[2024] JMCA Crim 40

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MISS JUSTICE SIMMONS JA

SUPREME COURT CRIMINAL APPEAL NOS 8, 9, 10 & 11/2017

ALEX HEMMINGS v R
TRAVIS FINDLATER
HOCKEAL SCOTT
DEMOY WILLIAMS

Lord Anthony Gifford KC and Hugh Thompson instructed by Gifford, Thompson & Shields for the appellants

Ms Paula-Sue Ferguson and Ms Carolyn Wright for the Crown

6 June 2022 and 15 November 2024

Criminal Law – Murder - Whether sufficient evidence of participation or encouragement with intent to kill or do grievous bodily harm - Whether directions ought to have been given on manslaughter - Whether to impose sentences of life imprisonment or fixed terms - Whether the sentences imposed were manifestly excessive

P WILLIAMS JA

[1] This appeal is related to what can be described as a heinous and gruesome murder. Mr Jovane Jones otherwise called 'Tyson' or 'Heartless' ('the deceased'), who was 18 years old, was essentially butchered. He was stabbed 42 times with a knife: 35 of those stab wounds were to the front of his neck injuring his windpipe and other major blood vessels; there were other stab wounds to his chest, one of which punctured his left lung; and stab wounds were seen to the left side of his back. Hockeal Scott ('Mr Scott'), Travis Findlater ('Mr Findlater'), Alex Hemmings ('Mr Hemmings'), and Demoy Williams ('Mr Williams'), referred to collectively as 'the appellants', were arrested and charged with

his murder. They were tried in the Hanover Circuit Court before G Fraser J ('the learned judge') on divers days between 9 November 2016 and 7 December 2016. The only evidence of their involvement in the events culminating in the death of the deceased came from written caution statements they made to the police, in the presence of attorneys-at-law and a Justice of the Peace. They were convicted for the offence of murder and, on 9 January 2017, sentenced to life imprisonment with Mr Scott being eligible for parole after serving 30 years and Mr Findlater, Mr Hemmings, and Mr Williams being so eligible after serving 25 years.

[2] The appellants appealed against their convictions and sentences. This was considered by a single judge of appeal who refused leave to appeal against their convictions but granted leave to appeal against their sentences on the basis that the learned trial judge erred in principle in conducting the sentencing exercise. As is their right, Mr Hemmings, Mr Findlater, and Mr Williams renewed their application for leave to appeal their convictions. In the renewed application for leave to appeal, supplementary grounds of appeal were filed challenging those convictions and challenging the sentences imposed on all four appellants. When the hearing of the application was completed on 6 June 2022 and we reserved the decision, we did not envision that so much time would have elapsed before its delivery. We apologise for the delay.

The prosecution's case

[3] At about 9:30 pm on 9 October 2009, Mr Donovan Jones ('Mr Jones'), the deceased's uncle, was at a shop in Claremont, in the parish of Hanover. He testified that at that time, he saw several other persons in the vicinity of the same shop. Initially, Mr Jones gave the names of three of the persons he saw. Subsequently, permission was granted for him to refresh his memory from the statement he had given to the police on 10 October 2009. Mr Jones then testified that the appellants were among the persons present in the vicinity of the shop, sitting outside on a bench or wall. Mr Jones said he saw the deceased walking past the shop and he called to him. The two men spoke briefly and the deceased continued walking on the road to "Mawga Bay". Mr Jones testified that

he waited at the shop for the deceased to return until about 10:30 pm. When the deceased did not return, Mr Jones left the shop and made enquiries from persons he saw whether they had seen the deceased but no one could assist him. Mr Jones said when he left the shop, the appellants were not seen in the shop's vicinity and he could not say when they left the location. He went along the same road the deceased had taken leading to Mawga Bay where he met the deceased's younger brother who showed him the deceased's shoes. Mr Jones eventually went home.

[4] The following morning, at about 7:00 am, Mr Jones went in search of his nephew. He went to the area where the deceased's shoes were found. He noticed an area "like some bush break down… like somebody haul something there" and followed the track. He saw a brown shirt and blue jeans pants which he recognised as the clothes the deceased was wearing the night before. There were what appeared to be bloodstains all over them. Mr Jones said he continued his search and eventually saw the deceased's naked body lying "across the river… into a bush". The police were summoned.

[5] The investigating officer in this matter, Detective Inspector Cordia Ashley ('Det Cpl Ashley'), was a Detective Corporal at the time. She testified that on 10 October 2009, sometime after 8:00 am, after receiving a report, she was taken to an area in Claremont that was about a 45-minute walk from the road, only accessible by foot. This was a bushy area at the bottom of a ravine. She saw the deceased's nude body by the river lying face down. She saw what appeared to be stab wounds to the neck, left side, and back. Later that morning, Detective Corporal Fenton Radcliffe ('Det Cpl Radcliffe'), a scene of crime expert, also visited the location where the deceased's body was found. Det Cpl Ashley was present as he processed the body and the scene. On his approach to the area where Det Cpl Ashley was, Det Cpl Radcliffe testified that he saw in the bushes a brown t-shirt that was close to a cut-off jeans pants and a black belt buckle marked "USA". The clothes had what appeared to be blood stains on them. He tagged and took photographs of them before placing them in bags that were marked. Further away, he saw the nude body of the deceased with stab wounds to the left side of his back and multiple stab wounds to the neck in the region of the collar bone and the chin. He took photographs of the body

and of the general area where the body was found. A CD with the photographs was admitted into evidence.

[6] On 18 October 2009, Det Cpl Ashley got some information, and she visited the Hanover Police lock-ups where she saw the appellants. She told them she was investigating the murder of the deceased, and the appellants expressed a willingness to tell her what had occurred. The appellants were cautioned separately. They still maintained the desire to speak and so arrangements were made to facilitate an interview with each appellant in the presence of an attorney-at-law and Pastor George Bates ('Pastor Bates'). Det Cpl Ashley testified that the interviews were conducted on 19 and 20 October 2009, and outlined the circumstances in which they were taken to establish that they were taken in accordance with the requisite procedures. Caution statements were collected separately from each appellant. The caution statements made by Mr Scott and Mr Findlater were recorded by Detective Inspector Wayne Jacobs ('Det Insp Jacobs') as the scribe, in the presence of Miss Tamika Davis, attorney-at-law, Pastor Bates, and Det Cpl Ashley. Mr Williams and Mr Hemmings gave their statements on 20 October 2009, which were recorded by Det Cpl Ashley in the presence of the same pastor, Detective Inspector Julia Jacobs-Holgate, and the attorney-at-law present was Miss Deloris Thompson. The appellants signed their respective caution statements. On 20 October 2009, Det Cpl Ashley visited the Hanover Police lock-ups and gave each appellant copies of the statements the others had given.

[7] On 22 October 2009, question and answer ('Q&A') sessions were conducted with each appellant separately, and the questions asked and the answers given recorded in different documents. Mr Williams and Mr Hemmings were questioned by Det Insp Jacobs in the presence of attorney-at-law, Miss Deloris Thompson, and Det Cpl Ashley was the scribe. Mr Scott and Mr Findlater were also questioned by Det Insp Jacobs and the questionings were done in the presence of attorney-at-law, Miss Tamika Davis with Detective Corporal Charmaine Hibbert ('Det Cpl Hibbert') as the scribe. The appellants all signed their Q&A documents.

[8] A *voir dire* was held to determine whether the statements were voluntarily given and ought to be admitted into evidence. Counsel for the appellants indicated that the appellants were contending that they gave the statements under duress. There were largely similar assertions made by the appellants regarding the circumstances which led to their signing the statements and the Q&A documents. Counsel suggested to Det Cpl Ashley and Det Insp Jacobs that physical violence and threats were meted out to the appellants causing them to give the statements out of fear and duress.

[9] It was suggested to the officers that one threat made to Mr Scott was that his mother, Miss Lamara Clarke ('Miss Clarke'), would be arrested if he did not cooperate since she had washed his bloody clothes. It was further suggested that a similar threat was made to Mr Harris that his mother, Miss Barbara Spence, who was at the time at the same police station in another room, would not be going home if he did not cooperate. Another threat made to the appellants was that they would be taken to the Freeport lockup so that other prisoners and members of the "Stone Crusher Gang" could beat them. Counsel also suggested to the witnesses that the appellants were given pre-prepared statements that they were forced and threatened to memorize and "re-hearse" before the attorneys-at-law and Pastor Bates arrived. These suggestions were vehemently denied by Det Insp Jacobs and Det Cpl Ashley.

[10] Mr Scott gave sworn evidence on the *voir dire.* He testified that Det Cpl Ashley poked him "hard" in his stomach with a baton and hit him on his shoulder and rib cage. He said he was given a confession by Det Cpl Ashley to memorise so his mother, Miss Clarke, could be released. He did not tell either the attorney-at-law or Pastor Bates what had been done to him because he feared what they would have done to him and that they would lock up his mother. In response to questions asked during cross-examination, Mr Scott admitted signing the caution statement five times. He denied that the caution statement was recorded on the 19 October insisting it was done on the 18 October. Miss Clarke testified that after she had visited the police station on 18 October 2009, Det Cpl Ashley came to her home and said she would be locked up because she "wash up the

blood up clothes them". She was taken to the police station where she was permitted to speak to her son and then told she could return home.

