THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Criminal Division

CRS 046/2009

THE STATE

v

1) AKEEL MITCHELL

&

2) RICHARD CHATOO

FOR

MURDER

Before The Honourable Justice Lisa Ramsumair-Hinds

Date of Delivery: 23 July 2021

Appearances:

Mrs Sabrina Dougdeen-Jaglal, Ms Anju Bhola and Mrs Sophia Sandy-Smith for the State

Mr Mario Merritt and Mr Randall Raphael, instructed by Ms Kirby Joseph for Accused No. 1

Mr Evans Welch and Mr Kelston Pope instructed by Ms Gabriel Hernandez for Accused No. 2

JUDGMENT

INTRODUCTION

1. Akeel Mitchell (Accused No. 1) and Richard Chatoo (Accused No. 2) are before me in a Judge Alone Trial (JAT) jointly charged on one Indictment with a single count of murder. I promised to deliver a written verdict today, Friday 23rd July 2021, fourteen days after I heard the closing arguments.

2. I wish to express my gratitude to all Counsel in the matter; the State led by Mrs Dougdeen-Jaglal, both Defence teams led by Mr Merritt and Mr Welch respectively and my Judicial Research Counsel Mr Ansar Mohammed; for their able assistance through the trial process. The trial, which admittedly took regrettably long to begin in our overly cumbersome criminal justice landscape, was quite involved. There were several significant rulings within the trial process, some of which were written and others delivered ex tempore. I have taken the liberty to reduce the latter into writing and included the relevant citations. Accompanying this written verdict therefore will be the rulings from the following:

    i. Motion to Stay Proceedings (by Accused No. 1) – Monday 01st February 2021
    ii. Motion to Quash Indictment (by Accused No. 1) – Monday 22nd February 2021
    iii. Ruling on Voir-Dires (Joint ruling) – Monday 19th April 2021
    iv. Motion to Stay Proceedings (by Accused No. 1) – Wednesday 19th May 2021
    v. Oral Ruling on Objections to Adduce Fresh Evidence (by Accused No. 1) – Friday 21st May 2021
    vi. Ruling on No-Case Submission (by Accused No. 1) – Monday 21st June 2021

3. I have considered carefully the relevant self-directions in law, the evidence adduced before me and the arguments regarding same.

4. I am satisfied beyond reasonable doubt that both Mr Akeel Mitchell and Mr Richard Chatoo are guilty of the murder of Sean Luke.

VIRTUAL JUSTICE

5. This trial was managed in and through the pandemic and involved intense case management through a consultative process with the attorneys. I remained vigilant regarding the concerns (my own, those expressed by Counsel as well as those ventilated in the case law[1] and legal literature[2] developed well prior to but especially since 2020 with respect to virtual justice) related to adjustments to the usual in-person format of criminal trials required as a result of the pandemic and attendant Practice Directions on Court Operations, as well as Public Health Regulations[3]. As this was a capital matter where the presence of the Accused persons was entirely virtual,

[1] **Capic v Ford** [2020] FCA 486; **Rooney v AGL Energy Ltd. (No. 2)** [2020] FCA 942; **Endean v British Columbia** 2016 SCC 42; **R v Satini** CR 227 of 2019 (Supreme Court of Tonga)

[2] Emma Rowden and Anne Wallace: **Remote Judging: The impact of video links on the image and the role of the Judge** - International Journal of Law in Context (2018), 14, 504-524

Amy Salyzyn: **A New Lens: Reframing the Conversation about the Use of Videoconferencing** - Osgoode Hall Law Journal Vol. 50, Issue 2, Article 4

Frederic I. Lederer and the Ctr. Of Legal and Ct. Tech., **Analysis of Administrative Agency Adjudicatory Hearing Use of Remote Appearances and Virtual Hearings** (June 3, 2021). Report for Administrative Conference of the United States

[3] Gazette No. 219 of 2021, Court Operations COVID-19 Pandemic Directions wef January 1st 2021 No. 10
Gazette No. 46 of 2021, Court Operations COVID-19 Pandemic Directions wef March 27 2021 No. 11
Gazette No. 95 of 2021, Court Operations COVID-19 Pandemic Directions wef April 24 2021 No. 12
Gazette No. 63 of 2021, Court Operations COVID-19 Pandemic Directions wef April 30 2021 No. 13
Gazette No. 78 of 2021, Court Operations COVID-19 Directions wef May 17 2021 No. 14
Gazette No. 79 of 2021, Court Operations COVID-19 Pandemic Directions wef May 18 2021 No. 15
Gazette No. 84 of 2021, Court Operations COVID-19 Pandemic Directions wef May 25 2021 No. 16
Gazette No. 102 of 2021, Court Operations COVID-19 Pandemic Directions wef July 1 2021 No. 17

I take the liberty to outline several of the precautions I took to ensure that the trial process remained fair. In the event I fail to recount them all, the trial record itself will bear me out.

6. One concern of primary interest to me was the caution against dehumanizing defendants. In every single sitting, I took care to engage directly with both Accused persons, ever mindful that they are not passive bystanders at a remote location. This engagement was not restricted merely to routine sound and audio checks at the commencement of each morning and afternoon sitting. I informed them regularly of their opportunity to stop the proceedings by either speaking up or physically raising their right hand to get my attention. To this end, they remained affixed to one of my screens using the MS Teams pin feature and were therefore always within view. Additionally, I had the constant support of the Judiciary's Audio Visual Technology Specialist and his team monitoring our technical needs including a diligent watch over the connection to the video conference (VC) facilities at MSP (Maximum Security Prison). In April 2020, I personally visited one such prison video conference facility, sat in it and myself tested the audio and video quality in order to personally feel assured that a defendant remained connected with proceedings conducted virtually. I was so satisfied. As to their view, I caused the video feed to both remand VC rooms to be affixed with certain screens throughout the trial. For example, at no point was an Accused to lose sight of the Judge, speaking Counsel and witnesses. I made checks throughout the trial to be shown the view of their screens. I would frequently appraise the Accused of what was expected at the start of a sitting or keep them abreast of what was to come next at the end of the day. At all times, I remained aware of the opportunities provided by the Prison authorities for Counsel to meet/speak with the Accused and in fact, indicated very early on that we would sit only on Mondays, Wednesdays and Fridays, which allowed an interval between sittings. To be quite frank, the atmosphere of virtual courtesy accommodated much more engagement between Bench and the dock than is ordinarily found in-person.

7. I remained vigilant in preserving the integrity of the trial process. This included a number of important details before, during and after sittings. For example, in order to ensure that this trial was conducted in open court, the link to each hearing was provided to any interested member of the public and/or media who requested same from our Court Protocol and Information Unit (CPIU). Of course, I caused certain 'rules' to be put in place to govern the etiquette of those in virtual attendance. For example, the only cameras to be enabled were those of the Judge, speaking Counsel, witnesses and the Accused. This was intentional as, although the courtroom was now virtually available in the bedrooms, living rooms, offices and even vehicles of members of the public, I did not need those atmospheres to enter my courtroom. Persons who wished to enter the virtual courtroom were required to display their names, which allowed me to peruse the list of participants and enquire whether attendees might in fact be witnesses yet to give evidence. Media houses were present in practically every single sitting, as well as several attorneys who were not on record. The proceedings remained digitally accessible to the public at large and defined strategies ensured that there was no consequent loss to the solemnity of the proceedings. In fact, in an effort to keep the interruptions[4] during the sitting, the decision was taken administratively for the verdict to be delivered by live stream. I wish to note that if this trial had taken place at any time before the Accused attained the age of 18, the opportunities enjoyed by the media may not have been quite so liberal. While we have seen and heard grown men, this case involved Accused persons **and** witnesses who were children in 2006. The passage of time has undermined some of the protections I would afford to all children, even in a capital matter.

[4] Owners of MS Teams licenses, including the Judge, receive notification alerts each time someone enters the virtual meeting. There were numerous interruptions during the Closing Arguments occasioned by the late arrival of interested observers, as attendance increased dramatically on those days.

8. Regarding the technical glitches, connectivity issues and disruptions, in my experience, these were minimal and whenever they became apparent, they were immediately addressed. The fact remains that bandwidth issues are out of the court's control. In the instances where we lost connection with MSP or with an attorney, the sitting was halted in order to restore same. I employed different strategies, sometimes asking what was the last thing the relevant party heard and I filled in the gap of a short sentence or two that might have been missed, always checking with Counsel for agreement on the record. In one instance, I caused the FTR (For The Record - court audio digital recording system) to replay a brief portion. I found, and I suspect it was the same for Counsel in the matter, that it became quite routine to exercise patience with these technical issues. The learning curve may have been steep at one point, but with the constant support of the Judiciary's Court Information Technology Unit, all the parties learned how to use the technology. State Counsel, to her credit, appeared most comfortable and indeed, was always ready to share documents to either advance her cause or to assist the Court and Defence Counsel.

9. As it relates to the integrity of the proceedings, I was mindful of the concerns and took steps to ensure that there was no compromise and that the streams of justice ran pure. On only two occasions (22nd February and 17th March), one during each voir dire, I received evidence from witnesses who were present together with examining Counsel and the trial Judge in a court building. (Even then, Counsel for the other Accused (these were voir dire hearings) and both Accused observed that testimony via live link video. I received ALL other testimony via live link video from my home. **I was nevertheless sure that there was no witness interference**. Apart from two isolated instances, all witnesses testified from **a court location** using the Judiciary's internet services. Those included the San Fernando High Court and the Virtual Access Customer Centres (VACC) at Port of Spain, Arima, Princes Town and Scarborough. We endeavoured as far as possible to have the witnesses go to a VACC facility closest to their geographical location. On one occasion (when the pandemic curve in our

country was somewhat intimidating), Mr Harrypersad (a witness who was formerly a police officer and is now an attorney in private practice) got the leave of the court to testify from his office. In ALL of those instances, a Court Marshal was physically present in the same room with the witness then in the box. The Marshal was operating under their general court obligations and my specific instructions to secure the room and the witness from interference and contamination. Regarding the VACC facilities, the rooms are outfitted with cameras that allow a Judge (who wishes to do so) to effectively view the entire room. With the assistance of the Audio Visual team, I was able to randomly observe witnesses from different angles. When I expected more than one witness at a location, two Marshals were assigned and the arrival time of witnesses was staggered. The effectiveness of this strategy became an issue of good case/trial management: a feature that should become more common in criminal trials if we have a breath of hope to address our backlog. For example, attorneys were pressed to estimate times and I robustly managed those. There was only one instance in which a witness gave evidence in the absence of a Court Marshal. Retired police officer Samuel Felice did so while at work. A truck driver in the USA, he pulled his vehicle over on an inter-state highway, joined the hearing link and testified via live-link video from the cab of his truck. Even then, I caused the witness to pan the cab and paid extra attention to audio and video as he gave his evidence. I was equally satisfied in his particular circumstances that there was no issue of compromise.

10. Finally, I believe it is important to address a concern that the court would not fully benefit in a virtual setting from witnesses' best evidence and would likely be deprived of the various insights to be afforded by non-verbal communication, especially those traditionally evoked by Counsel's most effective advocacy skills. Put simply, there is a view that the fact-finder would not be able to properly assess witnesses in the absence of non-verbal cues, particularly under cross-examination. Indeed, Counsel for the Accused in the first voir dire requested that I take certain witnesses in-person

for this reason (among others). I acceded to the request, although I anticipated the eventual outcome. Invariably, as the trial progressed, all parties grew increasingly more comfortable with the clear fact that, **to the extent that it could be useful** (in the context of behavioural and natural science concerning brain function, physiological responses, bias and flawed interpretations[5]), we ALL had the full benefit of observing the non-verbal cues, exchanges and overall dynamics of witnesses and any other party then pinned to our screen. Indeed, the Judge, Counsel and Accused had a closer view of witnesses than in a physical courtroom. Examinations and confrontations with photographs, exhibits and documents became routinely straightforward and effectively executed with either the screen share feature and/or the document camera provided by the Judiciary at every court location. For example, Dr Aboud testified from a VACC facility in Port of Spain about his actions concerning a physical exhibit which was being displayed in real-time from the San Fernando High Court using a document camera (assisted by the Court Orderly who navigated the item under the witness' direction), in the virtual presence of the Judge, nine attorneys on record, the two Accused and members of the public/media via live link video. We could all see the witness, the exhibit, the Judge and Counsel, as he testified. To be frank, this was more advantageous in the context of open justice than what

[5] Denault, V., Dunbar, N. E., & Plusquellec, P. (2019a). **The detection of deception during trials: Ignoring the nonverbal communication of witnesses is not the solution—A response to Vrij and Turgeon** (2018). The International Journal of Evidence and Proof, 24(1), 3–11.

Denault, V., Plusquellec, P., Jupe, L. M., et al. (2020). **The analysis of nonverbal communication: The dangers of pseudoscience in security and justice contexts**. Anuario de Psicología Jurídica, 30, 1–12

Hess, U., & Fischer, A. (2014). **Emotional mimicry: Why and when we mimic emotions**. Social and Personality Psychology Compass, 8(2), 45–57.

Rowden, E. (2015). **Distributed courts and legitimacy: What do we lose when we lose the courthouse?** Law, Culture and the Humanities, 14(2), 263–281

Rowden, E., & Wallace, A. (2018). **Remote judging: The impact of video links on the image and the role of the judge**. International Journal of Law in Context, 14(4), 504–524

R. v. Marquard, 1993 CanLII 37 (SCC), [1993] 4 SCR 223.

R. v. N. S., 2012 SCC 72 (CanLII), [2012] 3 SCR 726.

traditionally obtains in a physical courtroom. (Of course, suitability of a virtual hearing will be case and fact-specific according to the interest of justice.)

WRITTEN RULINGS IN JUDGE ALONE TRIALS (JATs)

11. Wit JCCJ in **Dionicio Salazar v The Queen**[6] had this to say about how judges in JATs will find facts:

> "As a rule, the judge will consider the prosecution's evidence first. If that evidence seems strong enough to carry a conviction, the judge will consider the evidence of the defence. The judge will then look at the totality of the evidence to reach a final decision. It is there where the intercommunication and overlapping take place. It is after this polymorphic process that the judge needs to arrange his or her judgment in a logical order which will not always be able to reflect the complicated thinking process as such."

12. What follows is the last of the stages in the process outlined by Wit JCCJ. I apologize for what reads as stoic sequencing and compartmentalization. I cannot accurately type in hindsight how thoughts came together in finding facts, which especially in this case, were intertwined and connected. I will do my level best to provide an adequate description of my mind's filter, sieve and scale.

13. Although it is difficult to capture the precise sequence in which I made my findings of facts and because it is both impractical and unnecessary to treat this written decision as if it is a consolidation of jury directions followed by the fact-finder's reasons, I have chosen a particular format that I think makes sense at this stage (almost in a reporting fashion).

[6] [2019] CCJ 15 (AJ), at para 35

14. I first outlined some general directions in law. Other directions which were considered are either included as I explain the process or are plainly understood. I next discussed the case for the Accused persons, explaining how I treated with them. I addressed each separately and I noted the effect of their previous good character. Finally, I outlined the case for the Prosecution and in doing so; I explained the weighing up process to show how I formed my conclusions. I recognize that the Accused persons had nothing to prove to me, but on the facts of this case, it was simply easier to explain my findings using this format.

GENERAL DIRECTIONS

15. I started with an acknowledgment that the law does not require me, as a judge sitting alone to detail every single relevant legal proposition, nor to review every fact and argument on either side[7], notwithstanding sections 42B(2) and (3) of Act No. 10 of 2017.

16. The purpose of this written ruling is to provide a safeguard to the Accused persons and to the State. Indeed, an area of concern in jury trials has always been that they are not required to provide reasons for their decisions, whether it be an acquittal or conviction. In JATs, the judge is mandated by statute to provide written reasons for convictions and upon request in the case of acquittals. As I said two weeks ago, in the interest of open justice and transparency, my verdict would be accompanied by reasons in writing, regardless of the result. Permit me to say that I commend wider use of JATs.

