[2024] JMCA Crim 27

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE LAING JA (AG)

SUPREME COURT CRIMINAL APPEAL NO COA2020CR00010

KAYJOHN DALEY v R

Vincent A Wellesley for the applicant

Ms Ashtelle Steele and Ms Alexia McDonald for the Crown

15 April and 21 June 2024

Criminal law — trial — summing-up by judge alone – duty of judge in giving judgment

Evidence — "Jailhouse confession" – possibility of evidence of cellmate being tainted — need for judge to consider factors indicative of improper motive for giving evidence — need for caution in accepting evidence

Evidence- circumstantial evidence- whether special direction is necessary

LAING JA (AG)

[1] On 15 October 2019, Kayjohn Daley ('the applicant') was convicted after a trial by a judge sitting without a jury ('the learned trial judge'), in the Circuit Court for the parish of Saint Catherine, for the offences of murder. He was sentenced, on 7 February 2020, to imprisonment for life with the stipulation that he serve 15 years before becoming eligible for parole.

[2] The applicant filed an application for leave to appeal against his convictions and sentences which was considered by a single judge of this court and was refused. The applicant has renewed his application for leave to appeal his conviction before this court.

[3] Mr Wellesley, on the applicant's behalf, was permitted to abandon the original grounds of appeal and to argue three supplemental grounds. However, on mature consideration, counsel formed the opinion that he could not support the third of those grounds with valid legal submission, and that ground was abandoned. Counsel pursued the following two grounds:

i. Supplemental Ground 1- "The learned trial judge failed to adequately give a warning that the evidence of a cell confession by a witness/prison informer must be treated with caution."

ii. Supplemental Ground 2- "The learned trial judge's directions on circumstantial evidence were inadequate."

The prosecution's case

[4] The evidence on which the prosecution relied was provided primarily by Mr Maxie Branford ('Mr Branford'), who was the father of Pixiann Branford ('the deceased'), and Demoy Pennington.

[5] Mr Branford's evidence was that he lived in Bog Walk, Saint Catherine, with his son, Nicholas, the deceased, and the applicant. He stated that the applicant asked him for permission to stay at his house and he allowed him to do so. The applicant and the deceased were involved in a romantic relationship and shared a room at the house.

[6] On 21 October 2013, Mr Branford left his home leaving Nicholas, the deceased, and the applicant there. He returned home at about 4:00 pm and he saw the accused who asked him what direction he was coming from and if he had seen the deceased anywhere. Mr Branford told him no and that he had left both of them there when he left for work. Mr Branford went inside the house and noticed that the dinner he had prepared earlier was untouched. He asked the applicant what had happened, and the applicant told him that he was supposed to have gone to the doctor to get his medication, but he went to Harkers Hall where he had left his medical card, instead, and the deceased

accompanied him. The applicant told him that "woman tek long fi get ready" and so he asked her to take a taxi to go back and get ready until he arrived. Mr Branford asked the applicant if he had seen the taxi that the deceased took, and the applicant said "no". The applicant said he would go down by the taxi stand and ask if anyone had seen the deceased. He left and when he returned, he said none of the taxi drivers said that they had seen her.

[7] Mr Branford made several telephone calls to his friends and the friends of the deceased without any positive results. He also called her telephone, but the calls went unanswered and to voicemail. Later that night, with the help of friends, Mr Branford walked around searching for the deceased. He left the applicant at the house. The applicant did not join the search party. The search ended at about 1:00 am with no success. On his return home he found the applicant sleeping in the room that the deceased and the applicant occupied.

[8] At approximately 6:25 am the following morning, Mr Branford suggested to the applicant that they go to the Bog Walk Police Station to make a report of a missing person and they did that. Mr Branford went to work and while there he received information by telephone. He went to the Bog Walk Police Station and then took a taxi to Paradise District, which he said is about a mile and a half from Harkers Hall. There he saw a crowd and the police. He also saw the body of the deceased lying motionless and she appeared to be dead. He observed "some mark around her neck". He subsequently attended the post-mortem examination conducted on her body as well as her funeral and her interment.

