REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr. App. Nos. 28- 30 of 2009

BETWEEN

VIVIAN CLARKE
STEVE MC GILLVERY A/C "BOOPS"
PERNELL MARTIN

APPELLANTS

AND

THE STATE

RESPONDENT

PANEL:

P. Weekes, J.A.

Yorke – Soo Hon, J.A.

N. Bereaux, J.A.

APPEARANCES:

Mr. J. Singh for Appellants nos. 1, 2 and 3

Ms. D. Seetahal, S.C. for the Respondent

DATE OF DELIVERY: 28th July 2011

JUDGMENT

Delivered by: P. Weekes, JA

1. The appellants, Vivian Clarke (appellant no.1), Steve Mc Gillvery a/c "Boops" (appellant no.2) and Pernell Martin (appellant no.3) were charged with the murder of Samdaye Rampersad, which was committed between the period November 27th 2005 and January 6th 2006. They were convicted of the lesser offence of manslaughter on 31st July 2009 at the Port of Spain Assizes and each was subsequently sentenced to thirty years imprisonment with hard labour.

The Prosecution Case

2. The appellants were charged and tried along with six other men, among them Phillip Boodram a/c "The Boss" (hereinafter referred to as the principal). The prosecution case against the appellants was based on the evidence of one Nigel Roderique a/c "Supercat", and statements which the appellants allegedly made to the police. It was alleged that the three appellants engaged in a joint enterprise, masterminded by the principal and involving others, to kidnap Samdaye Rampersad for ransom. The three appellants played a specific role in the kidnapping, which was to seize the victim and deliver her to their confederates. She was duly handed over and while in the custody of other participants in the enterprise, she was killed.

3. Roderique's evidence was that on Friday 25th November 2005, appellant no. 1, an acquaintance of several years, and another man visited him at home. Sometime later they all left Roderique's home and went to Claxton Bay where they were supposed to meet the principal but instead met yet another man. The principal eventually arrived and told the men gathered about one Rampersad to whom he had given cocaine valued $900,000 to take to England. He told the men that Rampersad was avoiding him and he wanted to kidnap Rampersad's mother, Samdaye, in order to recover his money.

4. After discussing further details, the principal gave two handguns to appellant no. 1 and two to another participant after which appellant no. 1, Roderique and the other man left. Appellant no. 1 told Roderique that when the woman was held he would call him saying "the bread is in the oven".

5. The following day around 9:00am appellants nos. 1 and 3 went to Roderique's home to get a vehicle with which to carry out their part in the enterprise. Appellant no. 3 collected keys and drove off in a white Nissan B15.

6. At 8:00 that night, Samdaye was snatched from the convenience store which she operated and bundled into the vehicle. Appellant no.3 was the driver and appellant no. 2 was in the front passenger seat. Appellant no. 1 was not present. Two other men accompanied appellants nos. 2 and 3. The *"snatch"* was communicated to appellant no. 1.

7. Shortly after, appellant no. 1 called Roderique and said "the bread is in the oven." Roderique, together with another confederate, drove to Bobby Hill in an open-tray van and waited. Appellants nos. 2 and 3 drove up with Samdaye in the backseat between the other men. (This was the first occasion on which Roderique was seeing appellant no. 2, whom he described as the only "clear" person that night. He also described appellant no. 2 as a "red skinned African man" and "dougla-ish". Roderique saw him on three subsequent occasions and estimated that appellant no. 2 was under his observation cumulatively for approximately nine hours. Appellant no. 2 was identified by Roderique in a dock identification).

8. At the time that the deceased was handed over, her hands were tied behind her back and there was something covering her eyes. The men transferred her to the tray of the van and secured her. Appellants Nos. 2 and 3 then drove off. This brought to an end the involvement of the three appellants in the enterprise.

9. On the 27th November 2005, Roderique went to a cashew field in a nearby village to meet the other six participants. The principal questioned Samdaye, asking about her son and she denied having a son. He slapped and told her not to make jokes with his drugs. He held her by her neck and shook her; another man kicked her in the waist; one of the participants stomped on her side. The principal then sat on her back, pulled her head back and again enquired about her son and she repeated that she did not have a son. The principal then beat her and pulled her head back again until there was a "crack crack" sound.

10. He then spoke to one of the participants saying, *"Pak, handle that."* Pak pulled a piece of string from his hair and tied it around Samdaye's neck until she stopped moving. She was then buried in the field. The following day, Roderique was at work in Claxton Bay when appellants Nos. 1 and 3 visited him and showed him a newspaper report about which they spoke.

11. On December 31st 2005, Roderique made a report to one Inspector Corbett, who later commenced the investigation into Samdaye Rampersad's death. On January 5th 2006, he, together with other officers, a forensic pathologist and two grave diggers went to the cashew field where the body of Samdaye Rampersad was unearthed. A post-mortem determined that her back had been broken. The cause of death, however, was asphyxiation from choking associated with live burial.

12. Appellants nos. 1 and 2 were arrested on January 5th and appellant no. 3 on January 8th 2006. Appellant no. 1 was interviewed and told of the investigation into the kidnapping and death of Samdaye Rampersad. On being cautioned he replied, *"I was involved in the kidnapping but not the murder."* In this interview he stated that he was invited by one "Soldier" in San Juan to participate in a *"profit scene."* Appellant

no. 1's part was to patrol the main road by Dollar Rescue and look out for police. He said that while doing so he got a call saying "the bread in the oven".

13. Appellant no. 2 was interviewed on January 8th 2006. When told of the investigation and cautioned, he replied, *"Ah sure I ent know nothing about no murder, but I was around when they was making the kidnapping move at the lady."* He gave a statement saying that he had met someone who wanted to know if he would participate in the kidnapping and he had told him that he was not going to snatch anyone but nonetheless accompanied him to Dollar Rescue where they waited for twenty minutes. The man received a phone call after which they drove slowly for about three minutes and then a white car sped past them. Shortly thereafter he was dropped home.

14. Appellant no. 3 was also interviewed on January 8th 2006. When told of the investigation and cautioned, he replied *"Boss, I don't know nothing about that."* He was later interviewed by the officers and admitted to being the driver of the car in which Samdaye was placed when she was taken. In his interview he referred to appellant no. 2 as "Spanish".

The appellants were tried along with the principal and other co-conspirators.

