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**IN THE COURT OF APPEAL**

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA  
THE HON MISS JUSTICE P WILLIAMS JA  
THE HON MR JUSTICE D FRASER JA**

**ON REFERRAL FROM HIS MAJESTY IN COUNCIL**

**SUPREME COURT CRIMINAL APPEAL NOS 29, 30, 31 & 32/2014**

**SHAWN CAMPBELL  
ADIDJA PALMER  
KAHIRA JONES  
ANDRE ST JOHN** v R

**PRESS SUMMARY**

**Date of delivery: 31 July 2024**

On 13 March 2014, the appellants, Messrs Shawn Campbell (also known as 'Shawn Storm'), Adidja Palmer (also known as 'Vybz Kartel'), Kahira Jones and Andre St John (also known as 'Mad Suss'), were convicted of the murder of Clive Williams (also known as 'Lizard'). The appellants appealed their convictions to the Court of Appeal and then to His Majesty in Council. On 14 March 2024, 10 years and one day after they were convicted in the Supreme Court, the Judicial Committee of the Privy Council ('the Privy Council') recommended that the appellants' convictions be quashed. The Privy Council remitted to this court, for determination, the question of whether the appellants should be ordered to stand a new trial.

Over six days, from 10 – 14 and 18 June 2024, this court comprising Judges of Appeal McDonald Bishop, P Williams and D Fraser heard arguments by counsel for the appellants and the Crown on that question. The court has considered counsel's written and oral

arguments, as well as the authorities and evidence filed by both sides and has arrived at a unanimous decision.

For a fulsome appreciation of the question remitted to this court for determination and the court's resolution of the issues and sub-issues raised by the parties relative to that question, an abbreviated summary of the background to these proceedings is provided.

The allegations against the appellants in the court below were that the deceased and Lamar Chow, the prosecution's sole eye witness, had been given two unlicensed firearms belonging to Palmer for safekeeping. Palmer gave Chow and the deceased a deadline of 8:00 pm on 14 August 2011 to return them, with which they failed to comply. As a consequence, Lamar Chow and the deceased were summoned by Campbell to Palmer's house at Swallowfield Avenue, Havendale ('the Swallowfield premises'). They went there by taxi on 16 August 2011, accompanied by Campbell and, on arrival, were met by Palmer, Jones and St John. Palmer asked what plans Chow and the deceased had for replacing the firearms, to which the deceased replied that he would replace them. They were then both attacked after which Chow saw the deceased lying motionless on the ground, with Jones bending over him. Chow escaped, but the deceased was never seen again and calls to his mobile phone went unanswered.

A team of police officers went to the Swallowfield premises to investigate the alleged homicide. They noticed that the house smelled of disinfectant. When the police returned to the premises on a subsequent visit, they found that the entire interior of the house had been destroyed by a fire. On a further police visit, it was discovered that the rear of the house had been demolished. The police dug at the premises but did not find anything of significance to their investigations.

The appellants were taken into custody on 30 September 2011 and subsequently charged for the deceased's murder. The appellants have remained in custody since then.

The appellants were tried in the Home Circuit Court before Campbell J ('the trial judge') sitting with a jury. The trial lasted 64 days. During the course of the trial, there were three incidents involving the jurors. The first and second incidents are not relevant to these proceedings, and will, therefore, not be discussed. It suffices to state that after the second incident, the trial judge discharged one of the jurors, and the jury panel was reduced from 12 to 11 members. The third jury incident came to light on 13 March 2014, the last day of the trial judge's summing up of the case to the jury. Following the report of possible jury misconduct, the trial judge convened a hearing in chambers and informed counsel on both sides that he had been made aware that a juror ('Juror X') attempted to bribe another member of the jury with an offer of \$500,000.00 to decide the case in a

particular way. The trial judge and counsel on both sides questioned the forewoman of the jury in chambers. The forewoman informed them that Juror X had spoken to all the jurors and encouraged them to free the appellants without regard to the evidence. There was no evidence to connect any of the appellants with the activities of Juror X.

Faced with the possibility of having to abort the trial, the trial judge heard submissions from the Director of Public Prosecutions (the 'DPP') and defence counsel. Despite defence counsel's resistance, the trial judge decided to continue with the summing-up and handed the case over to the jury that evening. The jury deliberated for almost three hours and, by a majority verdict of 10:1, convicted the appellants of the deceased's murder on the same day.

The appellants were each sentenced by the trial judge to imprisonment for life at hard labour, with the stipulation that the appellants Campbell and Jones should serve a minimum of 25 years in prison before becoming eligible for parole, and the appellants Palmer and St John should serve a minimum of 35 and 30 years, respectively, before becoming eligible for parole.

The appellants were unsuccessful in their appeals to this court against their convictions and appealed to the Privy Council. The Privy Council allowed the appellants' appeal and quashed their convictions, on the basis that the judge's treatment of the third incident of jury misconduct, was a material irregularity in the course of the trial, giving rise to a miscarriage of justice. In the Privy Council's view, the trial judge should have done more to investigate the third incident of jury misconduct and ought not to have relied solely on the forewoman's account. Furthermore, allowing Juror X to continue to serve on the jury was fatal to the safety of the appellants' convictions and was an infringement of the appellants' fundamental right to a fair hearing by an independent and impartial court under section 16 of the Constitution of Jamaica. Lastly, the fact that the prosecution was prepared to waive irregularities in the trial did not absolve the trial judge of his responsibility to ensure a fair trial. In all the circumstances, the trial judge ought to have discharged the jury and ended the trial in order to protect the integrity of the system of trial by jury.

