THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CRIMINAL CASE NO. 3 of 2005

BETWEEN:

DEVIN MADURO

Appellant

v.

THE QUEEN

Respondent

RESPONDENT'S SKELETON ARGUMENTS

RECORD

PROCEEDINGS AND EVIDENCE

On the 22nd of June 2005, Mr. Devin Maduro was convicted on all four counts of an Indictment charging him with Murder, two counts of Wounding with Intent and Aggravated Burglary. He was sentenced to life imprisonment for murder, seven years respectively for the charges of wounding with Intent and ten years imprisonment for Aggravated Burglary. All the sentences are to run concurrently.

The prosecution's case was that on the early morning of the 23rd of July 2004, the appellant wearing a mask and armed with a machete, a shotgun, a leatherman (an implement which can be used as a pliers and a knife) and electrical straps among other things, without permission, entered the house of Mr. Sunday Joseph, Mrs. Ursuline Paul-Joseph and family at Major Bay at the eastern end of the island. The Appellant

entered the house to do serious injury to his wife, Urlene Paul. He wore a mask because he intended to leave undetected. On entering the house the television being on downstairs attracted his attention. The Appellant proceeded downstairs where he encountered the brother of his wife, Anderson Paul and killed him. He then went upstairs and attacked and wounded his wife. Mrs. Urlene Paul-Joseph and Mr. Sunday Joseph intervened in order to render assistance to Urlene Paul. In the process, the Appellant chopped and wounded Mr. Joseph.

The prosecution led evidence that Miss Urlene Paul was the recently estranged wife of the appellant. They were married on the 31st March 2004. The marriage lasted for some three months. Miss Paul testified about the nature of the relationship and its end describing abuse and particularly relating specific occasions when the appellant would use plastic fasteners to tie her and a leatherman to inflict injuries to her person. He had even threatened to kill her. This abuse led to her fleeing the matrimonial home in his absence. She sought refuge at her mother's home in Major Bay on the 9th of July 2004, after an episode of physical abuse on the 8th of July 2004. She made a report to the police and consequently applied to the Court for a Protection Order on the 13th of July 2004. She was granted a temporary order which was made final on the 22nd July 2004. She indicated to the Court on that occasion that she wished to have the marriage annulled. The Appellant was present at Court at the time and was heard to comment, "they can't annul my marriage". Miss Paul gave evidence that after the granting of the order, the Appellant shook his head and said "so that is how it is, that is how it is". She got the impression that he was upset. It was the early morning of the following day that he Appellant entered the home where Miss Urlene Paul was staying and attacked and wounded herself and her stepfather and killed her brother.

Vol. I Pg. 6 line 5 – Pg. 9 line 25

Vol. I Pg. 10 line 8 – Pg. 13 line 23

Vol. I Pg 13 line 25 – Pg. 16 Line 2

Pg 19 line 14 – 21

On the morning of the incident, the Appellant, who at the time was masked, entered the house through the upper floor balcony and went downstairs. At the time, the deceased Anderson Paul was downstairs in the living room as he was earlier watching television and had fallen asleep. He then made his way upstairs to the bedroom of Miss Urlene Paul and attacked her with a machete causing a wound to her side and another to her head. Mr. and Mrs. Joseph who were in a room nearby went to her rescue. Mr. Joseph engaged in a tussle with him to disarm him and was cut to the left shoulder. The machete fell and this was retrieved by Miss Joseph who used it to inflict injuries to the appellant in a bid to protect herself and her family. The appellant was incapacitated and at that time Mr. Joseph used the opportunity of removing the mask from his face, thus revealing his true identity.

Vol. I Pg 64 line 2 – 23

Vol. I Pg 22 line 12 – Pg 23 line 3
Pg. 86 line 4 – 24

The Police were summoned. Constable Sean McCall was among the police officers who responded. He was directed to the room of Miss Urlene Paul where he noticed the appellant lying on the ground suffering from injuries. He searched the appellant and recovered a flashlight, the leatherman and a piece of cord from his pockets. Later, whilst the room was being cleaned, a shotgun containing one round of ammunition with which the appellant was armed, was recovered from the bedroom of Miss Urlene Paul. A grey bag containing among other things electrical straps and a piece of rope was also recovered from Miss Paul's bedroom.

Pg. 108 line 8 – 16

Vol. II Pg. 7 line 22 Pg 8 line 1 – 2
Pg. 9 line 2- 8

Vol. I Pg. 17 – Pg. 98 line 6

The paramedics were also summoned. While they were attending to the appellant in the presence of Constable McCall, Constable McCall heard shouts that "Andy dead, Andy dead". He then cautioned the appellant

Vol. II Pg. 108 line 17 – Pg 109 line 11

and asked him where Andy was. The Appellant responded that Andy was downstairs. Constable McCall asked him what he did to Andy whereupon the Appellant responded "I stab him in his chest with the machete". He was then arrested on suspicion for murder. He was then removed to Peebles Hospital for treatment.

Anderson Paul was seen downstairs in the living room suffering from injuries to his body and bleeding profusely. His body was removed to the morgue and later an autopsy was performed by Dr. Landron. The pathologist spoke of two significant injuries to the body of the deceased; one stab wound to the front of the neck and the other to the chest. He said the injuries were consistent with a knife-type sharp object or a machete. Other less significant injuries were also noted on the body of the deceased.

Vol. II Pg. 89 line 8 – Pg. 90 line 16. Pg 93 line 17 - 24

Miss Urlene Paul and Mr. Sunday Joseph were treated at Peebles Hospital for injuries sustained during the attack.

THE DEFENCE

The Appellant did not give evidence, neither did he call any witnesses.

In relation to the count of murder, his defence was a denial. He told the police he had not gone downstairs [where Anderson Paul was]. It was suggested to the witnesses for the prosecution that he did not tell the police that he stabbed the deceased in his chest with a machete.

Vol. 2 Pg. 166 Line 19-25 Vol. 2 Pg. 127 Line 17-21

In relation to Count II for the wounding of Mr. Sunday Joseph, his defence was that it was Mrs. Ursuline Paul-Joseph who struck her husband with the machete during the tussle. He never chopped Mr. Joseph and was in no position so to do, because of his injuries.

In relation to Count III for wounding Miss Urlene Paul and count four for Aggravated Burglary no positive defence was advanced. As there was no plea of guilty, the Crown was put to proof.

GROUND 1

(a) The appellant complains that the Learned trial Judge erred in allowing Urlene Paul to give evidence of allegations of physical abuse on her by the Appellant on June 22 and July 8, as this evidence, although relevant and admissible to the wounding charge was irrelevant and inadmissible in relation to the charge of murdering Anderson Paul.

(b) That the Learned trial Judge had a duty to ensure that the Jury fully appreciated that in considering the murder charge they should disregard the evidence relating to the alleged abuse of Urlene Paul.

RESPONSE

At trial, evidence was elicited by the prosecution of prior physical abuse to Miss Urlene Paul by the Appellant. Reference was made especially to two prior incidents of physical abuse which occurred on the 22nd June and the 8th July 2004. This evidence was advanced as a part of the background or the history relevant to the offences charged; to show the motive of the appellant and to show intent. It presented to the jury the context and circumstance within which the offences were said to have been committed, without which the account before the jury would be incomplete and incomprehensible (Dictum of Purchas LJ in **Pettnam**,

unreported, May, 2 1985 cited in **Fulcher [1995] 2 Cr. App. R. 251 @ 258 applied**).

