

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL SIDE  
HOLDEN AT GEORGE TOWN**

**Indictment No: 27/09**

**REGINA**

**V.**

**RANDY MARTIN**

**Appearances:**

**Crown: Cheryll Richards Q.C., Solicitor General, and Kirsty Gunn  
Crown Counsel**

**Defence: David Evans Q.C. and Adam King of Samson and McGrath**

**Before: Hon. Justice Charles Quin**

**Heard: 25<sup>th</sup> November to 11<sup>th</sup> December 2009, and, the 11<sup>th</sup> January to  
the 15<sup>th</sup> January 2010**

**JUDGMENT**

*Discovery of the Deceased*

1. On Monday the 16<sup>th</sup> of March 2009 Mr. Marvin Frederick (“Mr. Frederick”) was travelling on Farm Road from the John McLay Road end, when he saw a fire coming from “Bottom Road.” This fire caused him concern, as it appeared to have the potential to spread over on to his land, and he recalled how his land was burnt some three years ago. He drove onto his land and saw a white vehicle, Registration Number 133 249. Mr. Frederick had heard the description and

- licence number of this vehicle on the radio and that it had gone missing. He called 911 and told the police that he seemed to have found the missing vehicle. He stated that the vehicle was hidden off the trail and waited for the police to arrive.
2. On Tuesday the 17<sup>th</sup> March 2009, Kevin Jennings, (“Mr. Jennings”) brother of the deceased, Sabrina Schirn, who had been reported missing, contacted his friend, Mr. Christopher Eden (“Mr. Eden”) and sought his assistance in the search for his sister, Sabrina Schirn. Mr. Eden had significant local knowledge of the area surrounding the Northward Prison farm, as he had been an inmate for 18 years and was one of the first prisoners to work on the farm. Mr. Eden sought the assistance of another friend, Randy McLean (“Mr. McLean”) who also knew the area very well.
  3. By this time the search party, knowing that the missing car had been found, drove to that location and searched around that area. When they came to the boulders (Exhibit 2 Map 2 “A”) they got out of the car to search. Mr. Eden saw the container and noticed a foul smell as he moved closer to the container. Mr. Eden and Mr. Jennings walked further into the bush and saw a disused wooden shed (Exhibit 2 Map 2 “F”). Mr. Eden came upon the body of Sabrina Schirn (at Exhibit 2 Map 2 “D”). Mr. Jennings identified the body as the body of his sister, Sabrina Schirn. Mr. Eden confirmed that the deceased’s body was clothed in a bra and blue panties.

Postmortem

4. On Saturday the 21<sup>st</sup> March 2009 Dr. Mark Shuman, (“Dr. Shuman”) a forensic pathologist, performed a postmortem examination on a body which was identified to him as that of Sabrina Schirn.
5. Dr. Shuman said that the deceased’s body was clothed in a bra, a blue jeans (denim) skirt, and panties, and there was some jewelry as well.
6. Dr Shuman conducted an external examination, and before I address the injuries, I should state that he found the deceased’s body to be in a state of decomposition and had suffered changes from the insect activity and post-mortem scavenging. Dr Shuman confirmed that the deceased’s genitalia were in tact and were not injured, neither was her anus. The defects caused from the post-mortem changes were found on both of her breasts, her abdomen, and larger defects on her legs.
7. Dr. Shuman confirmed that there were significant anti-mortem wounds inflicted, which amounted to multiple chop wounds and incised wounds on the deceased’s head and body. Dr. Shuman explained that incised wounds are wounds that are made with a sharp instrument, basically cutting through the skin and tissue. Chop wounds are wounds that have both sharp components and blunt components, such as ones that would be made with an axe or with a machete.

8. Dr. Shuman prepared a sketch map of the deceased's head and body, which was produced as Exhibit 3. Dr. Shuman confirmed that the deceased had received chop wounds, and incised wounds, to the head, which he said would cause her to lose consciousness. There were incised and chop wounds on the head, scalp, face and the back of the head, which can properly be described as multiple chop and incised wounds. Dr. Shuman confirmed that there would have been a serious loss of blood from these injuries and that the deceased would have died in a matter of minutes, and certainly in less than hour. Dr. Shuman said that one single such laceration to the scalp can be fatal.
  
9. Dr. Shuman confirmed that there were incised wounds to the deceased's left shoulder and there were four multiple wounds – one of 19 centimetres, being horizontal – which were inflicted on the mid-upper back and went through the skeleton muscle to the vertebrae. Dr. Shuman said that these wounds were consistent with the deceased having been struck from behind.
  
10. Dr. Shuman also confirmed that the deceased received a chop wound on the right hand, which nearly amputated her thumb. Dr. Shuman confirmed that this was what he called a defensive injury, caused when a person is trying to defend himself or herself. There was a chop wound on the right hand and the index finger of the right hand was amputated through the middle bone. Dr. Shuman described this as another defensive injury. There was another chop wound on the left side of the deceased's forearm, which was yet another defensive injury. Dr. Shuman

described another chop wound to the deceased's left wrist and hand, measuring 7.5 centimetres. This went through the bones on the left wrist and into the hand, and almost amputated her left hand. Again Dr. Shuman confirmed that this was another defensive injury.

11. In summary, Dr. Shuman said that the deceased had 5 chop wounds – one on the scalp and the skull, two in her right hand, one in her left forearm, and one on her left wrist and hand. There were 8 incised wounds – three in the scalp, two in the face, one on the right shoulder, two on her left shoulder. There were also two wounds comprised of multiple wounds. One had an intersecting chop – an incised wound on the left side of her scalp – and then there was the large complex wound on the mid-upper back, which was comprised of at least four injuries. Dr. Shuman was in no doubt that the cause of death was multiple sharp-force and chop injuries, which would have caused a severe loss of blood. Dr. Shuman said the wounds to her scalp and to her left arm would have bled profusely and the deceased would have died within minutes.

12. Dr. Shuman confirmed that the deceased had been dead for some days, and said that it would have been consistent with death having occurred on the 11<sup>th</sup> March 2009.

13. None of the above facts have been challenged by the Defence and on the basis of Dr. Shuman's evidence it is quite clear that the deceased was brutally murdered.

CROWN'S CASE

Juliette Ebanks

14. The Court admitted the statement of Juliette Ebanks dated the 21<sup>st</sup> April 2009, pursuant to Section 33(1) and (3)(b) of the Evidence Law. Juliette Ebanks was a former girlfriend of the defendant. She recalled being at the Zodiac Bar with the defendant some time in 2006, where they saw Sabrina Schirn. Sabrina Schirn was eating a plate of oxtail. Juliette Ebanks' evidence was that the defendant told her that Sabrina was responsible for, or involved with, the shooting of his brother, Fernando Martin, by Sheldon Brown. Juliette Ebanks recalls the defendant and Sabrina Schirn entering into an argument, and she, Juliette Ebanks, stepped outside for a few seconds. Juliette Ebanks stated that on returning inside the Zodiac she saw the defendant, Randy Martin, holding Sabrina's head and pushing it into the plate of oxtail. Juliette Ebanks recalls Sabrina Schirn needing some help to wash her face, and the defendant left, stating he was going to McField Lane.

Andy Myles

15. Early in 2009, a Northward Prison inmate, Andy Myles ("Mr. Myles"), was moved to Eagle House. Whilst there, Mr. Myles said he was working on construction and maintenance inside the prison. He was also a former boyfriend of the deceased, Sabrina Schirn, but did not keep in touch with her. He said

Sabrina Schirn was in love with a new guy and that she used to hang up the phone when he, Mr. Myles, tried to contact her.

16. Mr. Myles recalls the defendant, Randy Martin, whom he had known for several years, coming to Eagle House a little before March 2009. He recalls Randy Martin being put in the cell next to him. Mr. Myles' evidence is that he had blue gloves for the construction work. The blue was on the palm of the glove, and was of a rubbery material. The top part of the glove was white. Mr. Myles said he used these gloves "for block work to prevent his hands being mashed up." Mr. Myles kept these gloves inside his cell.

17. One day, in early March 2009, Mr. Myles recalled the defendant coming along and saying, "I want them gloves. I need them gloves. One of the two." Mr. Myles said that they were "just chilling" and there was no other discussion regarding any gloves. The Defendant had simply come along and said that he wanted the gloves and that he was doing a lot of work for which he needed the gloves.

18. On either the 10<sup>th</sup> or the 11<sup>th</sup> March, Mr. Myles recalls the defendant coming to him early in the morning and asking for his gloves. He recalled the defendant taking the gloves. Mr. Myles also recalls that he never handed the gloves to the defendant, but that the defendant took them. Mr. Myles recalls the defendant taking both right and the left-hand gloves. Mr. Myles identified the glove in Exhibit 1 Photographs 54 and 55.