<u>The Defence Case</u>

<u>Appellant no. 1</u>

15. Appellant no. 1 did not testify. Through cross-examination of prosecution witnesses it was suggested that he had not given any statement and that his interview notes were fabricated by the police. He called two witnesses whose evidence was to the effect that Roderique was not at work on November 28th 2005, thereby suggesting that appellants nos. 1 and 3 could not have visited him as he had testified. It was also

suggested that appellant no. 1 had attended the Port of Spain Magistrates Court on November 28th 2005 and therefore could not have been in Claxton Bay.

Appellant no. 2

16. Appellant no. 2 did not give evidence. It was suggested on his behalf that he was invited to join the kidnapping enterprise but refused. It was also suggested that there was a case of mistaken identity. Sergeant Khan of the Criminal Records Department was called as a witness and testified that there were over 20 persons nicknamed "Spanish" in their records.

Appellant no. 3

17. Appellant no. 3 neither testified nor called witnesses. Through cross-examination it was suggested that he was tricked by police officers into signing the interview notes.

Verdicts

18. The jury found the three appellants guilty of manslaughter, one co-accused not guilty and failed to arrive at a verdict in respect of five of the co-accused, including the principal.

Ground 1

Inconsistent Verdict

A miscarriage of justice has occurred with respect to the convictions of all the appellants in that the said verdict of the jury with respect of the appellants is logically inconsistent with the jury failing to agree with respect to the other six accused in particular the alleged principal accused no. 1.

19. Mr. Singh submitted that given the manner in which the State put forward its case and its inextricable linkage with Roderique's credibility, the verdict of the jury in finding

the appellants guilty of manslaughter is logically inconsistent with their failure to agree in respect of the other five accused, in particular, the principal.

20. He argued that the verdict of manslaughter against the appellants was artificial and without plausible explanation, particularly when the principal was not found guilty of murder despite having been identified as the mastermind and the one who dealt the fatal blow to the deceased. He submitted that since the State's case was hinged on the guilt of the principal, the jury ought to have first been sure that he committed the murder before considering the culpability of the appellants. We pause to note that there was no "*fatal blow"* given the forensic evidence but understood the submission to mean inflicted the most serious injuries.

21. He contended that the varying verdicts indicate that the jury was unsure of Roderique's evidence against the other accused, and since that evidence was so closely linked to the evidence of the participation of the appellants, the verdict against the appellants lacked rational basis.

22. Ms. Seetahal, in response, argued that the evidence against the appellants was not the same as the evidence against the other accused, since the other accused raised alibis (which the appellants did not) and each of the three appellants made incriminating statements to the police, unlike their co-accused. She submitted that the verdicts were "readily explainable" having regard to the differences in evidence and the direction of the judge to consider the case of each accused separately. She further submitted that the prosecution case did not hinge upon proof of guilt of the principal, since it was sufficient that the appellants were part of the common enterprise to kidnap which would involve at the very least a contemplation of some physical harm and, where death resulted consequent on the kidnapping, the appellants were rightly found guilty of manslaughter.

23. The first issue to be settled is whether the ground as filed is sustainable given the fact that the complaint lies in a comparison between the three verdicts of guilty of manslaughter and the five failures to agree.

24. *Osbourne's Concise Law Dictionary* defines verdict as: *"In criminal cases, the finding is either guilty or not guilty.*" *Black's Law Dictionary* defines the term "legally inconsistent verdict" as *"A verdict in which the same element is found to exist and not to exist, as when a defendant is acquitted of one offence and convicted of another, even though the offences arise from the same set of facts and an element of the second offence requires proof that the first offence has been committed."*

25. Our Court of Appeal in **Evans Xavier v The State, Cr. App. No. 78 of 1988** stated:

"A verdict of a jury can only be one of guilty or not guilty. A disagreement by the jury is not a verdict."

26. It follows that for there to be inconsistent verdicts, there must first be actual verdicts delivered which can be compared. Where a jury fails to agree there is no verdict. The legal effect of a hung jury was examined in the United States Supreme Court case of **Yeager v United States (2009) 129 S. Ct. 2360**. In addressing the issues of double jeopardy and estoppel, the Court held that because it is impossible to know the basis for a jury's failure to agree, a hung jury has no legal significance at all. Justice Stevens, delivering the opinion of the Court, reasoned as follows:

"Because a jury speaks only through its verdict, its failure to reach a verdict cannot—by negative implication—yield a piece of information that helps put together the trial puzzle... Unlike the pleadings, the jury charge, or the evidence introduced by the parties, there is no way to decipher what a hung count represents. Even in the usual sense of "relevance," a hung count hardly "make[s] the existence of any fact . . . more probable or less probable." A host of reasons—sharp disagreement, confusion about the issues, exhaustion after a long trial, to name but a few—could work alone or in tandem to cause a jury to hang. To ascribe meaning to a hung count would presume an ability to identify which factor

was at play in the jury room. But that is not reasoned analysis; it is guesswork. Such conjecture about possible reasons for a jury's failure to reach a decision should play no part in assessing the legal consequences of a unanimous verdict that the jurors did return. [References omitted]"
"… hung counts have never been accorded respect as a matter of law or history, and are not similar to jury verdicts in any relevant sense."

27. We find this reasoning to be persuasive. In order to examine whether there is an inconsistent verdict, the jury must have delivered verdicts which allow the court to analyse the possible bases for their decisions. In the absence of a verdict, one way or another, the court is unable to follow any line of reasoning employed. Consequently, there is no issue of inconsistent verdicts on the ground, as filed.

28. Although the foregoing is dispositive of this ground, we find it useful to examine the law and the consequences had the appellants taken issue with the verdict of not guilty in respect of the co-accused who was acquitted.

    It is clear that the exercise that must engage a Court of Appeal is an examination of the reasonableness of the jury's decision.

29. In **R v McKechnie (1992) 94 Cr. App. R. 51**, the English Court of Appeal noted that:

    "Not every inconsistency between verdicts justifies interference by this Court. The principle well established in a number of cases is that where there is such an inconsistency the Court of Appeal will only intervene to quash a conviction where the appellant establishes that no reasonable jury could properly have reached the verdicts that they did."