17. I am acutely aware that the burden of proof lies with the State and that the relevant standard is that I must be satisfied so that I am sure. Indeed, the Accused persons had absolutely nothing to prove and more particularly, it was not their burden to

[7] **R v Thompson** [1977] NI 74 (CA, NI)

prove their innocence. It cannot be overstated that our criminal justice system is premised on the presumption of innocence. Suspicion, allegation, public sentiment, conjecture, speculation and shock/horror about a crime cannot deprive anyone of the presumption of innocence, at least not in a court of law. I make this point for the benefit of all who need to be reminded of a basic tenet: It is the State who alleges and it is the State who must provide proof beyond reasonable doubt. Anything short of that standard is insufficient to make a lawful declaration of guilt that withstands scrutiny in a civilized society.

18. My duty to resolve facts relevant to the issue on the Indictment did not require me to decide every single disputed fact. For example, I found it entirely irrelevant whether Avinash Baboolal had a girlfriend in 2006. That line of questioning betrayed a fundamental misunderstanding about sexuality, sexual orientation and gender identity. It simply was not important to my deliberations on the evidence in this case. Apart from that example, I will not refer to the suggestion again. In like manner, where I determined a contested fact to be irrelevant or unnecessary in my deliberations over the past few days to determine the issue on the Indictment, I simply ignored it. For the avoidance of doubt, I re-read every single word uttered into the record of this trial including the testimony and the legal arguments. Not everything that was said was relevant to the Indictment. The best interest of time and justice do not require me to list every instance where I discarded irrelevant matters.

19. In those deliberations, I remained aware that it was entirely up to me to determine what evidence was credible and reliable and even when it was, the weight to be attached was my function alone. I was also mindful that in determining the credibility of a witness, I am required to undertake a holistic exercise that involves assessing the plausibility and coherence of a given witness' testimony throughout the trial.[8] In this

[8] **R v Goldfinch** (2019) SCC 38

matter, as I weighed up the evidence, I accepted the full testimony of some witnesses, rejected two entirely and for yet others, I accepted part of their testimony as credible, reliable and of considerable weight, while rejecting parts that were not. Of course, I will explain further.

20. In that weighing up exercise, I remained mindful that conflicting and contradictory evidence can cause doubt and unreliability. The whole of the testimony was subject to the weighing up exercise, including the inconsistencies, discrepancies and omissions. Some of these were of greater significance than others, which I determined to be merely peripheral. Some caused me concern and rendered certain witnesses entirely unreliable. I did not simply ignore the inconsistencies laid bare on the evidence and highlighted by Counsel. Rather, I considered them carefully in order to determine the witness' overall credibility AND reliability. In certain cases, I found that the inconsistencies arose because of human frailty. That was compounded by the fact that some witnesses were children in 2006/2007 and their communication skills have changed over the past 15 years. I attributed some of the inconsistencies to the varying powers of recall. In other cases, I found that the inconsistencies arose because of deliberate lies. Where witnesses either admitted to or were caught by those inconsistencies and/or lies, I asked a simple question, "If I can't believe him on this issue, how can I rely on the rest of what he tells me?" That simple question had sometimes powerful ramifications on my mind's scale.

21. Delay of course played a particular role in the weighing up exercise, especially in considering some of those inconsistencies. The events of this case took place in March 2006 (approximately 16 years ago). The law requires me to consider that because of this delay, there is a danger of real prejudice to both Accused persons in this matter. The effluxion of time no doubt caused some deterioration in the memory of witnesses, who cannot be expected to remember with absolute clarity, events that occurred 16 years ago. I was entitled to consider this in assessing their credibility and

reliability. From the accused persons' point of view, the longer the time since the alleged incident, the more difficult it may be for them to answer it, call witnesses and remember details that could have assisted their defence.

22. Regarding the inconsistencies, some witnesses provided me with an explanation for the differences. I measured those as well and some failed to pass muster. Weighing up the witnesses is difficult to document with precision because, even where an inconsistency on a critical matter caused me disquiet about an individual witness' credibility, clarity and support from other testimonies neutralized the disturbance. I tried to outline most of this or at least provide a platform that laid bare my thought process.

23. Returning to the issue of the testimony of children, I noted that the law regards them in a particular way. They have not lived as long as us perhaps had hardly ever interacted with officials or seen the inside of police stations or court houses. This consideration played a role with respect to differences that arose as previous inconsistent statements. It featured as well in how I considered those parts of the evidence attributed to Accused Nos. 1 and 2 in 2006.

24. Regarding inferences, I remained vigilant to consider all those that were reasonable to draw and to note that if there were two equally reasonable inferences that can be drawn from a bit of evidence, one in favour of the Accused and another pointing to the accused person's guilt, the one most favourable to the Accused must take precedence. Certainly, as it relates to inferences, I was careful to guard against speculation and to ensure that the inferences were reasonable and based on actual evidence.

25. In my role as fact-finder, I was not expected to be able to answer every question that arose in this case. My role was not as an investigator and it was not my function to

close gaps, in the absence of direct evidence or reasonable inferences based on other evidence.

26. This case involved a great deal of expert evidence. Whether it was in relation to the witnesses from the Forensic Science Centre or the Pathologists (both the Forensic Pathologist for the State and the Anatomical Pathologist for the Defence) or the DNA expert Dr Aboud, it was very important that I put their evidence in proper perspective. Experts are called to give opinions within their area of expertise, generally of a technical or scientific nature. I well knew that I must not substitute my layman's views for the evidence of the experts. However, their evidence is intended to provide me with assistance in coming to my conclusions. On any issue where they provide an opinion, albeit an expert one, a fact-finder is entitled to have regard to it, or not. I remained mindful that I was not bound to accept any of the experts' evidence or their opinions, even if it was unchallenged, and ultimately, even on those aspects to which their opinions related, I remained the sole judge of the facts.

27. There were several Formal Admissions filed and received in evidence (see the attached table). I treated them in the same manner as the viva voce evidence. Even though they were unchallenged, ultimately, it was up to me to decide what weight, if any at all, to attach to the evidence in the Formal Admissions. I give an example now and will not return to it again. In the Formal Admission of Dr Birjah, the DMO, received in evidence on 26th April 2021, I noted that he "saw an object resembling that of a sugar cane stalk protruding from the anus of this child". Certainly, none of the other witnesses in this case made a similar observation on examination of the body. In fact, the Pathologist herself did not make any such observation on the external examination. From all the tested viva voce evidence I received, I believe that the cane stalk was FIRST observed by the Pathologist upon opening the chest cavity during the post-mortem examination. I was not able to get any explanation for how he came to say that he observed the cane stalk prior to the conduct of a post mortem

examination, because his evidence was not subject to testing. Even though evidence in a Formal Admission is tendered without challenge or objection, there clearly is an inherent limitation as I did not have the benefit of seeing and hearing the witness myself. As to how Dr Birjah could say he observed the cane stalk protruding, when absolutely no-one else did, not even the Pathologist, I did not speculate, but ultimately found that it did not matter to me. I attached no weight to it. I accepted his evidence that he pronounced the body dead and ordered its removal.

28. There were other forms of documentary evidence, including Certificates of Analysis[9]. These were treated as expert testimony of a technical or scientific nature. I did not substitute my layman's views regarding their contents. They provided opinion evidence from experts and I found that although I accepted them all[10], in some cases I attached significant weight to the opinions. In other cases, very little or no weight was attached. For example, one such document revealed the presence of 38 milligrams of alcohol when a sample of the Deceased's blood was tested. Dr McDonald-Burris provided expert opinion testimony about how such a finding could occur. Dr McDonald-Burris indicated that while a child is not expected to have alcohol in their blood, some medications such as cough syrup may contain a small amount of alcohol and, that decomposing bodies can also produce alcohol. In the absence of any evidence to suggest that it was ingested, whether from an alcoholic beverage or medication, and in the absence of expert scientific evidence supporting an inference that the stated quantity could be explained as a process in decomposition, I made no finding. Indeed, it was abundantly clear to me that Ms Pauline Bharath only became aware of this finding during her cross-examination. With respect, even if she was taxed for the first time in 2021 to recall whether she administered cough syrup in

[9] Exhibit No. **GH-3** – Forensic Science Centre – Certificate of Analysis dated 7th April 2006
Exhibit No. **RR-9** – Forensic Science Centre – Certificate of Analysis dated 5th February 2021
Exhibit No. **RR-10** – Forensic Science Centre – Certificate of Analysis dated 21st May 2007

[10] They formed strands in the circumstantial case, incapable of proving guilt on their own. For example, though conclusively proving that spermatozoa were found inside the anus of Sean Luke, the individual depositing same could not be scientifically identified.

2006, I doubt that much weight could be attached to her response. This issue remains an unanswered question in the trial. As I said before, it is not my duty to close gaps. This gap remains, almost a chasm in itself, but not one that affected my ability to determine the ultimate issue on the Indictment.

29. Consistent with the approach I took in **The State v Sheldon Williams**[11], I invited both sides to consider whether this might similarly be an appropriate case for the evidence adduced in both voir-dires to be incorporated into the main trial, so as to avoid needless repetition[12]. On 19th April 2021, both Mrs Dougdeen-Jaglal (for the State) and Mr Welch (for Accused No. 2) agreed that this was practical. Mr Merritt (for Accused No. 1) had reservations and (though I confess I could not appreciate them) in acknowledging that the agreement of both State and Defence was critical to any such incorporation, I fully expected that some witnesses from the first voir dire would be recalled to testify in the main trial. As it turned out, Counsel for Accused No. 1 reconsidered the need for this type of ring-fencing[13] and communicated their desire to similarly have the evidence incorporated on 7th May 2021. I pause to note that although Mr Welch at first indicated that all the evidence from the second voir dire would be incorporated, when it came to the case for the Defence, Mr Pope clarified that they would not be seeking to incorporate the evidence of Raymond Bruzual. I did not consider Mr Bruzual's evidence at all in arriving at my verdict.

30. The procedure involved in the process of incorporating the voir dire evidence was actually settled on the suggestion of Mr Merritt. In the case of each witness, the State would apply for the incorporation, noting the agreement of the Defence and where necessary, any further evidence in chief could then be marshalled, to be followed by any further cross-examination. I added one feature in case management. I required

[11] CR T 023/2015

[12] **R v Gauthier** [1977] 1 SCR 441 (SC, CA)

[13] **The State v Muchundu** 2000 (2) SACR 313 (W) (SC, SA)

Counsel to provide some notice as to which witnesses (both sides) were required to return to the box. In one case, a witness requested by Mr Merritt for further cross-examination was expected and, as it turned out, he decided that the cross was unnecessary and so the witness did not re-enter the box. The appended table contains a summary of the reception of witness testimony, which included viva voce ab initio, viva voce by incorporation and formal admissions.

31. As this was a JAT, no summing-up of the evidence of the witnesses was necessary (certainly I cannot do a more comprehensive job than the Judiciary's Court Reporting Unit and I would probably make a poor transcriptionist[14]).

32. I acknowledge that I am both judge of law and fact. That necessarily brings its own dynamics to the fact-finding process. I have meticulously guarded my thoughts as it relates to the respective hats I wear. So, for example, I was careful not to disclose too early my views of the factual matters at the close of the two voir dires. Invariably, those considerations involved both fact and law, yet determined admissibility only. My task thereafter was to approach the evidence which was admitted with a jury mind. Similarly, when I determined whether Dr Aboud was an expert witness, that decision was made purely in my capacity as judge of law. The question as to the value of his expert evidence, if any, was answered in my capacity as judge of the facts. The entire trial process was replete with opportunities to dissect which hat I wore at the material time. With respect, it might be an exercise in futility to attempt to capture every single one in this ruling. One function of a judge of the law is to review salient aspects of the evidence that relates to particular directions in law. Yet it is the sole purview of the judge of the facts to decide what evidence is relevant. It would be passing strange for me to don one hat and list all potential directions and related

[14] The Court Reporting Unit indicated after oral delivery of the verdict ruling that the certified transcript was at the time being finalized and will be available upon request.

facts, to thereafter replace the hat and indicate that I found some of those areas to be irrelevant. This ruling contemplates a more common-sense perspective.

33. Although both Accused are charged on one Indictment, they are entitled by law to be treated separately. Although some aspects of the evidence applied to them equally, I was nevertheless very careful to compartmentalize in my jury mind the case for the Prosecution against them separately, as well as to consider their defence in light of the case against each.

34. In assessing whether the State has satisfied me that the Accused persons murdered Sean Luke, I had regard to all the evidence in the main trial. This of course included all of the evidence tendered in both voir dires, save and except the evidence of Raymond Bruzual. I took care to base my findings only on the evidence and arguments, in accordance with the necessary directions in law. I scrupulously avoided biases and prejudices. I note on record that I took care to excise all attention to this trial in the media. Had this been a jury trial, I wonder if I could ever craft a robust enough direction to lay jurors in that regard.

35. There is one count on the Indictment. Accused No. 1 and Accused No. 2 are jointly accused of committing the murder of Sean Luke on a day unknown between 25th and 29th March, 2006, at Couva, in the County of Caroni.

36. Murder is committed where a person of sound mind and discretion, unlawfully kills another person with the intent to kill or cause grievous bodily harm. The offence of murder therefore has two elements- a physical element and a mental element. The Prosecution must satisfy me so that I am sure that:

    I. The Accused committed an act or acts which unlawfully killed Sean Luke (the physical element); and

II. At the time when the Accused committed this act or these acts, they had the intention to kill or cause grievous bodily harm to Sean Luke (the mental element).

37. To kill someone is simply to physically cause their death. The second ingredient is intention. To amount to Murder, there must be an accompanying intention to kill or cause grievous bodily harm. Now usually what a man, woman or even child intends is locked away in the secrecy of their mind. That however does not mean that one is unable to determine what their intention is. A person's intention is that result they want from the act they commit or the result that they clearly see will follow when they commit the act. Intention therefore can be inferred from evidence. I will deal with intention in much greater detail, especially as this case has been advanced on the principle of joint enterprise.

CASE FOR ACCUSED NO. 1

38. Accused No. 1's defence was denial and alibi. I was careful not to consider his silence at trial adversely and reminded myself that this is his right. I also noted that this right extended to whether he chose to call witnesses at all, and if so, who he chose to call.

39. As it relates to alibi, he averred that he was nowhere present at the scene of the gruesome murder. Specifically, he denies being in the cane field on that fateful Sunday afternoon, 26th March 2006. He did not give evidence, as is his right (and one which cannot give rise to any adverse inference). However, once raised, the State must disprove the alibi. I bore the standard directions in law always in mind as I weighed up the evidence[15]. There is no burden on Accused No. 1 to prove that he was elsewhere. Rather, it is the State who must prove their case beyond reasonable doubt. Further, I reminded myself that even if I disbelieved or rejected the alibi, that

[15] **Shazad Khan and Timothy Hunt and The State** Crim. App. Nos. 18 & 19 of 2008

does not lead to an assumption that he is guilty. Again, the burden remains squarely on the State. A failed alibi does not equate to guilt.

40. I pause to note that the contents of the Defence Case Statement, the particulars therein and the timing of the alibi notice did not form any part of my fact-finding exercise whatsoever. Wherever they were raised through the trial, I attended to them exclusively in my capacity as judge of the law. As a judge sitting alone, I meticulously girded my thoughts on matters such as this.

41. Accused No. 1's alibi was advanced in three ways. First, Mr Merritt put his case to a number of Prosecution witnesses, namely Avinash Baboolal and Arvis Pradeep, that he was never with them walking through the cane field on any fishing trip that Sunday afternoon. Secondly, he said that the evidence of Pauline Bharath supported his alibi. Pauline Bharath told me that when she awoke and went outside, she saw Accused No. 1 sitting at the shed across from her gate. In fact, Ms Bharath said she had Accused No. 1 in her sight at that very spot for quite some time and spoke with him. He was there, mere feet from her, when the group of boys, including Accused No. 2 and Avinash Baboolal emerged from the cane field. Therefore, while he was in her presence, he could not simultaneously be in the cane field. And finally, although nothing Accused No. 2 said in his out-of-court statements formed part of the case for or against Accused No. 1, the alibi was advanced through Accused No. 2's viva voce testimony. Under oath, Accused No. 2 testified that Accused No. 1 did not go with them on the fishing trip.