The Appellant concedes that the evidence of previous conduct is relevant and admissible in relation to the wounding charges. The Appellant contends however, that it is irrelevant and inadmissible in relation to the charge of murder. It is submitted that in circumstances of the instant case, the wounding of Urlene Paul and Sunday Joseph and the murder of Anderson Paul, together represent one transaction; one single incident and so each offence cannot and ought not to be viewed in isolation.

The Appellant clearly had a motive for launching an attack on the morning in question. He apparently, had enmity towards his wife, Urlene Paul, which was heightened by her leaving the matrimonial home and obtaining a Protection Order against him. The Appellant was upset and sought revenge. It was this motive that culminated in the commission of the violent crimes. The Appellant on the morning in question went into the house to attack Urlene Paul and to cause mayhem. This is evident from the manner in which he was armed. The evidence is that Anderson Paul, the deceased, was earlier watching television and had fallen asleep. The television must have attracted the Appellant's attention, so he went downstairs where he attacked and wounded Anderson Paul, who succumbed to his injuries. He then went upstairs where he attacked Urlene Paul and wounded her. Sunday Joseph intervened, and was also wounded by him.

In the circumstances where it is conceded that the evidence of previous abuse is relevant and admissible to the two wounding charges, it stands

to reason that on these facts, it must also be relevant and admissible to the charge of murder. As already intimated, all the offences are intimately connected in time and place. The only difference one can glean in respect of the murder charge is that the wounds inflicted to Anderson Paul, resulted in his death. To say that the evidence of background circumstances is not relevant to the murder charge therefore, would be erroneous.

There was therefore no duty on the learned trial Judge to specifically warn the jury not to consider the evidence of "background circumstance" in considering the murder charge as the evidence was also relevant and admissible in relation to this. In the circumstance there was no need for the learned trial Judge give a separate direction in respect of the murder charge. In **R v Sawoniuk [2000] 2 Cr.App.R. 220**, the Court took the view that admitting the evidence of background was proper on a broader basis and accordingly elaborated that criminal charges cannot be fairly judged in a vacuum. The Court took the view that the background evidence was relevant and admissible.

Having regard to these submissions, there was no need for the Trial Judge to warn the Jury not to consider the evidence of background circumstance in considering the murder charge, as the evidence was also relevant and admissible in relation to that charge. In the circumstance, no unfairness was occasioned to the Appellant.

GROUND 2

The thrust of the Appellant's submission is that the utterance "Andy is dead, Andy is dead. The guy killed Andy before he went upstairs"

made by Augustine Paul, was an implied assertion and a breach of the heresay rule and was prejudicial to the Appellant.

RESPONSE

It is the Respondent's submission that this evidence did not breach the heresay rule, was not prejudicial and the Judge was correct in allowing the prosecution to lead it for the following reasons:

(a) The Appellant himself on the evidence, must have heard when the remark was made.
(b) Augustine Paul, the person who made the statement was called as a witness and this was the direct evidence coming from him.
(c) This bit of evidence must be considered as part of the *res gestae* and thereby admissible on that basis.

When the witness Augustine Paul said the words of which the Appellant complains, Cons. McCall who heard, was at the very moment exactly where the Appellant was, who was then subdued in the house. Cons. McCall's evidence was to the effect that having heard the utterance, he immediately made enquires of the Appellant as to where Andy was, and he replied "he is downstairs". Further questions were asked by Cons. McCall of the Appellant, to which he answered. Under the circumstances, it cannot be gainsaid that the Appellant did not hear or could not have heard Augustine Paul's sudden outburst.

Vol. Ii Pg. 108 line 18 – Pg. 109 line 11

One of the features of implied assertions as established in **Teper v R [1952] 2 ALL ER 447** and **R v Kearley [1992] 2 ALL ER 345**, is that the assertion that implies the commission of the offence by the Appellant, must be said out of the hearing of the Appellant. In **Teper v R**, on a charge of maliciously setting fire to a shop with intent to

defraud, the prosecution called a witness who deposed that after hearing the fire alarm he heard a woman's voice shouting "your place burning and you going away from the fire". Immediately thereafter she saw a car being driven away by a man resembling the appellant. The words were said some 220 yards from the site of the fire and about twenty six minutes after the fire. The evidence was held to be inadmissible.

In **Kearley**, the Court held that evidence tendered of words spoken when the defendant was not present by a person not called as a witness, such statement being tendered not for the purpose of establishing the truth of any statement made by that person, but for the purpose of enabling the jury to draw an inference as to the defendant's actions and intentions, was irrelevant, unless the words spoken were otherwise part of the *res gestae*.

In **Teper** and **Kearley**, the person making the assertion implying the commission of the offence to the Appellant, was not called as a witness. In the instant case, that person Mr. Augustine Paul was called to testify. On that basis, and having regard to the fact that the Appellant himself heard (or must have heard) the utterance, then it cannot be maintained that the utterance, by Mr. Augustine Paul is inadmissible heresay.

Additionally, the prosecution is contending that the words spoken by Mr. Augustine Paul were part of the *res gestae*. These words cannot be viewed in isolation but must be viewed in the context of what was happening at the time.

On the evidence, the witness Augustine Paul had just arrived on the scene. In the pandemonium, he made enquires for his son and in his

Vol. I Pg. 141 lines 18 – Pg 142

frantic search, he happened upon him downstairs in the living room in a pool of blood, with a wound to his chest, one under his throat and the other to his right knee cap. It was then that he made the remark complained of. Under the circumstances, the utterance made by Augustine Paul would be words forced from him by the pressure of the prevailing circumstances. It was spontaneous and it was generated by that with which he was confronted when he saw his young son. The words were closely associated in time and place and circumstances and it can hardly be said that it was concocted. **line 10**

R v Andrews [1987] A.C. 281 is one of the leading authorities on the *res gestae* principle. In that case, the deceased was attacked and seriously wounded. Two police officers arrived within minutes of the attack and he named the defendant as one of the assailants. Two months later he died. The prosecution sought to have the statement of the deceased admitted as coming within the *res gestae* exception of the heresay rule. The judge ruled in favour of its admissibility. The defendant appealed.

The Appeal was dismissed. The Court held that:

> "*…where the victim of an attack informed a witness of what had occurred in such circumstances as to satisfy the trial Judge that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim so as to exclude the possibility of concoction or distortion and the statement was made in conditions of approximate but not exact contemporaneity, evidence of what the victim said was admissible as to the truth of the facts recited as an exception to the heresay rule…..*" (my emphasis).

Applying the principle extracted from this case to the instant case, the

remark made by Augustine Paul falls within the category of the *res gestae* exception to the heresay rule, and was therefore admissible. No prejudice was caused to the Appellant by the admissibility of the statement.

The Appellant further contends that the situation was compounded by the learned trial Judge's summing up to the Jury. It is the Respondent's submission that, the evidence being admissible, the trial Judge did not err in repeating it to the jury. In fact, the trial Judge's direction to the jury is overly generous to the Appellant in that she told the Jury that where two or more inferences can be drawn with equal reasoning then the one more favourable to the Appellant must be drawn.

