[2017] JMCA Crim 33

JAMAICA

IN THE COURT OF APPEAL

SITTING IN LUCEA IN THE PARISH OF HANOVER

SUPREME COURT CRIMINAL APPEAL NO 43/2015

BEFORE: **THE HON MR JUSTICE MORRISON P**
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE P WILLIAMS JA

ANDREW PARKER v R

Mr Trevor Ho-Lyn for the appellant

Miss Paula V Llewellyn QC and Miss Kameisha Johnson for the Crown

10, 11, 14 July and 26 September 2017

F WILLIAMS JA

[1] This is an appeal against conviction and sentence arising from the appellant's trial in the Circuit Court for the parish of Manchester. He was convicted of the offence of murder on 15 June 2015 after a trial by judge and jury and sentenced on 19 June 2015. The sentence imposed was life imprisonment, with the stipulation that he serve 35 years before becoming eligible for parole.

[2] We heard arguments in the matter in the parish of Hanover on 10 and 11 July 2017 and, on 14 July 2017, made the following orders:

"(i) The appeal is dismissed.

(ii) The conviction and sentence are affirmed.

(iii) The sentence is to be reckoned as having commenced on 19 June 2015."

[3] The appellant's conviction arose out of an attempted robbery and a resultant murder around 8:00 am on 15 October 2011, along Bonitto Crescent, Mandeville, in the parish of Manchester. At that time at a small grocery shop, the shopkeeper and two customers, all of whom were known to one another, were conversing when three men approached. One of the men (who, as it turns out, was the appellant) remained at the doorway to the shop, after greeting one of the customers (LR) who had been there before, whilst the others entered the shop. LR was later the main witness for the prosecution. The other two men who entered the shop were armed with guns. After announcing that it was a robbery, one of them (Wizzy) approached the customer seated in the shop (a businessman and their intended target) and held on to him. A struggle ensued between them, shots were heard, and both the robber and the businessman (who was a licensed firearm holder) were killed. The appellant was shot and injured and the other would-be robber (Pitbull) escaped.

[4] We use the names "Wizzy" and "Pitbull" to refer to the gunmen, as they are the names to which they were referred by the appellant. After being shot and injured in the incident and whilst in hospital, the appellant gave the police a statement. He also later gave another statement on caution and participated in a question-and-answer interview in which he gave information on the attempted robbery and eventual murder. A summary of the account given by the appellant is to the effect that Wizzy was the

one who planned the robbery. Pitbull telephoned the appellant when it was time to carry out the plan. On the fateful morning, he was armed with a knife; Wizzy was armed with what he referred to as a "clip gun" (taken to mean a semi-automatic pistol) and Pitbull was armed with what he referred to as a "spin barrel gun" (which we take to mean a revolver). In relation to the events that unfolded when the struggle between Wizzy and the now deceased businessman (EH) started, the appellant at first gave one account which he changed in his later statement. The first account was that Wizzy was the one who had stabbed EH during the course of the struggle. The final account was that, he, the appellant, went to Wizzy's assistance and stabbed EH on Wizzy's request.

[5] It is convenient to mention at this point that the cause of death was described by the pathologist, who gave evidence at the trial, as being: "multiple gunshot and stab wounds". The stab wounds were consistent with being inflicted with a knife. The pathologist spoke to seeing on the body of EH "two perforating gunshot wounds, and ten stab wounds and one incise wounds [sic]". About three of the stab wounds were of such depth as to have penetrated the heart. One wound, for example was 19.5 centimetres deep; another 19.3 and another 16 centimetres. Most of them were to the area of the chest of the deceased.

[6] It is also appropriate to state here that, apart from placing himself at the scene in his statements and answers, the appellant was also identified by the main witness, LR, in a video identification parade. No challenge was made to an important bit of evidence given by LR– that is, that the appellant, whilst Wizzy and the businessman were engaged in the struggle, said to Wizzy: "shot di bwoy and come".

[7] It is useful as well to mention at this point that no issue was raised in the trial about the fairness of the identification parade or with the fairness or voluntary nature of the statements and answers that the appellant gave to the police. These were the words of the appellant given in his unsworn statement: "On this matter which I am now facing the Court I was there but I have no intention of killing anyone".