Danielle Ramoon

19. The Crown called Danielle Ramoon (“Ms. Ramoon”). She was another good friend of the deceased. She gave evidence and said that she would see the deceased, Sabrina Schirn, everyday, and that sometimes they would sleep over at each other’s houses. She said she recalls on or about the 4<sup>th</sup> March 2009, one week before the 11<sup>th</sup> March 2009, Sabrina picking her up from Bodden Town, where she, Ms. Ramoon, was staying, and they drove to Sabrina’s workplace. Ms. Ramoon recalled Sabrina Schirn plugging in her phones and receiving some missed calls. Ms. Ramoon recalled that Sabrina received two messages, and that she, Ms. Ramoon, listened to these messages. The first message stated, “Yo, Sabrina, this Randy. When you get this, link me.” Ms. Ramoon asked Sabrina why Randy was calling her. Ms. Ramoon listened to the second message, which said, “Sabrina you ever going to link me or what?” and “I only need you do me a favour. I just need you to pick me up from the farm and drop me to the East End.” Ms. Ramoon recalled Sabrina Schirn trying to call the number, but was unable to get through.

Telecommunications – Specialists’ Evidence

20. The Crown called an Information Technology (IT) specialist from Cable & Wireless, and an Information Technology (IT) specialist from Digicel. They produced several analyses and reports regarding telephone and tele-text messages

from the phone of the defendant, Randy Martin, the phones of the deceased, Sabrina Schirn, and from other phones.

21. Their evidence included Exhibits 12, 13, 14, 16, 17, 18 19, 20 and 21. The Defence produced its own telephone schedule, Exhibit 22. From these Exhibits it was apparent that the defendant and the deceased, Sabrina Schirn, had been in telecommunication contact.

22. On the 4<sup>th</sup> February 2009 the defendant telephoned Sabrina Schirn on 12 occasions – most of which were telephone conversations of varying lengths. One of these conversations lasted 292 seconds, and others were of 42, 23, 37 and 36 seconds.

23. On the 5<sup>th</sup> February 2009 the defendant telephoned, and or sent text messages to the deceased, and had 5 communications including telephone calls lasting 90 seconds and 25 seconds.

24. On the 27<sup>th</sup> February 2009 the defendant telephoned Sabrina and talked for 36 seconds.

25. On the 4<sup>th</sup> March 2009 both talked for 34 seconds.

26. On the 5<sup>th</sup> March 2009 the defendant contacted Sabrina Schirn on 12 occasions – 9 on her Cable & Wireless telephone and 3 times on her Digicel telephone. Later that day Sabrina contacted the defendant on her Digicel phone on 6 occasions.

27. On the 9<sup>th</sup> March 2009 Sabrina Schirn contacted the defendant on 3 occasions – with one conversation lasting 191 seconds and the defendant contacted the deceased on 1 occasion.

28. On the 10<sup>th</sup> March 2009 the defendant called Sabrina on her Digicel telephone – 517-7577 at 12:29:06 and spoke for 83 seconds.

*The 11<sup>th</sup> March 2009*

29. On the 11<sup>th</sup> March 2009 at 9:06 a.m. the defendant calls Sabrina Schirn. From Exhibit 18 it is clear that the defendant's telephone is in the Breakers area at cell site CAY012. The second call on the 11<sup>th</sup> March is from Sabrina Schirn at 9:30 a.m. from her Digicel telephone, to the defendant. Her telephone, according to Exhibit 18, is at cell site Stadium CAY008 – which is in the South Sound area. The next telephone call is from the defendant at 9:43 a.m., and his telephone is again in the Breakers area at cell site CAY012, and Sabrina's telephone is at the Stadium cell site CAY008.

30. At approximately 9:00 a.m. the evidence of Tanya Christian (“Ms. Christian”) is that Sabrina called her, because they had agreed to meet for lunch at 1:00 p.m. Ms. Christian recalls Sabrina telling her that she was going to get her co-worker’s car. Ms. Christian knew her co-worker was Samantha Suberan (“Ms. Suberan”), and Sabrina said she was going to use her car.
31. Some time shortly after 9:00 a.m. Ms. Ramoon, who was staying at her boyfriend’s house in Pease Bay, near Bodden Town, received a telephone call from the deceased. Sabrina told her to wake up as she was going to drop by later that morning. Sabrina told Ms. Ramoon that she was going to pick her up.
32. At 10:00 a.m. Ms. Suberan started her work day at Blockbuster in Grand Harbour, Red Bay. At about 10:15 a.m. Sabrina Schirn came in to Blockbuster and asked Ms. Suberan if she could borrow Ms. Suberan’s car, a white Honda Torneo with Registration Number 133 249. Ms. Suberan told her no, because the car was registered in her father’s name. Ms. Suberan recalls Sabrina saying that she wanted the car to go and pick up her boyfriend from North Side, but again Ms. Suberan told her no. Ms. Suberan recalls leaving Sabrina at the front counter in order to go in the back of the store to return some DVDs to shelves. When she returned to the counter Sabrina was still there, and she recalls the deceased saying that she was gone. Ms. Suberan recalls Sabrina being in the shop for about five minutes.

33. At 9:43 a.m. on the 11<sup>th</sup> March 2009 the defendant calls Sabrina Schirn on her Digicel phone – 517-7577 – and talks for 56 seconds. His telephone is still at the Breakers cell site and Sabrina’s cell phone is still at the Stadium site.
34. At 10:27 a.m. the defendant again calls Sabrina on her Digicel phone. The defendant’s phone is now at cell site Old Man Bay – CAY015 – and the deceased’s telephone is at the Prospect cell site – CAY018.
35. Some time after 10:00 a.m. on the 11<sup>th</sup> March 2009 Sabrina Schirn arrives at Ms. Ramoon’s boyfriend’s house in Pease Bay. Sabrina Schirn had brought Ms. Ramoon some breakfast but Ms. Ramoon was not ready to leave. Ms. Ramoon recalls that Sabrina was driving a white car. Ms. Ramoon recalls the deceased saying that she would be right back because she, Danielle, was not ready as yet. Ms. Ramoon recalls Sabrina saying that she would return to pick her up and that she was going to drop somebody, by the name of Randy, off at East End. Ms. Ramoon recalled Sabrina saying she was going to drop Randy at East End and come back to pick her up.
36. At 10:52 a.m. on the 11<sup>th</sup> March 2009 Sabrina calls the defendant and her cell phone is at the Breakers cell site – CAY012 – and the defendant’s telephone is at East End cell site CAY013.

37. At 10:56 a.m. the defendant calls Sabrina, and his cell phone is at Breakers, and Sabrina's cell phone is at the East End.
38. At 10:59 Sabrina calls the defendant and her phone is at Old Man Bay and the defendant's telephone is at Collier's cell site, CAY014.
39. At approximately 10:50 a.m. on the 11<sup>th</sup> March Ms. Christian went for her cigarette break and called Sabrina Schirn. Ms. Christian asked Sabrina how she was. She said that Sabrina sounded alright. Ms. Christian said that Sabrina Schirn said that she was actually headed into East End, and that she, Sabrina, would meet Ms. Christian at 1:00 p.m.
40. At approximately 11:00 a.m. on the morning of the 11<sup>th</sup> March 2009 Amelia McTaggart ("Ms. McTaggart") called Sabrina Schirn and said that she would buy her lunch. Ms. McTaggart said that Sabrina said that she was going "up to East" to deal with some business and that she would be back, and that she would call when she came back.

*The Prison Farm on the 11<sup>th</sup> March 2009*

41. Carnel Simpson ("Mr. Simpson"), a supervisor at Northward Prison produced Exhibit 5, which was the gate occurrence list. He confirmed that on the 11<sup>th</sup> March 2009 the following inmates were taken to the Prison Farm, known as

Wilderness Farm. They were Anthony Bryan, Thomas Bush, George Evans, Randy Martin, Jason Smith, Yoandy Swaby and George General – a total of seven prisoners. There were also two officers, namely, Prison Officer Marlon Duhaney (“P.O. Duhaney”) and Prison Officer Gregory Hunter (“P.O. Hunter”).

42. One of the inmates was George Dexter Evans (“inmate Evans”) who looked after the irrigation system on the farm. His evidence is that around 10:35 a.m. he noticed a white car, which he thought was driven by a female, driving past the Prison Farm, towards the banana shed. He then noticed the same car drive past again in the other direction. He recalled P.O. Duhaney getting ready to cook that day, and, further he recalled seeing P.O. Duhaney outside of the kitchen getting ready to cook. He confirmed that the farm is not fenced in and that prisoners “move around.”