Summ. Vo. II Pg 110 line 17 – Pg 111 line 5

In any event, on the totality of the evidence, the inference that it was the Appellant who inflicted the fatal wound(s) to the deceased was virtually inescapable. This, for these and other reasons:

(a) The Appellant was the only intruder;
(b) The Appellant was armed with a machete/cutlass and knife;
(c) The forensic evidence was that the injuries to the deceased was inflicted by a sharp instrument;
(d) The Appellant himself conceded that the deceased "done dead already" and that he had stabbed him in the chest with a machete.

This undoubtedly indicates that the Appellant was not only aware of the deceased's death, but how he came to meet his death. Under the circumstances the inference was obvious and compelling.

GROUND 3 - ORAL CONFESSION

The Appellant complains that the learned trial Judge wrongly exercised her discretion in admitting the oral confession of the Appellant into evidence, that having regard to his medical condition, Cons. McCall proceeded to administer the caution and did not enquire of the Appellant whether he understood the nature of the caution and the consequence of his answering the questions he was about to put to him.

Further, the learned trial Judge in coming to her decision, did not allude to the evidence that Cons. McCall said he did not enquire as to whether the Appellant understood the caution.

RESPONSE

The prosecution's case is that the Appellant admitted by way of an oral confession that he stabbed the deceased in his chest with a machete. This oral confession was made in the presence of police officer Sean McCall and EMT Kinnel Turnbull. At the time of making the oral confession, the Appellant was injured, having being chopped a number of times with a machete.

Vol. II Pg. 108 line 17 – Pg. 109 line 13

A Voir Dire was held to determine the issue, whether the Appellant was able in the circumstances, to understand the caution that was put to him. Cons. Sean McCall and EMT Turnbull gave evidence on the voir dire of the circumstances under which the Appellant made the oral confession. It was Cons. Sean McCall's testimony that the Appellant had several injuries to his body. According to Cons. McCall, upon hearing someone say "Andy dead" he cautioned the Appellant and thereafter asked him "where was Andy"? to which he answered without delay. He said the Appellant sounded very confident about what he did and seemed very sure of himself. He did not ask the Appellant whether he understood what he said to him, but to his mind, the Appellant understood because

Vol. I I Pg 28 line 25 – Pg. 32 line 22

Vol. I pg 46 line 18-23

Pg 47 line 11-17

he answered every question without delay and the answers were in context with the questions.

EMT Turnbull's testimony was that he saw the Appellant on the floor, and a fellow EMT called out to him to see whether he was conscious and the Appellant responded, but he could not recall exactly what he said. Although he spoke as if he were in pain, he did not take very long before he responded to the question asked. The Appellant was conscious at the time the police officer was asking him questions, and it appeared to him that he understood quite well.

Vol. II Pg 52 line 2 - 20

Vol. II Pg. 57 line 12-22 Pg. 58 line 2 - 8

The Appellant did not give evidence on the voir dire, neither did he call any witnesses. No medical evidence was advanced by the Appellant, to support his contention that in the circumstances, he did not and could not have understood what was being put to him, although there is no burden on him to prove anything. There was no conflicting evidence or anything to contradict the prosecution's position.

In reviewing the evidence on the voir dire, the Judge found that the evidence elicited by the prosecution was very strong. She also found that the Appellant understood fully well what was put to him and his replies were appropriate in the circumstances. Accordingly, in the exercise of her discretion, she admitted the confession into evidence.

Vol. II Pg. 84 line 10 – Pg 85 line 4

There is no requirement in the Judges' Rules or the Police and Criminal Evidence Act (PACE) for the police to enquire of a person whether he understands the caution. The requirement as far as these rules are concerned, is that the person understands the caution.

The police can determine whether a person understands the caution by

means other than asking. This can be determined for example, by a person's response or by his reaction. In any event, the caution is not difficult to understand.

There was no breach of the Judges' Rules or the Police and Criminal Evidence (PACE) Rules by the Officer not making an enquiry whether the Appellant understood the caution. There was no evidence that he did not understand. The fact that he was in conversation which was in context with the questions asked, indicates that he understood. The question for consideration is not whether the Appellant was asked if he understood the caution, but whether he in fact understood. The fact that the Appellant was not asked by Cons. McCall whether he understood the caution would not provide a basis for the confession to be excluded.

In this regard, the decision of **Greaves v D and P [1980] 71 Cr. App. R 232** is worthy of note. In that case, the admissibility of a confession statement was challenged on the grounds that the caution had not been administered to the defendants until after they made an admission, in breach of the Judges' Rules. It was held that the mere fact of a breach of the Judges' Rules or of an administrative instruction does not automatically mean that the evidence is inadmissible. The approach to be taken is that the justices or Judge would then have to apply their minds to the question whether the admission is a true and voluntary admission.

Notably, in the instant case, there was no breach of the Judges Rules. It is submitted therefore, that the learned trial Judge did not wrongly exercise her discretion in admitting the oral confession into evidence. She applied her mind to the question of voluntariness and in any event, there was no evidence that the confession was not voluntarily made. There was no error in the application of the law by the Judge, and the

correct principles were applied. There was also nothing perverse about the learned trial Judge's decision to admit the statement into evidence. It is noteworthy that she also would have had the benefit of seeing and hearing the witnesses who gave evidence on the voir dire.

In the case of **Deolal Sukhram et al v The State [1993] 44 WIR 400**, a decision of the Court of Appeal of Trinidad and Tobago, complaints were raised regarding the inadmissibility of confession statements that inter alia, they were not voluntarily given and the trial Judge erred in admitting them into evidence.

His Lordship Chief Justice Bernard in delivering the judgement of the Court, quoted Lord Salmon in **Director of Public Prosecutions v Ping Lin [1975 62 Cr. App. R 14 @ pg 26** as saying that an appellate tribunal should disturb a trial Judge's findings:

> *"Only if it is completely satisfied that the judge made a wrong assessment of the evidence before him or failed to apply the correct principle – always remembering that usually a Judge has better opportunities of assessing the evidence than those enjoyed by an appellate tribunal.*"

His Lordship Chief Justice Bernard also alluded to the case of **Francois v The State [1987] 40 WIR 376** which followed **R v Rennie [1982] 74 Cr. App. R. 207**, where the court held that unless telling factors and compelling circumstances are apparent to an appellate tribunal, the latter ought not to differ from the conclusions reached by the trial Judge e.g. such as relate to the admissibility of a confession statement.

Applying these principles to the instant case, it is submitted that there is no basis for the Learned trial Judges' decision to be interfered with it

ought not to be disturbed.

GROUND 5 – MURDER – CONVICTION UNSAFE OR UNSATISFACTORY

The Appellant contends that the murder conviction in this case is unsafe or unsatisfactory, for the reasons following:

RESPONSE

The test to be applied by the Court in determining whether a conviction is unsafe and unsatisfactory, was enunciated by Sir Vincent Flossiac, Chief Justice in **John v R [1994] 47 WIR 122** which is a Court of Appeal decision of the Eastern Caribbean States. After rehashing the evidence in the case and considering the learned trial Judge's summing-up to the jury his Lordship said:

> *"Accordingly, the ultimate question to be decided in this case is whether this Court of Appeal has a subjective reasonable or lurking doubt as a result of considering all the circumstances of the verdict including the evidence, the summing-up and the general feel of the case".*

The Court found that in the circumstances of the case, it had a subjective lurking doubt that, justice may have been done and hence concluded that the verdict was unsafe and unsatisfactory.

