

22-FC6-10
(07)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CRIMINAL SIDE

INDICTMENT NO. 87/08 - A

THE QUEEN

V

**KIRKLAND HENRY
LARRY PRINSTON RICKETTS**

IN OPEN COURT
THE 27TH JANUARY, 1ST TO 5TH; 8TH TO 12TH AND 22ND FEBRUARY 2010
BEFORE THE HON. CHIEF JUSTICE

APPEARANCES: Miss Cheryl Richards QC, Solicitor General and Mrs. Kirsty-Ann Gunn, Senior Crown Counsel for the Crown

Mr. Ian Bourne QC instructed by Mr. Ben Tonner of Samson and McGrath for the defendant, Kirkland Henry

Mr. Robert Fortune, QC and Mr. Stephen Atherton instructed by Priestleys for the defendant Larry Prinston Ricketts

JUDGMENT

1. On 8th October 2008, Estella Scott Roberts marked her 33rd birthday.
2. On the night of Friday 10th October 2008, she met with her friends for a celebratory dinner at the Decker's Restaurant, on West Bay Road. Having already earlier that week celebrated with her husband and family, this evening

was planned as an outing with her closest girlfriends, a party of six; among them Rochelle Smith, Nadia Dilbert and Katherine Powery.

3. The group met at the Deckers Restaurant at around 8:30 pm and the evening proceeded as expected. Photographs taken by Rochelle Smith show the celebratory mood of the occasion and Katherine Powell shared souvenir birthday confetti which she had brought and which Estella liked to collect. Estella put some into her purse. As one might expect of a young successful executive woman, she was fashionably dressed for the occasion, wearing special items of jewellery including her diamond wedding band and designer shoes. In her purse she had a Cayman National Bank debit card and she carried a gold coloured Blackberry Curve cell phone along with a headset with two earpieces.
4. Contented with their celebrations, the group of friends left the restaurant at about 11:15 pm and walked together out to the curbside of the West Bay Road, where they paused to chat only momentarily.
5. They promised to meet again soon and made their way to their respective vehicles parked in the adjacent parking lot.
6. One by one they drove away from the parking lot. Except for Estella.
7. She was last seen by Rochelle Smith – who with Estella had seen the others off – walking towards the very rear of the car park furthest away from West Bay Road. There, by a terrible twist of fate, Estella's car had been parked in an area which was pitched in darkness.
8. As Rochelle Smith got into her own car and drove away, her last sight of Estella was of her walking into the darkness towards her car.

9. From the circumstances which have come to light, it is now known that as she got to her car, Estella came face to face with terror.
10. She was forcibly restrained, abducted and taken away in her car into the isolated reaches of the North of the Island, into the Barker's area. There she was raped and killed and her body incinerated in her car.
11. Estella not having returned home the night before, her husband Rayle Roberts, in his witness statement, explains how he had raised the alarm by first calling her friends, then family and then finally the Police. The alarm thus went out and the search to find her began.
12. The first physical sign of the horror that had befallen her was the discovery, on the morning of the 11th October, of her shoes, one foot scoured with drag marks, at the parking bay where her car had been parked the night before.
13. The search quickly spread out to the Barkers area, joined in by her friends. They had received information from Cable & Wireless where Estella worked, of cell site activity registered by her mobile phone from the Barkers area, in the early morning of 11th October.
14. Their search that morning in that area had however, to be abandoned, when their vehicles became bogged down in the muddy dyke roads which criss-cross the area.
15. It was then that Marine Park Enforcement Officer Nicholson, who regularly patrols the Barkers area, was called in to assist the search, leading to his discovery of the burnt shell of Estella's car and of the piteously charred and shrunken remains of her body in it; at half past noon on 11th October 2008.

16. Her body having been burnt beyond recognition, it could only be conclusively identified later by DNA comparison.
17. Her friends, determined to assist with what had become the investigation into her murder, returned to the Barkers area the next day, Sunday 12th October.
18. They made their way to the site where the burnt shell of her car had been discovered.
19. This was at the end of the dyke network called the Mangrove Buffer Road, which terminates in a dead end behind the dyke canal, at the rear of the housing development called “the Shores”.
20. At the point where the Mangrove Buffer Road ends, one can proceed to the other side of the canal by walking by a foot path but only after climbing over a wire fence. Beyond that fence and the canal (on the 11th October 2008 as shown in the photographs) were a mound of vegetation and a buffer of trees which had to be crossed before reaching onto the Shores development proper. As was confirmed by a visit to the *locus in quo* during the trial; whatever had transpired with the setting of fire to Estella’s car at the dead end of Mangrove Buffer Road, could not have been observed by someone then standing on the Shores behind the mound and buffer of trees.
21. The group of friends who had arrived along the Mangrove Buffer Road from the other direction, observed the scarred surface of the road from which the Police had by then remove the shell of the car.

22. On the ground between that spot where the front of the car would have been and the footpath to the shores, Rochelle Smith saw confetti; the same as that which Estella had placed in her purse at their dinner party on the night of the 10th.
23. Further along towards the Shores, in the area of the footpath, was found a set of headphones like those Estella used with her Blackberry cell phones.
24. Katherine Powery retrieved the headphones which she later handed over to the police.
25. The group of friends felt compelled to continue and as they approached the fence, they noticed fresh marks of marl left by a footprint along with fresh scratch marks, on the post about four feet above the surface of the pathway, indicating that the fence had been crossed recently.
26. The search was extended further throughout the Barkers area. The group went north to the beach area. There, on the 12th October and on their return on the 13th, at the end of one of the beach access roads, they discovered several items which became of further evidential importance in this case.
27. Strewn about the thick overgrowth alongside the road, their attention was first taken by what appeared to be “fresh” or “brand new” duct tape. Some of this was balled up and apparently discarded into the bushes; some found hanging from the branches.
28. Above, in the same clutch of bushes, on 13th October was found hanging a used condom, one end of which was stuffed back into the torn wrapper from which it had been taken.

29. Further along this road side; on the ground at the bush's edge, were found more pieces of the birthday confetti; other discarded condom wrappers and still more pieces of duct tape. The items discovered at this scene were brought to the attention of the police, photographed and recovered by officers Thornley and Codner and were later to become exhibits in the case.
30. This scene was some two miles by dyke roads, from the place where Estella's burnt car and body had been found. This, as other evidence would later confirm, was the place to which Estella had been abducted, gagged and tied with duct tape, raped and, according to one of two versions given in the cautioned statement of the defendant Henry, suffocated until she died.
31. The evidence also later confirmed that the vehicle was then driven from this place to the end of the Mangrove Buffer Road, where it was set on fire.
32. According to the DNA Specialist Mr. Noppinger, in his later report of his findings; dental remains from the body matched the dental records of Estella Scott Roberts and sparse remnants of blood recovered by the Police from her remains in the car, matched DNA retrieved from her hair brush and toothbrush obtained from her home.
33. While the cause of her death was given by Dr. Bruce Hyma the pathologist, generally as "homicide"; he also testified that the absence of any sign of the products of combustion in the airway of her lungs, suggested that Estella was not alive at the time of the burning of the car. The state of her lungs was also, he said, consistent only with an asphyxial kind of death; being deprived of oxygen to

breathe. He concluded that dying as a result of a plastic bag being tied over her head would be consistent with what he observed.

The Police Investigation

34. The things discovered and the location where they were found in Barkers on the 11th and 12th October were all documented by photographs taken by Scenes of Crimes officers Codner and Thornley.
35. The burnt shell of the car had been secured and searched by them both at the site on Mangrove Buffer Road and later, after it had been taken to the Police forensic garage.
36. The two front seats had been reclined as far back as they could go at some point in time before the vehicle was burnt and were found in that position.
37. Estella's diamond wedding band, shown in one of the photographs taken by her friends on the night of the 10th, was among the items of jewellery recovered. From among the burnt debris both at the site and from within the vehicle, were also recovered pieces of evidence which pointed to the vehicle having been set on fire after being splashed with an accelerant such as gasoline. From the downspout of the gas tank, a burnt piece of paper was recovered and from within the vehicle, the burnt remnants of a plastic gasoline container. Later, on the 16th October, Mr. Harvey Meshall, forensic fire investigator, found the remnants of the ring cap of a gasoline container among the burnt debris on the ground at the Mangrove Buffer Road site. He opined that all possible accidental causes of the fire were eliminated and that a burnt pattern on the external body work, as well as other

areas of origin of the fire, showed that accelerant had been spattered on the vehicle before it was lit.

38. Enquiries by the Police of Mr. David Berry, an acquaintance of Estella's and who also happened to have gone to the Deckers Restaurant on the night of the 10th, as well as enquires of employees of the restaurant; yielded descriptions of two men having been seen loitering about in the area of the car park during that night. Although not clear enough to identify either defendant, descriptions of at least one of the two men matched that of Kirkland Henry, as his unrefuted admissions to the Police later revealed.

39. By 15th October 2008, the Police had received further information of relevant cell phone activity from Cable & Wireless, relative to Estella's cell phones. It was that a Blackberry cell phone that had been officially issued to her (bearing identifying number IME1 #358-281-012-099-740 and subscriber number 926-1500) had registered on the network as making calls by use of a SIM card which was designated by Cable & Wireless for a different cell phone, one which had been issued with the subscriber number 939-1539. By that means, her Blackberry cell phone had been registered as making calls to another Cable & Wireless cell phone number 925-5828 registered to a Mr. Seaford Miller.

40. This bit of important information proved to be pivotal to the investigation.

41. It led Insp. Kim Evans on Saturday the 25th October to contact Mr. Seaford Miller who was later himself to testify at the trial.

42. Inspector Evans was given access to the call log of Mr. Miller's cell phone 925-5828, in which the calls from 939-1539 were logged. Mr. Miller also informed

him that the number 939-1539 belonged to his employee, the defendant Kirkland Henry.