43. Mr. Gilbert George Hudson (“Mr. Hudson”) works on a farm, owned by Dr. Lookloy, in East End. Mr. Hudson worked near to the road and near to the Prison Farm. He recalls watering plants when he saw a white car. He saw a white car drive up and park. He thought it was some time after 10 o’clock. He continued watering his plants and then he saw a prisoner coming across the farm. He said it was a prisoner because he was wearing prisoner pants and shoes, but he did not have his shirt on. He described the blue prison-issue pants and said that the prisoner had no shirt on. Mr. Hudson did not see the prisoner’s face, but he saw him, and he saw him open the door of the white car and climb in. Mr. Hudson

described the car reversing back out and identified the car on Exhibit 2 Map 5. Mr. Hudson recalls seeing the car at the ficus hedge. Mr. Hudson showed the police where the car was parked and where it reversed and then drove off. Mr. Hudson was not sure whether the driver was a man or a woman, but he said it looked like a woman's hair from where he was standing.

44. P.O. Duhaney recalled the 11<sup>th</sup> March 2009. He said that on that day he was doing the cooking, which meant the cooking would only allow him to perform minimum supervision. He therefore did periodic checks on the prisoners. P. O. Duhaney confirmed that the prison farm provided gloves. He said once gloves are issued then "you keep your gloves." He said every prisoner working on the farm had his own gloves. P.O. Duhaney confirmed that he had a previous "run-in" with the defendant, Randy Martin, in April 2008 when he caught him with some contraband – a result of which the defendant lost his privileges and was not allowed to work on the Prison Farm for a couple of months.

45. P.O. Duhaney recalled that on the 11<sup>th</sup> March there were 6 prisoners, plus the defendant, working on the Prison Farm. He said Yoandy Swaby, George General and Jason Smith were working to the left of the farm house sowing cucumber seeds. Anthony Bryan and Thomas Bush went to the adjoining property to retrieve banana suckers for the livestock. George Evans was doing the plumbing work and Randy Martin was working in the tomato patch beside the farmhouse. P.O. Duhaney described the cucumber patch being on one side of the farmhouse,

with the tomato patch being on the other side. Upon entering into the farm the first patch was the tomato patch. He said P.O. Hunter was supervising the inmates with the planting of the cucumber seeds. P.O. Duhaney recalls the defendant wearing blue prison pants, work boots, a gray merino (undershirt), and also working with a machete. P.O. Duhaney recalls the defendant “pulling weeds out.”

46. During the morning of the 11<sup>th</sup> March 2009 P.O. Duhaney recalled the defendant coming to him on two or three occasions, pointing out that he was “working here and not going anywhere else like the other guys.” Furthermore, on two or three occasions he said that the defendant came to him with a toilet roll and said that he was “going down to the bottom to take a dump.” In response to the Solicitor General, P.O. Duhaney said that the defendant would have been away for approximately 45 minutes.

47. At around 12 or after 12 noon P.O. Duhaney saw most of the inmates but did not see the defendant. He recalls asking P.O. Hunter if he had seen the defendant and he said no, and so it was agreed they should “go and take a walk down to the bottom section.” Upon walking to the bottom section an inmate called out, saying there was somebody at the prison gate. So P.O. Hunter and P.O. Duhaney turned around and went back to the prison farm gate and spoke to the person who was making the enquiry. While talking to the person at the gate he noticed the defendant walk speedily to a mango tree and speak to George General and then walk off. P.O. Duhaney noticed that the defendant walked off speedily, behind the

Prison Farm house. P.O. Duhaney was of the view that the defendant was behaving very suspiciously and again spoke to P.O. Hunter about this.

48. Accordingly, P.O.s Duhaney and Hunter went down towards the Orange Grove to where the animals were. P.O. Duhaney said he then saw the defendant “pop back onto the prison property” holding a black bag and his machete under his arm. According to P.O. Duhaney, he saw the defendant in the orange grove and saw him bending down to go under a fence. P.O. Duhaney said, “Randy, what are you up to?” and then defendant “froze for a couple of seconds.” P.O. Duhaney said that the defendant then went into the bushes and was out of sight for another couple of seconds. He said the defendant came back with an orange in his hand, which he was peeling. P.O. Duhaney noticed that the defendant no longer had the black bag and asked him what was he up to. The defendant’s response was that he had a “ziggy” just \$25 worth. P.O. Duhaney said the defendant said he had a ziggy and two packs of cigarettes, which his cousin had dropped off for him. P.O. Duhaney asked where it was and he said he had already smoked it. P.O. Duhaney ordered the defendant back up to the prison farm, and he and P.O. Hunter searched the area. He told the defendant not to go back down there.

49. As a result of the defendant’s suspicious behaviour P.O. Duhaney ordered the Prison Farm to be shut down so that they could search the farm.

50. P.O. Duhaney noticed a pair of prison trousers with the legs cut off, but did not pick them up. He added that the defendant did not have on his shirt. P.O. Duhaney recalled asking the defendant what happened to his shirt and the defendant said that he was lying underneath the guava tree, and the sun was “hot hot” so his shirt became all sweaty, and so he had taken it off.

51. P.O. Duhaney said the defendant sat on the box shown in Photograph 23 of Exhibit 7. He had his head held in his hand and he said to P.O. Duhaney, “where the fuck you come from on me like that” and asked for two Panadol pain-relieving tablets. P.O. Duhaney said the defendant appeared frightened and was not happy.

52. P.O. Duhaney recalls, whilst they were leaving the Prison Farm and walking towards the bus, the defendant saying to him “Look at the big pants that they give in the laundry mat” and P.O. Duhaney recalls asking himself why would the defendant be telling him about this, as he never recalled him saying anything in the morning.

#### Scene of Crime Evidence

53. On the 16<sup>th</sup> March 2009, on information received, WPC Zoan Marin examined the missing Honda Torneo car, with Registration Number 133 249, which she measured was 551 feet from the main road. She said the vehicle was positioned in the bush area. All the doors had been locked, and the car was not visible from the

main road. Officer Marin stated that you had to walk 440 feet from the main road, along the dirt track, before you could get sight of the vehicle.

54. WPC Marin produced as Exhibit 1, seventy-four (74) photographs of the Honda Torneo and its interior. The contents are photographs 1 to 13.

55. On the 17<sup>th</sup> March 2009 WPC Marin attended a possible murder scene on the High Rock Drive near the quarry. She reached the boulders, which are shown on Exhibit 2 Map 2 and Exhibit 1 photo 14. From there she walked towards the unused wooden shed at “F” on Exhibit 2 Map 2. There she proceeded to take photographs of the unused wooden shed and the deceased’s body, as well as photographs of the deceased’s slippers – photographs 45-48. Photographs 49 and 50 are of the blue blouse and the red container is photograph 20. WPC Marin identified the various parts to Exhibit 2 Map 2: A - the boulders; B - the abandoned van; C - the location of the deceased’s cell phone; D – location of deceased’s body; E – location of deceased’s shoes; F – unused wooden shed; G – trails of blood. WPC Marin secured all the exhibits for further analysis.

56. WPC Marin later returned to the scene on the 19<sup>th</sup> March and, using forensic chemicals, found blood stains in the unused shed. From the unused shed, to where the body was found, the officer took samples from the plants that appeared to have blood on them. The Officer also collected the deceased’s clothing for further analysis.

57. On the 23<sup>rd</sup> March WPC Marin proceeded to where the deceased's white motor vehicle had been hidden, and there took photographs of the keys which had been found, and photographs of the right glove which had been found by Officer Davis Scott ("PC Scott"), hidden in the bush.

Relevant distances and times

58. WPC Marin said that the Honda Torneo was 551 feet from the road. The glove was 380 feet from the road and hidden into the bush. The keys were found 50 feet from the vehicle. All this was done on the 27<sup>th</sup> March. Again WPC Marin secured the keys and the glove for further analysis.

59. WPC Marin walked from the vehicle to the prison farm. She said from the vehicle to the first roundabout, shown on Exhibit 2 Map 4, and Exhibit 8, took 5 minutes.

60. WPC Marin walked from the roundabout to the orange grove on the prison farm, again shown on Exhibit 2, Map 4, and Exhibit 8, and this took 2 minutes. Walking from the orange grove to the tomatoes took 6 minutes.

61. WPC Marin's evidence was that driving from the murder scene to the entrance to the dirt track where the Honda Torneo was hidden, at 30 miles per hour, took one minute. She added that driving from the end of the dirt track to where the car was

hidden, took 3 minutes, due to the very uneven surface on the road. So WPC Marin's evidence was that it would have taken 17 minutes to drive and walk from the murder scene to the prison farm house.

