

IN THE COURT OF APPEAL OF CAYMAN ISLANDS  
Criminal Appeal 2/2010

Ind. 27/09

C#03424/09

BETWEEN:

RANDY LEBERT MARTIN

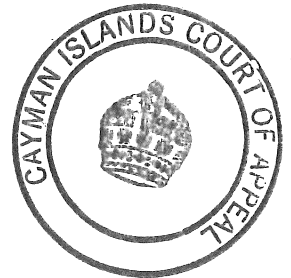
APPELLANT

AND

HER MAJESTY THE QUEEN

RESPONDENT

Before: The Hon. Mr. Justice Chadwick, President  
The Hon. Mr. Justice Mottley, Justice of Appeal  
The Hon. Mr. Justice Conteh, Justice of Appeal



Appearances: Mr. Adam King of Samson and McGrath for the Appellant.  
Ms. Cheryll Richards QC, Solicitor General and Mrs. Kirsty-Ann Gunn  
for the Respondent.

Heard and Judgment delivered: 20<sup>th</sup> August 2010

Reasons released: 7<sup>th</sup> December 2010

MOTTLEY, JA

[1] On 20 August 2010 at the conclusions of the hearing of the appeal, the Court dismissed the appeal and affirmed the conviction and sentence. At that time, we indicated that we would put our reasons for so doing in writing. Those reasons are now handed down.

[2] On 26 January 2009, following a trial before Quin J without a jury, the appellant was convicted of murder and was sentenced to a term of life imprisonment. The appellant had been charged with the murder of Sabrina Schirn on a day unknown between 11 March 2009 and 17 March 2009.

### **Prosecution's case**

[3] The case for the prosecution was based on circumstantial evidence which was supported by DNA evidence. Sabrina borrowed a white Honda Torneo motor car registration No. 133 249 from Samantha Sueberan who worked at Blockbuster in Grant Harbour. Sabrina had gone to Blockbuster and had indicated that she wanted to pick her boyfriend up from North Side. Shortly after 10 a.m. Sabrina went to a house in Pease Bay to take breakfast for Danielle Ramoon. She told Danielle that she would return later to pick her up as she was not ready. Sabrina indicated that she was going to pick up someone called Randy and drop him off at East End and would return for her. At approximately 10.50a.m. on that same day Sabrina arranged to meet a young lady, Ms. Christian at 1p.m. to buy lunch for her. Later that day, Gilbert George Hudson ("Mr. Hudson") who worked on a farm owned by Dr. Look Loy, was watering plants when he saw a motorcar drove up and park. This farm is situated near the Prison Farm. After the car parked Mr. Hudson saw a prisoner coming across the farm and got into the car. Shortly after, the car reversed and then drove off. While Mr. Hudson, from where he was standing, was unsure whether the driver of the car was a man or a woman he nonetheless thought that the driver was a woman. Mr. Hudson formed the view that the

person who got into the car was a prisoner because that person was wearing blue prison-issued pants and shoes. He however did not see the prisoner's face. An inmate by the name of George Dexter Evans who looked after the irrigation system on the farm noticed a white car being driven by what he thought was a female. The car had driven pass the Prison Farm towards a banana shed. He subsequently saw the same car being driven in the other direction.

[4] In order to establish Sabrina's movement after she left the Blockbuster Store, the Crown relied on the cell phone records of Sabrina. The cellular phone records of the appellant were also produced. These cellular records from both Digicel and Cable & Wireless indicated that between 4 February 2009 and 10 March 2009 the appellant and the deceased were in contact with each other on their cellular phones. Sabrina possessed two cellular phones - one on the Cable & Wireless Network and the other on the Digicel. From these records the following facts indicated:

- i) at 10.24a.m. Sabrina's cellular phone on the Cable & Wireless network was within the Red Bay Cell Site;
- ii) at 10.27a.m. Sabrina's cellular phone on the Digicel network was within Prospect Cell Site;
- iii) at 10.37a.m. Sabrina's cellular phone on the Cable & Wireless network was within the Bodden Town Cell Site;
- iv) at 10.52a.m. Sabrina's cellular phone on the Digicel network was within the East End Cell Site;
- v) at 10.53a.m. Sabrina's cellular phone on the Cable & Wireless network was within the High Rock Cell Site;

- vi) between 10.52 and 10.59a.m. the records indicate that there were four calls passing between the appellant's cellular phone and the cellular phone of the deceased. The cellular records indicate that no further calls were answered by Sabrina's Digicel cellular phone. All subsequent calls went to her voice mail.
- vii) at 11.27a.m. Sabrina's Cable & Wireless cellular phone went off the network and was not again activated. Pieces of this cellular phone were found in a broken condition near the spot where her body was subsequently discovered.

Based on the evidence the Crown suggested that Sabrina would have been killed sometime between 10.50a.m. and 11.27a.m. on 11 March 2009.

[5] The Crown tendered into evidence a statement dated 21 April 2009 which was made by Juliette Ebanks. In that statement Juliette Ebanks said that she was a former girlfriend of the appellant. She referred to an incident which took place in 2006 at the Zodiac Bar. Sabrina was eating a plate of oxtail when an argument ensued between the appellant and Sabrina. The appellant held Sabrina's head and pushed it into the plate of oxtail. Sabrina needed assistance in washing her face. Before pushing her head in the oxtail, the appellant told Juliette that Sabrina was responsible for or was involved in the shooting of his brother.