The grounds of appeal

[8] Three grounds of appeal were urged on us by Mr Ho-Lyn for the appellant. They read as follows:

> "1. In the light of the ruling in the cases of Joggee [sic] & Ruddock The Learned Trial Judge (LTJ) failed to deal, adequately, with the required intent needed to ground a conviction for murder incases where the Appellant is a secondary party.
>
> 2. The Learned Trial Judge (LTJ) failed to leave for the consideration of the jury the issue of manslaughter based on the circumstances of the case together with the Appellant's defence of lack of intention to kill.
>
> 3. The Learned Trial Judge (LTJ) failed in his consideration of the appropriate sentence to balance the mitigating factors against the aggravating factors and did not consider the usual sentences imposed for offences such as the one before him further the sentence determined had no structured basis and conveys the impression that the figure was merely plucked out of the air in consequence therefore the resulting sentence imposed was manifestly excessive in all the circumstances."

[9] Grounds 1 and 2 may best be considered together, as, that is how the two grounds were argued; and, to some extent, they both concern the application of the case of **R v Jogee and Ruddock v The Queen** [2016] UKSC 8 and [2016] UKPC 7.

In the briefest of summaries, that case involved a consideration, or, perhaps more accurately, a reconsideration of the law relating to directions on the intent of secondary parties in cases in which a person is killed in the course of a robbery, assault or other criminal act involving more than one person present. To use another term coined by Professor Sir John Smith, it involves directions concerning "parasitic accessory liability".

[10] The pith and substance of the law that preceded **R v Jogee and Ruddock v The Queen** might best be seen in the summary that paragraph 62 of that judgment provides. It reads as follows:

> "62. From our review of the authorities, there is no doubt that the Privy Council laid down a new principle in **Chan Wing-Siu and others v R** [1985] AC 168 when it held that if two people set out to commit an offence (crime A), and in the course of it one of them commits anotheroffence (crime B), the second person is guilty as an accessory to crime B if he foresaw it as a possibility, but did not necessarily intend it. ..."

[11] In **Jogee and Ruddock**, the court directed that the test should be not just foreseeability by the reasonable man; but rather that the focus should be on whether the secondary party had a specific intent to kill. As Mr Ho-Lyn correctly submitted, the proper current direction in a case of this nature is to be found in the Supreme Court of Judicature of Jamaica-Criminal Bench Book. That direction is set out in chapter 7-4, paragraph 28 as follows:

> "28. Where the prosecution allege that there was an agreement between D and P to commit crime A, in the course of doing which P went on to commit crime B, with which D is also charged, a direction based on the following will be appropriate: If D agrees with P to commit crime A, in

> the course of doing which P also commits crime B, D will also be guilty of crime B if D shared with P an intention that crime B, or a crime of that type, should be committed if this became necessary. It is for the jury to decide whether D shared that intention with P. If the jury were satisfied that D must have foreseen that, when committing crime A, P might well commit crime B, or a crime of that type, it would be open to the jury to conclude that D did intend that crime B should be committed if the occasion arose. Whether or not the jury thinks it right to draw that conclusion is a matter entirely for them... ."

Submissions

For the appellant

[12] In the light of the decision of **Jogee and Ruddock**, Mr Ho-Lyn submitted that the learned trial judge in his summation to the jury ought to have gone further than merely giving (as he did) the classic direction on intention and how the intention of a defendant is ascertained. The summation is deficient, he submitted, given the ruling in **Jogee and Ruddock**. What the jury should have been directed to consider, he submitted, was whether, during the struggle between Wizzy and EH, the appellant, in going to Wizzy's assistance, had an intention to kill or cause serious bodily harm; or was just assisting Wizzy to get free from the grasp of EH. The learned trial judge, he further submitted, ought to have left the possibility of a manslaughter verdict to the jury. It was noted that the nature of the appellant's defence was that he did not intend to kill.

For the Crown

[13] On the other hand, the submissions of Miss Llewellyn QC were aimed at persuading the court to view the appellant, not as a secondary party at all, but rather

as a principal in the first degree. This arose primarily, it was submitted, from the infliction of stab wounds to the deceased by the appellant. In support of this, the case of **Osland v R** [2000] 2 LRC 486, was cited, in which McHugh J at paragraph [70], observed as follows:

> "At common law, a person who commits the acts which form the whole or part of the actus reus of the crime is known as 'a principal in the first degree'..."

