

(11)

DOMINICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NOS. 13, 14 and 15 of 1985

BETWEEN:

JULIAN DAVID  
MALCOLM REID  
PATRICK JOHN

- Appellants

and

THE STATE

Before: The Honourable Mr. Justice Robotham - Chief Justice  
The Honourable Mr. Justice Bishop  
The Honourable Mr. Justice Moe

Appearances: Dr. R.L. Williams for the first Appellant  
Mr. John Fuller and Mr. C. Shepherd for the second  
and third Appellants  
Mr. D. Singh, S.C., Desmond Christian (D.P.P.)  
and Patrick LaRonde for the State.

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1986: Feb. 3, 4, 5.

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JUDGMENT

MOE, J.A. delivered the Judgment of the Court:

The three appellants were tried together before a Judge and Jury on a two-count indictment. The first count charged that they on divers days between the 19th day of September, 1980 and the 29th day of April, 1981, in the Commonwealth of Dominica and elsewhere conspired together with Michael Perdue, Wolfgang Droege and other persons unknown to overthrow the lawfully constituted Government of the Commonwealth of Dominica by force of arms. The second count charged that they on divers days between the 19th day of September, 1980 and the 29th April, 1981 in the Commonwealth of Dominica and elsewhere conspired together with Michael Perdue, Wolfgang Droege and other persons unknown to contravene the provisions of section 36(2) of the Small Charges Ordinance, Cap. 53, Laws of Dominica by assaulting police officers in the execution of their duties of guarding the Police Headquarters at Roseau, Commonwealth of Dominica.

/The appellants.....

The appellants were found guilty on the first count; the first appellant was sentenced to 5 years hard labour while the second and third appellants were each sentenced to 12 years hard labour. They all appealed against conviction and sentence.

SUMMARY OF FACTS:

Patrick John was a former Premier and Prime Minister of Dominica. Malcolm Reid was a Captain in and second in command of the Dominica Defence Force. Julian David was a businessman.

On July 23, 1980 after the holding of elections the Honourable Mary Eugenia Charles was sworn in as Prime Minister and others as Ministers of Government. These matters were duly Gazetted.

Evidence was given by one Algernon Maffie. He had nine previous convictions, six of which involved the use of violence. Further while in custody pending the hearing of a charge of murder against him he took leave of the Prison when it was destroyed by Hurricane David in August, 1979. He was never retaken into custody. He gave evidence at the preliminary inquiry in this case in October, 1981 and the charge of murder was formally discontinued by the Director of Public Prosecutions on December 14, 1981.

Maffie testified that in December, 1980 he went to the home of Malcolm Reid where he, Reid and another had conversation about a plan to take the State of Dominica. Reid explained it would be a joint enterprise between the Defence Force, dreads and foreign mercenaries. That arms, ammunition and finance would come from friendly people in the U.S. and Michael Perdue was the contact man in the U.S. He, Maffie was to mobilise the dreads.

Subsequent to this Reid paid several visits to his (Maffie's) house, some of which were for the purpose of making collect overseas telephone  
/calls.....

calls to Michael Purdue in Texas.

On a Sunday in January, 1981 he went to Reid's home where Patrick John and Julian David also came. He heard John and Reid discussing the amount of men needed for the operation. They all discussed transport. He mentioned getting a Suzuki jeep and Julian David said that at the time he did not have money to obtain new transport but assured him he had enough to get a reconditioned land rover jeep or a Volkswagon. John and David left after the discussion but before he Maffie left, Reid gave him a slip of paper with Michael Purdue's telephone number and also gave him a message for Purdue. When he got home he called Purdue and in the course of their conversation, they arranged to meet in Antigua at the Castle Harbour Hotel between 29th and 31st January, 1981. Purdue said he would send \$300 U.S. to Julian David through the Royal Bank of Canada to take care of Maffie's travel expenses.

