[2023] JMCA Crim 18

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE FRASER JA

SUPREME COURT CRIMINAL APPEAL NOS 39 & 40/2019

PAUL BRYSON

LENNOX BRYSON v R

Anthony Williams for the appellant Paul Bryson

Mrs Melrose Reid for the appellant Lennox Bryson

Miss Kelly-Ann Murdock and Miss Cindi-Kay Graham for the Crown

28, 29 March and 5 May 2023

Criminal Law - Murder - Identification - Summation on inconsistent evidence - Whether summation biased - Whether judge entitled to give non-evidence document to the jury

FOSTER-PUSEY JA

[1] On 29 January 2019, the appellants, Paul Bryson o/c Ken ('Paul') and Lennox Bryson o/c Bull ('Lennox'), were each convicted of murdering Richard Allen in November 2007, after a trial before Sykes CJ ('the learned trial judge') sitting with a jury. On 12 April 2019, the learned trial judge sentenced Paul to 22 years' imprisonment at hard labour with the stipulation that he serves 10 years before being eligible for parole. Lennox, on the other hand, was sentenced to 27 years' imprisonment at hard labour with the stipulation that he also serves 10 years before being eligible for parole.

[2] Both appellants applied for and were granted leave to appeal their convictions by a single judge of this court on 30 July 2021. Before us, Paul renewed his application for leave to appeal sentence.

[3] On 28 and 29 March 2023, the court heard the appeals and, after considering the arguments of counsel on both sides, made the following orders:

(1) The appeals against conviction for Paul Bryson and Lennox Bryson are dismissed.

(2) The convictions of both appellants, Paul Bryson and Lennox Bryson, are affirmed.

(3) The application by Paul Bryson for leave to appeal against sentence is refused.

(4) The sentences of both appellants, Paul Bryson and Lennox Bryson, are to run as of 12 April 2019, the date they were imposed.

[4] We promised to put our reasons in writing and now briefly outline them below.

The case for the prosecution

[5] The sole eye witness for the Crown, PS, was 16 years old and attending high school at the time of the incident in November 2007. Before commencing high school in September 2007, PS attended Cross Primary and Junior High from grades one through to nine. PS testified that she knew Lennox "from about grade 4" when, although he was not a student at the school to the best of her knowledge, she would see him on the school compound "right through the day, every day", "from morning straight to evening". He spoke with her once when he told her to "skip school and come and stay with him". At trial, PS was unable to indicate the last time before November 2007 that she had seen Lennox.

[6] PS stated that she also knew Paul over the same period, and saw him on the school compound at the same time that she saw Lennox, but had never spoken with Paul. The last time that she had seen Paul before November 2007, was before her school went on holiday. She also referred to a man named "Popaul" whom she would usually see along with Lennox and Paul.

[7] On 19 November 2007, at about 7:30 am, a school day, PS had just stepped on the verandah of her home, when two men passed her so quickly that she did not see their faces. She then heard a gunshot coming from within the house. When she went into the house, she saw one man kneeling down with a gun and Lennox, who was at arm's length from her, firing shots at the deceased, Richard Allen. PS saw the side of the face of the man who was kneeling and recognized him as Paul. She also saw Lennox's face. She testified that she stood beside Lennox and Paul, who both had guns, and looked at them for about five minutes. Lennox then turned towards her mother's room and she again saw his face for one to two seconds. Paul also got up, and PS saw his face for about two to three seconds while he was walking out. PS followed the men and went to the back door of the house, where she saw Popaul. He too had a gun. He joined Lennox and Paul and left the premises.

[8] PS identified Lennox at an identification parade held in December 2007. In April 2008, she gave a deposition at the preliminary enquiry in relation to the matter. It was after the preliminary enquiry that Paul was arrested. Later, in May 2008, PS attended a second identification parade at which she identified Paul.

[9] In cross-examination, PS was challenged as being untruthful, as the name Paul did not appear in the statement that the police recorded from her soon after the incident. In addition, while during her testimony at trial she stated that nothing covered Lennox's face, in her statement to the police it is recorded that she said that Lennox was wearing a cap with a peak and a black and white handkerchief tied over his mouth at the time of the incident. PS insisted that she had mentioned Paul's name to the police, and although the police read her statement to her, she was traumatized at the time. PS stated that she could not recall telling the police that at the time of the incident Lennox was wearing a cap with a peak and a black and white handkerchief tied over his mouth.