42. Certainly, what was put by Counsel is not evidence. Avinash Baboolal and Arvis Pradeep[16] both disagreed with Mr Merritt's suggestion that Accused No. 1 did not form part of the group heading through the cane to fish that day. Their testimony was in direct conflict with that of Accused No. 2 in this regard. It is useful to note here that

[16] See paragraphs 80 and 81 below

I did not accept the evidence of Accused No. 2 as being credible and reliable and did not accept him to be a witness of truth. As a consequence, his evidence provided no support for Accused No. 1's alibi.

43. As for the evidence of Ms Bharath, that she saw Accused No. 1 at the shed, well prior to the emergence of the group of boys from the cane field, I accepted that evidence as the truth. I believe for sure that while the other boys were still either at the watercourse or returning from same, Accused No. 1 was in fact at that shed. As to whether that amounts to an alibi and one that the State failed to negative, that is addressed below and is obvious through stated findings of fact.

44. As to the defence of denial, Mr Merritt put directly to Arvis Pradeep and to Avinash Baboolal that Accused No. 1 was never together with them in the cane field and denied entering any cane with Accused No. 2 and Sean. In the case of Avinash Baboolal, the defence of denial took a more pronounced form as fabrication. It was put to Mr Baboolal, and supported through the testimony of Accused No. 2, that Avinash Baboolal disliked Accused No. 1, was racist in his attitude towards him and desired to 'set him up' and send him back home. Indeed, the unchallenged evidence, which I accept, is that Accused No. 1 was a visitor to the area and staying at the home of Accused No. 2, who was his step-father's brother (Accused No. 2's brother was in a relationship with Accused No. 1's mother). Accused No. 2 testified that the reason why Accused No. 1 did not accompany them on the fishing trip (the alibi) was because Avinash Baboolal insisted that Accused No. 1 could not come along. Mr Baboolal flatly refuted this suggestion of fabrication, and denied that he was racist, wanted to set up Accused No. 1 or that he refused to allow him to join the fishing trip. As to these competing positions, they are addressed in my account of how I weighed up the State's witnesses.

45. There was a very peculiar invitation by Mr Merritt in his closing address to treat certain statements attributed to one Marvin as falling within the *res gestae* exception to the hearsay rule. I cannot allow it to pass unnoticed that Mr Merritt failed to raise this at the Ensor Hearing and, knowing full well that I did not wish for issues of law to be raised in closing addresses and that I discouraged interruptions during same, he nevertheless raised this in what I considered to be somewhat vulgar fashion. That this was a JAT should serve as no excuse. I appreciated State Counsel's restraint. Frankly, the material that Mr Merritt referred me to did not meet the conditions which are required in law[17]. What an awkward direction this would have made to a jury of 12 lay-persons.

THE CASE FOR ACCUSED NO. 2

46. The Defence for Accused No. 2 was fabrication and involuntariness in his caution statement and the admissions given on 31st March 2021. Mr Welch put his case to the Prosecution witnesses through cross-examination (though what was put is itself not evidence). Accused No. 2 also gave evidence under oath and subjected himself to the rigours of cross-examination, though he was under no burden to prove his innocence. The following is a detailed account of the defence for Accused No. 2 which I carefully considered.

47. Accused No. 2 testified that he was just outside his home on the Sunday afternoon in question, at his gap. Accused No. 1 was sitting on an old stove opposite their home. Avinash Baboolal, in company with Arvis Pradeep, came to his gap and Avinash invited him to go fishing. Avinash insisted that Accused No. 1 was not welcome, but allowed Accused No. 2 to bring along his nephews (his sister's children who were then visiting). He wanted his nephews to go in order to spend some quality 'uncle' time with them. On their way down Henry Street West, they passed Sean Luke's home. As

[17] **R v Andrews** [1987] 1 A.C. 281, as adopted in **Walter Borneo and The State** Cr. App. No. 7 of 2011

they passed, Accused No. 2 saw Sean, inside his yard, playing by himself behind his front gate. As the group neared the watercourse, his nephews excitedly ran ahead. In an effort to secure his nephews, he and Arvis Pradeep ran towards them, leaving Avinash Baboolal behind. He looked back briefly and observed Avinash Baboolal turn back and walk in the very direction from which they just came. He, Arvis Pradeep, and the nephews continued to the 'river'. Avinash Baboolal joined them some time later. Accused No. 2 said that, on their journey back home, as they passed Sean's house, he observed 'Ms Pauline' on the road, as well as Accused No. 1. In the presence and hearing of Avinash Baboolal, Ms Pauline asked if he had seen Sean and he answered, "No." Avinash said nothing. He himself did not tell Ms Pauline that he had seen Sean earlier while on his way to the fishing spot.

48. Later that day, he learned that Ms Pauline was still looking for Sean and he heard persons saying that they had seen Sean walking into the cane field with a tall man in a white shirt. He specifically heard this from Accused No. 1, Ms Mayo and other people from the village, but more from "Ms Mayo and other people". He noticed that although villagers were talking about the tall man who took Sean into the cane field, but even though police were asking questions, nobody wanted to give a statement. He wanted to help, "to give the police something to go on", so he decided to give a false statement saying that he actually saw that man with Sean. Though it was a lie to say that he saw it himself, he genuinely believed the account to be true. He said that he lives in regret of that decision. That first statement was recorded by a police officer at his home in Orange Valley in the presence of his step-father Mr Raymond Bruzual on Monday 27th March 2006 at 8:30 pm. (Incidentally, the clothing had been discovered just a few hours prior.)

49. He said that on Tuesday 28th March 2006, he returned from school and went to the grocery where he worked part-time. He was summoned home because police wished to speak with him. Sometime later, he and his mother were taken by the police to the

Couva Police Station. There, between 7:21 pm and 9:05 pm, he was interviewed by two police officers. The first, Officer Fraser questioned him about the account concerning the man who he claimed he saw taking Sean into the cane field. He said he felt "shame and embarrassed" to admit that he had not really seen it himself, and so he continued to answer questions about it, as if he were in the shoes of the persons he genuinely believed had seen it. At a point in the interview, Officer Harrypersad took over and things changed dramatically. He described a good cop/bad cop switch and said that Officer Harrypersad was aggressively asking questions and wanted fast answers. He said that the substance of the interrogation changed, as well as the nature. He was being asked about the fishing trip and Accused No. 1. The exhibit **DJ-1** bears out this change in the substance of the questions.

50. He said that he was not allowed to go home after that interview. Instead, later that night, he was taken to the Homicide Office, San Fernando. In fact, he has never returned home. He was kept there under poor conditions, sometimes even having to sleep on chairs, much like the one he was on while giving his evidence. On 30th March 2006, in an enclosed room in the presence of his mother, between 7:20 pm and 8:10 pm, Officers Harrypersad and Simon brought in Avinash Baboolal and his father Shane Baboolal. Officer Harrypersad cautioned him and told him he was going to let Avi tell him (Accused No. 2) what he had told the officers. Avinash Baboolal then gave the account noted on exhibit **NS-2**. Officer Simon was taking notes. When Avinash was finished, Officer Harrypersad again cautioned him and asked him if he had anything to say. He immediately gave the account that was noted by Officer Simon. However, Officer Simon identified that she made an error in her testimony. She testified at the Magistrate's court that it was Officer Harrypersad who invited Accused No. 2 to read over the interview notes and told Accused No. 2 and his mother, Mary Boodoosingh, that they were free to add, alter or change anything. It was in fact Officer Simon who invited Accused No. 2 and his mother to do this. She attributed this to human error. It was put to her that she fell to another very human error in that she mistakenly

wrote in the name 'Akeel' in her notes at the end of the account given by Accused No. 2. Although Officer Simon said she recorded his account accurately, Accused No. 2 said that he never included 'Akeel' as being present on the fishing trip.

51. Later that night, so Accused No. 2 said, Officer Harrypersad told him that there was only one way to get out of this and that he could "get out of it" by giving a statement stating that Akeel 'bull' Sean, push the cane up in his bottom and that he was just there holding Sean's hand. He said that he was also told that if he did that, he would not be charged. Officer Harrypersad told him that Officer Garcia would come to him later in the night to 'work out the details'.

52. He said that later that night, Officer Garcia came to him and told him that Avinash Baboolal gave a statement and went home and if he did the same, he would be able to go home too. He claimed that Officer Garcia told him that, in the statement, he needed to fabricate an account accusing Accused No. 1 of the crime. He said that he was required to state that Accused No. 1 sexually assaulted Sean, committed the deadly assault with the cane stalk and that he merely assisted by holding Sean's hand.

53. He said that he could hardly sleep that night as he thought about forming the story the officers expected of him. The next morning, on 31st March 2006, acting upon the directions given to him the night before by Officer Garcia, he told the first police officer he encountered, Officer Rodney Mohammed, that he wanted to tell them what really happened to Sean.

54. That same day, he voluntarily gave a sample to be tested for DNA. The officers then video recorded the process while they took the written caution statement he had been directed to make up. Immediately after, they took him to the cane field in Couva where they asked him several prompting and leading questions about the area. He

went along with it and told them what he believed they wanted him to say, hoping that, like Avinash, he would get to go home.

55. Accused No. 2 said essentially that based on that account, nothing that he told the police on 31st March 2006 (in his caution statement and statements made later that day) was of his free will. He had been somewhat roughed up, pressured, induced, tricked and generally oppressed to give statements that both implicated Accused No. 1 and himself. He argued that I ought not to believe that those admissions were freely given, true or reliable. Certainly, I had **Mushtaq**[18] directions in mind. As it related to the admissions generally and in fact, as it relates to every statement attributed to Accused No. 2 on that particular day, my jury mind was challenged.

56. The State invited me to attach weight to the inculpatory aspects of those admissions as proof of guilt, as it related to Accused No. 2. In this regard, both Mrs Dougdeen-Jaglal and Mr Welch advised that I direct myself in terms of **Mushtaq**, that is, where I weigh up the evidence globally and find that I accept that a statement was in fact made by an Accused and the contents are true, I must first be satisfied that the confession had not been obtained as a result of oppression, or in consequence of anything said or done to render it unreliable. If I am not so satisfied, I must disregard it.

57. I did bear the direction in mind, and it took me up to a certain point. I considered the evidence of the police officers, incorporated from the voir-dire and additionally during the main trial. I also considered the import of the evidence from Accused No. 2 himself and other witnesses. I found that I believed the police officers (and some of the other witnesses), all of them, as they were cogent and compelling. I entirely disbelieved the suggestion that Officers Harrypersad and Garcia conspired together

[18] **R v Mushtaq** [2005] UKHL 25; **Wizzard v The Queen** [2007] UKPC 21 (Jamaica); **Deenish Benjamin & Deochan Ganga v The State** [2012] UKPC 8

to induce/force/oppress Accused No. 2 to falsely admit to the participation in the death of Sean Luke. I believe and I am sure that he made all those statements of 31st March 2006 free from oppression.

58. In those circumstances then, where I found that there were no instances of oppression or maltreatment such that it could be said to have rendered the inculpatory admissions unreliable, I could then rely on them if I believed the contents to be true.

59. I considered that State Counsel wished me to take a particular portion of the Cautioned Statement as evidence to show that Accused No. 2 had special knowledge, that is, the reference to the use of a piece of cane of 'about 12 joints'. This was the classic 'ring of truth' circular argument, embellished with the idea of special knowledge. I understand that inculpatory portions of an admission are more likely to be true (otherwise, why else say it) and that the exculpatory portions might not be true. To be frank, when I weighed up all the circumstances, I formed the view that, even if some aspects of the Cautioned Statement and the other admissions of the 31st March 2006 might ring true, they were so diluted and tainted by a clear impression in my mind that Accused No. 2 wished to portray himself in the most favourable light and to minimize his role. I found that it was practically impossible to properly ascertain truth from falsity and filter. I simply could not remove from my jury mind the belief that Accused No. 2 gave an account that portrayed him as being minimally involved and I doubted the truth of that. What caused me this trouble came in part from the account by Avinash Baboolal. Specifically, Avinash said that it was he, Accused No. 2 who said, "Stop. Hold on." before they entered the cane. Avinash said that it was he, Accused No. 2 who first volunteered a story about Sean defecating in the cane when the child did not emerge with them. On that evidence, Accused No. 2 played a distinct role in the 'before and after' of whatever transpired inside the cane and out of Avinash's sight. The confrontation the night before all those 'admissions'

of the 31st highlighted just that limitation. I honestly could not rely on the contents of those admissions. I therefore attached no weight to anything said in those statements of the 31st March 2006, which had been challenged yet admitted (as edited) at the close of the voir dire[19].

60. As startling as that may sound, ultimately I decided the issue on the Indictment between the State and Accused No. 2 without placing any weight at all on what he said and did on the 31st March 2006, while under police detention. May I point out to police investigators that the effort paid to building cases on confession statements does not always yield the desired attention and impact with fact-finders. I certainly did not consider the 'confession' in arriving at my decision.

GOOD CHARACTER

61. In assessing the respective cases for the Accused persons, I noted that they were each entitled to both limbs of the good character direction[20], whether they gave evidence or remained silent. I was mindful that both Accused had no previous convictions. In law, a good character cannot by itself provide a defence to a criminal charge, but the absence of convictions on the part of an Accused is evidence which I am entitled to take into account in the following ways: First, where an Accused gives evidence (as in the case of Accused No. 2) and where an Accused does not give evidence but relies on out-of-court statements, as with any man, woman or child of good character, that good character supports their credibility, his believability/truthfulness. Good character is a factor which I should take into account when deciding whether I believe or accept their evidence. Secondly, the fact that both Accused are persons of good character may mean that they are less likely than otherwise might be, to commit offences of this nature, namely sexual and/or physical violence, at this stage in their

[19] See paragraph 145 below

[20] **R v Hunter (Nigel)** [2015] EWCA Crim 631; **R v Vye and others** [1993] 97 Cr. App. R. 134; **R v Aziz** [1996] 1 AC 41

life. I was required to have regard to these matters in both Accused's respective favour, but ultimately it is for me to assess what weight to give to it. On the weight of the evidence in this case, as I drew the facts together, I did consider the good character of each Accused as I separately decided on their case. I noted in particular what Accused No. 2 said in his sworn evidence about his diligent school, work and church ethic. Ultimately, I found that the absence of a propensity to commit an offence of a sexual or violent nature and the credibility of the Accused persons were each wholly outweighed by the State's case.

ANALYSIS OF THE POLICE INVESTIGATION

62. A joint limb of the case for Accused Nos. 1 and 2 is a suggestion that the police failed to properly investigate the account about a tall man in a white shirt walking with Sean into the cane. (In one wild suggestion, I was invited to consider that because Avinash was described to be tall, he might have been the tall man.) I was invited to find that this failure to properly investigate leaves room for reasonable doubt as to the true perpetrator/s. The invitation gained some value from the evidence of Ms Pauline Bharath. Indeed, I accepted that it was Ms Bharath who first told the police that she had heard about this tall man in the white shirt. But, what exactly was the evidence about this story and the police handling of it?