[11] Mr Findlater, Mr Hemmings, and Mr Williams gave unsworn statements on the *voir dire*. Mr Findlater said that sometime after he was taken to the station with the other men, he was questioned by Det Cpl Ashley and Det Insp Jacobs. Later, Det Insp Jacobs "was writing the statement that [he] was giving and Ashley was standing very close to [him] with a baton". He said Det Cpl Ashley would hit him with the baton and say that he was lying. He maintained that the police officers changed the statement "and put in stuff in it that Hockeal did the stabbing" and used the statement "to build the one that [they] did the crime". He went on to say that the statement that the police officers "build" was later given to him and to Mr Scott. Det Cpl Ashley instructed them to read the statement and "to convince the other men". Mr Hemmings said after spending a night in custody, the following morning he was taken to a room where he saw Mr Scott and Mr Findlater who gave him a paper and told him that "these were the words [they] should say when [they] go inside cause … they were beaten and they were afraid". Mr Williams said after he was taken to the station he did not see the other appellants for a day or so. He said Det Cpl Ashley and Det Insp Jacobs took a statement from him. The following day, they asked him some questions and when he answered, Det Cpl Ashley poked him on his shoulder with a baton and told him he was lying. He was taken to another room where he saw the other three appellants. He was told to say what was on the paper Mr Scott gave him. Initially, he refused, but later, he was returned to his cell with some papers that he was told to rehearse, and after speaking again to the other appellants, he "finally decide to go along with it".

[12] The learned judge considered submissions made by counsel for the prosecution and that of the defence on the *voir dire*. She rejected the unsworn statement of Mr Findlater, Mr Hemmings and, Mr Williams and rejected the evidence of Mr Scott and his mother, Miss Clarke. She accepted the prosecution's version as being truthful and found that the caution statements and Q&A documents were voluntarily given.

[13] The caution statement made by Mr Scott was tendered and admitted into evidence as exhibit 1. It was as follows:

> "Friday in October the 9th, 2009, Tyson [the deceased] … called in Bigfoot bout one missing gun. Him a accuse him say a we thief it. Him a accuse we say a we thief it. Tyson [the deceased] tell we say him even go thief the gun. The gun weh him a talk 'bout me never see it yet. Me deh a one shop the night and Big Foot confront we and say him no 'fraid fi put him gun in a we mouth an' bus' shot because a dat him do fi a living. Him go in a the shop and buy a flask a rum and cigarette. Him come out back same place out weh me did deh and say, him no 'fraid fi kill we. So we get up and walk off. Him call Tyson [the deceased] one side. We walk off and go out a one bench. Tyson [the deceased] and another youth walk pass. The other youth walk come back out couple minutes after. After that Tyson [the deceased] come back and stop weh we did deh a the bench and say whole heap a people a go dead. Him say him call two car load a man fi come. Him still a threaten all four a we 'bout the two car load a man. So we hold him same time and a ask him weh di gun deh. Him naw talk. Him just a fight back. Him did have a knife. We a ask him fi the gun and him just a tell we say Big Foot know 'bout it. Him pull the kinfe and we wrestle it from him. After we get the kinfe we still a ask him fi the gun. Him no mek we know weh di gun deh. But him mek we know say we can't let him go. Him start mek noise. We try to cover him mouth but him still a wrestle we that's when me stab him. Me did a ask fi di gun because mi know if him give me back we could a return it to the owner and everything would a return to normal. A wen we no get the gun me stab him. We pull him go down a river, a deh we leave him. The knife loss [sic] from me the same night because a whole heap bush we a go through. Him did just a keep on a tell me say we a go dead so that's why we do it, fi the gun weh me never see yet. Before the shop incident him tell Big Foot say a Demoy got the gun and we know say a him got the gun."

[14] Mr Scott's Q&A document was tendered and admitted into evidence as exhibit 7. The following was stated therein:

> "Question 1: Is your name Hockeal Scott?
>
> Answer: Yes, sir.
>
> Question 2: Are you called any other names?

Answer: Tavoy.

Question 3: Where are you living?

Answer: Claremont District, Hanover.

Question 4: Do you know Demoy?

Answer: Yes.

Question 5: What is Demoy's correct name?

Answer: Demoy Williams.

Question 6: Is he called any other name?

Answer: Squeezer.

Question 7: How long have you known Squeezer?

Answer: In all me life, nineteen years.

Question 8: Do you know Alex?

Answer: Yes, sir.

Question 9: What is Alex's correct name?

Answer: Alex Hemmings.

Question 10: Is he called any other name?

Answer: Yush.

Question 11: How long have you known Alex?

Answer: All my life, nineteen years.

Question 12: Do you know Travis?

Answer: Yes, sir.

Question 13: What is Travis's correct name?

Answer: Travis Findlater.

Question 14: Is he called any other name?

Answer:	Just Travis.
Question 15:	How long have you known Travis?
Answer:	All me life, nineteen years.
Question 16:	On Monday the 19th of October, 2009, you [gave] a statement to the police at the Lucea Police Post?
Answer:	Yes, sir.
Question 17:	In the statement you gave to the police you said, 'me stab him. Me pull him go dung a river and me pull him go dung a river and a deh we leave him.'
Answer:	I don't wish to answer that.
Question 18:	Who were you referring to?
Answer:	Jovane.
Question 19:	What is Jovane's correct name?
Answer:	Jovane Jones.
Question 20:	Is Jovane called any other name?
Answer:	Tyson or Heartless.
Question 21:	In the statement you said, 'We pulled him go dung a river and a deh we lef' him.' Who were you referring to as 'we'?
Answer:	Me, Alex, Demoy, and Travis."

[15] The caution statement recorded from Mr Findlater was admitted into evidence as exhibit 2. It said:

> "The night four a we, when sidung under the guinep tree and say we go tek a walk go in a the street. A when the 9th a October, 2009, when we reach out a the shop we see Big Foot and same time Big Foot say to Squeezer, wha' him a screw up him face fa before him walk go in a the shop. Him say him no 'fraid fi put him gun in a some batty boy mouth and bus' it. Him walk go in a the shop and buy rum

and cigarette and same time four a we walk go out a the bamboo bench out a Mawga Bay. Me, Demoy Williams, Hockeal Scott and Alex Hemmings. We sidung out deh fi a while until we see Craig and Tyson [the deceased] pass. Couple minutes after, me see Craig alone come back. Tyson [the deceased] come back and stop, then him start tell we say two car load a Bone Crusher man deh pon dem way a come shoot up we and we family. Same time we hold him, we carry him over the next side in a bush and we start ask him weh the gun deh. Him naw tell we. Squeeze lick him pon him foot with one stone den him start say Big Foot know we wouldn't let him go back because it would a get worse. Hockeal Scott stab him and him dead and same time we start haul him and carry him go in a the bush. We left him over the river side and go weh. We start get call a ask we fi Tyson [the deceased]. We in a the bush fi two days. We burn the clothes dem wha we did have on and over one next river. Before all a this happen Sweepstake Youth did give Tyson [the deceased] money fi go buy gun. Him never get the gun fi buy so him rent it. Him did tell me say him a go thief it and carry it back. After Tyson [the deceased], after Tyson [the deceased] give back the gun him start tell the Sweepstake youth them say a we thief it. Dats why when him tell we say two car load a Bone Crusher man a come fi we, we did want get the gun from him fi give back the man dem."

[16] Mr Findlater's Q&A document which was admitted as exhibit 8, was as follows:

"Question 1: What is your correct name?

Answer: Travis Findlater.

Question 2: Are you called by any other name?

Answer: No.

Question 3: Where do you live?

Answer: Claremont in Hanover.

Question 4: How long have you been living there?

Answer: 19 years.

Question 5: Do you know Hockeal Scott?

Answer: Yes.

Question 6: How long have you known him?

Answer: 19 years.

Question 7: Is he called any other name?

Answer: Yes, Tavoy.

Question 8: Do you know Demoy Williams?

Answer: Yes.

Question 9: How long have you known him?

Answer: 19 years also.

Question 10: Is he called any other name?

Answer: Squeezer.

Question 11: Do you know Alex Hemmings?

Answer: Yes.

Question 12: How long have you known him?

Answer: 19 years also.

Question 13: Is he called any other name?

Answer: Yes, Yush.

Question 14: On Monday the, [sic] 19th of October, 2009 you gave a statement to the police?

Answer: Yes.

Question 15: In that statement you said Hockeal Scott stabbed him and him dead, who were you referring to as 'him'?

Answer: Tyson.

Question 16: What is Tyson's correct name?

Answer: Jovane Jones.

Question 17: In the statement you said sometime with -- in the statement you said same time we haul him

and carry him goh in a the bush, who were you referring to as 'we'?

Answer: Me name Travis, me Hockeal Scott, Alex Hemmings and Demoy Williams."

[17] The caution statement given by Mr Williams was admitted in to evidence as exhibit 3. He said:

> "On the 9th of October, 2009, about 10:00 in the night me, Hockeal, Travis, Alex, went on the road where we meet [sic] Kadeen and Tyson [the deceased]. Kadeen threaten me to shoot me in me mouth cause him claim me have suppen fi him, and him want it back and anyhow him no get it back a whole heap a things a go happen because a dis him do fi a living. Him went in a the shop, bought rum and cigarette. Then me see him and Tyson [the deceased] stand up holding a reason and all four of us went out on the road. About five minutes, me see Craig and Tyson [the deceased] walk past go out on the road. Craig alone came back then when Tyson [the deceased] came back he stopped and said that two car load of Stone Crusher gang is coming fi us and our family and then I said to him, how you fi tell the man dem say a we have the gun? And then me say to him a you have the man dem gun because I saw you with it. Den same time I panic. That's when him take a knife out a him pocket. That's when we grab him, ask him which part the gun deh. Only thing him say Kadeen know 'bout it. That's when I hit him in his ankle with a stone and that's when Hockeal stab him and then we drag him through the bushes, down by the river and leave him. I didn't tell anyone because I was too scared then. When we leave him there we went and burn the clothes. That's when we start getting the calls from Kadeen asking for Tyson [the deceased]. Then him just heng up – hang up. That's it. Tally it."