43. At Insp. Evan's request, Mr. Miller there and then on 25th October 2008, telephoned the defendant Henry who answered and confirmed his location to be at a work site in the South Church Street area.
44. This information was immediately relayed to Det. Supt. Marlon Bodden. He, accompanied by two other officers, drove immediately to the given location at South Church Street.
45. There Supt. Bodden accosted and identified himself to Kirkland Henry; asking to see his cell phones. Henry produced two phones from his person, one, a gold Blackberry Curve and the other, a Samsung cell phone.
46. Henry purported to account for the Blackberry phone later that day at the Central Police Station. His account was to the effect that he had bought it less than a month before "*from a youth whery me know but not his name*". This was an account he was later to retract in a cautioned statement on the 27th and in a full cautioned interview on the 28th October 2008. The second cell phone recovered from his person – the Samsung, having the number 328-1612 – was also taken by Supt. Bodden and later proved also to be of evidential value in the investigation.
47. On the 25th October, Supt. Marlon Bodden, having managed to unlock the gold coloured Blackberry cell phone by a password (12345678) given by Henry; keyed in a code which he had been given by Cable & Wireless and immediately there was displayed on the screen the IMEI # 356-281-012-099-740 – thus identifying the phone as one of two which had been issued to Estella Scott Roberts. Henry

was then arrested by Det. Supt. Bodden on suspicion of theft and handling stolen goods. When cautioned he replied: *“What I will do is try to find the other guy so that you can speak to him too”*.

48. Henry's apartment was searched later on the 25th October and a Dell laptop computer, which had also been issued to Estella Scott Roberts by her employer Cable & Wireless, was found hidden in a compartment above the entrance door.
49. Items of his clothing were then also taken by Det. Sgt. Joseph Wright. A white Econoline Ford Panel Van which Henry used for his garden maintenance work with Mr. Seaford Miller was parked nearby. It was searched by Sgt. Codner and taken to the Central Police Station for safe keeping.
50. Henry was required to give a buccal swab for DNA comparison and was kept in custody on the 25th October.
51. For three hours, between 7:55 pm to 10:50 pm on the 26th October 2008, Henry voluntarily submitted to an interview by Det. Insp. Livingston Bailey and Det. Cons. Angella Scarlett.
52. In it, he elaborated upon and maintained throughout, the account he had first given upon being accosted on the 25th, of how he had come into possession of Estella Scott Roberts' Blackberry cell phone. He also said that he had bought the laptop computer for \$500 from the same guy named "Ricky", from whom he said he had bought the phone and whom he described in extensive detail.
53. On Monday the 27th October Supt. Bodden received word through Det. Sgt. Angella Scarlett and later that day again through Det. Sgt. Wright; that Henry wished to speak to him.

54. The message received from Det. Sgt. Wright was that Mr. Henry wanted to take Supt. Bodden *“to show him where the other guy that was along with him lived”*.
55. Henry wished to be taken in a “tinted vehicle” and this was arranged. Det. Sgt. Wright and Det. Cons. Campbell were detailed to accompany Supt. Bodden and Henry. They all immediately assembled in the vehicle at the rear of the Central Police Station with Supt. Bodden at the wheel. As they were about to set off, Henry started to speak. Supt. Bodden cautioned him but Henry continued nonetheless and Supt. Bodden wrote at his dictation. Henry signed the record after it was read back over to him.
56. The statement then freely given by Henry was admitted into evidence during the testimony of Supt. Bodden without objection. It started with an apology to Supt. Bodden for having lied to him before, implicitly about the cell phone (and it seems to Sgt. Wright) about the laptop.
57. It contained an admission to being involved in the abduction and rape of Estella Scott Roberts and to having stolen her laptop and cell phones, plural; it then emerging for the first time during the Police investigation, that Estella Scott Roberts may have had a second cell phone with her on the night of the 10th October.
58. Significantly also, Henry then denied having been involved in the actual killing. This most damning aspect of the incident he attributed to someone whom, up until that moment, he described simply as “the other guy” in these terms:

“Yeah, it’s not me alone. And, to be honest it really wasn’t my idea, it was the other guy idea to get rid of the lady. Me tell him

say that not right. But he said if he didn't get rid of her police would find him...

Both of us was together by Deckers. We just hanging around by the front and two of us was hanging out by the front and then he called me and said come now, come now. Then I realised that he ran and hold the lady. And when he hold the lady I said to him what this for? And he said just easy and co-operate with him.

Then he go into the vehicle and me get into the vehicle and then he carry away the lady. The two of us was in the vehicle and then he carried the woman down into the bush and him have sex with her and me have sex with her too. And then him move away the vehicle...somewhere else and him kill her before he light the vehicle. He wrapped something around her and put a bag over her head and tape it. And he did it till she dead and him light the vehicle. Him get pieces of paper, put it in the gas tank and take it out and then him light it..."

59. Among the things to note from this account is that the final fatal assault upon their victim took place, not at the first, but at the second location.

60. Henry proceeded in his statement to Supt. Bodden to further explain his taking of the deceased's laptop and cell phones and then he said:

"I'm willing to show you where Prinston live. That's the guy that I was with that killed the lady. It look like something what him plan because I don't see the reason why him do that..."

61. After the completion of this statement, the officers set off with Henry in search of “*the other guy*” Prinston. This led, some three hours later that evening at about 6:30 pm, to the arrest of the defendant Ricketts who was accosted by Supt. Bodden and the other officers, after he was seen riding a bicycle as Henry had anticipated, in Central George Town.
62. Ricketts was immediately arrested on suspicion of murder and invited by Supt. Bodden in the presence of Sgt. Wright to give a statement in Supt. Bodden’s office at the Central Police Station. His responses then given were ruled inadmissible in the trial on the *voir dire*, having regard to the attendant circumstances which appeared to be oppressive.
63. He was however, on the 28th October interviewed under caution by Det. Insp. Livingston Bailey in the presence of Sgt. Wright, the record of which was admitted into evidence although its voluntariness was denied by Ricketts. Full written reasons for that ruling were given during the trial and so I need not elaborate now.
64. However, as that record of interview records responses which amount to an admission to the killing of Estella Scott Roberts and which Ricketts continued to deny ever having said to the Police, the question of the authenticity and reliability of the record of interview remained at large throughout the trial.
65. Indeed, in support of his challenge, Ricketts took the witness stand both upon the *voir dire* and in his own defence after the close of the prosecution’s case. On both occasions, he denied, but as it transpired, in conflicting ways, ever having given the answers attributed to him in the record of his interview.

66. As the judge responsible for trying the facts of this case, the view I have taken is that it remained therefore, to the end, for the prosecution to satisfy me so that I am sure that he did give those answers freely and voluntarily and that they were fairly and accurately recorded by Det. Insp. Bailey.
67. If a judge considers that the criteria for admission of a confession are not met by virtue of developments in the trial subsequent to a *voir dire* ruling in favour of admissibility, he would nonetheless be obliged to disregard the confession: *R v Watson* [1980] 1 WLR 991, *Ajodha and others v The State* [1981] 2 All. E.R. 193.
68. *Ajodha and others v The State* is of particular relevance because in those conjoined appeals, an issue arose, as here, in which the defendant denied authorship of the contents of the interview and claimed that he signed it involuntarily.
69. In such cases, as the Privy Council directed (per Lord Bridge at p201 j); the judge must rule on admissibility on the *voir dire* (as I have done in this case) and, if he admits the statement [interview], leave all issues of fact as to the circumstances of the making of the statement for the jury to consider and evaluate.
70. Of course, in practice, when applied to circumstances like the present where the trial judge is both judge of the law and adjudicator of the facts; this principle can be taken to apply only as I have indicated above – the factual question of the true attribution of the contents of the interview must remain to be finally determined until after all the evidence is heard.

71. I will therefore return to consider the reliability of the evidence as to the authenticity of the admission, in the context also of my evaluation of the evidence of the defendant Ricketts given on his defence.
72. This task must also, I note here, be undertaken always with the reminder that nothing said by Henry out of Court in his cautioned statement or interview against Ricketts can be relied upon to convict Ricketts, whatever I might make of it in respect of Henry himself. And vice versa. This is a long-standing and fundamental rule of the law of evidence: *Gunewardene [1951] KB 800*.
73. To complete the narrative of this sequence of events, Ricketts, after his arrest on the evening of the 27th October; had been taken by the Police with a search warrant for the search of his apartment. There, they discovered a Blackberry cell phone separated from its battery, each in separate pockets of a shirt hanging among other clothing in his closet.
74. This cell phone turned out to be the second of the two which had been issued by her employer to Estella Scott Roberts. More will be said about these cell phones below.
75. Also from the closet in Ricketts' apartment, the Police recovered a navy blue peak cap, emblazoned on the front with a very distinctive motif of a Chinese dragon in yellow, red and silver; a short-sleeved blue denim shirt with a prominent white, red and black label on the right sleeve; as well as a pair of brown and white loafer type shoes.
76. Photographs were taken by Officer Codner and Ricketts was returned into custody after the search ended in the late evening of the 27th October.

77. As already noted, Henry did give a second and further explanatory admission of his involvement under cautioned interview on 28th October 2008, an interview which was conducted largely contemporaneously with that in which Ricketts' impugned interview was being conducted. I will return below to consider their interviews separately in respect of each.
78. By the time of the arrests of Henry and Ricketts, respectively on the 25th October and 27th October 2008; the police investigation in the case had progressed in other directions.
79. On Thursday 16th October 2008, Estella Scott Roberts' debit card had been obtained by PC John Orville Williams from the Cayman National Bank and handed over to Officer Codner. It had been recovered the day before (15th October) at 1:20 pm by Judy A. Rivers, an officer of the bank, from the bank's Automatic Teller Machine ("ATM") at the Texaco garage on Eastern Avenue.
80. This card had last been used by Estella Scott Roberts on 10th October 2008 at 3:34 pm to pay for services at "Tips and Toes Ltd.", Bay Shore Mall, South Church Street, George Town.
81. But bank records show that it was again used within what must have been only a matter of a few hours of her death.
82. On 11th October 2008 at 6:19 am, the Bank of Butterfield ATM located at Bay Shore Mall recorded a debit card bearing her number (4546-1102-6396-0006) as having been inserted into that machine. The transaction was not completed and the card was returned to the user.