63. Ms Bharath outlined the sequence of events and I found, from the very credible manner in which she testified, when tested by Mr Merritt, she provided me with an accurate and convincing response. (I believe she was otherwise honestly mistaken about the sequence). She estimated that around 5 pm (which time I found may have been an error); Accused No. 1 told her that he saw Sean with a tall man. From her evidence, it is clear that this was the first time this story featured in the scenario on Sunday 26th March 2006. What did she do? She ignored him! And that did not surprise me, because just prior to that, while they had both been sitting at the shed, she asked

Accused No. 1 if he had seen Sean and he told her, "No." She said that she next spoke with one Marvin and, although she could not accurately recall what he told her, that information caused her to go to the Bay and speak with the security. She then returned home and she told us that it is then that Mr Raymond Bruzual spoke with her. (I did not consider Mr Bruzual's evidence as it was not incorporated.) It is AFTER Mr Bruzual spoke with her that Ms Bharath ended up at the police station, where SHE reported to them the story of her missing child, as well as the information about the tall man in the white shirt. She then went straight to Aripo Heights. When pressed about that action on the information, she said, "Because of who I was told took my son and was walking down the trace. Because at that time I was grasping at straws about anything that could help me find my son. I thought Sean was with his father. That his father had come and get him and didn't tell me anything. I was grasping at straws. I was told that a tall man in white clothing was walking down the trace with Sean and Sean's father is a tall man." That is what she heard, how she acted on it and the reason why. I accept her evidence and in this regard, I am sure.

64. How did the police treat with the story? The evidence from Officer Garcia, consolidated from the evidence which was incorporated, but more so when tested by Mr Merritt in cross examination on 14th June 2021, adequately met this question and convincingly so. Officer Garcia said that he interviewed Accused No. 1 on 29th March 2006[21]. Per his instructions and equipped with three statements, he sought to verify the information with the same person Ms Bharath told the police she first heard the story from. Those three statements were from Anndale Mitchell, Dharmendra Chatoo and Raymond Bruzual. (Incidentally, although Officer Garcia did not then have the very first statement from Accused No. 2, which was the very first statement the police officially recorded about the tall man in white clothing, certainly

[21] Accused No. 1 was not then a suspect and gratuitously gave detailed answers in this entirely voluntary process. My factual findings on voir dire remained the same in my jury mind, to the appropriate standard and provided me with a general picture as it related to Accused No. 1.

this formed part of the police investigation.) Officer Garcia also said that a statement was recorded from Sean's father Daniel Luke. Pressed about whether Daniel Luke was placed on an ID Parade, or had provided evidence of an alibi, Officer Garcia noted that he chose not to take that route. Instead, he had a sketch artist produce an impression. He determined that the description was false. In any event, as he said, the investigation took a different and definite turn with the statements from Mr Baboolal and Mr Pradeep. I accept that the police properly investigated the story about a tall man in white clothing and determined that it was false. On the full weight of all the evidence, I drew the only reasonable inference open to me and was sure that not only was it a false account, but further that it was intentionally generated and advanced by both Accused persons and which they deliberately inserted into the police investigation.

CASE FOR THE PROSECUTION

65. I summarized the case for the Prosecution in narrative form in two parts. The first part was provided by several witnesses for the Prosecution who were not pointedly challenged with an alternate version. Some were tested as having said certain things in 2021 using a different description than they used in 2006/7, and in some instances, provided less/more detail. Using the usual tests for credibility and reliability, I found the following facts.

66. 6-year old Sean Luke had been living with his mother Pauline Lum Fai (as she was then known) in March 2006 at the end of Henry Street West, Orange Valley, Couva. He was an active child who would play freely with other neighbourhood children in the street in front his home and would often go to the home of his mother's uncle, right next door, to play in the boats in that yard.

67. Pauline Bharath (as she is now known) told me that on Sunday 26th March 2006, she took Sean into their bedroom at about ten minutes to two in the afternoon to take a nap. Sean was then clothed in a light blue underwear with the word 'RUBA' labelled on the waistband. She fell asleep while Sean was playing around on her. When she awoke, Sean was not in the bedroom. Her checks revealed that he was not in the house, nor the yard. She did not know where he was at that time, but was unconcerned, as she considered the community to be a safe one and trusted in her belief that Sean was playing nearby. She went outside and sat down by the shed opposite her gate. Accused No. 1 **was there** sitting on the ground. She was not sure of the exact time.

68. Genevieve Ramtahal lived a couple houses away from Sean and his mother. On the afternoon of Sunday 26th March 2006, she observed some neighbourhood children playing in front her house on the street. They were making a kite. The group included Accused No. 1, Accused No. 2 and some younger children who she believed were staying in the same house with Accused No. 2. The kite-making activity was happening while her neighbour was digging a pipeline across the road. There were a lot of people on the road. At first, Sean was not with the group of boys. While speaking with some girls, she observed Accused Nos. 1 and 2 leave the kite-making group and walk to the corner of Henry Street West. Sean then joined the group and was looking on at the kite-making. She then saw Accused Nos. 1 and 2 return to the kite-making activity and then ALL the boys, including Sean and both Accused headed north with the kite towards the junction with the school. She said she saw Accused Nos. 1 and 2 at the corner with Sean. She lost sight of them at the junction and did not know where they went. She did not know Arvis Pradeep. She described the group of boys who she observed with the kite as the 'normal street boys'. Now, Genevieve Ramtahal was an interesting yet important witness and although I was sure of the facts just recounted, I still had some concerns with aspects of her evidence.

69. When Genevieve Ramtahal testified about who she saw playing in front her house, she used the expression, 'the normal street boys'. She explained the term by listing a host of names. Now her evidence was interesting. She said that Sean lived three houses away from her to her left and Accused No. 2 lived right next to her on the left hand side, "boundary by a wall". (She even pointed that out on the sketch map, exhibit **GHD-1**.) She knew Accused No. 1 to be staying with Accused No. 2 and his stepdad Mr Raymond Bruzual. She described these boys physically but admitted that with the passage of time, she could not now identify them. That was not a concern. The concern rather was about her inclusion of 'Avi' in the group she said that she saw making the kite. If this 'Avi' was the one and the same Avinash Baboolal, then there was some conflict between these two witnesses.

70. I explored her evidence. Asked which boys she has seen with Sean, she responded, "The normal street boys: was with Richard and Akeel, and the other little ... it had another two boy ... Keshon, Rishawn, Avi and his brother." She clarified that the 'Rishawn and Keshon' came to live "by Mr Bruzual residence." She described her knowledge of 'Avi' as someone living "two houses away from me on the right-hand side." During her entire evidence-in-chief, she spoke only of 'Avi'. It is under cross-examination that the name 'Avinash' was introduced. Mr Merrit asked, "And those two other indian boys, would that be Avinash and Arvis?" She answered, "Avinash and I believe it was his brother. I don't know his name." Mr Merritt included three names in his questions generally, namely 'Rishawn, Keshon and Tyrone', but the witness was clear, that of those little boys in the Bruzual home, apart from Akeel and Richard, she was referring only to two. She said, "Richard, Akeel, Rishawn, Keshon ... I could mix up one of the name with the little boy, it could be Tyrone or Rishawn ... I say it wrong ... and Avinash and his brother. All boys were there ... and Sean ... all boys were together." But it got very interesting during Mr Merritt's cross-

examination, when she was asked to estimate Avinash's age. I quote the entire exchange from the transcript[22] in order to fully make my point.

> Q And how old was Avinash back then? Do you know?
>
> A They were all so small. To date back, I could say, maybe, about eight -– seven, eight -- if I -- vaguely. Yes. Not too precise.
>
> Q Ma'am --
>
> A Not too precise.
>
> Q Ma'am, it's Avinash we're talking about.
>
> A Yeah -- that Avinash self. They were small, so I could say, maybe, about eight years -- seven, eight.
>
> Q Is this the same Avinash Baboolal?
>
> A I don't know his surname, sir.
>
> Q And back then, the person was about eight years old?
>
> A I average him to be around that.
>
> Q He would not have been a teenager for you?
>
> A No. No, he wouldn't have been a teenager

71. Mr Welch explored the apparent confusion as well. This was the exchange under his cross examination:

> Q Yes. Ms. Ramtahal, when you refer to the "two Indian boys" that was with them going north with the kite -- that was with Sean going north with the kite; you are referring there to Avinash as one of those Indian boys?
>
> A Avinash, his brother and the little ones.

[22] Certified transcript not available as at 23 July 2021. Excerpt prepared from unofficial transcript, Judge's notes and FTR.

Q Right. So that's what I'm getting at. So Avinash is included with those Indian boys. Now, let me be a li'l more precise, Arvis Pradeep, do you know that name

A I know "Avi." I don't know the correct name.

Q Is "Avi" the same person as Avinash?

A I would -- I would say, yes. "Avi" - Avinash, yes.

72. And further:

Q Yes. Now, Avinash was a big, tall boy compared to the other boys?

A Avinash was tall, yes. Yes, sir.

Q Ah?

A Yes, sir.

Q Yes?

A Yes, sir.

Q Right. So he was the -- he was the like the biggest in body; right?

A Maybe in height, not size or age. Height, not size.

73. Even to the end of the second cross-examination, the issue whether the 'Avi' or 'Avinash' she spoke of could be/was the Avinash Baboolal, I would come to later see and hear myself, continued to be explored:

Q One last question, Ms. Ramtahal, I promise. Ms. Ramtahal, around 5:00 in the evening you said you saw a group of boys. One of the Indian boys was coming from the direction of Sean's house, that's later on in the evening. Coming from in the direction of Sean's house and going past your house; was one of the two Indian boys that saw, was it Avinash?

A Yes, It was Avinash.

Q And Avinash, remind me, we know where your house is, close to the "R" on the Henry Street, the upper "R", the Upper Henry Street. Avinash lived further north of you on that same street or further south of you?

A North of me on the right-hand side of me, yeah.

Q Same side with you?

A Yeah.

Q Same stretch of road?

A Two houses away from me on the right.

Q Oh, I see. Okay.

74. Now, a number of witnesses testified right after Ms Ramtahal on the same day and the very next. I have specified their names and quoted the portions relevant to the point.

- **23rd April 2021**
  - Sankar Moonilal : Under cross examination by Mr Merritt – Mr Moonilal said he knew Avinash, whose father used to work for him. He estimated Avinash to be "about 18 years of age". As to the idea of normal playmates for Sean, he said, when pressed whether it would be normal to see him playing with Avinash, "No. That would be an unusual event because they weren't in the same age group."
  - Marilyn Bharath-Persad : Under cross examination by Mr Merritt - "Avinash was much older. He was like a teenager at that time, I think."
  - Pauline Bharath : She said that the Raymond Bruzual's home was two houses away from hers.

- **26th April 2021:**
  - Pauline Bharath : Under cross examination by Mr Welch, she said that she estimated Richard's age to be 13 or 14 and estimated Avinash as,

"Yes. Seventeen. Around there. Seventeen around there." When asked if she knew where Avinash lived, she said, "Behind Orange Valley Government School."

- Nehemiah Ramdhanie : Mr Ramdhanie spoke of two Avinash's. In examination in chief and the first cross examination, seemed to suggest that Avinash lived closer to Sean than did Ms Bharath, I found that Mr Welch's cross examination cleared it up sufficiently for me. Mr Ramdhanie disagreed with Pauline's description that it was a squatting area, but he seemed to agree, in using the sketch map, that Avinash lived much further north on Henry Street West than was captured on the map.

  Q Yes. You told me earlier -- just to get it clear -- Avinash house was going in the direction of that white arrow somewhere up there; right? The young Avinash that we spoke about.

  A Yes.

75. I believe so that I am sure that Ms Genevieve Ramtahal saw a group of boys making a kite outside her home on the road. They were a group she saw playing together regularly. I am also sure that the 'Avi' she spoke of, who she agreed was an 'Avinash' under cross examination, was not the 17-year old Avinash Baboolal who the other witnesses spoke of and was not the Avinash Baboolal who testified before me.

76. Drawing together the other testimonies, which I found to be credible and reliable, I believe that the kite-making did in fact take place. I believe and I am sure that Ms Ramtahal's estimates about time were honest mistakes and I did not rely on those provided by her. To be quite frank, I found only two estimated times to be reliable. The first was the one given by Ms Pauline Bharath, as the time she went for a nap with Sean Luke playing on her. That was at ten minutes to 2 in the afternoon. The

next was that given by Mr Sankar Moonilal, when he said he became aware that Sean was missing, because his niece Pauline asked him if he had seen Sean at about 6 in the evening. Mr Moonilal and Ms Bharath were very cogent and compelling witnesses. They provided me with the window within which I pulled together and considered the evidence of the Pathologists' opinions and was successfully able to narrow the time of death. When I drew the evidence together, I found so that I was sure that, through logic and common-sense, only one inference remained reasonable. When Pauline fell asleep and Sean first went outside onto the road, he joined a group of boys making a kite. At that time, the two Accused were at the corner and then, after Sean joined the kite-making group, they came and re-joined the group. I believe so that I am sure, the kite-making activity and the walk further north with the kite happened after 1:50 pm but still relatively early on the Sunday afternoon and before the fishing trip.

77. Returning to the State's narrative, I found that sometime that Sunday evening, Pauline began to actively search for Sean, first at her uncle's home, then to that of neighbours. She spoke with several persons in her quest to find Sean, and her search took her to several places including the Bay, Sean's father's home in Aripo Heights and the Couva Police Station. Sean Luke could not be found. The last time Pauline saw her son alive was when she fell asleep around 1:50 pm that day. She never set eyes on him again, not even his dead body.

78. The State said that the reason Sean Luke was not found is because he had been murdered and that the murder was committed by the two Accused. On this, the State and Defence vehemently disagreed. This second part of the case for the Prosecution was hotly contested and, because of that challenge, it required greater effort on their part to meet the standard of proof.

79. The Prosecution's case regarding the murder was advanced on the principle of joint enterprise and comprised several strands of circumstantial evidence. In addition, the Prosecution presented scientific evidence in the form of DNA, itself a form of circumstantial evidence.

Arvis Pradeep

80. It is important to note separately how I treated with Arvis Pradeep before I explain the rest of my findings. The State relied on Arvis Pradeep's evidence of itself and in addition to lend support to some aspects of Avinash Baboolal's evidence with respect to the events which they said transpired on 26th March 2006. However, from the moment Arvis Pradeep entered the witness box, his testimony was riddled with evidence that I considered to be bizarre, inconsistent and illogical. There were too many instances to list. Perhaps, it began with him taking the oath and though directed by me, he began to recite the Pledge; or when in the first few minutes, I had to ask State Counsel to rein him in when he began his account to this court in this case with, "March the 26th, right, dah was ah Sunday. Ah was home, get up in de morning 7:00 ... relax ... around 7 o'clock to 8 o'clock, brush teet', eat food, relax ..." Red flags were at full mast in my jury mind as the hours of his evidence progressed. When questioned by Mr Merritt on his ability to estimate time, Arvis professed his formidable expertise in telling time by "looking up in the sky" and "when the sun use to move and the clouds". And while that is not rocket science, Arvis Pradeep embellished what is common-sense into the realm of foolishness when he insisted that he could appreciate the difference between 2 pm and 2:25 pm, better yet, even 2 pm and 2:15 pm, through only the movement of the sun and the clouds. For example, he said, "I does watch up in the sky to tell minutes. When I dey home, I doesn't even watch a clock." On substantive issues as well, he was quite problematic. His account of the names of the boys who went on the fishing trip changed so many times. For example, he would at times include a 'Tyson' and admitted to referring to 'Akeel' as 'Anil'. The

most bizarre exchange was in response to a serious suggestion in cross-examination that he was racist against black people. He said, "I like fair-skin people. Dah wah ah sayin'. I like money. Money is my colour."

81. Arvis Pradeep was 13 years old in 2006 when he spoke to the police, and 14 when he gave evidence in the committal proceedings. As I considered the person who stood (sat) before me 15/16 years later, I observed an unsophisticated simpleton, very gullible, impressionable and prone to a tendency to embellish his evidence based on the response the previous answer elicited. I found myself unable to attach any weight whatsoever to his evidence as the State requested me to do. I know they have to take their witnesses as they find them. There were too many discrepancies which created unfathomable doubt and I therefore rejected Mr Pradeep's evidence in its entirety.

Avinash Baboolal

82. It is equally important that I address how I weighed up Avinash Baboolal in finding facts. Several of the suggestions from Counsel that I could not rely on Avinash's evidence to the requisite standard were built on a particular pillar, that is, the divergence between his account and that of Arvis Pradeep. Frankly, although I did not believe that Arvis Pradeep was a bold-faced liar, I found him to be utterly unreliable. As I said, I completely rejected his evidence. Disparities between his account and that of Arvis Pradeep therefore did not affect Avinash's overall credibility.