[6] Sabrina went missing on 11 March 2009. On 17 March 2009 Sabrina's brother Kevin Jennings enlisted the assistance of Christopher Eden in searching

for Sabrina after the motor car registration number 133249 was found on the previous day. The area surrounding the Northwood Prison Farm was well known to Eden as he had worked on the farm while he was an inmate in prison for 18 years. Eden sought assistance from a friend by the name of Randy McLean. Sabrina's body was subsequently discovered near to a container from which a foul scent was emanating. Sabrina's body was dressed only in a bra and blue panties.

[7] On the 11 March 2009 the appellant was an inmate of Northward Prison from June 2008 having been sentenced to a term of imprisonment for 7 years for aggravated burglary and 3 years for possession of an unlicensed firearm. The sentences were consecutive. The appellant was one of the prison inmates who had worked on the prison farm on that day. On 11 March 2009 a prison officer who was cooking was only able to perform minimum supervision on the prisoners who were working on the farm. The prison officer said that the appellant was working in the tomato patch, which was beside the farm house. When he saw the appellant, prison officer Dehaney recalled that the appellant was wearing a blue prison pants, work boots and a grey undershirt. The appellant came and spoke to him on two or three occasions pointing out that he was working in the tomato patch and was not going any other place like the other inmates. The appellant told Dehaney that he was going down to the bottom to take a "dump". On that occasion the appellant was carrying with him a toilet roll. The appellant was away for approximately 45 minutes.

[8] Around 12 or shortly thereafter, Dehaney saw most of the inmates but did not see the appellant. Dehaney spoke to prison officer Hunter and they both decided to “go and take a walk down to the bottom section” in search of the appellant. While on the way to the bottom section they were informed that someone was at the gate. As a result they turned back and went to the gate. While he was at the gate Dehaney saw the appellant who was walking quickly in the direction of a mango tree. Dehaney formed the impression that the appellant was behaving suspiciously. When seen again, the appellant was holding a black bag and carrying the machete under his arm. The appellant then disappeared into the bushes. Shortly afterwards the appellant was seen again but was no longer carrying the black bag. When challenged by Dehaney as to what he was doing, the appellant responded that he had a “ziggy” and two packs of cigarettes which were given to him by his cousin. On seeing the appellant without his shirt the prison officer asked the appellant what happened to his shirt. The appellant said that he was lying under a guava tree and the sun was “hot hot” so his shirt became sweaty and he has taken it off. Later the appellant drew Dehaney’s attention to the big pants that he was given in the laundry.

[9] On 16 March 2009 W.P.C Marin went to the bushy area where the car was previously found and conducted a forensic examination of the vehicle and the area. On the following day, the officer went to the unused wooden shed and the area where the deceased body was found. On 19 March, the officer again returned to the wooden shed where blood stains were found. Blood stains were also found on the plants. The officer also conducted tests by walking between various points.

[10] A post mortem examination was conducted by Dr Mark Shuman, a forensic pathologist. He found that Sabrina had significant multiple anti-mortem chops and incised wounds in her head and body. These wounds would have caused her to become unconscious. The body was in a state of decomposition. She had 5 chop wounds to the scalp and skull, right hand, left arm and left wrist and hand. She had 8 incised wounds to the scalp, face, right and left shoulders. Cause of death was multiple sharp force chop injuries which would have caused a severe loss of blood. He was of the opinion that the wounds to her scalp and left arm bleed profusely and would have caused Sabrina to die within minutes. The doctor's evidence was not challenged.

[11] Kevin Noppinger, a forensic serologist and scientist, examined a number of exhibits and found the presence of DNA both from the deceased and the appellant. DNA from the deceased was found in a swab taken from the door jam of the wooden shed, the wrist area of the right hand, blue and white glove and the interior portion of the wrist portion of the glove. The DNA of both the deceased and the appellant was found in the interior of the right index finger of the glove. Similarly on the interior right middle finger area of the glove.

### **The Defence**

[12] As earlier stated the appellant was serving a term of imprisonment in Northward Prison. He admitted that he had previous convictions for other offences including wounding, burglary and driving offences. The appellant first met Sabrina in April 2, 2008. She would bring his then girlfriend Juliette Ebanks

to the prison where she would have sex with him and provide him with drugs. He denied that he had assaulted Sabrina as Juliette has alleged. The appellant admitted that he had sex with Sabrina. He also gave the names of other prisoners who had sex with Sabrina.

[13] On 11 March 2009 the appellant was wearing a blue pants and a white merino when he went to the farm. He explained that the phone calls between Sabrina, Lance Myles his nephew, and himself related to Myles getting ganja for Sabrina to bring to the appellant at the prison farm. The appellant explained that he had called the deceased on 4 and 5 March 2009 because they were getting much closer to each other. Sabrina had told him that Lance Myles had visited her work place and had damaged her car. On 9 March 2009 Sabrina and Lance had an argument. The appellant told Lance that he should stop harassing Sabrina. On 10 March 2009 he spoke to Sabrina and arranged for her to visit him on 11 March 2009. He asked her to bring him some "weed" and cigarettes.

