IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL 30/2010
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BETWEEN:

HER MAJESTY THE QUEEN — **Respondent**

and

PATRICK MCFIELD
OSBOURNE DOUGLAS
BRANDON LESLIE EBANKS — **Appellants**

Before: **The Rt. Hon Sir John Chadwick, - President**
The Hon Mr. Justice Mottley - Justice of Appeal
The Rt. Hon Sir Anthony Campbell, - Justice of Appeal

Appearances:
Trevor Burke QC instructed by Ben Tonner of Samson & McGrath for Patrick McField.
Alastair Malcolm QC instructed by Clyde Allen(Chambers) for Osbourne Douglas.
Nicholas Rhodes QC instructed by Nicholas Dixey of Mourant for Brandon Leslie Ebanks.
Cheryll Richards QC, the Director of Public Prosecutions and Tricia Hutchinson for the Crown.

Heard: 28 and 29 November 2011
Delivered: 30 March 2012

REASONS FOR JUDGMENT

MOTTLEY, J.A.

[1] On 16 September 2010, after a trial before Quin J and a jury, Patrick McField, Osbourne Douglas and Brandon Leslie Ebanks, the appellants, were convicted of the murder of Omar Barton Samuels and were each sentenced to a term of life imprisonment. They each appealed against their conviction. At the conclusion of the oral hearing of the appeal the Court stated that the appeal would be allowed for reasons which would be put in writing and delivered as soon as convenient.

[2] The prosecution's case was essentially based on the evidence of two young girls, Cindi Wright and Erica Logan, who the prosecution put forward as witnessing the shooting of Omar. On 5 July 2009, shortly after midnight, Cindi Wright, then aged 15, left her home along with her friend Erica Logan also aged 15, to visit a friend at Harlem in McField Lane. On arrival at the home where her friend resided, Cindi went upstairs but discovered that her friend was not at home. She returned downstairs where she saw Omar who was sitting on one of the walls of the porch of the same house. A light was burning in the porch. Omar, who had lost an arm, was carrying a navy blue jacket. After a short conversation with him, she told Omar that she was returning to her home.

[3] Three young men suddenly appeared from the side of the house. Cindi recognized them as the three appellants. The appellant Douglas said to Omar "what are you saying now". On arrival at the scene, Douglas was wearing a scarf over his head. She was nonetheless able to identify him at a later stage. Both Douglas and Ebanks were armed with guns. They both pointed their guns at Omar's head. The other appellant McField had nothing in his hand. McField said to Douglas and Ebanks "wunna deal with him". Omar moved from the porch. Douglas and Ebanks started wrestling with Omar. This wrestling was described by Cindi as "fighting, punching and kicking". Both Douglas and Ebanks punched and kicked Omar. During this fighting, Omar was backing away going towards the chain link fence which had a gate. This fence is located on the right side of the house as you stand facing the house (on the side of the house with the porch) and ran adjacent to the house. Omar backed away and fell on the fence. As he fell, Douglas and Ebanks started to shoot at Omar. After the shooting started, Cindi and Erica ran toward the left side of the house. From that position Cindi stated that she saw Douglas and Ebanks with their guns still pointed at Omar. As soon as they heard shots being fired, Cindi and Erica ran along the alleyway which is on the left side of the house. They ran in the direction of the laundromat which is situated on the left side of the house towards the back.

[4] On reaching the laundromat, Cindi and Erica waited for two to three minutes during which period they hid in a gap which is situated between the Laundromat and another building. Cindi said she heard about 13 gunshots. After the shooting ceased,

the three appellants walked down the same alleyway on the left of the house in the direction of the laundromat where Cindi and Erica had stopped. On seeing the three appellants coming down the alleyway towards the laundromat, Cindi and Erica went further into the gap. On reaching the laundromat, the appellants turned right and walked across an open area which is situated at the back of the house, between the house and another building; that is to say, at the other end of the house from that where the porch is situated. The appellants then left the property by going through a "gate" in the fence at the back of the property.

[5] Cindi and Erica left the scene and returned to Cindi's home taking the same route as the appellants albeit at some distance behind them. Shortly arriving at her home, Cindi saw the three appellants pass through her yard.

[6] Neither Cindi nor Erica made any complaint or statement to the police until 29 July 2009, some 24 days after the shooting.