[18] The Q&A document for Williams was admitted as exhibit 5. It was as follows:

"Question 1: Is your name, Demoy Williams?

Answer: Yes, Sir.

Question 2: Where do you live?

Answer: Claremont District, Hanover.

Question 3:	How long have you been living in Claremont District?
Answer:	Nineteen years.
Question 4:	Do you know Hockeal?
Answer:	Yes, sir.
Question 5:	What is his correct name?
Answer:	Hockeal Scott.
Question 6:	How long have you known him?
Answer:	19 years.
Question 7:	Do you know him by any other name?
Answer:	Tavoy.
Question 8:	Do you know Alex?
Answer:	Yes, sir.
Question 9:	What is his correct name?
Answer:	Alex Hemmings.
Question 10:	How long have you known him?
Answer:	19 years.
Question 11:	Do you know Alex by any other name?
Answer:	Yush
Question 12:	Do you know Travis?
Answer:	Yes, sir.
Question 13:	What is his correct name?
Answer:	Travis Findlater.
Question 14:	Do you know him by any other name?
Answer:	No, sir.

Question 15: Do you know Tyson?

Answer: Yes, sir.

Question 16: What is Tyson's correct name?

Answer: Jovane Jones.

Question 17: On the 20th of October 2009, you gave a statement to the police?

Answer: Yes, sir.

Question 18: In the statement you gave to the police on the 20th of October, 2009, you said Hockeal stab him?

Answer: Yes, sir.

Question 19: Who were you referring to as him?

Answer: Tyson [the deceased].

Question 20: In the statement given on the 20th of October, 2009, you said we dragged him through the bushes?

Answer: Not sure.

Question 21: And it says the suspect was shown the statement by Detective Inspector Jacobs. Did you say in the statement that we dragged him through the bushes?

Answer: Yes, sir.

Question 22: Who were you referring to as we?

Answer: Hockeal, Travis, Alex and me Demoy Williams, otherwise called Squeezer.

Question 23: In the statement given on the 20th of October, 2009, who were you referring to as him when you said we dragged him through the bushes?

Answer: Tyson [the deceased]."

[19] The caution statement given by Mr Hemmings was admitted into evidence as exhibit 4. He said that:

> "On October the 9th, 2009, at 9 o'clock we were at a shop. The four of us sidung on a bamboo bench in the night when Ricardo Smith and Jovane Jones showed up and then they start to talk that Ricardo Smith said that him gonna put a gunshot in Squeezer mouth. Then he went into the shop and buy a drink of rum and one cigarette. After that me, Tavoy, Travis and Squeezer who also name Demoy, walk go out the road, Mawga Bay and after that me see Tyson [the deceased], a him same one name Jovane Jones and another youth walk past. Me did feel 'fraid because when me see Tyson [the deceased] go out the road and the next youth, name Craig, pass me go back round the road and I did not see Tyson [the deceased] pass, I said something must be wrong. Then me see him walk come up towards me, Travis, Tavoy and Squeezer and come tell we say two car load a Crusher man a come kill we. Me ask him, wha' mek him tell the man dem say we have the gun? Tyson [the deceased] say, me must tell them. That said time me look back pon me family because me know say the Crusher man dem will kill everybody when dem come. Said time now me look and say if me kyan hold Tyson [the deceased] fi get back the gun me family kyan be all right. So me, Tavoy, Travis and Squeezer hold him and go question him, and see if we can get back the gun because we family can be all right if we get back the gun. When we hold him he try to fight back and draw a knife. Tavoy took away the knife from him and Tyson [the deceased] say anyhow we let him go whole heap a people a go dead. We did deh deh a question him and a ask him where the gun is and Tyson [the deceased] say Big Boot know weh the gun deh. Big Boot is the same Ricardo Smith. Squeezer lick him on his foot with one stone and we keep on question him and a ask him where is the gun but he don't want to tell we where is the gun but he don't want to tell we where it is. He just want to go get away and have our family killed and Tavoy say you a go mek we family dead sake a one gun? Den Tavoy stab him and then we draw him go down in the bush. Me, Tavoy, Travis and Squeezer and after that we hear Big Boot call and a ask where is Tyson [the deceased]. After that now, we went into the bush for two days, me, Tavoy, Travis and Squeezer because me know say Big Boot a murderer and him will kill the four a we, Tavoy, Travis, Squeezer and me. We burn we clothes dem down a one river and the next day me hear say Big Boot deh a Trelawny a look fi we fi kill we. Dat time me start fret because if him hold me, Tavoy, Travis and Squeezer, him ago kill we. Dat's it."

[20] In the Q&A document for Hemmings which was admitted into evidence as exhibit 6, he said the following:

"Question 1:	Is your correct name Alex Hemmings?
Answer:	Yes.
Question 2:	Are you called any other name?
Answer:	Hush -- Yush.
Question 3:	Where do you live?
Answer:	Claremont, Hanover.
Question 4:	How long have you been living there?
Answer:	19 years.
Question 5:	Do you know Squeezer?
Answer:	Yes.
Question 6:	What is his correct name?
Answer:	Demoy Williams.
Question 7:	How long have you known him?
Answer:	19 years.
Question 8:	Do you know Tavoy?
Answer:	Yes.
Question 9:	What is his correct name?
Answer:	Hockeal Scott.
Question 10:	How long have you known him?
Answer:	19 years.
Question 11:	Do you know Travis?
Answer:	Yes.

Question 12:	What is his correct name?
Answer:	Travis Findlater.
Question 13:	How long have you known him?
Answer:	19 years.
Question 14:	On the 20th of October, 2009 you gave a statement to the police?
Answer:	Yes.
Question 15:	In your statement you said Tavoy stabbed him?
Answer:	Yes.
Question 16:	Who were you referring to as him that Tavoy had stabbed?
Answer:	Tyson.
Question 17:	What is Tyson's correct name?
Answer:	Jovane Jones."

[21] As was the case on the *voir dire*, when Det Insp Jacobs and Det Cpl Ashley were cross-examined by counsel, questions were asked challenging the voluntariness of the caution statements and Q&A documents. Questions were also asked seeking to challenge the procedures adopted before the taking of the caution statements and Q&A documents. The police officers were also interrogated as to the sufficiency of the investigations conducted. They denied any suggestions challenging the voluntariness of the appellants' caution statements and Q&A documents, and maintained that the integrity of the interview process had not been compromised and the investigative process was sufficient.

[22] On 23 October 2009, the appellants directed Det Cpl Ashley, Det Cpl Radcliffe, scene of crime expert, and other police personnel to an area along the "Point Main Road". They went under a fence, through a rough terrain, which was about an hour's walk into bushes. Det Cpl Ashley said the appellants "actually took [her] along the path through the bushes to the exact spot" and showed them an area that looked as if "something had

been burnt there" as "[t]he ground was black". She also saw something that appeared to be a pants zipper where the black spot was. The appellants started to tell them what happened and so they were cautioned. Mr Scott said:

> "Me naw tell you no lie, Miss Ashley a here so we burn up the clothes dem that we were wearing when we kill Mr. Jovane Jones – when we kill Jovane Jones."

[23] Det Cpl Radcliffe testified that he observed burnt debris and among that debris, he saw what appeared to be three zippers "metal section from the zip" and an "eyelet" – "more like a button … but a metal mostly carry on jeans, jeans pants or skirt". They were tagged and labelled. That scene was also processed and photographed. The photographs taken on both occasions were placed on a CD which was tendered and admitted as exhibit 9. Several images were shown to the jury.

[24] The police and the appellants also visited Mr Scott's home, which they searched, but nothing incriminating was found.

[25] In cross-examination, Det Cpl Radcliffe admitted that he had not received any forensic reports in respect of this case. Accordingly, he was unable to say whether the items he found at both locations had anything to do with the instant case.

[26] Dr Murari Sarangi ('Dr Sarangi'), a forensic pathologist, gave evidence. He testified that when he examined the deceased's body, 42 stab incised wounds were found. The stab wounds were caused by a sharp cutting weapon such as a knife. There were 35 such stab wounds clustered close to one another to the front of the deceased's neck. The wounds on the neck were of varying sizes with the smallest being 1 cm long to 0.5 cm wide and the largest, being 3 cm long and 1.5 cm wide. The wounds to the neck were deep into the neck structure injuring the windpipe or trachea and major neck blood vessels called the carotid arteries and jugular veins. There were stab wounds to the chest, one of which punctured the deceased's left lung, causing it to collapse. There were also four stab wounds to his back. Dr Sarangi said that the deceased bled to death as a result

of multiple stab wounds to important areas of the body. The death, in his view, was a homicide.

