

1 *(Trinidad and Tobago)* [2005] U.K. PC 1, it is at least arguable that these convictions
2 should be set aside and a new trial ordered.

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4 In answer to a question from the bench, the complainant said that the brother of the
5 appellant had told her the appellant was a “monster” and that “every woman he see him
6 want to have sex with.” This answer was not responsive to the question asked. The
7 evidence had at least some potential to work to the prejudice of the defendant. Moreover,
8 coming from the mouth of the complainant, the answer was pure hearsay (the brother did
9 not testify). No warning of any kind was given to the jury to disregard the evidence. It is
10 at least arguable that this was an error which entitles the appellant to a new trial.

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12 I conclude, therefore, that the appellant should, but for the issue examined below, be
13 granted leave to appeal his convictions out-of-time.

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15 After conviction, sentencing was postponed because a Social Inquiry Report was
16 requested. The defendant was at large on bail. He left for Jamaica two days before the
17 date for sentencing and never returned voluntarily.

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19 Eventually, the defendant was arrested in Jamaica and extradited back to the Cayman
20 Islands. He appeared before me on May 30, 2005. Since he had been sentenced in
21 absentia on April 29, 2004 to imprisonment for eight years, I ordered the issuance of a
22 warrant of committal.

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1 On August 19, 2005, approximately one year and four months after conviction, the
2 appellant first indicated an intention to appeal. He filed a Notice of Intention to Appeal,
3 after which the leave application was adjourned to obtain a transcript of the trial. For
4 reasons which are unclear, the leave application was not heard until November 14, 2006,
5 some two years and seven months after conviction.

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7 The Crown says that, by absconding, Mr. Walker has rendered himself incapable of
8 justifying the delay in launching the appeal. In effect, he has waived his right to appeal.

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10 In a similar, although not identical, situation – in *R. v. Jones (1972) 2 All ER 731* – the
11 Court of Appeal found that leave to appeal should be denied because to do otherwise
12 “put a premium on jumping bail.” The Court of Appeal of Jamaica has reached a similar
13 conclusion: *R. v. Moore (1972) 19 WIR 72* (but see the lengthy dissent therein).

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15 The Crown also argues that the act of absconding and seeking to appeal subsequently
16 amounts to an abuse of process.

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18 The effect in law of absconding is a point of considerable importance. There is enough
19 merit in the respective submissions of the parties that the issue should be considered by a
20 three-judge panel of the Court of Appeal.

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1 Leave to appeal out-of-time is denied; the applicant is at liberty to seek a re-hearing of
2 this application before a 3-judge bench.

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4 Dated this 16th day of November, 2006

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9 Henderson, J.

10 Judge of the Grand Court