The case of **John v R** is clearly distinguishable on the facts from the instant case. In that case, the main issues were that of identification and

credibility. The witness on whom the persecution sought to rely was a drug addict whose testimony was at best, unreliable. The version of the incident which he advanced at trial did not coincide with the medical report. The defence had called a psychiatrist who testified that the witness may have been highly intoxicated during the time he claimed to have witnessed the incident. As a result of such intoxication, he could have auditory and or visual hallucinations, in other words, hearing voices and seeing things which were not there. It was on these facts that understandably the Court came to its decision and allowed the appeal. Comparatively speaking, the instant case is a strong case for the prosecution. On the facts of this case, it is submitted that there is no basis upon which the Court ought to entertain any reasonable of lurking doubt that justice may not have been done by the verdict. There was ample evidence upon which the jury could have arrived at their verdict. It is submitted that the verdict is not unsafe and unsatisfactory.

FORENSIC EVIDENCE

The Appellant contends that the defence to the charge of murder was denial in that he (the Appellant) did not go downstairs (where the deceased was). It was therefore incumbent on the prosecution to place the Appellant downstairs and prove that he killed Andy.

RESPONSE

The prosecution presented by way of circumstantial evidence and direct evidence, proof that the Appellant was downstairs the home which he intruded on the morning in question, where the deceased was, and that he killed Anderson Paul. These are as follows:

Vol. I pg 64 line 2-

(a) Ursuline Paul Joseph testified that she saw someone going

downstairs on the morning in question according to her, "when I got to the study….I looked outside the stairway and there was someone going downstairs with their head covered in a dark colour". She also testified that about 10, 15 or 20 minutes after her daughter Adelle who had gone back in her room came rushing back and indicated that the person was coming back. Thereafter she heard a bang on Urlene's door and a scream.

Vol. I Pg 85 line 8 - 24

(b) Adelle Paul testified that she was awakened by screaming sounds. She later heard a sound and she went towards the study room door and looked through the window. She saw someone coming up the stairs, dressed in full black with the head covered in black material. The person was marching up the stairs. She ran to her mother's room and thereafter she heard three loud bangs on her sister's bedroom door.

Vol. I page 66 line 3 - Pg 67 line 5

On the evidence for the prosecution, shortly thereafter, Urlene Paul was attacked by the intruder, whom, when the mask was removed from his face, turned out to be the Appellant. In the circumstances, it was open to the jury to draw the inference, that it was the Appellant, who was seen going downstairs and later coming upstairs, as the evidence for the prosecution is that only one intruder had entered the house that morning, that was, the Appellant. It was not necessary therefore for the prosecution to elicit direct evidence (as the Appellant posits), which positively identified the intruder who was seen going downstairs as the Appellant. This was proved by way of circumstantial evidence. It was also open to the jury on this evidence, to conclude that in the circumstances where the Appellant was the only intruder in the house that morning, and this intruder was seen going downstairs where Anderson Paul was, Anderson Paul being found dead with sharp force injuries to his body, and the Appellant being armed with a machete and

knife, it was the Appellant who killed Anderson Paul. In summing up to the Jury the Learned Trial Jude told them:

Summ. Vol. II Pg 106 line 10 – 22

"*The first of these question relate to the identity of the person who caused the death of Anderson Paul. Here the prosecution is relying on circumstantial evidence, on direct evidence as well as circumstantial evidence to a certain regard……You will consider what the accused said to Sergeant of Police, Calvin James when he was cautioned and the accused asked how Andy get killed. "All I know I was not downstairs". These are the words he said. But I told you about circumstantial evidence a moment ago…The defence is also saying to you this accused told the police that he did not go downstairs and as such is not responsible for the death of Anderson Paul. Mr. Foreman and members of the Jury, it is for the prosecution who have brought this man here to prove that this accused was downstairs because that is where Anderson Paul was in the Television Room downstairs and that this accused killed Anderson Paul*"

Summ. Pg. 109 line 22 – Pg 110 line 5

Having regard to the clear and full directions given by the judge to the jury, it is obvious that the jury by their verdict in relation to the murder charge, must have accepted that the Appellant had gone downstairs and killed Anderson Paul.

The prosecution also proved that the Appellant killed Anderson Paul by way of direct evidence which came from the Appellant himself by way of an oral confession. He told the police that Andy was downstairs, that "Andy done dead already" and that he stabbed him in the chest with a machete. It was for the jury to determine if this confession was true and what weight to attach to it.

FORENSIC EVIDENCE CONTINUED – BLOOD ON MACHETE/CUTLASS

The Appellant argues that there remains a lurking doubt as to whether the prosecution has proved that it was the Appellant's cutlass that was used to stab Andy and therefore it was the Appellant who stabbed him, having regard to the forensic report that the blood on the cutlass did not come from Anderson Paul.

RESPONSE

The Respondent submits that the prosecution had no duty/burden to present at the trial, the murder weapon or to satisfy the jury as to what weapon was used to kill the deceased. The jury was not required to feel sure about what was used to kill the deceased, as long as they were satisfied and felt sure that it was the Appellant who killed the deceased.

It was the prosecution's case that the Appellant made an oral confession that he stabbed the deceased in his chest with a machete. The Appellant was found in possession of a machete/cutlass and a leatherman (an instrument that can be used as a knife and a pliers) on the morning in question.

Dr. Francisco Landron, Forensic Pathologist called on behalf of the prosecution, testified that the stab wound injuries that he noted to the body of the deceased, were consistent with a knife-type sharp object, a weapon, or a machete/cutlass. In referring to the wound to the chest, he said that it was consistent with a cutlass, but, he could not exclude a knife. He further testified that, either weapon could possibly have been

Vol. II Pg. 93 line 17 – 24

Pg 95 line 15 – 24

Pg. 100 line 5 -13

used to inflict these injuries and that he could not say exactly which weapon it was.

The machete/cutlass was submitted for forensic examination. The forensic report revealed that the blood was found on the machete, which when tested was found not to be that of the deceased. It is submitted, that this in and of itself, is not conclusive evidence that the machete was not used to inflict the injuries to the deceased for the following reasons:

(a) The evidence elicited by the prosecution is that the machete was used to inflict wounds to three other persons after the deceased was injured, Urlene Paul, Sunday Joseph and the Appellant himself, who sustained several chop wounds from the machete. In the circumstances, the blood of the deceased would not necessarily be present on the machete. This was open to the jury to so find.

(b) What is clear from the forensic report is that only three areas of blood staining found on the machete were tested for DNA profiling. There were two other areas of blood staining not tested. This further supports the contention that the forensic evidence is not conclusive, that the Appellant's machete was not used to stab the deceased, as one does not know what the outcome would have been, were the two other areas tested.

The prosecution contends that even if they failed to prove definitively whether it was the machete/cutlass or the knife or another weapon which was used to inflict the fatal injuries to the deceased, it means that it wasn't the Appellant who inflicted these injuries. This is said against the background of the compelling circumstantial and direct evidence in

the case. There was sufficient evidence before the jury for them to have concluded that it was the Appellant who caused the death of Anderson Paul.

ORAL CONFESSION

The Appellant further contends in relation to the oral confession that if the Learned Judge was not correct in allowing the confession, there is no telling how the Jury would have assessed the case of murder against the Appellant. That even if the Judge was correct in allowing the confession there must be serious doubts about the quality of such a confession having regard to the physical and mental condition of the Appellant when the confession was made.