Maffie told Reid about this conversation and made checks with Julian David about the money. On the 29th January, 1981, David phoned the Royal Bank of Canada and learnt that the money had arrived. David asked him to get Income Tax clearances for himself and Reid which he obtained and handed over to David. Later the same day Reid came to his house and delivered a LIAT plane ticket and his Income Tax clearance. Reid also said he had the money for expenses.

On the 30th January, 1981, following a phone call from Julian David he was picked up in a land rover jeep and taken to Patrick John's home to meet Reid. David was present but not Reid. They waited a couple of hours and then decided that David and Maffie would go in search of Reid. Before they left John handed Maffie a large envelope and told him to give it to Reid for delivery by him to Purdue. Reid was located and Maffie handed over to him the envelope.

On 31st January, 1981, Reid and Maffie left Dominica and went to Antigua by LIAT. On arrival they went to the Castle Harbour Hotel, where  
/they.....

they met with Michael Perdue in a room. Maffie was introduced to Perdue and Reid handed Perdue the envelope received from John. Perdue opened it and took two documents therefrom. There was discussion between Perdue and Reid about the documents which were in the envelope and about the merits of the M16 and Bushmaster rifles. Perdue handed over to Reid a parcel of hundred dollar notes. At lunch time there was discussion on the contract and after lunch Reid gave Maffie a copy of the contract for study.

Later that night there was a discussion between them about the contract and the money Perdue said he required in advance. Some amendments were made to the contract. On 1st February, 1981, they left Antigua.

On 3rd February, 1981, Maffie, Reid, David and Patrick John met together at John's home. They discussed the contract and the money Perdue was asking for. John said the \$200,000 being asked was crazy as he was not sure he could raise that type of money at the time.

The four of them again met the following week at the home of David Kentish. The contract was again discussed and it was agreed that positions on the Revolutionary Council would be as follows:- Patrick John, Leader and in charge of Foreign Affairs and the entire military; Malcolm Reid, Commander of the Armed Forces; Julian David, Treasurer; Dennis Joseph, in charge of Radio and Telecommunications.

It was also agreed that the landing of the mercenaries would be at the former Dominica Mining Co. site.

Here I comment that it would be seen that Maffie had to be treated as an accomplice and in light of the fact that a murder charge was still pending against him also as a person with an interest to serve.

The evidence of John Osburg was that as a special agent with the Bureau of Alcohol, Tobacco and Firearms in the U.S. Government he

/received....

received certain information from a Michael Howell as a result of which he went on board a vessel "Maniana" in Municipal Yacht Harbour, New Orleans. On board he met Michael Perdue who in course of conversation stated that he was looking for a ship to transport him and some men, arms, ammunition and supplies from New Orleans to the island of Dominica for the purpose of overthrowing the Government on the island of Dominica. That he had an agreement with the Ex Prime Minister, a Captain Reid and a Major Robertson and also a contract with the Ex Prime Minister. Perdue agreed to charter the vessel for \$18,000 U.S. There were several other meetings between Osburg, Perdue, and Howell. On 26th April, 1981, one Wolfgang Droege joined them. At the meeting on that date Perdue said he had a contract with Ex Prime Minister Patrick John to furnish arms and ammunition to overthrow the Government of Eugenia Charles. He said the Ex Prime Minister was in Dominica in police custody; the first objective was to free Patrick John from police custody, attack the police complex and seize their weapons. Perdue had photographs of the police complex, the city of Roseau, maps of the island and the plans on the landing of the vessel near a mining fort. Perdue gave him Osburg \$9,800 U.S. toward the charter, maps of the island and the plans on the landing. He also stated that the parties on their return to the U.S. would be paid \$3,200 U.S. Mr. Droege said that once they had control of the island he and Perdue hoped to make several million dollars before leaving. They would operate a cocaine laboratory and would use "Maniana" to transport cocaine and marijuana from Dominica to the U.S. On 27th April, 1981, in a Park on the outskirts of New Orleans, Perdue, Droege and seven other persons transferred arms, ammunition, clothing, explosives and other items from their respective vehicles to a van and a large truck. Eventually they were all arrested by Osburg and other U.S. Government agents. Osburg took possession of the arms, ammunition and other articles including a brief-case taken from Perdue. In the brief-case were found, a map of the island of Dominica, a hand drawn map of the police compound, an address book belonging to Perdue, a document headed Operation Red Dog, a letter addressed to Michael Perdue and signed Patrick John and a /document.....

document headed "Contract". These documents were put in evidence and taken together they indicated the manner in which the conspirators hoped to achieve their objective. Another special agent Lloyd Grafton gave similar evidence.