[10] Four other witnesses testified for the prosecution. Dr Desmond Brennan testified as to the contents of the post-mortem report that he prepared after examining the body of the deceased. Inspector Sandra Webb-Spence conducted the identification parade at which PS identified Lennox in December 2007, while Inspector Marcia Colquhoun

conducted the identification parade at which Paul was identified by PS in May 2008. Detective Sergeant Christopher DaCosta was the investigating officer.

No case submission

[11] At the end of the case for the prosecution, defence counsel for Paul made a no-case submission on the basis that the identification evidence in relation to him was tenuous. The learned trial judge refused to uphold the submission.

The defence

[12] Both appellants made unsworn statements. Paul stated that he heard that the police wanted to speak with his brother, Lennox. He took his brother to the station and the police detained him. He (Paul) left the station. After his brother went to court, he heard that PS called his name in court saying that he was involved in the matter. He denied any involvement in the incident and denied knowing PS or hanging out at any school. He stated that he was a businessman who bought and sold goods.

[13] Lennox stated that he was a higgler. His brother came to his house and told him that the police wanted to speak with him. When he went to the police, they held on to him and eventually told him that he was to be placed on an identification parade for the offence of murder. He told the police that he knew nothing about the murder. He denied going to PS's school and denied knowing her or where she lived.

The grounds of appeal

Paul Bryson

[14] Mr Williams, on behalf of Paul, sought and was granted permission to abandon the original grounds of appeal and instead argue the following grounds:

> "**Ground 1**
>
> The Learned Trial Judge erred in law in failing to uphold the No Case Submission on the basis that the purported evidence of (recognition) identification was no more than uncorroborated fleeting glance by the sole eye witness. It was also identification made in difficult and/or challenging circumstances. This amounted to a material miscarriage of justice. The conviction ought to be quashed.

Ground 2

The Learned Trial Judge erred in misdirecting the Jury by not telling them that the accused was not obliged to go into the Witness Box but had a completely free choice either to do so or to make an unsworn statement or to say nothing at all and by so doing effectively deprived the Applicant of a fair consideration by the Jury of his stated Defence.

Ground 3

The verdict is unreasonable and cannot be supported having regard to the weight of the evidence. By that miscarriage of justice the convictions ought to be quashed and the sentence set aside."

Lennox Bryson

[15] Mrs Reid, counsel for Lennox, received permission to abandon the original grounds of appeal and to argue the following supplemental grounds:

"1. The Learned Trial Judge (LTJ) erred from the inception of the case when he prejudiced the minds of the panel of Jury, when he narrowed their foci, preventing them from listening to the full evidence, and directing them to focus on the issue of identification, and the document that he would have given them at the end of the trial.

2. The identification of the Appellant by the sole eye witness, was fleeting and tenuous, rendering the verdict unsatisfactory, unsafe occasioning a miscarriage of justice; and the LTJ whilst he dealt with the general issues of identification, failed to sufficiently impress upon the Jury the material effect it had in the case at bar.

3. The LTJ failed to adequately deal with the inconsistency which was material to the identification of the Appellant.

4. The LTJ was biased in the conduct of the trial and also in the summing-up to the jury and favoured the prosecution's case, amounting to a miscarriage of justice.

5. The LTJ erred by giving the Jury a document on identification which document did not form part of the evidence, and which was prejudicial to the Appellant, resulting in his wrongful conviction.

6. That the conviction is unsafe and a miscarriage of justice, as the LTJ held legal arguments on the matter of 'good character'

warning in the presence of the jury, which comments prejudiced the Appellant's good character, resulting in the Jury wrongly convicting the Appellant.

7. That the LTJ misdirected the jury on the Appellant's unsworn statement from the dock.

8. That the conviction cannot stand as the Jury had not given the final consensus of the guilt of the 'accused', now Appellant."

Submissions on behalf of Paul Bryson

[16] Mr Williams did not pursue ground 2, in which he complained that the learned trial judge did not inform the jury that the appellant had a completely free choice whether to go into the witness box, make an unsworn statement or say nothing at all. The court drew counsel's attention to page 346, lines 12-16 of the transcript where the learned trial judge expressly stated:

> "… [T]he two defendants here, were not obliged to go into the witness box and had a completely free choice either to do so or to make an unsworn statement or say nothing at all."