The Response in relation to the oral confession is set out at paragraphs 32 -45 of the Respondent's submission is adopted.

It is the Respondent's contention that the Learned trial Judge was correct in allowing the confession into evidence. Even if the oral confession were to be excluded however, the case of murder against the Appellant, relying on the circumstantial evidence, would still be compelling for these reasons:

(a) only one intruder on the prosecution's case entered the house that morning;
(b) This intruder was seen going downstairs where Anderson Paul was and then seen coming upstairs;
(c) Later Anderson Paul was found dead with sharp force injuries to his body, consistent with a machete or a knife;
(d) The intruder when the mask was removed from his face, turned

out to be the appellant;

(e) The appellant was armed with, among other things a machete and a knife; and

(f) The Appellant attacked two other persons, Urlene Paul and Sunday Joseph in the house that morning, inflicting injuries to them with the machete.

The learned trial Judge having ruled that the confession was admissible, gave full and proper directions to the jury on the circumstances under which the confession was made, the physical and mental condition of the Appellant at the time it was made and their functions in relation to the confession.

She told the jury that Officer McCall questioned the Appellant and cautioned him before he made any reply, but he did not ask the Appellant whether he understood the caution. She directed them in essence, that in deciding whether they could rely on the confession, they may wish to consider the evidence of the Appellants' state of mind. She reiterated the physical condition at that the Appellant was in at the time. This would not have been lost upon the jury and it was therefore entirely a matter for them as to what weight they attach to the confession.

Summ. Vol.II Pg. 112 line 15 - Pg 113 line 9

MISDIRECTION OF EVIDENCE

The Appellant contends that the learned Judge misdirected the jury when she told them that the Appellant told Inspector James that he saw Andy on the night of July 22, 2004 and this was highly prejudicial.

RESPONSE

Insp. Calvin James testified that he asked the appellant if he had seen

Urlene Paul-Maduro or Anderson Paul on the morning of Friday, 23rd July 2004 and he said yes.

The learned trial Judge in summing up to the jury, on this point put to them for their consideration, the prosecution's position in relation to this piece of evidence. To this end the learned trial Judge told the jury:

Summ. Vol. II Pg 118 line 14-24

> "*The prosecution is also asking you to find that the answers he gave to Inspector James are important to show that he went downstairs in the television room area where Andy was because he said that he saw Andy that night….*"

She went on to point out that the prosecution said that the evidence pointed to the Appellant as the person who murdered Anderson Paul. She then importantly emphasised that the Appellant said he did not go downstairs and that the evidence was that he was upstairs and that, he admitted that part, but at no time did he go downstairs. She then told the jury that it was a matter for them. The jury would have heard the evidence in relation to this point. In the context that the learned trial Judge had put this statement before the jury is was not highly prejudicial.

Summ. Vol. II Pg 119 line 5 – 12

The fact that the learned trial Judge emphasised on several occasions to the jury that the Appellant said he did not go downstairs (where Anderson Paul was) would have nullified any possible prejudicial effect that the statement might have had.

The Appellant has wrongly concluded that because it is undisputed that he saw Urlene that morning, it must be taken to mean that he did not see Andy. In any event, what the Appellant refers to as a "misdirection" is

a peripheral matter in the circumstances of this case, which would not have affected the justice of the case and the safety of the murder conviction.

The point raised at paragraph 38 of the Appellant's submission captioned "Inadmissible Evidence" has been dealt with at paragraphs 19 - 31 of the Respondent's submissions.

GROUND 6 - Conviction for Wounding Sunday Joseph Unsafe and Unsatisfactory

The Appellant contends that as far as the injury to Sunday Joseph is concerned, there is a discrepancy between the evidence given by Urlene Paul on the one hand and Sunday and Ursuline Joseph on the other hand, as to whether the Appellant had the machete when he was struggling with Mr. Joseph and by extension, whether he had caused the injury to Mr. Sunday Joseph.

RESPONSE

The Respondent submits that if there were discrepancy between the evidence of Urlene Paul on one hand and Ursuline Paul-Joseph and Sunday Joseph on the other as to whether the Appellant was armed with the machete when he was struggling with Mr. Joseph, the learned trial Judge's direction to the jury as to how to deal with discrepancies and inconsistencies, would have adequately addressed this and no injustice was done to the Appellant. The learned trial Judge gave a full and comprehensive direction to the jury as to how they should approach the issue of discrepancies and inconsistencies. In part, the learned trial Judge had this to say:

Summ. Vol. II Pg 102 line 10 – Pg 104 line 6

"*if you find discrepancies and they are trivial or you can find a reasonable explanation for them, you may choose to ignore them. On the other hand, if they are of a serious nature, then you may well say that you cannot believe the witness or witnesses on the particular point. It is for you to say whether or not you can reconcile those discrepancies in examining the evidence or whether you regard them as so serious as to cast doubt on the credit of the witness or witnesses*".

Summ. Pg. 102 line 25 – Pg. 103 line 8

Earlier in her summation, the learned trial Judge emphasised to the jury that:

"*You have to decide whom you believe and what you believe. You can take the view that everything a particular witness told you is suspect and therefore to be rejected. You can accept some parts of what the witness said and reject other parts*"

Vol. II Summ. Pg. 99 line 13 - 20

Having regard to the learned trial Judge's clear directions on how the Jury was to treat inconsistencies and discrepancies, it was entirely a matter for the jury as to who or what to accept and reject. These directions, it is submitted could not have been lost upon the jury who it is taken, are reasonable people. It is obvious that they accepted the version of Sunday and Ursuline Joseph.

The learned trial Judge had no duty to highlight every single discrepancy and inconsistency. The jury would have heard the evidence and having regard to the directions, would have been in a position to arrive at a proper verdict.

The trial Judge had also adequately put before the jury, the defence in

Summ. Vol. II Pg.

relation to this charge for their consideration. No injustice was therefore caused to the Appellant.

123 line 7 – 14 Pg. 124 line 21 – Pg. 125 line 3

In total, there is nothing to suggest that the Appellant did not receive a fair trial. There is overwhelming evidence in support of the case for the prosecution. There was nothing to suggest that the Appellant suffered any injustice. The convictions therefore, ought not to be disturbed.

Grace Henry-McKenzie
Senior Crown Counsel
for Director of Public Prosecutions

THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

(CRIMINAL DIVISION)

CRIMINAL CASE NO. 3 of 2005

BETWEEN:

DEVIN MADURO

Appellant

V.

THE QUEEN

Respondent

RESPONDENT'S SKELETON ARGUMENTS

Director of Public Prosecutions

SKELETON ARGUMENTS

IN THE COURT OF APPEAL OF JAMAICA

CRIMINAL APPEAL NO. 14/2008

BETWEEN **CONSTANTINE ATKINSON** **CLAIMANT/APPELLANT**

A N D **REGINAM** **RESPONDENT**

FOR INCEST AND BUGGERY

INTRODUCTION

The Applicant was pleaded to an indictment containing two counts in the Clarendon Circuit Court on January 10, 2008 the statement of offence and particulars being:

(1) Incest contrary to Section 2 (1) of the Incest Punishment Act.