83. Only minutes later, between 6:29 am and 6:31 am; four separate attempts were made to use her card at the Cayman National Bank ATM located on Elgin Avenue, George Town, only a matter of a half mile or so away from the Bay Shore Mall. On the first of these attempts, the incorrect personal identification number (“PIN”) was entered and the transaction was refused.
84. On each of the three subsequent attempts, although the correct PIN was entered, the transactions were refused, either because of the amount requested (\$5,000) being in excess of the daily limit or because the wrong account was prompted, or a combination of both those factors.
85. After the fourth attempt, the user, whose deliberate but futile efforts had been captured on the CCTV of the Elgin Avenue Branch, retrieved the card, gave up and left.
86. Finally, on the 15th October 2008, at 12:11 am, the card was inserted into the ATM at the Texaco garage on Eastern Avenue. When an invalid PIN was entered and the user requested a withdrawal of CI\$5,000 from the unauthorised “savings account”, the transaction was declined. The user twice more entered the invalid PIN and in keeping with bank protocol, the ATM then captured the card. It remained secured within the ATM until recovered by Ms. Rivers at 1:20 pm.
87. The CCTV footage of the activity at the ATM location at the Elgin Avenue Branch in the early morning of 11th October 2008 was recovered by Det. Sgt. Julian Lewis of the RCIPS on 24th October. The data recorded by the CCTV system had been stored by the Bank’s DVR Computer Security System. A DVR

exact copy was transported by Det. Sgt. Lewis on the 25th October to forensic video and image analyst, Marla Englander Carroll, at Plantation, Florida, U.S.A.

88. In her evidence given in Court, Ms. Carroll presented photographic side-by-side comparisons of the images recovered from the CCTV DVR with those from the photographs taken by Officer Codner during the search of the defendant Ricketts' apartment.
89. The comparison showed exact matches as between the navy blue peak cap, shirt and loafers worn by the person shown in the CCTV footage attempting to use Estella Scott Roberts' ATM card between 6:29 am and 6:31 am on 11th October 2008 at Elgin Avenue Branch; and those items of clothing recovered from Ricketts' apartment.
90. Ricketts, in his evidence under cross-examination in this trial, admitted that he is the person shown wearing those items of clothing in the Bank's CCTV DVR. He continued to deny, however, that he had made that or any of the other admissions recorded in his cautioned interview of the 28th October 2008.
91. By the 27th October 2008, the investigation had gained more strength by dint of further very significant DNA findings by Mr. Noppinger.
92. DNA extracted from the inside and outside of the used condom recovered from the beach access road in Barkers on 13th October, produced identical matches with DNA recovered from the buccal swab of Kirkland Henry and from the bodily remains of Estella Scott Roberts.
93. Further analysis also showed conclusive DNA matches as between blood from the remains of the deceased and several spots of blood and a scraping of skin cells

recovered from a pair of long jeans pants belonging to the defendant Henry. These pants were obtained by the police from Henry's apartment only when Henry offered to produce them because, it seems, they had been missed during the police search of his apartment.

94. These pieces of scientific evidence, which SIO Kenneth described as then being at the time of their emergence, the "*jewel in the crown of the investigation*" were, by themselves, conclusive proof of Henry's involvement at least in the abduction and rape of the deceased.
95. Matching DNA was also retrieved from the torn edge of a condom wrapper recovered from the bushes at the beach access road in Barkers.
96. This evidence about the DNA results, SIO Kenneth was adamant in his evidence would, in no circumstances, have been revealed to either defendant before the time of their cautioned interviews on the 28th October 2008.
97. To return to the chronology of the investigation, Insp. Bailey had arrested Henry on 27th October on suspicion of murder at 3:15 pm after being briefed by SIO Kenneth at 2:30 pm about the DNA results. Henry then responded: "*How you come by that now?*" When booked into custody for that offence by custody officer Sgt. Ena Forbes, Henry started to cry.
98. Up until then, Insp. Bailey was also adamant in his evidence, that no one had told Henry about the DNA results.
99. This is a factor that Mr. Bourne QC invited me to bear in mind when evaluating the veracity of the exculpatory aspects of Henry's statements, particularly those given to Supt. Bodden on the 27th and again in the cautioned interview on the 28th

October 2008. The implication being, that Henry was simply telling the truth of what he knew rather than giving a crafted limited admission of his involvement only because he was aware that there was DNA evidence to prove his involvement.

100. In the same vein, I am also invited to place emphasis upon Henry's having volunteered during the interview of 28th October, to produce his blood spattered trousers which later yielded DNA matching Estella Scott Roberts and which the police had not recovered during the search of his premises. So too, I am invited to place emphasis on the related account given by Henry of his accomplice brandishing the knife by which was inflicted the injury to the hand of the deceased and which explains how her blood got onto his pants.
101. The final developments to be described in this narrative of the investigation, are those to do with cell phone activity – both as this relates to calls between the cell phones of the defendants and as it relates to the geographic locations and movements of the cell phones which belonged to the deceased and which were recovered respectively from the possession of the defendant Henry and the defendant Ricketts.

Calls between the defendants and use of their cell phones

102. Records obtained from the cell phone service providers Cable & Wireless and Digicel, reveal that there had been constant cell phone activity between the cell phones of Henry (345 328 1612) and Ricketts (345 321 2948) over the days leading up to and during the 10th October 2008.
103. There is no dispute that the defendants knew each other well.

104. In particular, the cell phone records compiled by Cable & Wireless and Digicel personnel and by Det. Sgt. Katherine Marshall (the latter in Exhibits 54A – D and 55) show that on 10th October to 11th October 2008; they exchanged calls on no fewer than eleven occasions.
105. Calls during the evening of 10th October at 6:59 pm, 8:09 pm and 8:20 pm show the defendants being in constant touch with each other that evening. The call at 8:20 pm was made at a time when, according to their separate accounts, (in the case of Henry, in his cautioned statement/interview and in the case of Ricketts in his evidence in the trial), each defendant would have been preparing to go to or would have arrived at the Royal Palms Beach bar on West Bay Road.
106. While in his impugned interview of 28th October 2008 the defendant Ricketts is recorded as having admitted to meeting up with defendant Henry at this location, before going later to “chill out” at the Deckers’ car park; in his evidence in Court he denied having seen Henry at all on the night of 10th October 2008.
107. His evidence was to the effect that he had gone to the Royal Palms alone to “chill out” on the night of 10th October and although he did speak with Henry on the phone while there (a call registered at 8:09 pm for 103 seconds) he never met with him that night.
108. Henry for his part has, through his counsel (exercising his right not to take the witness box), maintained that he did go to the Royal Palms on the night of the 10th October with Ricketts, thence to the Deckers car park where they “*hanged about*” on the side walk by the main road, until the sudden rush by Ricketts at “the lady” in the car park.

109. Of some further significance, the cell phone records also show a call from Henry's to Ricketts' cell phone at 2 am and 44 seconds on the 11th October 2008. This call, which lasted for but seven (7) seconds, became of significance in the trial because it was made at a crucial point in time when Estella Scott Roberts must have been with her captors in the Barkers area.
110. The records further show calls between the defendants on the 11th October 2008 at 8 am, 8:05 am, 8:09 am, 11:25 am, 11:59 am and 4:27 pm.
111. On the 13th, 16th, 17th, 20th, 21st and finally on the 24th at 10:23 pm when Henry called Ricketts for 31 seconds, there were calls between the defendants by way of their registered cell phone numbers.
112. Thereafter, on 24th through to 25th October at 9:50 am (Henry having been later that day arrested) the records show calls from Henry to defendant Ricketts' LG phone 321-2948, but with the former using subscriber number 939 1539 on a SIM card then transmitting from Estella Scott Roberts' Blackberry phone with IME # 356-281-012-099-740 – the SIM card that was in that cell phone when it was recovered from him by Supt. Bodden.
113. Finally in this regard, we see from the records that on 27th October at 6:30 pm, just moments before he was arrested in Central George Town by Supt. Bodden and others; Ricketts, using his registered LG cell phone 321-2948, attempted to call Henry on the Blackberry cell phone 939-1539. That latter phone was however, by then securely in the custody of the police.
114. Miss Richards QC submitted that Henry's motive for becoming involved in the abduction, rape and killing of Estella Scott Roberts was sexual obsession. In

support of this she pointed, in particular, to two aspects of his cell phone use. The first is a photographic image which was recorded in his Samsung cell phone at 00.43 am on 11th October 2008, of a woman's genitalia (shown in Exhibit 53).

115. The explanation Henry proffered for this disturbing image came only indirectly by way of cross-examination of the defendant Ricketts by Mr. Bourne QC on his behalf in these terms (on the afternoon of 10th February 2010):

“Q: Do you agree that at 00:43 am [on 11th October 2008] you held your lighter so that a picture could be taken of part of Mrs. Scott-Roberts?”

Ans: No Sir

....

Q: And you used your lighter to light up the image which otherwise was in darkness?”

Ans: No Sir.”

116. That exchange of questions and answers implied that the image was recorded by the defendant Henry, even though, as suggested, with the aid of the light from Ricketts' hand-held cigarette lighter.

117. I note here that choosing to keep this image conveys, like so many other things about his admitted behaviour on the night of the 10th October 2008; none of the sense of withdrawal from, objection to, or regret about, the killing of Estella Scott Roberts that Henry invites the Court to accept he had shown at the time.

118. So too, the other images retrieved from his Samsung cell phone 328-6162 by Det. Const. Alvan Boxwell and presented also as part of Exhibit 53.