[7] Erica said that she and Cindi left Cindi's home to visit a friend. While walking along McField Lane they met Omar coming from the opposite direction. Erica, Cinidi and Omar walked to a house where they sat on the porch. While sitting there, three men came from the left side of the house. She recognized the appellant McField. One of the three men was wearing a scarf over his head. While she agreed that Douglas and Ebanks were carrying guns, she said that the guns were in their waist. Douglas, the

one with the scarf, started arguing with Omar about something that Omar had previously done to McField at a nightclub.

[8] Both Douglas and Ebanks pulled their guns from their waist and pointed them at Omar who got off the wall where he was sitting and moved away from them going towards the fence, which runs along the right side of the house. At that stage both Douglas and Ebanks started shooting at Omar. Erica estimated that the argument and shooting lasted for about "25 to 30 minutes". She said about 15 minutes elapsed between the time the appellants came to the house and the time when she and Cindi moved to the alleyway along the left side of the house. While she and Cindi were standing at the corner of the house, Erica said more shots were being fired. However, she could not see. Erica indicated that, when other shots were being fired she and Cindi were standing in front of the laundromat. She could not see what was happening at the front of the house. Erica and Cindi ran to Cindi's house. While on the sidewalk by the parking lot of the church she saw the appellants running through the car park of the church. She indicated that earlier she saw the appellants jump over the chain link fence.

[9] Marcus Manderson, at the time of the trial an inmate at Northward Prison, was present at McField Lane on the night of the incident. The Crown treated him as a hostile witness. He however said that he saw Omar who was lying on the ground in

McField Lane and bleeding, he tried to help him. Omar who did not believe he was going to die told Manderson that Martin (meaning Martin Trench) had shot him.

[10] Dr. Bruce Hyma who performed the post mortem stated that Omar died from a perforating gunshot wound to the left leg. The bullet went through the leg causing damage to the femoral artery which led to rapid blood loss resulting in death. The doctor indicated that blood goes through the aorta and in the space of one minute the entire blood volume of the body flows through the aorta. Dr. Hyma pointed out that it would not have taken long for Omar to lose a third of his blood causing irreversible damage leading to death. This whole process would happen in "just a few minutes". He expressed the opinion that, given the nature of the injury Omar sustained, his blood loss would have been immediate as the artery and vein, which were damaged, were deep within the left thigh. Blood would have accumulated deep in the muscle of the left leg before it found its way out of the skin through the bullet hole. Omar would have been able to walk for a few minutes after he was shot. The doctor described the injury as being caused by the bullet going in the left thigh and going upward and out at the base of the thigh. The absence of gunpowder residue on the skin or clothing indicated that when the shot was fired the person shooting would have been some distance away. Dr. Hyma did not find any clinical evidence of Omar being beaten.

[11] On the morning of 5 July 2009 at about 2.50am, as a result of information received, police constable Zoan Marin who is attached to the Scenes of Crimes Department of the Royal Cayman Island Police Service attended the scene of the shooting which she described as an apartment complex in the vicinity of School House Road and McField Lane. In response to a question from the Director of Public Prosecutions as to what she observed at the scene, PC Marin responded that:

> "During the search of the crime scene, I observed five shell casings. They were actually in front -- or between the upstairs and the apartment 16 and 17, in that area there, five shell casings on the ground. Next to apartment 17-- 16 and 17 are actually together."

[12] Apartments 16 and 17 are located at the rear of the house; that is to say at the other end from the porch where Cindi said she saw the deceased sitting. PC Marin went on to describe what else she found in the area between the house and the apartments:

> As you passing number 17 apartment, there's an open space that consists of two cars . . .
>
> A white Corona and a gold Corona – the white one had a licence plate number and the gold one didn't. During the examination of the crime scene, there was what appears to be blood on the ground next to the gold Corona. . . .
>
> Behind the -- the two vehicles, there were a chain link fence . . .
>
> And there's a wall right here, right on – on the pathway . . .

So I observed what appears to be blood on the lower part of the chain-link fence . . . as you go over the chain-link fence, there is a cement column -- cement block and column, and on that column over the fence was what appears to be blood.

She went on to say that she observed what appeared to be blood on the wall of the pathway.