[14] On 11 March 2009 at 10.38 a.m. he met Sabrina at the banana shed. At that time he was wearing his blue prison pants, blue prison shirt with a white merino. Earlier, he had arrived at the prison farm at about 8.45 a.m. and had gone to the area of the mango tree in order to retrieve his cellular phone which he had left in a coffee bottle by the tree. He made calls to Sabrina at 9.06 a.m., 9.30 a.m. and 9.43 a.m. in order to find out where Sabrina had reached as she was coming to the farm to meet him.

[15] At about 10.38 a.m. the appellant met with Sabrina who had arrived at the farm. Before doing so, he informed one of his fellow inmates that he was going to pick up "some weed" and asked him to whistle if the officer asked for him. He admitted that he told a prison officer that he was going down in the bushes to take a dump. However he said it was Hunter he spoke to and not Dehaney. At 10.38 a.m. he arrived at the banana shed where Sabrina was. He knew the exact time because he looked at his watch. He and Sabrina started kissing and this led to them having intercourse. However, this was not completed as Sabrina was having her period and this forced them to stop. At this time, he noticed that Sabrina had a bruise on her face. While he was kissing her, Sabrina called a guy in North Side who was responsible for inflicting the injury on her face. After the sexual intercourse ended, Sabrina picked up a glove and wiped it on her leg. He stopped her and gave her his bath rag. At that time, he heard a whistle and he took up the drugs and cigarettes and left. Sabrina hurried off in the car taking the glove, which was left on the backseat of the car. On his way back to the tomato patch where he was working he saw Dehaney. The appellant testified that he had spoken to Sabrina twice at 10.56

a.m. for 108 seconds and 10.59 a.m. for 41 seconds. During the first conversation, he made arrangements with Sabrina to meet on the following Wednesday, 18 March. In the second conversation Sabrina wanted him to hear a song which was being played on the car radio. The appellant explained that the bag containing the weed Sabrina brought for him was not in a good condition so he had to place the weed in a black plastic bag. He disposed of the bag and placed the cellular phone in his shoe when he saw Dehaney. Dehaney had previously caught him with ganja and a mobile phone resulting in the phone

being taken away from him and with him being removed from duty on the prison farm.

[16] When asked by his counsel why he did not contact Sabrina on 12 or 13 March 2009, the appellant stated that he and Sabrina had made arrangements to meet on Wednesday 18 March 2009. On learning that Sabrina was missing, the appellant explained that he did not try to call Sabrina as he called other persons. Regarding the plait of hair found in his prison cell wrapped in paper with the name Sabrina Schirn written on it, the appellant said it was his hair which he had cut in February 2008. He wrote the name Sabrina Schirn on the paper so that he would not forget it, as he wanted to put her name on his visiting list. The appellant later denied that the handwriting was his. In respect of newspaper clippings relating to Sabrina, the appellant explained that he had seen her on 11 March 2009 and she had suddenly gone missing so he saved the clipping to follow what was going on. He also stated that he had saved the clipping relating to the attempted murder of his brother and the subsequent appeal relating to that incident.

[17] In cross-examination, the appellant explained that he chose Sabrina to bring drugs for him as she was reliable. He obtained Sabrina's telephone number from another inmate. In February 2009, Sabrina brought half a pound of ganja to the prison farm for him from his nephew Lance Myles. In 2008, he had sexual intercourse with Sabrina on two occasions. The appellant denied that he left a message on Sabrina's cell phone asking her to pick him up at the prison farm and to drop him at East End.

[18] At the trial counsel for the appellant made an application to the judge that the appellant should be allowed to introduce into evidence a voice message from Lance Myles which was left on the cellular phone of Sabrina on 1 March 2009. In addition, permission was also sought to introduce into evidence the voice message which Lee Anne Lemay Ebanks left on the cell phone of Sabrina on 10 March 2009. The defence contended that these messages contained threats of violence against Sabrina and, indeed, the second message could be interpreted as threats to Sabrina's life. In addition, the defence referred to the statements made to the police by Lance and Lee Anne on 25 March 2009 and on 8 April 2009 respectively. The defence contended that the evidence relating to the telephone calls brought into question the truthfulness of the statements of Lance and Lee Anne concerning the whereabouts of Lance on the morning of 11 March 2009, at that time when Sabrina was murdered. The defence specifically contended that the lack of activity on the cellular phone of Lance between 10.39 a.m. and 12.50 p.m. on 11 March 2009 suggested that an inference could be drawn that Lance had an opportunity to be with Sabrina during the period of time at which the prosecution suggested that Sabrina was murdered. Even though the prosecution objected, the judge ruled that the evidence relating to the telephone calls would be admitted. The judge considered that the interest of justice and the need to ensure that the appellant had a fair trial dictated that the evidence be admitted and that Lance and Lee Anne be called as witnesses.

[19] In his judgment Quin J., referred to the circumstantial evidence which the prosecution submitted showed that the appellant was guilty. At paragraph 167 of his judgment the judge said:

"167. The Crown concludes by saying that the following items of circumstantial evidence, when added up, demonstrate that the defendant is guilty as charged.

