

THE REPUBLIC OF TRINIDAD AND TOBAGO
Cr. No. 12 of 2009



IN THE HIGH COURT OF JUSTICE

PORT OF SPAIN

BETWEEN

THE STATE

And

SHERVON PETERS A/C BUFFY

KIEDA GARCIA

MARLON TRIMMINGHAM A/C MADMAN MARLON

EARL TRIMMINGHAM A/C BOBO

RONALD ARMSTRONG A/C 22

ANTONIO CHARLES A/C HEDGES

JOEL FRASER A/C NINJA

LYNDON JAMES A/C IRON

DEVON PETERS A/C BLACKBOY

ANTHONY DWAYNE GLOSTER

JAMILLE ANDRE GARCIA A/C WASA

FOR KIDNAPPING AND MURDER

RULING ON APPLICATION OF NO CASE TO ANSWER
JAMILLE ANDRE GARCIA

January 15th 2016

BEFORE:
THE HON. JUSTICE HOLDIP

HC CR 12/2009 The State v. Peters, S. and Ors.

APPEARANCES:

MR. I. KHAN SC, MR. G. PETERSON SC, MS. J. BALKARAN, MS. K. THOMPSON appeared on behalf of **THE STATE**

MR. M. MERRITT, instructed by MR. C. CHANDLER

appeared on behalf of **SHERVON PETERS**

MR. M. MERRITT, instructed by MS. A. ROMERO

appeared on behalf of **KEIDA GARCIA**

MR. S. MOHAMED, instructed by MRS. S. BENJAMIN-ROACH

appeared on behalf of **MARLON TRIMMINGHAM**

MR. C. SELVON, instructed by MS. T. FRANCIS-BROOKS

appeared on behalf of **EARL TRIMMINGHAM**

MR. M. MERRITT, instructed by MR. S. NOREIGA

appeared on behalf of **RONALD ARMSTRONG**

MR. I. BROOKS, instructed by MRS. S. BENJAMIN-ROACH

appeared on behalf of **ANTONIO CHARLES**

MR. U. SKERRITT, instructed by MR. N. ALI

appeared on behalf of **JOEL FRASER**

MR. W. STURGE, instructed by MR. R. VINCENT CHARLES

appeared on behalf of **LYNDON JAMES**

MR. R. VALERE, instructed by MR. S. WILSON

appeared on behalf of **DEVON PETERS**

MR. J. PANTOR, instructed by MS. C. CREVELLE

appeared on behalf of **ANTHONY DWAYNE GLOSTER**

MR. L. SANKERSINGH, MS. L. LAKHAN

instructed by MR. A. RAHMAN

appeared on behalf of **JAMILLE GARCIA**

INTRODUCTION

1. On the 23rd November 2015, the Prosecution through Israel Khan SC, closed its case against the accused.
2. By submissions filed the 7th December 2015, Defence Counsel Mr. Sankersingh has asserted that the Prosecution has not made out a case for the accused Jamille Garcia, accused No. 12. Further, he stated that *"it is clear in the evidence given so far that no one who has made allegations against Jamille Garcia also called WASA has identified him or pointed him out as the person who was seen doing certain things complained of."* It was also asserted by Mr. Sankersingh that *"the mere fact that Accused No. 12 pleaded 'not guilty' to the offence charged meant that the Prosecution had to prove every ingredient of the alleged offence. The 'Not guilty' plea meant that the accused was denying any involvement, so his identity was in dispute and had to be proved."*
3. The crux of Mr. Sankersingh's no case submissions, rests on the issue of identity, that there is not even the *"slightest scintilla of evidence that there is any attempt to identify Accused No. 12, not in the slightest bit."*

DEFENCE SUBMISSIONS

4. The Defence submitted that in the evidence given so far, no one who has made allegations against Jamille Garcia also called Wasa, has identified him or pointed him out as the person who was seen doing certain things complained of. Counsel submitted that the mere fact that Accused No. 12 pleaded 'not guilty' to the offence charged meant that the Prosecution had to prove every ingredient of the

alleged offence. The 'Not Guilty' plea meant that the accused was denying any involvement, so his identity was in dispute and had to be proved.

5. Defence Counsel referred this Court to the Archbold, 2006, paragraph 4-353:

"Unlike formal evidence which does not touch the substance of the matter, establishing identity is invariably a most material step in establishing the case against a defendant."

Counsel submitted that the above is a clear statement of the law and in essence it says that if you are making allegations against me, you must point me out; you must identify me as the person you referred to in your statement to the police. This was never done in this trial with respect to Accused No. 12, Jamille Garcia. Identification therefore is an essential ingredient to establish the offense charged.

Attempt at Dock Identification

6. Counsel for the Accused submitted that the **first attempt to identify the defendant was by the process of dock identification. This was attempted by the prosecution on the 2nd March, 2015 at page 28 of the transcript when during the evidence of Keon Gloster, Mr. Khan S.C. led the witness in the identification of several of the accused. Before he reached accused No. 12 accused, Counsel for accused No.12 objected by pointing out that if Mr. Khan continues in this way *"and if left unchecked can be very prejudicial to my client, as it will amount to dock identification."* It was pointed out to the Court that so far, accused No. 12 has not been identified by anyone, especially persons making allegations against him (page 28). It is pointed out that this objection to the dock identification was done approximately eight months before the prosecution closed its case, making it very clear that identification was an issue.**
7. Counsel summarised the submissions made on the 2nd March, 2015 at page 29 of the transcript during the evidence of Keon Gloster, as follows:

"the evidence so far is that there is no hint or suggestion or any concrete evidence at all that anyone has identified Accused No. 12 and the way Mr. Khan is proceeding, he is about to approach Accused No.12 which will be an attempt at dock identification. Archbold, 2013 at 14-59 states 'the identification of a defendant for the first time in the dock is an undesirable practice and is rare in this jurisdiction, where procedures have been devised to deal even with suspects who are unwilling to participate in formal procedures. The case of Tido R. [2011], 2, Cr. App .R. 23. Examples of normal procedures that one used are identification parades; there are situations of group identification and even the procedure of confrontation, procedures that are normally used to identify persons'. "There is no evidence that any such thing has been attempted or taken place in this situation, none at all. There is not even the slightest scintilla of evidence that there is any attempt to identify Accused No. 12, not in the slightest bit."