83. Nevertheless, there were several other concerns regarding Avinash Baboolal explored at length in both cross-examinations. I had been invited to consider this witness to be less than forthright. The cross-examination elicited some notable concerns within one statement, with other statements as well as the evidence, here and from the Magistrate's Court including, but not limited to the following:

i. He was asked if he objected to his parents being present with him during the interview and it was noted that he said to send both of them outside. At trial, Avinash testified that he does not remember saying or doing that because he wanted his parents there for support.
ii. Avinash was asked by 'Frossy' if Sean came by him and he said, "Yeah, he went home". However, at trial, Avinash said he replied "He home".
iii. Avinash was asked how far away from him, inside the cane, did the Accused persons and Sean go, and it was noted that he said, a distance of 8 to 9 feet inside the cane. At trial, he said he could not see how far they went inside the cane. He explained that this was an average/rough estimate.
iv. Disparity in the sound he heard emanating from the area that the Accused persons and Sean went into. He indicated in the statement that he heard a 'screal', like the turning up of the volume on a microphone, while in other statements and at the Magistrates' Court he called it a 'bawl' or 'scream'.
v. Failure to mention in certain versions that Keshon went on the trip.
vi. No reference of seeing Sean and Richard going in the bush in some statements as opposed to previous ones.
vii. No reference of Richard coming out of the bush with anybody (in certain accounts).
viii. No reference to Richard telling him, "Sean doing he number two's and he will go home" (in certain accounts).
ix. In one statement he said that he looked back and saw no-one.
x. No reference to Keshon going into the cane in certain parts of one statement (second starting over of the statement).
xi. He denied seeing or hearing Pauline Bharath on his return to Henry Street West, after the fishing trip, although he did see Accused No. 1 at the shed.

84. Further, it was suggested in cross-examination that for someone with his common sense and maturity, if the account Avinash told me was in fact true, it was highly unlikely that he would have failed to investigate or intervene after he heard the sharp noise, by whichever description, coming from the cane field.

85. Care Warning: In view of the attacks by both Defence teams, I considered that I ought to pay extra care and attention to the weight to be given to the evidence of Avinash Baboolal. Now, even as I consider what the law[23] expects of me when it has been suggested that a witness has an interest to serve, I recognize that this type of self-direction must be witness-specific. I remained mindful that where there is the possibility that a witness may be considered to be one with an interest to serve, the fact-finder should assess the plausibility of that witness' evidence. One factor in that assessment, if it arises, as it does in this case, can be a witness' failure to immediately attempt to intervene during the alleged incident[24]. A care warning does not automatically follow simply because of the allegation by Counsel[25]. I considered very carefully what evidence actually existed to suggest that Avinash Baboolal's evidence might be tainted by an improper motive[26]. This was not borne out through the cross-examination as clearly as it was argued in closing addresses.

86. Nevertheless, I understood the Defence to have suggested that Avinash was racist against Accused No. 1. This was suggested to him in cross-examination and he denied same.

87. It was also suggested from the evidence of Accused No. 2, which I have already noted that I weighed up and entirely disbelieved. I therefore did not believe that Avinash Baboolal's evidence was false and tainted by racism.

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[23] **Deenish Benjamin and Deochan Ganga v The State** Cr. App. Nos. 50 & 51 of 2006 and [2012] UKPC 8

[24] **Marlon King and The State** Crim. App. No S002 of 2012

[25] **Mouqni** (unreported) March 29, 1994

[26] **R v Beck** [1991] 74 Cr. App. R. 221

88. The Defence also suggested that he was actually responsible for Sean Luke's death and therefore pointed fingers at Accused Nos. 1 and 2 in order to cover his own culpability. During the cross-examination, it was put in various ways to Avinash Baboolal that he was lying because of his involvement in Sean Luke's death. Save for suggestions of this nature, the case did not paint him as an accomplice. Rather, in closing addresses, Counsel labelled him as the perpetrator. Courts are reluctant to label a witness as an accomplice merely at the suggestion of Counsel and a greater evidential basis is required[27]. Nevertheless, at the urging of State Counsel during the **Ensor Hearing**, I saw no harm in considering that I ought to caution myself about acting on the evidence of Avinash Baboolal, because it was contended that he had an interest to serve by involving the Accused and exculpating himself[28]. I did so.

89. Taken at its highest, the idea of interest to serve gained some mileage from the fact that at some point in time, the police had detained all three boys at the Homicide Office in San Fernando. The suggestion itself was bolstered by two arguments advanced by the Defence. First, they suggested from the evidence of Accused No. 2 that Accused No. 1 was not on the fishing trip at all and that the entire account involving the joint action of them both taking Sean into the cane was a lie. They added further that on Accused No. 2's version of the trip, it was he, Avinash Baboolal, who turned back and joined the group some time later. They asked me to connect some dots to find that in turning back from the group, there was opportunity for him, Avinash Baboolal, to get to Sean who was last in his yard, cause his death and then return to the fishing spot. As I said, I did not believe the account given by Accused No. 2 at all. That left the suggestion to little more than saying that all three boys were in custody and Avinash decided to blame the others in order to escape being blamed himself.

[27] **R v Prater** [1960] 1 All ER 298

[28] **Wanzar (Michael) v The State** (1994) 46 WIR 439

90. I considered this carefully, especially in light of the fact that Avinash told the enquiring Magistrate in 2017, that he felt the police were trying to blame him. I found that it was reasonable for the young boy, then detained by police, to believe that the police considered him a suspect. That does not suggest to me that he had an improper motive. However, it was in a general weighing up exercise that involved the inferences raised and conclusions drawn from the DNA evidence, that I rejected this suggestion that Avinash had an improper motive. As State Counsel pointed out, this was expected to be a global exercise.

91. I reminded myself that there is no requirement for the Accused to prove that motive exists[29] and that even if I disbelieve the suggestion of an improper motive to lie, that does not automatically mean that the witness is necessarily telling the truth[30]. Certainly, there were a number of irregularities in Avinash Baboolal's evidence and they did raise questions as to his veracity and reliability.

92. The Defence teams pointed out that, it was passing strange that he never told Ms Pauline when he last saw Sean Luke. Worse yet, he never even mentioned that 'last seen' moment to Nehemiah Ramdhanie and the others during the search on Monday 27th March 2021.

93. While it was suggested to me that the inference to draw from that was interest to serve or that he was simply incapable of belief, the State's summing up provided other inferences. For example, Avinash Baboolal clearly stated that he became worried about getting in trouble if Sean was not found. I took the witness as I found him and accepted that explanation. My jury mind considered that it is not uncommon in our culture for blame and even punishment to be issued disproportionately to children and young people. In my jury mind, it was easy to consider that, as the eldest

[29] **Earle Charles v The State** Cr. App. No. 26 of 2001

[30] **Reed Richards and The State** Cr. App. No. 12 of 2008

on the fishing trip, Avinash would have been 'blamed' for not intervening, for not helping, for not telling. In fact, exactly what was suggested during Mr Welch's cross-examination is what the young man, then still a child by contemporary understanding, would have faced him. Why did Avinash worry that he would get in trouble if Sean was not found? He did not know what happened to Sean. He believed that Sean was going home. A group of boys playing is noisy, rambunctious, punctuated by screams, shouts and hoots ... walk into a boys' Primary School any lunch-time and shut your eyes for five seconds. He did not see anything inside the cane. My jury mind tells me that the only reasonable and logical inference is that Avinash Baboolal was afraid that he would have been 'blamed' for not doing something to 'save' Sean Luke. As he said, he was afraid of getting in trouble if Sean was not found. With that 'pressure' of the detention, with the mounting pressure of remembering and adding up the Sunday's events, my jury mind absolutely understood why his statements were staggered with back-and-forth.

94. I spent a little time thinking about the search. That one bothered me. Why would he not have told them that he last saw Sean at a particular spot, just as he described it to me, using the map? Hindsight in sometimes much more than 20/20. I again took the witness as I found him. He had actually seen precious little on the Sunday afternoon and said, and I believed him, that he believed Sean was supposed to have gone home. Remember, at that stage, the boy was technically 'missing'. Remember as well that Accused No. 1 had told a story about a tall man walking through the cane with Sean. That story was also told to the police by Accused No. 2 on 27th March 2006. Officer Simon said she was aware that other children in the Orange Valley District were repeating the story. In my jury mind, I put myself in Avinash's shoes. One even sat with a police sketch artist, according to Officer Garcia. Was I expected to dissect that from playing on Avinash Baboolal's mind as well in 2006? Permit me a colloquialism, but was it to be expected that Avinash would have maths'd it out and siphoned out the fictitious story about a tall man and maths'd it out that it must have

really been Accused Nos. 1 and 2 when they went in the cane? That is the issue on the Indictment. Was he supposed to have resolved it then? Remember that he said they took Keshon in with them as well and that he asked Keshon about it and got an answer.

95. Well, with ALL those considerations in mind, this is how I maths'd that part out. Of all the inferences that arose in my jury mind, I came to the conclusion by ordinary human logic and common-sense, that Avinash Baboolal was simply not sure what on earth was going on. He did not then realize that what he knew was much more significant than what was being told to the police so seemingly convincing that sketch artists became involved. When he was spontaneously drawn into the search by Nehemiah Ramdhanie on Monday afternoon, that search was already in full effect with Nehemiah in control. Nehemiah Ramdhanie determined the starting point and plotted out the positioning, with everyone having the same understanding ... Nehemiah's plan was to COMB the entire cane field ... including where Avinash last saw Sean. To his credit, Avinash Baboolal helped, whether to Nehemiah's left or his right. He certainly did not distract them from the plan to comb the entire field.

96. Another important concern involved the manner in which he gave his account to the police. Defence Counsel quite rightly identified that a witness who gave five statements over a three-day period, wherein the first of the five itself literally included 're-starts', and where the statements were not all the same, might not pass muster as a credible and reliable witness. I heard, considered and accepted his explanation unreservedly. He said he lied, but what he meant was that he had more to tell, as he remembered more and more. He said that he was asked by the police to give an account for HIS Sunday. As he said, he was trying to remember with precision, what HIS Sunday involved. That is how the statement read. My jury mind believed that the self-imposed 'pressure' that he must certainly have been under, against the backdrop of the picture I believe, by logical inference, was his reality from that

Sunday night when he was awakened by Frossy to the moment when the clothes were discovered, contributed in no small measure to the way he gave his statements.

97. On the totality of the evidence, I rejected all suggestions that Avinash Baboolal had an interest to serve or that he acted on that in giving false evidence against the Accused. On the evidence before me, I was sure that Avinash Baboolal was not involved.

98. I pause here to note that it was quite unfortunate to hear during the closing address by Mr Welch, and even see and hear it repeated and reported in equally vulgar fashion, a suggestion that the villagers in Orange Valley attributed culpability to this witness and that possibly such blame was connected to the burning down of his home. First, that suggestion unfairly casts aspersions on the good people of Orange Valley. And secondly, if there was any truth to the suggestion at all, while totally irrelevant to this case, I put on record my consternation against such an idea of vigilante barbarism, for such a thing could never be justice.

99. To be clear, I was able to accept several areas of Avinash Baboolal's evidence which I believed to be credible, reliable and of considerable weight.

100. Having explained how I weighed up certain witnesses, in particular, Arvis Pradeep and Avinash Baboolal, I return to the Prosecution's narrative. The State said that on that Sunday afternoon, Avinash Baboolal met Arvis Pradeep at the savannah. Avinash convinced Arvis to go fishing and they proceeded down Henry Street West. Avinash stopped on the road close to Accused No. 2's gap. Accused No. 2 came out to the road and Avinash asked him to join the fishing trip. Sean Luke was playing on the road right in front that gap. The State said that this was sheer coincidence. (In fact, it is probably the only time in this trial that the State comfortably asked me to believe in

coincidence. The Defence countered that coincidence is insufficient to weave the fishing trip into the allegation of joint enterprise.)

101. The route to the 'river' (watercourse) was via the track through the cane fields (located South of Henry Street West). The State said that, at a certain point, Accused Nos. 1 and 2 left the group of boys heading to fish and entered into the abandoned and overgrown cane field, taking Sean Luke and Keshon with them. They returned, No. 1, No. 2 and Keshon, but without Sean Luke.

102. The State suggested that Sean Luke was sexually assaulted and killed by the two Accused persons inside that cane field at that time. There is no direct evidence about what happened inside that cane field[31].

103. That very afternoon into evening, the State said that a fictitious story about a tall man in a white jersey walking with Sean into the cane emerged which they suggested was generated by the two Accused persons as part of their criminal enterprise. The State said that the story was first given to Ms Pauline Bharath by Accused No. 1, then again to her by Mr Raymond Bruzual, with whom Accused Nos. 1, 2 and No. 2's little nephews were all living/staying.

104. Sean Luke's clothing was discovered the following day during a search of the cane field led by Nehemiah Ramdhanie, that is, Monday 27th March 2006. Just a few hours after that, Accused No. 2 gave a statement to the police in which he advanced the fictitious story about the tall man in the white shirt taking Sean into the cane.

[31] I did not rely on admissions attributed to Accused No. 2.

Nehemiah Ramdhanie

105. Nehemiah Ramdhanie's evidence was significant and I found him to be cogent and compelling. I believed him. He started searching by himself that afternoon around 4:45 pm. He was joined by Darren and they decided to search the cane field which was across from Sean's home, the entire stretch. As they were heading to what he called the 'peak', he saw some other guys and called them to join. Avinash Baboolal was in this group. It was clear to me that Nehemiah was the leader of this search party. From that peak, the guys were set out 6-8 feet apart and the plan was to comb the entire cane field moving diagonally from the peak. He said that the cane was bad, 6 feet tall with "plenty high grass and vine and trashy". Certain photographs assisted me here and, together with the evidence of Mr Ramdhanie, provided context as well for accepting the evidence of the officers who conducted the search. He noted that although they could hear each other, they could not see. They moved from south-west and were heading to the north-east corner. He described the search. 35 to 40 feet into the cane, he came upon a clearing/path/track. He said it was not clear like a trace, but it was clear enough to walk through. He took the easy route at that point, because the cane was 'bad' and he turned right, and was proceeding easterly on the track/path for about 14 feet, which led him almost to the middle of the cane field. There, he came upon an area of about 5 feet in circumference, which was trampled/mashed down. The clothes were found in that 'mashed down' area. One of the photographs spoke to this. As pictured, and as described by other witnesses, it was a child's shorts with male underwear inside it. He moved 3 feet away and I accept that he preserved the integrity of his discovery until it was removed by police. Prior to its removal, the clothing was identified by Pauline Bharath as her son's clothing. She identified the same clothing to me during this trial and they are exhibited as **IN-2** and **IN-3**.

106. A few hours after the discovery of the clothing, Accused No. 2 gave his first statement about seeing a tall man in white clothing walking with Sean into the cane.

Discovery of Sean Luke's Body

107. In the early morning hours of Tuesday 28th March 2006, the dead and already decomposing body of Sean Luke was discovered, some 100 feet from the point where the clothing had been found the evening before. According to Officer Thurab the body was found at approximately 6:15 am on this morning by police dog Eric.

108. The body of Sean Luke was pronounced dead and ordered to be removed to the Forensic Science Centre by Dr Birjah.

PATHOLOGISTS' EVIDENCE

109. Dr McDonald-Burris conducted the post mortem examination at 12:25 pm on Tuesday 28th March 2006, some 6 hours after its discovery, after it was duly identified as that of Sean Luke. At first, I expected this to turn into a battle of experts, one resembling those we sometimes find in trials in the Criminal Division when experts have different opinions. That was the promise of Mr Merritt's cross-examination, at least, on the basis of the challenges he put to the State's Pathologist. As it turned out, Dr/Professor Daisley, the Defence's Expert, did not give evidence to substantiate those 'challenges' regarding cause of death, which of course, in any event, Dr McDonald-Burris addressed quite succinctly. While the Defence's expert, to my absolute surprise, did not speak to cause of death at all, he did address the estimated time of death based on signs of decomposition. Again, as it turned out, the Defence's expert validated the State's expert.