- i. The acquisition of the deceased's telephone number by the defendant in early 2009;
- ii. The telephone message on the 4<sup>th</sup> March 2009 to get Sabrina Schirn to pick up the defendant and drop him off at East End;
- iii. The circling of the date of the 11<sup>th</sup> March 2009 on two calendars when no other meeting has been circled for 2 ½ years;
- iv. The defendant identifying the blue construction gloves in early March 2009;
- v. The defendant taking the glove early in the morning of either the 10<sup>th</sup> or the 11<sup>th</sup> March 2009;
- vi. The defendant's suspicious conduct on the farm on the 11<sup>th</sup> March 2009;
- vii. Mr. Frederick's sighting of the prisoner getting into the white car at the East End of the farm with no shirt;
- viii. The two or three absences of the defendant for 45 minutes each on the 11<sup>th</sup> March 2009;

- ix. The absence of the defendant after noon on the 11<sup>th</sup> March;
- x. The defendant's removal of the shirt and the claim of being sweaty;
- xi. The defendant's sudden appearance in the afternoon and the conversation about the baggy pants;
- xii. The defendant never calling the deceased on her cell phone after their amorous encounter, which I will address shortly;
- xiii. The defendant's lying to the police in his witness statement;
- xiv. The defendant having clippings of Sabrina's disappearance and of Sheldon Brown's Appeal related to the attempted murder of his, the defendant's brother;

The Crown submits that this evidence shows that the defendant has knowledge of the assault and that on the basis of this cogent circumstantial evidence the defendant is guilty. “

[20] The judge referred to the submission made on behalf of the Crown that the appellant insisted that he had met Sabrina at 10.38 a.m. in order to show that he was not with Sabrina at a time when it was suggested by the prosecution that she was murdered . The evidence from the cellular records of both Digicel and Cable & Wireless indicated that several calls were made between the appellant's and Sabrina's cellular phones with the last call being made and answered on the

Digicel network at 10.59:29 a.m. All subsequent calls went to voicemail, Sabrina's Cable & Wireless cellular phone stopped working at 11.27:35 a.m. and was later found destroyed in pieces in the area which was considered as being the area where the murder occurred. The Crown submitted that the inference may be drawn that the deceased attacked Sabrina sometime between 10.59:29 a.m. and 11.27 a.m. on 11 March 2009. The appellant gave evidence in relation to the calls which were made after he met Sabrina .The first call at 10.44 a.m. was alleged to have been made to a man in North Side at a time when they were supposed to be making love. The second call made at 10.52 a.m. which the appellant said that Sabrina was warning about the officer at the gate. The third call made at 10.56:19 a.m. to make arrangements to meet the following Wednesday 18 March 2009. The fourth and last call at 10.59:29 a.m. was for the purpose of allowing the appellant to a tune that was being played on the car radio. The Crown submitted that the appellant's account of these cellular calls after meeting Sabrina was contrived and implausible .The judge, in accepting this submission, concluded that the appellant had valued his phone and farm privileges and it is unlikely that he would have had a conversation at 10.56:19 a.m. for 108 seconds and a second at 10.59:29 a.m. for 41 seconds. The last conversation taking place at a time when he could have seen Dehaney with whom he had a previous problem at the farm.

[21] The judge went on to find that it was significant that the appellant did not call Sabrina on her cellular phone after 10.59 a.m. In addition the judge also found it strange that the appellant made no attempt to have any further

conversations with Sabrina who he said was his source of ganja and cigarettes and was a person who would do anything he requested.

[22] Even after he learnt on 13 March that Sabrina was missing the appellant made no attempt to contact her . This led the judge to conclude that a

" ..... very compelling inference is that the defendant did not call her or attempt to call her because he knew she was dead. He killed her. He had disposed of the body and then hidden the car, the keys and the right glove with the blood of the deceased and the DNA of the deceased and the defendant in the index and middle finger tips."

### **The Appeal**

[23] Criticism is made that the judge only made brief reference to the evidence of Lance Myles and this was in the context of a very short précis of the submission made on behalf of the appellant. Specifically it is said that the judge made no finding of fact in relation to any of the evidence of Myles and for this reason it was submitted that the conviction should be set aside. It was further contended that the judge was under a duty to give reasons for his decision.

[24] In the Cayman Islands, a defendant in a criminal trial in the Grand Court has the right to select trial by a jury or by a judge alone. When tried by a judge alone, the judge has certain duties which he is required to carry when giving the reasons for his decision. This Court has had occasion to give guidance on the role of a judge when sitting in a criminal case without a jury. In **Richards v R** [2001] CILR 496 Rowe J.A. stated at 507:

“32. When a trial judge sitting alone has advised himself of the applicable principles of law and given himself any necessary warning, he must indicate clearly in his judgment his reasons for acting as he did , in order to demonstrate that he has acted with the requisite degree of caution in mind and has therefore heeded his own warning. No specific form of words is necessary for this demonstration, “what is necessary is that the Judge’s mind upon the matter should be clearly revealed”.”

[25] The issue was recently dealt with by the Court in **R v Dave Kennedy Whittaker** Cr. App. R. No. 14 of 2006. The court pointed out that the judge does not have to state every relevant legal proposition or review every fact and argument raised by the prosecution and the defence. As he sits without a jury he does not have to deal with the issues that arise in the trial in the same manner as if he was summing up a jury comprised of lay people. He had to make a conclusion and to give his reasons for so doing. This Court accepted the proposition as stated by the former Chief Justice of Northern Ireland, Lord Lowry in **R v Thompson** [1977] NI 17 and in **R v Thain** [1985] N.I. 457.