[13] In cross-examination by Mr. Burke, the following sequence took place:

Q: So the far end of where you've just been able to identify with your finger is that porch area depicted in this photograph. Now, before moving onto other things, can we just establish, so there's no doubt about it, having examined this area, the only item of forensic interest was the jacket which you recovered, having photographed it in situ on this photograph?

A: That is correct, the jacket and the cigarette lighter that in (sic) the pocket.

Q: In the pocket. So the jury will know, because you have examined it and are about to tell us, there was no blood, no cartridge casings, no part of bullets or anything to indicate there had been any shooting in this photograph or the area it shows?

A: No, there was no blood there. No shell casings, no.

[14] As I have explained, PC Marin testified that blood drops were seen on a chain-linked fence, which separated the house from a walkway which leads to the main road and to the area where the deceased was found lying on the ground. In addition, PC Marin also found pieces of metal in the walkway between the chain-linked fence and a wall. Blood was also seen on the wall in the walkway. . She testified, in answer to questions put to her by Mr Malcolm in cross-examination, that the blood by the car, the blood on the chain-link fence, the blood on the cement column and on the wall, were DNA consistent with Omar's blood. Following re-examination by the Director, Mr Malcolm asked her these two questions:

Q. . . . And just to sum up the blood, I asked you about the blood at the top end by the cars and on the fence there, and you, when you examined the scene, could follow a trail of blood which started there, went over the fence and then all the way down the alley round the front to where eventually his body was found.

A That's correct.

Q. Is that right? So you could see --- although you didn't swab it all the way along, you swabbed it in places to find out that it was his blood – or to send it off to be tested to see if it was his blood. But you physically at the scene could see the trail which started at the cars and then could follow it all the eay down into the alley, round the corner, into the main square, round McField building to where he was picked up by the ambulance?

A. That is correct.

[15] Allen Greenspan, a firearm and tool mark examiner attached to the crime laboratory of the Broward County Sheriff's in Fort Lauderdale, Florida expressed the opinion that the person who fired the bullets would have had to be close by to the area where the casings were found. These casings were identified as 40 S&W for a 40 caliber pistol. He was however unable to give an exact distance as to where that person would have been. It is necessary to set out the cross-examination of this witness by Mr. Malcolm:

Q: Those are the places where, as you've heard, the shell cases were found. And as I understand it, what you're saying about it is the person who was firing the gun would be close by, but you can't say exactly where, is that—

A: I couldn't tell you. There's hard surfaces, both horizontally and vertically, and when the casing comes out, it's going to hit and bounce and ricochet.

Q: Yes. But close by were your words, is that right?

A: That's correct, yes.

Q: And that's all – we're not asking you to put an X on the ground and say exactly where the gunman was. He was close by when those shells were ejected?

A: Yes.

Q: What sort of distance can they go, in fact, a shell when it's being ejected?

A: I've seen them go 30, 40 feet down the street. When they hit, they're bouncing really quickly.

Q: But in a confined space like this, where they could bounce off the wall or bounce off the ground, it's not surprising that they're all found fairly close together?

A: Could be.

Q: They wouldn't, for example – just to take example, they wouldn't – they would be unlikely, put it that way, to be where they are if the man who was firing the gun was standing close to the yellow wooden building that we see at the far end of the alleyway in photograph 33?

A: If he was standing by the building at the very end of the alley?

Q: Yes, yes. It's highly unlikely that the cartridge cases would be where they are in that –

A: He would have to be shooting to the right, and then they would have to hit and bounce all the way over there. So that would be unlikely, yes.

Q: Yes, unlikely. So – I'm trying to get the parameters of how close by is. The gunman must have been closer to the cases than that pink building, in all probability?

A: Could have been, yes.

Q: And given that we know, if we just turn to photograph 31, which is looking the other way, the metal and the copper that was found was found over by the fence that we see in the distance in photograph 31.

A: Okay.

Q: It's a pretty good indication that that was the direction the gunman was firing?

A: Correct.

Q: And, indeed, the particular copper jacket that we saw in photograph 72, which was the only one you identified as the copper jacket, if you look at – photograph 31 and go beyond the down pipe on the corner of the building and then there's a concrete flints and then there's some vegetation. I think we can match the various photographs and see that is, in fact, where we're looking when we look at photograph 72, so that gives you an indication of where that copper jacket was found.