[9] Mr Pennington gave evidence that in May 2012, he was arrested and charged and taken to the Linstead lock up where he was kept in a cell with between 13 and 15 other persons. On 22 October 2013, he was in his cell when the applicant, whom he had seen previously, was taken there. He shared that cell with the applicant for about four days. He said the first night when the applicant arrived, he asked him what he was taken there

for, and he said he was taken there on suspicion of having killed his girlfriend. Mr Pennington asked him if he did it and he said no.

[10] The following day after speaking to another inmate Mr Pennington asked the applicant if he did what he was taken there for. The applicant said there were a lot of rumours going around that his girlfriend was not being faithful to him and that made him "feel a way in himself". He said that they were supposed to go to a clinic appointment, so she stopped by his house to prepare to go there. He approached her from behind and held her around her neck. He did not let go until she stopped breathing. He then took her to his vehicle in a sheet that he wrapped her in, placed her in the trunk and then threw that sheet behind the house. He then left and went to his girlfriend's relative and asked if they had seen her. He said from there he went to the police station to make a report because he knew they would not suspect him, which I understand him to mean that he made the report with the expectation that by doing so he would not be considered to be a suspect.

[11] Mr Pennington said when he was taken to the Linstead lockup, he spoke to Det Sgt Radcliffe and told him what the applicant had told him. He said he did not receive any favours from any police officers or anyone concerning giving information in this case, nor did he receive any threats or pressure in any way to give any statement in this case. He also did not place any pressure on the applicant when the applicant was having this conversation with him while they were both seated on Mr Pennington's bunk bed in the cell.

[12] Mr Pennington explained that in May 2012 he was charged with the offences of robbery with aggravation, rape, abduction, grievous sexual assault, and indecent assault. He went on trial and was found guilty on two counts, robbery with aggravation and indecent assault. He was sentenced to two five-year sentences, to run concurrently. He served three years and four months in prison during which he taught classes and worked in the overseer's office as an orderly. He was released on 14 September 2018, and in August 2019 he was arrested and charged with the offence or simple larceny.

Supplemental ground 1-The learned trial judge failed to adequately give a warning that the evidence of a cell confession by a witness/prison informer must be treated with caution

The submissions

[13] Mr Wellesley, submitted that the learned trial judge, having accepted the evidence of Mr Pennington, failed to adequately warn herself of the special need for caution in treating with the evidence of a cell mate against another cell mate, which may be tainted by an improper motive. He relied on the cases of **Michael Pringle v The Queen** [2003] UKPC 9 ('**Pringle**') and **Benedetto v R; William Labrador v R** (2003) 62 WIR 63 ('**Benedetto**'). Counsel advanced that this was especially important because Mr Pennington gave three different versions of the account which he said was given to him by the applicant of the circumstances in which he killed the deceased.

[14] Counsel argued that the learned trial judge erred in relation to her treatment of the cell confession in three material respects. He stated that firstly, in the learned trial judge's summation, she did not show that she clearly dealt with the issue of whether Mr Pennington had an ulterior motive or expected some perceived benefit in giving evidence for the Crown. Secondly, the learned trial judge did not speak to the fact that Mr Pennington, at the time he gave his evidence, was awaiting trial for the offence of simple larceny, having previously been sentenced to a period of imprisonment of five years. Thirdly, the learned trial judge erred in treating the provision to Mr Pennington of the Star newspaper and a pencil to do crossword puzzles as a courtesy and not as a favour, which, he submitted, it was. He submitted that she should have expressly warned herself that the provision of these items could be interpreted as a benefit, but she did not do so. However, he argued that in any event, there was no evidence to show that providing these items to Mr Pennington was a mere courtesy to him.

[15] The Crown, on the other hand, submitted that the learned trial judge had adequately warned herself about the dangers of cell confessions. Ms Steele argued that there were no fixed rules for the wording of the caution that the learned trial judge should give to herself, but that what was required was only the observance of two steps. Firstly,

the learned trial judge must draw the jury's attention to the indications that may justify the inference that the prisoner's evidence is tainted. Secondly, the learned trial judge must advise the jury to be cautious before accepting his evidence. Crown Counsel relied on the cases of **R v Rushon Hamilton** [2023] JMCA Crim 40, **Pringle** and **Benedetto** in support of this.