8. Further at page 30 of the transcript of 2nd March, 2015 Counsel referring to Keon Gloster's statement marked:

"what I can say as a 'misdescription' of Accused No. 12 where he is referred to as having short hair and Keida Garcia having long hair, and referring to Accused No. 12 as dark, where one can see Keida as fair and one can see that they are both of the same complexion; a misdescription of Accused No. 12. From Archbold 2013 'where a known suspect is not available or ceased to be available, the identification officer may arrange certain procedures'. But this is not the case here. There is no evidence that Accused No 12 was not available. There is no evidence that he had gone anywhere. There is no evidence that he has ceased to live where he lived at that time. In fact, my instructions are that he was available at all times, if needed, to undergo that procedure, if necessary. Archbold continued 'although a trial judge retains a discretion to permit a dock identification, it is submitted that, in practice, the exercise of such a discretion should not even be considered unless the failure to conduct an identification procedure was as a result of the defendant's fault' ". "There is no evidence that it was the defendants fault in that he did not make himself available, he

hid, or some other reason that the identification parade was not adopted. I say this because it is absolutely essential that the accused be identified."

Counsel for accused No.12 continues to rely on these submissions.

Ruling of the Court on Attempted Dock Identification

9. With respect to the ruling of the Court on the attempt at dock identification, the Honourable Trial Judge at page 38 of the transcript were as follows:

"Be it as it may, at the end of it all it clearly is amounting to a dock identification if you allow this particular witness at this point in time to come and say about No.11 and No. 12.

In fact, even the methodology being used I would need to have some measure of relevance to the methodology being used by counsel for the State of the witness simply saying, 'I know X, Y and Z,' and so on, without X, Y and Z being known in a particular circumstance.

So that, the ruling effectively is that, as the law says and what you are reading is quite undesirable to have the witness come at this point in time and carry out the identification, especially as it relates to No.11 and 12. From reading his statement there is some purported identification, and I use the word 'purported' because even that is up for question now, there is some purported verification process that would have taken place as it relates to one or two of the other individuals who are in the dock, but as it relates to Nos. 11 and 12 it will amount to a dock identification at this time.

The evidence will unfold, undoubtedly, at some point in time where it could be otherwise dealt with in terms of who the parties are, but for the present purposes I would have to rule that it will be dock identification and it should not be admitted as of this moment." (a copy of this part of the transcript is attached hereto and labelled 'A').

10. Counsel for the Accused submitted that of extreme significance, is the concluding statements of the learned Judge that, *"it should not be admitted as of this*

moment" (emphasis mine). Counsel submitted that the reason for highlighting "as of this moment" is to show that an attempt at dock identification can be made by the prosecution at a later stage once a proper application is made to the Court supported by the relevant evidence which will be efforts made to locate Accused No. 12, if he hid or absconded, why an identification parade was not held or any of the several other methods that can be used. **Counsel submitted that no application to have a dock identification has been made.**

Attempts of naming Accused No. 12

11. During the evidence of Keon Gloster on the 2nd March, 2015 as reported from page 41 to page 45, the Prosecutor attempts to have the witness name the 12 accused persons. He begins with Accused No 1 asking the witness the name of each accused person. On reaching Accused No 12, quoting from the transcript at page 44-45:

MR.SANKERSINGH: My Lord, this is another effort at dock identification.

THE COURT: No, he says he knows everybody inside from years so he is identifying the people he knows by years.

MR. KHAN: he ain't identify him as doing anything. Continue, My Lord?

THE COURT: Yes Please

BY MR. KHAN :

Q: No.12 Do You know his name?

A: Yea.

Q: Name?

A: Keida

It is noted that 'Keida' is not the name of Accused No. 12.

Further Attempt To Name Accused No. 12

12. On the 23rd April, 2015 cross examination of Keon Gloster continued. Quoting from the transcript at page 31 after objections:

THE COURT: Well, Mr. Sankersingh, just to allay your fears, I don't think there is any way that counsel is making a dock identification other than simply asking the witness if he knows this particular person on the basis that the witness said he knew the persons. But I am not in any way raising it to the standard that it may amount to dock identification.

MR.SANKERSINGH: I am much obliged, My Lord.

THE COURT: Alright. Far from that. Mr. Khan

MR. KHAN SC: Much obliged; My Lord.

BY MR. KHAN SC:

Q: No. 12

MR KHAN SC: If he could please stand, My Lord.

THE COURT: Yes

(Accused No. 12 Stands)

BY MR. KHAN SC:

Q: You know this gentleman?

A: Yes.

Q: What is his name?

A: Just now eh. I know he but I forget his name, I know him.

Q: He has a nickname?

A: I ent know he nickname, I ent know he nickname.

13. Counsel submitted that on the prior occasion on the 2nd March, 2015, the witness Keon Gloster was taken through an identical process which referred to in paragraph 9 above, at that time; he identified Accused No. 12 Jamille Garcia as "Keida". This time he says 'I know he but I forget his name. I ent know he nick name, I ent know he nickname'.

14. Counsel for the Accused submitted that the sum total of all three efforts made by the prosecution to identify and /or name Accused No. 12 Jamille Garcia also called Wasa failed in its entirety. On the importance of the identification in criminal matters, our Court of Appeal in the case of Dwayne Vialva v The State Cr. App. No. 33 of 2008, the Court in referring to the case of Ronald John v The State [2009] UK PC 12 (Trinidad and Tobago) said at page 12 paragraph 33:

"In Ronald John it was found that an identification parade would have been desirable. In that case, the appellant was identified by his accomplice, whom the Board found has been in a position to describe the appellant to the police. This is because the witness often saw the appellant in Port-of Spain area whilst driving his taxi. He saw the appellant 'liming' in Port-of Spain for two or three hours, once or twice per week, over a period of time. As a result, he was able to recognize him even though he did not know him personally. The accomplice had also driven the appellant to a club in south Trinidad and had thereby been afforded ample opportunity for observation as the appellant had been sitting in the front passenger seat throughout the journey. The Board concluded that a parade ought to have been held. Emphasis was placed on the fact that the offence was one of a capital nature and that there was nothing to lose by holding a parade as it would have eliminated the risk, however small, of a false dock identification."

Brief History Of Matter In Relation To Jamille Garcia

15. Defence Counsel outlined some of the history of this matter that would be relevant to this application. Jamille Garcia was interviewed by Senior Superintendent Traevajo on the 9th May, 2007. During this interview, Jamille Garcia was asked about his personal history, his acquaintances and about a pool board and its location. Not one question was asked about Vindra Naipaul Coolman nor any allegations made against him with respect to this matter.