110. Frankly, in weighing up the evidence of the Pathologists, I did not quite know what to make of Mr Merritt's cross-examination. Suffice it to say, I resolved it by acknowledging that what is put is not evidence. Nothing more came in the way of evidence to challenge the cause of death and therefore I treated with the opinion of Dr McDonald-Burris according to the standard direction on expert evidence. It is specialized and scientific in nature and I did not substitute my layman's views for that of the expert. Even though it came from an expert, I acknowledge that Dr McDonald-Burris' evidence is an opinion and one therefore that I could accept or not, in whole or in part. I accepted her evidence.

111. Sean Luke was about 4 feet in height and weighed about 45 pounds. There were signs of decomposition, including bloating, skin slippage, discolouration, marbling and small maggots in the hair, eyes, nostrils and around the neck.

112. One of those unanswered questions I referred to earlier arose on the Pathologist's evidence. I accepted that she observed that the soles of Sean's feet were wrinkled and that such a finding is associated with water immersion, or that she would commonly find in drowning cases. Unfortunately, I found nothing on the facts which I could accept as explaining that observation. I noted that there was a gap between the window of death (as I term it) and the time of discovery of the body. I also observed by logical inference that the body had been moved. The evidence before me was insufficient to close that gap. I did not speculate. It did not however prevent me from determining the issue of the Indictment.

113. Regarding her opinion as to estimated time of death, I accepted Dr McDonald-Burris' explanation that included a consideration of how examinations are conducted by Counsel while witnesses are testifying, hindsight and experience. In fact, the issue was entirely cleared up by the Defence expert. I accepted that the seeming inconsistency was little more than perhaps the difference between whether an

estimate was calculated from time of discovery of the body or calculated from time of the post-mortem examination, as explained by the Defence expert. I am sure that Sean Luke died within the window suggested by both of those experts, that is, 24-48 hours prior to the post-mortem examination. That window therefore opened at midday on Sunday 26th March 2006. Weighing it up with other facts, as I found them, I am sure that Sean Luke died after his mother fell asleep and before she came outside and saw Accused No. 1 at the shed. That conclusively addresses that aspect of the alibi evidence. That time, I deduced on the totality of the evidence, to be between 3 pm and 6 pm.

114. Dr McDonald-Burris (whose evidence was critical) made observations of injuries to the left side of the face and under the jaw. The red bruise she observed under the jaw was suggestive of a thumb print. I accepted that opinion without doubt. She further observed injuries to the neck, which she opined were consistent with application of pressure to the neck. This injury, when observed internally related to bruising and haemorrhage on the left side of the neck. In her opinion, these injuries could have been sustained peri-mortem. As it related to the combination of the observations, that is, the internal and external observations of the neck and the injury to the face, she opined that this could have been caused by someone holding Sean Luke's mouth and face to prevent screaming. She noted however that if only the mouth and face were covered, another explanation would be required for the neck. Because the hyoid bone was uninjured, she assigned mild to moderate force to that neck injury. I accepted these opinions and I attached considerable weight to them.

115. As to the cause of death, I accept her very detailed observations and find as a fact that Sean Luke died as a result of internal chest and abdominal injuries and haemorrhage due to a foreign object ('a sugarcane like stalk') introduced into the body cavity. The path of that cane stalk was as follows: up through the anus, rectum, behind the bladder, through the pelvic and abdominal cavities, perforating the bowel,

stomach and diaphragm, entering the chest cavity, perforating the oesophagus, pericardial sac, causing laceration to the back of the heart and right lung and ending at the upper border of the right chest cavity, at the level of the collar bone.

116. Another important finding related to the laxity of the anus. Quite simply, the observation and opinion led me to conclude that Sean Luke was not subject to repeated sexual activity. The anus was tight.

117. Under cross-examination, Dr McDonald-Burris was questioned in a manner to suggest that she was overwhelmed in this case, which I surmised was intended to cast doubt on the weight that could be attached to her findings. With respect, I accepted and completely believed this expert witness when she said, "I was physically traumatized, yes, but not distracted. I have a job to do." Though I would not describe it in such dramatic terms, I identified with her ability to surmount human frailty and remain professional. She conducted her examination, noted her findings, which drew praise from the Defence's expert witness. An experienced Anatomical Pathologist, he called it "meticulous". She also retrieved a number of very significant samples, including the anal and rectal swabs. In addition, she retrieved and measured the cane stalk. It was a total of 53 cm long, bent at the collar bone. The straight part before the bend measured 43 cm. The photographs **CD 2 –3** assisted with a graphic depiction of the track of the cane and the bend. These and all the others exhibits she detailed were duly packaged, labelled and handed over to Officer Harrypersad and taken to the Forensic Science Centre.

118. She estimated that death could have occurred within minutes, but up to half an hour, explaining that the body is a dynamic machine. She did not believe that death was instantaneous. The Defence's expert witness essentially agreed that it would be a very short time after those injuries were caused by the cane stalk. He estimated 5 minutes. He noted and I accepted his expert opinion that Sean Luke would have been

in a lot of agony. Regarding the time of death, Dr Daisley's opinion proved immensely helpful to me. He, in agreeing with the State's expert, estimated the time of death as being 3 pm and 6 pm (that is the unmistakeable inference drawn from his evidence) on Sunday 26th March 2006. I did not substitute my layman's view for that of the Professor. These expert opinions played a significant role in my findings as I weighed up the evidence of Genevieve Ramtahal, Pauline Bharath, Avinash Baboolal and Accused No. 2.

119. The investigation continued/intensified after the discovery of Sean Luke's body. The police interviewed villagers, handled exhibits, took photographs and over a 3-day period, from March 28th to March 31st, detained certain persons and interviewed and/or recorded statements from them. In general, I found those Prosecution witnesses, including the police officers to be cogent and compelling. I believed them and accepted their evidence. (There is no need to list them.)

120. The following is a list of the more important of those statements obtained by the police:

i. **27th March 2006 – Between 7:30 pm-8:00 pm: Statement of Accused No. 2:** Taken at Mr Raymond Bruzual's home, in the presence of Mr Raymond Bruzual and Officer James (who recorded it.)

ii. **28th March 2006 – Between 7:20 pm – 9:05 pm: Interview Notes of Accused No. 2:** Taken at the Couva Police Station, in the presence of Accused No. 2's mother Ms Mary Boodoosingh, Officer Harrypersad and Officer Fraser. (Both Officers took turns recording the notes while the other interviewed.)

iii. **29th March 2006 – Between 4:10 pm – 8:00 pm: Interview Notes of Accused No. 1:** Taken at Homicide Office, South in the presence of Officer Garcia, Officer Simon (who took notes) and Accused No. 1's mother, Ms Anndale Mitchell.

iv. **29th March 2006** – **Interview Notes of Avinash Baboolal**: Taken at Couva Police Station in the presence of Officer Harrypersad, Officer Ragoonath (who took notes), Mr Shane Baboolal (Avinash's father) and Ms Camini Baboolal (Avinash's mother.)

v. **30th March 2006 – Statements of Avinash Baboolal:** Avinash Baboolal gave three statements at the Homicide Office, South on this day. From the evidence, they were done either in the presence of one or both of his parents (Shane Baboolal and Camini Baboolal) and Officer Harrypersad (who also took notes) at Homicide Office. It was noted that one of these statements was taken at 1:20 pm on that day.

vi. **30th March 2006 – Between 3:55 pm-7:55 pm: Interview Notes of Arvis Pradeep**. Taken at Homicide Office, South, in the presence of Officer Garcia, Officer Montique-Clement (who took notes) and Mr Pradeep's uncle, Sheriff Khan.

vii. **30th March 2006 – Between 7:20 pm – 8:10 pm: Confrontation Interview Notes of Accused No. 2 & Avinash Baboolal:** Taken at Homicide Office, South. In the presence of Ms Mary Boodoosingh, Officer Harrypersad, Mr Shane Baboolal and Officer Simon (who recorded the notes)

viii. **31st March 2006 – Between 1:30 pm – 3:45 pm: Caution Statement of Accused No. 2:** Taken at Conference Room, Police Administration Building, South, in the presence of Ms Mary Boodoosingh, Officer Harrypersad, Officer Garcia, Justice of the Peace Balroop Chandarjeet and Officer Stephen.

121. Some of those documents in the sequence in the paragraph above are the admissions attributed to Accused No. 2 which I addressed earlier.

DNA EVIDENCE

122. The State also relied on other expert testimony, that is, DNA evidence. Some of those exhibits which had been retrieved by Dr McDonald-Burris, the clothing which was

found by Nehemiah Ramdhanie, buccal swabs taken from Accused Nos. 1 and 2 and other exhibits referred to in the evidence were handed over by Officer Radhaykissoon on 18th February 2021. I accepted the evidence presented by the State as satisfying me beyond doubt with respect to the preservation of chain of custody and avoidance of contamination.

123. I made no adverse finding of Accused No. 1's refusal to give a sample for DNA testing in 2006. According to the law at that time, he was well within his right to refuse. On the other hand, and it did count in my assessment of his evidence, to his credit, Accused No. 2 voluntarily gave a sample in 2006, even though he too had the right to refuse. While this did have a positive effect on his case, I nevertheless found that the weight of the Prosecution's circumstantial case was against him.

124. In addition, I made no adverse inference with respect to the fact that Dr Aboud's services incurred a cost to taxpayers of approximately $3000 per exhibit. I did however find that the delay may have contributed to the deterioration of several samples and if so, I was potentially deprived of a benefit[32]. I did not speculate about that, but I admit that I was more than a bit discouraged by the evidence of Ms Camille Grant. She noted that since 2018, the Forensic Science Centre, the State-funded lab, has not been able to do DNA tests on the backlog of exhibits, not because there is no equipment, but rather, because the 5 machines require servicing and calibration. As a Judge in the Criminal Division, I find that unacceptable[33].

125. This DNA evidence was subject to the standard direction on expert evidence. I accepted the expert qualifications of the witness, Dr Aboud. He is an expert of 15

[32] It ought not to pass unnoticed that I made the decision to commence this trial last year and that, as fact-finder, I could well have been deprived of RELEVANT evidence.

[33] If the purposes of Criminal Courts include the conviction of the guilty and the acquittal of the innocent, then it is imperative that the relevant arm of the State finds the requisite will to do all that is necessary to equip itself to best assist fact-finders with evidence, and to do so sooner rather than later. I note that several (though not all) adjournments in this particular case were based on the State's requests to obtain the DNA evidence.

years' experience in the field of Chemistry and Forensic Science and holds a PhD in Chemistry with an emphasis in Forensic DNA Analysis. The laboratory which he is Director and Evidence Custodian over is accredited under the standard of ISO 17025 and qualified under the FBI's Quality Assurance Standards. Neither the expert's qualifications nor the lab's accreditations were challenged.

126. Dr Aboud explained what DNA is and how evidence of its presence may be relevant in the trial process. DNA (Deoxyribo-nucleic acid) is a complex chemical typically found in the nucleic cells of the human body, that is, most of our cells, excluding red blood cells. DNA is the genetic blueprint for humans and could be considered our body's recipe book. DNA contains the instructions for coding for our characteristics that give our genotypes; our hair colour, skin colour, eye colour, etc. Each person typically has 23 pairs of chromosomes. We inherit half from our mother and half from the father.

127. Where biological material is recovered on an item from a crime scene, DNA may be 'found' and from that DNA, a DNA profile may be developed for comparison. The item purportedly from the crime scene is called the questioned sample. It can be compared with the DNA profile taken from one or more people. The other DNA, taken from known persons for comparison, are called reference samples.

128. Though there was some test of Dr Aboud's evidence, I was satisfied so that I was sure that I understood and at least appreciated the DNA testing process of presumptive testing, extraction, quantification, amplification and electrophoresis in order to lead to the **allelic ladder**. The analysis is conducted through a comparison of that data and, where relevant, will involve statistical calculation. In other words, if the DNA profile from a reference sample matches the DNA profile from the questioned sample, then the evidential significance of that 'match' can then be further evaluated. The evaluation is a statistical one based on probability. The existence of the profile

together with other scientific data is used to give an indication of the probability of one of a group of people, of which the contributor of the reference sample is, one, being involved in the situation that gave rise to the questioned sample. The statistical indication of probability is called a "random match probability[34]" and is the frequency with which DNA characteristics or alleles matching the DNA sample in question are likely to be found in a given population.

129. Dr Aboud gave very detailed evidence and compared the blocks of alleles at each locus from a number of questioned samples with 3 reference samples, which I am satisfied from the evidence belonged to Sean Luke, Accused No. 1 and Accused No. 2. The statistical likelihood of any 'match' was calculated by him using a particular forensic science database, that is the Trinidad and Tobago Allele Frequency Population Database Table published by the Federal Bureau of Investigation, edited in 2017, in the Forensic Science International Genetics Journal.

130. I took care to avoid the 'prosecutor's fallacy'[35] and in this regard, I found that Dr Aboud gave evidence skilfully and was very cautious never to overstep the line separating his province from mine as fact-finder. His role was to explain the nature of the 'matches' he discovered, if any, between the DNA in the exhibits the evidence says was provided to him by Officer Radhaykissoon (which I accept from the evidence of other witnesses concerned the crime scene and the investigation from 2006) and the DNA of the Accused persons from the buccal swabs[36] taken in 2021 and to provide me with the random occurrence ratio (if any 'match' existed). Dr Aboud skilfully avoided giving any opinions on whether it was the Accused who left the DNA material at the crime scene. He cannot tell me that. The 'prosecutor's fallacy' confuses the random occurrence ratio with the probability that the Accused committed the offence. It is not the same.

[34] Or random occurrence ratio.

[35] **Doheny and Adams** [1996] EWCA Crim 728

[36] Any of the known reference samples

131. With respect, there were only four results from his evidence upon which I found I could make positive findings of facts.

132. The relevant questioned samples were two swabs from the light blue briefs given to him by Officer Radhaykissoon, a piece of fabric from that same garment and a swatch from a cane stalk, also handed over to him by Officer Radhaykissoon. The relevant reference samples were from Sean Luke, Accused No.1 and Accused No. 2.

133. With respect to the first of the four, a swab of the inside crotch area of the light blue underwear, he made two findings – a partial profile from a cellular fraction and a complete profile from a sperm fraction. With respect to the former, Accused No. 1's profile could not be excluded as a contributor. **The complete profile from the sperm fraction was a match with the DNA of Accused No. 1 with a random match probability of one person in 45.9 nonillion.**

134. There were two partial profiles on the swab from the inside anal area of the light blue underwear, one from a cellular fraction which proved insufficient for match purposes, but regarding the partial profile from a sperm fraction, the DNA of Accused No. 1 could not be excluded as a contributor with a random match probability of 24.9 million.

135. On the piece of fabric which Dr Aboud said he removed from the same underwear, he found two things. First, there was a **mixed** DNA profile consistent with at least 3 individuals obtained from a cellular fraction. While the major DNA profile of that mixed profile matched Sean Luke, the DNA of Accused No. 1 could not be excluded as one of the minor contributors. **On that same piece of fabric, there was a complete profile from a sperm fraction which matched the DNA profile of Accused No. 1, with a random match probability of 1 person in 45.9 nonillion.**

136. Finally, from a swatch of a cane stalk, there was a partial mixed DNA profile in respect of which Sean Luke's DNA cannot be excluded[37] as the major contributor. The foreign alleles detected were insufficient for match purposes. Dr Aboud explained that he could offer no scientific opinion where there was insufficient data[38]. I did not substitute my layman's opinions for that explanation. In the absence of a scientifically based opinion, I avoided speculation. For the avoidance of doubt, I accepted that there was a fourth person in the midst of this criminal enterprise. As Avinash Baboolal said and I believe him, Keshorn also entered the cane together with Accused Nos. 1 and 2 and Sean Luke. He also emerged from the cane together with them. That fact, addressed any inferences in relation to the **partial mixed** DNA profile which Dr Aboud discovered on the cane swatch. Nevertheless, in the absence of adequate scientific data, I do not find a fact in that regard, except that I remained sure on the evidence that Avinash Baboolal was not involved.

