

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 116 of 2024**

B E T W E E N

OKINO LYNDERO WHYMNS

Intended Appellant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Intended Respondent

BEFORE: **The Honourable Mr. Justice Evans, P
The Honourable Mr. Justice Smith, JA
The Honourable Mr. Justice Turner, JA**

APPEARANCES: **Mr. Geoffrey Farquharson, Counsel for the Intended Appellant
Ms. Darnell Dorsette, Counsel for the Intended Respondent**

DATES: **10 June 2025; 2 December 2025; 3 March 2026; 8 June 2026;
1 September 2026**

Criminal Appeal — Application for an Extension of Time to Appeal — Appeal against Conviction — Possession of Firearm with Intent to Endanger Life — Attempted Murder – Inconsistent verdicts — Sufficiency of evidence — Firearm not recovered from shooting incident – No-case submission — Section 33 of the Firearms Act — Section 17 of the Court of Appeal Act — Rule 9 of the Court of Appeal Rules

The Intended Appellant was charged with attempted murder and possession of a firearm with intent to endanger life arising from a shooting incident in which the complainant sustained multiple gunshot wounds. Approximately ten days later, following a vehicle pursuit and collision, the Intended Appellant was arrested and a firearm and ammunition were recovered beneath the vehicle he had been driving. At trial, the jury acquitted him of attempted murder but convicted him of possession of a firearm with intent to endanger life, for which he was sentenced to seven years' imprisonment.

The Intended Appellant sought to appeal against his conviction but failed to file a Notice of Appeal within the prescribed time. He therefore applied for an extension of time within which to appeal.

The Intended Appellant advanced proposed grounds challenging the safety of the conviction, including alleged inconsistency between the verdicts, insufficiency of the evidence, and the refusal of the no-case submission. The Intended Respondent opposed the application on the basis that the proposed appeal had no realistic prospect of success.

Held: Application for extension of time within which to appeal refused. Conviction and sentence affirmed.

In determining whether to extend time within which to appeal, the Court considered the length of the delay, the reasons for the delay, the prospects of success of the proposed appeal, any prejudice to the Intended Respondent, and the overall interests of justice.

The Court held that the conviction for possession of a firearm with intent to endanger life was not rendered unsafe by the acquittal on attempted murder. Although arising from the same circumstances, the offences involved different legal ingredients: attempted murder required an intention to kill, while the offence under section 33 of the Firearms Act required possession of a firearm with intent to endanger life by means thereof.

The Court held that the verdicts were not legally inconsistent. A jury may assess evidence separately in relation to different counts and is not required to reach identical conclusions merely because the offences arise from the same incident.

The Court further held that the failure to recover the particular firearm alleged to have been used during the shooting did not, of itself, render the conviction unsafe. The question was whether, having regard to all the evidence and circumstances, there was a sufficient evidential basis upon which the jury could properly convict.

The Court held that the learned Judge did not err in refusing the no-case submission. The issue was whether there was evidence upon which a properly directed jury could convict, not whether the prosecution had proved the charge beyond reasonable doubt.

The proposed grounds of appeal therefore disclosed no realistic prospect of success and the application for an extension of time within which to appeal was refused.

Damien Stuart v The Attorney General SCCrApp No. 173 of 2010, considered.
R v Clarke and Fletcher (unreported, delivered by the Court on 30 July 1997), considered.
R v Galbraith [1981] 1 WLR 1039, considered.
R v G [1998] Crim LR 483, considered.
R v Hayward [1999] All ER (D) 1324, considered.
R v Hunt [1968] 2 All ER 1056, considered.
R v Salih [2007] EWCA Crim 2750, considered.
R v Stone (13 December 1954), CCA, considered.
Rodriguez Jean Pierre v The King [2023] UKPC 15, considered.
Scavella v R SCCrApp No. 124 of 2009, considered.
Sherry v The Queen [2013] UKPC 7, considered.
The Attorney General v Omar Chisholm MCCrApp No. 303 of 2014, considered.
Vithaldas v R [1987] LRC (Crim) 324, considered.