Constantine Atkinson on a day unknown between the 1st day of November, 2006 and the 30th day of November, 2006 in the parish of Clarendon, carnally knew Sheronie Atkinson, whom knew to be his daughter.

(2) Buggery

Constantine Atkinson on a day unknown between the 1st day of January, 2006 and the 2nd day of February, 2004 in the parish of Clarendon buggered Sheronie Atkinson.

On the 10th January, 2008, the Appellant entered a plea of "Not Guilty" to both counts. The first and only witness to fact was the Applicant/Appellant's daughter who started giving evidence on 10th January, 2008 and concluded her evidence on the 11th January, 2008. Upon her evidence having started, the Crown made an application to amend the indictment based on what the witness said on 10th January, 2008 on two points and the amendments were granted. In the result a third count was added to the indictment to read "Incest Contrary to Section 2(1) of the

Incest Punishment Act. Particulars being: **Constantine Atkinson** on a day unknown between 1st day of February, 2004 and 1st day of March, 2004 in the parish of Clarendon carnally knew Sheronie Atkinson whom he knew to be his daughter.

Count two was also amended to read on a day unknown between the "1st day of January, 2004 and the 2nd day of February, 2004".

The young lady, aged fifteen at the time of giving evidence was uncorroborated. Her complaint to the Police was made on February 2, 2007. The complainant in evidence stated that it was not only three occasions that her father had unlawful sex with her, there were others and further, she structured occasions of being indecently assaulted before the acts complained of in the three counts started. At the close of the Crown's case the Crown again requested an amendment to Count two of the indictment based on what the witness testified to, in that, the dates were again changed; Count two's particulars read "on a day unknown between the 1st day of September, 2002 and the 31st day of July, 2004 in the parish of Clarendon buggered Sheronie Atkinson."

The amendment was granted. There was no further cross examination of the Crown's witnesses having regard to the alterations. On each occasion that the amendments were made they were made in accordance with the evidence given by the complainant Ms. Sheronie Atkinson and the Appellant was re-pleaded.

That Applicant/Appellant at the start of the Defence's case made an unsworn statement in which he asserted his undying love for his children and that he had never and would never hurt the complainant in the way she said he had.

GROUND 1

The complaint here is that the complainant Sheronie Atkinson in the presence of the jury uttered [page 53 Notes of Evidence] words which suggested that (i) the Appellant had sex with

her on more occasions than stated in the three counts on the indictment and (ii) that she was indecently assaulted prior to the incidents referred to in the indictment [page 4]

It is submitted that the utterances of the complainant before the jury had a wholly prejudicial effect on the Applicant/ Appellant's case. This submission is made not withstanding what the defence was.

It is further submitted that the jury having been exposed to this evidence ought to have been discharged.

Admittedly and unfortunately no request was made by defence counsel to have the jury discharged, but it s submitted that where no application is made on behalf of the defendant the question of the discharge of the jury is one for the discretion of the judge. **(R v Wright 25 C A R 35).**

From all appearances the Court's mind was not directed to the possibility of the exercise of its discretion.

It is submitted that the non-exercise of the Court's discretion is ample reason for the quashing of the conviction which has been rendered unsafe. Failure to exercise a discretion and to take account of a material consideration are grounds for a review.

It is submitted that the Applicant/Appellant was severely prejudiced as there was inadequate treatment or lack of treatment of the two situations. In the first instance where the material concerning indecent assault was led, the Learned Trial Judge merely regurgitated the

evidence [pages 23 – 24 of the summation] without analysis. This should be looked at in light of the evidence given by the complainant where she was invited to testify by Crown Counsel to tell the Court about these matters in a leading way: [pages 4 & 10 of the transcript]

Q Now you can recall he started to touch you on your body, touch you on parts of your body he should not have?

A Yes, ma'am, it start in Grade 6.

Q You mean the same Grade 6 you referred to at Foundation Preparatory?

A Yes, ma'am.

Q Now, you said he touched you on parts of your body he should not have. What parts of the body are you talking about?

A He touched me on my breasts and my vagina.

GROUND 2

Section 6 of the Indictments Act allows for the amendment of an indictment at any stage of the trial provided it does not cause any prejudice to the Defendant.

In the case at Bar the indictment was amended twice during the course of the trial. The first amendment was on January 10, 2008 after the complainant started evidence in chief and count two was amended to reflect a different date band for the offence, and a third count was added to the indictment for Incest. On January 11, 2008 at the close of the Crown's case count two was again amended to change the date band of the offence so as to be in accord with the complainant's evidence.

It is submitted that to allow the two sets of amendments to the indictment in the particular circumstances of this case was prejudicial to the Applicant/Appellant. The circumstances of the

amendments cumulatively resulted in an injustice as follows:

(i) The young lady (complainant) was uncorroborated in respect of every material particular and the constant moving of the goal posts during the trial to coincide

with her evidence could have had the effect of providing her with some credibility in the eyes of the jury in a case which relied wholly on her credibility.

(ii) The addition of a third count during the course of her evidence would also have the effect of tipping the scales in favour of her being a credible witness as validity is given to the evidence she gave as it fell from her lips.

(iii) In adding the third count only as the evidence fell from the lips of the young complainant, it is not unreasonable to infer that neither the Crown nor the defence had this information at the commencement of the trial in any form, that is, in a deposition or statement, and thus the defence would not have had an opportunity to prepare to meet the allegation contained in the count. It is submitted that if the Crown had this information before hand then the reasonable conclusion is that it would have been a part of the original indictment.

(iv) Count three having been added to the indictment from the witness box, it would appear that the Applicant/Appellant as the defendant in the matter would not have had a previous statement with which to confront his accuser in cross examination and thus he would have been somewhat restrained in putting forward his defence

(v) The "date bands" which were reflected in the amendments to count two were very broad and covered several years, that is, "1st September, 2002 to 31st July, 2004" would be equivalent to two years, and 1st January, 2004 to 2nd February, 2007

would be equivalent to three years . This had the effect of forcing/embarrassing the Applicant/Appellant into mounting a very broad defence, that is, "I didn't do

it", in circumstances where if a specific date was put he may have been able to say "I didn't do it because on that specific date I was at ……... , or I was with ……..……". It is our submission that to every time the dates were shifted it robbed the Applicant/Appellant of re-enforcing the position that the complainant lied.

(vi) The final amendment having been done at the close of the Crown's case the witnesses were never recalled for further cross examination, thus the impact of the amendment was never explored.

(vii) Further, it is imperative to note that at the time when two significant amendments were done, the Applicant/Appellant's retained Counsel was not present. Counsel who held was embarrassed by not having either instructions or papers in the matter and could not effectively repel the application for the amendments. This would of course be to the significant disadvantage of the Applicant/Appellant.

GROUND 3

It is well established that Counsel's failure to adduce evidence of good character may cause a conviction to be set aside.

Teeluck v R [2005] UKPC 14

Maye v R [2008] UKPC 35

Arthurton v R [2004] UKPC 25

Langton v The State [1999] UKPC 35

Smith v R [2008] UKPC 34

It is submitted that in the instant case, the Court is not certain that if good character evidence had been adduced and directions given, that this would have nonetheless resulted in the Applicant/Appellant being convicted, and therefore he was prejudiced by the absence of both the good character evidence and directions. The Crown's case was the uncorroborated evidence of a child (where judicial experience would desire corroboration before conviction). There was no medical evidence and no recent complaint. Further, in the case at Bar, the Applicant/Appellant's good character went beyond merely having no previous convictions, and there was no admitted discreditable conduct that could have denied him a good character direction. In the premises the instant cased does not fall to be treated as exceptional to the principles in ***Teeluck*** or in ***Maye***.