[14] Also relied on in the same case was the dictum of Callinan J at paragraph [214], which reads as follows:

> "There is no question that there may be more than one principal in the first degree to murder..."

[15] The appellant's shout of encouragement to Wizzy to: "shot di bwoy and come", coupled with his infliction of 10 stab wounds, elevated him, it was submitted, from a "mere" secondary party to a principal in the first degree.

[16] Further, or in the alternative, the Crown submitted that the case was properly one of common design and that the learned trial judge correctly directed the jury accordingly. That submission was based primarily on the following part of the learned trial judge's summation at page 152, lines 2-8:

> "It is you who must be satisfied, based on the evidence that you have heard, whether he is guilty or not guilty of murder. Because he was there he said and he encouraged, based on if you accept the evidence of the witness, as being true, that he encouraged Wizzy to shoot di man and the man died."

Discussion

[17] The main part of the learned trial judge's summation that concerns these grounds of appeal reads as follows: (line 8 of page 123 to line 9 of page 124 of the transcript):

> "Intention is not capable of positive proof. The only practical way of proving a person's intention is by inferring it from his words or conduct. In the absence of evidence to the contrary you are entitled to regard the accused as a responsible man, that is to say, an ordinary responsible person capable of reasoning. In order to discover his intention therefore, the absence [sic] of any expressed intention, you look at what he did and ask, whether as an ordinary responsible person, a reasonable man, he must have known that death or really serious bodily injury would result from his actions.
>
> If you find that he must have known then you may infer that he intended the result and this would be satisfactory proof of the intention required to establish the charge of murder. It is the actual intention of the accused that you are trying to discover so you must take into account any evidence given by him explaining his actions and stated what was his intention or perhaps his absence of intention, then on the testimony, on the totality of the evidence in the case you come to your decision whether the required intention has been proved."

[18] At page 149, lines 9-23 of the transcript, the learned trial judge further directed the jury on the matter of intention as follows:

> "So you have to decide what was the intention of the accused man when he went to the aid of Wizzy. Now, if you have ten stab wounds what conclusion can you come to. It's a matter for you.
>
> Was it the intention to cause death or to cause serious bodily harm. That is a matter for you to decide, because if you decide when you are deliberating that it was his

> intention to create, to kill the man or to create serious bodily harm, then murder would be the correct decision, because who else would you say inflicted those injuries. It's not the witness, and the three men went there armed, two with guns and one with knife."

[19] Earlier in the summation (page 125, lines 4-9), the learned trial judge also stated the appellant's defence to the jury as follows:

> "Now, in this case Madam Foreman and Members of the Jury, the accused man gave an unsworn statement. In that statement, he said I was there but I had no intention to kill him. So this is what he is actually saying, in that, he lacked the necessary intention to kill."

[20] It will be seen, therefore, that the directions that the learned trial judge gave on the issue of intention were the standard ones given in the usual case where proof of intention is required, without what might be regarded as the "complications" or somewhat peculiar features of this case. These features, strengthened in effect by the fact of their occurrence together, are: (i) the appellant's shout of encouragement or instruction to Wizzy to "shoot di bwoy an come"; (ii) the appellant's infliction of 10 stab wounds to the body of EH (some of which might have featured in the cause of death); and (iii) the appellant's express declaration in his unsworn statement that he did not intend to kill anyone.

[21] If we define manslaughter as an unlawful killing not accompanied by an intention to kill or do grievous bodily harm, then it will be seen that, at least in theory, the defence that was being put forward by the appellant at his trial, would, if accepted, have raised the possibility, however remote, of a conviction for the offence of manslaughter. It is apparent, therefore, that the appellant in this case was entitled to

have had manslaughter left for the jury's consideration. By not having left the possibility of a verdict of manslaughter to the jury, the learned trial judge, unfortunately, fell into error.