J U D G M E N T

Judgment delivered by The Honourable Mr. Justice Evans, P:

Introduction

1. This is an application for an extension of time within which to appeal against the decision of the Honourable Madam Justice Jeanine Weech-Gomez ("the learned Judge"), whereby the Intended Appellant was convicted on 19 July 2023 of possession of a firearm with intent to

endanger life, contrary to section 33 of the Firearms Act, Chapter 213. He was subsequently sentenced on 5 June 2024 to seven (7) years' imprisonment.

2. As the Intended Appellant did not file a Notice of Appeal within the twenty-one-day period prescribed by section 17 of the Court of Appeal Act, Chapter 52 ("the CoAA"), he filed an Amended Notice of Application for Extension of Time within which to Appeal on 10 March 2025. That application advances seven grounds challenging his conviction.
3. We have treated those grounds as proposed grounds of appeal pending our determination of whether an extension of time within which to appeal ought to be granted.

Background Facts

4. The charges arose out of a shooting which occurred on 11 August 2021, in which Moses Adderley ("the complainant") sustained multiple gunshot wounds. As a consequence of that incident, the Intended Appellant was charged with attempted murder and possession of a firearm with intent to endanger life.
5. The prosecution's case at trial was that the complainant had returned to his parents' residence when he realised that he had left his house keys inside his vehicle. Whilst standing in the yard of the property, a pink Nissan March motor vehicle arrived and a masked gunman emerged. Although the assailant's face was partially concealed, the complainant testified that he recognised him by his eyes and a distinctive tattoo. He identified the gunman as the Intended Appellant, whom he had known for approximately seven years through a mutual friend named Travar.
6. The complainant testified that the gunman stood approximately six feet away before firing multiple shots in his direction. He stated that he was struck five times, including twice in the chest. He managed to re-enter his vehicle, but the assailant continued firing as he attempted to escape, discharging a final shot into the driver's side of the vehicle where the complainant was seated.
7. Approximately ten days after the shooting, police officers engaged the Intended Appellant in a high-speed pursuit which ended when the vehicle he was driving crashed. Following the collision, officers recovered a firearm from beneath the vehicle, and the Intended Appellant was taken into police custody.
8. The prosecution further relied upon evidence that a confrontation was subsequently conducted in the presence of police officers, during which the complainant identified the Intended Appellant as the individual who had shot him.
9. At the conclusion of the trial, the jury acquitted the Intended Appellant of the charge of attempted murder but convicted him of possession of a firearm with intent to endanger life, contrary to section 33 of the Firearms Act.
10. It is against that factual background that the present application falls to be determined.

Leave to Appeal Out of Time

11. The Court's power to extend the time for filing a Notice of Appeal is contained in section 17(1) and (2) of the CoAA which provide, so far as material:

“17. (1) Where a person convicted desires to appeal to the court or to obtain the leave of the court to appeal under the provisions of this Part of this Act, he shall give notice of appeal or of his application for leave to appeal in such manner as may be prescribed by rules of court within twenty-one days of the conviction.

(2) The time within which notice of appeal or of application for leave to appeal may be given, may be extended at any time by the court.”

12. Section 17 of the CoAA is to be read together with rule 9 of the Court of Appeal Rules ("the CoA Rules"), which provides, in relevant part:

“9.(1) The Court may, on such terms as it thinks just, by order—

(a) extend the period prescribed by these Rules for the doing of anything to which these Rules apply;

...

(c) direct a departure from these Rules in any other way where this is required in the interests of justice.

(2) The power of the court, under the provisions of paragraph (1), to extend any period so prescribed or specified, is exercisable notwithstanding the expiration of the period so prescribed or specified.”

13. Although the Intended Appellant did not file his Notice of Appeal within the time prescribed by section 17(1) of the CoAA, section 17(2) gives this Court a discretion to extend the time for doing so. Rule 9 of the CoA Rules similarly empowers the Court to extend a prescribed time limit where it is just to do so.