30. The Court went on to approve the following statements of Devlin J. (as he then was) in the unreported case of **Reg. v. Stone (unreported), December 13, 1954, C.C.A.**:

    "When an appellant seeks to persuade this court as his ground of appeal that the jury has returned a repugnant or inconsistent verdict, the burden is plainly on him. He must satisfy the court that the two verdicts cannot stand together,

meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they were an unreasonable jury or, that they could not have reasonably come to the conclusion, then the convictions cannot stand. But the burden is on the defence to establish that."

31. These sentiments were mirrored by the Court in **R. v Aldred (1995) Crim L.R. 160**. Importantly, the Court in **Aldred** noted that

> "*there may be all sorts of valid reasons why the jury may be convinced by a witness on one count but not another."*

Equally, there may be a number of valid reasons why a jury may be convinced by a witness with respect to his evidence about one accused but not another. A jury provides no reasons for its decision and an appellate court is not at liberty to speculate but once it can ascribe logic and reason to the differing decisions, the jury's verdict cannot be said to be inconsistent.

32. In Australia, emphasis is placed on the role of the judge in deciding whether verdicts are inconsistent. In the New South Wales case of **R v Mosegaard [2005] NSWCCA 361**; the Court of Appeal discussed what must be considered in assessing whether the inconsistency is sufficient to allow the appeal. It was said:

> *"In determining whether the inconsistency points to an unsatisfactory conviction, the appellate court must consider the evidence, the issues and the directions which the jury were given… An examination of the directions, issues and evidence may confirm that apparently inconsistent verdicts are in fact inconsistent and demonstrate that the conviction is unsafe. Just as frequently, however, examination of the issues evidence and directions may show that apparent inconsistent verdicts are not inconsistent and that there has been no failure in the reasoning process of the jury."*

33. In the Northern Territory of Australia, the Supreme Court, in **R v. Idolo Catalano (1992) 107 FLR 31** had this to add:

> *"When inconsistent verdicts are returned by the same jury, the position is usually more simple. If the inconsistency shows that that single jury was confused, or self contradictory, its conclusions are unsatisfactory or unsafe and neither verdict is reliable. Very often, however, an apparent inconsistency reflects no more than the jury's strict adherence to the judge's direction that they must consider each case separately and that evidence against one may not be admissible against the other: for example, where there is a signed confession."*

34. The High Court of Australia in the landmark case of **MacKenzie v R (1996) 190 CLR 348** stated

> *"... the respect for the function which the law assigns to juries (and the general satisfaction with their performance) have led courts to express repeatedly, in the context both of criminal and civil trials, reluctance to accept a submission that verdicts are inconsistent in the relevant sense. Thus, if there is a proper way by which the appellate court may reconcile the verdicts, allowing it to conclude that the jury performed their functions as required, that conclusion will generally be accepted. If there is some evidence to support the verdict said to be inconsistent, it is not the role of the appellate court, upon this ground, to substitute its opinion of the facts for one which was open to the jury. In a criminal appeal, the view may be taken that the jury simply followed the judge's instruction to consider separately the case presented by the prosecution in respect of each count and to apply to each count the requirement that all of the ingredients must be proved beyond reasonable doubt."*

35. The need for differing verdicts to be deemed unreasonable also obtains in Canada. The courts there have identified factors peculiar to verdicts in a case with multiple accused. In **R v Pittiman (2005) 198 CCC (3d) 308**, the accused was jointly charged with two co-accused of sexually assaulting a fourteen year old complainant. Following a trial by jury, the accused was convicted and his co-accused acquitted. He appealed his conviction on the basis that the verdicts were inconsistent and, consequently, that the jury's verdict against him was unreasonable.

36. The Court of Appeal of Ontario stated:

> *"....where several accused are jointly charged with the same single offence, it is not possible to characterise inconsistent verdicts against co-accused as unreasonable unless the evidence against both is identical… The fact that one accused was convicted while other co-accused were acquitted on similar evidence does not mean that the person convicted is entitled to an acquittal. In cases involving multiple co-accused charged with the same count, the Crown's case may be significantly stronger against one accused than another, the evidence may indicate that one accused played a more dominant role, or, in cases where the accused testify, the jury may assess the demeanor of one accused differently, any of which would provide a basis on which to distinguish the culpability of the accused."*

37. On further appeal, the Supreme Court of Canada added:

> *"The reasonableness of a verdict in the case of multiple accused charged with the same offence will require a consideration of much the same factors. For example, the jury may accept the complainant's testimony as credible in respect of one accused, but reject the complaint against another. The overall strength of the evidence relating to each accused may not be the same, leaving the jury with a reasonable doubt on the guilt of one, but not of the other. Of necessity, the case of multiple accused will also raise different considerations. For example, when considering a single accused who is charged with multiple offences, there is little to be gained by asking whether the evidence is the same. The evidence, by definition, will be different for each offence. Conversely, whether the evidence is the same will be the primary focus when considering inconsistent verdicts as between multiple accused charged with the same offence."*

38. The decision of our Court of Appeal in **Minnot et al v The State (2001) 62 WIR 347** is apposite. de la Bastide CJ, there stated that the complaint that verdicts are inconsistent may be raised either when a single accused is charged with more than one count or there are several accused tried on the same charge. It was held in the earlier Jamaican case **of R v Baker, White, Tyrell, Johnson, Brown and Phipps (1972) 19 WIR 278** that the principles applicable to inconsistent verdicts are the same whether they are verdicts on different counts of an indictment against the same person or verdicts on the same count in respect of different persons. The contention in that case was that the verdict of guilty of murder against each appellant was inconsistent with verdicts of acquittal of their co-accused, as there was nothing to distinguish between

the cases presented against the co-accused and the appellants. The Court of Appeal held that when considering inconsistent verdicts in a case where there are verdicts on the same count in respect of different persons, the critical question was whether, on the evidence, the jury could reasonably draw a distinction between the cases of the two or more persons; it was not sufficient that the verdicts merely appear to be inconsistent. It was made clear that the facts of each case must be carefully examined.

39. In **Minnot**, the principal ground of appeal was similar. It concerned the inconsistency of the appellants' convictions with the acquittal of a co-accused in the same circumstances. The appeals were allowed, the Court finding that the evidence in the case against the appellants had been exactly the same as that against the co-accused and accordingly, there was no reasonable, sensible and plausible explanation for how the jury could have doubted the veracity of the evidence of the police in regard to the co-accused but felt sure of it in regard to the appellants and their convictions were quashed.