### DNA

62. The Crown called Kevin Noppinger ("Mr. Noppinger") who is a forensic serologist and forensic scientist, with over 31 years experience in the field of crime laboratory work. He has been studying DNA case work since 1990.
63. Mr. Noppinger examined a number of Exhibits including Exhibits marked LB1 to LB14, which were the clothes of the defendant taken from his cell in Northward Prison.
64. LB6 was the prison-issue belt of the defendant. Mr. Noppinger's evidence was that there was a little blood on the belt, and when he examined it he confirmed that the DNA profile matched that of the deceased, Sabrina Schirn.
65. Mr. Noppinger examined Exhibit WVM2, which was a swab from a Blockbuster key card. He identified blood but confirmed that there was not enough DNA present to obtain a profile. Similarly, Mr. Noppinger found blood on the two branches that Zoan Marin had collected, namely ZM48 and ZM49, but there was

either insufficient blood or, more likely, soil and dirt, which inhibited the DNA identification process.

66. ZM52 was a swab taken from a door jam in the unused wooden shed – Exhibit 2 Map 2 “F”. No blood was detected on this item, but a DNA profile was obtained, which matched the deceased, Sabrina Schirn. ZM53 was another swab from the door jam of the wooden structure on the unused shed, which again matched the deceased’s DNA profile.

67. Mr. Noppinger examined ZM76, which became Exhibit 10 – the right hand blue and white glove. Mr. Noppinger took a sample from the wrist area which the Crown presented as Area 1 and obtained a partial DNA profile, which matched that of the deceased.

68. Mr. Noppinger took a sample from the interior wrist portion of the glove. There was no blood on that sample. However, a DNA profile was obtained and the major portion of the DNA matched the deceased.

69. Mr. Noppinger examined the interior of the right index finger which was termed Area 4. There was no blood found in that area. However the DNA profile was a mixture of at least two individuals and Mr. Noppinger confirmed that he found the DNA of both the defendant and the deceased in this location.

70. Mr. Noppinger examined the interior of the right middle fingertip area of the glove which was Area 5. Mr. Noppinger found blood on this sample. In addition, the sample that he collected did not have blood. Again, Mr. Noppinger found DNA that matched both the defendant and the deceased.

71. Mr. Noppinger examined a sample from the interior of the wrist area of the glove. This sample did contain blood and the profile matched the deceased, Sabrina Schirn.

72. Mr. Noppinger also found blood on the interior of the index and middle finger. The DNA matched the deceased.

73. Mr. Noppinger examined ZM90 which were swabs that Zoan Marin had taken from around the ignition area of the white Torneo motor vehicle. Mr. Noppinger found blood on this swab and the blood matched up to the deceased.

#### DEFENCE CASE

74. The defendant began his evidence by confirming that he was currently an inmate in Northward Prison, having been convicted on the 13<sup>th</sup> June 2008 for Aggravated Burglary and possession of an unlicensed firearm, for which he received 7 years and 3 years respectively – making a total of 10 years. The defendant also admitted

previous convictions for other offences including wounding, burglary and drug offences.

75. The defendant said he first met the deceased, Sabrina Schirn, in April 2008. He said he had a girlfriend, Juliette Ebanks, and that the deceased would bring Juliette Ebanks to the prison to meet him. The defendant explained that Juliette would visit the farm for them to have sex and to provide him with marijuana. Sabrina Schirn would often come to the prison with Juliette Ebanks.

76. The defendant in examination-in-chief denied that he had ever assaulted the deceased in the manner described by Juliette Ebanks in her statement. He said “nothing like that ever happened.” The defendant said that Juliette Ebanks is just a “typical liar.”

77. The defendant said he was allowed to work at the prison farm as he became a category C prisoner in late 2007. He said people would bring drugs to the farm and women would come to the farm area to provide sexual favours for the inmates.

78. The defendant said that Juliette Ebanks or anyone else coming to have sex at the prison would go to the banana shed where the bananas were washed. The defendant said that there was also a container there. The defendant said “you could either go through the fence to where the container was, or walk down deep

into the farm and double back to the banana shed.” The defendant said Juliette Ebanks and others delivered drugs to him and other inmates whilst he was at the prison farm.

79. The defendant recalled the incident in April 2008 when P.O Duhaney caught him with ganja and a mobile phone. The defendant said he was not happy. He was caught with the ganja and the mobile telephone and consequently his mobile phone was confiscated and he was removed off the prison farm duty. The defendant said P.O. Duhaney was down on him. He said other prisoners might have mobile phones or have drugs but P.O. Duhaney seemed to pick on him.

80. The defendant said that the deceased would bring him, and his nephew, Lance Myles cigarettes. In 2008 when he was caught with the marijuana and the mobile telephone by P.O. Duhaney, the defendant said the ganja had come to him from the deceased and Juliette Ebanks.

81. The defendant said that he had sexual relations with Sabrina Schirn before January 2009 on the farm. He added that the deceased had sexual relations with other prisoners. In fact, it is the defence’s case that the deceased had sexual relations with a number of prisoners, including Shane Connor, Derrick Bush, Kaylant Hunter, Raysial Jeffers, Patrick McField and Matthew Miller.

82. On the 11<sup>th</sup> March 2009 the defendant said he went to the prison farm dressed in blue pants and white merino. The defendant accepted that the prison farm provided gloves but did not say he was wearing any glove or gloves on that day.
83. The defendant explained that the phone traffic between himself and the deceased and Lance Myles was in relation to getting ganja from Lance Myles (outside of prison) and asking him to give it to the deceased to take to the prison farm. The defendant said that the deceased acted as a courier.
84. The defendant said that the reason for the calls on the 4<sup>th</sup> and 5<sup>th</sup> March 2009 were because he and the deceased were getting much closer to one another. The defendant said that on the 4<sup>th</sup> and 5<sup>th</sup> of March the deceased told him that Lance Myles had visited her “work place” and destroyed her car. The defendant said he and Lance Myles got into an argument because he told Lance to stop harassing the deceased. The defendant said this took place on the 9<sup>th</sup> March 2009.
85. The defendant said that at 12:29 p.m. on the 10<sup>th</sup> March he had a telephone conversation with the deceased. He said that it was during that call that the defendant arranged for her come and visit him on the 11<sup>th</sup> March. The defendant asked her to bring him some “weed” and cigarettes.
86. The defendant said that in the second week in February he asked for the pair of gloves from Mr. Myles. The defendant stated that he (the defendant) had been

working with the gloves from the second week of February. He said he was working only with the right hand glove. He said he left the left hand glove in the changing room at the prison farmhouse.

87. On the 11<sup>th</sup> March 2009 the defendant said that he and the deceased had a couple of phone calls and that Sabrina Schirn met him at 10:38 a.m. at the banana shed. The defendant said he was dressed in blue prison pants, blue prison shirt, white merino/t-shirt and white sneakers. The defendant said that he was assigned to the tomato patch and the two officers on duty were P.O. Duhaney and P.O. Hunter. The defendant said that he had a machete and a hand fork. The defendant's evidence was that prisoners could obtain a machete at any time and there was very little supervision in relation to the allocation or maintenance of the machetes and the other tools. The defendant had left his mobile phone down by the mango tree in a coffee bottle (Exhibit 9).

88. The defendant said that he had arrived at the prison farm at around 8:45 a.m. on that day, went down to the mango tree, got his phone, and proceeded back up to the farm house. The defendant said he did not tell anybody where he was going. He said he was away for approximately five minutes. The defendant said all the earlier calls – 9:06 a.m., 9:30 a.m. and 9:43 a.m. were really to say where Sabrina Schirn was and where she had reached. The defendant said she went by a gas station and he had asked her to get some cigarettes.

89. The defendant said that 10:38 a.m. was when the deceased was at the location on the farm. He said when he was working in the tomato patch the deceased drove across and he saw the white car. He then proceeded to meet her. Before he left his location he went to tell one of his fellow inmates that he was going to pick up some weed and if an officer asked for him he should whistle. The defendant said he then went to see P.O. Hunter in the kitchen and told him he was going down to the bushes to take a dump. After doing that the defendant said when he got to Sabrina at the banana shed it was 10:38 a.m. The defendant said he was certain about this time because he said he had looked at his watch – a silver Fossil watch.
90. The defendant said that whilst he was with the deceased they started kissing one another in a sexual manner, which led to intercourse. However, the sexual intercourse was not completed. The defendant said that the deceased had her menstruation and this made them stop. The defendant said he was wearing his prison trousers, which were held up by a belt. The defendant's evidence is that during this time he noticed a bruise on Sabrina Schirn's face and they tried to call a guy in North Side because he was the guy who beat her up. The defendant said the deceased picked up the phone while he was kissing her and she made the call. He said a girl answered the phone. The defendant said that after the phone call was over "me and her continued" and at some stage the deceased picked up the glove and wiped it on her leg. The defendant said he stopped her and took out his bath rag. He then heard the whistle so "we rushed off." The defendant said he picked up the weed and the cigarettes and went off and the deceased jumped in

the car and rushed off. The defendant said he left the glove on the back seat of the car.