16. The next occasion Jamille Garcia met with the police was on the 21st July, 2009. Over two years would have elapsed since the first interview. Following this, the indictment against Jamille Garcia was signed by the Ag DPP on the 27th August, 2009. It is important here to quote the specific words of the indictment, i.e "he

Jamille Garcia also called WASA and other persons on a day unknown between the 18th December, 2006 and the 12th May, 2007 at Diego Martin, in the County of St. George murdered Vindra Naipaul Coolman". It is also important to point out here that when Jamille Garcia was interviewed on the 21st July, 2009 and subsequently charged, the Preliminary Inquiry with respect to the other accused (except No.11 and 12) had already been completed in 2008. As such, Jamille Garcia did not have the benefit of a preliminary inquiry (P.I.) to be informed of all the details of the allegations against him. This is critically important when one keeps in mind the absence of particulars in the Indictment. According to Archbold, 2006, 1-114, an indictment consists of three parts: the commencement, the statement of the offence and the particulars of the offence. Those accused persons who went through the P.I. process would be familiar with the particulars. Accused No.12 did not go through a P.I. It can be seen that there is almost a complete absence of particulars except that the alleged offence was committed between 18th December, 2006 and 12th May, 2007 (a period of 147 days) and that it took place in Deigo Martin.

17. Defence Counsel submitted that the period between 18th December, 2006 and 12th May, 2007 is 4 months and 24 days. If Jamille Garcia wished to rely on an alibi, he would have to remember where he was 'everyday' for the period between 18th December, 2006 and 12th May, 2007, a period of 4 months and 24 days or approximately 147 days. And he would have to recall this more than two years after this period, when he was charged.
18. To compound matters further, Jamille Garcia was only able to formally learn of the details of the allegations against him in about June/July 2013 from his attorneys, who received copies of the proceedings of the P.I. on the 29th May, 2013. Therefore, a period of about 6 ½ years would have elapsed since the alleged incident when Jamille Garcia would have learned the specific details of the allegations against him. Therefore, he would have to remember where he was and what he was doing 6 ½ years ago, an extremely difficult, if not impossible task. And, he would have to do this while sitting in a prison cell, not having access to persons and documents to assist him.

19. On the 8th December, 2014 **Inspector Suzette Martin** gave evidence that on the 13th, 14th and 17th May, 2007 Keon Gloster pointed out several of the accused persons at the Homicide Office in Port-of-Spain in what was referred to as a **verification exercise**. This is recorded in pages 10 to 16 of the transcript of the 8th December, 2014. **Counsel for the Accused has pointed out that no such verification exercise took place with respect to Accused No. 12.**
20. The importance of the accused being identified as the person who was seen in particular circumstances has already been emphasized. Further, the person who has made allegations against the accused must be the one who must identify the accused and this identification process must be done according to certain well defined procedures that have developed over the years. It is further submitted that the requirement of having the accused person properly and specifically identified is an important ingredient or element of an alleged crime as are the actus reus and the mens rea. Counsel submitted that Identification of the accused is an essential ingredient of the offence and this ingredient is missing. This is particularly important in a case such as this as there is no confession, no forensic evidence, no weapon or suspicious article can be traced to Accused No.12, Jamille Garcia. Counsel submitted that a prima facie case against No. 12 has not been made out and that this no case submission be upheld.

ALTERNATIVE SUBMISSIONS

21. Defence Counsel on behalf of Accused No. 12 Jamille Garcia also called Wasa, submitted that the actus reus and the mens rea, essential elements of the alleged offence, have not been established. In this regard, the only evidence relating to this issue is that of **Keon Gloster's statement of the 27th July, 2007**. It must be borne in mind that Keon Gloster has recanted this statement. To the extent that any reliance can be placed on it, he says that someone whom he calls Wasa was in the room when the alleged incident took place. (The fact that Keon never identified the person whom he called Wasa must be kept in mind.)
22. Counsel submitted that there is no evidence that the person referred to as Wasa participated in the act. To implicate the defendant, there must be participation in

the act: R v Borthwick (1779), Doug 207, for even if a man is present whilst an offence is committed, if he takes no part in it and does not act in concert with those who commit it, he does not become an aider and abettor merely because he does not endeavor to prevent the offence, or fails to apprehend the offender. R v Searle [1971] Crim. L.R 592 (Taken from Archbold 2006, 18-14). It must be borne in mind that there is no evidence that the person referred to as Wasa intended to encourage or wilfully did encourage the alleged crime. Mere continued voluntary presence at the scene of a crime, even though it was not accidental, does not of itself necessarily amount to encouragement.

Insufficient Evidence

23. Defence Counsel submitted that in considering the evidence of Keon Gloster about someone he calls 'Wasa' and that if there is no evidence that this person participated in the actus reus or mens rea, the judge if satisfied that no jury, if properly directed, could convict, has the power to withdraw the case from the jury. Counsel submitted that there is no evidence that the alleged crime has been committed by Accused No. 12 and as such the case against him should be stopped. Relying on Archbold 2006, 4-292 Counsel submitted that **the prosecution's evidence, taken at its highest is such that a jury properly directed could not properly convict the person whom Keon Gloster referred to as Wasa and whom Keon has never identified.**

The case for the State against Jamille Garcia also called "WASA"

24. The accused were indicted for murder firstly on the 24th July 2007, **save and except Jamille Garcia whose name was on the 2nd September, 2009 joined to the indictment for the offence of Murder.** It is the case for the Prosecution that the accused Jamille Garcia also called 'WASA' being aware of the kidnapping and disappearance of Mrs. Vindra Naipaul Coolman kept her against her will after which she was killed.

25. The Prosecution submitted that the accused Jamille Garcia was interviewed by Officer Travajo and WPC Roach on the 9th May, 2007 during which Jamille Garcia stated that he resided at LP 84 Upper La Puerta and that **he is the brother of Kieda Garcia** who also resided at that address. He further stated that **he lived at La Puerta for ten years and is called 'WASA' by his friends.** (see pg. 3 of the statement). It is to be noted that Jamille Garcia also stated that he *"played pool dey ah lil two game just before Christmas"* and that he knew 'Iron' and the other accused as he played pool with them at the red brick house. Additionally, **the firearm which, according to the Prosecution's case, was connected to the kidnapping of the deceased, was found in the house where he lived.**

26. It is also evidence in this matter, that Jamille Garcia was interviewed further by Ex-Inspector Nadhir Khan and Officer Elvin Mings on the 21st July 2009, at the Homicide Bureau of Investigations, Port of Spain.