40. de la Bastide CJ, set out six principles for dealing with the question of inconsistent verdicts but noted that the propositions were not meant to *"represent any sort of comprehensive statement of the law on the topic of inconsistent verdicts."*
These principles were stated as follows:

   (1) The Court of Appeal should be extremely slow to quash a conviction on the ground that it is supported by evidence from a source which must have been regarded by the jury as unreliable having regard to a Not Guilty verdict which they returned against the same accused on another count or against a co-accused on the same charge. If there is any plausible way at all of explaining how a reasonable jury might have reached the two verdicts, the Court of Appeal will not quash the conviction.

   (2) If there is any evidence to support the conviction which is confirmatory of, or supplementary to, the evidence which has been rendered questionable by the

acquittal, this is sufficient to justify different verdicts and the conviction will be upheld.

(3) If the implied rejection by a jury of a witness's evidence inherent in a verdict of acquittal can be explained on any basis which does not involve attributing to that witness an intention deliberately to mislead, eg faulty recollection, mistake, confusion, etc, a conviction based on other evidence from the same witness will not necessarily be regarded as unsafe.

(4) Even if an acquittal connotes lack of confidence by the jury in the truthfulness of a witness, a conviction based on the unsupported and challenged evidence of that witness may nonetheless be upheld if from the evidence there is available some reasonable basis for believing that the witness may have lied in relation to the charge that failed, but told the truth in relation to the charge that succeeded.

(5) In determining whether it was reasonable for a jury to have accepted one segment or aspect of a witness's evidence while rejecting another segment or aspect of his evidence, it is material to consider how closely linked in terms of time, place and subject matter are the two segments or aspects of his evidence.

(6) If an acquittal cannot be explained on any other basis but that the jury doubted the truthfulness of a witness, a conviction which depends on the jury having accepted that same witness as a witness of truth, cannot in the absence of some explanation of the jury's differing assessment of that witness' credibility, stand.

41. He noted that an inconsistency can cause a miscarriage of justice to occur *"when on analysis of the evidence the Court of Appeal is driven to the conclusion that a jury which has considered certain evidence not sufficiently reliable to support a conviction on one charge, nevertheless has relied on the same evidence, or more usually, on evidence from the same source, in order either to convict the same defendant on another charge, or to convict another defendant on the same charge."*

42. It is evident from the above cases that the similarity of the evidence is of great importance and critical to grounding an appeal based on inconsistent verdicts. It is therefore important to examine the similarities between the case for the appellants and the other accused in the instant appeal.

43. Counsel for the appellants contended that the verdicts were inconsistent "in light of the manner in which the State put forward its case and its inextricable linkage upon the credibility and truthfulness of Roderique as a witness". It is important to note that the prosecution case against the appellants did not rely solely on the evidence of Roderique. Apart from his evidence, there was evidence that each appellant made incriminating statements to the police concerning his involvement in the joint enterprise. Appellant no. 1 admitted to being "involved in the kidnapping" but stated that he knew nothing about the murder. Appellant no. 2 admitted to being present at the kidnapping; he was in the company of the driver. Appellant no. 3 confessed that he knew of the kidnapping plan and agreed to be the driver, but stated that he was not present at murder.

44. Consequently, even if the jury was not convinced beyond reasonable doubt solely on the evidence of the witness, it was still open to it to believe the inculpatory statements made by the appellants and, on that basis, find them to be party to a joint enterprise to kidnap Samdaye Rampersad, though without foresight of the fatal acts of the principal.

45. Another important factor is that unlike the other accused, the appellants did not raise the issue alibi. The accused who was acquitted had a unique confluence of evidence for/against him. Like the appellants, he had given a statement which was reduced into interview notes and Roderique testified in respect of him, but unlike the appellants, he had raised the issue of alibi.

46. Roderique testified that the acquitted accused had not been party to the planning stages of kidnapping, as were the other co-accused, but had only appeared on the night of the kidnapping itself, arriving in the same car as the principal. He was

present, standing in a circle about six feet away, when the deceased was questioned, assaulted and eventually killed.

47. The case against this accused differed from that of the appellants, since on the evidence it was open to the jury to find that he was a mere passive spectator, who took no part in the enterprise. With respect to him the judge gave following direction:

> *"Now, it is no criminal offence to stand by, a mere passive spectator of a crime, even of a crime of murder. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime and offered no opposition to it, though he might reasonably be expected to prevent it and had the power to do so, or at least to express his disgust, might under some circumstances afford cogent evidence upon which a jury would be justified in finding that he willfully engaged and lent his support to the principal in the commission of the offence…"*
>
> *"So what you have to do, Members of the Jury, in this case, bearing in mind that accused no. 9, according to the evidence, arrived in the same car as accused no. 1, stood by, did nothing, said nothing while the incident was unfolding and left, subsequently, in the same car as accused no. 1. So what you have to do is consider the circumstances of the case. Consider the time, consider the area in which this incident took place, from all accounts it is a lonely area, it is coming towards the evening. Bear in mind accused no. 9 placed himself, according to the evidence, in the car of accused no. 1, there was no evidence he was coerced into going there.*
>
> *He allowed himself to be taken to the cashew field when night was about to fall. Stood by and he did nothing and said nothing. The woman was slapped shaken, kicked, her head pulled back by accused no. 1, accused no. 7 mashed the flesh on her hand, accused no, 8 took a string and pulled it around her neck and accused no. 9 after all this took place in his presence, went back in the car with accused no. 1 and accused no. 7 and 8 and left.*
>
> *So look at all the circumstances of the case, and it's a matter for you to decide whether or not by his presence there, in all those circumstances, did accused no. 9 encourage or support the commission of the offence."*

48. The evidence for/against the other co-accused was therefore not the same as that for/against the appellants. The jury could therefore reasonably draw a distinction

between the case for the appellants and the other accused so as to result in varying verdicts.

49. The direction to take the case against each accused separately was given many times throughout the summing –up. The judge went through the evidence for each accused thoroughly, explaining, in relation to the appellants that their cases were based on the evidence of Roderique as well as on the interview notes or statements. Although the judge himself later grouped the cases for the other co-accused together, he remained insistent that the jury deal with the case against each accused separately. He directed:

   "… I am dealing with these together because they have certain similarities. Now, all of these accused gave no evidence, but they called upon witnesses to establish an alibi."