14. In deciding whether to grant an extension of time, the Court is guided by the well-established factors identified in **The Attorney General v Omar Chisholm** MCCrApp. No. 303 of 2014. At paragraph 12, this Court (differently constituted) stated that the relevant considerations are:

“... the length of the delay, the reason[s] for the delay, the prospect[s] of success, and the prejudice, if any, to the respondent.”

15. Those factors are not exhaustive. In **Rodriguez Jean Pierre v The King** [2023] UKPC 15, the Judicial Committee explained that an application for an extension of time must ultimately be determined by what the interests of justice require. At paragraph 27, their Lordships stated:

“Furthermore, it should not be thought that the four criteria identified in Williams are the only relevant criteria when considering an extension of time. It will be necessary to consider the overall justice of the case. In the Board’s view, further relevant considerations will normally include the gravity of the offence and the severity of the sentence imposed. Considerations of legal certainty will also be highly relevant. There is an important public interest in the finality of legal proceedings, the efficient use of judicial resources, good administration and the interests of other litigants ... It will also be necessary to take account of the interests of victims of crime and their families, and of witnesses.”

16. Their Lordships went on to observe at paragraph 30:

“... each application will turn on its own facts and circumstances and, more importantly, that the discretion conferred by rule 9 to extend time is unfettered and extremely wide.”

17. The proposed merits of the appeal are also relevant. In **Sherry v The Queen** [2013] UKPC 7, Lady Hale stated at paragraph 14:

“The Board accepts that the merits of any proposed appeal are relevant to an application to extend time. At the very least, it must be shown that there is some merit in the proposed appeal before a court will consider whether the delay can be excused. If the appeal has no prospect of success, then it is in no-one’s interests to allow it to proceed ...”

18. In considering whether a proposed appeal has sufficient merit to justify an extension of time, the prospect of success must be realistic rather than fanciful, as explained by Lord Woolf MR in **Swain v Hillman** [2001] 1 All ER 91.

Length of Delay / Reason for Delay

19. Counsel for the Intended Appellant submits that the **“roughly day-long delay”** was neither substantial nor inordinate. It is further submitted that the delay arose through circumstances beyond the Intended Appellant's control, as explained in the affidavit filed in support of the application.

Prejudice to the Intended Respondent

20. Counsel for the Intended Appellant further submits that no prejudice would be occasioned to the Intended Respondent if an extension of time were granted.

21. Counsel for the Intended Respondent opposes the application on the basis that the proposed appeal has no realistic prospect of success, relying upon the principles identified by this Court in **Omar Chisholm**.

22. Having regard to the parties' submissions, we consider that the central question is whether the proposed appeal discloses a realistic prospect of success.

Prospects of Success

23. The proposed grounds of appeal are contained in the Intended Appellant's Amended Notice of Application for Extension of Time within which to Appeal filed on 10 March 2025. They are as follows:

“1. The verdict is irrational.

2. The learned Judge misdirected himself (sic) when she dismissed the No Case Submission of the Appellant.

3. The learned Judge erred by failing to consider the weakness and tenuousness of the evidence supporting the Possession of Firearms allegation against the Appellant.

4. In particular, the Learned Judge gave no consideration or no proper consideration whatsoever to the fact that the Appellant could not possibly be convicted for the offence as charged given the internal contradictions contained in the prosecution's case and the unreliability of its witnesses which this revealed.

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

6. The learned Judge erred in failing to direct the acquittal of the Appellant when there was in fact produced no sufficient evidence to support his conviction.

7. And such other grounds as may appear appropriate once the Learned Magistrate (sic) condescends to provide a written ruling setting out his (sic) reasons for the conviction.”