119. Among these is one that shows that when the Gold Blackberry cell phone which he had converted to 939-1539 was used to call his Samsung 328-6162, the latter phone was programmed to display a pornographic film on its screen.

120. In choosing to associate pornography with her cell phone, this too revealed anything but a repentant state of mind about the horrible killing of Estella Scott Roberts, that he claimed to have witnessed only as an unwilling bystander.

The locations and movement of the deceased's Estella's Blackberry cell phones

121. There had, indeed, been two Blackberry cell phones in Estella's possession on the night of the 10th October; both issued to her by her employer Cable & Wireless.
122. However, one – that recovered from the shirt pockets found by the police hanging in Ricketts' closet and separated from its battery – had been taken out of service from about the end of June 2008. While (from demonstrations in Court) it appeared still to be serviceable, no use of it had been registered by the telecommunications service providers at any time relevant to the case.
123. Its evidentiary significance is therefore confined to its recent possession found in Ricketts after the death, on 27th October. The evidence was given that with the battery separated from the phone or with the phone turned off, the telecommunication cell sites were unable to track its locations or movements about the Island.
124. There is, however, further relevant evidence in relation to the locations and movements of that Blackberry cell phone recovered from the defendant Henry and which had been issued to the deceased with the subscriber's number 926-1500 (IME# 3528281012099740) but which he had converted to 939-1539.
125. The cell site tracking data (Exhibit 49) show this phone as having been located during the night of 10th October to morning of 11th October 2008 as follows:

- At 6:27 pm on 10th October (while it would still have been in Estella's possession) in the area of the cell site at the Truman Bodden Sports Complex;
- At 11:39 pm on the 10th October in the area of the Pappagallos cell site on the North North Eastern area of the Island; that is, the Barkers area. This confirms that she was taken directly to that area from Deckers restaurant; a sign of pre-planning on the part of her abductors.
- At 7:00 am on 11th October the phone was located in the area of the North West Point cell site west of Pappagallos. Between 7:00 am and 7:34 am there were many text messages sent to this phone, indicating that other phones (in particular 926-3939 and 548-0325) were trying to contact her.
- At 7:18 am in the area again of the Pappagallos cell site, but this time to the North North West of it.
- At 7:30 am in the area of the Harquail cell site, four-fifths of the way from Pappagallos to George Town (or near to the Royal Palms Beach bar).
- Only four minutes later, at 7:34 am, in the area of the George Town cell site (Cable & Wireless Building), in Central George Town.

126. There is no further cell site data for this phone after 7:34 am on the 11th October 2008 until the 22nd October 2008. It seems that this phone was turned off during that time.

127. There are, however, other records which show that there had been an "invoking event" triggered by this phone on 20th October 2008, but which event is not

shown in Exhibit 49 because as other evidence revealed, the signal was from another network overseas.

128. This was somewhat explained by the fact (the subject of an admission in the trial) that the defendant Henry who had this phone in his possession, had traveled to Jamaica on 17th October 2008 and returned on 20th October 2008.

Estella's laptop computer, ATM card and second cell phone

129. Following the events of 10th October 2008, the deceased's laptop computer was accessed four times by means of her user profile as follows:

- (i) Saturday 11th October 2008 between 7:43 am and 8:59 pm
- (ii) Monday 13th October 2008 between 3:45 pm and 3:46 pm
- (iii) Thursday 16th October 2008 between 8:23 pm and 10:18 pm
- (iv) Tuesday 21st October 2008 between 7:15 pm and 8:13 pm.

129. In his evidence under cross-examination, the defendant Ricketts admitted to having assisted the defendant Henry (on occasions by telephone during the morning of 11th October and later that day, at Henry's apartment) to access this computer. This, according to him, while believing, as he said Henry had told him, that Henry had bought the computer from someone.

130. Ricketts' account from the witness box, of the circumstances under which he came into contact with the deceased's ATM card, one of her cell phones and her lap top computer, became of importance in the trial.

131. As to the ATM card, he insisted in cross-examination that having only by chance come across Henry at minutes after 6 am on the 11th October in downtown George Town while on his way to work, Henry showed him the card saying that

he had found it. Henry then asked him to assist with accessing the ATM. They immediately set about that admittedly unlawful purpose by attempting the Bank of Butterfield ATM at the Bay Shore Mall. When that attempt failed, Ricketts said they went by foot (then varied later in his evidence, to going together on Henry's bicycle) to the Elgin Avenue branch of Cayman National Bank where again, Ricketts' efforts were unsuccessful but, as it turned out, his image was successfully captured on the CCTV system. Ricketts admitted that he had observed the name Estella Scott Roberts on the ATM card from the outset but had not heard of her disappearance or death until about minutes to eight later that morning when he had arrived at work at "Dive Tech" at North West Point; a further statement which in and of itself, became also of significance in the trial.

132. As to the cell phone found in his shirt pockets, Ricketts said that he bought it from Henry during the visit to Henry's apartment at about 3 pm on 11th October, for \$200. Henry had told him that he had found the two Blackberry cell phones. Ricketts said he bought one of them without then testing it or without ever trying to charge the battery or to use the phone at any time before it was recovered by the police from his apartment on 27th October. When pressed in cross-examination, he did admit to having turned the phone on when given it by Henry, but only momentarily – not long enough to see whether the true owner's identity would appear from the phone itself.
133. No explanation was given by him for having not tried to use the phone thereafter, apart from not having had a charger for the battery; a factor that was put in doubt

by the demonstration in Court which showed that even then, the battery had sufficient power to start the phone.

134. Against that background, it is worthy of note that by having kept the phone separated from its battery in two different pockets of his shirt in the closet, the defendant Ricketts would have successfully prevented the phone from being located or tracked by the cell site telecommunications systems.
135. As to the laptop computer, Ricketts said that Henry had told him on the 11th October that he had “bought it from someone”, an account which he did not believe, because taken together with the ATM card and the cell phones, he had by then realised that Henry must have come by them unlawfully.
136. These aspects of his testimony became of importance to my assessment of Ricketts’ evidence in the overall context of this case; a matter to which I will return below when I assess the case as it relates to each defendant separately.
137. Before turning to record my understanding of the further principles of the law including the law on accomplices as it applies to this case; there are worthy of note a few observations in respect of submissions made in particular by Mr. Fortune QC on behalf of Ricketts; relative to the subject of the use of cell phones disclosed in the evidence.
138. The circumstance which Mr. Fortune found most troubling, indicative, he said, of the involvement of someone other than his client with Henry in the killing of the deceased; arises from seeking to match the sequence of events as between 6:31 am on 11th October 2008 – when Ricketts was certainly present at the Elgin Avenue Branch ATM – and 7:00 am, when the deceased’s Blackberry phone

(then bearing subscriber number 926-1500) was located in the area of the North West Point cell site, just west of Pappagallos.

139. Mr. Fortune strongly urged the inference that neither Ricketts, nor for that matter Henry, could have been with that phone at that location at 7 am while having been at Elgin Avenue Branch at 6:31 am; the two locations being some 8 miles apart. This difficulty he said was only compounded by the fact that the phone is tracked as having returned to George Town moving south along the West Bay Road at 7:18 am and 7:30 am; arriving within range of the George Town Central cell site at 7:34 am.
140. As on Henry's account given in his statement or interview to the Police, this sequence of events could not have happened; they all pointed to the involvement of someone else who, Mr. Fortune submitted, could not have been Ricketts. This must be especially so, he said, because on Ricketts' own account, he had traveled north arriving at work at Dive Tech by minutes to 8:00 am.
141. In the same vein, I am invited to note other unexplained aspects of this case.
142. For instance, the presence of a gasoline container and the apparent use of an accelerant in the setting afire of the deceased's car, when her husband Rayle Roberts knows nothing of her having kept such a container in the car. Nor how that could have happened when, even on the inculpatory narrative of the defendant Henry, neither himself nor his accomplice would have been carrying such a container as they bicycled or walked about in George Town and along West Bay Road to the Decker's Restaurant. Nor, further, for this matter, why Henry and his accomplice would have found themselves stranded having set the

car ablaze and having to sleep outdoors before wending their way by chance, depending so early in the morning on public transportation, to return with their ill-gotten gains to the Royal Palm Beach site; and all this when, as the evidence shows, Henry would have had available to him the Econoline panel van provided by his employer. And finally in this regard, the improbability of Henry's account that he and his accomplice cycled on the accomplice's bicycle into Central George Town from the Royal Palms Beach site, a trip which took only four minutes having regard to the cell site tracking data.

143. These are indeed aspects of this case which are unexplained or which at least seem to be improbable. But I must note immediately, that none of them is such, as to my mind, to preclude the full and clear ascertainment of the nature of the involvement of either defendant in the events of the 10th to 11th October, 2008.

The Further applicable law

144. The defendants having elected, pursuant to section 129 of the Criminal Procedure Code, to be tried by a judge alone without a jury, I must be mindful of my duty clearly and fully to express my understanding of the applicable law and my treatment of the evidence.
145. It is a duty to explain the legal and factual reasons for any decision at which I arrive (see Barker: Criminal Litigation in the Cayman Islands, 2nd Ed. Ch. 7 para 13, p. 255).
146. The law on this issue in this jurisdiction was most recently reviewed and explained by Justice Quin in his judgment delivered on 15th January 2010 in the case of *The Queen v Randy Martin* (at pages 38-39). There the law is explained

in terms which I adopt as being applicable to my approach in arriving at my decisions in this case.