[17] Counsel argued grounds 1 and 3 together. Mr Williams' main point was that at the close of the Crown's case, the totality of the identification evidence was no more than a fleeting glance by PS in difficult circumstances, where PS only saw the side of Paul's face for five minutes, and then his face for two to three seconds. Counsel submitted that the period of time, which PS estimated as five minutes, when PS was viewing the side of Paul's face did not assist her in identifying him. Counsel noted that PS had not seen Paul in close proximity before the incident, and submitted that, in all the circumstances, PS did not have a proper opportunity to make a reliable identification of Paul.

[18] Mr Williams also emphasized that, although PS made the alleged identification in difficult and/or challenging circumstances, the learned trial judge did not sufficiently emphasize the traumatic circumstances to the jury. Counsel submitted that the identification evidence was therefore manifestly and inherently tenuous, weak and poor, and, as a consequence, the material on which the identification was made was not sufficiently substantial to obviate the "ghastly risk" of mistaken identification. Counsel

urged that the case should have been withdrawn from the jury upon the making of the no case submission by defence counsel for Paul.

[19] Mr Williams also submitted that, even if the case was allowed to go to the jury, the totality of the evidence was insufficient. He relied on a number of cases including **Herbert Brown and Mario McCallum v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 92 & 93/06, judgment delivered 21 November 2008, **Garnet Edwards v R** [2006] UKPC 23, **Separue Lee v R** [2014] JMCA Crim 12 and **Larry Jones v R** (1985) 47 WIR 1.

[20] Counsel urged that PS's reliability and credibility were seriously undermined and eroded on two main bases. Firstly, she did not mention the name Ken (in reference to Paul) in the statement that she provided to the police on 19 November 2007. Instead, it was only while she was testifying at the preliminary enquiry that she claimed that he was involved in the incident. Secondly, although in her statement to the police, PS is recorded as having stated that when she saw Lennox during the incident, he was dressed in full black, had on a cap with peak with a black and white handkerchief tied over his mouth, at trial, she categorically and emphatically denied ever relating that to the police.

[21] Counsel submitted that while he did not have instructions to make submissions in respect of the sentence imposed on the appellant, he did not believe that the sentence imposed was manifestly excessive.

Submissions on behalf of Lennox Bryson

[22] Mrs Reid, in arguing grounds 1 and 5 together, submitted that the learned trial judge erred when, at the end of the prosecution's case, he gave the members of the jury a document highlighting the matters that they should consider in examining the identification evidence. The danger in this, according to counsel, was that the mind of the jury was focused on one sole issue that of identification. She urged that the document was extraneous as it was not a part of the evidence in the case. Counsel relied on **Machel Gouldbourne v R** [2010] JMCA Crim 42 in support of her submissions on this point.

[23] In relation to ground 2, counsel's submissions were similar to those made by Mr Williams, as she urged that the identification evidence was fleeting and tenuous.

[24] Counsel submitted, on ground 3, that the learned trial judge did not sufficiently explain how inconsistencies in the evidence of the eye witness affected the cogency and reliability of her testimony and the fact that she should have provided a credible explanation for the inconsistencies.

[25] Mrs Reid, in making submissions on ground 4, referred to an instance when the learned trial judge stated "call a spade a spade, it is a gang" in referring to the incident. She urged that the comments were "deleterious" to the ears of the jury and led to a miscarriage of justice. Counsel also referred to the approach that the learned trial judge took to the evidential procedure needed for the doctor to refresh his memory with his notes, when the learned trial judge stated "[l]ook here, mister, just take out your notes and look at them". She relied on **Leslie Moodie v R** [2015] JMCA Crim 16 and **Tino Jackson v R** [2016] JMCA Crim 13.

[26] Counsel abandoned ground 6 as originally outlined, and instead submitted that the learned trial judge erred in giving the good character direction to the jury when he stated that "persons of good character are not involved in a life of criminality, a life of lawlessness, they walk along the straight and narrow, yes, so that is the propensity part of it". Counsel submitted that the learned trial judge should have stated that persons of good character are not likely to have committed the crime in question.

[27] In her submissions in support of ground 7, Mrs Reid complained that the learned trial judge ought not to have told the jury that the appellants were reluctant to put their story to the test. Counsel insisted that the directions that the learned trial judge gave differed from those given in **DPP v Leary Walker** (1974) 1 WLR 1090.