[16] Ms Steele submitted that the learned trial judge followed the two-step process as suggested by the authorities. The learned trial judge summarized and assessed the evidence of Mr Pennington. She highlighted the possible indicators of a possible motive at pages 445-447 of the transcript and gave herself a special warning in respect of this.

[17] Crown Counsel also submitted that the applicant had misconstrued the learned trial judge's assessment of the evidence and findings as judge of fact, in that he viewed it as a misinterpretation of the law in this area. She argued that the learned trial judge demonstrated in her summation, the facts which she accepted, those she did not, and her reasoning, as was the recommendation of this court and the Privy Council. The learned trial judge found that Mr Pennington had no improper motive that tainted his evidence and that there was no plea agreement in respect of the offences for which he was charged at the time when he gave the report about the confession. She also found that the provision of the Star newspaper and pencil were courtesies extended to Mr Pennington and not a benefit or favour to facilitate his cooperation with the police.

[18] Ms Steele contended that these conclusions on the facts are to be determined by the learned trial judge as a judge of fact and the appellate court ought not lightly to interfere with such findings. She requested that the court be guided by the case of **R v Crawford** [2015] UKPC 44. Counsel submitted that this ground is without merit.

Discussion and analysis

[19] In **Benedetto**, the appellants were tried along with two others for the murder of a woman in the British Virgin Islands. The case against them rested heavily on the evidence of a witness who had numerous convictions for offences of dishonesty and who

alleged that the appellant, Labrador, had made confessions to him while they were together in the same cell. The witness also claimed that he had heard an argument between Labrador and Benedetto about their respective responsibility for the crime that had been charged with.

[20] The Board conducted a review of the law relating to cell confessions and referred to the Board's examination of the issue in the earlier case of **Pringle**. At paras. 34 and 35 Lord Hope of Craighead, delivering the advice of the Board, made the following observation:

> "**34.** In *Pringle v R* (2003) p 287 at 300, post, para [30], the Board recognised that it was not possible to lay down any fixed rules about the directions which the judge should give to a jury about the evidence which one prisoner gives against another prisoner about things done or said while they are both together in custody. But, as the Board said (at p 300, *post*, para [31]) a judge must always be alert to the possibility that the evidence by one prisoner against another is tainted by an improper motive, and the possibility that this may be so has to be regarded with particular care where a prisoner who has yet to face trial gives evidence that the other prisoner has confessed to the very crime for which he is being held in custody. The following guidance was then given:
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> > 'The indications that the evidence may be tainted by an improper motive must be found in the evidence. But this is not an exacting test, and the surrounding circumstances may provide all that is needed to justify the inference that he may have been serving his own interest in giving that evidence. Where such indications are present, the judge should draw the jury's attention to these indications and their possible significance. He should then advise them to be cautious before accepting the prisoner's evidence.'
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> **35.** It should be noted that there are two steps which the judge must follow when undertaking this exercise, and that they are both equally important. The first is to draw the jury's attention to the indications that may justify the inference that

> the prisoner's evidence is tainted. The second is to advise the jury to be cautious before accepting his evidence. Some of the indications that the evidence may be tainted may have been referred to by counsel, but it is the responsibility of the judge to examine the evidence for himself so that he can instruct the jury fully as to where these indications are to be found and as to their significance. Counsel may well have suggested to the jury that the evidence is unreliable, but it is the responsibility of the judge to add his own authority to these submissions by explaining to the jury that they must be cautious before accepting and acting upon that evidence."

[21] Although this guidance is targeted at a judge sitting with a jury, the principles are equally applicable, with appropriate modification, to a judge sitting alone. It should be appreciated that when a judge is sitting alone as the arbiter of the law and fact, protection of the accused person's rights is maintained by the ability of the appellate court to interrogate the reasoning of the judge as evidenced in his judgment. Consequently, there are reasonable limits placed on the need for him to give a warning or direction about every point of law or evidence in those circumstances where his treatment of the issues will sufficiently demonstrate that the relevant considerations were taken into account. This point was clearly made in the Caribbean Court of Justice case of **Dioncicio Salazar v The Queen** [2019] CCJ 15 (AJ) at paras. 28 and 29 as follows:

> "28. The Court of Appeal in Northern Ireland stated in *R v Thompson* [[1977] NI 74] with respect to the duty of the judge giving judgment in a bench trial:
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> > 'He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an

> appeal it can be seen how his view of the law informs his approach to the law.'
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> 29. Equally, a judge sitting alone and without a jury is under no duty to 'instruct', "direct" or "remind" him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial). As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand."