147. The indictment before me contains a single count in which the defendants are charged jointly with the offence of the murder of Estella Scott Roberts.
148. Although charged jointly, the case for and against each defendant must be considered separately. If, therefore, in the case of any particular defendant, the evidence at trial proves that he was guilty of the offence but was not acting in concert with the other defendant, he can nonetheless, be convicted on the indictment as laid: ***DPP v Merriman [1973] A.C. 584.***
149. The burden remains throughout upon the prosecution to prove a defendant guilty and so to satisfy me that I am sure before I might convict.
150. Consistent with where the burden of proof lies, there is no burden upon either defendant to prove his innocence or even to raise a reasonable doubt in my mind.
151. It follows that – as in the case of the defendant Henry – he was entitled as he did, to remain in the dock and to not give any evidence; even though I might consider his failure to do so when deciding what weight I should properly give to the exculpatory aspects of his cautioned statement and interview: ***R v Duncan 73 Cr. App. R. 359; R v Sharp [1988] 1 WLR 7.***
152. In the case of defendant Ricketts who did give evidence, he is entitled to insist, even if I reject his evidence, that the prosecution must prove the case against him to the requisite standard, before I might convict him.

153. The prosecution must prove all the elements of the indictment to the necessary standard. In a case of murder, this involves establishing the use of force with intent to kill or to cause serious bodily harm.
154. In this case, the law relating to the criminal liability of someone who claims to have been an accessory only to lesser offences than that committed by the principal offender, was raised as a matter of great importance to the defence of the defendant Henry.
155. Although having pleaded guilty to the abduction and rape of Estella Scott Roberts on a different indictment, his defence to this indictment is first, that he was never party to any agreement to kill her or to do her serious bodily harm and, even if it might be found that he did join in the criminal enterprise at some stage realizing that she could have been seriously harmed; he made his withdrawal from it expressly known to his accomplice before she was killed.
156. Where there is a secondary party involved in a joint enterprise realizing or foreseeing that in the course thereof the principal offender might use force with intent to kill or cause serious bodily harm – the secondary party will also be guilty of murder if the principal does kill with the specified intention.
157. But, if the principal offender goes beyond the scope of the joint enterprise (that is: does an act resulting in the killing not foreseen by the secondary party as (under Cayman law) a probability, the secondary party is not guilty either of murder or manslaughter.
158. As stated by the Privy Council in *The Queen v Chan Wing Sui (1985) 80 Cr. App. R. 117*; to be guilty under the accessory principle, mere foresight is not

enough; in order to be guilty the secondary party must have foreseen an act of the type which the principal offender committed as a possible (in Cayman probable) incident of the common unlawful enterprise and must with such foresight still have participated in the enterprise. In this case, from the defendant Henry's asserted point of view, the act of killing or doing serious bodily harm to the deceased by his accomplice was not something that he foresaw.

159. The conclusion may, however, be otherwise, if the use of a deadly weapon by the secondary party was foreseen, even if the principal used a deadly weapon of a different type to the one contemplated: ***R v Powell; R v English*** [1999] 1 A.C. 1; ***Archbold*** 2010 Ed. para. 19-24. Whether this is so will depend on the circumstances of each case.

160. As Lord Hutton concluded in ***R v Powell, R v English*** at p.30):

“...if the weapon used by the primary party is different to, but as dangerous as, the weapon which the secondary party contemplated he might use, the secondary party should not escape liability for murder because of the difference in weapon, for example, if he foresaw that the primary party might use a gun to kill and the latter used a knife to kill, or vice versa.”

161. Under the accessory principle, criminal liability is dependent not on proof of an actual intention on the part of the accessory to kill or injure seriously, but on proof of subjective foresight on the part of the accessory in the criminal enterprise that the principal might commit a greater offence; that being in this case, foresight that the principal might commit murder as defined in law; and so going beyond the commission of any lesser offence (see: per Lord Steyn in ***R v Powell, R v English*** at p.12).

162. In this case, where the defendant Henry claims to be the accessory and not the principal, whether there is proof of that subjective foresight must, of course, be assessed from the point of view of someone in his position.
163. And, specifically in this regard, while inferences as to a defendant's state of mind might be drawn from the proven circumstances, adverse inferences may only be drawn if they are the only reasonable inferences to be drawn.
164. Mere speculation about a defendant's state of mind or about any other issue in the case is forbidden.
165. Finally, on this question of foresight of the actions of the principal offender, I emphasise that the law of the Cayman Islands as laid down in section 19 of the Penal Code, requires that the accessory would have foreseen the further actions of the principal not as a possible, but as a probable consequence of the carrying out of their joint enterprise. It is therefore not enough for the accessory to have contemplated the further actions merely as a possibility; which is what the common law, as laid down in the cases discussed above, requires. I accept the meaning of "probable" in this context to be that provided by the Shorter Oxford English Dictionary: that is, "*that (which) may reasonably be expected to happen or be the case*"; "*likely*"; which is, in effect, the same as that from the Miriam-Webster Dictionary cited by counsel: that is: "*likely to be or become true or real*".
166. Still further, there is the legal issue of countermanding and withdrawal from a joint criminal enterprise.

167. While the relevant cases were provided and discussed by counsel, I trust it will suffice if I take the relevant aspects of the law on this issue as I find it is helpfully summarized from the case law in Archbold 2010 Ed. Para 18.26 – 18.28:

“A secondary party may be able to escape liability [as an accomplice to] an offence if he makes an effective withdrawal before the offence is actually committed....In R vs Whitehouse [1941] 1 W.W.R. 112 (Court of Appeal of British Columbia), Sloan J.A. said:

‘After a crime has been committed and before a prior abandonment of the common enterprise may be found by a jury, there must be, in my view, in the absence of exceptional circumstances, something more than a mere mental change of intention and physical change of place by those associates who wish to dissociate themselves from the consequences attendant upon their willing assistance up to the moment of the actual commission of that crime. I would not attempt to define too closely what must be done in criminal matters involving participation in a common unlawful purpose to break the chain of causation and responsibility. That must depend on the circumstances of each case but it seems to me that

one essential element ought to be established in a case of this kind: where practicable and reasonable there must be timely communication of the intention to abandon the common purpose from those who wish to dissociate from the contemplated crime to those who desire to continue in it. What is “timely communication” must be determined by the facts of each case but where practicable and reasonable it ought to be such communication, verbal or otherwise, that it will serve unequivocal notice upon the other party to the common unlawful cause that if he proceeds upon it he does so without the further aid and assistance of those who withdraw.”

....

“And In R v Boyce [2004] 2 Cr. App. R. 35 CA, it was said that where an act of assistance or encouragement accompanied by the necessary mens rea (as to which see ante para 17.67) was proved, the defendant would only avoid liability if he did a further act that amounted to a countermanding of the earlier assistance and a withdrawal from the common purpose; repentance alone would not suffice, the fact that his mind was innocent when the crime was committed was no defence.

In R v O’Flaherty, Ryan and Toussaint [2004] 2 Cr. App. R. 20 CA, it was said that a person who effectively disengages or withdraws before the fatal injury is, or injuries are, inflicted is not guilty of murder because he was not a party to and did not participate in any unlawful violence which caused death; to disengage from an incident a person must do enough to demonstrate that he is withdrawing from the joint enterprise; ultimately this is a question of fact and degree, account being taken, inter alia, of the nature of the assistance and encouragement already given and how imminent the infliction of the fatal injury or injuries is, as well as the action said to constitute the withdrawal; in a case of assistance, it is not an essential pre-requisite of an effective withdrawal that reasonable steps should have been taken to prevent the crime....

In Becerra and Cooper 62 Cr. App. R. 212 C.A., the appellant had been convicted of murder committed during the course of the killing. It was held that B’s sudden departure from the scene with the words “Let’s go” when surprised by the victim, was an insufficient communication of withdrawal. A valid withdrawal could only have been effected in some manner “vastly different and vastly more effective”. The Court (of Appeal) left open the question whether the circumstances were such that physical action with a view to preventing the crime, was required if B’s prior assistance was to be effectively neutralized. The point was again left open in R v Rook 96 Cr. App. R. 327 C.A. In principle, it seems clear that the measures necessary to absolve a person from liability as an accessory

will vary according to what assistance, encouragement, etc., he has given....”

168. The questions which arise in relation to the defendant Henry's case then are these:
- First, what was the scope of the joint enterprise to which he had lent himself?
- Second, did what happen go beyond what he should have foreseen would be a probable consequence of that joint enterprise?
- Third, if the answer to the second question is “No”, had he effectively withdrawn from the joint enterprise or was he still in it when the deceased was killed?
169. I am aware that approaching the issues in this way implies the conclusion that the defendant Henry was not, himself, the person or one of the persons who actually physically killed the deceased.
170. But this is the approach which I think is dictated by the evidence, because the only evidence that there is against the defendant Henry as to his presence and actions or inactions at the time when the deceased was killed, is that provided by him in his cautioned statement or interview to the police.
171. That evidence is to the effect that it was his accomplice who asphyxiated the deceased.
172. It is nonetheless of crucial importance to vouchsafing the correct outcome in this trial, that there be a true and proper determination of who it was that inflicted the harm upon the deceased that caused her death, if it cannot be determined with certainty that both assailants did it. And it is in this context, that the practical importance of the principle, that nothing said by either defendant out of Court to

the police in their respective statements or interviews might be taken against the other, becomes most acutely of relevance in this trial.

173. With the foregoing directions on the law in mind, I turn now to the assessment of the evidence as it relates separately to the case in relation to each defendant.

The case against defendant Henry

174. An assessment of the evidence in relation to the defendant Henry should begin with his first contact with the police as the case in relation to him so heavily depends on his statements to them, Henry having elected not to give evidence in Court.
175. His first account when confronted by Supt. Bodden on the 25th October 2008, was to the effect that he had bought the Blackberry cell phone (by then using the subscriber number 939-1539) from “*a youth*” whom he knew but did not know his name. Then, having been taken into custody at the Central Police Station, he replied when arrested and cautioned for theft and handling as already mentioned above, to the cryptic effect that he may have been involved with another guy, but without indicating the nature of that involvement. Next, on the 26th October in his first full cautioned interview he gave, over the course of some three hours, the more elaborate story about having bought the Blackberry cell phone and the laptop computer from the imaginary person named “Ricky”.
176. That exercise, over some three hours of interview, I feel compelled to conclude as Mr. Fortune, QC and Miss Richards, QC submitted; is a clear indication of the defendant Henry’s capacity for concocting self-serving statements.