[26] In **R v Thompson** Lord Lowry said at p.83:

"While on the subject I might say a word on the duty of the judge when giving judgment in a trial under the 1973 Act. He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to

every relevant aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and to give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an Appeal, it may be seen how his view of the law informed his approach to the facts."

[27] In **R v Thain** [1983] N.I. 457 Lord Lowry LCJ said at p. 478:

"Where the trial is conducted and the factual conclusions are reached by the same person, one need not expect every step in the reasoning to be spelled out expressly, nor is the reasoning carried out in sealed compartments with no inter-communication or overlapping, even if the need to arrange a judgment in a logical order may give that impression. It can safely be inferred that, when deliberating on a question of fact with many aspects, even more certainly than when tackling a series of connected legal points, a judge who is himself the tribunal of fact will (a) recognize the issues and (b) view in its entirety a case where one issue is interwoven with another."

[28] In **H M Advocate v Al\_Megrahi (Addelbaset Ali)** (No.4) 2002 S.L.T 1433, the High Court of Justiciary in Scotland having referred to and accepted the approval of the Court of Appeal of Northern Ireland in **R v Thompson** and **R v Thain** concluded at para 19:

"In our view these observations are relevant to a written judgment under act 5(6) of the Order in Council by which, in similar language, the trial court is required to state "the reasons for the conviction". It is plain that reasons do not require to be detailed, that the trial court does not have to review every fact and argument on either side, and that reasons do not require to be given for every stage in the decision making process."

[29] The appellant relied on **Chiu Nang Hong v Public Prosecutor** [1964] 1 W.L.R 1279 where Lord Donovan stated at p.1285:

"For in such a case a judge, sitting alone, should, in their Lordships' view, make it clear that he has the risk in question in his mind, but nevertheless is convinced by the evidence, even though uncorroborated, that the case against the accused is established beyond any reasonable doubt. No particular form of words is necessary for this purpose: what is necessary is that the judge's mind upon the matter should be clearly revealed."

[30] However, in **Bekoe v Broomes Privy Council** [2005] UKPC39, Lord Carswell endorsed the statement made by Jones JA in the Court of Appeal of Trinidad that:

"While (the trial judge) had not stated in his reasons that he had given consideration to the matters raised in this appeal by attorney for the appellant, it cannot be said that they were so compelling that

his failure to detail his view on them was fatal to the conclusion to which he came."

His Lordship went on to indicate that:

"Their Lordships regarded this expression of opinion as quite supportable and would add in parenthesis that a judge sitting without a jury does not have to review every fact and argument presented to him. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury: cf. **R v Thompson** [1997] N.I. 74, 83 per Lord Lowry CJ."

[31] From these cases the following guidance may be discerned. A judge sitting in a criminal case without a jury, in rendering his decision and giving his reasons for so concluding, is not required to review every fact and to detail each argument on which the prosecution and defence rely as if he were summing up to a jury. The judge must set out the conclusion reached and make clear the reasons for arriving at that conclusion. He is required to have regard to any difficult or unusual points of law and to show how those points of law have in anyway impacted the conclusion that he has reached.

[32] In dealing with the evidence relating to Lance Myles and Juliette Ebanks, Quin J stated at paras. 118 and 119:

"118. The Defence submits that there is another possible suspect, namely Lance Myles and, regrettably, the "evidence gatherers", as

the leading counsel for the defence terms them, did not follow up on certain lines of enquiry. The defence submits that Lance Myles had originally given a false alibi. The defence relies on the fact that there were threats on the telephone of the deceased from Lance Myles, and Lance Myles' girlfriend, Leeann Lemay Ebanks. The defence also relies on the fact that when Mr. Jennings, brother of the deceased, confronted Lance Myles, Lance Myles "Started to stutter and stammer". In addition to the threats and the stuttering the defence submits that there was the period of time between 10.54 a.m. and 12.34 p.m. that Lance Myles' phone was not in use. The defence submits that this provides an opportunity for Lance Myles. In this regard the defence relies on Exhibits 23 and 24.

119. The Defence also submits that Juliette Ebanks' statement regarding the supposed motive was not true. Further, if there had been a Sabrina who has anything to do with the attempted murder of the defendant's brother, it was a Sabrina Powell, and not Sabrina Schirn. The defence relies on the further admissions admitted into evidence. The defence submits that there are very serious shortcomings in the police investigation, which led to the case not being properly investigated. In summary, the defendant pleads not guilty."

[33] While the judge did not set out the evidence of Lance and Lee Anne in detail it is, in our opinion for the reasons set out below, clear that he was

mindful of their evidence. In delivering his Ruling and the Application of the Defence to call Myles and Ebanks the judge clearly demonstrated that he was alive to the importance of their evidence. The judge indicated that the Defence was saying that evidence of the voice messages left by Lance and Lee Anne on Sabrina's cellular phone on 1 and 10 March 2009 respectively contained threats of violence against Sabrina and could be interpreted as threats to Sabrina's life. In addition the judge appreciated that the evidence relating to the use of the cellular phone by Lance could be interpreted that Lance was not where he told the police he was but was in fact in some other place. The judge indicated that he appreciated the significant lack of activity on Lance's phone between 10.39 a.m. and 12.50 p.m. on 11 March 2009 could suggest that there is an inference that Lance had an opportunity to be with Sabrina at the time of her death. The judge recognized that it was being said that Lance ought to be considered as a suspect since in the past he had a relationship with Sabrina and had made threats to her and had opportunity on the 11 March 2009 to commit the murder.