24. Although framed as seven separate grounds, the complaints advanced by the Intended Appellant raise two principal issues. First, whether the conviction for possession of a firearm with intent to endanger life is rendered unsafe by the jury's acquittal on the charge of attempted murder. Secondly, whether there was sufficient evidence upon which the jury could properly convict, having regard to the alleged weaknesses, inconsistencies, and matters raised in the no-case submission.
25. The Intended Appellant therefore challenges both the consistency of the verdicts and the evidential foundation upon which the firearm conviction rested.

Discussion & Analysis

Grounds 1 - The alleged inconsistency between the verdicts

26. The principal issue arising on the proposed appeal is whether the Intended Appellant has demonstrated that his conviction for possession of a firearm with intent to endanger life, contrary to section 33 of the Firearms Act, is unsafe.
27. The Intended Appellant advances two connected arguments. First, he submits that the conviction is inconsistent with the jury's acquittal on the charge of attempted murder. It is argued that both offences arose from the same shooting incident and depended substantially upon the same evidence. Accordingly, having rejected the prosecution's case on attempted murder, the jury could not properly have relied upon that same evidence to convict on the firearm count.
28. The Intended Respondent submitted that the Intended Appellant had failed to establish that the verdicts were legally inconsistent or that no reasonable jury could have reached the conclusions reached. The Intended Respondent submitted that the jury was entitled to assess the evidence separately in relation to each count and that the verdicts were not unreasonable merely because the jury acquitted on one count and convicted on another.
29. The Intended Respondent also relied upon section 114(2) and (3) of the Criminal Procedure Code, which permit a person charged with an offence to be convicted of a lesser offence not charged where the combination of particulars proved constitutes a complete lesser offence, or where the facts proved reduce the offence charged to a lesser offence. However, that provision does not arise for determination in the present appeal. The Intended Appellant was charged with both attempted murder and possession of a firearm with intent to endanger life. The question before this Court is not whether the jury could convict of a lesser offence not charged, but whether, having considered the evidence and the directions of the learned trial judge, the jury was entitled to convict on the firearm count while acquitting on the charge of attempted murder.
30. We do not accept the submissions of the Intended Appellant. We find in favour of the Intended Respondent. The starting point is that a jury is not required to reach identical conclusions on separate counts merely because those counts arise from the same factual circumstances. The question for an appellate court is not whether the verdicts appear unusual or whether another jury might have reached a different conclusion. The question is whether the verdicts are so inconsistent that they demonstrate that the jury must have misunderstood the evidence, failed to apply the law, or reached a conclusion which no properly directed jury could reasonably have reached.
31. An appellant alleging inconsistent verdicts must therefore establish more than the existence of different verdicts. The appellant must demonstrate that the verdicts are legally irreconcilable.
32. In **R v Hunt** [1968] 2 All ER 1056 at 1058, Lord Parker CJ considered an argument that a jury's verdicts were inconsistent and approved the approach of Devlin J in **R v Stone** (13 December 1954), CCA, unreported. The principle stated was that an appellant must demonstrate that the verdicts were such that:

“... no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion ... ”

33. That principle has been reaffirmed in subsequent authorities. In **R v Hayward** [1999] All ER (D) 1324, Evans LJ explained:

“25. The same principle is in play when an appellant, as here, appeals against conviction on the ground that the verdict was inconsistent with his acquittals on other counts. The appellant has to show not merely that the verdicts were inconsistent ‘but that they were so inconsistent as to call for interference by an appellate court. The court will interfere if it is satisfied that no reasonable jury who had applied their mind properly to the facts of the case could have arrived at the conclusion which was reached ...’”

34. Similarly, in **R v G** [1998] Crim LR 483, Buxton LJ cited **R v Clarke and Fletcher** (unreported, delivered by the Court on 30 July 1997), which explained that an appellant must establish:

“... (1) that the verdicts are logically inconsistent and (2) that they cannot be sensibly explained in a way which means that the conviction is not unsafe. Thus an appellate court will not conclude that the verdict of guilty is unsafe if, notwithstanding that it is logically inconsistent with another verdict, it is possible to postulate a legitimate train of reasoning which could sensibly account for the inconsistency. ... ”

35. The significance of those authorities is that appellate intervention is not justified merely because verdicts appear difficult to understand. A jury is entitled to accept some parts of the evidence and reject others, provided that its conclusions are available on the evidence and consistent with the directions given.