A: Okay.

Q: And so that would indicate or be a pretty good indication that somebody was firing an automatic 40 S&W, is that right?

A: That's where the casings were, yes.

Q: And, indeed, the copper jacket came from a similar type of gun?

A: Similar calibre, correct.

Q: Similar calibre gun. Would be shooting in that direction from somewhere near but not precisely by where we find these shell casings?

A: Somewhere's close, yes.

[16] At the close of the case for the prosecution counsel on behalf of each of the appellants made submissions that none of the appellants had any case to answer. The judge did not agree with the submissions and ruled that each appellant had a case to answer. At the outset of his oral ruling Quin J indicated that counsel were relying on **R v Galbraith [1981] 1 W.L.R. 1039**. The judge ruled that:

> "The Crown's evidence depends upon reliability of the two eyewitnesses and other matters which, in my view, are within the province of the jury and where, in one possible view of the facts there is evidence upon which a jury could properly convict, and therefore I should not prevent the case from going to the jury. It is my view, that although there are several inconsistencies and discrepancies within the Crown's evidence, there are matters which proper directions can be safely led [sic] to the jury. There will have to be careful directions on a number of issues such as eyewitnesses and voice identification evidence."

He concluded that:

> "In my view, looking at all the evidence before me, there is a case for the three defendants to answer. And looking at each of the three defendants and the charge they face, there is, one possible view of the facts, evidence upon which a jury could properly come to the conclusion that they are guilty."

[17] At the oral hearing of the appeal, this Court indicated that it would be convenient, first, to hear argument addressed to the ground of appeal that the judge erred in law in that he failed to accept the no case submissions made on behalf of the appellants and to withdraw the case from the jury. It was accepted that if the appellants succeeded on this ground it would lead to the convictions being quashed and sentences being set aside as the wrongful rejection of a submission of no case to answer will lead to the conclusion that the convictions are unsafe (see **R v Abbott [1955] 2QB 497**).

[18] In **R v Barker (Note) (1975) 65 Cr. App. R. 287** Lord Widgery C.J., commenting on the role of the judge where a no case submission has been made, said at p.289:

> "But even if he is right and even if the judge has taken the view that the evidence could not support a conviction because of the inconsistencies, he should nevertheless have left the matter to the jury. It cannot be too clearly stated that the judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the necessary minimum evidence to establish the facts of the crime has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the

witness is lying. To do that is to usurp the function of the jury and would have been quite wrong in the present case."

[19] However, in **R v Mansfield [1977] 1 W.L.R.** 1102, Lawton L.J., having referred to the judgment of Lord Widgery C.J. in **R v. Barker,** went on to observe that the judge was not entitled to say that he could not entertain a submission that the defendant had no case to answer when that submission was based on the ground that "the evidence was so conflicting as to be unreliable and therefore if the jury did rely upon on it the verdict would be unsafe".

[20] This observation led to some uncertainty as to the correct approach which should be adopted by a judge when a submission was made that there was no case for a defendant to answer. It was possible to conclude that the conviction would be unsafe because in the judge's opinion the main prosecution witness is not to be believed. This would be clearly wrong, as it would require the judge to determine the credibility of witnesses, which was entirely the function of the jury.

[21] The issue was revisited by the Court of Appeal in England in **R v Galbraith [1981] 1 W.L.R 1039** where Lord Lane C.J. set out the approach which should be adopted. His Lordship said at p.1042:

"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the

case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury would properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred."

[22] In **R v Colin Shippey, Steven Jedynak and Malcolm Jedynack [1988] Crim L.R. 767** Turner J, commenting on limb 2 of the Galbraith formulation, indicated that 'taking the prosecution case at its highest did not mean picking out the plums and leaving the duff behind'. The judge held that he was required to 'assess the evidence and if the witnesses' evidence was self-contradictory and out of reason and all common sense then such evidence is tenuous and suffering from inherent weaknesses'. He was, he said, required to make an assessment of the evidence as a whole and not simply a

question of the credibility of individual witnesses nor was it a matter of evidential inconsistencies between witnesses".