27. On the 14th October 2014, Officer Elvin Mings testified that *"on 21st July 2009 I went to the Homicide Administrative Office in Port of Spain, which is also located at old Police Headquarters building where I met ACP Khan."* **Officer Mings during his examination in chief stated "Jamille Garcia who I see sitting also in the back but this time the extreme right with the black long sleeve t shirt, the words "Hollister" written on it."** At that point in the examination in chief Ms. Balkaran stated *"For the record, the witness has identified Accused No. 12, please."*

28. The Prosecution has relied on the statement of Keon Gloster dated the 27th July, 2007 which was tendered and marked "C.E.1" on the 31st March, 2015 wherein Keon Gloster was deemed a hostile witness stated as follows:

- a. *"Last year December, just before Christmas nah I end up going by Black Album de red brick house near Miss Norma Shop in La Puerta, my cousin Buffy, Antonio, Black Boy, Raphael, Wasa and Bomb. I used to sleep there sometimes."* See pg. 852 of the Magisterial Deposition.
- b. *"While dey Buffy and Rafael was asking she for money and she was crying help. Devon, Bobo, Shevon, Dwayne, 22, WASA, Jameel, Antonio, Crime B mih brother, Ninja, Bomb, Kieda and Joey. Iron and Scanny was outside by Scanny van sitting down talking."*
- c. *"Blackboy, Wasa, Madman Marlon, 22, Kieda, Scanny, Bobo, Raphael and Hedges was inside Black Album. Vindra was sitting down on the pool table, she didn't even look like she bathe she had duct tape on she mouth, she hands tie behind she back with duct tape. She foot was tie together with the silver grey duct tape too. She didn't have on no shoes. Vindra had blood running down her left foot... .. Well Iron was standing up right in front of Vindra by the pool table with ah nines ah black gun in he hand. Vindra was crying and Iron was say he getting fucking fed up come and carry we for the money. Then ah see Iron take*

the gun and shoot she in she chest. She fall back on the pool table like she dead and real blood start to flow."

- d. *"Them fellas was taking in the scene too."*
- e. *"it was late in the evening and Black Album have no electricity. But it had ah big yellow light they was getting current, electricity from, WASA Stepfather Leroy next door. WASA correct name is Jamel he and Kieda are brothers. They live right next to the Black Album"*
- f. *"WASA hair short like mines, Kieda brown and WASA black."*
- g. *"Well Bobo, Buffy, Rafael, Blackboy, Kieda, WASA and Dwayne lift them sheet they split up nah and we went up the hill."* See pg. 855 of the Magisterial Deposition.
- h. *"Raphael and Wasa start digging the hole....WASA, Raphael and 22 put the galvanise they went and take by Shabba down the hole...the saw the red and white one is Iron own the white extension cord was WASA own"* See pg. 856 of the Magisterial Deposition.

Circumstantial Evidence

29. **Duct Tape** – the single roll of used duct tape which was tendered into evidence as "AJ2" on 23rd June 2014 contained blood which scientific tests revealed matched that of the deceased. According to his own interview notes, the accused placed

himself at the red brick house, near the pool table and in possession of duct tape around the time the Prosecution alleges the murder took place.

30. **Hole** – The evidence of Officers Heeraman Singh and Che Duprey dated 17th July 2014 corroborate the fact alleged of Keon Gloster in his witness statement that a hole was in fact found on mountainous terrain at La Puerta. Photograph “*CDI*” depicts the hole with portions of galvanize , and photograph “*CD4*” depicts a side of a boot which Keon Gloster claimed belonged to one of the accused (both photographs were tendered on 17th July 2014). The Certificate of Analysis tendered as “*HSI*” on 17th July 2014, revealed that no blood was found on the tested soil samples. This revelation supports the version of events put forward by Keon Gloster at pages 856 of his statement :

“I then carry them up the track ah show them the hole and the cashew tree where they bury Vindra nah. The hole was open but the galvanise was still there so I tell Mr. Mohammed that is the galvanise them fellas used the night some was in the hole still but I did not see the white sheet with the body. I even show Mr. Mohammed one side of them fellas boots that they leave by the hole.”

31. **This Court notes that further support for this version of events could be found in the interview notes of accused number 4, Earl Trimmingham dated 12th May 2007 at page 5, where he revealed that the body which was placed in plastic garbage bags was subsequently excavated and dumped at sea. In addition, at page 5 of the interview notes of accused number 5, Ronald Armstrong, also stated that the body was disposed of. This explains the lack**

of forensic evidence within the hole and the jury is entitled to draw an inference in favour of Keon Gloster's recanted statement of the 27th July, 2007.

The Pool Board

32. Officer Moulden, on 23rd April 2015 as per pages 31 to 33 of the transcripts, stated the following:

"Q Now, with respect to the pool table on that day, do you recall what position it was, on the 6th January 2007, the room that it was in, do you recall exactly what room it was?"

A I believe upon my arrival, it was in the kitchen area.

Q In the kitchen area?

A That is correct, ma'am, yes.

Q And that is the room where the stove was?

A That is correct, ma'am, yes.

Q Now, counsel suggested to you or asked you the "if" question, that if a body is being cut up in that room with a circular saw, there would be no control of where the flesh would land or anything like that; you recall that?

A Yes, ma'am. I recall stating that had a circular saw been used in that circumstance, that I would expect the remains to have fanned out from the rotation of the blade in the direction of that rotation of the blade, so there would be a pattern within the room itself.

Q Now, if this, at the time someone is on the pool table being cut

up and that pool table is surrounded by 12 persons around that pool table while that cutting up is taking place, wouldn't they be acting as the shield you spoke about?

BY MS. BALKARAN:

Q Now you had suggested that if something was blocking the wall, et cetera, that -

A That is correct, ma'am, yes.

Q So if persons are around the pool table --

A Yes, ma'am.

Q would that have the same effect, 12 persons, would that have the same effect?

A And so, if there is something within if, for example, I am cutting up a body on a pool table and this is within the trajectory of that blood spatter or those human remains, (indicating) there would be, when I remove this bottle or, as you indicated, the persons move out the way, there would be a clear void of where this bottle has been or that person has been. And, therefore, you would see the outline or rough outline of either the persons or the bottle and when you remove it; there would be a clear void on the wall.

33. It is to be noted that officer Moulden gave evidence pertaining to a hypothetical situation if the saw was used to dismember the deceased in the kitchen. The Prosecution's case, is that the accused was dismembered in the living room, which is approximately twice the size of the kitchen. In the circumstances, the

jury is entitled to draw an inference that an alternative outcome may have transpired in terms of the blood splatter if same was done in a larger room.