91. On his way back to where he was working the defendant said he was tapping the pack of cigarettes and saw P.O. Duhaney. The defendant said it would take about 3 minutes at the most to get from the banana shed to where he was working. The defendant said he went back to the tomato patch and started working. He also said he had two telephone calls with the deceased – one at 10:56 a.m. which lasted 108 seconds and the other at 10:59 a.m. which lasted 41 seconds. The defendant's evidence is that during the first conversation they made the arrangement to meet on the following Wednesday, the 18<sup>th</sup> March. During the second conversation the defendant said it was the deceased wanting him to hear a song that was on the car radio.

92. The defendant said that the bag in which the deceased had given him the weed was a very poor bag, so he secured the weed properly in a black plastic bag. The defendant said he was nervous because, clearly, P.O. Duhaney was, “dogging him.” The defendant said he kept his mobile telephone inside his shoes. In his effort to hide the weed he threw it down as soon as he saw P.O. Duhaney.

93. In his evidence-in-chief the defendant said that he did not hear about Sabrina Schirn going missing until some time on Friday the 13<sup>th</sup> March. In answer to his counsel he said the reason he did not try to contact the deceased, either on the 12<sup>th</sup>

or the 13<sup>th</sup>, was because they had made the arrangements to meet the following Wednesday, that is, the 18<sup>th</sup> March.

94. Asked by his leading counsel if when he had heard the deceased had gone missing, did he think to telephone her, the defendant said no. The defendant said he called other people when he heard that the deceased had gone missing.

95. The defendant's statement, Exhibit 28, was put by his leading counsel to him. He said he knew by the time he had made the statement that Sabrina Schirn was dead, and he denied having anything to do with the killing.

96. The defendant said the plait of hair which was found in his cell wrapped in a piece of paper marked with the name Sabrina Schirn, was his hair, which he had cut on the 3<sup>rd</sup> February 2008. When asked who wrote the name Sabrina Schirn on the piece of paper the defendant said, "I did." He said the reason for writing her name was because he did not want to forget her name because he wanted to make an application to put her name on his visiting list. The defendant said there was no reason why he wrapped the paper with her name on it around the plait of hair.

97. In Court when the defendant was shown the piece of paper with the deceased's name on it he said it was not his handwriting. Asked by his leading counsel how the paper came to have Sabrina Schirn's name on it, he said he was in the police

station on the 7<sup>th</sup> April for 12 days, and officers searched his cell whilst he was not there.

98. The defendant was asked about AP10 – the newspaper clippings which related to Sabrina Schirn. He said the reason he had those clippings was because he saw her on the 11<sup>th</sup> March and all of a sudden she went missing, so he was following up on what was going on, and that was why he saved the clippings on her. Similarly, he kept the clippings of the attempted murder of his brother, because he was following up on the Appeal.

*Cross Examination of the Defendant*

99. The defendant said he chose the deceased to be the courier for the drugs because she was reliable. He also acknowledged that the deceased used to bring cigarettes to him at the prison. The defendant said anything he asked Sabrina for “she always give it to me, man.” The defendant said, for example, that on the 5<sup>th</sup> February the deceased took half a pound of ganja from his nephew, Lance Myles, and brought it to the prison farm for him.

100. The defendant said he had obtained Sabrina Schirn’s telephone number from Derrick Bush, because he was another person for whom Sabrina brought weed to the prison farm.

101. The defendant said he and Sabrina Schirn had sexual relations twice in 2008.
102. The defendant was asked about the telephone calls on the 4<sup>th</sup> March 2009, and the message that he left with Sabrina Schirn “when are you going to link me?” and further, “I only need you to pick me up from the farm and drop me at East End.”
103. The defendant said I did not tell her to pick me up from the farm. The defendant denied leaving a message asking her to pick him up at the prison farm and drop him at East End. He said nothing like that happened. He said he only called her to tell her to call him back.
104. The defendant maintained that the arrangement to meet was made at 12:29 p.m. on the 10<sup>th</sup> March. In relation to the other conversations, he said, “Sabrina is a little chick that she love use her phone and thing. Sabrina when she call you on the phone she is going to give you a whole yard of what is taking place.”
105. On the 11<sup>th</sup> March the defendant said he called her at 9:06 a.m. to see if she was alright. The defendant said that Sabrina called him at 9:30:05 a.m. and then the defendant said he called her at 9:43 a.m. to tell her to get cigarettes and things for him. The defendant said she was at “some gas station, she picked up the cigarettes and things for me.” Asked about the 10:27:34 a.m. call which he made

to Sabrina Schirn, the defendant said, “That was to ask her what vehicle she was driving.”

106. The defendant told the Solicitor General that Sabrina arrived at 10:38 a.m. “but only stayed for about 10 or 11 minutes, it was not long.”

107. On the defendant’s evidence, the defendant was with Sabrina Schirn from 10:38 a.m. to 10:49 or 10:50 a.m. on the 11<sup>th</sup> March 2009. Then the defendant’s evidence is that Sabrina Schirn made a call on her phone at 10:52:56 to tell the defendant that one of the officers was at the gate.

108. The defendant’s evidence in cross examination was that the deceased visited him and he collected the weed and the cigarettes. She was wearing a jeans skirt and a white blouse. The defendant said Sabrina Schirn got out of the car and they were kissing, that is, French kissing. The defendant first said that his gloves were on the car, with the cigarettes and the weed. Then defendant said the cigarettes were on the back seat. The defendant said he had not used the gloves for work that day, because he had not started working. The defendant said he put the glove on the back seat of the car and then they caressed, then Sabrina Schirn used the glove to wipe herself and they put the glove back on the back seat of the car. The defendant said Sabrina Schirn cleaned herself up with water from a faucet which is at the banana shed. They then heard the whistle. The defendant said, “I just rushed, Ma’am, I did not take it back, I did not take the glove back

from her.” The defendant told the Court it takes three minutes at the most to get back to the tomato patch.

109. Asked about the call which he made to her at 10:56:19 a.m. the defendant said he was back in the patch, near the farmhouse. The defendant said he saw P.O. Duhaney talking to somebody by the gate and he, the defendant, had a telephone conversation with Sabrina Schirn for 108 seconds. This call was to make the arrangements for the following week. The second telephone call, after her departure, was when Sabrina called the defendant and that call lasted for 41 seconds. According to the defendant Sabrina called him to make him “listen to music and things like that.”

110. The defendant was shown Exhibits 18 and 22. The defendant was asked about the telephone call that he made at 10:27:54 a.m., where his cell phone was transmitting from Old Man Bay cell site, and the deceased’s telephone was transmitting from the Prospect cell site. The defendant was asked how Sabrina Schirn got from Prospect, stopped to give breakfast to Ms. Ramoon in Pease Bay Bodden Town, then got from there to the Prison farm in 11 minutes. The defendant was asked whether he was still certain that he and Sabrina Schirn met at 10:38 a.m. and he said, “Yes, that is the time.”

111. The defendant was asked whether he had taken off his shirt and he replied, “That is not true.” It was put to the defendant that P.O. Duhaney said that the

reason he had taken off his shirt was that he had told P.O. Duhaney that he, the defendant was sweaty. The defendant said, “Nothing like that ever occurred.”

112. The defendant was asked whether he had ever drawn P.O. Duhaney’s attention to his baggy pants and the defendant replied, “Nothing like that ever occurred” and he never had baggy pants. The defendant was asked about Mr. Myles saying that he saw the defendant wearing baggy pants after the 11<sup>th</sup> March, he said, “That’s not true.”

113. Asked why he had not called the deceased after the 11<sup>th</sup> March he said, “No. Because arrangements had been made.” Asked why then did he not call her when he knew he would not be able to make the appointment for the 18<sup>th</sup>, because he had been moved off the prison farm assignment, he said, “I did not know what was taking place at that time.”

114. The defendant acknowledged that he had lied in his voluntary witness statement to the police because the prison painted a picture of him by removing him from the farm work party and removing him out of the general population and placing him in “maximum.” The defendant said all that was because he felt that, for the police, he was a suspect. The defendant denied trying to lead the police away from himself, and said, “I simply told them what I feel like to tell them.”