   At points in the summation, the cases against the three appellants were dealt with together, but the need for the jury to separate the issues and the various accused was reiterated:

   "Now I will deal with accused Nos. 3, 5 and 6, for the purposes of convenience, I deal with them together, you must take their cases separately."

50. The judge also directed the jury that it was open to them to find the principal guilty or not guilty of murder, whereas, for the other accused there were three possible verdicts, guilty of murder, guilty of manslaughter or not guilty.

51. We are of the opinion that the verdicts were unexceptionable. The verdict of guilty of manslaughter indicates that the jury was satisfied beyond reasonable doubt that the three appellants participated in the joint enterprise to kidnap Samdaye Rampersad with foresight that some degree of harm might be visited upon her. The jury had been instructed to consider its verdict with respect to each accused separately and the differences in the evidence were brought to their attention by the trial judge. In arriving at different verdicts the jury clearly followed instructions. It cannot be said

that the acquittal of one accused or the failure to agree in respect of the others is inconsistent with the conviction of the appellants and therefore unreasonable necessitating the quashing of their convictions. This ground fails as it is unmeritious.

Grounds 2 and 4

These will be dealt with together as they touch and concern the same issue.

<u>Joint Enterprise</u>

<u>Ground 2</u>

A material irregularity occurred during the course of the trial when the learned trial judge misdirected the jury with respect to the legal concepts of joint enterprise and foreseeability.

<u>Availability of Manslaughter</u>

<u>Ground 4</u>

The learned trial judge erred in law when he misdirected the jury that they could find the Appellants guilty of manslaughter if they found that what was contemplated by the Appellants was harm falling short of serious physical harm being done to the deceased by the Principal. Such a direction was not only wrong in law but would have deprived the Appellants of an acquittal in the circumstances of this case.

52. Mr. Singh submitted that there were material non directions with respect to the concepts of joint enterprise and foreseeability, which amounted to a miscarriage of justice with respect to all three appellants. The trial judge gave lengthy directions on the principles of joint enterprise which are recorded in his directions given on July 31st 2009, pg. 3 beginning at line 28. Mr. Singh submitted that the judge's directions were deficient in three ways.

53. Firstly, he submitted that the judge omitted to instruct the jury that they had to be sure that the principal had committed the murder before considering whether the appellants were liable as secondary parties. On the prosecution case, there was a clear principal

and the appellants were at best secondary participants, therefore the jury should have been told that they had to be sure that the principal committed the murder before secondary participation could arise. He distinguished the instant case from **R v A and Others [2010] EWCA Crim 1622,** where there was a multi-handed assault so the principal was not readily identifiable. It was held that there had to be a murder by a person, identified or not, before any other participant could be guilty by virtue of the principles of joint enterprise. Mr. Singh argued that in the instant case, the principal was on the prosecution case clearly identified and so it had to be proven to the jury's satisfaction that he had committed the murder.

54. In response, Ms. Seetahal submitted that such a direction was unnecessary. She contended that it was the acts, rather than the identity, of the principal that were germane to the liability of the secondary parties. She added that the usual direction to juries in cases of joint enterprise, that a secondary party had to have foresight of what the principal, whoever he was, might do, was what was of relevance and there was no need to direct the jury that they had to be sure of the principal's guilt before secondary parties could be liable.

55. We are not persuaded that a jury must be satisfied beyond reasonable doubt that an accused before them in a joint enterprise must necessarily be the principal. What is required is that they accept beyond reasonable doubt that there was a principal who committed the *actus reus* with the necessary *mens rea* and that other persons before them were secondary participants together with the principal, whomever he might be. One could well see that that there might be a case in which the jury, while not satisfied beyond reasonable doubt that the principal is before them, is nevertheless on a whole of the evidence, sure that the other participants are guilty. This is especially so where the evidence in respect of some participants is not identical to the evidence in respect of others.

56. In terms of weight, the evidence against the principal as against the appellants was not evenly balanced, particularly in light of the statements given by the appellants and the alibi advanced by the principal. It was therefore open to the jury to harbour doubts as to the principal's involvement since it was based solely on Roderique's evidence, especially given the fact that an accomplice direction had been given with respect to Roderique. On the evidence, the jury could, nevertheless, have been satisfied beyond reasonable doubt of the guilt of the appellants given the additional circumstances.

57. Secondly, under this ground Mr. Singh submitted that the judge failed to instruct the jury to consider whether the acts of the principal were fundamentally different from what the appellants contemplated.

58. While he conceded that the judge did direct the jury on whether the accused contemplated physical harm to the deceased in varying degrees, he contended however, that the judge failed to direct the jury that, if the principal's act was, or may have been fundamentally different from any act which the appellants realized that he might do, then, the appellants were not guilty of either murder or manslaughter.

59. In response, Ms. Seetahal submitted that the judge's directions in the instant case clearly conveyed that if the secondary parties did not foresee any kind of physical harm by the principal, they were not guilty of murder or manslaughter. She argued that the jury first had to determine what was the scope of the joint enterprise and only then would they be in a position to determine what the appellants would have foreseen. She found the judge's direction to be complete and that he properly advised the jury of the various options open to them, according to their findings of fact.

60. We agree with Ms. Seetahal. The judge's direction on what the appellants contemplated was comprehensive and he laid out for the jury in a simple, sensible and analytical manner, the various steps and stages which they had to follow in order to

make their relevant findings. The essence of the direction is set out at page 3 beginning at line 28 of his summation dated July 31st 2009 and is in the following terms:

> *"**But if the principal goes beyond the scope of the joint enterprise, that is he commits an act which the secondary party does not foresee as a real possibility, the secondary party is not guilty of murder or manslaughter**. In order to be guilty the secondary party must have foreseen that the risk of harm to the deceased was a substantial risk or a real possibility.*
>
> *Where the secondary party realizes or foresees that the principal might use force with intent to kill or do grievous bodily harm and participates with that foresight or realization, and the principal does kill, with that intention, the secondary party is guilty of murder.*
>
> *Where the secondary party realizes or foresees that the principal might inflict physical harm falling short of grievous bodily harm, and he participates in the joint enterprise with that foresight, then the secondary party is guilty of manslaughter.*
>
> ***So the essence of the thing really, of the liability of a secondary party is his foresight, what he foresees, what crosses his mind, what he contemplates may happen when he embarks on or participates in the joint enterprise….***
>
> ***So a lot depends on what you make of the foresight, or what would have crossed the mind of a secondary party when he decides to embark on the joint enterprise, or he joins in and participates, what does he foresee."*** [Emphasis ours]

The jury was thus alerted to the issue of whether the acts of the principal were beyond the contemplation or fundamentally different from what the appellants envisaged.