34. Officer Moulden gave evidence that on his visual examination of the pool table on 6th January 2007, he did not detect any blood staining. Counsel for the Prosecution submitted that this does not in any way weaken the Prosecution's case, as the Prosecution's case is that the deceased was cut up on 'a' pool table and not necessarily the one found on 6th January 2007. Again, the jury is entitled to draw the inference that a different pool table was used and thereafter disposed of prior to the arrest of the accused.

35. The logs of Officer Mears revealed that no blood was found in the red brick house. Significantly, however, his logs reveal the following:

At **page 42** – the discovery of burnt clothing, which is in tandem with the account of Keon Gloster.

At **page 49**- *“review of poolboard shows warping of chipboard on sides. This could be the result of water retention”* – The jury is entitled to infer from this evidence that the red brick house was subjected to a washdown.

The Kidnapping of Vindra Naipaul Coolman

36. It is the evidence of Rishma Ali, Rennie Coolman and Resheeda Yacoob that on the 19th December 2006, Vindra Naipaul Coolman was taken out of her vehicle bearing registration number PCB 2355, whilst entering her home situated at Radix Road Lange Park Chaguanas. It was stated by the said witnesses that some men

confronted Mrs. Coolman with weapons, each of whom wore masks covering their faces. Further, at that crime scene the dentures were seen on the ground with blood matching that of Vindra Naipaul Coolman as per Mrs. Helen Rose, the DNA expert in this matter. It is to be noted that on the 19th December, 2006 that was the last time the said witnesses saw Mrs. Coolman alive.

37. This Court holds the view that there is sufficient evidence to satisfy the elements of the offence.

LAW AND ANALYSIS- IDENTIFICATION ISSUE

38. The text **Archbold Criminal Pleading, Evidence and Practice 2015** states at para 14-22:

"In the narrow field of recognition, there were degrees of danger; perhaps less so where the parties had known each other for many years, or where the person identified was at the scene...in a recognition case, the risk is not that the witness will pick out the wrong person on a parade, but that at the time of the offence he mistakenly thinks he recognises the offender; this danger should be brought home to the jury : R v. Thomas [1994] Crim LR 128.

39. In light, of the judgment (supra) no such danger arises as this is a pure recognition matter as Keon Gloster's evidence at page 854 of the Magisterial Deposition is that *"I know two ah dem about fifteen years now"* in reference to Kieda Garcia

and WASA which was admitted during his examination in chief where he stated on 5th March 2015 at page 66:

Q Did you tell them that? Is obvious if you do not know you wouldn't tell them that, but I must ask you, did you tell them the light was like what the police does use? Did you tell them that?

A The bright light the police and them does use when they coming up in --

Q You tell them that?

A Yeah.

Q You also tell them "'WASA' correct name is Jamille. He and Keida is brothers." You told them that?

A I tell them they is brothers, yeah.

Q "They live right next door black album."

A Yes.

Q And you know them about 15 years?

A Yeah."

40. At paragraph 5 of Learned Defence Counsel's submissions, he cited the case of *Tido v. R* [2011] 2 Cr App R 23 which is evidently distinguishable from the matter at bar. In *Tido (supra)*, the eye witness had never seen the accused, prior to the commission of the offence. In the instant case, however, Keon Gloster indicated that he knew the accused for the vast majority of his life, more specifically, approximately fifteen years. The issue in that case was whether a dock identification for the first time in court was permissible when no identification parade was held. The Privy Council concluded that:

"The discretion to admit such evidence had to be exercised in light of the particular circumstances, which would always include consideration of why an identification parade was not held."

41. The Prosecution submitted that **an identification parade would have served no useful purpose as Keon Gloster indicated that he knew the accused for the majority of his life and as such, the identity of Jamille Garcia also called "WASA" was not in issue.**

42. In the text **Archbold Criminal Pleading, Evidence and Practice 2015** para 14-45 it states:

'...In R v. Lambert [2004] EWCA Crim 154, it was said that the question of whether a suspect disputes an identification made or purported to have been made by a witness, falls for consideration at the time that the police were investigating the offence, rather than in light of the evidence actually given at trial...'

43. This Court notes that the accused, during his interview on **9th May 2007**, admitted that his alias was **"WASA"**, and that he had a brother by the name Keida, who lived next to the red brick house. This evidence, was corroborated by Keon Gloster in his witness statement of the **27th July, 2007**. Jamille Garcia was asked specifically, at page 3 of his interview notes:

Que: Who de does call WASA on your side?

Ans: I. My friends does call me that.

44. This Court has found guidance in the judgment of Goldson v. R [2000] UKPC 9 which is authority for the proposition that where it is not disputed that the suspect is already well known to the witness who claims to have seen him commit the offence, a positive identification establishes no more than the uncontroversial fact that, the witness is able to identify the person he knows and does not resolve the question of whether that person committed the offence.

45. Learned Defence Counsel argued that during the evidence of Keon Gloster on 2nd March 2015, he identified the accused incorrectly. In addition, counsel contended at paragraph 6 of his submissions, that within Keon Gloster's witness statement, there was a misdescription of Jamille Garcia, whom the witness described as having short hair and being dark. At paragraph 6, defence counsel went on to further contend that there was no evidence that the accused was not available and as such, an identification parade should have been adopted.

46. However, on the transcripts of evidence dated 2nd March 2015, at page 31, Senior Khan addressed the arguments by Defence Counsel Mr. Sankersingh as follows:

"My Lord, identification is not an issue in this case. When the case depends wholly and substantially on identification, the concept of a dock identification comes into issue, My Lord."

Mr. Sankersingh contended at page 35:

"It is a huge issue in this matter, because as I pointed out before, even the statement of Keon Gloster misdescribed accused no. 12 and there is a situation where evidence came here in this court that the name "Jamal" came up several times."

47. This Court notes that the weakness of this argument is evidenced by the fact that the indictment reveals that the accused is also known by an alias '**WASA**', a fact which the accused himself admitted to police during his interview on 9th May 2007. In his statement dated 27th July 2007, Keon Gloster identified the accused by his given name as well as his alias. Furthermore, he indicated the names of the accused's brother and stepfather and revealed the location of their house.

48. In the circumstances, this Court is of the view that there is no doubt that the individual Jamille also known as "**WASA**" mentioned in Keon Gloster's statement is the same Jamille also known as "**WASA**" before the court.

49. With respect to the alleged misdescription contended by counsel, it is important to note that with respect to the hairstyle of the accused, that description was made in 2007. After eight years, it is not inconceivable that the accused's hairstyle may not be the same as it was at that time. Moreover, in his statement Keon Gloster made the following description "*Keida brown and WASA black*". Learned Counsel contends that they are both of the same complexion. Whether "**WASA**" is lighter or darker than Keida is a matter of fact for the jury to decide and also it infringes on the identification of the accused.