In the ***Maye*** case, the Applicant/Appellant was convicted on his third re-trial for murder. The main evidence for the Crown consisted of testimony from two witnesses, a thirteen year old girl and her grandmother. The Board expressed concern at the lack of a good character direction even though the trial judge could not have been faulted for this, as Counsel failed to raise the matter in evidence. That the Appellant was of good character was not in doubt and the Board felt that evidence of the Appellant's good character could and should have been adduced and the direction given accordingly. The Board further concluded that this could have materially advantaged the Appellant in his defence.

It is submitted that in the instant case it cannot be said that the evidence was overwhelming and thus the proviso can be applied. In the case at Bar, no character evidence was led by Counsel, which is unfortunate, as the antecedent report and the social enquiry report alluded to by Counsel in mitigation, both indicated that the Applicant/Appellant was of good

character. The Prosecution's case rested heavily on the credibility of the fifteen year old complainant, and she was not corroborated in any material particular. Had a direction been given as to the propensity and good character by the Learned Trial Judge, it would have enured to the Applicant/Appellant's advantage.

GROUND 4

It is submitted that the Crown's duty to disclose is an instance of the State's Constitutional responsibility to give "adequate time and facilities for the preparation of his defence" (S20 (6) Jamaica Constitution). In this obligation, the Crown is indivisible and it does not matter whether the information that ought to have been disclosed was with the police or the prosecutor.

Sangster & Dixon v R UKPC

R v Winston Solomon WIR

It is submitted further, that the Court need not speculate a to what the medical evidence might have been, but what the Court should consider is whether it can be sure that the Applicant/Appellant received a fair trial in the face of the non-disclosure. Indeed the Applicant/Appellant 's ability to fully argue his appeal is hamstrung by the Crown's continued failure to disclose .

GROUND 5

It is fundamental to due process that where the defendant is represented by Counsel, his Counsel must take full instructions. If these instructions are absent, Counsel cannot truly represent his client. It is submitted that both retained and holding Counsel failed in this regard and conviction ought therefore to be quashed.

Boodrm v State[2001] UKPC 20

Muirhead v R [2008] UKPC 40

GROUND 6

GROUND 7

Sentence manifestly excessive.

On count one - the Learned Trial Judge acted ultra vires in applying a sentence of six years. Under the Incest Punishment Act under Section 2(1) the maximum sentence is five years imprisonment. In the case at Bar the Learned Trial Judge delivered a sentence of six years imprisonment.

As it relates to counts two and three reference is made to the transcript at pages 62 – 64 which demonstrates the judge's thinking. The Learned Trial Judge clearly thought that in terms of chronology the third count followed the first and second count, thus justifying the consecutive

nature of the sentence. However the fact is that both incidents in counts two and three occurred in the same year.

-9-

It would appear that the Applicant/Appellant received an extremely good social enquiry report in which the community, wife, complainant crave leniency on his behalf and he had no previous conviction at age fifty-five years and was/is truly deserving of a suspended sentence.

The Applicant/Appellant was, one could say, ambushed by count 3 on the indictment and it would almost appear that he was specially punished for this late recollection by the complainant and its subsequent addition.

It is submitted that he could be rehabilitated in a much shorter time not necessarily in prison.

WHEREFORE THE APPELLANT HUMBLY PRAYS:-

(1) That this conviction be quashed and sentence set aside.

(2) Such further and or other relief as this Honourable Court may deem fit.

SETTLED BY
CAROLYN C. REID & COMPANY

PER:_____
CAROLYN C. REID-CAMERON
ATTORNEY-AT-LAW FOR THE
ABOVE-NAMED APPELLANT

TO: The Director of Public Prosecutions
Public Buildings West
King Street
Kingston

AND TO: The Registrar
Court of Appeal
Public Buildings West
King Street
Kingston

`

FILED by **CAROLYN C. REID & COMPANY** of 92 Harbour Street, Kingston, Attorneys-at-Law for and on behalf of the Applicant/Appellant herein whose address for service is that of his said Attorneys-at-Law.

APPENDIX 2: INFORMATIONS

1

INFORMATION

Parish of

The Information and Complaint of

of the parish of

made and taken upon oath

before the undersigned this

day of

in the year of Our Lord

Two Thousand and

who saith that on

the

day of

in the year

aforesaid one

of

of the said parish

with force

at

and within the jurisdiction

against the form of the Statute in such case made and provided, and against the Peace of Our Sovereign Lady the Queen Her Crown and Dignity, and thereupon the said Complainant prays that the said

defendant may be summoned to answer unto the said Complaint according to Law.

Taken and sworn to before me at

in the parish of

this

day of

Two Thousand and

.....

Justice of the Peace or Clerk of the Courts
for the Parish of

1A

In the parish of

REGINA
vs
Information of

In the parish of

REGINA
vs
Information of

For
Tried on
before

Guilty

Sentence

*Here fill in place at which Court was held

18

To be Seldelew at the Sho.T Ran on the [illegible] 7.09 at 10Am

In the parish of St Andrew

10451/09

REGINA vs [redacted] Information of Christopher Young Cpl 548-8652

for Assault at common law.

Common Assault

On 1/9/09 BO
Rm Fraser
Atty —
IO Ms Winsome Young
W/N Bo to bring child.
NCD T 27/11/09

19/02/2010
Indict the accused herein before me this day for the offence of Assault OB Harm contrary to Common Law

In the parish of

RM CORPORATE AREA

REGINA vs Information of

Grannie Murph

564-4431
Ms Winsome Young
23/7/2010

On 27/11/09 BO
RM Fraser
Atty —
IO BO
W/N Mother Bo to bring c.
For NCD T 6/01/10
Tried on
before
On 6/1/10 D BO
RM Mrs Williams
Atty
IO BO
Witn BO + mother
Guilty
NCD 19/2/2010
Crt 4

Sentence

25/3/2010
RM Ms E Williams
Atty none
IO abs
W/n CBO 14/[illegible] pres
XKCD PH 1/6/2010

On 29/08/09 BO
RM [illegible]
Atty Unrep.
IO BO - Magnet e/Hon
W/N BO Mother
NCD T 28/08/09
T 1/10/09 BE
CBO, IOBO
Mother will attend.

PH 20/04/2010 BO
Defence application for [illegible] BO

*Here fill in place at which Cout was held

J.P.S. (1992) LTD.

PHT 14/6/2010

Cb 16/6/10 Call by [illegible]
PH
Verdict 26/04/10
PH 1/7/2010 B/E

5A

INFORMATION

Parish of St. Andrew.