[23] The Court of Appeal had occasion in **R v Ashley Trevor Pryer, Paul Sparkes, Benjamin Jon Walkes [2004] EWCA Crim 1163**, to explain the observations of Turner J in **Shippey** concerning the "plums and duff". Hooper L.J. stated at para 21:

> "21. Counsel rely heavily on the case which Mr. Moses described as "infamous", the case often referred to as the "plums and duff" case. The name of the case is **Shippey [1988] Crim LR 767**. It is a decision of Turner J, sitting at Sheffield, and is the subject of a commentary by the late Professor Sir John Smith. What is not clear from **Shippey** as reported in the Crim LR are the facts, which lay behind the decision that Turner J. reached. What is clear is that the evidence of the complaint in a rape case was certainly very weak and full of inconsistencies in the view of Turner J.
>
> 22. Turner J considered the case of **Galbraith (1981) 73 Cr App R 124** and then said, according to the report in the Crim LR:
>
> > "However, taking the prosecution case at its highest did not mean picking out the plums and leaving the duff behind."

[24] At para 27 the Lord Justice observed:

"27. It has been the experience of at least two members of this Court that **Shippey** is often cited by counsel at the close of the prosecution's case. What counsel often do, and what in our view counsel have done in this case, is to convert **Shippey** from what it actually is, namely a decision on the facts, into a decision on the law. Mr. Moses and Miss Stapleton seek to find in **Shippey**, as many counsel have done before them, some principle of the law called "the plums and duff principle".

[25] Lord Justice Hooper then set out what is the duty of the trial judge when faced with a no case submission. He said:

"28. What is a trial judge being asked to do when a submission of no case is made either at the close of the prosecution case, or, as sometimes happens, after all the evidence in the case has been given? He has a task to perform, which is stated simply and clearly in **Galbraith**:

> "Could a reasonable jury properly directed properly be sure of the defendant's guilt on the charge which he faces."

29. Although the test is a very simple one, it is often difficult to answer the question. Help may sometimes be found in the case of **Shippey** in resolving that question, provided it is remembered that **Shippey** is no more than another case on the facts. **Galbraith** gives significant assistance to judges when being asked to resolve that question when the reliability of witnesses is in issue."

[26] The question which this court is to consider is whether a reasonable jury properly directed could be sure of the defendants' guilt on these charges. Alternatively, the court has to consider whether "the evidence (was) so internally inconsistent and unreliable as to lead to the conclusion..... that no reasonable jury properly directed could be sure of the appellant(s') guilt" (see Richards LJ in **R v Gary Inskip [2005] EWCA Crim 3372**). This question must be distinguished from the question of whether the judge believes the witnesses for the prosecution. It is not a question of what weight was given to the evidence of particular witnesses which would be a matter for the jury and not the judge.

[27] Mr. Trevor Burke QC, counsel for the appellant Patrick McField, relied on the second limb of **Galbraith** and submitted that, while there was some evidence, it was of a tenuous character because of inherent weakness or vagueness or because it was inconsistent with other evidence. The judge, counsel said, was required to assess the prosecution evidence as a whole. He was required to take into account the weaknesses of the evidence as well as its strengths and, in so doing had to look at the evidence in the round. He contended that looking at the evidence in the round, the judge could not be satisfied that the jury properly directed could properly convict. The judge was therefore required to stop the case.

[28] Mr. Alastair Malcolm QC, counsel for the appellant Osbourne Douglas also relied on limb 2 of the **Galbraith** formulation. He adopted the submissions of Mr. Burke.

[29] Counsel for the appellant Brandon Ebanks, Mr. Nicholas Rhodes QC, complained of the ruling by the judge that "there is, on one possible view of the facts, evidence upon which a jury could properly come to the conclusion that [the appellants] are guilty". He submitted that, while this is the appropriate test, it did not mean that a case should continue on a fanciful or wholly unrealistic basis as the testimony of the eyewitnesses was discredited insofar as the location of where the shooting occurred.

[30] Miss Cheryll Richards QC, Director of Public Prosecution, agreed that the applicable test was the formulation set out in the second limb of **Galbraith**. The Director submitted that, even though there were inconsistencies and discrepancies in the evidence, these were issues of fact for the jury. It could not be said that it was a case in which, a jury could not convict upon the evidence taken at its highest. The Director relied on **R v Pryer & Others (supra)**.