61. Mr Singh's third complaint was that the jury had to be instructed to consider whether the killing occurred while the joint enterprise was still ongoing and the judge omitted so to direct. He submitted that the prosecution case raised the issue of withdrawal by the appellants from the joint enterprise and therefore it was necessary to direct the jury on that issue. He cited **R v D [2005] EWCA Crim 1981** in which the court

referred to the learning stated in **R v Flaherty and Others [2004] EWCA Crim 526**. In **Flaherty** the court stated:

'61.There is no reference to a requirement that reasonable steps must have been taken to prevent the crime. The old decision of R v Hyde Hale 1 Pleas of the Crown 537 (1672) and R v Grundy [1977] CRLR 543 are also illustrations of the recognition that this is not necessary. Furthermore, the decision in R v Mitchell and King (1998) 163 JP 75, so far as we can see, an authority not brought to the attention of the judge, shows that in a case of spontaneous violence in principle it is possible to withdraw by ceasing to fight, throwing down one's weapons and walking away. In that case one of Mitchell's defences was that he had withdrawn before the final fatal injuries had been inflicted. It was stated by the Court that in those circumstances the jury had to be directed (a) that they must be satisfied that the fatal injuries were sustained whilst the joint enterprise was continuing and that the defendant was still acting within that joint enterprise, and (b) that they must be satisfied that the acts which caused the death were within the scope of the joint enterprise.…

63.For these reasons a defendant who effectively disengages or withdraws before the fatal injury or injuries are inflicted is not guilty of murder because he was not party to and did not participate in any unlawful violence which caused the fatal injury or injuries. We consider that the question of whether or not the violence formed one evolving incident or was two separate and discreet incidents is only relevant in helping to decide whether a particular defendant disengaged before the fatal injury or injuries were caused or joined in after they had been caused.

64.Accordingly, we consider, as this court did in R v Mitchell and King (1998) 163 JP 75 that the jury should have been directed that they must be satisfied (a) that the fatal injuries were sustained when the joint enterprise was continuing and that the defendant was till acting within that joint enterprise, and (b) that the acts which caused the death were within the scope of the joint enterprise."

62. Counsel submitted that the jury should have been invited to consider whether the appellants had withdrawn from the joint enterprise after delivering the deceased to the principal.

63. Ms. Seetahal pointed out that the judge specifically directed the jury to consider the scope of the joint enterprise in these terms,

> "*Was the joint enterprise to kidnap the woman and bring her straight to accused no. 1 unharmed? Was that the scope of the enterprise? Did it end there? Or did it include bringing the woman there and the accused no. 1 will take such steps as he sees fit then to recover this money from the woman's brother or to recover his drugs from the woman's brother? So what was the scope of the enterprise? Where did it end? Did it end at the kidnapping? Or does it include the further period when the woman is now being detained and kept by accused no. 1 with a view to recovering his money or his drugs?"*

64. She submitted that the judges' directions were consistent with the principles in **O'Flaherty and Others [2004] EWCA 526**, that the jury consider whether the fatal injuries had been sustained while the joint enterprise was continuing and whether the acts causing death were within the scope of the joint enterprise.

65. The cases of **R v Mitchell and King** and **R v O' Flaherty, Ryan and Toussaint [2004] 2 Cr. App. R. 20, C.A.** addressed the specific issue of a spontaneous attack and withdrawal before the fatal blow is delivered. That is not in issue in the instant matter. In our considered opinion, the issue of withdrawal was not a live one. The prosecution case, as posited, did not raise it nor did the appellants. It was the prosecution case that the joint enterprise was to kidnap for ransom, not to murder. The appellants, while part of the joint enterprise, were to play and did play a limited role. There was nothing on the evidence to suggest that at any stage they resiled from their specific participation. They did what they were supposed to do within the joint enterprise and brought that to a successful completion.

66. It would have been confusing to the jurors to instruct them to consider whether the joint enterprise continued beyond their participation, as clearly it did. The proper issue for them, which the trial judge drew to their attention, was 'what was the scope of the original enterprise'. Clearly it could not have ended with the seizing of Samdaye,

since that was only the first step in the plan to kidnap for ransom. Once they concluded that that was the scope of the enterprise, there was no room on the evidence to admit the question of withdrawal. We conclude that the judge was quite correct not to invite the jury to consider whether the killing occurred while the enterprise was still ongoing.

We find each of the three complaints contained in this ground to be unjustified.

Availability of Manslaughter

67. Mr. Singh submitted that there were material non-directions by the judge with respect to the concepts of joint enterprise and foreseeability which amounted to a miscarriage of justice with respect to all three appellants. He impugned the following portion of the judge's summation, of 31st July 2009,

> *Where the secondary party realizes or foresees that the principal might inflict physical harm falling short of grievous bodily harm, and he participates in the joint enterprise with that foresight, then the secondary party is guilty of manslaughter.*

68. He contended that the judge fell into error when he directed the jury that a secondary party is guilty of manslaughter if he foresees that the principal might inflict physical harm falling short of grievous bodily harm and participates in the joint enterprise with that foresight. He submitted that this direction was wrong in law.

69. Counsel submitted that the judge's directions in this case were based on the judgment of the English Court of Appeal in **R v Barry Reid (1976) 62 Cr. App. R. 109** and that after the decision in **R v Powell; R v English [1999] 1 A.C. 1, Reid** *(supra)* no longer represented the common law on the availability of manslaughter as a possible verdict. He relied on the case of **R v Mendez and Thompson [2010] EWCA Crim 516** which suggests that the decision in **Reid** is no longer representative of the common law position in England. We note that these comments were *obiter*.

70. He also submitted that based on the reasoning in **Rahman [2009] 1 A.C. 129; R v Powell; R v English [1999] 1 A.C. 1** and **R v Anderson and Morris [1966] 2 Q.B. 110** there was no basis on which the appellants could have been found guilty of manslaughter and that the jury having rejected the verdict of murder meant that they found as a fact that the deceased's killing was not within the appellants' foresight and therefore, they could not be guilty of manslaughter.