The Information and Complaint of Christopher Young Corporal.
of the parish of St. Andrew
made and taken upon oath
before the undersigned this 1 day of July. in the year of Our Lord 2009
Two thousand and 9. who saith that on Friday
the 3rd day of April 2009. in the year
aforesaid one [redacted]
of 5 Murray Drive Kingston 6. of the said parish
with force at
and within the jurisdiction of this Court.

ath
ord
ear
ish
at

Unlawfuly did Assault. [redacted] at Common Law
Contrary to Common Law.

ainst the form of the Statute in such case made and provided, and against the Peace of Our Sovereign Lady the Queen
r Crown and Dignity, and thereupon the said Complainant prays that the said. [redacted]
defendant may be summoned to answer unto the said Complaint according to Law.
ken and sworn to before me at Half Way Tree RM Ct.
he parish of St Andrew this 1st day of July
two thousand and nine

dy the
o Law.
day of

....
Justice of the Peace or Clerk of the Courts for the Parish of

FB

1

INFORMATION

Parish of

The Information and Complaint of

of the parish of made and taken upon oath

before the undersigned this day of in the year of Our Lord

Two Thousand and who saith that on

the day of in the year

aforesaid one of the said parish

of with force at

and within the jurisdiction

against the form of the Statute in such case made and provided, and against the Peace of Our Sovereign Lady the Queen Her Crown and Dignity, and thereupon the said Complainant prays that the said

defendant may be summoned to answer unto the said Complaint according to Law.

Taken and sworn to before me at

in the parish of this day of

Two Thousand and

.....

Justice of the Peace or Clerk of the Courts
for the Parish of

APPENDIX 3: HABEAS CORPUS

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

VIRGIN ISLANDS

CLAIM NO. BVIHCV2006/00

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

DESMOND ALPHONSO

Applicant

AND

COMMISSIONER OF POLICE

Respondent

NOTICE OF APPLICATION

The Applicant, DESMOND ALPHONSO, of Fish Bay, Tortola applies to the court for an order:

1. That he be immediately released from custody at the East End Police Station.
2. Alternatively, that a Writ of Habeas Corpus be issued against the Respondent.

A draft of the order sought is attached.

The grounds of the application are that the Applicant has been unlawfully detained for a period of twenty-four hours without being charged and there is no valid basis for the continued detention of the Applicant.

Dated 6 October 2006

Signed:

Farara Kerins
Solicitors for the Applicant

NOTICE:

This application will be heard by the judge in Chambers on Friday the 6th day of October 2006 at 9:00 am at High Court of Justice.

The court office is at Road Town telephone number **4680039**, Fax **494 6664**
The office is open between 9:00 a.m. and 4:30 p.m. Monday to Friday except public holidays.

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

VIRGIN ISLANDS

CLAIM NO. BVIHCV2006/00

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

DESMOND ALPHONSO

Applicant

AND

COMMISSIONER OF POLICE

Respondent

DRAFT ORDER

BEFORE: **The Honourable Justice [ ] (in Chambers)**
DATED: The of October 2006
ENTERED: The of October 2006

UPON THE APPLICATION for an order under CPR 57 coming on for hearing

AND UPON READING the evidence

IT IS HEREBY ORDERED THAT:

1. The Respondent is to immediately release the Applicant Desmond Alphonso from custody at the East End Police Station, East End, Tortola.
2. [Leave is granted to the Applicant to issue the Writ of Habeas Corpus in the form attached for hearing on]

BY ORDER OF THE COURT

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHCV2006/00

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT
OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

DESMOND ALPHONSO
Applicant

AND

COMMISSIONER OF POLICE
Respondent

Notice of Application

Farara Kerins
Solicitors for the Applicant

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

VIRGIN ISLANDS

CLAIM NO. BVIHCV2006/00

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

DESMOND ALPHONSO

Applicant

AND

COMMISSIONER OF POLICE

Respondent

AFFIDAVIT

I, DESMOND ALPHONSO of Fish Bay, Tortola, British Virgin Islands make oath and state as follows:

1. That I was detained by the police on 5 October 2006 at approximately 2:00pm.
2. I am the owner and operator DA's Trucking Services. I provide a wide range of services including general trucking and delivery, heavy-duty equipment and delivery of water.
3. On 5 October 2006 several policemen came to my premises in Fish Bay from which I operate my business and also reside. They asked for my permission to search the place and asked me about a guy who I have doing labour for

me who I only know as "Ratty". I allowed them to search my business and residence.

4. They then said they wanted to go to the construction site of my house in Kingston. I accompanied them and when we arrived there there were other police already there. They searched the premises, which is an incomplete house that is under construction. I am not sure what they found there; I believe that it was a small bag with clothes that I think belongs to the said guy Ratty.

5. I gave a full statement to the police telling them everything I know about this guy, which is essentially that he came to the construction site looking for work and I put him on to my contractor. My contractor hired him and he has been working on the site since about one to two months. He came to me one day about a week ago and told me that he was having some problems with his sister and she was putting him out of the house that he shared with her. He said that he has some cushions that he used to sleep on at his sister's house and a bag of clothes and asked me if he could leave them at the site. I told him no problem.

6. Around that same time the said guy Ratty brought another guy to me that he said was also looking for work on the site. I put him on to the contractor and I never had any dealing with them. I have never socialized with either of these guys and I don't know anything about them. A copy of the statement that I gave to the police is exhibited marked "DA1". TO the best of my recollections all that is stated in the statement is true and correct.

7. The police then told me that they suspected me of being an accessory to robbery or something like that. I asked them what robbery but they have not explained to me. I do not know anything about any robbery and was never involved in any way in any robbery. I have tried to co-operate with the police as much as I can.

8. After the searches of my business, residence and the site, I was taken to the Road Town Police Station where the police asked me a number of questions,

which I answered, and also which is where I gave the statement. At around 11pm last night I was taken to East End Police Station.

9. The police have had me in custody for around twenty-four (24) hours and have not released me. I have not been charged with any offence.

10. I am a resident of Tortola and have lived here since I was a baby. I am a well-known businessman and have significant ties to the community. Both my parents, and my two brothers and sister all work and live in Tortola and are well known. I am a diabetic and have to take medication daily. I also have a special diet. The night spent in custody at a cell at East End Police Station was very uncomfortable for me and the place is unbearably hot.

11. I am unlawfully and unjustifiably detained.

12. I humbly pray that this Honourable Court grants the order for my immediate release.

13. I make this affidavit freely and truthfully.

Sworn at the East End Police)
Station, East End, Tortola)
this 6th day of October 2006)
Before me:

_____
DESMOND ALPHONSO

_____
A Commissioner to swear Oaths

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHCV2006/00

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT
OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

DESMOND ALPHONSO
Applicant

AND

COMMISSIONER OF POLICE
Respondent

AFFIDAVIT

Farara Kerins
Solicitors for the Applicant

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

VIRGIN ISLANDS

BVIHCV 2006/

IN THE MATTER OF DESMOND ALPHONSO

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

DESMOND ALPHONSO

Applicant

AND

THE COMMISSIONER OF POLICE

Respondent

WRIT OF HABEAS CORPUS AD SUBJICIENDUM

To the Commissioner of Police and Manager of the East End Police Station, East End, Tortola, British Virgin Islands

You are required to produce to the High Court on the day of , 2006 at the body of **Desmond Alphonso**, by whatsoever name he may be called, said to be detained in your custody and be prepared to state the day and cause of that person's being taken and detained so that the court may then and there examine whether such cause is legal.

TAKE NOTICE that if you fail to produce the body of Desmond Alphonso before the Court on the date and time stated above the Court may commit you to prison for your contempt in not obeying the order.

Witness the Honourable Madame Justice , Justice of the Eastern Caribbean Supreme Court the day of 2006.

.....

By Order of Court

This Writ was issued by FARARA KERINS Solicitors for the Applicant