[28] Mrs Reid, in support of ground 8, referred to the transcript in her possession and highlighted that there was no response from the jury when the registrar enquired whether the jury had unanimously found both appellants guilty of the offence of murder.

[29] On the question of sentence, Mrs Reid indicated to the court that she did not identify any basis on which the sentence that the learned trial judge imposed on Lennox could be challenged.

[30] Finally, Mrs Reid submitted that a retrial would not be feasible, as the issues surrounding the identification evidence, including the inconsistencies, could not be corrected.

The Crown's submissions

[31] Miss Graham responded to the submissions made by both appellants.

[32] Insofar as the appellants made submissions concerning the identification evidence, Miss Graham disagreed with their submissions that the identification evidence was inherently fragile. Counsel emphasized that recognition evidence was a part of the identification evidence in the case, and, together with the other evidence, there was sufficient identification evidence for the case to be left to the jury. Counsel highlighted that the lighting in which the incident occurred was good, the identification was not fleeting, and the trauma experienced by the eyewitness did not prevent her from giving cogent evidence.

[33] On the issue of the document that the learned trial judge handed to the jury with legal directions on examining identification evidence, counsel for the Crown noted that such an approach was not unprecedented. She referred to the Criminal Bench Book of the Supreme Court of Judicature of Jamaica ('the Bench Book'), in which the authors suggest that, instead of waiting until the end of the case, a trial judge could, early in the matter, highlight in writing legal points that the jury will need to consider. Counsel submitted that, in doing so, it was not true to say that the learned trial judge was telling the jury to focus on identification and nothing else. Counsel emphasized that the document was not evidence in the trial and was not extraneous to the issues for determination in the trial.

[34] In response to the appellants' complaints that the learned trial judge did not adequately address inconsistencies in the identification evidence, counsel submitted that the learned trial judge identified the main inconsistencies and omissions, referred to the explanations that the eyewitness gave, and left the jury to determine how they would assess the evidence. Counsel submitted that the learned trial judge spent an extensive period of time examining the inconsistencies and the critical omission in PS's evidence. Thereafter, in accordance with the law, the learned trial judge was correct to leave it to

the jury to determine whether the eyewitness was reliable. She referred to **Dwayne Knight v R** [2017] JMCA Crim 3, **Herbert Brown and Mario McCallum v R** and **Calvin Rose v R** [2011] JMCA Crim 56.

[35] Counsel disagreed with Mrs Reid's complaint that the learned trial judge was biased in favour of the prosecution. She referred to the transcript and indicated that the jury had withdrawn at the time when the learned trial judge commented that the manner in which the incident proceeded revealed that a gang was involved. In addition, no objection was raised to the evidence from the doctor as he did not deal with any matters in dispute. Counsel submitted that the learned trial judge demonstrated a balanced approach in his summation and in his management of the trial process.

[36] On the question of the directions that the learned trial judge gave on the propensity aspect of the good character direction, counsel submitted that he was correct in law.

[37] Finally, on the question of the absence of a response by the foreman of the jury when the registrar again asked whether the jury unanimously agreed that the appellants were guilty, counsel submitted that her transcript did not reflect a response. She submitted, however, that it was not important for the jury to again respond, as they had already unanimously found each of the appellants guilty.

Discussion

[38] The identification evidence comprised the recognition evidence, the period of time when PS said that she was looking at the side of Paul's face and Lennox's face for five minutes, along with the two to three seconds when she saw Paul's face and one to two seconds when she saw Lennox's face. The learned trial judge directed the jury to take into account the evidence concerning PS's prior knowledge of the appellants. In directing the jury on their approach to the identification evidence at the time of the incident, the learned trial judge indicated that it was unlikely that PS was observing the side of Paul's face as well as Lennox's face for a period of five minutes, however, if they believed the narrative that PS had given, they were to estimate the time over which PS would have been observing the appellants. We agreed with the Crown's submissions that, contrary

to the submissions made by counsel for both appellants, the identification evidence was not fleeting, tenuous or inherently unreliable.

[39] Upon a review of the summation of the learned trial judge, we concluded that his summation on the issues that arose in the trial, and in particular, on the question of the identification evidence, could be described as exhaustive, intensive and comprehensive.