115. The defendant was asked about his notebook – Exhibit AP7. He accepted that his alias was “savage” and that on the notebook he had written “school of killing” and “murder” as the class. Asked why he wrote those things on his notebook the defendant replied, “That’s just writing, Ma’am.” Asked why he had written down the dates “the 11<sup>th</sup> March and the 18<sup>th</sup> March” he said, “Those were just marks and they indicated nothing.” The defendant said the fact that the dates were marked on both calendars meant nothing. Asked about the lock of hair which was wrapped in a paper on which he had written the deceased’s name, the defendant said he simply wrote her name on a piece of paper and wrapped it round the hair to remind him to make an application to put her name on the visiting list.

116. It was put to the defendant that the last call at 10:59:29 a.m. was from Sabrina Schirm to the defendant to say she was there at the other meeting place, and that the defendant then went out to meet her. It was put to the defendant that it was between 10:59 and 11:27 a.m. that he was with her, and that was to comply with the arrangement for her to pick him and take him to East End. It was put to him that they met at the disused wooden shed where the blue blouse was found and not at the banana shed where the bananas were washed and where inmates met visitors for sex. The defendant denied that they had met at the disused shed.

117. The defendant recalled the pink bag in the car. The defendant denied getting the glove to ensure that there were no fingerprints, and, in order to chop

and injure the deceased. The defendant denied chopping her and leaving her for dead. The defendant denied making up a story relating to Sabrina Schirn's visit to him on the 11<sup>th</sup> March 2009 and her death. The defendant denied that he had any involvement in the killing of the deceased.

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 had 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.

THE LAW

120. At the outset of this case on the 24<sup>th</sup> November 2009, I acceded to an application by the Defence, pursuant to Section 129 of the Criminal Procedure Code whereby the defendant elected to be tried by a judge alone.

121. Our Court of Appeal first dealt with the duties of a judge in judge alone trials in its judgment in *K. Richards v. R* [2001] C.I.L.R. 496 where Rowe JA stated:

“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 be clearly revealed.”

122. Deborah Barker stated in her Second Edition of Criminal Litigation in the Cayman Islands at chapter 7, paragraph 13 on page 255:

“The basis of this duty is that the appellant is entitled to know the reasons for the Court’s decision and a written record of those reasons is essential to the proper conduct of any Appeal.”

123. More recently our Court of Appeal in *R v. Dave Kennedy Whittaker* Cr. App. R. No. 14 of 2006 gave some guidelines regarding the duties of a judge in

judge-alone trials. In the judgment of Mottley JA, delivered on the 8<sup>th</sup> December 2009, he adopted the judgment of the former Lord Chief Justice of Northern Ireland, Lord Lowry, in *R v. Thompson* [1977] NI 74, in which he stated at page 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.”

124. The Indictment charges the defendant with murder contrary to Section 181 of the Penal Code and the particulars of the offence are that the defendant, on a day unknown, between the 11<sup>th</sup> day of March 2009 and the 17<sup>th</sup> day of March 2009 in Grand Cayman, Cayman Islands, murdered Sabrina Schirn.

125. Section 181 of our Penal Code states:

“Whoever, of malice aforethought express or implied causes the death of another person by an unlawful act or omission is guilty of the offence of murder.”

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, Cheryll 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.

#### Circumstantial Evidence

128. In this case there are no eye witnesses to the crime, nor is there any confession, and therefore we do not have any direct evidence of the murder off High Rock Drive. The prosecution relies upon circumstantial evidence in order to prove the defendant guilty. The prosecution submits that the various circumstances relating to this crime and the defendant are such that when you take them all together, it leads to the sure conclusion that the defendant committed the act of killing Sabrina Schirn.

129. It has often been cited that circumstantial evidence can be powerful evidence. It is important that I examine it with care and consider whether the evidence upon which the prosecution relies in the proof of its case is reliable, and whether it does prove guilt. Furthermore, before convicting the defendant on circumstantial evidence, I must consider whether it reveals any other circumstances which are, or may be, of sufficient reliability and strength to weaken or destroy the prosecution's case. Finally, I have to warn myself to be careful to distinguish between arriving at conclusions, based on reliable circumstantial evidence, and mere speculation.

*Defendant lies to the police*

130. On the 21<sup>st</sup> March 2009, some ten days after the death of Sabrina Schirn, and some ten days after being with her, the defendant gave a witness statement to the police. The defendant told the police that he had heard that some people had found Sabrina Schirn in East End. However, he told the police that he had never met Sabrina before and never had any direct or indirect contact with her.

131. The defendant has admitted that he lied to the police in his witness statement regarding Sabrina Schirn. I then must ask myself why did the defendant lie. I must remind myself that the mere fact that the defendant lied to the police is not in itself evidence of his guilt for the charge of murder. I must also remind myself that the defendant may lie for many reasons, and they may possibly be

“innocent” lies in the sense that they do not denote guilt, for example, they could be lies to bolster a true defence, or to protect someone else, or to conceal some disgraceful conduct, other than the murder of Sabrina Schirn. Furthermore, the defendant may have lied out of panic, distress, or confusion. In this case the defendant says that he lied because he thought he had become a suspect and had been put in maximum security at the prison.

132. I have to ask myself if there is an innocent explanation for the defendant’s lies and, if there is, I can safely disregard the lies. However, if I am sure that the defendant did not lie for an innocent reason, then his lies can be regarded as evidence to support the case for the prosecution and to prove his guilt.

*Previous Bad Character*

133. In this case there is evidence of the defendant’s previous criminal convictions. I have to remind myself that I must not convict the defendant because he has bad character. I can take the defendant’s bad character into account when deciding whether or not his evidence before this Court is truthful. A person with a bad character may be less likely to tell the truth, but it does not follow that he is incapable of doing so. I must warn myself that the defendant’s bad character cannot by itself prove that he is guilty. It would be quite wrong of me jump to the conclusion that he is guilty simply because of his previous convictions, and this is something I must consider with great care.

CONCLUSION

134. The defendant's witness statement to the police was taken on the 21<sup>st</sup> March 2009. The defendant was only a witness and not a suspect. The defendant had not been cautioned and the defendant made his witness statement voluntarily. The defendant gave a six-page statement. He was aware that he had not been cautioned and that the statement was to assist the police in relation to information they were seeking about Sabrina Schirn. In the statement the defendant said that he had heard that people were looking for Sabrina, but that he had never met her before and that he had never had any direct or indirect contact with the Sabrina Schirn. This was deliberate lie. It is not clear whether an independent source had informed the defendant that Sabrina Schirn had been found dead off High Rock Drive. The defendant states that he lied in his witness statement because he felt under pressure and had been moved into the maximum security area of the prison. Although it was not a caution statement, the defendant felt he had become a suspect.

135. The defendant admitted that he worked on Monday the 9<sup>th</sup> March 2009 on the prison farm. The defendant also said in his statement that the inmates on the farm are usually under constant supervision, which was also a lie. The defendant also indicated that the prisoners are not allowed any visitors, as it is against the rules. In his witness statement to the police the defendant made no mention of the

fact that he and many other prisoners received visits from girls acting as drug couriers and from girls providing sexual favours for prisoners on the prison farm.

136. In his witness statement the defendant said he was wearing black boots, long blue pants, and a short-sleeved blue shirt. He said that he had left his white shirt on the line to dry on the previous evening. There was no mention of any gloves nor has there been any evidence that the defendant wore the blue glove in Exhibit 10 at any time before the 11<sup>th</sup> March or on the 11<sup>th</sup> March.

137. In his witness statement the defendant states that on his return from the prison farm on the 11<sup>th</sup> March 2009 he took off all his clothes so that they could be put into the wash on Thursday morning. He further stated that he put all his dirty farm clothes in the wash and put on a clean set of clothes on Thursday the 12<sup>th</sup> March 2009 and went back to his usual farm detail.

138. It is quite clear that the defendant lied. I am reminded of the warning that I would give to the jury, pursuant to **R v. Lucas** [1981] Q.B. 720, and I treat this evidence with great care.

*Meeting at Banana Shed at 10:38 a.m.*

139. The defendant insists on maintaining that his meeting with the deceased on the prison farm at the banana shed took place at 10:38 a.m. He says that he

checked his silver Fossil watch and it said 10:38 a.m. It has been shown to the defendant and to this Court that Sabrina Schirn could not possibly have reached the farm by 10:38 a.m. or even by 10:52 a.m. on the 11<sup>th</sup> March 2009. Yet, still the defendant hangs on to this time and to his story. On the evidence before this Court this could not have happened.

140. First Ms. Christian goes for her cigarette break at 10:50 a.m. and calls Sabrina Schirn, who says she is on her way to East End.