The appellants' cases

Mr Scott's case

[27] Mr Scott gave sworn testimony and largely maintained what he had said in the *voir dire*. He testified that on 18 October 2009, he was taken to the Lucea Police Station by Pastor Bates who he did not know before that day. His mother, Miss Clarke, the other appellants, and their parents were present. Whilst at the Lucea Police Station, Mr Findlater was taken upstairs. Mr Scott said he was thereafter taken to a room where he saw Det Cpl Ashley and Det Insp Jacobs. Det Cpl Ashley started asking him questions about the murder, and when he denied knowledge of it, she hit him with a baton on his shoulder and poked him in his stomach. He felt pain in these areas and also felt "afraid" and "terrified" because he was handcuffed and being beaten by police. When he told Det Cpl Ashley that he was living with his mother and she did his laundry, she threatened to arrest his mother as "she is the one that wash di blood-up clothes". The appellants were also threatened that they would be taken to Freeport "to let 'Stone Crusher' man beat [them]".

[28] On the way to Freeport, they took him to his house and took his mother, Miss Clarke, into custody. They returned to the Lucea Police Station, where his mother was placed on a bench inside the holding area. He was very concerned when his mother was on the bench. He and Mr Findlater were taken upstairs to a room where they were "briefed on a statement" by Det Cpl Ashley and Det Insp Jacobs. They were told to memorise the statement. The police then called the attorney-at-law Miss Davis and Pastor Bates, and Mr Scott gave the statement. When he gave the statement, his mother was still in custody and after it was given, she was released. Mr Scott was placed in a room with the other appellants, and he was instructed to tell them exactly what was in the statement. He did not tell Det Cpl Ashley that he could not afford an attorney-at-law, and

he was not told that he needed one. He testified that it was Det Cpl Ashley who called Pastor Bates.

[29] Under cross-examination, Mr Scott admitted to signing the caution statement six times and the Q&A document three times. He denied being cautioned but accepted that the attorneys-at-law and Pastor Bates were present. He admitted to not complaining to either the attorneys-at-law or Pastor Bates about what he was enduring.

[30] Miss Jennifer Douglas ('Miss Douglas') was called on Mr Scott's behalf as a character witness. She had been a teacher for 26 years but, at the time, was retired. She taught Mr Scott at the Claremont All Age School. After he left high school, they kept in touch. He completed skills training, and he raised animals. She was shocked and puzzled when she heard of the incident as she had never seen him as a hostile person. Although she was called on Mr Scott's behalf, she also spoke to the characters of Mr Findlater, Mr Hemmings, and Mr Williams. Mr Findlater was her son's playmate. She said he was not talkative and was very quiet with "good mannerism". Miss Douglas knew Mr Hemmings and Mr Williams since their birth. Mr Hemmings was also very quiet in school and was involved in sports. Mr Williams was more into music.

[31] Under cross-examination, Miss Douglas admitted that she was not in the appellants' age group and that she would not have been privy to all aspects of the appellants' lives or the activities they were involved in. In answer to questions from the court, she also admitted to not socialising with them in the evenings and nights. She admitted to seeing them less after they were no longer attending the Claremont All Age School.

[32] Mr Delroy Leon ('Mr Leon') was another character witness who also spoke to the character of the appellants. He is a Minister of Religion. He had known Mr Scott for 17 years and would interact with him at Sunday School. He would give the boys food and he would see them around the community. They are always respectful to him. He called Mr Scott "Othneil". He said that Mr Scott was hardworking and loved animals. He cried

when he first heard of the allegations because he knew the boys to be "good behaving boys". Mr Leon said that Travis was "calm and nice, no problem with that boy". Mr Hemmings was his neighbour and he is a "good" and "mannerable" boy. He knew Mr Williams. He had never seen the appellants engaged in or had to speak to them about undesirable conduct.

Mr Findlater's case

[33] In his unsworn statement, Mr Findlater stated that on 18 October 2009, he and the other appellants were taken to the Lucea Police Station by Pastor Bates. Later that day, Det Insp Jacobs and Det Cpl Ashley started asking them questions. Det Insp Jacobs was writing and Det Cpl Ashley was standing very close to him with a baton. He was asked questions. However, when Det Insp Jacobs and Det Cpl Ashley were not satisfied with his response, they would accuse him of telling lies, and Det Cpl Ashley would hit him with the baton on the upper part of his body. After giving the statement, the appellants were told that they would be taken to the Freeport Lock-up so that the prisoners or "Stone Crusher Gang" members would beat them as they were not telling the truth. On the way to the Freeport Lock-up, the police officers turned around at the Hopewell Gas Station and proceeded to the house where he (Mr Findlater) lives with Mr Scott to search for bloody clothes. After the search, they took Miss Clarke, who is also Mr Findlater's sister, into custody. Mr Scott was crying as he did not want his mother to go to jail, and he (Mr Findlater) cried as well. Det Cpl Ashley promised them that if they confessed, she would release Miss Clarke. Mr Findlater said a written statement was given to the appellants to memorise before the attorneys-at-law and Pastor Bates were called. Mr Findlater stated in conclusion that they gave the written statement, but it was not given in their own words.

Mr Hemmings' case

[34] Mr Hemmings gave an unsworn statement and he also began by describing how he was brought to the police station along with the other appellants and their families. He said Mr Scott and Mr Findlater later told them that Det Insp Jacobs and Det Cpl Ashley

gave them a statement, and told them to read it and understand what to say when they go to the attorney-at-law. Mr Hemmings said that while he was giving the statement, the police told him that he was telling a lie. They took him back to the cell, and he saw Mr Scott and Mr Findlater with a paper with words that they should memorise. He studied the paper, and they called the attorney-at-law, Miss Thompson, and Pastor Bates. He gave them "his words" and they signed the paper.

Mr Williams' case

[35] In his sworn testimony, Mr Williams said he knew the other appellants. He said they were all taken into custody on 18 October 2009. Afterwards, they were taken on a journey close to the "Point area" in "some bushy area along the main road". Then they were first placed in separate cells. The police first took Mr Scott and Mr Findlater. Mr Williams testified that when he was questioned, Det Cpl Hibbert was present. He said he gave "maybe like two statements" as "they came for [him] more than once". He explained that the first statement was not given in the presence of an attorney-at-law, just police. Det Insp Jacobs and Det Cpl Ashley asked questions about the murder and when he told them he knew nothing about it, he was poked by Det Cpl Ashley with a baton to his upper and lower shoulder and lower body, along the rib cage. Det Cpl Hibbert did not ask too many questions; "she was just there in presence". After he gave the statement, he did not sign it. The appellants were eventually placed in cells together. Mr Scott and Mr Findlater informed him and showed him papers with pre-written statements regarding the deceased's murder, that were given to the other appellants and that they had already signed. They told him to inform Det Cpl Ashley that they were the ones who committed the murder. He gave what he called "the current statement" with his signature at a different time. The statement about the stabbing and burned clothes was signed because he was influenced by Mr Scott and Mr Findlater, who "told him to go along with it". The questions he answered were also done under the influence of Mr Scott and Mr Findlater.

[36] In cross-examination, he admitted to signing the caution statement and the Q&A documents. He admitted that the statements are in different words and terms. He also

accepted that he made no complaints to Pastor Bates or the attorneys-at-law about any threats or violence he claimed to have endured.

The appeal and the issues raised therein

[37] As indicated, the appellants were convicted for the deceased's murder and sentenced to life imprisonment with Mr Scott being eligible for parole after serving 30 years and Mr Findlater, Mr Hemmings, and Mr Williams being so eligible after serving 25 years. In the renewal of their application for leave to appeal against their convictions before us, Mr Hemmings, Mr Williams and Mr Findlater sought and obtained leave to argue supplementary grounds of appeal, which were as follows:

> "**APPEALS AGAINST CONVICTION**
>
> **(A) APPEAL OF ALEX HEMMINGS (HEMMINGS)**
>
> 1. The learned Judge erred in not holding that there was no case to answer on the charge of murder, since the statement under caution of Hemmings did not reveal any participation in, or encouragement or foreknowledge of, the stabbing of the deceased by the Appellant Scott, nor was there any evidence of a common design to kill or do grievous bodily harm to the deceased between Hemmings and Scott who alone struck the fatal blows.
>
> …
>
> 2. In the alternative the learned Judge erred in law in not directing the jury that it was open to them to find the Appellant Hemmings guilty of manslaughter under the 'unlawful act' principle defined in **Ruddock v R** [2016] UKPC 7 at paragraph 96:
>
> > 'If a person is a party to a violent attack on another, without an intent to assist in the causing of death or really serious harm, but the violence escalates and results in death, he will not be guilty of murder but of manslaughter. So also if he participates by encouragement or assistance in any other unlawful act which all sober and reasonable people would

> realise carried the risk of some harm (not necessarily serious), and death in fact results.'

3. The evidence against Hemmings at its highest showed that he participated in the unlawful act of detaining the deceased in order to question him, and that during the questioning a minor assault was committed by Williams hitting the deceased on the foot with a stone which caused no injury (see page 909/23). The violence then escalated by the unforeseen act of Scott in stabbing the deceased.

4. The learned judge considered this possible verdict in the absence of the jury but erred in her decision not to leave it to the jury. (page 1220-1224)

(B) APPEAL OF TRAVIS FINDLATER (FINDLATER)

5. The learned Judge erred in not holding that there was no case to answer on the charge of murder, since the statement of Findlater did not reveal any participation in, or encouragement or foreknowledge of, the stabbing of the deceased by the Appellant Scott, nor was there any evidence of a common design to kill or do grievous bodily harm to the deceased between Findlater and Scott who alone struck the fatal blows.