177. One is well advised then to approach his confession statements (that made under caution to Supt. Bodden in the back of the unmarked police car on 27th October and that made in the cautioned interview on the 28th) with circumspection.
178. An issue of obvious and first importance, both to this defendant and to his interrogators, would have been to ascertain how he came to be involved in the assault upon Estella Scott Roberts.
179. Henry prefaced his explanations given in the full cautioned interview of the 28th October 2008 by seeking to assure Supt. Bodden (for whom by then he had professed deep respect because he had treated him “like a son”) that he would be telling exactly what had happened.
180. He explained that his co-defendant, whom he said he knew only as “Prinston”, had come to his home in the evening of the 10th October and asked what he was up to. He said he had replied that he was simply cooling out at home and when Prinston said he would be going out on the road, as he had nothing planned, he decided to go with him. They set off from his home on their bicycles. Along the way, his own bicycle tire developed a leak and so he returned and left it at his yard and then he walked alongside, as Ricketts slowly rode his bicycle until they came to the Service Station at the intersection of Eastern Avenue and North Church Street “near to Kentucky”. There they bought and ate something. From there he said Prinston said let’s go to the “Go Bar” and from that place, they went along and ended up at the Royal Palms. There they had drinks until Prinston said the Royal Palms had become boring and suggested they go out walking west along the West Bay Road. Prinston’s bicycle was left at Royal Palms.

181. They wandered along, first stopping at a bar, the name of which Henry said he did not know but, as that place too had no activity, after 10 minutes or so, they continued along until, as it seemed to Henry, they came purely by chance to stop at the Deckers Restaurant (which Henry describes as “*the bar near the Hyatt*”). There he said that they simply stood about on the side of the road on the side walk, but it is of import to note that he gave their time of arrival at about “fifteen to ten or after ten”.

182. Then there is recorded the following sequence of questions and answers (at the bottom of page 4 of 20 of the record of interview of 28th October 2008):

Q. So did anything happen while standing there?

A. No, nothing never happened while standing there.

Q. So what happened next?

A. I just heard when Prinston said come in, so when he say come in me say what happen, me just see him walk fast to go towards a lady which me never know what him up to, so the lady go into her vehicle now and by the lady fi go inna her vehicle, before she coulda do anything else, him on to her, him hold her; the vehicle never start, when me reach up there the lady a de make noise before me reach. So when me reach now me sey wha happen, him say cool no man soon talk to you. It's like before me reach him and the lady a deh struggle. The lady was in the vehicle and he was struggling with the lady. So I know that him have a lady that him a talk to that is a Caymanian, so I was wondering if a she, and

they have little friction, but me no really know sey him have a lady who him a talk to that is a Caymanian, him did tell me about her, sey him have this woman weh him a talk to weh married, so I figure out so it probably she, cos me hear them talk pon the phone several time, so a so me know him have a lady whe him a talk to weh a Caymanian.”

183. From that account (which I read from the point of view of common knowledge of Jamaican patois), the impression is clearly given that the assault, abduction and events which followed were entirely, from Henry’s point of view, unplanned and spontaneous. That he got swept up in a spur of the moment attack on “the lady” led by the other man who – to use the earlier account Henry gave in the statement in the police car on the 27th – had said to him “just easy and co-operate” and so he went along thinking that this was nothing more than a domestic altercation.
184. Even moments later, when a knife was brandished by the other man and the lady had received what Henry, later in the interview, describes as a “very big cut”, the impression sought to be conveyed by his narrative is that he was himself being taken along thinking nothing really bad would happen. And so, when the lady was crying and said “you guys don’t kill me”, he found it possible to turn to her and say “don’t worry yourself” and this, even while admitting to struggling with her and “holding her head” in the back seat while she was pinned between the two front seats still restrained by the seat belt of the driver’s seat, which she must have just managed to fasten during the attack.

185. I conclude that none of this narrative of the events accords either with common sense or with the other proven circumstantial evidence in the case.
186. In the first place, as a matter of common sense, I have no difficulty at all in rejecting the notion that an assailant – the other man – would set about such a terrible criminal enterprise as this with other than an accomplice in whom he must have had full confidence would act in unison with him.
187. Equally unbelievable, is the notion that such a thing could have been undertaken without any planning whatsoever, entirely on the spur of the moment.
188. There is, moreover, the evidence of Ooi Swee Ton and Alma Puyos – the Deckers’ employees and of David Berry who saw two men – whom Henry now accepts were himself and his accomplice – apparently loitering around the area of the car park, not on the side walk of the West Bay road, but well in away from the road.
189. In this particular, Henry’s statement is itself quite telling in his own estimate of having arrived at Deckers at “about fifteen to ten or after ten”; fully an hour before Estella Scott Roberts had parted from her friends in the car park at 11:15 pm. Clearly, Henry and his accomplice had not merely been “standing” or “hanging” about on the side walk.
190. Still further in this regard, there are the calls during the evening of the 10th October at 6:59 pm, 8:09 pm and 8:20 pm between the defendants, which refute Henry’s account that their coming together that evening initially at his place, was entirely by chance. The only reasonable inference to draw is that, if it was indeed

Princeton whom he met up with that evening, that meeting would have been by pre-arrangement..

191. Primarily for the foregoing reasons, I reject the account given in Henry's cautioned statement and interview that his own involvement in the criminal enterprise came about without any fore-warning or pre-planning and entirely, from his point of view, by chance.
192. It is next important to consider at what point it was that Henry does admit that he decided to join in and so to what extent.
193. The narrative continues in his interview of the 28th October, describing the rush from the parking lot in the car driven by his accomplice along West Bay Road, narrowly escaping detection by three marked police cars as follows:

"So headed to West Bay me still a ask him what happen and him say me not fe worry me self him nah do her nothing. After said and done me realize that, like him nah no the lady. Same time the lady said to me say, ease up me hand off a her because she can't breathe good, so I ease up me hand off a her and she was still crying and a say, "we na fi do her nothing." So I was saying to her no worry yourself we na going do you anything, which I didn't know that him had the intention to do her something.

Q. What else happened?

A. While driving down to West Bay, when him turn down Pappagallo Road, I ask him where him a go, and him say relax yourself nuh man no worry about anything. So me myself did start to worry too,

but at the same time me say me done inna the vehicle a ready so me inna it aready. So him drive go down inna the bush. Princeton stop, take her out of the vehicle and him tie up her hand.

Q. What was used to tie up her hands?

A. Him use a Cable and Wireless T shirt because she had a lot of Cable and Wireless hat and so and then him start to tape up her mouth, which the tape him had inna him pocket, I think him had on one shorts with some big pocket and then him pull off her underwear and start have sex with her....”

194. From this aspect of the narrative, we see Henry proffering the explanation that only after reaching the Pappagallos area and arriving in Barkers, by which time he had started to become worried about the situation; did he decide that he had to go along “*because me inna it a ready*”.

195. This, which can only be described as an excuse, is then also implicitly given as the explanation for his participation thereafter; as he goes on to suggest that as he was already involved, he decided to join in the rape of the lady, giving the following chillingly casual explanation:

“Q. Would you please help us to understand why you had sex with her, seeing that her mouth was taped up and her hands tied?

A. To be honest, I just said that I would just like to experience a different nationality.”

196. I reject entirely this account which would suggest that the defendant Henry was nothing but a compulsive dupe who, like the victim herself, was swept along by

the driving force of the other assailant and who only decided to gratify his own urges because the opportunity presented itself.

197. I find instead, that the defendant Henry acted from the very onslaught in concert with his accomplice. He continued, even after he was aware of the presence of the knife and that his accomplice would, if necessary, inflict serious injury upon their victim, to assist in overpowering and subduing her. Having gagged, and tied her up with duct tape which they must have planned in advance to use, they acted in concert in the sexual assault upon her.
198. I find beyond reasonable doubt that the defendant Henry had embarked upon a joint criminal enterprise in which he was aware, at the very least, that really serious bodily injury would probably be inflicted upon his victim and continued thereafter nonetheless sexually to assault her, after she had been gagged and bound.
199. Given the nature of his defence as it arises from his cautioned statement and interview, there remains the further important question whether the defendant Henry had effectively countermanded and withdrawn from the joint criminal enterprise before Estella Scott Roberts was killed.
200. In this regard, it is important to decide what should be made of Henry's subjective state of mind at the time when the deceased was killed, including how that state of mind may be revealed from his conduct after she was killed.
201. This is all, of course, to be assessed against the background of what can be gleaned about the level of his intelligence and the nature of his personality from all the evidence in the case.

202. It is therefore just as well that I emphasize here my impression of him as being quite deliberate and collected even under pressure, as he amply demonstrated in his dealings with the police. He leaves the firm impression of having an appreciable level of intelligence, even though he is clearly not as schooled as his co-defendant Ricketts; the principal from whom he claimed to have dissociated himself.

203. As to what Henry may have said or done by way of countermand or withdrawal, the evidence comes only from his cautioned statement and interview.

204. The following is what he said in the cautioned statement of the 27th October in this regard:

“And to be honest, it really wasn’t my idea, it was the other guy idea to get rid of the lady. Me tell him say that not right. But he said if he didn’t get rid of her the police would find him.”

(Emphasis supplied.)

Then, again picking up the narrative of how he claimed to have withdrawn from the killing of the lady, he said:

“I turn away and walk like me a go walk out the road, because we had turn down inna one track that had take to the beach.

Then Prinston turn the vehicle and stop by me and I got into the vehicle and then he drive to the other location.”