137. I reminded myself as I considered this evidence that it was me, the fact-finder, who was taxed with making the final decision and that I was not bound by the expert's opinion[39].

138. What did I make of this evidence[40]? Well, first, Dr Aboud's evidence is only evidence of a probability of contact between Accused No. 1 and the underwear which he analysed. This evidence does not in itself prove that Accused No. 1 committed the offence on the Indictment[41]. It is up to me to consider Dr Aboud's expert opinions <u>in light of all the other evidence in this case</u>, of which his opinion is but a part. All the

[37] This profile was only partial and the data incomplete, even though the evidence is that this questioned sample was taken from the cane stalk, which was retrieved from inside the body cavity of Sean Luke. The suggested inference that the DNA of the Accused persons should be 'lighting up' that profile was considered in the context of the expert's actual findings. That it was only tested in 2021 and yielded an incomplete profile was not insignificant.

[38] **Dlugosz** [2013] EWCA Crim 2

[39] **Ronald Bisnath v The State** Cr. App. No. P 009 of 2014

[40] **R v Reed, Reed and Garmson** [2009] EWCA Crim 2698

[41] **R v Ogden** [2013] EWCA Crim 1294

limitations of partial profiles aside, it came down to this for me. If I accept Dr Aboud's evidence regarding even just the **two matches between the COMPLETE profiles from sperm fractions and the DNA of Accused No. 1**, then it means that I can draw the inescapable inference and therefore conclude from the random match probabilities he provided that, in our population of 1.3 million and even with the world population as it is, there is hardly likely to be another human being other than Accused No. 1 from whom the DNA on the underwear came. I accepted Dr Aboud's evidence without reservation and indeed formed that inference and made that conclusion.

139. What Dr Aboud cannot assist me with, as correctly noted by Mr Merritt, is any evidence as to how and when that spermatozoa came to be on the underwear.

140. So what therefore is the connection between Dr Aboud's opinion and the Indictment? I am sure, on the weight of the evidence before me that the underwear that Dr Aboud analysed in 2021 is the very same 'pair of light blue male briefs' which was:

    i. discovered by Nehemiah Ramdhanie on 27th March 2006;
    ii. removed from the cane field in Orange Valley, Couva by Officer Nicholls;
    iii. handed over by Officer Nicholls to Dr Emmanuel Walker (via Evidence Technician Clive Thomas) on 29th March 2006;
    iv. examined by Scientific Officer Camille Grant on 5th February 2021, upon which she found the presence of human spermatozoa;
    v. handed over by the Scientific Officer to Officer Radhaykissoon on 19th February 2021; and;
    vi. handed over by Officer Radhaykissoon to Dr Aboud on 19th February 2021.

141. Based on the evidence of Officer Nicholls, Ms Grant, Officer Radhaykissoon and Dr Aboud, I am also sure that the chain of custody and protocols to guard against contamination of the exhibits were established and secure. Dr Aboud's evidence

therefore took me straight back to the clothing discovered by Nehemiah Ramdhanie on 27th March 2006.

WEIGHING UP OF CIRCUMSTANTIAL EVIDENCE

142. The State's witnesses through both voir dires and in the main trial chronicled the events surrounding the death of Sean Luke and drawing it all together, I am sure about what happened.

143. The State has mounted a circumstantial case against both Accused. A circumstantial case is one which depends for its cogency on the unlikelihood of coincidence. It works by cumulatively, in geometric progression, eliminating all other possibilities[42]. Essentially, the State sought to prove separate events and circumstances which they say can be explained only by the guilt of the Accused persons; both of them. In a circumstantial case, there are different strands of evidence, no single one of which directly proves guilt, but when taken together (and with other explanatory evidence), so the Prosecution says, could leave no doubt that the Accused person/s is/are guilty.

144. The test for me is to determine whether the strands of the evidence, that is, the facts as I find them to be, drive me to the conclusion that I am sure of guilt[43]. Put another way, can I, taking into account all relevant self-directions, exclude all realistic possibilities consistent with innocence[44]? I kept in mind that circumstantial evidence must always be narrowly examined and that before drawing an inference of guilt, I must be sure that there are no other co-existing circumstances which could weaken or destroy the inference[45]. I took heed to the caution of Mr Merritt that there was a risk that speculation might become a substitute for the drawing of a sure inference

[42] **DPP v Kilbourne** [1973] AC 729
[43] **McGreevy v DPP** [1973] 1 WLR 276
[44] **Masih v R** [2015] EWCA Crim 477
[45] **Teper v The Queen** [1952] UKPC 15

of guilt and to take extra care not to neglect evidence that, if accepted, could diminish or exclude the inference of guilt[46]. To be clear, I did not allow speculation to substitute for the drawing of sure inferences.

145. I pause to note that, in the case of Accused No. 2, the State did ask me to consider (in addition) that there is some direct evidence, that is, a confession. Certain strands of the circumstantial case against Accused No. 2 came from the confession. I did not take it into consideration.

146. Defence Counsel for both Accused persons have declared that the strands of this catena either should not be accepted or even if I do so, they cannot satisfy me of guilt. In particular, Mr Merritt has suggested that the State depends on speculation to close several critical and therefore fatal gaps. I agree that there are some gaps but they are not fatal to the consideration on the Indictment.

147. I took each strand under consideration, tested them for reliability and as against the case for the Defence teams, and then, with those strands that I accepted, I then decided what conclusions could be fairly and reasonably drawn when I drew them together. This process remained devoid of speculation and guesswork.

148. One strand involved the opportunity which presented itself in the fishing trip spontaneously suggested by Avinash Baboolal.

149. The State then invited me to infer that an integral component of the plan was to lure the 6-year old Sean into joining them by causing children closer to his age to be a part of the trip. This the State said is the real reason why Accused No. 2 went inside and got his young nephews and not because he was being a good uncle. Not only was this tactic employed to get Sean to join the group, but it was again used to get Sean to

[46] **The Queen v Kelly** [2015] EWCA Crim 817

leave the track and enter into the cane field. According to the evidence of Avinash Baboolal, they also took Keshon into the cane field.

150. Yet another strand is the evidence that Sean Luke was last seen by both Avinash Baboolal and Arvis Pradeep entering into the cane field with the Accused persons. I did not rely on Arvis Pradeep but I did on Avinash Baboolal[47].

151. While inside the cane field and out of sight from those who remained on the track/road, there was a loud sound. Avinash Baboolal said he heard 'screaling' ('scream' at the Magistrate's Court) which sounded like someone turned up the volume on a microphone, *"like real loud"*. In my experience, the only sound I associate with that description is one that is sharp and high-pitched. Sometime after (the accounts differ), the persons who had entered the cane field returned to the path, but not Sean. Sean did not return from the cane field.

152. Mr Baboolal said that he asked for Sean and was told by Accused No. 2 that he was doing a 'poop'/'twos' and would go home when he was finished (he gave two versions and I accepted this one).

153. According to Avinash Baboolal, the group (less Sean) continued towards the 'river' and just before they got there, Accused No. 1 said he was going back home. Avinash observed that Accused No. 1 headed back in the direction and specifically he noticed that Accused No. 1 was going back into the cane where he and Accused No. 2 had earlier entered with Sean.

154. Further, Mr Baboolal said that while they were returning home, as they walked through the cane field talking and laughing about the mamateta that they caught and

[47] See paragraphs 80 and 81. Although their accounts were not identical and involved several discrepancies, I did not rely on Arvis Pradeep.

getting stuck in the mud, Accused No. 2 seemed reserved and was behaving 'strangely' or 'suspiciously'.

155. While on Henry Street West, where he saw Accused No. 1 after they came from the 'river', as he was about to go home, Mr Baboolal said he looked back and saw Accused No. 1 heading back south towards the cane field.

POST OFFENCE CONDUCT

156. Yet another strand of the circumstantial case involves post-offence conduct. I considered the following directions in law. There are situations or circumstances where the conduct of an Accused after a crime has been committed might constitute evidence of his culpability. Inferences of guilt might be drawn for example from the fact that an Accused fled the scene. This type of evidence is usually admitted to show that the person acted in a manner which, based on human experience and logic, was consistent with the conduct of a guilty person and inconsistent with the conduct of an innocent person. Of course, this kind of evidence can be highly incriminating and subject to competing interpretations. Ultimately, I must first decide if I believe that the Accused persons in this case did actually commit the post-offence acts suggested by the State. Then, if I am satisfied that they did commit those acts, I must consider whether they were out of an awareness or consciousness of having committed the offence charged, or for some other innocent reason. In this regard, of particular importance is any evidence that offers an explanation for the conduct in question. I must weigh the post-offence acts in light of all the other evidence in order to determine if it was consistent with guilt and inconsistent with any other conclusion[48].

157. The State asked me to note the behaviour of Accused No. 1 in particular (as against him of course) in that, quite peculiarly, there being no children around to play with,

[48] **Mapp and Bissoon v The State** Cr. App. Nos. 13 & 14 of 2012; **David Baptiste v The State** Cr. App. No. 23 of 2016

he was at the shed opposite Pauline Bharath's home. He remained very close to her while she waited there. He was at that spot, and not at Mr Bruzual's gap, even when the group of boys came up from the cane field, not even on the old stove. The State asked me to infer that he did this to oversee who would say what when Ms Pauline started asking questions. I found another inference.

158. The post-offence conduct involved much more. As against Accused No. 1, the State asked that I take note of the inconsistent reports given by him. At first, and even before the boys returned from fishing, Ms Bharath asked Accused No. 1 if he saw Sean and he said, "No." Later, when the searching began, Ms Bharath said that Accused No. 1 was the first person to come to her and report that he had seen Sean walking into the cane with a tall man in a white shirt. The next day, while at the Homicide Office, in the presence of his mother, he gave the police quite a developed account with a vivid description (down to 'chinee' eyes) of the man he supposedly saw taking Sean into the cane field. That account involved great detail and included a sinister report that the man threatened him.

159. This account about a tall man in a white shirt taking Sean into the cane was also given to the police by Accused No. 2. In his testimony, Accused No. 2 admitted that he was not speaking truthfully to the police when he gave that account. He provided an explanation, saying that no one wanted to come forward to give the police a statement and he wanted to help. Though he testified that he lied to the police, he said that he genuinely believed the account to be a true one. He merely pretended to have seen it himself in order to help the police.

160. In the case of Accused No. 2, he admitted the lie, albeit providing a reason. If I believed Genevieve Ramtahal and Avinash Baboolal, then the lie was proven as against both Accused Nos. 1 and 2. The State asked me to use the lie as proof of guilt. They said it was yet another strand in the catena of circumstantial evidence.

161. While the circumstances of this case as it relates to this particular lie were somewhat unique, I nevertheless considered a **Lucas** direction[49] as I weighed up the evidence. **Lucas** seems to have made its way into general usage in criminal trials. Clearly the State asked me to rely on the lie as proof of guilt against them both, as opposed to merely an attack on their credibility. I found that the State satisfied me beyond reasonable doubt that when BOTH Accused Nos. 1 and 2 gave the account of the tall man in the white shirt taking Sean Luke into the cane, they lied intentionally to Ms Pauline Bharath, Mr Bruzual and the police. I am sure that when they gave that tale, they did not do so for any innocent reason. In this regard, I entirely rejected the explanation provided by Accused No. 2. They lied out of consciousness of guilt post-offence. I am sure that when they did so, it was planned. I believe they inserted themselves into the investigation from the time the alarm about the missing child was raised in an attempt to derail the investigation and channel attention away from themselves.

162. I found the following facts to the extent that I am sure of them.

I. Pauline Bharath fell asleep around 1:50 pm on Sunday 26th March 2006. Her 6-year old son Sean Luke was playing on her at the time, wearing only an underwear, the very underwear found by Nehemiah Ramdhanie on Monday 27th March 2006 and examined in 2021 by Dr Aboud.

II. After she fell asleep, Sean Luke went outside, unbeknownst to her. He went into the road and joined a group of boys making a kite. Avinash Baboolal was not in this group. Accused Nos. 1 and 2 re-joined the group making the kite and all of them headed north. I am sure that it was after Pauline fell asleep and before the fishing trip. I am also sure that this was before 3 pm (time taken from Pathologists).

[49] **R v Lucas** [1981] 73 Cr. App. Rep. 159; **R v Burge and Pegg** [1996] 1 Cr. App. Rep. 163

III. Avinash Baboolal met Arvis Pradeep at the savannah and Arvis agreed to go fishing with Avinash. They headed south on Henry Street West and stopped near to Mr Bruzual's home. By this time, I am sure that Accused Nos. 1 and 2 had returned from wherever they went earlier with the kite. Accused No. 2 was at his gap.

IV. Avinash Baboolal paused on the road and Accused No. 2 came over to him and Arvis on the road. At the time Accused No. 2 was at his gap, Sean Luke was playing close to that gap. (I am sure that he had likewise returned from wherever they went north with the kite by this time.) I am sure that Avinash Baboolal did not declare that Accused No. 1 could not join them. In fact, at the time he invited Accused No. 2 to go along, only Accused No. 2 and Sean Luke were present on the road. Accused No. 2 went inside and came back with Keshon, Reshawn and someone else who was introduced to Avinash by Accused No. 2 as 'Akeel', who in fact was Accused No. 1. Sean Luke went along as well (I weighed the evidence globally and accept this from Avinash Baboolal).

V. They went south and passed Sean Luke's house where I believe so that I am sure, Pauline was still asleep.

VI. While walking through the track between cane fields (clearly there were on both sides), Accused No 2 said, "Stop. Hold on." And at that point in time, Accused Nos. 1 and 2 entered into the abandoned cane field. They went into the cane which was approximately 6 feet in height with Sean and Keshon, out of sight of Avinash Baboolal and the others who remained waiting on the road. Arvis Pradeep was with him and they had not yet arrived at the watercourse to fish. I believed that. The spot where they entered the cane is exactly as that pointed out by Avinash Baboolal on the sketch map; along the red line and just above the '537', at the point where the blue line intersects. He pointed it out to us and I took a screenshot,

which was sent to Counsel. That was the last place Sean Luke was seen alive.

VII. While they were out of his sight, Avinash Baboolal heard a short, high-pitched sound, which I am sure was a sound of utter distress from Sean Luke. I am sure that Sean Luke was buggered and sodomised with the cane stalk at that time and that both Accused persons participated in this enterprise with the requite intent (attributed one as principal and the other as secondary) to kill or cause grievous bodily harm. (The requisite intent is explained below.) In drawing all the evidence together, I am sure that this happened in a few frenzied moments, minutes between 3 pm and 6 pm. Death came within minutes of the penetration of the cane stalk.

VIII. Avinash asked Accused No. 2 for Sean when he came back out and I am sure that Accused No. 2 replied words to the effect that Sean was defecating and would go home when he was finished. Avinash Baboolal believed that Sean was defecating and would go home when he was finished.

IX. The group (minus Sean) continued on the journey to the watercourse. Almost to the destination, I am sure Accused No. 1 said he was going back home and he left them, turning back 180 degrees to where they just came from. Avinash looked back just before the watercourse and saw Accused No. 1 re-entering the cane, at the same spot where he and Accused No. 2 had earlier gone in with Keshon and Sean, but had returned without Sean.

X. While fishing (in the usual manner of children in rural areas wherever you could find tadpoles and wuabine), Avinash asked Keshon about the noise he heard and Keshon replied to him. They caught a mamateta and were returning home via the same route. (I am sure.)

XI. While going back home, as they passed the cane field, even as the group of boys joked about getting stuck in the mud and how they caught the mamateta, Accused No. 2 was strangely reserved. (I am sure.)