[22] However, we are unable to say that the appellant was entitled to directions given in accordance with the learning stated in **Jogee and Ruddock.** The main reason for this is that we find that there is merit in Miss Llewellyn's submissions that the appellant's actions in the incident would make him more properly to be regarded as a principal in the first degree, rather than a secondary party. I would hasten to add, however, that, even had the learned trial judge been in error in not giving directions in accordance with **Jogee and Ruddock**, given the particularly unusual facts and circumstances of this case, paragraph 100 of the judgment of **Jogee and Ruddock** would have had to be stated and considered:

> "100. The effect of putting the law right is not to render invalid all convictions which were arrived at over many years by faithfully applying the law as laid down in **Chan Wing-Siu** and in **R v Powell and R v English** [1999] 1 AC 1. The error identified, of equating foresight with intent to assist rather than treating the first as evidence of the second, is important as a matter of legal principle, but it does not follow that it will have been important on the facts to the outcome of the trial or to the safety of the conviction." (Emphasis added)

[23] A question that we may consider is whether the learned trial judge's omission to have given directions in keeping with what we now know to be the current correct directions on secondary liability after **Jogee and Ruddock** (had such directions been required), would have resulted in the appeal being allowed. In other words, can we

reasonably say that the **Jogee and Ruddock** direction, had it been required in this case but not given, would have been important on the facts to the outcome of the trial; or to the safety of the conviction?

[24] In a consideration of this matter, it is important to bear in mind the following features of this case: (i) the evidence on the Crown's case consisted in large part of unchallenged admissions on the part of the appellant placing himself at the scene of the premeditated would-be robbery and of his participation in the killing of EH; (ii) apart from the matter of sentencing, the only challenge raised by the appellant in two of his three grounds of appeal arises primarily from a re-statement of the law as a consequence of the court's ruling in **Jogee and Ruddock** and that this re-statement occurred subsequent to the trial; and (iii) in the trial which ran over four days and in which six witnesses were called on the Crown's case, the jury is recorded as having retired at 11:43 am and returning at 12:30 pm – thus taking about 47 minutes to return a unanimous verdict of guilty.

[25] In the light of these considerations, we were decidedly of the view that the omission to give **Jogee and Ruddock** directions, had they at all been required, would not have affected the safety of the conviction. This matter is somewhat similar to, although not on all fours with, a fairly-recent decision of the Privy Council in which **Jogee and Ruddock** was reviewed. That is the case of **Lester Pitman v The State (Trinidad and Tobago) and Neil Hernandez v The State (Trinidad and Tobago)** [2017] UKPC 6 – in particular the appeal relating to Pitman, which was reviewed as a result of the decision in **Jogee and Ruddock**. In Pitman's case, he had been

convicted of a triple murder committed in the course of a robbery. The victims' throats had been cut. Somewhat similar to the facts of this appeal, the case against Pitman featured a confession made by him. The difference, however, (which perhaps makes the instant appeal stronger against the appellant) was that Pitman, whilst indicating his participation in the robbery, sought to put the blame for the killings entirely on his co-defendant, Agard. He said that after the victims had been robbed, they were put in a bathroom, tied and gagged. When they (the robbers) were ready to leave, he said, Agard produced a knife, went into the bathroom, and when he next looked, he saw the three bodies there. Lord Hughes, writing on behalf of the Board, made the following important observations at paragraphs 22 and 23 of the decision:

> "22. The trial judge faithfully directed the jury in accordance with the law of joint responsibility as it was understood at the time (**Chan Wing-Siu v The Queen** [1985] AC 168 and **R v Powell and English** [1997] UKHL 45; [1999] AC 1). That involved the direction that the defendant would be guilty of murder as a secondary party if he continued to participate in the robbery with the foresight that his accomplice might intentionally kill or do grievous bodily harm. It is now established by **Jogee and Ruddock** that the correct condition for guilt is that he intended, whether conditionally or otherwise, that there should be at least grievous bodily harm. It follows that there was to that extent a misdirection. The Board already had before it an appeal against conviction for which leave had been given. In those circumstances it permitted Pitman to argue that he should be given leave to appeal additionally, out of time, on this new point.
>
> 23. ...Pitman was plainly guilty of murder in any event. The jury clearly accepted the confession. On that basis, he was unarguably guilty of robbery, an arrestable offence involving violence, and the triple deaths were occasioned in the course or furtherance of it. The faint suggestion that

> Pitman's participation in the robbery was over before the killings took place is untenable." (Emphasis added).