205. The following is what he said in his cautioned interview of the 28th October about withdrawing from the criminal enterprise. It follows after his narrative describing how their victim had been taken to the sea nearby to wash herself but was

immediately restrained again by tie straps (which Henry said had only co-incidentally been given by him to his accomplice at some earlier date) and locked inside the car so that she could not overhear their conversation outside.

“Him put her back inna the vehicle...then him lock her up inna the vehicle. She couldn’t hear anything and then him say to me, say him have to get rid of her because she was going to the police and would witness to everything, before he even put her into the vehicle and she was begging for her life she was saying, that she have two child, I don’t remember about the first one but the last one I think she was saying that the last one was either 4 or 4 months. This was before he even put her inna the vehicle. So me and him was reasoning out side and him say “boy him have to get rid of her” so I was telling him that that not a good idea because [of] she two child and we can still go to jail, them time de I was still thinking about my son. So Prinston say boy him a go still have fi get rid a her, so I say boy me nah help you because its up to you and in a the first place him shouldn’t start it.”

206. Henry next describes in his interview, the final murderous assault upon the victim inside the car which he attributes entirely to his accomplice suffocating her with a bag over her head until she stopped struggling. This terrible scene, it also appears from his narrative, he watched passively and safely from outside the car.
207. I do not accept that by any measure, subjective or objective, the defendant Henry could have believed, from these accounts of what he said and of his failure to take

- any positive action to make his intentions clear; that he could reasonably have believed that he had countermanded and withdrawn from the criminal enterprise of which serious bodily harm had, from the outset, been contemplated to be a part.
208. By way of explaining his failure to say or do more, his Attorney Mr. Bourne QC suggested that Henry was in fear of his accomplice who was armed with the knife.
209. But that, in the eyes of the law, could not provide exculpation for his failure having regard, especially, to all the harm that he had himself already done to his victim and which must have helped to diminish her ability to resist or even plead for her life.
210. To be clear, I expressly reject the suggestion that by saying to his accomplice in effect that I will not help you because it is up to you, whether or not you kill this person; the defendant Henry could have thought that he had done sufficient to countermand or withdraw from the criminal enterprise.
211. Rather, in all the circumstances as they are revealed from his own cautioned interview, those words were capable of carrying the implicit suggestion to his accomplice that he may go ahead and kill, just so long as he did not expect any physical assistance. And so the implicit suggestion also that Henry would be a willing participant in the cover up that must follow afterwards.
212. In other words, far from countermand or withdrawal, implicit words of encouragement.
213. I note, moreover, the pronounced lack of truth in the suggestion that his accomplice wished to get rid of her for fear of himself as distinct from themselves, being caught by the police.

214. This is itself a clear enough insight into the prevaricating state of mind of this defendant – even while he assured his interviewers that he spoke nothing but the truth – but seeking only to exculpate himself.
215. I also note here the inconsistency between the two accounts – that given in the statement in the police car on the 27th and that in the interview on the 28th – about the location where the deceased was killed. On the 27th, the location was given as the second location but on the 28th it was given as the first location. This is significant as I will explain.
216. In the cover up that followed, the defendant Henry could hardly have been a more willing participant. In the rest of his narrative he sought to give the impression that he was ordered back into the vehicle and driven to the dead end of the Mangrove Buffer Road where it was burnt by his accomplice acting alone, but there are a number of clear indicia of his willing participation in the continuing chain of events.
217. These indicia, which also go to his state of mind at the relevant time, have helped to inform my conclusion that he had not in any way, let alone in the manner contemplated by the law, sought to withdraw from the criminal enterprise before the deceased was killed. In the first place, he showed none of the remorse that one would expect about the final terrible fate of his victim. Instead, he had the presence of mind to elicit the PIN number for her bank ATM card before she was killed which, literally at the crack of dawn, he was involved in using it to access her account. He described how he elicited the number in this way in answer to a question about the card during his interview:

“Yeah, we did get her PIN number from her you nuh, she just gave it freely, but before she gave we the PIN number she said ‘if she gave we the PIN number you guys going kill me same way.’ I turned to her and say, no we not going to kill you, just give we the PIN number.”

218. The evidence in the case about the subsequent attempt to use her ATM card shows that she did indeed give the number but it had bought her no mercy from Henry who did nothing to help her.
219. While there is nothing in his account to explain whether this exchange with the deceased had taken place before or after Henry’s accomplice declared his murderous intent, other things said by Henry indicate that he was not being truthful about what happened in this respect either.
220. We see further in his interview the account that it was not until after the deceased had been killed and they had driven her car with her body in it to the end of Mangrove Buffer Road, that Henry himself searched “her handbag” and took what he described as her credit cards. His accomplice, he said, also searched the handbag and found money which he shared with Henry. But it is obvious that this account of having found her credit cards at that point in time does not accord with them having already elicited the PIN number. Otherwise, why would they have needed the number before the card was found?
221. Equally unexplained and inconsistent with his account, is the fact that the frame of the two front seats were found in the fully reclined positions when the burnt shell of the car was discovered, having been driven in the dark on treacherous roads some two miles away from the first scene where, according to Henry, in his

second account the deceased had been raped and killed. Obviously, the car would have been driven to its final position with Henry and his accomplice in the front seats in their upright position. Against this background, one cannot but reflect that had the deceased been alive and further assaulted at the end of Mangrove Buffer Road, Henry's attempt to dissociate himself from his accomplice at the first location, as he claimed, could not have taken place. Having regard to the inconsistencies between his two accounts given in this regard on the 27th and 28th October, I do not accept, in any event, that he had made any attempt whatsoever to countermand or withdraw from the criminal enterprise.

222. The further evidence of his subsequent conduct only serves to reinforce this conclusion.
223. From his own statement, it also appears that after he and his accomplice had ransacked and searched the car, with Henry taking one of the two Blackberry phones, the laptop computer, a camera and some of the money, he waited and watched while his accomplice set the car on fire with the victim in it. And although he claimed to have moved away, he also said that he had waited until his accomplice caught up with him and he remained with his accomplice, according to Henry, "at the Digicel pole until about to 5:30 – 6:00 am".
224. This narrative is also inconsistent with what Mr. Bourne QC submitted I should make of the call at 2 am and 44 seconds from Henry's to Ricketts' cell phone; which is that accepting Henry's account for these purposes that Ricketts was his accomplice, the call indicates that Henry must have moved some distance away from Ricketts as he said he had in an attempt to dissociate himself. But from

Henry's own narrative as described above, whatever separation had taken place between them that night could only have been momentary.

225. Henry's persistent attempt to access the laptop during the course of the next day also betrays the absence of any feelings of remorse. And, finally and perhaps most telling and damning of all, are the pornographic reminders which he chose to keep of the terrible ordeal to which he had subjected his victim, leading to her cruel death.

226. On the overwhelming weight of the evidence, I find that the defendant Henry was a willing participant in the plan to abduct and rape Estella Scott Roberts by the use of force and with the realization that she would in all probability suffer serious bodily harm. While I must accept that it was his accomplice who actually suffocated her, I find that he made no true attempt to countermand or withdraw from the criminal enterprise when his accomplice declared the intention to kill but instead, by his presence and behaviour, giving at least tacit encouragement; continued thereafter in the criminal enterprise without any sense of remorse but with the intention instead to profit from the crime.

227. I am satisfied so that I am sure that he is guilty of the offence of murder as laid in the indictment against him. He is convicted accordingly.

The case in relation to the defendant Larry Prinston Ricketts

228. Apart from the admissions contained in his cautioned interview of the 28th October given to Insp. Bailey and Sgt. Wright, the evidence against the defendant Ricketts arises from such inferences as may properly be drawn against him from

his very recent possession in the early morning of the 11th October, of the deceased's ATM card and his attempts then to use that card. When considered together with his possession of the ATM card, his possession also of the other Blackberry phone of the deceased – that found in the pockets of his shirt on the 27th October – gives rise to inferences of a connection with her death which would have been difficult to resist.

229. But the prosecution's case quite properly has not been presented, in any event, based on inferences of involvement arising solely from recent possession. It is based squarely on Ricketts' cautioned interview being accepted by the Court.
230. Thus, for legal and procedural reasons already explained, that question of the final acceptance and reliability of the cautioned interview, remained at large to be considered against the background of all the evidence in the case, including that given by the defendant Ricketts himself from the witness box, both in the *voir dire* and later, in his defence.
231. After careful consideration of all the evidence in the case, the conclusion at which I have arrived is that the correctness of having ruled the cautioned interview to be admissible, is reaffirmed. Reasons for that earlier ruling were given in writing and so I do not have to repeat all of the earlier findings now.
232. I will therefore explain this final conclusion at which I have arrived by reference to some specific aspects of the evidence.
233. At the *voir dire*, among the reasons given for admitting the record of interview was the level of detail in it, much of which was not then available to the interviewers, as well as the natural flow of the questions and answers.

234. Then Miss Richards identified eight (8) specific areas of detail with which I agreed.

235. I mention two of those and a third in particular now by way of emphasis.

236. In answer 14 of his interview, the defendant Ricketts, in describing how he and his accomplice killed the deceased, described the use of a garbage bag to suffocate her. This was important information which his interviewers, it is reasonable to accept, could not have known at that time as the defendant Henry's interview was being conducted contemporaneously in another office of the George Town Police Station. Nor was Dr. Hyma's opinion, given in Court that the cause of death was not inconsistent with asphyxiation, apparent from his post mortem report which was available to the police following the post mortem examination on 13th October 2008. In that report the conclusion was given as "homicide by unspecified means".

237. The other particular detail of striking coincidence in the interviews of the defendants not known to the police before, was the account they both gave, but in different terms, of the deceased pleading for her life.

238. I have already set out above what the defendant Henry said were her words used.

239. In the defendant Ricketts' interview, it appears in this way:

Q.33: Did the lady beg you and Kirk not to kill her?

A.33: Yes Sir, she said that she have something like two kids and she want to go home to her family."