XII. Meanwhile and shortly before this, Pauline Bharath woke up and was outside at the shed. Accused No. 1 had **by this time** returned to Henry Street West and was positioned outside her home. I believed this to be deliberate on his part to establish a false alibi. She asked him if he had seen Sean and he said, "No." (I am sure.)

XIII. Sometime after, the group of boys (less Sean and Accused No. 1) emerged from the track through the cane fields and, as they were about to pass Sean's home, Pauline Bharath (mere feet away from Accused No. 1) asked Accused No. 2 if he saw Sean. Accused No. 2 said he did not. (I am sure.) I believed that Avinash Baboolal was mistaken.

XIV. Avinash Baboolal went home and took a bath. As it got dark, he went to bed. I am sure that he had no thoughts about Sean Luke before he went to bed. He believed Sean Luke had gone home after he went into the cane. When he was awakened with questions about whether he had seen Sean, I am sure that he answered instinctively in the affirmative, and communicated words to the effect that he believed Sean had gone him. That was his belief. In the ensuing days, as it dawned on him that persons were searching for Sean, he grew increasingly concerned as the afternoon's events took on significance that he had not earlier attached. (I am sure.)

XV. Meanwhile, Pauline Bharath grew worried. She started making enquires in the neighbourhood for Sean, but did not find him. The first person, I am sure, who mentioned seeing Sean to her was Accused No. 1, who gave a fictitious account about seeing a tall man in a white shirt walking with Sean in the cane. Pauline did not act on that information, which happened to come such a short while after he had earlier told her that he did not see Sean.

XVI. Accused No. 1's position at that shed, at that time, was deliberate and intentional. I am sure that the State negatived any and all ramifications of the Defence of Alibi.

XVII. Pauline spoke with other persons and someone's response caused her to go to the Bay and speak with the security guard there. Upon her return home, Mr Bruzual spoke with her (I am sure) and she again heard about a tall man walking with Sean in the cane.

XVIII. Pauline Bharath surmised that Sean's father, a 6' 4" tall man, may have taken Sean without her permission. That consideration took her to the father's home in Aripo Heights where she met Daniel Luke, but not Sean. Daniel Luke returned with her to Orange Valley and the search continued into the morning. There was no sign of Sean Luke. (I am sure.) I have already indicated the other major facts I found after this point in the sequence of events.

THE JOINT ENTERPRISE[50]

163. The criminal law generally only holds offenders liable to their own actions but under the doctrine of joint enterprise a person may be found guilty for another person's crime. Simple association or accidental presence is insufficient for a charge under joint enterprise. With respect to a secondary party, the prosecution must prove beyond reasonable doubt that the secondary party intentionally assisted or encouraged the principal to commit the act with the requisite intent. The State advanced its case on the basis of joint enterprise and on the basis of principal and secondary liability. That secondary liability that can make an accessory guilty of the murder is dependent on proof of intentional assistance or encouragement. The

[50] **R v Jogee** and **R v Ruddock** [2016] UKPC 7; **Baldath Rampersad and Sunil Singh and The State** Crim. App. No. P 005 and P 006 of 2017; **Soman Rampersad and others and The State** Cr. App. Nos. 17-22 of 2015 and Cr. App. No. 3 of 2013; **Dino Shawn Smith v DPP** SCCR App. No. 196 of 2018

State's case is that Accused No. 2 is the secondary party and they said that, while he did not have the positive intent to commit the murder, he intended to assist and/or encourage Accused No. 1, who they claimed had the specific intent to commit the murder. Did the State satisfy me that this in fact is what happened so that I am sure? There is no direct evidence about what happened inside the cane. (I did not consider the admissions.) However, I weighed up all the evidence globally, in particular the evidence of Avinash Baboolal, both Pathologists, Pauline Bharath, the Police Officers, the Scientific Officers and the DNA experts. And I drew the strands together from the facts I found.

164. I have found and have already outlined I found that all the circumstances led to one inescapable inference. That inference is as follows (not on speculation, but in my jury mind, what I believed happened inside the cane when I pulled it all together): Accused Nos. 1 & 2 planned to harm Sean Luke before the fishing trip which spontaneously provided them with an opportunity. En route to the fishing spot, without any conversation passing between them, Accused No. 2 suddenly said "Stop. Hold on." and again, without any other conversation passing between them, both Accused Nos. 1 & 2 entered into the cane, taking with them Sean Luke and Keshon. They remained inside that cane for a few minutes. I am sure what happened inside the cane was akin to a planned yet frenzied assault with intent to cause grievous bodily harm. From the appearance of the clothing which was discovered, I believed that Sean Luke's shorts and underwear were yanked down in one fell swoop. I believed on the totality of the evidence, including the DNA, that Accused No. 1 buggered Sean Luke and that, ordinary human logic and common sense satisfied me that it is he, Accused No. 1, who discharged spermatozoa both inside Sean Luke's anus and on the clothing. I believed that while he was doing that, Accused No. 2 covered Sean Luke's mouth. In my jury mind, I am sure on the totality of the evidence that from the time Sean Luke was naked, Accused No. 1's actions as the Principal, were at Sean Luke's rear end and that Accused No. 2 actively and intentionally provided him with assistance

throughout, by silencing and incapacitating the child. I accepted the opinion of the Pathologist. I believed that Accused No. 1 immediately after discharging then sodomised Sean Luke with the cane, intending as he did so to cause grievous bodily harm, with the full knowledge of the length of the cane and the depth of the penetration. I am satisfied beyond reasonable doubt that the State has rebutted the presumption of *doli incapax*[51] and that Accused No. 1 was at that time capable of forming the requisite intent[52], for the following reasons[53]:

i. He was mere weeks from his 14th birthday thereby putting him higher on the scale[54];
ii. On the spectrum of criminal conduct, the act was "more obviously wrong"[55];
iii. The full notes of the interview on 29th March 2006, showed his maturity and intelligence[56];
iv. He created for himself a false Alibi using the mother of the victim; and
v. The extent to which he inserted himself in the investigation was remarkable.

165. I believed that the loud sound Avinash Baboolal heard, like a mic being turned up too quickly, was the result of the excruciating 'agony' that Dr Daisley described. I believed that, in an effort to suppress that noise of the distressed child in his agony while being sodomised, and to incapacitate the child (clearly he would have fought), Accused No. 2's hand was over Sean Luke's mouth and on his neck, and he (Accused No. 2) was

[51] **C v DPP** [1996] AC 1; **A v DPP** [1997] 1 Cr. App. Rep. 27; **L v DPP** [1996] 2 Cr. App. Rep. 501

[52] Per Lord Lowry in **C v DPP**, "(t)he cases seem to show, **logically enough**, that the older the Defendant is and the more obviously wrong the act, the easier it will generally be to prove guilty knowledge."

[53] The "benevolent safeguard" was removed by the evidence.

[54] **B v R** [1960] 44 Crim. App. Rep. 1; **C v DPP**

[55] **C v DPP**; and in **A v DPP**: "The act does not speak for itself, but consideration of the conduct closely associated with the act is permitted for the purpose of deciding whether guilty knowledge is proved."

[56] The entire exculpatory account was given, not only voluntarily, but gratuitously and intentionally, full of details about the fictitious man and well aware of the investigation.

thereby actively and intentionally assisting Accused No. 1, who had the requite intention to cause grievous bodily harm. I am sure[57] that Accused No. 1 well knew that grievous bodily harm, perhaps even death was the only intended outcome. I am sure about the grievous bodily harm. I am sure that with each frenzied, forceful thrust, Accused No. 1 had the intention to commit murder. He pushed that cane stalk until it had nowhere else to go, and as he did so, he required the active assistance of another person to silence and incapacitate the child. I am sure that Accused No. 2 intentionally assisted Accused No. 1 in this act. I am sure that all this happened in the space of a few minutes in that trampled down area with a circumference of 5 feet where Nehemiah Ramdhanie found the clothing. Photograph **KBG-1**, taken by Officer Beckles-Gordon on 27th March 2006, displays Sean Luke's clothing immediately touching, right next to a broken cane plant. I note that that photograph was taken before either of the two Accused were detained by the Police and well before Accused No. 2 went into Couva with police on 31st March 2006. The inescapable inference to my jury mind was that long before 31st March 2006, and even before the body was discovered, there was evidence connecting a broken cane plant and Sean Luke's clothing. The discovery of the naked, sodomised and discarded body the next morning drew the pieces of the puzzle together.

166. I am sure that the joint enterprise incorporated the fictitious tale about a tall man in a white shirt. But that is not the only post offence conduct that contributed to my clear finding that this was a joint enterprise. I believed Avinash Baboolal when he said that, as soon as they emerged from the cane, he asked about Sean, and it was Accused No. 2 who provided the ready answer. Accused No. 2 emerged from the cane with a ready excuse that Sean was defecating and would go home when he was done. What happened inside that cane did not meet Accused No. 2 by surprise. Thereby, covering for Sean's failure to emerge with them and his absence during the entire

[57] Based on the evidence of the Pathologists, as to the degree of force, the extent of the internal injuries and the actual length of the cane stalk which was removed from the body.

fishing expedition. The story about the tall man in the white T-shirt revealed the extent to which both Accused were invested in covering up their enterprise. That very afternoon it was Accused No. 1 who first started the story, telling Pauline Bharath about the fictitious tall man. Even after Pauline ignored him, I believed that they advanced their agenda by communicating through someone she would take seriously, that is Mr Bruzual. So said, so done. I say 'they' because the very next day, mere hours after Sean's clothing was found next to the broken cane plant, and before his body was discovered, it was Accused No. 2 who gave the first official police statement about the fictitious tall man in white. Not too long thereafter, Accused No. 1 gave Officer Garcia a story surrounding the tall man in white, only this time (kind of on steroids) adding a face, description and threat, to continue to thwart the police investigation.

167. As it relates to my route to verdict, I took note of the recommendations in the **Ensor Hearing**, my findings did not take me to felony murder or manslaughter. I have explained myself.

DISPOSITION

168. As it relates to Accused No. 1, Mr Akeel Mitchell, I find him guilty of the Murder of Sean Luke.

169. As it relates to Accused No. 2, Mr Richard Chatoo, I find him guilty of the Murder of Sean Luke.

Lisa Ramsumair-Hinds

Puisne Judge

APPENDIX

TABLE 1 – TRIAL PROGRESS

VOIR DIRE NUMBER 1			
DATE	**WITNESS**	**NATURE OF EVIDENCE**	**EXHIBIT**
12-Feb	PO Leith Jones	VV -virtual	
12-Feb	PO Lyndon Fraser	VV -virtual	
12-Feb	PO Samuel Felice	VV -virtual	
17-Feb	PO Rodney Mohammed	VV -virtual	
22-Feb	PO Nicole Simon	VV - in person	NS 1
22-Feb	PO Alexis Garcia	VV - in person	
VOIR DIRE NUMBER 2			
DATE	**WITNESS**	**NATURE OF EVIDENCE**	**EXHIBIT**
26-Feb	PO Peter Ramdeen	VV -virtual	
26-Feb	PO Nigel Marrain	VV -virtual	
26-Feb	PO Leith Jones	VV -virtual	
1-Mar	PO Nawraj Ramdhan	VV -virtual	
1-Mar	PO Sean Dhilpaul	VV -virtual	
1-Mar	PO Learie Figaro	VV -virtual	
1-Mar	PO Richardson Elvin	VV -virtual	
3-Mar	PO Richardson Elvin cont'd	VV -virtual	
3-Mar	PO Rodney Mohammed	VV -virtual	
5-Mar	PO Nicole Simon	VV - in person	NS 2
5-Mar	PO Nigel Stephen	VV - in person	NS-DVD1; NS-T1; NS-T2
10-Mar	PO Nigel Stephen cont'd	VV -virtual	
10-Mar	PO Lyndon Fraser	VV -virtual	
15-Mar	JP Balroop Chandarjeet	VV -virtual	
17-Mar	PO Nigel Stephen recalled	VV -virtual	
17-Mar	PO Azam Hamid	VV -virtual	
22-Mar	PO Gobin Harrypersad	VV -virtual	GH 1; GH 2
24-Mar	PO Gobin Harrypersad cont'd	VV -virtual	
26-Mar	PO Gobin Harrypersad cont'd	VV -virtual	
29-Mar	PO Alexis Garcia	VV -virtual	
31-Mar	PO Alexis Garcia cont'd	VV -virtual	
31-Mar	Defence Witness: Raymond Bruzual	VV -virtual	

MAIN TRIAL			
DATE	**WITNESS**	**NATURE OF EVIDENCE**	**EXHIBIT**
19-Apr	PO Nina Rawlins-Barclay	VV -virtual	NRB 1-3
19-Apr	PO Gregory Hood	VV -virtual	GHD 1
19-Apr	PO Anthony Thurab	VV -virtual	
19-Apr	PO Danny Ramlogan	VV -virtual	
21-Apr	PO Dane James	VV -virtual	DJ 1
21-Apr	PO Khemraj Ragoonath	VV -virtual	KR 1
21-Apr	PO Ivan Nicholls	VV -virtual	IN 1-3
23-Apr	PO Ivan Nicholls cont'd	VV -virtual	
23-Apr	Genevieve Ramtahal	VV -virtual	
23-Apr	Sankar Moonilal	VV -virtual	
23-Apr	Marilyn Bharath-Persad	VV -virtual	
23-Apr	Pauline Bharath	VV -virtual	
26-Apr	Pauline Bharath cont'd	VV -virtual	
26-Apr	Nehemiah Ramdhanie	VV -virtual	
26-Apr	PO Che Duprey	FA	CD 1-3
26-Apr	PO Kennetha Beckles-Gordon	FA	KBG 1-3
26-Apr	Dr Indarjit Birjah	FA	
28-Apr	Avinash Baboolal	VV -virtual	
30-Apr	Avinash Baboolal cont'd	VV -virtual	
3-May	Avinash Baboolal cont'd	VV -virtual	
3-May	Arvis Pradeep	VV -virtual	
5-May	Arvis Pradeep cont'd	VV -virtual	
7-May	Arvis Pradeep cont'd	VV -virtual	
7-May	PO Lyndon Fraser	INC & VV - virtual	
10-May	Dr Estlyn McDonald-Burris	VV -virtual	
10-May	PO Nicole Simon	INC & VV - virtual	NS 1; NS 2
12-May	PO Nicole Simon cont'd	VV -virtual	
12-May	PO Lindon Hosein	VV -virtual	
14-May	PO Gobin Harrypersad	INC & VV - virtual	GH 3
14-May	PO Leith Jones	INC	
19-May	PO Rajesh Radhaykissoon	VV -virtual	RR 1-24
19-May	Camille Grant	VV -virtual	
19-May	PO Samuel Felice	INC	
21-May	Camille Grant cont'd	VV -virtual	

21-May	Dr Maurice Aboud	VV -virtual	MJA 1; MJA 2
26-May	Dr Maurice Aboud cont'd	VV -virtual	
26-May	PO Peter Ramdeen	INC	
26-May	PO Nigel Marrain	INC	
26-May	PO Nawraj Ramdhan	INC	
26-May	PO Sean Dhilpaul	INC	
26-May	PO Learie Figaro	INC	
26-May	PO Richardson Elvin	INC	
26-May	PO Nigel Stephen	INC	
26-May	JP Balroop Chandarjeet	INC	
2-Jun	PO Rodney Mohammed	INC & VV - virtual	
2-Jun	PO Azam Hamid	INC	
7-Jun	PO Alexis Garcia	INC & VV - virtual	
14-Jun	PO Alexis Garcia cont'd	VV - virtual	
16-Jun	**NO CASE SUBMISSION**		
21-Jun	**RULING ON NO CASE**		
23-Jun	Dr Hubert Daisley - Case for Acc # 1	VV - virtual	
25-Jun	Richard Chatoo - Case for Acc # 2	VV - virtual	
28-Jun	Richard Chatoo cont'd	VV - virtual	

PO – Police Officer

JP – Justice of the Peace

VV – Viva Voce

INC – Incorporated from voir dire(s)

FA – Formal Admission