[40] The learned trial judge emphasized that it was the jury's assessment of the evidence that was key, and highlighted that, on the crucial issue of identification, PS was the only witness who spoke to the incident. The learned trial judge warned the members of the jury that they should approach the identification evidence with extreme care and caution, as there have been instances of mistaken identification resulting in wrongful convictions and they should bear in mind that honest witnesses can be mistaken.

[41] The learned judge dealt extensively with the inconsistencies and omissions in PS's evidence, including the omission of Paul's name from her statement to the police and her denial that she told the police that Lennox was wearing a cap and had a handkerchief covering his mouth (see for example pages 274 - 277 and 304 – 305 of the transcript). In addressing the omission and previous inconsistent statement, the learned trial judge reminded the jury that PS insisted that she had mentioned Paul's name when giving her statement, and that she denied telling the police that Lennox was wearing a hat and had covered his mouth with a handkerchief. In so doing, the learned trial judge fulfilled his legal duty (see **R v Carletto Linton and others** (unreported), Court of Appeal, Jamaica, Criminal Appeal Nos 3, 4, 5/2000, judgment delivered 20 December 2002, per Harrison JA at page 16). In those circumstances, it was a matter for the jury to determine whether PS remained credible and reliable. Therefore, the learned trial judge was correct when he refused to uphold the no case submission made on behalf of Paul (see **R v Galbraith** (1981) 1 WLR 1039 at page 1042, paras. B-D). It also follows that, depending on the jury's view of the evidence, there would be evidence of sufficient weight to support a guilty verdict. We found that there was no merit in grounds 1 and 3 argued on behalf of Paul as well as grounds 2 and 3 argued on behalf of Lennox.

[42] Before commenting on the submissions that Mrs Reid made concerning the document that the learned trial judge handed to the jury, it is useful to examine a few

excerpts from the transcript. At page 258 of the transcript, we noted that the learned trial judge instructed the jury as follows:

> "So, that is what you are required to do to look at the evidence carefully and I said to you at the beginning of the trial you will be getting a sheet of paper from me, you will get that tomorrow and that you [sic] going to have now the questions that you need to ask yourself and you have to find the answers to those questions in the evidence presented in court, you can't find it anywhere else."

After providing the jury with the document that he promised, at page 283 we observed that he then stated:

> "So you need to separate those two things, so that is why, on the first part of it, what I sent to you, it speaks about, you will see…that it says you must take extra special care with this kind of evidence because there have been wrongful convictions based on mistaken identification. It also tells you that an honest witness can be convincing and they may be making a serious mistake."

[43] An excerpt from pages 284 - 285 of the transcript revealed more details of the nature of the questions that were reflected in the document that the learned trial judge gave to the jury in the process of summing up. The learned trial judge stated:

> "But let's suppose you come to the conclusion that the witness is honest, and you are prepared to trust the witness, now you have to look at the evidence to see if the quality of the evidence is such that you feel sure that the witness is not mistaken and did make and was able to make a positive identification of the defendants. So that is why we said to you now, break down the identification evidence into two parts: Prior knowledge and identification at the time of the crime that is alleged to have been committed.
>
> And, so you will see there are questions now, two sets of questions. So under the heading of prior knowledge: Did the witness know the accused before? If so, for how long? Does the witness have any special reason for remembering him? Did the witness speak to him or he speak to the witness? If yes, when and where? How often would the witness see him and where? Did the witness see him in day or night? When, where and under what circumstances? And when was the last time before the crime was the defendant seen by the

> witness? So those are the kinds of questions that you ask in order to assess the quality of the identification evidence.
>
> When it comes to the time of the incident now, different set of questions: How long did the witness have the accused under observation? What part of the defendant did the witness see? What was [sic] distance? What was the lighting condition? Was the observation impeded in any way? So those are the questions that you ask. So, if you follow those questions, chances are, you will put the identification evidence under the microscope and then the answers that the evidence provides now will assist you in determining, firstly, whether the evidence is reliable and you are prepared to accept it and act upon it, or you have doubts about it; so that is the purpose of these questions."

[44] It was clear to us, having reviewed the above excerpts of the summation, that Mrs Reid's complaint about the document that the learned trial judge provided to the jury outlining the law as regards examining the identification evidence, was misplaced. The learned trial judge was assisting the jury with the approach that they should take in assessing the identification evidence, he was not providing them with evidence, and the questions are consistent with the law on identification evidence (see **R v Turnbull** [1976] 3 All ER 549, at pages 551 - 552). Further, the learned trial judge was correct in highlighting identification as the main issue in the case. Interestingly, in her written submissions, Mrs Reid herself stated that identification was the main issue in the case. As counsel for the Crown submitted, at page 1 of the Bench Book, the authors note that the provision of written materials to jurors, alongside oral directions, may increase their understanding and recollection of legal directions.