[22] In the instant case, the learned trial judge considered whether there were any indications that may justify the inference that Mr Pennington's evidence is tainted. She acknowledged that Mr Pennington admitted that he had had been arrested and charged in May 2012 with the offences of robbery with aggravation, rape, abduction, grievous sexual assault and indecent assault. He also admitted that he was convicted for robbery with aggravation and indecent assault, for which he received two concurrent five-year sentences, of which he served three years and five months. Additionally, in August 2019 he was arrested and charged with simple larceny.

[23] It is evident that the learned trial judge appreciated that the indications that the evidence may be tainted by an improper motive must be found in the evidence itself and she found that there was no indication of improper motive that would have tainted the evidence of Mr Pennington. She stated that she viewed the Star newspaper and the pencil that were provided to Mr Pennington as a courtesy extended to him which she "would not describe to be a benefit for a favour of the nature that would facilitate him giving evidence to ingratiate himself to the police" (page 446 lines 15-20 of the transcript). It was her duty to decide whether the evidence was credible or reliable and in applying her jury-mind to these facts, we find that her conclusion was manifestly sensible. The fact that a courtesy was extended does not *ipso facto* elevate it to the status of a favour which must necessarily lead to the conclusion that Mr Pennigton's evidence was tainted.

[24] The nature and substance of the accommodation found to be extended to Mr Pennington cannot be viewed in a vacuum but must be examined through the prism of reasonable life experience. The learned trial judge was entitled to conclude that the provision of a Star newspaper and a pencil to do the crossword puzzle was not a sufficient inducement to cause Mr Pennington to fabricate the evidence implicating the applicant and, furthermore, that she did not find any evidence of an improper motive on the part of Mr Pennington.

[25] The learned trial judge also gave herself what she termed a "special warning" and advised herself of the need to be cautious before accepting Mr Pennington's evidence. She stated that in treating with evidence such as that of a fellow prisoner she appreciated that there was a risk that the testimony might be given in order to secure a benefit or favour and such favour is often related to the proceedings which are to come. The learned judge having performed a detailed analysis in accordance with the applicable authorities, we are the view that there is no merit in this ground of appeal.

Supplemental ground 2- The learned trial judge's directions on circumstantial evidence were inadequate.

The submissions

[26] Mr Wellesley submitted that the learned trial judge's direction on circumstantial evidence was inadequate because it followed the guidelines set out by Carey JA in **R v Everton Morrison** (unreported) Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 92/1991, judgment delivered 22 February 1993, which accepted that the rule in **R v Hodge** (1838) 2 Lew CC 227 ('**Hodge's case**'), that a special direction is required as to the treatment of circumstantial evidence, was still applicable. He submitted that the learned trial judge erred in applying this principle since the requirement for a special direction is no longer necessary. Counsel asserted that the applicable rule in respect of the proper direction to the jury on the issue of circumstantial evidence was that elucidated in **Melody Baugh-Pellinen v R** [2011] JMCA Crim 26 ('**Melody Baugh-Pellinen**') and as a consequence, **Hodge's case** is inapplicable to Jamaica.

[27] It was also his submission that the learned trial judge did not direct her jury mind as to how the inferences are to be treated. The court was referred to the case of **Kevin Peterkin v R** [2022] JMCA Crim 5 ('**Kevin Peterkin**'), wherein Edwards JA, in discussing how circumstantial evidence and inferences from that evidence should be dealt with, opined that such inferences must be reasonable and inescapable and where several inferences may be drawn from a piece of evidence, this should be pointed out to the jury.