36. The present case must therefore be considered against that framework.

37. It is convenient at this stage to set out the statutory provision under which the Intended Appellant was convicted. Section 33 of the Firearms Act provides:

“If any person has in his possession any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property, he shall, whether any injury to person or property has been caused or not, be guilty of an offence, and shall be liable ...”

38. The offence of attempted murder required the prosecution to prove that the Intended Appellant acted with the specific intention to kill. The offence under section 33 required proof that the Intended Appellant possessed a firearm or ammunition with the intention that, by means

thereof, he would endanger the life of the complainant. It did not require proof of an intention to kill.

39. Although the offences arose from the same incident, they did not require the jury to answer the same question.
40. The learned trial judge expressly directed the jury on this distinction. In addressing the firearm count, the judge stated at page 17, lines 13-17 of the summation transcript dated 19 July 2023 (“the summation transcript”):

“The charge is an alternative one to that of attempted murder. And the prosecution need only prove, on the facts, that the defendant had in his possession a firearm and that he intended, by the use thereof, to endanger the life of the complainant. ...”

41. The judge further directed the jury at page 17, lines 17-22:

“... The question then is whether in this case there is evidence adduced from which inferences can be drawn, that the defendant is guilty of the attempted murder of the complainant. Or, alternatively, that with the firearm he intended only to endanger te (sic) complainant’s life.”

42. Those directions correctly identified the distinction between the two offences. A conviction for the firearm offence did not require proof of an intention to kill. The jury was therefore entitled to consider separately whether the prosecution had proved the specific intention required for attempted murder and whether it had proved the different intention required by section 33 of the Firearms Act.
43. The jury was entitled to accept the complainant’s evidence that a firearm had been used and that the Intended Appellant was the person who possessed and discharged that firearm in circumstances which endangered the complainant’s life, while remaining unpersuaded that the prosecution had proved the separate and higher intention required for attempted murder.
44. That approach is consistent with the authorities concerning the assessment of evidence by juries. In **Scavella v R** SCCrApp No. 124 of 2009, Allen P recognised that a jury is entitled to assess a witness’s evidence in relation to particular issues and is not required to treat that evidence as an indivisible whole. At paragraph 25, the Court adopted the observation in **R. v G** that: **“A person’s credibility, any more than their reliability, is not necessarily a seamless robe. ...”**
45. Similarly, in **R v Van Der Molen** [1997] Crim LR 604, the Court rejected the contention that a jury acts irrationally by relying upon part of a witness’s evidence after rejecting another part. The Court referred to the earlier decision in **R v Campbell** (unreported, delivered by the Court on 26 January 1996, No. 95/2581/Y4), in which the Court had observed:

“However, it quite clearly does not follow that because the jury must have disbelieved a witness or rejected his evidence, with the result that it acquitted upon one count, it is necessarily

acting irrationally to rely on the evidence of the same witness to convict on another count.”

46. That reasoning applies directly in the present case. The jury’s acceptance of the complainant’s evidence for one purpose did not require it to accept every inference advanced by the prosecution.
47. The verdicts were therefore not logically inconsistent. They reflected the jury’s assessment of two different offences requiring proof of different mental elements.
48. Accordingly, Ground 1, which alleges that the verdict was irrational, does not disclose a realistic prospect of success.