Against this background, the court has to determine whether the interests of justice require that the appellants be ordered to face a new trial or whether judgments and verdicts of acquittal should be entered.

Section 16(9) of the Constitution, in summary, provides that a person who has been convicted of a criminal offence should not be tried again for the same offence unless ordered by an appellate court to face a new trial. The principles which guide the court in

determining whether the interests of justice require a new trial have been set out authoritatively by the Privy Council in **Dennis Reid v The Queen** (1978) 16 JLR 246; (1978) 27 WIR 254; [1980] AC 343, and in subsequent cases to which the court has paid due regard.

Based on these principles, and the submissions of counsel for the appellants and the Crown, the court has considered 12 main factors in its determination of whether the interests of justice require the appellants to face a new trial: (1) the nature, seriousness and prevalence of the offence; (2) the strength of the prosecution's case; (3) the availability of the prosecution's witnesses and trial exhibits; (4) the availability of defence witnesses and any evidence which tended to support their defence at the first trial; (5) the issue of delay and whether a new trial can be facilitated within a reasonable time; (6) the time, financial costs, expense and impact on the court's resources that a new trial would have; (7) the ordeal to be faced by the appellants if a new trial is ordered; (8) the impact of prejudicial publicity on the fairness of a new trial, if one is ordered; (9) whether a new trial would give the prosecution an unfair advantage; (10) changes in the Jury Act and potential legislative changes in the sentence for murder; (11) the possibility of prejudice arising from the mandatory minimum sentence and minimum term before eligibility for parole under the Offences Against the Person Act; and (12) the interferences and likely interferences with the appellants' constitutional rights.

The court has considered all the factors governing the court's determination of whether a new trial should be ordered and has given due regard to all the material, submissions and evidence presented by the appellants and the Crown.

The egregious nature and seriousness of the offence in this case is beyond argument. So too, is the prevalence of the offence of murder in Jamaica. The features of this case bear every hallmark of a deliberate attack on and bare-faced defiance of law and order, involving allegations of transactions relating to illegal firearms, an alleged killing in respect of which the body of the deceased has not been recovered, and interference with a crime scene while it was under the control of the police. The court is, therefore, satisfied that the nature, seriousness and prevalence of the alleged offence in this case are powerful factors that weigh in favour of ordering a new trial.

The court is also satisfied that, even though the prosecution's case was based substantially on circumstantial evidence, the prosecution had presented sufficient evidence at the trial in the Supreme Court to make out a *prima facie* case for murder against the appellants. The strength of the prosecution's evidence at the time of the trial in the Supreme Court is also a factor that would weigh in favour of ordering a new trial.

The court, however, finds that there are several equally powerful countervailing factors which, when combined, militate against ordering a new trial. In summary, these factors are:

- (1) The inadequate account by the prosecution for the availability of its witnesses and trial exhibits.
- (2) Witnesses and trial exhibits relied upon by the appellants, which tended to support their defence at their first trial, are now unavailable or cannot be accounted for.
- (3) The appellants' trial in the Supreme Court was complex, lasting 64 days and utilised a significant share of the court and the appellants' resources. Therefore, the time, financial costs, expense and impact on the court and the appellants' resources which a new trial will require, and the impact which this case will have in delaying the completion of other cases which are pending in the Supreme Court, is likely to be significant.
- (4) The psychological, financial and medical effect that a new trial will likely have on the appellants, who have already spent 13 years in custody, which is demonstrated by medical and other affidavit evidence, is likely to be significant. In particular, the court notes the serious medical issues faced by the appellant Palmer, which were brought to the court's attention through unchallenged medical reports that speak to his declining health in the penal system.
- (5) The period of time between the commission of the alleged offence and the likely time within which a new trial would take place, which would, in our estimation, be at least 15 years in total.
- (6) The unjustifiable interference with the appellants' constitutional rights to a fair hearing within a reasonable time under section 16(1) of the Constitution, and the possibility that that interference will continue if a new trial is ordered.
- (7) The potential prejudice to at least two of the appellants who, if convicted after a new trial, would be required to serve a longer term of imprisonment before eligibility for parole than that which was originally imposed upon them after their first trial, due to the operation of the mandatory minimum term to be served before eligibility for parole prescribed for the offence of murder under the Offences Against the Person Act.

Having weighed all the relevant considerations in the balance, the court concludes that the interests of justice do not require that a new trial be ordered for the appellants. The

court, therefore, orders that judgments and verdicts of acquittal are entered in relation to the appellants.

The appellants were represented by John Clarke, Isat Buchannan, Miss Alessandra LaBeach and Iqbal Cheverria. The Crown was represented by Miss Claudette Thompson, Director of Public Prosecutions (Ag), Janek Forbes, Miss Loriann Tugwell and Rasheed Lee.

**DISCLAIMER: This summary is provided for the sole purpose of assisting members of the public with understanding the Court of Appeal's decision in this matter. It does not form part of the reasons for the court's decision and should not be used as a substitute for the judgment of the court, which is the only authoritative record of the court's reasons. The full judgment of the court will be made available to counsel and to the public through the court's website at [www.courtofappeal.gov.jm](http://www.courtofappeal.gov.jm).**

**- END -**