50. This Court has given consideration to the fact that although at the trial proceedings, Keon Gloster wrongly identified Jamille Garcia when asked to point him out, it must be noted that he occupied the specific position of a hostile witness. As such, Keon Gloster's evidence must be considered in that context. His statement dated 27th July 2007 was tendered into evidence and the issue arises as to the weight to be attached to his oral evidence.

51. In the text **Archbold Criminal Pleading, Evidence and Practice 2015 para 8-204:**

"This will be a matter for the tribunal of fact, but it would appear to be open to it to act on the statement and to reject the oral evidence, provided that it is satisfied to the requisite standard that it is the statement that represents the truthful account."

52. Accordingly, this Court is of the view that the jury is entitled to reject all or some of Keon Gloster's viva voce evidence and accept his signed witness statement as being evidence of truth.

53. Learned Defence Counsel cited the authorities of *Dwayne Vialva v. The State* Cr. App No. 33 of 2008 and *Ronald John v. The State* [2009] UKPC 12 in support of his position. Again, these cases are distinguishable from the instant matter. In *Dwayne Vialva (supra)* the disparities are highlighted at para 30 of the judgment :

"In the instant case, the appellant was unknown to the witnesses. Upon his arrest, he claimed that the witnesses were mistaken, and, when charged he stated "Officer I is the wrong man". It is clear that he and the eye-witnesses were not well known to each other and also clear that identification was a disputed and critical issue in the circumstances of this case. However, there is no evidence that the suspect expressly or implicitly asked to be placed on an identification parade, so as to make the holding of a parade mandatory within the terms of the Judges' Rules.

The mandatory requirement being inapplicable, a parade ought only to have been held if it served a useful purpose."

54. Further, at **para 32** of the judgment the Court of Appeal referred to **Ronald John** (*supra*) and indicated :

"In Ronald John, the Privy Council enumerated three situations in which an identification parade would be useful, namely:

- (i) where the police have a suspect in custody and a witness who, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so);*
- (ii) where the suspect and the witness are not well known to each other and neither of them disputes this;*
- (iii) when the witness claims to know the suspect but the suspect denies this."*

55. The Prosecution has submitted that the facts in this matter against the accused do not turn on identification. This Court has found guidance in **H v DPP [2003]** EWHC 133 referred to by the State which states that:

"if a witness clearly knows the person suspected of committing a crime and is able to name him, an identification procedure would not be mandatory."

56. Further, at paragraph 13 of the judgment H v DPP, Elias J quoting Lord Bingham in the judgment of R v Forbes [2001] AC 473, [2001] 1 All ER 686 stated

“Lord Bingham also accepted that there would be cases where the code did not cover all possible situations. There would be circumstances where the investigating officer would be entitled not to hold an identity parade, even in circumstances which were not covered by these specific exclusions... ..one of the situations identified was as follows: ‘if a case is of pure recognition of someone well known to the eyewitness, it may again be futile to hold an identification parade’.”

57. Also, at paragraph 13 of the judgment H v DPP supra, Elias J stated,

“the fundamental question in this case, so it seems to me, is whether or not the officer was entitled to take the view that this was what is, as Lord Bingham described it a “Pure recognition of someone well known to the witness.”

It is crucial to note that in the said matter the victim during her evidence stated

“I have known...H for approximately 18 months.”

58. Thus this Court has considered that in the matter at bar, the eyewitness Keon Gloster has stated that he grew up with those men which includes ‘WASA’ and indicated to the Court on the 2nd March, 2015 at page 42 of the transcript *“I know all ah them in my area”*. Further, at page 54 of the said transcript it states:

“Q- What about WASA, you know WASA

A-Yeah

Q-who is he to you?

A-Dat meh partner

Q-Your partner?

A-Yeah

Q-Now these names I call to you, have you ever seen them sleeping at the black album

A-Yes"

59. On the 5th May, 2015 as per the transcript of evidence at page 8 as follows:

"Q- Yes, are you good at memorizing people's faces?

A- I good at memorizing meh cousin and them faces and like it has certain people faces, once I know them.

Q-Yes

A-All the time, when I see them, all the time, I must memorize they face.

Q- Good. All these men here, you could memorize them?

A-I could memorize them, yes because I know them."

60. This Court further note the Magisterial Deposition at page 854 of Keon Gloster which stated :

'WASA correct name is Jamel he and Kieda are brothers. They live right next to the Black Album"

61. This Court finds credence with Counsel for the Prosecution submission that identification is not an issue in this matter, which involves ‘*pure recognition.*’ As a result of which the officers were not mandated to conduct any identification exercise nor does the State need to establish the identity of Jamille Garcia.

62. Further, this Court is of the view that in light of Keon Gloster’s statement of the 27th July 2007, and his viva voce evidence at the trial proceeding’s, Keon Gloster has in fact identified ‘*WASA*’ as Jamille Garcia and the brother of Kieda Garcia.

63. Defence Counsel submitted that the Accused did not undergo a verification exercise. However, The Prosecution has submitted that after the **verification exercise on the 13th May, 2007** Jamille Garcia also called “WASA” was then arrested and charged for the murder of Vindra Naipaul Coolman and brought before the Court to answer.

Burden of Proof

64. The general rule with regard to burden of proof as enunciated by Lord Sankey in **Woolmington v DPP [1935]** AC 462, 481 is as follows:

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception....No matter what the

charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it can be entertained."

65. As per the words of Lord Mackay of Clashfern L.C in the judgment R v Bellman [1989] A.C. 836, page 842:

"the prosecution must satisfy every juror to the required standard that every ingredient of the offence has been made out."

The Culpability of Jamille Garcia also called "WASA"

66. This Court has found guidance on this issue in the judgment of Chang Wing-Siu v The Queen 1984 All ER 877 where Lord Parker C.J stated at page 881 para b as follows:

"Where two persons embark on a joint enterprise each is liable for the acts done in pursuance of that joint enterprise and that includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise but...if one of the adventurers goes beyond what is tacitly agreed as part of the common enterprise his coadventurer is not liable for the consequences of that unauthorized act. Finally....it is for the jury in every case to decide whether what was done was part of the joint enterprise or went beyond it and was in fact an act unauthorized by that joint enterprise."

67. Further, the judgment of R v Jefferson [1994] 1 All ER 270, establishes that the

presence of an accused at the scene of a criminal offence is capable of constituting encouragement.

68. The Blackstone Criminal Practice and Procedure 2014 at para A4.30 states:

“withdrawal from participation in the offence can remove his responsibility for the completed offence.”