Grounds 3, 4, and 6 - The sufficiency of the firearm evidence

49. The Intended Appellant’s further complaint concerns the fact that the firearm used during the shooting was not recovered at the scene. It is argued that the firearm later recovered beneath the vehicle driven by the Intended Appellant was not connected to the shooting and could not, without more, establish the offence.
50. The Intended Respondent submitted that the absence of the firearm used during the shooting did not prevent the prosecution from proving the offence. Reliance was placed on **Damien Stuart v The Attorney General** SCCrApp No. 173 of 2010, where this Court (differently constituted) upheld a conviction notwithstanding that the firearm alleged to have been used was not produced in evidence. It was submitted that the issue was whether the evidence, taken as a whole, established that the Intended Appellant possessed a firearm and had the intention required by section 33 of the Firearms Act.
51. We do not accept the submissions of the Intended Appellant. We find in favour of the Intended Respondent. The failure to recover the particular firearm alleged to have been used during the shooting did not, without more, render the conviction unsafe.
52. In **Stuart**, this Court considered whether the learned trial judge had properly directed the jury where the prosecution had not produced the firearm alleged to have been used in the commission of the offence. The learned trial judge directed the jury:

“24. ... You will note, members of the jury, that the prosecution did not produce a firearm as evidence in court. It is not necessary for the prosecution to produce the offensive instrument that is alleged to have been used in the commission of the offences with which you are concerned. In the absence of physical evidence, it is up to you, members of the jury, to carefully consider the evidence of [the witnesses] and determine whether you accept their evidence as credible evidence on which you can rely. If you accept the evidence of these witnesses as being truthful, it is up to you to determine whether you are satisfied that the defendants were in possession of a barreled weapon of any description that was capable of inflicting injury

and from which any shot, bullet or other missile could be discharged.” [Emphasis added]

53. This Court upheld that direction as adequate and held that there was ample evidence upon which the jury could have found the defendants guilty of the offences.
54. The reasoning in **Stuart** is applicable. Although a firearm was recovered in the present case, the issue was not whether the prosecution had produced the particular firearm used in the shooting, but whether there was sufficient evidence from which the jury could conclude that a firearm had been used and that the Intended Appellant possessed a firearm with the intention required by section 33 of the Firearms Act.
55. The learned trial judge specifically directed the jury to consider the significance of the firearm and ammunition recovered beneath the vehicle driven by the Intended Appellant some ten days after the shooting, including the fact that no fingerprints of the Intended Appellant were found on the firearm and that some time had elapsed before its recovery. The judge directed:

“What do you make of the evidence in respect of the finding of the firearm and ammunitions under the vehicle driven by the defendant? Was he in possession of a firearm with the intention to endanger the life of the virtual complainant? Having regard to that, does it matter that the firearm was said to have been located some ten or more days after the alleged shooting incident? Does it matter that the defendant prints were not found on the firearm? Are you satisfied beyond a reasonable doubt that the defendant was found in possession of the firearm, having regard to the circumstances?” (See page 58, lines 10-21 of the summation transcript)

56. Those matters were factual questions for the jury.
57. The jury was required to consider all of the circumstances, including the recovery of the firearm, the absence of fingerprints, the period between the shooting and the recovery, the complainant’s account of the shooting, and the medical evidence.
58. The complainant gave evidence that he was approached by a man armed with a gun who pointed the firearm at him and repeatedly discharged it. That evidence was supported by the medical evidence. Dr. Strachan’s evidence and the body map prepared by him identified penetrating wounds to various parts of the complainant’s body. The number and distribution of those injuries were consistent with the complainant’s account that he had been shot multiple times.
59. The significance of the medical evidence was not merely that the complainant sustained injuries, but that the nature and location of those injuries were consistent with his account that he had been shot multiple times. The medical evidence therefore provided support for the prosecution’s case that a firearm had been discharged during the incident.
60. The question of the intention required by section 33 is addressed in **R v Salih** [2007] EWCA Crim 2760. In that case, the Court of Appeal considered section 16 of the Firearms Act 1968,

which is materially similar to section 33 of the Firearms Act insofar as it concerns possession of a firearm with intent by means thereof to endanger life. Section 16 of the Firearms Act 1968 provides:

“It is an offence for a person to have in his possession any firearm or ammunition with intent by means thereof to endanger life, or to enable another person by means thereof to endanger life, whether any injury has been caused or not.”