[26] It will be seen that the facts, as they presented themselves in this appeal, were not suited to a successful praying in aid of the case of **Jogee and Ruddock**. This is due to the appellant's shout to Wizzy to shoot EH; and, more importantly, his infliction of 10 stab wounds, at least three of which penetrated the heart of EH and at least contributed to the cause of death. In contrast, in the case against Jogee, the evidence was to the effect that, whilst Jogee might have been armed with a bottle and shouted encouragement to his co-defendant, Hirsi, it was Hirsi who stabbed the deceased, causing his death. Similarly, in the case against Ruddock, the substance of the evidence was to the effect that, whilst Ruddock had tied the hands and feet of the deceased, it was his co-defendant, Hudson, who had cut the throat of the deceased. There was, therefore, (as previously observed) some merit in the Crown's submission that the appellant in this matter, by himself inflicting the stab wounds, could properly be regarded as a principal in the first degree.

The proviso

[27] In the event that we are wrong in our primary conclusion, and in light of our finding that, based on the defence, the learned trial judge omitted to leave for the jury's consideration the possible alternative verdict of manslaughter, it may be appropriate to consider the question of the application of the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act (JAJA). The relevant part of the section reads as follows:

> "14.-(1) The Court on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:
>
> Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred." (Emphasis added)

[28] Factors relevant to a consideration of the application of the proviso have been discussed by this court in a number of cases. Among them are two recent decisions that are helpful in succinctly setting out the main considerations. These decisions are: (i) **Mervin Jarrett v R** [2017] JMCA Crim 18, delivered on 31 March of this year; and (ii) the slightly more recent decision of **Vince Edwards v R** [2017] JMCA Crim 24, delivered on 23 June of this year.

[29] In **Mervin Jarrett v R**, at paragraphs [35] to [38], Morrison P reviewed the main Privy Council decisions on the point, which are: **Stafford and Carter v The State** (1998) 53 WIR 417; and **Dookran and another v The State (Trinidad and Tobago)** [2007] UKPC 15. The main considerations to be gleaned from this review are: (i) that the test for the application of the proviso is whether the jury properly directed would inevitably have convicted; and (ii) in that review (as pointed out by Lord Hope in **Stafford and Carter v The State**), "the application of the proviso will depend upon an examination of the whole of the facts which were before the jury in the evidence".

[30] In **Vince Edwards v R**, Brooks JA at paragraphs [125] to [131] also had regard to the cases reviewed by Morrison P in **Mervin Jarrett v R**, along with the cases of: (i) **Jason Lawrence v The Queen** [2014] UKPC 2; and (ii) **Rex v Haddy** [1944] KB 422; (1944) 29 Cr App Rep 182. The result of this review was a confirmation of the test for the application of the proviso as the inevitability of the conviction had the error not been made.

[31] In these two decisions of this court, the proviso was not applied. However, it was applied in the case of **Leslie Moodie v R** [2015] JMCA Crim 16. In that case, whilst acknowledging deficiencies in the summation in relation to self-defence, Morrison JA (as he then was) observed at paragraph [140] of the judgment:

> "[140]...For all the reasons which we have attempted to state, we consider that, as this court said in **R v Michael Adams and Frederick Lawrence** SCCA Nos 35 and 36/1993, judgment delivered 7 April 1995, at page 16, any deficiencies in the learned trial judge's summing up 'paled into insignificance when viewed in the light of the overwhelming evidence put forward for the prosecution against the appellant, and...no substantial miscarriage of justice has actually occurred'. To the extent that it is necessary to do so, therefore, we would apply the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act."

[32] It is our view that, for similar reasons, and to the extent that it might at all be necessary, the proviso ought to be applied in this case. Having carefully reviewed the evidence, we are satisfied that no substantial miscarriage of justice has occurred.

[33] What remains to be discussed, therefore, is the matter of sentencing.

Sentencing

[34] The appellant's complaint in respect of ground 3 of the grounds of appeal, challenging the sentence imposed as being manifestly excessive, might be found at page 6 of the appellant's skeleton arguments. That challenge is as follows:

> "As stated in the case of Sylburn Lewis v Regina (SCCA 2 of 2014) by Morrison P. *'in the case of Meisha Clement v R, the court adopted the approach to sentencing previously articulated by Harrison JA, as he then was, in R v Everald Dunkley; which is that, having decided that a sentence of imprisonment is appropriate in a particular case, the sentencing judge's first task is to 'make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any factors that will serve to influence the length of the sentence, whether in mitigation or otherwise'.*
>
> This was not done in this particular case. The logical conclusion to its absence was that the determination of the sentence was arbitrary because it clearly did not follow any structured methodology."