…

6. In the alternative the learned Judge erred in law in not directing the jury that it was open to them to find Findlater guilty of manslaughter under the 'unlawful act' principle defined in Ruddock v R [2016] UKPC 7 at paragraph 96:

> 'If a person is a party to a violent attack on another, without an intent to assist in the causing of death or really serious harm, but the violence escalates and results in death, he will not be guilty of murder but of manslaughter. So also if he participates by encouragement or assistance in any other unlawful act which all sober and reasonable people would realise carried the risk of some harm (not necessarily serious), and death in fact results.'

7. The evidence against Findlater at its highest showed that he participated in the unlawful act of detaining the deceased and that

in order to question him, and that during the questioning a minor assault was committed by Williams hitting the deceased on the foot with a stone which caused no injury (see page 909/23). The violence then escalated by the unforeseen act of Scott in stabbing the deceased.

8. The learned judge considered this possible verdict in the absence of the jury but erred in her decision not to leave it to the jury. (page 1220-1224)

(C) APPEAL OF DEMOY WILLIAMS (WILLIAMS)

9. The learned Judge erred in not holding that there was no case to answer on the charge of murder, since the statement under caution of Williams did not reveal any participation in, or encouragement or foreknowledge of, the stabbing of the deceased by the Appellant Scott, nor was there any evidence of a common design to kill or do grievous bodily harm to the deceased between Williams and Scott who alone struck the fatal blows.

…

10. In the alternative the learned Judge erred in law in not directing the jury that it was open to them to find the Appellant Williams guilty of manslaughter under the 'unlawful act' principle defined in **Ruddock v R** [2016] UKPC 7 at paragraph 96:

> 'If a person is a party to a violent attack on another, without an intent to assist in the causing of death or really serious harm, but the violence escalates and results in death, he will not be guilty of murder but of manslaughter. So also if he participates by encouragement or assistance in any other unlawful act which all sober and reasonable people would realise carried the risk of some harm (not necessarily serious), and death in fact results.'

11. The evidence against Williams at its highest showed that he participated in the unlawful act of detaining the deceased in order to question him about a gun, and that during the

questioning a minor assault was committed by [Williams] hitting the deceased on the foot with a stone which caused no injury (see page 909/23). The violence then escalated by the unforeseen act of Scott in stabbing the deceased.

12. The learned Judge considered this possible verdict in the absence of the jury but erred in her decision not to leave it to the jury. (page 1220-1224)

APPEAL AGAINST SENTENCE

ON BEHALF OF ALL FOUR APPELLANTS

13. Although this was a brutal murder, the evidence before the court of the good character and reputation of the Appellants was so exceptional that the learned Judge ought to have passed the determinate sentence of a fixed term of years, and not a life sentence with a minimum of 30 years (in the case of Scott) and 25 years (in the case of the other three) to be served before being eligible for parole.

...

[14.] In all the circumstances the sentences were wrong in principle and/or manifestly excessive."

[38] We agree with counsel for the appellants that their supplementary grounds of appeal essentially raise three issues which, in our view, are as follows:

1. Was the learned judge correct in ruling that there was a case to answer in light of the evidence regarding the participation or encouragement with intent to kill or do grievous bodily harm to the deceased by Mr Findlater, Mr Hemmings and Mr Williams (grounds 1,5, and 9)?
2. If Mr Findlater, Mr Hemmings and Mr Williams had no intention to kill or do grievous bodily harm to the deceased, did the learned judge err in not directing the jury that they could find them guilty of manslaughter and should their convictions for murder be set aside and convictions for

manslaughter be substituted therefor (grounds 2, 3,4, 6, 7, 8, 10, 11 and 12)?

3. Were the sentences imposed on the appellants wrong in principle and/or manifestly excessive (grounds 13 and 14)?

Issue 1: Was there was a case to answer in light of the evidence regarding the participation or encouragement with intent to kill or do grievous bodily harm by Mr Findlater, Mr Hemmings and Mr Williams (grounds 1, 5 and 9)

Submissions

[39] Lord Anthony Gifford KC ('Lord Gifford'), in the submissions on behalf of the appellants and after reviewing the evidence, analysed aspects of the summation by the learned judge. He accepted that the learned judge gave full directions on joint enterprise. Further, he accepted that the general directions were not only full but also in conformity with the principles laid down in **R v Jogee; Ruddock v The Queen** [2016] UKSC 8; [2016] UKPC 7 ('**Jogee and Ruddock**'). However, King's Counsel submitted that "justice will not be done if there is no evidence capable of giving substance to the principles".

[40] King's Counsel contended that there were several instances where the learned judge invited the jury to consider matters which were inherently speculative or contradictory. He noted that although the learned judge gave directions on inferences at the start of her summing up, she stopped short of saying that the inferences had to be reasonable and inescapable. He submitted that the treatment of inferences at the start of the summing up was "cursory and inadequate", and that the learned judge did not revert to any further directions on the issue when advising the jury to consider whether, for instance, the words spoken by the appellants in their statements could be taken as meaning that they had joined Mr Scott in a new common design. **Kevin Peterkin v R** [2022] JMCA Crim 5 was relied on in support of this submission.

[41] Lord Gifford submitted that the only evidence against Mr Findlater, Mr Hemmings and Mr Williams was their caution statements. When those statements are examined, King's Counsel contended, the no case submission ought to have been upheld as "right

up to the moment of the stabbing by Mr Scott, there was no evidence of a common design to kill the deceased or do him grievous bodily harm". He said there was a common design to ask the deceased questions about a gun belonging to a gang, which the deceased had falsely stated had been taken by the appellants. Lord Gifford pointed to the learned judge's summation where she said that "there was no evidence that at the outset [the appellants] had planned to kill [the deceased] or to cause him grievous bodily harm".

[42] In analysing the caution statements, Lord Gifford submitted that guidance in approaching such statements, when they contain both admissions and explanations, is to be found in **R v Sharp** [1988] 1 All ER 65, where there was an approval of the approach to a "mixed statement" as being "for the jury to be told the whole statement, both the incriminating parts and the excuses or explanations, must be considered by them in deciding where the truth lies". King's Counsel said that the caution statements given by Mr Findlater, Mr Hemmings, and Mr Williams show that the common design was to hold the deceased and question him about the gun. When the deceased pulled the knife, Mr Scott took it, and the questioning continued. This process ended with Mr Scott's act of stabbing the deceased. In relation to Mr Williams, Lord Gifford submitted that the act of using the stone preceded the murder. Mr Scott acted entirely on his own in the murder. The other appellants started to assist him as accessories after the fact of the murder. Lord Gifford argued, in reliance on **R v Anderson and Morris** [1966] 2 All ER 644 and **Jogee and Ruddock**, that Mr Scott's act of stabbing the deceased is an "overwhelming supervening event which no one in their shoes would have contemplated". He submitted that the learned judge herself had these reservations when, in discussions with counsel for the Crown who appeared at the trial, she questioned the appellants' involvement as secondary parties for the offence of murder or manslaughter.

[43] In relation to Mr Williams, Lord Gifford noted that on his account, the act of using the stone immediately preceded the stabbing. King's Counsel pointed to the fact that Mr Hemmings, however, said it was an individual act in the context of the questioning. King's

Counsel submitted that this demonstrated the importance of the direction which has to be given that "the statement of X is only to be considered as evidence against X".

[44] In response to the submissions, Ms Paula-Sue Ferguson for the Crown contended that there was sufficient evidence of a joint enterprise amongst the appellants. Ms Ferguson recounted the principles outlined in **Jogee and Ruddock** and summarised in **Joel Brown v Lance Matthias v R** [2018] JMCA Crim 25. She stated that Mr Findlater, Mr Hemmings and Mr Williams were in a hostile confrontation with the deceased at the time of the murder. They were confronting him about a missing gun and restraining him. They participated by contributing to force in numbers and fortified the principal by lending support. They were restraining the deceased, preventing him from escaping, and Mr Williams even hit the deceased on his foot with a stone before the stabbing. Crown Counsel also said that the threat of consequences should they release the deceased was evidence from which the jury could infer an intention to lend support to the actions of Mr Scott.

[45] Another factor, she said, that points to Mr Findlater, Mr Hemmings and Mr Williams lending support to Mr Scott, is the fact that, upon witnessing the stabbing taking place, those appellants offered no dissent to it and, in fact, assisted in its commission. In support of this submission, she relied on **R v Dennie Chaplin, Howard Malcolm and Peter Grant** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 3 and 5/1989, judgment delivered on 16 July 1990 and **R v Clyde Sutcliffe and Randolph Barrett** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 148 and 149/1978, judgment delivered on 10 April 1981. Ms Ferguson, therefore, contended that the learned judge was correct in holding that there was a case to answer.

Discussion and analysis

[46] Following the seminal case of **R v Galbraith** [1981] 2 All ER 1060, which has been cited numerous times by this court, a no case submission will be upheld:

1. if there is no evidence to prove that the crime alleged has been committed by the defendant; or

2. where there is some evidence but it is of such a tenuous character, that, taken at its highest, a jury properly directed could not convict on it.

[47] As there was no evidence that Mr Findlater, Mr Hemmings, and Mr Williams stabbed the deceased, the only way in which culpability could have been found is based on the question of whether they were secondary parties or accessories to the deceased's killing. On behalf of Mr Findlater, Mr Hemmings, and Mr Williams, it was contended that there was no evidence that they participated in, encouraged, or were a part of the common design to kill or do grievous bodily harm to the deceased. Consequently, there was no evidence proving that they committed the crime alleged and so the no case submission made on their behalf should have been upheld.