[34] Quinn J was clearly mindful that the defence was saying that the appellant was not guilty and further that the judge could not be satisfied beyond a reasonable doubt that the appellant was guilty as Lance and Lee Anne were persons who had threatened Sabrina and therefore had both opportunity and motive for killing Sabrina. The judge had appreciated that the defence was in fact saying that persons other than the appellant may have committed the crime.

[35] While it is accepted that it would have been better if the judge had analyzed the evidence given by Lance and Lee Anne , there could be little doubt

that the judge appreciated the importance of their evidence and the impact it could have on the issue, which he was required to determine i.e. whether the Crown had proved beyond a reasonable doubt that the appellant had committed the murder. The judge indicated that he had accepted that the circumstantial evidence along with the evidence relating to the finding of the DNA of the appellant and Sabrina on the glove as establishing beyond reasonable doubt the guilt of the appellant.

[36] Complaint is made by the appellant that the judge made no finding of fact in relation to the evidence of Lance or Lee Anne . Counsel for the appellant submitted that the failure showed that the judge did not appreciate the significance of the evidence of these witnesses.

[37] Insofar as the evidence of Lance is concerned, it was submitted that it showed that Lance had a romantic involvement with Sabrina and that he had both motive and opportunity for killing Sabrina . It was further submitted that, in as much as he was lying in respect of his movement on the afternoon of 11 March 2009, the Court ought to have inferred that he was not speaking the truth in respect of his movements on the morning of 11 March 2009 during the time when it was suggested that Sabrina was murdered.

[38] On 1 March 2009 Lance Myles left the following message on Sabrina's cellular phone:

"Yeah you lil fucking bitch make Patrick do what you want make him do, make him fuck me up, make him come by my yard with

his gun, show him where my room window is make him shoot it up you hear. When you wake up, I guarantee you hear about him dead, so you make him do what you ga do you lil fucking coward, you talk about man box me in my face -wha happen when hal rush you and you run go police station you lil bitch. Why you don't stand up and fight your war? Gal rushing you and you run going station. F--- you! You can't deal with me or my woman. We mash you and your man up, come do it!"

[39] Counsel also pointed to the evidence which indicated that a number of calls were made on the cellular phone of Lance for most of 11 March 2009 except for the period between 10.54 a.m. and 12.34 p.m. which is the period of time during which the prosecution alleged that Sabrina was killed.

[40] In the statement made to the police on 18 March 2009, Lance gave an account of his movements on 11 March 2009 and those of Lee Anne. Lance stated that he slept at the home of Lee Anne in Palm Dale. Around 11.30 a.m. they went to West Bay Primary School where the sports day for Lee Anne's children was taking place. Later Lance and Lee Anne returned to Palm Dale. Lance remained home while Lee Anne left the house around 2.30 p.m. and did not return until 8.30 p.m. After returning home they both spent the evening together at home.

[41] In her statement to the police dated 8 April 2009, Lee Anne's account of their movements on the morning of 11 March 2009 supported the account given

by Lance. She estimated however that they returned from the Sports Day at 1.30 p.m. However, her account in respect of their movements in the afternoon differed from that of Lance. She stated that they both left the house around 2.45 p.m. returning home at 8.30 p.m. after which they remained at home.

[42] In support of his submission that the alibi statements were false, counsel also relied on the cellular records relating to the cellular phones of Lance and Lee Anne which showed that on 11 March 2009 contact was made between the phone at various times including 10.41 a.m., 10.49 a.m., 10.54 a.m., 10.09 p.m. and 11.23 p.m. The cellular records also indicated that both Lance and Lee Anne made calls from a cell site in Newlands. Counsel pointed out that this was inconsistent with their evidence that they were both at Palm Dale or West Bay. Counsel submitted that such evidence would indicate the direction of High Rock Farm.

[43] In his oral evidence Lance maintained the account of his movement which he had given in his statement to the police. He explained that these contacts between Lee Anne and himself may have been because they were in different parts of the house or one may have been outside and the other was indoors. When asked about the calls which were made at 1.09 p.m. and 1.11 p.m. in a different cell site, Lance replied:

"Yes, well that is the friend that called me now, 8491 [sic] that's where he lives, Newlands. "

It was pointed out to Lance that it suggested that he was at Newlands and not his friend, he replied:

"well, probably... possibly could have went there. I don't know.

Possibly I would have went there to visit him or something. "

Lance was then asked what were he and Lee Anne both doing in Newlands area. He responded that they could have been by his friend or they could have been by her sister.

[44] In her evidence, Lee Anne was adamant that her evidence showing that she and Lance were together on the morning of 11 March was true. However, she conceded that the evidence stating that she and Lance were together on the afternoon of 11 March was not correct. She said that she was under pressure from and fearful of Lance that he would harm her. Lee Anne admitted that she has a conviction for lying in court. In view of this, counsel submitted that Lee Anne may well have been lying about Lance's movement on the morning of 11 March 2009. Later Lee Anne conceded that "we didn't quite stop home to his (Lance's) residence because at that point -I had -was suppose to collect something from my sister" who lived in Newlands.