[35] In response, the Crown placed reliance on a number of cases, including: (i) **R v Alpha Green** (1969) 11 JLR 283 and **R v Gary Hoyes** (1988) 25 JLR 373, in seeking to remind the court of the principles by which it ought to be guided in considering appeals against sentence. Reference was made to a quotation from **R v Ball** (1951) 35 Cr App Rep 164 (referred to in **R v Alpha Green**) in which it was stated that:

> "In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he mayhave chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed

> there was a failure to apply the right principles then this Court will intervene."

[36] In an effort to demonstrate that the sentence imposed was not excessive, Miss Llewellyn referred us to the case of **Wayne Campbell v R** [2010] JMCA Crim 11, in which the appellant was convicted of murder in furtherance of a robbery. A sentence of life imprisonment with a stipulation that he not become eligible for parole until he had served 30 years' imprisonment was deemed by this court to be fair in the circumstances. We were also referred to the case of **Calvin Powell and Lennox Swaby v R** [2013] JMCA Crim 28, in which the appellants' sentences of life imprisonment, with the stipulation that they were to serve 35 years before becoming eligible for parole were also deemed appropriate by this court in light of what was said to be the heinous nature of the killings.

Discussion

[37] We accept as a correct statement of what ought to inform this court's approach to reviewing sentences, the dictum of Forte JA (as he then was) in **R v Gary Hoyes**, in which, at pages 3-4 of the judgment, he stated:

> "...an appropriate sentence must relate to the circumstances of the offence and also have regard to the antecedents of the accused.
>
> The court must therefore look to see if the sentence imposed comes within the usual range which relates to a particular offence."

[38] In relation to the range, we have had regard to sentences for the offence of murder that have either been approved by this court or substituted by this court for

lengthier sentences imposed by the court below. Those cases include the two cited by the Crown as well as that of **Rasheme Mendez and Tio Bamberry v R** [2015] JMCA Crim 2. In the last case, the appellants were convicted for a gun murder in which the deceased had been shot some 12 times in broad daylight in the presence of onlookers. The appellants' sentences of life imprisonment with the stipulation that they should not become eligible for parole until after serving 40 years' imprisonment were upheld by this court.

[39] The murder that resulted in this conviction and appeal arose from a planned attempt at a robbery of a businessman, who, whilst going about his lawful business, met his death by being shot twice and stabbed ten times, several of those stabs wounds penetrating his heart. The stab wounds were inflicted by the appellant. This occurred in a rural community about 8:00 in the morning and was carried out by men armed with guns and a knife.

[40] Additionally, a feature of this matter that is a cause for some concern is what is stated at page two of the social enquiry report that the court below would have considered in arriving at the sentence. That is that part of the interview with and personality appraisal of the appellant that reads:

> "He divulged that his statement to the police was so stated as aresult of pressure from the police and added that he did not lay a hand on the deceased, but rather attempted to take the jewellery from him. It was at that time that [he] was shot in the chest. Mr Parker again stated that he is not denying that he was not [sic] involved but is adamant that he did not kill anyone."

[41] It appears from this that the appellant, in spite of what appeared to be his initial show of frankness, displayed, after his conviction, an inclination to recant. This raises the question as to whether he can truly be said to be remorseful.

[42] We accept as well founded Mr Ho-Lyn's concern about the lack of a systematic approach to sentencing in this case (and, we note, in other cases). It is hoped that the guidance given in cases such as **Meisha Clement v R** [2016] JMCA Crim 26 and **Sylburn Lewis v R** [2016] JMCA Crim 30, (which in fairness to the learned trial judge in this case, were decided after this trial), might be accepted and used to direct the approach to sentencing by all sentencing judges. However, whilst the sentencing process was somewhat deficient, having regard to the range indicated by our review of the just-mentioned cases, we are unable to say that the appellant has discharged his burden by convincing us that the sentence in this case is manifestly excessive. It appears to us that the appellant would have been better served and would have received a lesser sentence had he entered a plea of guilty and concentrated his efforts on a plea in mitigation.

[43] It was for the foregoing reasons that we made the orders indicated at paragraph [2] hereof.