[48] The United Kingdom Supreme Court and the Judicial Committee of the Privy Council unanimously re-stated the principles concerning the liability of secondary parties in **Jogee and Ruddock**. McDonald-Bishop JA (as she then was) in examining that case in **Joel Brown and Lance Matthias** indicated, at para. [77], that:

> "… The core of the principle, as restated in **R v Jogee; Ruddock v The Queen**, is that a person who assists or encourages another to commit a crime (the secondary party or the accessory) is guilty of the same offence as the actual perpetrator of the crime (the principal) if he 'shares the physical act', that is, through assisting and encouraging the physical act. In their Lordships words, '[h]e shares the culpability precisely because he encouraged or assisted the offence'."

[49] Edwards JA in **Troy Smith, Precious Williams and Andino Buchanan v R** [2021] JMCA Crim 9 ('**Troy Smith et al**'), at para. [44], also explained the principle in **Jogee and Ruddock** thus:

> "It has been well accepted that, where two or more persons embark on a plan to commit a crime, and act in furtherance of that plan, each will be liable for the acts to which they have agreed or assented, whether expressly or by implication. Even where there is no prior agreement and the parties come together spontaneously to commit

> the offence, the intentional giving of support or encouragement is sufficient to attract secondary liability…"

[50] It is settled that mere presence when a crime is committed is not sufficient for there to be secondary liability. There are circumstances, however, where it can be inferred from continued presence. Such was the case in **R v Dennie Chaplin, Howard Malcolm and Peter Grant**, where this court found that, in respect to one of the appellants:

> "…far from being accidentally present [he] was in fact voluntarily and purposely present at the scene, and his conduct during and after the commission of the murder, is sufficient evidence upon which the jury could correctly find that he was present aiding and abetting the others in the act and therefore a participant in the common design to the murder."

[51] Accordingly, the question to be answered, in the instant case, is whether Mr Findlater, Mr Hemmings, and, Mr Williams agreed to, participated in, encouraged, or assisted in the commission of the crime and intended to do so with knowledge of the facts constituting the commission of the offence.

[52] The appellants' caution statements revealed that they were together when the deceased came and confronted them about a missing gun. Mr Findlater said that when the deceased came "him start tell we say two car load a Bone Crusher man deh pon dem way a come shoot up we and we family". Mr Williams stated that the deceased said, "two car load of Stone Crusher gang is coming fi us and our family". Mr Hemmings stated that the deceased said, "two car load a Crusher man a come kill we". Mr Williams said he asked the deceased "how you fi tell the man dem say a we have the gun [a]nd …you know say we no have no gun because I saw you with it".

[53] The appellants admitted that after hearing of the imminent arrival of the members of the Bone Crusher gang, they restrained the deceased and took him away to interrogate him in an effort to retrieve the gun and return it to members of the gang. Mr Findlater said, "[s]ame time we hold him, we carry him over the next side in a bush and we start ask him weh di gun deh". Mr Williams said he panicked "same time". Mr Hemmings said:

> "That said time me look back pon me family because me know say the Crusher man dem will kill everybody when dem come. Said time now me look and say if me kyan hold Tyson [the deceased] fi get back the gun me family kyan be all right. So me, Tavoy [Scott], Travis and Squeezer [Williams] hold him and go question him, and see if we can get back the gun because we family can be all right if we get back the gun."

So from the outset, they admitted to participating in assaulting the deceased and carrying him away in circumstances which could be described as amounting to kidnapping him.

[54] Lord Gifford submitted that when Mr Scott stabbed the deceased, this was "an overwhelming supervening event" which the other appellants would not have contemplated as they had only wished to interrogate him. Certainly from the statements, the appellants had no weapon when they took hold of the deceased. It was the deceased's knife that Mr Scott had disarmed him of and used to stab him. The deceased was stabbed 42 times, and nowhere in their statements do Mr Findlater, Mr Hemmings, or Mr Williams indicate that they released the deceased at any time after taking him into the bushes or at any time thereafter up to when they dragged his body further into the bushes and left it there. The only inference that could be drawn from the evidence was that they continued to hold and question him about the gun while the stabbing took place. Certainly, the continued restraint of the deceased would have been necessary since it is apparent from the evidence in the caution statements that the deceased resisted their interrogation. Mr Hemmings said that the deceased tried to fight back and pulled a knife. Mr Williams also said that the deceased took a knife out of his pocket. Further, from the statements of Mr Findlater, Mr Hemmings, and Mr Williams, the intention became one where it was necessary to restrain the deceased and prevent him from escaping out of fear of what would happen to their families and themselves if he did. The following extracts from their caution statements clearly demonstrate each man's intention.

[55] Findlater said:

> "Squeezer lick him pon him foot with one stone den **him start say Big Foot know we wouldn't let him go back because it would**

> **a get worse**. Hockeal Scott stab him and him dead and same time we start haul him and carry him go in a the bush. We left him over the river side and go weh." (Emphasis added)

[56] Williams said:

> "Craig alone came back then when Tyson [the deceased] came back he stopped and said that two car load of Stone Crusher gang is coming fi us and our family and then I said to him, how you fi tell the man dem say a we have the gun? And then me say to him a you have the man dem gun because I saw you with it. **Den same time I panic. That's when him take a knife out a him pocket… That's when I hit him in his ankle with a stone and that's when Hockeal stab him and then we drag him through the bushes, down by the river and leave him.**" (Emphasis added)

[57] In his caution statement Mr Hemmings said:

> "When we hold him he try to fight back and draw a knife. **Tavoy took away the knife from him and Tyson [the deceased] say anyhow we let him go whole heap a people a go dead.** We did deh deh a question him and a ask him where the gun is and Tyson [the deceased] say Big Boot know weh the gun deh. Big Boot is the same Ricardo Smith. Squeezer lick him on his foot with one stone and we keep on question him and a ask him where is the gun but he don't want to tell we where is the gun but he don't want to tell we where it is. **He just want to go get away and have our family killed and Tavoy say you a go mek we family dead sake a one gun?** Den Tavoy stab him and then we draw him go down in the bush." (Emphasis added)

[58] Another fact that significantly undermined Lord Gifford's submission in this regard was the circumstances of the deceased's death as was outlined by Dr Sarangi. We agree with Crown Counsel that the learned judge explained this fact to the jury, rather well, and we will re-state it here:

> "… The evidence of Dr. Sarangi is that the deceased man was stabbed, not once, not twice, not even five times, but 42 times. It appears from the narrative in the caution statements that the deceased was never released. So these three accused men, Findlater, Hemmings and Williams was [sic] still restraining Jovan when the stabbing was taken [sic] place. You will have to determine

> if this is so. But to stab someone 42 times on different places of their body … This is not a one second thing. So, after the first couple of stabs, could it be that these three men then realized what was going on, and then they nonetheless, remained? Remained to restrain the deceased man, and to see the 42 stabs inflicted to Jovan's body? No one is said to have registered any dissent and told Mr. Scott to desist, or to stop what he was doing. None of these three men left the scene signaling that they were not in agreement, or as we say in popular parlance, none a dem neva tek weh dem themselves, but all remained right there up to the end. Their involvement did not end there, according to what they say. They say they continued in Mr Scott's company and helped him to drag the body to the bushes and down to the river. They then went off together and hid themselves in bushes and burnt their clothing." (See pages 1354-1355 of the transcript)

[59] Ultimately, based on the caution statements of Mr Findlater, Mr Hemmings and Mr Williams, and contrary to the submissions of Lord Gifford, there was sufficient evidence to be left to the jury for a determination of whether they were voluntarily present and participated in the killing of the deceased. They all participated in restraining him to interrogate him with a determination to get back the gun to preserve their lives and those of their families. This progressed to a fear on the part of Mr Findlater, Mr Williams and Mr Hemmings that if the deceased was to be released, that too could have led to their deaths and that of their loved ones. The deceased himself let it be known that should he be released, "whole heap a people a go dead". The deceased armed himself and was disarmed. After Mr Williams hit him on his foot with a stone, Mr Findlater, Mr Hemmings and Mr Williams remained as the deceased was stabbed by Mr Scott 42 times, in multiple areas of his body, including his back. When the act of the killing was complete, they assisted in dragging the deceased's body into bushes and covering up their crime.

[60] Further, in all these circumstances, in our view, there was no evidence that Mr Findlater, Mr Hemmings and Mr Williams demurred, departed or withdrew from any of Mr Scott's activities. The learned judge would have been correct to find that there was evidence of an intention to participate, encourage or assist in the deceased's murder with knowledge of all the facts constituting the murder, and so there was a case to answer. Grounds 1, 5, and 9, therefore, fail.

Issue 2: Directions on manslaughter and substituting the convictions for murder to manslaughter (grounds 2, 3, 4, 6, 7, 8, 10, 11 and 12)

Submissions

[61] Although the learned judge gave directions on manslaughter arising from provocation, she did not direct the jury that Mr Findlater, Mr Hemmings and Mr Williams could be convicted of manslaughter if they found that they had no intention to kill or do grievous bodily harm to the deceased. Lord Gifford contended that since there was no evidence from which it could be inferred that those appellants intended the death of the deceased, the learned judge ought to have given those directions to the jury. King's Counsel urged that since those directions had not been given, the convictions of those appellants for murder should be quashed and a sentence for manslaughter imposed. He cited **Shirley Ruddock v R** [2017] JMCA Crim 6 and **Troy Smith et al** as examples of cases where this was done.