[28] The learned trial judge, it was submitted, did not identify, and outline, the possible inferences that could be drawn from the circumstantial evidence, which counsel contended were several. Counsel also argued that the inferences that the learned trial judge drew from the evidence were not inescapable and were neither consistent with guilt nor inconsistent with innocence. He posited that, for example, there was evidence that the applicant was a diabetic and this could have explained him going to sleep the night that the search was being conducted for the deceased. Furthermore, counsel highlighted the applicant's assertion that he was expressly told not to join the search. Counsel submitted that in such circumstances the inferences that were found by the learned trial judge to be consistent with the guilt of the applicant were not inescapable, and the circumstantial evidence was insufficient, on its own, to implicate the applicant.

[29] In response, Ms Steele submitted that the applicant's appeal would not turn on whether **Hodge's case** was still applicable in Jamaica. She argued that the importance of **Hodge's case** was its directive that a special direction needed to be given. Counsel argued that in cases involving circumstantial evidence, the special direction using the form of words suggested in **Hodge's case** is not now considered to be wrong when used, but the law as it currently stands is that a special direction using that previously utilised language is no longer compulsory. She argued that since no special form of words must be used where circumstantial evidence is being considered, what constitutes an appropriate direction will be case specific. She highlighted the difference in the requirements for warnings in a trial by judge alone versus those applicable for a jury trial, and in this regard, relied on the case of **Kevin Peterkin**.

[30] Ms Steele shared the opinion of Mr Wellesley that the approach to circumstantial evidence that emanated from **Melody Baugh-Pellinen** is applicable, however, she expressed the view that the learned trial judge's direction was consistent with this approach. She submitted that the learned trial judge highlighted the applicable law in relation to circumstantial evidence and the process of arriving at reasonable inferences. Counsel argued that the learned trial judge also summarized and assessed the circumstantial evidence and reasonable inferences that could be drawn therefrom.

[31] It was also emphasized by counsel that the Crown relied not only on the circumstantial evidence but also on the cell confession given by the applicant and the post-mortem report. She submitted, that as a consequence, the learned trial judge had at her disposal the totality of this evidence to assist her in coming to her decision and accordingly, there was no merit in this ground.

Discussion and analysis

[32] It is common ground between counsel that the case of **Melody Baugh Pellinen** provides helpful guidance on the directions to be given in a case involving circumstantial evidence. In that case, this court confirmed that there is no rule requiring a special direction in cases in which the prosecution relies either wholly or in part on circumstantial evidence. Morrison P at para. [39] opined that this had been resolved in the House of Lords case of **McGreevy v Director of Public Prosecution** [1973] 1 All ER 503 ('**McGreevy**') and he quoted from the leading judgment of Lord Morris of Borth-y-Gest who said, in part, at page 510 as follows:

> "In my view, the basic necessity before guilt of a criminal charge can be pronounced is that the jury are satisfied of guilt beyond all reasonable doubt. This is a conception that a jury can readily understand and by clear exposition can readily be made to understand. So also can a jury readily understand that from one piece of evidence which they accept various inferences might be drawn. It requires no more than ordinary common sense for a jury to understand that if one suggested inference from an accepted piece of evidence leads to a conclusion of guilt and another suggested inference to a

> conclusion of innocence a jury could not on that piece of evidence alone be satisfied of guilt beyond all reasonable doubt unless they wholly rejected and excluded the latter suggestion. Furthermore a jury can fully understand that if the facts which they accept are consistent with guilt but also consistent with innocence they could not say that they were satisfied of guilt beyond all reasonable doubt. Equally a jury can fully understand that if a fact which they accept is inconsistent with guilt or may be so they could not say that they were satisfied of guilt beyond all reasonable doubt."

[33] To the extent that Mr Wellesley's complaint relates to the inapplicability of **Hodge's case**, it is helpful to appreciate that the direction that emerged from that case has been utilised in many cases involving circumstantial evidence. In **Hodge's case**, the evidence against the prisoner was purely circumstantial and rested on his presence near a woman who was robbed of a sum of money and murdered. He was seen burying something that was dug up the following day and found to be money which roughly corresponded to the amount the woman who was murdered was supposed to have had, although the precise amount she had was unknown. Alderson B directed the jury that the case as was made up entirely of circumstances and before they could find the prisoner guilty, they had to be satisfied "not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person".