240. The third detail of especial significance which I regard as helping to refute Ricketts' allegation against the Police, is that aspect of his interview in which he describes in detail, the clothing he was wearing on the night of the 10th October.

241. These are details which his interviewers could not have been sure about only hours after his arrest and the search of his apartment the night before. It was not until the 21st November that the image analyst Marla Carroll had composed her side by side comparison of the footage from the bank CCTV with the photographs of clothing taken from Ricketts' apartment. This exchange with his interviewers comes from questions and answers No. 30:

Q. 30: Can you remember how you and Kirk were dressed that night of Friday 10th October 2008?

A.30: I was wearing a black jeans pants, a navy blue shirt, the same shirt that the police take from my yard last night and a navy blue cap with a red, yellow and white dragon on the front and peak of the cap, that's it for me. Kirk was wearing...."

242. Finally, in this regard, it is worth noting that the allegation of concoction by his interviewers of his admissions by use of what Henry had said, does not fit with the fact that nowhere in Ricketts' interview is there any reference to him having sexually assaulted their victim. By contrast, the defendant Henry made that clear allegation against Ricketts in his statements.

243. The actual admissions of and Ricketts' reasons for the killing of the deceased, are in his answers 14 and 34.

244. I set them out here. It is worthy of note that this defendant's account is that the deceased was killed, not at the first location but at the second location which we now know corresponds with the end of the Mangrove Buffer Road:

"Q.14: After you drove down the road [to the second location] for about a mile and stopped, what happened next?"

A.14: I find a garbage bag in the back of her car which Kirk used to put over her head to suffocate her. We suffocate her by tying the bag over her head until she stop moving. So she stop moving and I realized that she was dead. Then I light the vehicle with some paper inside the vehicle. Before we left we watched it until it blaze up." [Emphasis supplied]

245. And at question and answer 34:

"Q.34: So, Mr. Ricketts why did you kill Mrs. Estella Scott-Roberts after she beg for her life?"

A.34: Well, actually, after she beg for her life not to kill her, the only choice I would have if she never saw our face then she wouldn't be able to recognize us. So the only reason for killing her is not to recognize or identify us for kidnapping her."

246. Despite his ultimate and steadfast denial in his testimony in Court of these and the other admissions in his interview; there were some telling moments in the cross-examination of the defendant Ricketts, which also point to the real truth of the matter.

247. Having had to admit that the name of the deceased was plainly apparent to him from the front of the ATM card when the undeniable fact of his possession of it in the early morning of the 11th October was put to him; he sought to explain that that was no basis for linking him with her death. However, he did so in the context of the following revealing exchanges with Miss Richards QC in cross-examination:

Q: You knew it [the card] probably belonged to the lady who was killed?

A: I never knew the lady was killed.

Q: You told us you heard the guys on the work site talking about this.

A: When I went there.

Q: The Saturday morning?

A: Yes ma'am.

Q: And what were they saying?

A: They were saying like they heard a lady somebody got burnt up inside a vehicle, it was found somewhere in the Barkers.

Q: Right and a lady had been killed?

A: Yes ma'am.

Q: Yes. So by the time you met up back with Kirk that afternoon, you knew the lady had been killed, where she had been killed, yes?

A: Yes ma'am.

....

The Court: Before you go on Miss Richards, I just want to be clear. When you say you heard the fellows talking about this at work – that morning?

The Witness: Yes, Sir.

The Court: How long after you got to work?

....

The Witness: How long after I got to work?

The Court: Yes.

The Witness: It was minutes to eight.

The Court: Minutes to eight?

The Witness: Yes.

The Court: You heard them talking about that?

The Witness: Yes Sir, while we were on the work site.

Ms. Richards: You left work about 1:00 o'clock you say you were there for five hours.

A: Yes Ma'am.

Q: What is it that you say the guys were saying?

A: They said they heard a vehicle was found burnt ...in the Barkers area and someone was in it.

Q: What else?

....

Q: Someone was in it?

A: Yes ma'am

Q: What else?

A: That was basically it...talking about work and stuff.

Q: Did you tell Kirk about that?

A: If I tell him about it?

Q: Yes, did you tell him you I heard the guys at work talking about that this morning?

A: Yes ma'am.

Q: When did you tell him about that?

A: When I went to his home.

Q: What time did you get by his house?

A: About three in the evening.

Q: At 3 pm?

A: Yes ma'am."

248. Although the defendant Ricketts later sought, during further cross-examination and in re-examination by his attorney Mr. Fortune QC to suggest, that he was there describing events of the following Monday (13th October 2008); it was clear beyond question that he was, in that exchange, speaking about the very Saturday after the deceased was killed and when he had attempted to use her ATM card. And so also, when he later that day, Saturday, the 11th October 2008, admitted that he had assisted Kirk at the latter's apartment to access her laptop computer.

249. The obvious question that arises then is how could this defendant have heard of the discovery of the burnt car and body when he had arrived at work at minutes to

8 am that Saturday, when the discovery had not been made until after 12 noon by Officer Nicholson?

250. The only reasonable inference is that that knowledge, at that time, could have been acquired only from his own involvement.

251. In further cross-examination, it emerged that although in the *voir dire* he had sought generally to challenge the contents of his interview as having been concocted by the Police, Ricketts was now prepared, selectively, to acknowledge certain of his answers given during the interview. This is even while implicitly suggesting that the police were nonetheless artful enough to tailor those answers as well to fit the rest of the interview. This appears from the following exchange:

“Q: Mr. Ricketts, I suggest to you that you, faced with all of that [the evidence the police had found] not hearing from Kirk [after the 25th October when the latter was arrested], you decided to tell the police to make a clean breast of it, you decided to tell the police exactly what had happened?”

A: No ma’am, I never did that.

Q: Because you were intelligent enough to connect all the dots to connect the pieces, yes?”

A: No, ma’am.

The Court: I think I heard him say that he did tell the police about the card and the cell phone?

The Defendant: Yes, Sir.

The Court: When did you do that?

The Defendant: They were asking me where I got it from.

The Court When was that?

The Defendant: On the Saturday morning when I was arrested.

The Court: You were arrested in the evening?

The Defendant: Yes, Sir.

The Court So when did you tell them this?

The Defendant: I told Mr. Bodden during the interview that took place in his office and then I told Mr. Bailey how I got the phone.

The Court: To Mr. Bailey, that's the next day?

The Defendant: Yes, Sir.

The Court: So that's during the interview?

The Defendant: Yes, Sir.

Miss Richards: And what do you say you told Mr. Bailey during the interview?

A: He was asking about the phone found at my house.

Q: Yes?

A: During the search warrant.

Q: Yes?

A: I told him I bought it from Kirk.

Q: I see. And did you tell him about the card in that interview too?

A: They were asking about the clothes that they took.

Q: Yes.

A: I told them on the Saturday morning.

Q: Yes.

A: *I went by the machine and tried to use the card that a good friend had [found].”*

252. It is suggested from this account given by Ricketts, that the officers interviewing him would have taken it and concocted from it the full explanation given in the interview which he admits to having read over before he attached his initials and signature, certifying his acceptance of it. I have no hesitation in rejecting that suggestion.
253. Finally, in this regard, I have further considered the difference between what the defendant Ricketts had given in the *voir dire* as his reasons for denying his cautioned interview and what he gave as those reasons during cross-examination in his defence.
254. In the former context, he had alleged that he signed and certified the record of interview although he knew it contained answers which he did not give, for the reason among others, that the police had promised him it would not be used against him, and that the interview was just to assist the police and was a routine procedure.
255. However, it emerged in his defence, in response to a question from his own counsel Mr. Fortune QC, that he was suggesting something else. This latter to the effect that he only became aware that the record of interview contained the concocted incriminating answers, after he had been served with the bundle of documents for the Court proceedings.
256. The following exchange in questions and answers will suffice to illustrate this contradiction.

Miss Richards: *In answer to your counsel you said 'When I get the bundle and read it that's when I realized it was stating it. What bundle are you talking about?*

A: *The bundle with some interview and statements from the witnesses.*

Q: *You mean the Court bundle?*

A: *Yes, ma'am*

Q: *So I take it that you are saying you didn't realize you had admitted to the killing until you got the Court bundle? That's what you are saying?*

A: *No ma'am. I said I never realized that the answer Mr. Bailey was stating is not what I was telling him.*

Q: *So you only realize it when you got the Court bundle?*

A: *When I read through it and fully understood it.*

Q: *So you did not realize it at that time in the interview room?*

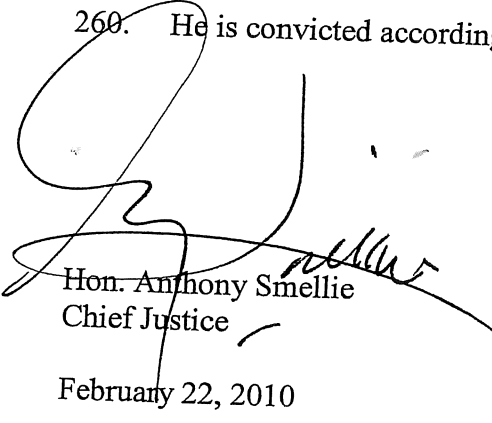
A: *No ma'am."*

257. That response, which he goes on to repeat in further questions and answers, puts the complete lie to the reasons he gave on the *voir dire* for having signed the record of interview while being fully aware of the incriminating questions and answers it contained; that is: because the police had cajoled him into doing so.

258. Taken with all the other evidence that relates to the voluntariness and fairness of the interviews; I am left in no doubt that the admissions were freely and voluntarily given.

259. They contain the admission of the defendants Ricketts' active participation in the death by suffocation of the deceased, Estella Scott-Roberts at the second location at the end of the Mangrove Buffer Road and based on them, I find him guilty of the offence of murder charged in the indictment.

260. He is convicted accordingly.


Hon. Anthony Smellie
Chief Justice

February 22, 2010

