v Trinidad and Tobago [2007] UKPC 15.