[34] In **McGreevy**, Lord Morris of Borth-y-Gest referred to **Hodge's case** and at page 508 admitted that the directions were "helpful and admirable". However, he noted that although in some Commonwealth countries there were references to the "rule" in Hodge's case, there was no support for the view that "it enshrines guidance of such compulsive power as to amount to a rule of law which if not faithfully followed will stamp a summing up as defective". In **Kevin Peterkin** Edwards JA analysed **McGreevy** in detail and confirmed that "it authoritatively states that no specific or formulaic words are required in directing a jury on how to deal with circumstantial evidence". The learned judge of

appeal concluded that the jury should be assisted using a "suitable form of words" to appreciate what they are permitted to consider and the approach they are to take.

[35] We accept as sound the submissions of the Crown that, for purposes of this application, the key takeaway from **McGreevy** is that it is not necessary to reproduce the precise formulation of the directions utilised in **Hodge's case**. It is not authority that that formulation is wrong. Accordingly, we are of the view that there is no support for the submissions of Mr Wellesley that the directions of the learned trial judge were wrong by virtue only of the fact that they conformed to the directions given in **Hodge's case.**

[36] The relevant portion of the learned trial judge's summation (page 423, lines 10-25 and page 424, lines 1-15) dealing with this issue is as follows:

> "Circumstantial evidence can be powerful evidence and it is important that the Court examines it with care and consider whether the evidence upon which the Prosecution relies in proving it's [sic] case is reliable and whether it does, in fact, prove the case.
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> For circumstantial evidence to prove guilt is being-- is where one witness must prove one thing, another witness another thing, both things taken together to prove the charge. None of them separately can prove the guilt of the accused, but if when taken together they lead to one inevitable conclusion of guilt, then that would be the verdict of the Court. So the Court has to look at all the surrounding circumstances presented, and if the Court sees-- and if the Court sees from them the sense of undesigned, unexplained, coincidentally [sic] that can lead the Court to one conclusion, that the circumstances point in one direction and one direction only, and that direction must be the guilt of the accused.
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> If the circumstantial evidence falls short of that standard, if it does not satisfy that test, if it leaves [a] gap, then it is of no use at all. You may have the circumstances consistent with guilt, but equally consistent with something else, that would not be enough. What the Court needs is an array of circumstances, a set of circumstances which point only to one conclusion, namely, the guilt of the accused."

[37] The learned trial judge demonstrated that she appreciated the correct approach to considering circumstantial evidence by directing herself in accordance with the guidance offered in cases such as **McGreevy** and **Kevin Peterkin**, using appropriate modifications suitable for a judge sitting without a jury. She concluded that the compelling inference from the location at which the deceased's body was found in Paradise District, which is near Harkers Hall where applicant's family home was located, was that this was the last house at which the applicant and the deceased were together after the deceased's father saw them at this home. She considered the submission of the Crown that it was "highly unusual" that the applicant went to bed when the deceased had been missing for a protracted period.

[38] We considered Mr Wellesley's submission that this might have been explained by the fact that the applicant was diabetic, and, to that extent, this evidence did not point only to the applicant's guilt. However, there was no evidence to support the position that diabetes might have caused the applicant to require sleep at that time. In any event, that was not the only piece of circumstantial evidence which pointed to the guilt of the applicant. It is important to note that the learned trial judge expressly stated that she did not rely entirely on circumstantial evidence but also took in to account the evidence of Mr Pennington of what he was told by the applicant.

[39] The reasoning of the learned trial judge is adequately demonstrated in her judgment. She considered the evidence in its entirety and determined that she was satisfied beyond a reasonable doubt that it was the applicant who murdered the deceased. It is implicit in this finding that she concluded that the evidence did not point to the conclusion that the deceased was killed by someone other than the applicant and that the applicant was innocent. This conclusion was clearly one that was open to the learned trial judge as a judge of the facts in the case, and we find that her interrogation of the evidence and her analysis were impeccable. In the circumstances, we do not find any merit in this proposed ground of appeal.

Disposition

[40] Having found that there is no merit in ether ground of appeal, the orders of the court are as follows:

1. The application for leave to appeal conviction and sentence is refused.

2. The sentence is to be reckoned as having commenced on 7 February 2020, the date it was imposed.