[45] On 10 March 2009 at 9.13 a.m. Sabrina sent a text message to Lance . He admitted that Sabrina had sent him a text that she knew what he had done to her while she was at work and what she intended to do to his car. This was confirmed by Lee Anne .

[46] Reference was also made to a pay-slip in Lance's name which was found at Sabrina's address. On that pay-slip the names of Lance and Sabrina were written along with variety of terms of affection such as "To love honour and cherish her

all the day of my life". Lance denied that he had written on the pay-slip. Evidence was given that Sabrina had said that Lance wanted to marry her but Sabrina was not keen to marry him.

[47] It was submitted that the police crime reports had indicated that Lance had previously been reported as being violent towards Sabrina.

[48] In addition, counsel submitted that Lance made no attempt to telephone Sabrina or to search for her after it had been reported that Sabrina was missing. This conduct on the part of Lance was unlike the behavior of other persons who had been previously involved with Sabrina and who along with others were assisting in the search for Sabrina before her body was discovered.

[49] Counsel submitted that the judge ought to have taken the evidence of Lance and Lee Anne into consideration in determining whether the appellant was guilty. In support of this submission counsel relied on *R v Andrew Philip Greenwood* [2004] EWCA Crim. 1388. At first trial of Greenwood at which the jury failed to reach a verdict the evidence relating to the former boyfriend of the deceased had been admitted into evidence. At the retrial, the judge ruled that the evidence relating to the former boyfriend, together with certain admissions which the Crown was prepared to make, should not be placed before the jury. Greenwood was convicted of murder at retrial. On appeal the main issue related to the ruling by the judge at the retrial not to allow the admissions and the evidence about the former boyfriend of the victim which had been admitted into evidence at the first trial and which the Crown was prepared to allow to go to

the jury at the second trial . At the first trial the judge considered that the evidence was relevant to the issue whether the appellant's confession was true. Waller L.J. ,in giving the judgment of the Court, stated:

"41. The position seems to us to be as follows:-

i) If there is no issue that there has been a murder and the person on trial is saying that he did not do it, then he must by inference be asserting that someone else did. There is no obligation on a defendant to establish that someone else did the murder but, if he has evidence which proves that someone else did the murder, he must be able to adduce it. If he has any evidence that points to another person having a motive to do it he must be entitled to produce evidence of that motive. If he has any other evidence that would point to the possibility that another person might have done the murder he should be entitled to produce it.

ii) .....

iii) .....

iv) On the whole, the question of what admissions the Crown are prepared to make, or what evidence the Crown should call, should be left to the prosecution. Clearly the judge is entitled to express a view on whether evidence is admissible or relevant, but the evidence which the Crown are prepared to put forward should on the whole be left to them. It does not seem to us that the Crown were saying that the evidence of the telephone call made at 1.41 on the 16th June by

Parkinson from a telephone box two-thirds of a mile away from the Penwortham New Bridge was irrelevant or inadmissible. The judge's ruling "If the Richardson brothers' walk for ten to fifteen minutes after being seen on the CCTV at 1.23 before seeing the presumed offender at the locus, then this evidence about Parkinson arguably amounts to an alibi, and certainly does not begin to implicate him ...." seems to us to be taking a matter away from the jury, which the jury should have been entitled to consider. The fact that something may arguably amount to an alibi should not prevent the appellant being entitled to put before the jury that Parkinson was, in fact two-thirds of a mile away from the murder scene on the morning of the murder, and was a person who had previously had a relationship with the victim and has a motive in the sense of having been violent towards the victim in the past.

v) .....

vi) But the important point is that it cannot have been right to take away from the jury's considerations all aspects of Parkinson, including that he had been the victim's boyfriend and had acted violently to her in the past, and indeed was in the vicinity on the evening of her murder.

[50] The Solicitor General submitted it was for the judge to determine what evidence was material to his decision. It was for the judge to decide whether on

the analysis there was sufficient evidence relating to the conduct of Lance to show that he was at or near the scene of the murder at the material time. The Solicitor General submitted that there was no evidence of any threat by Lance to kill Sabrina. It was argued that the voice message which was said to be a threat was merely responsive or reactive to and was by no means a statement which was intended to be offensive. The evidence from Lance was that he was not making any threats to Sabrina. All that he was saying to her was that if you are going to make Patrick come to my house to do me harm make sure that he bring a gun. Lance denied that his statement amounted to a threat. He explained that all he was saying is that if anyone threatened his life and came to do him hard he was going to defend himself.

[51] Insofar as the message left by Lee Anne, the Solicitor General submitted that this message also appears to be reactive to the conduct of Sabrina and was an attempt to prevent Sabrina carrying out her threats to damage the motor vehicle. Lee Anne explained that the purpose of her call to Sabrina because after Lance had spoken to Sabrina about the threat to damage the car and she had seen Sabrina driving pass about five to six times and her intent was to stop Sabrina from carrying out her threat to damage her car.

[52] In respect of the submission that Lance received no calls between 10.54 a.m. and 12.34 p.m. the period which coincided with the period during which the Crown suggested that the murder of Sabrina occurred, the Solicitor General submitted that this by itself was incapable of bearing the inference which this

Court was being invited to draw – that Lance had an opportunity to drive to the scene where Sabrina was murdered, commit the murder and return to his home.