71. Ms. Seetahal responded that where a secondary party foresees the act of a principal, but with an intent not contemplated by the secondary party, the secondary party may be convicted of manslaughter rather than murder: **R v Gilmore [2002] 2 Cr. App R. 407**; **Archbold Criminal Pleading, Evidence and Practice 2010 para. 18 – 15**.

72. She referred to **R v Mathew (2010) EWCA Crim 1859** in support of her submission specifically at paragraph 9:

> *"Thirdly, a defendant who participated in an attack on the deceased in which someone else stabbed him but without the intent to kill or to do grievous bodily harm, and in circumstances in which the defendant foresaw a real risk of another attacker stabbing him, would be guilty of manslaughter but not murder."*

She also relied on the case of **Parsons v R [2009] EWCA Crim 64**.

73. The principles of liability of secondary parties to murder are amply covered in **Archbold Criminal Pleading, Evidence and Practice 2010 para. 19 – 26**:

> *"Following on from R v Powell; R v English, the House of Lords held in R v Rahman [2009] 1 A.C. 129, HL, that where, in the course of a joint enterprise to inflict unlawful violence, the principal killed the victim intending to do so, but the secondary party only foresaw that the principal might use force with an intent to cause serious injury, the secondary party was still guilty of murder as the principal's intention was not relevant to (i) whether the killing was within the scope of the joint enterprise or (ii) whether the principal's act was fundamentally different from the act or acts with the secondary party foresaw as part of the joint enterprise.*

Consistently with Rahman, it had been held in the earlier case of R v Day (M) [2001] Crim. L.R. 984, CA, that where an alleged secondary party to murder foresaw the act of the principal that caused the victim's death, but did realize that the principal might act with mens rea for murder, but did envisage that harm less than serious bodily harm might result, he would be guilty of manslaughter. This was confirmed post Rahman in R v Yemoh [2009] 6 Archbold News 2, C.A. See Also R v Gilmour [2000] 2 Cr. App. R. 407, NICA […] The obiter observation to the contrary in Attorney General's Reference (No. 3 of 2004) [2006] Crim. L.R. 63 CA, must now be regarded as wrong as being inconsistent with Rahman and with these authorities. Referring to Day in R v Parsons [2009] 2 Archbold News 3, the Court of Appeal said that a judge would only be obliged to leave manslaughter to the jury on this basis where there was evidence to support such a conclusion."

74. In **R v Anthony John Parsons [2009] EWCA Crim 64** paragraph 18, the court stated in relation to manslaughter as an alternative in joint enterprise cases:

"What is the situation, however, if he does not appreciate that such may be the consequence and envisages only that some harm less than serious bodily harm may result? Such is a situation which may occur more readily in practice where the weapon known about is a knife or piece of wood or the like. It is far less easy to envisage in reality such a possibility where a gun is known about and may be used.

***In principle, it seems to this court that the secondary party would indeed be guilty of manslaughter because he had neither the intention nor even the foresight that death or grievous bodily harm should result. He would lack the necessary mens rea for murder.**"* [Emphasis ours]

75. This Court addressed the issue of manslaughter as an alternative verdict in **Kelvin Bailey v The State Cr. App. No. 19 of 2000**. The appellant and a friend embarked on a plan to commit burglary. While he kept watch, his friend strangled the occupant in the house. The appellant subsequently assisted in disposing of the body. He was convicted of manslaughter and appealed his conviction. After summarizing the arguments on behalf of the appellant, Jones, J.A. said:

However, in view of the fact that both men had embarked on a course which had the potential for violence, then the secondary party, in this case, the appellant, must have foreseen the possibility of some action being taken to meet any resistance encountered. It is conceivable that he might have foreseen some lesser

harm than grievous bodily harm. If in such circumstances death results, then the secondary party will be guilty of manslaughter.

76. We consider this a succinct statement of the principles governing the availability of the verdict of manslaughter in joint enterprise cases. In the instant case, the trial judge directed the jury in a manner that reflects the learning in **Kelvin Bailey v The State**. It is clear from the passage above that manslaughter may be available as an alternative verdict in joint enterprise cases of murder alternative verdict should only be left to the jury if it is one to which they could reasonably come. We are of the view, that manslaughter was available to the appellants on the prosecution case and that the trial judge's directions on the availability of manslaughter as an alternative verdict was in keeping with the law. In the circumstances, we find no merit in this ground of appeal.

Ground 3
Relevant to appellant no. 2 only

Identification Parade

"A material irregularity occurred in the conduct of the trial with regard to the failure to conduct an identification parade in relation to appellant no. 2."

77. The five subparagraphs of particulars which comprise this ground are fully incorporated into the submissions of Mr. Singh. In this regard, Mr. Singh submitted that the failure of the police to conduct an identification parade was so manifestly and inherently unfair that the dock identification of the accused by Roderique was rendered nugatory and unsafe. He submitted that the first description given to the police by Roderique lacked sufficient particularity to identify appellant no. 2 as the person whom the witness knew as "Boops" and who had participated in the kidnapping of the deceased. Consequently, an identification parade ought to have been conducted in respect of appellant no. 2 and in light of the fact that this was not

done, the dock identification was prejudicial, had little probative value and should have been disallowed.

78. He added that the prejudice against appellant no. 2 was heightened when the trial judge directed the jury that they could use his (the appellant's) caution statement to support the identification of the appellant by Roderique, when, in fact, in that statement, the appellant had completely denied being a participant in the joint enterprise or going to the place Roderique said he saw him.

79. The directions of the trial judge on this aspect were as follows:

> *"Another matter which you will take into account, a matter which you may consider may support his identification is his statement that he gave to the police, because, remember in that statement that he gave to the police, he admits to having knowledge of the kidnapping of Samdaye Rampersad. And he admits to being in a car when the other white car passed and the person was driving the car in which accused no. 5 was, was in contact with Soldier, and so on with respect to what was happening on that night. So, what you would have to consider, well, is this a mere coincidence that he happens to have knowledge of this kidnapping but he was not at Claxton Bay on the night of the 5th, according to Roderique. So that's a matter you would consider."*

80. In **John v The State [2009] UKPC 12**, the Privy Council held that an identification parade should be conducted whenever it would serve a useful purpose, such as, whenever the police have a suspect in custody and a witness who, with no previous knowledge of the suspect, saw him either commit the crime or in circumstances relevant to the likelihood of his having done so. The Board further stated that:

> *"In such a case, Lord Hoffmann said in Goldson (56 WIR 444), 'a dock identification is unsatisfactory and ought not to be allowed,' although he added: 'Unless the witness had provided the police with a complete identification by name or description, so as to enable the police to take the accused into custody, the previous identification should take the form of an identification parade.'"*

81. The Board however went on to consider the situation where the witness claimed to know the suspect but the suspect denied it. In such a case the Board held that,

depending on the circumstances of the case, although it would be good practice to conduct an identification parade, it would serve less purpose. In **John**, the only evidence against the appellant was given by an accomplice, Lewis, a taxi driver, who had driven the appellant and other men to the location where the robbery and murder took place. Lewis had been in a position to describe the appellant to the police because for some months previously, once or twice a week whilst on his taxi run he had seen the appellant liming on Queen and Nelson Streets, Port of Spain, on one occasion for two or three hours, and so was able to recognize him although he did not know him personally.