[62] Ms Ferguson submitted that a direction on manslaughter would not have been appropriate in the circumstances as there was evidence pointing to the appellants being accessories to the murder. Mr Findlater, Mr Hemmings and Mr Williams would have assisted by their force in numbers in restraining the deceased. She contended that they all agreed that the deceased could not be allowed to return. They gave no indication that they released the deceased while he was stabbed 42 times. Accordingly, Ms Ferguson concluded, Mr Findlater, Mr Hemmings and Mr Williams were not just accessories after the fact, as they were present at the beginning and assisted throughout by restraining the deceased. However, she added the caveat that if this court formed the view that the offence of manslaughter ought to have been left to the jury, then it may substitute it for the murder conviction as was the case in **Norval Wray v R** [2019] JMCA Crim 38.

Discussion and analysis

[63] It is indisputable that this court is empowered to substitute a verdict of guilty for another offence for which an appellant could have been convicted on that indictment where it is satisfied that the conviction for a particular offence is wrong on the facts. This

power comes from section 24(2) of the Judicature (Appellate Jurisdiction) Act, which states that:

> "Where an appellant has been convicted of an offence and the Resident Magistrate or jury could on the indictment have found him guilty of some other offence, and on the finding of the Resident Magistrate or jury it appears to the Court that the Resident Magistrate or jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the judgment passed or verdict found by the Resident Magistrate or jury a judgment or verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity."

[64] Brooks JA (as he then was) in **Shirley Ruddock v R**, indicated, at para. [21] that, a court may substitute manslaughter for murder conviction "where it is found that the trial judge ought to have given the jury the option to convict for manslaughter but had failed to do so". Brooks JA said that the rationale for this was found in **Dwight Wright v R** [2010] JMCA Crim 17, where this court adopted the words of Lord Tucker in **Joseph Bullard v The Queen** [1957] AC 635, and said, at para. [27]:

> "…We adopt the words of Lord Tucker, in **Bullard**, as being entirely applicable to this case:
>
> > 'Every man on trial for murder had the right to have the issue of manslaughter left to the jury if there was any evidence on which such a verdict could be given. To deprive him of that right must of necessity constitute a grave miscarriage of justice and it was idle to speculate what verdict the jury would have reached.'"

[65] There are several instances where this court has exercised the power given to it in this section and substituted convictions for murder with manslaughter: **R v Rudolph Dodd, Karl Wauchorpe and Billy West** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 184, 185 & 186/1999, judgment delivered 8 October 2001 ('**Rudolph Dodd**'); **Shirley Ruddock v R**; and **Troy Smith et al**.

[66] In **Rudolph Dodd**, the deceased and his companions were taken to the police station after being embroiled in a dispute over lost car keys. While in custody, the deceased was beaten all over his body by the three appellants. Wauchorpe and West were heard saying "[b]oy yuh fi dead, a long time yuh fi dead", while the deceased was shouting "murder, lef mi, whey mi do". The deceased was not seen alive afterwards. He was taken out to sea and thrown overboard by the appellants. The body was found days later offshore. Although the court noted that these words spoken by Wauchorpe and West connoted an intention to kill, Dodd was not connected with the utterance of these words. The court also said that it was open to the jury to find that the words were used metaphorically and there was no intention to kill the deceased or cause him grievous bodily harm. As such, manslaughter should have been left to the consideration of the jury. The conviction for murder was, therefore, set aside, and a verdict of manslaughter substituted.

[67] In **Shirley Ruddock v R** a consideration of whether to substitute the conviction for murder with manslaughter was made based on a recommendation by the Privy Council, after Mr Ruddock's partially successful appeal to Her Majesty in Council. In this case, Mr Pete Robinson was killed during a robbery. Mr Ruddock was said to have admitted to tying the hand and feet of the victim but said it was his co-accused who had used a knife to cut the victim's throat. At trial, he denied any knowledge of the incident in which Mr Robinson had been killed. Their Lordships identified as a defect in the summation the fact that the jury was not directed that if they accepted that Mr Ruddock was a party to the robbery, this did not automatically mean he was a party to the killing. Counsel for the appellant and the Crown submitted that the facts of the case were consistent with the law concerning a conviction for manslaughter. This court found that based on an assessment of the facts, the evidence on the prosecution's case suggested that Ruddock was voluntarily involved in a robbery where violence was intended but possibly lacked the intent to kill. In those circumstances where the intended victim was killed during the transaction, a conviction of manslaughter should have been left as an alternative verdict for the jury's consideration (see para. [22]). As a consequence, a

conviction for manslaughter was substituted and a sentence of 17 years' imprisonment at hard labour was imposed.

[68] The applicants in **Troy Smith et al** were convicted of murder, which occurred during a robbery. The deceased was at a shop in Rock Hall Square, Saint Ann, when a silver-gray Nissan panel van stopped some distance away. Mr Smith and Ms Williams exited the vehicle, which was driven by Mr Buchanan and the vehicle drove off. Mr Smith and Ms Williams left the immediate area but returned shortly after. The Nissan panel van also returned, and Mr Buchanan exited the same and entered the shop, purchasing two "Tiggaz" cheese trix before returning to the Nissan panel van. The Nissan panel van remained there with the engine running. Sometime thereafter, Ms Williams approached the side of the shop and demanded that the deceased give her his gold chain. Mr Smith also came and demanded the chain. He then took a rifle from his bag, shot the deceased in the head, removed the chain and fled to the Nissan panel van driven by Mr Buchanan. An alarm was raised and the Nissan panel van and its occupants were intercepted by police. The rifle and the deceased's chain were recovered. In relation to Mr Buchanan, this court found that there was evidence which could reasonably point to a common enterprise to commit the offence of robbery, but there was no evidence that he intended to be a party to the murder. In those circumstances, this court found that directions on manslaughter ought to have been left to the jury. It, therefore, quashed Buchanan's conviction for murder and substituted one for manslaughter.

[69] From our review of these cases, it is clear that a murder conviction will be set aside and one for manslaughter substituted where there is no evidence that the secondary party intended to be a party to the murder. The instant case is distinguishable from all those cases as, firstly, there was clear evidence suggestive of a joint agreement to take and carry away the deceased with a view to interrogate him into telling them where the missing gun was. This developed into an intention not to release the deceased so as to avoid possible harm to them and their loved ones given his threats of what would happen if he was released. It must have been within the contemplation of Mr Williams, Mr Hemmings, and Mr Findlater that the only way to prevent that was by causing grievous

bodily harm to the deceased or by his death. It is to be noted that the learned judge demonstrated an appreciation of the obligation to leave for the jury's consideration any possible defence that arose on the evidence and directed them on the issue of provocation. She instructed them that it was open to them to return a verdict of manslaughter if they found that the appellants were provoked.

[70] Ultimately, as has been already discussed, there was no evidence of Mr Findlater, Mr Hemmings and Mr Williams doing anything that can be viewed as distancing themselves from Mr Scott's action. While they did not admit to holding the deceased, there is no indication that they released him after his initial resistance such that he could be stabbed 42 times. They admitted that they then assisted in disposing of his body. The actions of Mr Findlater, Mr Hemmings and Mr Scott went beyond merely questioning the deceased for the return of a gun to, according to them, a recognition of a need to protect themselves and their families from what could happen in the event of his release. Accordingly, there was nothing on the evidence which would oblige the learned judge to leave the issue of lack of intent to participate in the murder for the jury's consideration. The learned judge would not have erred in failing to give directions to the jury that they could have convicted the appellants of manslaughter on that basis. Accordingly, there is no merit in grounds 2, 3, 4, 6, 7, 8, 10, 11 and 12.

Issue 3: Sentence (grounds 13 and 14)

Submissions

[71] Lord Gifford acknowledged that the murder was brutal. Nonetheless, he argued that given the exceptional character and reputation of the appellants, a determinate sentence of a fixed term of years would have been appropriate and not a sentence of life imprisonment. King's Counsel noted that the appellants were all 19 years old at the time of the offence and 26 years old at the date of sentence. He pointed to the absence of previous convictions and good character evidence in their favour. He contended that it was clear that the offence committed was out of character and unpremeditated. Lord Gifford pointed out that if the sentences passed were upheld, Mr Scott would be

imprisoned until 2047 at the age of 56, and the three other appellants until 2042, at the age of 51 before they could apply for parole. He went on to point out that by contrast, if a determinate sentence of 30 years were to be passed on Mr Scott he would be able to apply for parole in 2027, aged 37 and for the others, they could apply for parole in 2025 aged 35. King's Counsel concluded that, in all the circumstances, the sentences were wrong in principle and/or manifestly excessive.

[72] Ms Ferguson conceded that although the learned judge appreciated the relevant sentencing principles and had them in mind, she did not adhere to the appropriate sentencing principles and did not identify a starting point. Nonetheless, Crown Counsel posited that the sentences imposed were within the range of sentences usually given for murder in these circumstances and so were not manifestly excessive and should not be disturbed.

Discussion and analysis

[73] As indicated, on 9 January 2017, a sentence of life imprisonment was imposed on the appellants with Mr Scott being eligible for parole after serving 30 years and Mr Findlater, Mr Hemmings, and Mr Williams being so eligible after serving 25 years. Before we can interfere with the sentence imposed on the appellants, we must be satisfied that the learned judge erred in principle in conducting the sentencing exercise, and arrived at a sentence that was manifestly excessive in all the circumstances (see **R v Kenneth John Ball** (1951) 35 Cr App Rep 164; **Meisha Clement v R** [2016] JMCA Crim 26; **Daniel Roulston v R** [2018] JMCA Crim 20; and **Wayne Lewis v R** [2021] JMCA Crim 3).