[53] In respect to the submission concerning false alibi statement, the Solicitor General pointed to the fact that Lance maintained the position which he gave to the police concerning his movements on the morning of 11 March. While Lee Anne admitted lying about her movements on the afternoon of 11 March she nonetheless maintained that she was not lying in relation to their movements in the morning of 11 March . She submitted that it was for the judge to determine whether, and if so, what weight should be given to the fact that Lance did not, in his statement to the Police or evidence before the Court, support the lie told by Lee Anne .

[54] At paragraphs 126 and 127 the judge reminded himself as to his role as a Tribunal of Fact. The judge said:

"126. As the Tribunal of Fact I have endeavoured to remind myself of the prominent features of the evidence, both on behalf of the Crown and on behalf of the Defence, because it is my responsibility as the Tribunal of Fact to judge the evidence and decide on the relevant facts of this case. Accordingly I have reviewed the relevant evidence as I see it and I have also taken into account the arguments in the speeches of the Solicitor General, Cheryl Richards Q.C., and defence counsel David Evans Q.C.

127. I remind myself that the burden of proof is always on the prosecution. It is for the prosecution to prove that the defendant is

guilty and further it is never for the defendant to have to prove his innocence. I also have to remind myself that the prosecution must prove the defendant's guilt to a high standard of proof, namely , that I must be satisfied that the defendant is guilty of the charge of murder beyond all reasonable doubt or accordingly, I must be sure that he is guilty. If I find that the prosecution has not made out the case so that I am sure, I must find the defendant not guilty. Accordingly, I must review all the evidence and decide whether the defendant is guilty of unlawfully causing the death of the deceased.”

[55] Although the judge did not deal specifically with the evidence of Lance in relation to the opportunity which he had to commit the murder of Sabrina or his previous relationship with Sabrina or motive, this Court is mindful of the fact that the judge had ruled that the evidence of Lance and Lee Anne was admissible. In so ruling ,the judge reviewed the reason why he considers that such evidence was admissible. The defence had not only submitted that the appellant did not commit the murder but that there was someone else ,namely Lance who had the opportunity and the motive to kill Sabrina. These were all factors which operated on the minds of the judge when he ruled that the evidence was admissible.

[56] Even though the judge did not specifically review the evidence of Lance and Lee Anne, it is clear that he had in mind the significance of their evidence. The judge adverted to the submission by the Defence that, not only did the appellant not kill Sabrina, but that the evidence showed that there was another

suspect. He reminded himself that the defence was saying that Lance had not only given a false alibi but that Lance had also made threats on the telephone to Sabrina. In addition to this, the judge referred to, by the defence that, Lance had been stuttering when confronted by Sabrina's brother. The judge also had regard to the contention by the defence to the fact that no calls were made on the cellular phone of Lance between 10.54 a.m. and 12.34 p.m. and that this afforded him an opportunity to commit the murder.

[57] When challenged by Kevin Jennings, Sabrina's brother, as to whether he knew of her whereabouts, Jennings said Myles claimed that he had not seen Sabrina "for weeks" and denied that he had threatened Sabrina. Jennings described Myles as "stammering". However, when Myles was told that it was said that his demeanor had changed from being calm and collected when asked about the whereabouts of Sabrina, he replied that he was sick and tired of everybody calling him and asking him about something he knew nothing about. This was not evidence from which it could be inferred in the circumstances of his case that Myles has committed the murder.

[58] For the reasons stated above , the Court is satisfied that the judge clearly appreciated the significance of the evidence relating to Lance and Lee Anne. Having reminded himself of his duty to ensure that the appellant receive a fair trial and, being mindful that the defence had submitted that Lance (i) had previously had a relationship with Sabrina (ii) had given a false alibi as to his whereabouts on the morning of 11 March 2009 and therefore had the opportunity to commit the murder (iii) that the cellular records showed that

there was no traffic on his cell phone (iv) had made threats to Sabrina (v) was stuttering and stammering when confronted by Sabrina's brother, the judge for the reasons set out in his judgment was satisfied that the prosecution had proved beyond reasonable doubt that the appellant was guilty..

[59] The final issue raised on behalf of the appellant related to the evidence given by George Hudson who said that, around the time of the murder, he had observed a man in prison pants without a shirt get into a car driven by a woman. Hudson had said the man he had seen was "a little lighter than P C Price". Counsel submitted that it was plain for all to see that the appellant was significantly darker in skin tone than that of P C Price. The court does not consider that there was any merit to this submission. Hudson was cross examined on this issue. The judge indicated that Hudson said that the man he saw had a lighter complexion than that of P C Price. But the judge reminded himself Hudson did not see the prisoner's face. The judge indicated that they would have been no reason for Hudson to fabricate the event. The judge found that Hudson was an honest and reliable witness whose evidence he accepted.

[60] Counsel for the appellant submitted that, in the circumstances of this case, and for the reason which he submitted, this Court should allow the appeal in accordance with section 9(1)(b) and (c) of the Court of Appeal Law. Section 9(1)(b) and (c) provides that:

“9. (1) Subject to section 12, the Court shall allow an appeal against conviction if it thinks –

(a) .....

- (b) that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law;  
or
- (c) that there was a material irregularity in the course of the trial,

[61] For the reasons set out the Court did not agree with his submission.

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Chadwick P

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Mottley JA

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Conteh JA