82. The Board held that the circumstances suggested that the appellant was well known to Lewis and the failure to conduct an identification parade would not have resulted in a miscarriage of justice because the possibility of a mistaken recognition was not high. The Board considered that only if Lewis (the witness) had not in fact clearly known what the appellant looked like could he have failed to pick him out on a parade.

83. In the recent Privy Council decision, **Maxo Tido –v- The Queen [2011] UKPC 6**, the Board found it necessary to re-affirm the principle that *"dock identifications are not, of themselves and automatically, inadmissible"*. This was in the face of dictum by Lord Carswell, in **Edwards -v- the Queen [2006] UKPC 23**, that it was *"well established"* that, where a dock identification was the first identification it would be a *"serious irregularity"* to permit it. Lord Carswell cited as his authority the decision of the Privy Council in **The State v Constance, Wilson and Lee (1999, unreported)** in which Sir Patrick Russell, giving the judgment of the Board, stated that *"it is only in the most exceptional of circumstances that any form of dock identification is permissible."* He also cited the decision of the Privy Council in **Holland v H M Advocate [2005] UKPC D1, 2005 SLT 563**, as authority for the proposition that a dock identification was *"an undesirable practice in general"*.

84. In **Tido**, the Board, in upholding the admissibility of dock identifications, considered these three authorities and rejected the suggestion that **Holland v H M Advocate** was in fact authority for the principle that dock identifications were undesirable. Lord Kerr, who delivered the judgment of the Board, re-affirmed the admissibility of dock identification evidence in the following terms:

> *The Board therefore considers that it is important to make clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly where it is the first occasion on which the accused is purportedly identified, should be permitted on the basis that its admission might imperil the fair trial of the accused. Where it is decided that the evidence may be admitted, it will always be necessary to give the jury careful directions as to the dangers of relying on that evidence and in particular to warn them of the disadvantages to the accused of having been denied the opportunity of participating in an identification parade, if indeed he has been deprived of that opportunity. In such circumstances the judge should draw directly to the attention of the jury that the possibility of an inconclusive result to an identification parade, if it had materialised, could have been deployed on the accused's behalf to cast doubt on the accuracy of any subsequent identification. The jury should also be reminded of the obvious danger that a defendant occupying the dock might automatically be assumed by even a well- intentioned eye-witness to be the person who had committed the crime with which he or she was charged."*

85. It remains the law therefore that the failure to conduct an identification parade will not render dock identification evidence inadmissible unless on the facts and circumstances of the case it may result in a miscarriage of justice. Ms. Seetahal readily conceded that an identification parade would have been desirable in this case but submitted that in all the circumstances there had been no miscarriage of justice in the admission of the identification evidence. She submitted that the description given by Roderique to the police was not a generalised description rather it was a detailed description in regard to race, height and colouring coupled with an association with "Clarkey" (appellant no. 1) who lived in Sea Lots.

86. We agree with counsel for the respondent. We too consider that while an identification parade would have been desirable, that there was no miscarriage of justice in respect of the dock identification in the circumstances of this case. Roderique claimed that over the period of two months, and in connection with the kidnaping, he came into direct contact with the appellant, twice during daylight hours and once at night. He estimated that in total he had had the appellant in his observation for approximately nine hours. The different occasions and the length of time Roderique had the appellant in his observation suggest that the appellant was well enough known to him, that, together with the fact that he gave a description of the appellant as a *"red spanish kinda dougla looking*" individual known to him as "Boops", whom he had met at the home of "Clarkey" in Sealots, suggests also that he had that particular individual in mind when he gave that description to the police.

87. Mr. Singh sought to distinguish this case from **John**. He submitted that the description of appellant no. 2 given by Roderique to the police was not as detailed as the description given in **John**. We disagree. The description of the accused in this case was similar in so far as it spoke of race, height and complexion. Moreover, it was not argued that the description given by the witness did not match the description of appellant no. 2.

88. In our judgment, the evidence of Roderique was sufficient to show that he was well enough acquainted with appellant no. 2 to make the dock identification. This was sufficient to have been left to the jury for them to determine its weight. There was additional evidence which implicated appellant no. 2. He gave a statement in which he said that he was around when they were *"making the kidnapping move"* on the deceased. He further admitted that he knew about the white car in which there were at least three men who were involved in the kidnapping. It was open to the jury on that admission to find that appellant no. 2 had acted as Roderique had testified and, having

accepted that he made a statement to the police, it was for them to decide which parts of the statement they believed. The trial judge's direction that appellant no. 2's statement was supportive of Roderique's identification of him, is unexceptionable, once the jury had accepted Roderique's evidence on that issue.

89. While the judge did not warn the jury about the absence of opportunity for appellant no. 2 to take advantage of a possible inconclusive outcome to an identification parade, we do not consider this to have been fatal to the verdict. There was strong evidence which suggested that once Roderique was found to be a witness of truth it was unlikely that he could have been mistaken on the question of identification of appellant no 2. We are satisfied that the trial judge adequately pointed out to the jury the weaknesses in the identification of appellant no. 2 including the failure of the police to hold an identification parade and the value of having such a parade done. He also adequately pointed to the dangers of dock identification in that the witness could have conveniently selected appellant no. 2 as a person who fitted the general description of the person he saw.

ORDER

In the above premises the appeals are dismissed and the convictions and sentences affirmed.

P. Weekes,
Justice of Appeal

Yorke – Soo Hon,
Justice of Appeal

N. Bereaux,
Justice of Appeal