69. In addition, the Archbold Criminal Pleading, Evidence and Practice 2015, para 18-1 highlights the categories of offenders :

“When the law relating to the principals and accessories as such is under consideration there is only one crime, although there may be more than one person criminally liable in respect of it : Surujpaul v. R 42 Cr. App. R 266 at 269...Secondary parties are those who either aid, abet, counsel or procure the party who immediately causes the actus reus of the crime..”

At para 18-15 it is stated :

Where two or more persons embark on a joint enterprise each is liable for acts done in pursuance of that joint enterprise. That includes liability for unusual consequences if they arise from the execution of that joint enterprise...It is for the jury to decide if what was done was part of the joint enterprise or was or may have been an unauthorised act and therefore outside the scope of the joint enterprise : R v. Anderson and Morris [1966] 1 QB 110.”

70. This Court has found the case of R v. Mitchell [2009] Crim LR 287, to be of assistance. In Mitchell, there were three issues for the jury:

- (i) whether the initial common enterprise (to which the appellant was undoubtedly party) was still in existence at the time of the infliction of the fatal injury.
- (ii) if it was, whether there had been an effective withdrawal and
- (iii) if not, whether the principal went beyond the scope of the enterprise by doing an act fundamentally or radically different from what was foreseen as a real possibility.

71. This Court has considered **Para 18-18** of the **Archbold Practice and Procedure** where it states:

“To establish aiding and abetting on the basis of encouragement, it must be proved that the defendant intended to encourage and wilfully did encourage the crime committed. Mere continued voluntary presence at the scene of a crime, even though it was not accidental, does not of itself necessarily amount to encouragement; but the fact that a person was voluntarily and purposely present witnessing the commission of a crime and offered no opposition, though he might reasonably be expected to prevent it and had the power to do so, or at least express dissent, might in some circumstances afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted, but it would be purely a question of fact for the jury whether he did so or not : R v. Clarkson 55 Cr App R 445.’

72. The issue of liability of secondary parties in murder was addressed at **para 19-24** :

“A secondary party is guilty of murder if he participates in a joint venture realising that in the course thereof the principal might use force with intent to kill or cause grievous bodily harm, and the principal does kill with such intent.”

73. The case of **R v. Rahman [2009] 1 AC 129 HL** is of importance on this issue. It was stated 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 which the secondary party foresaw as part of the joint enterprise.

74. This Court takes note of **R v. Lewis, Ward and Cook [2010] Crim LR 870, CA**, where the court said that the effect of **Rahman** was that an accessory is liable for murder on the basis of his

“foresight of what the principal might do rather than his foresight of the intention with which the principal's act might be performed.”

75. Thus, to the extent that this suggests that it is sufficient that the accessory foresees that the principal might kill, this Court is of the view that **Rahman** did not alter

the requirement that the accessory must have foreseen that the principal might act with murderous intent. This Court holds the view that what *Rahman* decided was that *an accessory was not absolved from responsibility if he foresaw that the principal might act with intent to cause really serious bodily harm, but the principal in fact acted with an intent to kill.*

76. Thus, In light of the judgment of *Chang* supra, **the jury must decide whether what was done by an accused was part of the joint enterprise.**

77. In the judgment *Allan and Tate [1993]* Crim LR 538 the Crown's case was that both T and R took an active role in the assault occasioning actual bodily harm of F. The judge, in summing up, directed the jury that a tacit agreement was sufficient as both T and R took an active part in the assault.

"If there were no physical act on the part of either, they could find them guilty on the basis of joint enterprise if the non-active person was physically present and ready and willing to assist in the assault."

78. This Court has found guidance in the judgment of *Robinson v The Queen [2011]* UKPC 3, the accused Robinson was one of two Defendants convicted on 2 February 2006 before the Chief Justice of Bermuda and a jury for the murder of two twin brothers. Burgess and Robinson were longstanding friends for "*ten or more years previously.*" The Crown's case against him was that he aided the other man, Burgess, to commit the offence. It was not the Crown's case that Robinson had himself used any force upon either of the victims. In that matter the Officers found a "*smear of Blood with DNA matching Jahmal it was on the inside of the*

sliding side door” (one of the murder victims). It was argued at para 5 that “the blood in the van could have easily have got there by secondary transfer.” In that matter, Robinson’s attorney, argued as per para 5 of the judgment “that although he was shown to be present, he was not shown to have done anything to aid Burgess...the inconsistencies in the evidence demonstrate the unreliability of the witnesses.” Also, Defence Counsel submitted that Robinson did nothing that continue to be present and that mere presence cannot suffice. It is to be noted that Robinson’s appeal against his conviction was dismissed by the Court of Appeal for Bermuda.

79. The Prosecution submitted that Jamille Garcia is culpable for the murder of Vindra Naipaul Coolman. The evidence of Keon Gloster via his statement of the 27th July, 2007 and his viva voce evidence have placed Jamille Garcia with that criminal liability. It was submitted that the accused Jamille Garcia also called ‘WASA’ was aware of the kidnapping and disappearance of Mrs. Vindra Naipaul Coolman yet kept her against her will after which she was killed. ‘

80. The prosecution submitted that Jamille Garcia is culpable for the murder of Vindra Naipaul Coolman. **The statement of Keon Gloster at page 2 which stated that he was outside with other accused talking with Scanny and shortly after was placed back inside the Black Album where he was present when Lyndon James shot Vindra Naipaul Coolman when he stood a mere two feet in front of her.**

81. Further, Jamille Garcia actively participated in the disposal of Mrs. Coolman's remains by holding the sheet containing her parts and taking it up a hill which required the climbing of several steps to arrive at the burial point. Added to the fact that he participated in digging the hole after which he placed galvanize upon same. It is to be noted that during the entire exercise the principal Lyndon James was present.

82. The State submitted that the presence of the accused was not accidental at the red brick house at the material time nor was he accidentally present on the hill during the disposal of Mrs. Coolman's remains. The fact that he was present at the shooting and actively participated in the disposal of Mrs. Coolman's remains demonstrates that he actually assisted the principal and was aware that he was in fact doing so.

83. This Court holds the view that there is sufficient evidence to satisfy the elements of the offence.

The Role of the Trial Judge

84. The Honourable Judge has the power to entertain a no case submission to ensure that there is no miscarriage of justice, See page 312 of the case of R v Galbraith 1981.