141. Secondly, at approximately 11:00 a.m. Ms. McTaggart calls Sabrina Schirn's Digicel phone to say she would buy her lunch and Sabrina Schirn tells Ms. McTaggart that she is going to East End "to deal with some business" and then come back.

142. Thirdly, if one examines the telecommunications Exhibit evidence, there is a call at 10:24:10 a.m., which has Sabrina's phone transmitting from the Patrick's Island cell site. At 10:27 a.m., the defendant calls Sabrina and Sabrina's phone is transmitting from the Prospect cell site. I find that Sabrina Schirn's cell phone and Sabrina could not get from Patrick's Island and Prospect, stop with Ms. Ramoon at Pease Bay to give her breakfast, and get to Wilderness Farm, past the entrance, and arrive at the banana shed by 10:38 a.m.

143. Furthermore 10:37:23 a.m., on Exhibit 13, has Sabrina Schirn's telephone in the Bodden Town/Savannah cell site of 9182-9185. It would be impossible for Sabrina Schirn and her phone to get from that location to the banana shed in time for meeting the defendant at the time, and at the place, that the defendant has sworn took place. In fact the deceased could not possibly be at Bodden Town Savannah and reach the Prison Farm before 10:52 a.m. when the defendant says he rushed back to the tomato patch.

144. I find on the evidence before me that the defendant could not have met the deceased at the banana shed or indeed anywhere on or near Wilderness Farm at 10:38 a.m. on Wednesday the 11<sup>th</sup> March, because the deceased and her telephone had just left Blockbuster and were on the way to pick up Ms. Ramoon in Pease Bay near Bodden Town.

145. On the basis of the testimony from the other witnesses and from Ms. Christian and Ms. McTaggart, and from the evidence presented by the IT technologists from the telecommunications firms of Cable & Wireless and Digicel, I conclude that the defendant has been completely dishonest and lied to the Court about the so-called meeting at the banana shed. I find the defendant's sworn testimony to be entirely unreliable and untruthful on this very important piece of evidence. This is a fact that supports the Crown's case and the Crown's submission that the inference is that the defendant is trying to remove himself

from the scene of the crime and from the time of the assault which caused the death of Sabrina Schirn.

146. At some time after 10 a.m. Mr. Evans did see a white car go past the gate of the prison farm towards the banana shed, and then back from the banana shed towards East End. It is quite conceivable that the deceased managed to get to the prison farm and drive past the gate after 10:56 a.m. and then drive back again to meet the defendant on the East End side of the prison farm. This would have involved the defendant going down towards the orange grove at the bottom of the farm and over to the roundabouts as can be shown on Exhibit 2 Map 4 and Exhibit 8. WPC Zoan Marin timed this walk at six minutes, but clearly, it could be run in a much shorter time.

147. It is very significant that Mr. Hudson who was watering some plants on the Lookloy's farm saw a white car, which he described to the police as being parked as shown in Exhibit 2 Map 5. Mr. Hudson saw a prisoner with prison blue pants and no blue prison shirt get into the white car and then the white car drove off. He said that the man he saw might have a lighter complexion to Officer Price (who was in Court when Mr. Hudson gave his evidence) but it has to be remembered that Mr. Hudson said he did not see the prisoner's face. There is absolutely no reason why Mr. Hudson would fabricate this evidence. I find Mr. Hudson to be an honest and reliable witness and I accept Mr. Hudson's evidence. Mr. Hudson said, "Me see the prisoner pants and shoes and he did not have a

shirt.” “Blue prisoner pants and he did not have no shirt.” “Me don’t see him face or nothing.” “Me just see him like open the white car and then him get in behind.” Mr. Hudson was not sure about the driver of the white car, “but it looked like a woman’s hair where me stand from.” “So it look like a woman to me, not sure.” Mr. Hudson was asked by the defence whether he was sure he had got the right date and his answer was, “Me know what me saw on Wednesday, me didn’t saw nothing on Friday.”

148. Mr. Hudson’s evidence is consistent with the message that Ms. Ramoon heard on or about the 4<sup>th</sup> March 2009 when she listened to two telephone messages on Sabrina Schirn’s phone from Randy. In the second message Ms. Ramoon heard a message from Randy asking Sabrina to pick him up from the farm and drop him at East End. Mr Hudson sees a white car which he thinks is driven by a woman pick up a prisoner on the East End side of the prison farm.

149. However, the defendant has denied leaving the message on the deceased’s telephone for the deceased to come and pick him from the farm and take him to East End. Ms. Ramoon clearly recalls this telephone message. She heard it and had no reason to fabricate any story relating this. Accordingly, I accept Ms. Ramoon’s evidence as evidence of truth and that the defendant, contrary to his story, did leave the said message with the deceased. Furthermore, on the morning of the 11<sup>th</sup> March 2009 when Sabrina went to pick up Ms. Ramoon at Pease Bay,

Ms. Ramoon's evidence is that Sabrina Schirn had told her, that she, Sabrina, was going to drop Randy at East End.

150. I have to treat Juliette Ebanks' statement with a high degree of caution because she was not subject to cross examination. It may be that another Sabrina, namely Sabrina Powell, was involved in the attempted murder of the defendant's brother. However the action of putting Sabrina Schirn's head in a plate of oxtail is a very detailed account. It is regrettable that Juliette Ebanks felt that she could not give live testimony due to her fear. Accordingly, I do not put much store on this evidence.

*Acquiring the glove*

151. Another conflict in the evidence is when the defendant first identified the gloves and his need for them. Mr. Myles was clear that in early March 2009 the defendant noticed his gloves and said he needs a pair like that. Mr. Myles is also clear that the defendant, either early on the morning of the 10<sup>th</sup> or the 11<sup>th</sup> of March 2009 took the gloves.

152. The defendant's evidence is that he borrowed the gloves in the second week of February 2009. There is no evidence to support that fact, nor is there any evidence that the defendant ever wore a blue glove during the following weeks in February and in early March. In fact there is no evidence to suggest that he ever

used the glove on the farm. Accordingly, one must ask the question why the defendant made such a deliberate point of identifying the gloves and then taking the gloves. The defendant said he would never go anywhere on the farm without the glove, and yet nobody ever saw him wear the glove or carry the glove. On this point I accept the submission from the Solicitor General that the evidence of the defendant is internally inconsistent. Mr. Myles, in the view of this Court, has no reason to lie regarding this very significant evidence, and he was, in my view, both clear and reliable. It is also evidence that the defendant was planning to use the glove. Accordingly, on the evidence before me I reject the defendant's evidence on this point.

#### Pathology Evidence

153. Dr. Shuman, a forensic pathologist confirmed that the deceased had, at some stage, received four multiple wounds on the mid-upper back, which went through the skeleton muscle, to the vertebrae. Dr Shuman said that these wounds were consistent with the deceased having been struck from behind. The deceased received five chop wounds on the skull and wounds to her forearm, left wrist, hand, foot, and one to the index finger of her right hand which amputated that finger, and one which also almost amputated her thumb. Dr. Shuman confirmed that these were all injuries he termed defensive injuries, caused by what can only be described as a most brutal assault. Dr Shuman confirms that the chop wounds would cause the victim to lose consciousness, and the injuries to the scalp would

bring about such a serious loss of blood that the deceased would have, mercifully, died within minutes.

DNA

154. Mr. Noppinger has examined several areas of the glove and he has found the blood of the deceased and DNA of the deceased inside the glove. In summary Mr. Noppinger found the DNA of the deceased and the DNA of the defendant in the interior of the glove on the right index fingertip. Mr Noppinger also found the DNA of the deceased and the defendant at the tip of the interior of the middle finger.

155. Mr. Noppinger also found that the blood on the defendant's belt matched the blood of the deceased. The Crown submits that this is further proof of the fact that the defendant was the deceased's assailant.

156. In my view, the blood of the deceased and the DNA of both the defendant and the deceased could not have found their way into those locations in the manner described by the defendant. The defendant's belt and the blue right hand construction glove, in my view, link the defendant to the crime. There is no doubt that it is the DNA of the deceased and the defendant's DNA at the right index and middle fingers and there is no doubt that it is the deceased's blood on the defendant's belt.

157. The Crown submits that the DNA of the defendant and the deceased got inside the glove when the defendant attacked the deceased and after the injuries had been inflicted.

158. In addition Mr. Noppinger found the defendant's blood on the ignition. The Crown submits that the glove could explain the lack of DNA in the car and the presence of the deceased's blood where the key can be put into the ignition.