[45] In the case at bar, after providing the jury with the written directions, the learned trial judge also took the jury through the evidence, highlighting what was led so that the jury could determine the answers to the questions. We concluded that contrary to Mrs Reid's submissions, the learned trial judge did not introduce material that was prejudicial to the appellants when he provided the jury with an aide-memoire on the assessment of the identification evidence in the case. Grounds 1 and 5 of Lennox's appeal therefore failed.

[46] There was also no basis for the complaint that the learned trial judge acted in a biased manner and deleteriously impacted the jury when he stated that the manner in which the incident occurred revealed that a gang was involved. The Crown was correct that, as revealed on pages 76 - 77 of the transcript, the jury had withdrawn at the time when the learned trial judge made that statement. Mrs Reid's complaint concerning how the learned trial judge dealt with the evidence from the doctor was also baseless. The case for the appellants was not negatively impacted by the doctor's evidence about which there was no dispute. We concluded that ground 4 pursued by Lennox did not have any merit.

[47] The complaint that Mrs Reid made about the propensity element of the good character direction given by the learned trial judge is also without merit. The law requires the trial judge, where such a direction is to be given, to state that a person of good character does not have a "propensity" to commit crimes (see **Leslie Moodie v R** at para. [125]). When the learned trial judge stated that the appellant was of good character, and persons of good character do not commit misdeeds, he set the standard even higher than that required by the law. His direction, therefore, benefitted the appellants. Therefore, ground 6 of Lennox's appeal failed.

[48] Mrs Reid's complaint about the direction given by the learned trial judge on the appellants' unsworn statements, when he asked the question whether they were afraid to put their story to the test of cross-examination, is also without merit. The direction given by the learned trial judge was consistent with the law outlined in **DPP v Leary Walker** (see page 1096), which to date, is still good law and so, as a consequence ground 7 of Lennox's appeal had no merit.

[49] We come now to the point that Mrs Reid raised concerning the transcript and the jury's response to a query as to whether they were unanimous in their decision that both appellants were guilty. It is interesting that the court's copy of the transcript differed from that of counsel. Our transcript reflected the following on pages 382 - 383:

> "**V E R D I C T**
>
> REGISTRAR: Mr. Foreman, please stand.

> Mr. Foreman and members of the jury, have you arrived at a verdict.
>
> FOREMAN: Yes, sir.
>
> REGISTRAR: Is your verdict unanimous, that is to say you are all agreed?
>
> FOREMAN: Yes, sir.
>
> REGISTRAR: Mr. Foreman and members of the jury, in respect to the accused, Mr. Paul Bryson, is your verdict guilty or not guilty of the offence of murder?
>
> FOREMAN: Guilty.
>
> REGISTRAR: In respect to, Mr. Lennox Bryson, is your verdict guilty or not guilty to this offence of murder?
>
> FOREMAN: Guilty.
>
> REGISTRAR: Mr. Foreman and members of the jury, you say you find the accused men, Mr. Paul Bryson and Mr. Lennox Bryson guilty of the offence of murder and so say all of you?
>
> **FOREMAN: Yes.**
>
> HIS LORDSHIP: Mr Foreman and members of the jury, just a moment. This is your last week?
>
> FOREMAN: Yes, sir." (Emphasis supplied).

The aspect in bold is missing from the transcripts of counsel in the matter, but appears in the court's copy.

[50] In any event, we agreed with the submissions made by the Crown that the jury had already made it clear in response to questions asked in respect of each appellant, that they had unanimously found each of them guilty. There can be no doubt about the decision to which the jury arrived. Consequently, we found that ground 8 argued on behalf of Lennox had no merit.

[51] We considered the sentences handed down in relation to both Paul and Lennox. While Lennox did not renew his application to appeal sentence, we concluded that the learned trial judge did not make any error of law in the sentencing process and the

sentences imposed on both appellants were not manifestly excessively. The concession made by both counsel on this issue was therefore appropriate.

[52] It was for the above reasons that we arrived at the decisions outlined at para. [3] above.