85. It is noted that the case of The State v Latchman Deosaran CR No. 114 of 2008 approved the words of Lord Widgery CJ in the matter R v Barker (1977) 65 Cr App R 287 at 288 which states:

"it is not the Judge's job to weigh the evidence, decide who is telling the truth and to stop the case merely because he thinks that the witness is lying. To do that is to usurp the function of the jury and would have been quite wrong in the present case."

86. The Prosecution submitted that the basis upon which Mr. Sankersigh has requested that the court rule that Jamille Garcia does not have a case to answer is erroneous.

The test to be applied for a No Case Submission

87. This Court has considered the text **Archbold Criminal Practice and Procedure 2014** at para 4-363 where it states that:

"A submission of no case should be allowed when there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict. In such a case a directed verdict must be taken from the jury."

88. The leading authority on the test a trial judge should apply when determining whether there is a case to answer is the authority, **R v Galbraith [1981] 2 All ER 1060**. At page 1042B-D of the said judgment Lord Layne stated that a no case submission should be approached in the following way:

"How then should the judge approach a submission of no case? One, if

there is no evidence that the crime alleged has been committed by the defendant there is no difficulty, the Judge will, of course stop the case. Two, the difficulty arises when there is some evidence but it is a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence."

- a. *"Where the judge comes to the conclusion that the Prosecution evidence taken at its highest is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made to stop the case.*
- b. *Where however the Prosecution's evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a Jury could properly come to the conclusion that the defendant is guilty, then the Judge should allow the matter to be tried by the Jury. There will of course, always in this branch of the law be borderline cases that can safely be left to the discretion of the Judge."*

INCONSISTENCIES

89. This Court has considered the case of *The State v Latchman Deosaran* Cr. No. 114 of 2008 at page 5 where it was stated:

"Now let me say immediately, that it is this Court's opinion that where inconsistencies and contradictions are concerned, the Court of Appeal has

repeatedly stated that it is for the Jury to determine what evidence they accept or what evidence they reject."

The Honourable Judge relied on the words expressed by Justice Ibrahim in the judgment *The State v Gomes and Gomez* 59 W.I.R where at page 486 where it was stated:

"we are of the opinion that such contradictions as there were, ought to have been left by the trial Judge to the Jury for them to determine whether they accepted his evidence in whole or in part notwithstanding the contradictions, or rejected it because of them."

RELIABILITY AND CREDIBILITY

90. This Court has considered the case of *The State v Latchman Deosaran* Cr. No. 114 of 2008 which stated:

"Let me say that again the question accessing the reliability and the credibility of a witness is something that ought to be left to a jury.... As far back in 1994 in the case of Brooks v The Director of Public Prosecutions (1994)44 W.I.R at page 323 we find at page 342 Lord Woolf sitting in the English Court of Appeal made this statement, he said that: Questions of credibility, except in the clearest of cases do not normally result in a finding that there is no prima facie case, they are usually left to be determined at the trial."

91. The Honourable Judge in the *Deosaran* ruling, supra also relied on the words of the Lord Chief Justice in the judgment of *Patrick Brian Barker*, 1975 Criminal Appeal R 287 which stated as follows:

"But even if he is right and even if the Judge has taken the view that the evidence could not support a conviction because of the inconsistencies, he should nevertheless have left the matter to the Jury as it cannot be too clearly stated that the Judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the necessary minimum evidence to establish the facts of the crime have not been proved. It is not the Judge's job to weigh the evidence"

92. This Court is of the view that the evidence of Keon Gloster goes to weight which is a matter that should be placed before the jury. The Prosecution has proven that Jamille Garcia actively participated in the commission of an offence which resulted in the death of Vindra Naipaul Coolman. **The Accused had factual knowledge that Mrs. Coolman was kidnapped yet remained present at the red brick house where he witnessed her death and the cutting up of her body.**

93. Further, this Court finds that any inconsistencies and the credibility of Keon Gloster's evidence goes to weight and they are matters which must go before the jury.

94. Notably, Keon Gloster indicated during cross-examination at the High Court by Senior Khan on 1st April 2015 at page 20 :

A Excuse? To tell you the honest truth, right --

Q The honest truth?

A I is a very ignorant fella, right? Since I small, right? Because meh mother and them does only, they does only beat meh and thing. If you want meh take off meh clothes and thing, you will see real cut and thing on meh, right? Down to them and all used to be beating meh up long time? (Pointing)

Q Who "them" beating you?

A Meh cousin and them, because when I doing stupidity.

Q So one of them tap you up and tell you "go from here, you are a buller man"?

A But is all of them tap meh up, all. All meh cousin and them dey tap meh up. (Pointing)

95. The Honourable Court was reminded that this witness stated additionally on 5th May 2015 at page 62 of the transcripts Keon Gloster stated in answer to Senior Khan:

A I don't afraid to nobody, I only afraid to God, you know.

Q Yeah.

A And the station, you know. That is the only thing I afraid, you know.

96. The Prosecution has submitted that Keon Gloster dictated his statement of the 27th July, 2007 to the Officers as he was afraid of being in jail. Additionally, that he feared for his life due to the fact that the accused are for the most part his

relatives, who in his own words, beat him up regularly. Thus, the jury is entitled to draw a reasonable inference that in the circumstances, a rational explanation could be drawn as to why Keon Gloster turned hostile and why he may attempt to give via voce evidence to benefit the accused.

Conclusion

97. The Prosecution submitted that Jamille Garcia also called '*WASA*' was known by the eyewitness Keon Gloster which is evident in his statement of the 27th July 2007 wherein he stated "*WASA real name is Jamille Garcia.*" Also, the Prosecution conceded with Mr. Sankersingh's argument in so far as he relied on the words of the Honourable Justice Holdip on the 2nd March, 2015 wherein it stated at page 38 "*The evidence will unfold, undoubtedly, at some point in time where it could be otherwise dealt with in terms of who the parties are.*" The Prosecution submitted that the evidence has unfolded to the extent that it demonstrates that the Jamille Garcia which is before the Court was arrested and charged on account of Keon Gloster's pure recognition of his presence and involvement at the material time.
98. This Court finds that the inconsistencies in Keon Gloster's evidence referred to by both Counsel are matters which must go before the jury. Further, the Prosecution has proven that Jamille Garcia also known as "*WASA*" actively participated in the commission of the offence.

COURT'S RULING

99. This Court hereby rules that there is sufficient evidence to satisfy the elements of the offence and the evidence of the State's witnesses have not been rendered manifestly unreliable.

100. This Court hereby reject the submission of no case to answer and call upon the accused to answer this charge.

Dated this 15th day of January, 2016.

**JUSTICE MALCOLM HOLDIP
PRESIDING JUDGE**