Disposal of car, keys and glove

159. I accept that the Honda Torneo was moved from the body site and hidden 551 feet up a dirt track cul-de-sac off High Rock Drive. The car appears to have been deliberately hidden. The keys were hidden away into the bush. Most significantly the glove was hidden even further into the bush by someone who never wanted it to be found and identified. I should say at this point that in my view an unknown assailant would have had no reason to appreciate the significance of the glove. The only person who could possibly understand its significance was the defendant. In fact if Mr. Frederick had not noticed the smoke coming from a fire near Bottom Road, it is quite conceivable that the white Torneo, the keys and the glove would never have been found.

160. I should also mention the evidence of PC Scott. He is a native of East End and on the 30<sup>th</sup> March he searched the area where the car was discovered. At 2:30

that afternoon he found the keys in very dense bush off the dirt track. He actually found the keys and a tag marked Blockbuster in a hole. At 3:30 p.m. he discovered the blue right hand construction glove further into the bush and 100 feet from where the keys were found. PC Scott said he was very familiar with the area and had walked it many times, and he said that one could get back to the boundary of the prison farm by the back route within three to five minutes.

161. The Crown submits that, on the evidence, the defendant was able to hide the car, get rid of the keys and, most importantly, the glove, and still be in good time to return to the prison farm without his absence causing untoward concern.

*P.O. Duhaney's Evidence*

162. I come to evidence of Officer Duhaney. It is correct that there is some conflict between his evidence and that of P.O. Hunter. For example they both stated they were doing the cooking on the 11<sup>th</sup> March 2009. However George Evans also remembers P.O. Duhaney doing the cooking. In my view, P.O. Duhaney's evidence was more accurate and reliable than P.O. Hunter's evidence. An example of this, as was pointed out by the Solicitor General, is that P.O. Hunter was not sure on which day the defendant's phone was found. First of all, he thought it was found on the Wednesday then he thought it was found on the Friday, then he thought it was found in the following week. Furthermore, on

several occasions, the defendant told the Court that P.O. Duhaney paid special attention to him, and on the 11<sup>th</sup> March appeared to be dogging him.

163. P.O. Duhaney thought it strange that the defendant kept drawing attention to himself to show that he was working. This is a small detail, but there is no reason for P.O. Duhaney to be mistaken on this innocent detail, or to fabricate it. Officer Duhaney recalls that the defendant said he was going off down the farm for a “dump” and that there were two, or possibly three, 45-minute periods when the defendant was absent. Officer Duhaney also recalls the defendant missing at lunchtime. It was P.O. Duhaney who felt that the defendant was behaving suspiciously and who noticed these periods when the defendant was missing. It was also P.O. Duhaney who asked P.O. Hunter for assistance in locating the defendant after lunchtime.

164. Just after going to search for the defendant, P.O. Duhaney was called to the prison farm gate to meet a visitor. There was some delay with the visitor, but the defendant’s behaviour had aroused P.O. Duhaney’s suspicion. P.O. Duhaney’s evidence to the Court was that he became very concerned about the defendant’s suspicious conduct, for which there was no innocent explanation. Eventually, the defendant appeared peeling an orange, but without a shirt. Officer Duhaney saw that the defendant was not wearing a shirt and recalled the conversation he had with him. P.O. Duhaney told the Court that he asked the defendant what happened to his shirt, to which the defendant replied, “You know, because I was lying

underneath the guava tree, and the sun was hot hot on me, the shirt became all sweaty to I took it off.” This evidence from P.O. Duhaney is clear. The defendant denied taking his shirt off and also denied the conversation with P.O. Duhaney. The Court finds that there is no reasonable explanation for P.O. Duhaney to fabricate what is, of itself, an innocent observation. Furthermore, it is consistent with Mr Hudson’s description of the prisoner who got into the white car.

*Items found in the defendant’s cell*

165. The Crown relies upon what it admits may be a minor point but yet a very unusual point. The Crown asks why had the defendant marked off the 11<sup>th</sup> March 2009 and the 18<sup>th</sup> March 2009 on both calendars found in his cell? The defendant had received visits from the deceased and others, but no other dates were marked off on these calendars.

166. There is the lock of hair which the defendant claims is his hair which the defendant claims is his hair, wrapped in a piece of paper with Sabrina Schirn’s name written on the paper. The defendant first admitted that he wrote the name, and then the defendant said it wasn’t his handwriting, but implied that it could have been written by a number of Prison Officers whilst he was at the lock up in Central Police station. The defendant also said he had Sabrina Schirn’s name on the piece of paper to remind him to apply to put her on the visitor’s list. What is particularly strange is that Sabrina Schirn had visited the defendant for many

months and was actually #15 on the Northward Prison Visitors List. Accordingly, I find the defendant's account of these items to be both extraordinary and implausible.

*Crown's list of circumstances*

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 Sabrina's name written on a piece of paper wrapped around a lock of hair in his cell;
- xv. 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 had knowledge of the assault and that on the basis of this cogent circumstantial evidence the defendant is guilty.

Phone Calls

168. It has been suggested by the Crown that the defendant hung on to the meeting time of 10:38 a.m. so that he would draw himself away from the crime and the time when the deceased was attacked and, consequently, the time of her death. The defendant has called Sabrina Schirn on her Digicel phone and on her Cable & Wireless phone on many occasions before the 11<sup>th</sup> March 2009. The last telephone conversation recorded between the defendant and the deceased was at 10:59:29 a.m. It has been confirmed that the deceased's Cable & Wireless telephone stopped working at 11:27:35 a.m. when the phone somehow was destroyed. The Cable & Wireless phone goes completely off the network at that time. The last Digicel call is 10:59:29 a.m. and all subsequent calls went into voicemail. Pieces of the Cable & Wireless phone are found near the murder scene on Exhibit 2 Map 2 "C" and shown on Exhibit 1 photos 41 and 42. Accordingly the Crown submits that this is the window of opportunity. The Crown also submits that the inference is that the defendant attacked the deceased between 10:59:29 a.m. and 11:27 a.m. on the 11<sup>th</sup> March 2009.

169. The Crown submits that the defendant's account of the four telephone calls after their meeting at 10:38 a.m. is contrived and implausible. The first call was at 10:44 a.m. – supposedly made to a man in North Side during their amorous encounter. The second is at 10:52 a.m. which the defendant says is the deceased

warning him about the officer at the gate. The third call is the 10:56:19 a.m. call of 108 seconds, to make arrangements to meet the following Wednesday. The fourth and last call is at 10:59:29 a.m., which the defendant says is the deceased playing music from her car radio.

170. I find the defendant's explanation regarding the telephone calls to be wholly implausible. I assume for the sake of argument that Sabrina Schirn was able to drive from Bodden Town to Wilderness Farm, for the defendant to meet her at 10:38 a.m. On the defendant's account she had just brought him some weed and cigarettes and then they had ten minutes of amorous activity before the defendant was whistled back to the farm. The defendant values his phone and his farm privileges and yet he proceeds to have, on his account, a 108-second conversation at 10:56:19, and, a 41-second conversation at 10:59:29 – all while he can see the vigilant P.O. Duhaney at the farm gate.

171. What I find to be of even more significance is that the defendant does not call Sabrina Schirn's phone after 10:59:29 a.m. He does not try to have any further conversation with the deceased, someone who is, according to the defendant's own testimony, his supplier of weed, cigarettes and someone who would do anything he asked her to do.

172. Even more unusual is that the deceased, who uses the phone all the time, does not call the defendant after she supposedly leaves the prison farm and the defendant does not think it strange enough to try to make phone contact with her.

173. Then we learn from the defendant that some time on Friday the 13<sup>th</sup> March he discovers that the deceased has gone missing. Again, the defendant makes no attempt to call her. This is someone to whom, by the defendant's own testimony, he had begun to get closer to and was even willing to call a boyfriend of hers to question him about hitting her. The defendant does not attempt to call the deceased when he discovers she has gone missing, but says, he calls other people instead.

174. Finally, the defendant then realizes he cannot make their supposed appointment on Wednesday the 18<sup>th</sup> March because he has been removed from farm work and placed in maximum security at the prison. The defendant still does not call or attempt to call her to tell her he won't be there. One very compelling inference is that the defendant did not call her or attempt to call her because he knew she was dead. He had killed her. He had disposed of the body and then hidden the car, the keys and the right hand glove with the blood of the deceased and the DNA of the deceased and the defendant in the index and middle finger tips.

175. Accordingly I find that the Crown has proved on the evidence before me that the defendant is guilty beyond all reasonable doubt.

176. I find the defendant guilty as charged under Section 182 of our Penal Code and I sentence the defendant to life imprisonment.

**Dated this 26<sup>th</sup> day of January 2010**

**Quin J  
Judge of the Grand Court**