61. In **Salih**, the appellant was convicted of possession of a firearm with intent to endanger life. The issue concerned the nature of the intention required under the provision. The Court rejected the submission that the prosecution was required to prove an immediate and unconditional intention to endanger life. Hooper LJ reiterated the approach adopted by HHJ Forrester when directing the jury, stating:

“4. ... The crown is not required to prove an immediate unconditional intention to endanger the life of another. It is sufficient if the Crown proves that he had possession of this loaded pistol, ready to use against another person, in a manner which endangered the life of that other person, if occasion arose.”

62. The Court also reiterated the purpose of the provision in the following terms:

“4. ... The mischief for which s16 of the Act is aimed is that of a person carrying a firearm ready for use, if and when occasion might arrive, in a manner which might endanger the life of another person. Note those words 'endanger life'. Not to kill, but to endanger life ...”

63. Those observations are consistent with the wording of section 33 of the Firearms Act. The offence does not require proof of an intention to kill. It requires proof that the accused possessed a firearm with the intention that, by means thereof, life would be endangered.

64. The approach in **Salih** is also consistent with the decision of the Privy Council in **Vithaldas v R** [1987] LRC (Crim) 324. In **Vithaldas**, the Board considered an appeal against a conviction for possession of a firearm with intent to endanger life. The appellant argued that the lower courts had applied an objective test of intention. The Board rejected that argument and explained that, where there is no direct evidence from the accused as to his intention, the tribunal of fact may draw the necessary inference from the evidence and surrounding circumstances.

65. The Board stated at 326:

“... Accordingly, their finding as to his intention could only have been made as a matter of inference from the evidence before them. ...”

66. The Board further observed:

“... they were considering, as a matter of inference from the evidence before the Magistrates, the appellant having given no evidence, what his intention must in fact have been.”

67. The principle arising from **Vithaldas** is that the intention required for an offence of possession of a firearm with intent to endanger life is a question of fact for the tribunal of fact. Where direct evidence of intention is unavailable, the necessary intention may be inferred from the evidence and circumstances proved.
68. In the present case, the issue for the jury was not whether the prosecution had conclusively established that the firearm recovered beneath the vehicle was the particular firearm used during the shooting. The question was whether, having regard to all of the evidence, it was satisfied beyond reasonable doubt that the Intended Appellant possessed a firearm and had the intention, by means thereof, to endanger the complainant's life.
69. The evidence before the jury included the complainant's account of being confronted by an armed assailant who repeatedly discharged a firearm at him, the medical evidence confirming multiple gunshot injuries, the subsequent recovery of a firearm and ammunition beneath the vehicle driven by the Intended Appellant, and the surrounding circumstances of that recovery.
70. Those matters were capable of supporting the inference that the Intended Appellant possessed a firearm and had the intention required by section 33 of the Firearms Act.
71. In our view, there was a proper evidential basis upon which the jury could reach that conclusion.
72. Accordingly, Grounds 3 and 4, and Ground 6 insofar as it challenges the evidential sufficiency of the prosecution's case, do not disclose a realistic prospect of success.

Grounds 2, 5 and 6 - The no-case submission ruling

73. The Intended Appellant relies upon the learned trial judge's ruling on the no-case submission. It is submitted that, having regard to the matters identified by the learned Judge in her ruling, there was no sufficient evidential basis upon which the firearm conviction could properly stand, particularly following the jury's acquittal on the charge of attempted murder.
74. The Intended Respondent submitted that the learned trial judge correctly refused the no-case submission because there was factual evidence upon which the jury could properly convict. It was submitted that the issues identified by the Intended Appellant, including the reliability of the complainant, the identification evidence and the inferences to be drawn from the circumstances of the incident, were matters for the jury and not matters properly arising for determination on a no-case submission.
75. We do not accept the Intended Appellant's submissions. The complaint misunderstands the nature of the determination required on a submission of no case to answer. At that stage, the learned Judge was not required to determine whether the prosecution had proved the offence beyond reasonable doubt. The question was whether there was evidence upon which a properly directed jury could properly convict.