[74] In sentencing the appellants, the learned judge said that she had regard to punitive, deterring, and rehabilitative aspects of sentencing. She identified aggravating and mitigating factors. She determined that a non-custodial sentence was not one she could impose in law for murder and noted that the prescribed statutory minimum was 15 years' imprisonment. She said that she would not impose the 50 years that perhaps the sort of behaviour in this case deserved so she found that the sentence would have to fall

somewhere between 15 and 50 years. She went on to say that she believed an appropriate sentence for each appellant was life imprisonment.

[75] There was, however, no indication that she considered any starting point in considering her pre-parole period. The appellants were on bail when the trial commenced and were taken back into custody during the trial, but there was no indication that credit was given to them for time spent in custody before being sentenced. In our view, therefore, the learned judge sufficiently erred in principle in conducting the appellants' sentencing exercise, thus warranting the court's conducting its own sentencing exercise and determining whether the sentences imposed were excessive.

[76] Section 2(2) of the Offences Against the Person Act ('OAPA') provides that a person who commits murder in these circumstances is to be sentenced in accordance with section 3(1)(b) of the OAPA which provides that persons convicted of murder falling within section 2(2) "shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years". If a person is sentenced for murder pursuant to section 3(1)(b) and a sentence of life imprisonment is imposed, the minimum pre-parole period is 15 years (see section 3(1C)(b)(i)), but if a term of years was imposed, the minimum pre-parole period should not be less than 10 years (see section 3(1C)(b)(ii)).

[77] In a recent decision of this court, **Roland Bronstorph v R** [2024] JMCA Crim 29, the principles governing the imposition of a sentence of life imprisonment pursuant to the provisions of section 3(1)(b) of the OAPA was considered in a comprehensive manner. Although the learned judge would not have benefitted from the guidance given in this recent decision, the decision is most relevant in dealing with the issues raised here. McDonald-Bishop JA (as she then was) writing on behalf of the court, in an extensive review of the legal principles governing the imposition of life imprisonment considered the English case law, and the development of the English common law in the Commonwealth. In summing up the applicable principles, she stated:

"[74] Having considered the above cases, it appears that a number of instructive principles can be utilised to inform the exercise of a sentencing judge's discretion in determining whether to impose a sentence of life imprisonment for section 2(2) murder. They are summarised as follows:

(1) Historically, a sentence of life imprisonment could only be imposed where all three of the Hodgson criteria were satisfied. The common law has, however, developed and the Hodgson criteria are no longer considered to be an exclusive judicial guide to imposing a sentence of life imprisonment (see **Essa** and **Alleyne**).

(2) The Hodgson criteria may be utilised by a sentencing judge to justify imposing a sentence of life imprisonment in cases where an offender is mentally unstable. However, where an offender is mentally normal, the Hodgson criteria are irrelevant and the offender should be sentenced in accordance with the established sentencing principles and methodology having regard to the facts of the case (see **Essa**)

(3) When determining whether a sentence of life imprisonment is appropriate in any case, the following guidance is applicable:

(a) The imposition of any sentence, including a sentence of life imprisonment, is a matter of the discretion of the sentencing judge bearing in mind the classical principles of sentencing, and the need to impose a sentence that is tailored to the circumstances of the offence committed and the particular offender (see **Meisha Clement**, **R v Sydney Beckford and David Lewis** and **Patrick Green v R**)

(b) Life imprisonment is the maximum sentence permissible for section 2(2) murder. Therefore, such a sentence is reserved for 'the worst examples of [section 2(2) murder] likely to be encountered in practice'. Where a murder does not fall within that category, a determinate sentence should be imposed (see **R v Kenneth Ball** and **Meisha Clement**).

(c) The court should weigh in the balance (i) the gravity of the offence before the court; (ii) likelihood of further offending; and (iii) the gravity of further offending should such occur. The crucial and overarching question

to be considered is whether the gravity or serious nature of the offence which was committed and/or the dangerousness of the defendant, warrants placing the defendant under the jurisdiction of the state for the remainder of his or her life through the imposition of a life sentence (see **AG's Ref No 32** and **R v Chapman**).

(d) The gravity or serious nature of the offence committed will, in some cases, provide a sufficient basis on which to impose a life sentence. There is no closed list of circumstances in which the seriousness of the offence committed will justify the imposition of a life sentence (see **Alleyne** and **Gregory August and Alwyn Gabb v The Queen**).

(e) The dangerousness of a defendant may be established with the use of medical evidence to show the defendant's mental instability or instability in character. Such evidence is, however, not required for the imposition of a life sentence. In assessing the dangerousness of the offender the court should consider whether, on all the facts, it appears that the defendant is likely to present a serious danger to the public for an indeterminate time (see **AG's Ref No 32**).

(f) A plea of guilty, of itself, does not exclude the imposition of a life sentence if the seriousness of the offence, the dangerousness of the offender and the interests of the administration of justice warrant its imposition (see **Alleyne**)."

[78] At para. [76], McDonald-Bishop JA referred to the Eastern Caribbean Supreme Court Practice Direction No 3 of 2021 ('ECSC PD NO 3') where at para. 4 a non-exhaustive list of circumstances that may be considered so serious as to warrant the imposition of a life sentence. She opined that "para. 4 of the ECSC PD No 3 can be of invaluable assistance to our courts, as an appropriate starting point for determining when the seriousness of an offence may result in the imposition of a life sentence". Of particular significance to this case, amongst the circumstances listed are: the abduction of the victim, a murder involving sadistic conduct, and a murder involving prolonged suffering or torture.

[79] In the instant case, the appellants took the deceased away, at night, to question him over a firearm which they ought not to have had in the first place. They restrained him. When he armed himself in a bid to escape, they knew that the deceased could not be allowed to escape fearing what would befall them and their families, and so, Mr Scott stabbed the deceased. The others remained and did not admit to releasing the deceased as he was brutally stabbed 42 times. When he was dead, they stripped him naked and disposed of his body. They burnt their clothes and attempted to avoid initial detection. This murder could be deemed as one of the worst examples of the offence. In our view, the circumstances are sufficiently grave and serious to justify the imposition of a sentence of life imprisonment.

[80] The next task is to determine whether the pre-parole period stipulated by the learned judge was manifestly excessive. In determining this period, the learned judge was required to choose a range, select a starting point within that range, weigh up the aggravating and mitigating factors and to allow credit for time spent on remand pre-trial and sentence. The Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines'), do not indicate a usual starting point for murder. However, they do state that the range of sentences for murder, in these circumstances, is 15 years to life imprisonment. We would adopt that range but must acknowledge that the learned judge would not have had the benefit of the Sentencing Guidelines when she dealt with this matter in January 2017.

[81] In the circumstances of this case, where a killing in such a brutal murder occurred out of dispute surrounding an illegal firearm, a starting point of between 19 to 25 years is appropriate.

[82] The aggravating features are that the deceased was taken away by the appellants to have a deliberate and hostile confrontation with him. This confrontation took place at night in isolation. He was restrained. In a bid to escape, he armed himself with a knife. However, he was disarmed. Violence was used as Mr Williams hit him on the foot with a stone. The role of each appellant in the murder must be considered in relation to each.

The manner in which they disposed of his body must be another factor, and crucially relevant too would be the steps taken by them to avoid detection by burning their clothes.

[83] In mitigation, it must be noted that the appellants had no previous convictions, were all gainfully employed, and had good community reports. We consider too that they were teenagers when they committed the offence. As Lord Gifford submitted the offence they committed seemed out of character given their antecedents.

[84] When these aggravating and mitigating features are balanced, it is evident that the aggravating features would far outweigh the mitigating ones. The resulting pre-parole period for Mr Scott would fall within the range of 30-35 years and 25-30 years for Mr Findlater, Mr Hemmings and Mr Williams. Consequently, we could not, therefore, say that the sentences imposed by the learned judge were manifestly excessive, and we see no basis to disturb them.

[85] The appellants were remanded on 21 November 2016 and sentenced on 9 January 2017. They would have spent one month, two weeks and five days in custody pre-sentence. Credit must be given to them for the time spent in custody (see **Meisha Clement v R** and **Daniel Roulston v R**). The Privy Council has stated that it should not be only "a form of words" but "an arithmetical deduction" (see **Callachand and Another v State** [2008] UKPC 49). This is a position also encouraged by the Caribbean Court of Justice (see **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ)). This arithmetical deduction would result in Mr Scott being eligible for parole after serving 29 years 11 months, one week and two days, and Mr Findlater, Mr Hemmings, and Mr Williams being so eligible after serving 24 years, 11 months, one week and two days.

Conclusion

[86] In all these circumstances, we would therefore make the following orders:

1. The applications by the applicants Findlater, Hemmings and Williams for leave to appeal against their convictions are refused.
2. The appellants' appeal against sentence is allowed in part.
3. The sentences of life imprisonment imposed on the appellants are affirmed.
4. The minimum term of imprisonment stipulated by the learned judge for each appellant to serve before being eligible for parole is set aside.
5. The minimum term of imprisonment to be served by each appellant before being eligible for parole is reduced by one month, two weeks and five days, to allow credit for the time spent in pre-sentence custody.
6. The minimum term to be served by each appellant before being eligible for parole,shall be as follows:

   (a) Mr Scott is eligible for parole after serving 29 years, 11 months, one week and two days.

   (b) Mr Findlater, Mr Hemmings and Mr Williams are eligible for parole after serving 24 years, 11 months, one week and two days.
7. The sentences are reckoned to have commenced on 9 January 2017, the day they were originally imposed.