[31] What was the state of the evidence at the conclusion of the prosecution's case? Cindi said she met the deceased sitting in the porch of the house. Erica however said that she and Cindi met the deceased walking along McField Lane and not sitting on the

porch. Cindi said that immediately before the shooting, which she said took place in the area of the porch, the physical fighting took place. Two of the appellants Osbourne Douglas and Brandon Ebanks, who were brandishing guns, punched and kicked the deceased. The post mortem examination of the deceased did not reveal any signs of the deceased being kicked and punched.

[32] Both Cindi and Erica said that a total of 13 shots were fired by Osbourne Douglas and Brandon Ebanks. P.C. Marin testified that only 5 spent cartridge casings were found at the scene. These were found in the at the back of the building in the open area between the house and the building with apartments. There was no challenge to this evidence. No evidence was led to show that the spent casings were moved. P.C. Marin made it clear that the only thing found by the porch of any forensic value was the jacket belonging to the deceased. She made it clear that no shell casings were found at the front of the house by the porch.

[33] From the evidence of Allen Greenspan, it was distinctly possible that the person shooting a single semi-automatic weapon would be more likely than not standing in the area at the back of the house between the house and the building with apartments 16 and 17. He reached this conclusion because the shell casings were all found grouped in a relatively small area; indicating that the person shooting would have been close by to where the casings were found. In response to question from Mr. Rhodes he agreed that "because the casings were located relatively close to one

another I would say the person could have been close by" – that is to say, close by to where the casings were found.

[34] Cindi and Erica said that the shooting took place in the vicinity of the porch – at the front of the house. It was in this vicinity that they purported to identify two of the appellants as the persons who shot Omar

[35] According to PC Marin, the spent shell casings were found in the area between the back of the house and the other building with apartments 16 and 17. The evidence is that the person shooting the gun would have been close by to where the shell casings were found. The logical inference from this evidence is that, at the time of the shooting, the person shooting would have had to be in that area between the back of the house and the apartment building. If this is so, it would be impossible to reconcile the physical evidence as to where the spent shell casings were with the evidence of Cindi and Erica that the shooting took place at the front of the house, in the vicinity of the porch. Further, of course, there was the evidence of the trail of blood leading from the gold Corona car at the back of the house, over the chain-link fence and along the pathway; and the absence of any blood in the vicinity of the porch.

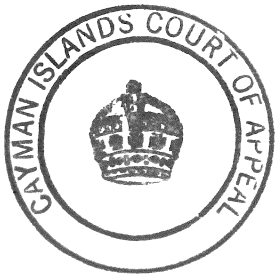
[36] The Director conceded that there were inconsistencies; but contended that these were not substantial and did not warrant the trial judge adopting the robust approach which was taken by Turner J in **Shippey's** case. We do not agree with the

Director. The issue here was not simply the credibility of the eyewitnesses. In our view, it would not be possible for any jury properly directed to properly reconcile the physical evidence relating to the findings of the spent shell casings in the area at the back of the house by the apartment building and the trail of blood with the evidence of Cindi and Erica that the shooting took place at the front of the house, in the vicinity of the porch. We consider that this evidence was so internally inconsistent that no reasonable jury properly directed could properly be sure of the appellants' guilt. This was not a case where it was open to a jury to accept one version which would indicate guilt as opposed to the other which would lead to a verdict of not guilty. The only version which the jury could properly accept, on the physical evidence, was that the shooting took place at the back of the house in the area between the house and the building. This raises a serious issue as to whether Cindi and Erica actually saw who shot Omar; for, if so, why would they make such a fundamental mistake as to where the shooting took place. This inconsistency has not been explained. This has to be viewed against the background that neither Cindi nor Erica made any complaint to the police until 24 days after the shooting occurred.

[37] For the reason set out above, the judge ought to have accepted the submissions of no case to answer. As stated earlier, it is well established that the wrongful rejection of a no case submission will lead to conclusion that a conviction is unsafe. Section 9(1) of the Court of Appeal Law (2011 Revision) provides *inter alia* that the verdict of the jury should be set aside if it is unsafe.

Chadwick, P.

Mottley, J.A.



Campbell, J.A