76. The applicable test is that established in **R v Galbraith** [1981] 1 WLR 1039. The Court of Appeal recognised that where the strength or weakness of the prosecution’s case depends upon matters such as the reliability of witnesses or the inferences to be drawn from the evidence, those matters are generally within the province of the jury. The Court stated:

“Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. ...”

77. The matters relied upon by the Intended Appellant, including the alleged weaknesses in the complainant’s identification evidence, the circumstances surrounding the firearm recovered following his arrest, and the absence of evidence directly linking that firearm to the shooting itself, were matters affecting the weight and reliability of the prosecution’s case. They were not matters demonstrating that there was no evidence upon which a properly directed jury could convict.
78. The no-case submission was advanced in relation to the charge of possession of a firearm with intent to endanger life. The learned Judge was therefore required only to determine whether, at the close of the prosecution’s case, there was evidence upon which a properly directed jury could convict. She was not required to determine whether the prosecution had ultimately proved the offence beyond reasonable doubt.
79. In considering that submission, the learned Judge had regard to the evidence relied upon by the prosecution, including the allegation that the complainant was approached by an armed assailant who discharged a firearm at him, the medical evidence confirming that he had sustained gunshot injuries, the identification evidence relied upon by the prosecution, and the subsequent recovery of a firearm and ammunition beneath the vehicle driven by the Intended Appellant following his arrest.
80. The learned Judge summarised the prosecution’s case as being that the complainant was approached by an assailant armed with a handgun who fired shots at him, causing injuries from which he later recovered. The learned Judge further noted that, approximately ten days later, the Intended Appellant was arrested and an unlicensed firearm with live ammunition was recovered.
81. Having considered the submissions of counsel and the applicable law, the learned Judge concluded at page 12, lines 31-32 and page 13, lines 1-3 of the transcript dated 11 July 2023:

“Having regard to statute, case law and submissions tendered by both counsel, I am of the view that the Prosecution has provided some evidence that is factual in nature and which can be assessed by the jury as triers of the facts. ...”

82. The learned Judge accordingly ruled:

“... In light of the foregoing, the case for the accused with respect to all charges shall continue.” (See page 13, lines 3-5 of the transcript dated 11 July 2023)

83. That ruling did not amount to a finding that the prosecution had proved the firearm offence. It was a determination only that there was evidence capable of being assessed by the jury and that the evidential threshold for the matter to proceed had been met.

84. The assertion that the learned Judge failed to consider relevant matters, failed to exercise her discretion judicially, or ought to have directed an acquittal is not supported by the ruling. The learned Judge considered the submissions of counsel, the applicable law, and the evidence relied upon by the prosecution before concluding that there was evidence capable of being assessed by the jury and that the matter was properly one for the jury’s determination.

85. The issues concerning the identification of the Intended Appellant, the reliability of the complainant’s evidence, the significance of the firearm recovered following his arrest, and the inferences to be drawn from the surrounding circumstances were matters within the jury’s province. The subsequent acquittal on the charge of attempted murder did not retrospectively remove the evidential foundation upon which the firearm count proceeded.

86. Accordingly, Grounds 2, 5 and 6, insofar as they challenge the refusal of the no-case submission, do not disclose a realistic prospect of success.

Conclusion

87. Having considered the proposed grounds of appeal, we are not satisfied that the Intended Appellant has demonstrated any realistic basis upon which the safety of the conviction could properly be challenged.

88. The proposed appeal therefore has no realistic prospect of success. In the circumstances, the application for an extension of time within which to appeal is refused, and the conviction and sentence are therefore affirmed.

The Honourable Mr. Justice Evans, P

The Honourable Mr. Justice Smith, JA

The Honourable Mr. Justice Turner, JA