Also put in evidence were Immigration Cards in respect of Perdue as an incoming passenger to Dominica on 18th September, 1980 and 13th December, 1980, and outgoing passenger on 20th September, 1980 and 17th December, 1980; a diary taken from Reid's home and bearing handwriting known to be his and other documents bearing handwriting known to be his; a thesis written on 32 pages by Patrick John in his own hand, a telegram emanating from Houston, Texas, addressed to Royal Bank of Canada and showing an order of Mike Perdue to the Bank to pay \$400 U.S. to Julien B.G. David.

Immigration cards of Maffie and Reid as outgoing passengers from Dominica on 31st January, 1981, Immigration cards in respect of them on entry into Antigua on 31st January, 1981, then registration cards at the Castle Harbour Hotel on 31st January, 1981, and Immigration cards in respect of them on entry into Dominica on 1st February, 1981, were also exhibited.

A hand-writing expert gave evidence that in his opinion the letter addressed to Michael Perdue found in Perdue's brief-case was signed by the appellant Patrick John; that in his opinion Michael Perdue wrote various notes on the contract and the map of Dominica in evidence, Michael Perdue drew and wrote on the map of the police compound; that the document headed Red Dog was written by Perdue - that Malcolm Reid wrote the letter addressed to one Fred, referring to Mike Perdue and that the main strike should be the Police Station.

The first appellant gave evidence in which he denied having meetings with Maffie at Reid's home or attending meetings of the Black Revolutionary Council with Maffie, John and Reid. He met a man called Mike Perdue in /the course.....

the course of his business in the importation, sale and exporting of produce and had a conversation with him pertaining to importation and distribution of certain food lines. He put Purdue in contact with a Company which would do the kind of business concerned and asked for commission on orders booked. He also gave Purdue his telephone number at home and at office, his fiance's number and his address. In January, 1981, he received commission of \$400 U.S. in respect of an order of onions and potatoes, this was through the telegram in evidence - the Bank called him. He also received commission of \$1800 U.S. - telegram put in evidence.

The appellant Reid in a statement from the dock said that Michael Purdue is or was a real scoundrel just like Maffie. He met him on a business trip to Antigua. He was surprised to have met Maffie at the Airport and at the Castle Harbour Hotel in Antigua. Maffie introduced Purdue to him and from the discussion which followed he realized the two of them were not up to anything good. They attempted to use him to meet their own ends. He got sick and afraid from the realization of the position he found himself in. Shortly after he returned home, Maffie disappeared. The next time he heard about Purdue was when he was charged and the next time he saw Maffie was at the preliminary inquiry when Maffie gave this unbelievable crazy story. He called witnesses to contradict the evidence that certain documents were in his handwriting.

Patrick John also made an unsworn statement and said that all Dominicans knew why he was there. That the evidence put before the Court had been contrived for obvious reasons. He pointed out he had led a delegation to Marlborough House in 1978 to obtain for the people of Dominica a system of Democratic Government and to ensure that a system of justice was enshrined in the Constitution. He believed and still believes that the system of justice enshrined in the Constitution worked. That system was on trial and the Court had to apply it to the present matter. He appealed to the Court to let conscience be its guide. He also called some witnesses as to character.

/THE APPELLANT.....

THE APPEALS

For the first appellant in relation to the appeal against conviction four grounds of appeal were argued. The first three grounds may conveniently be dealt with together and are as follows:

"(2) The direction of the trial Judge on corroboration of the evidence of the witness Algernon Maffie implicating the appellant in the criminal conspiracy was inadequate."

(4) The trial Judge (a) misdirected the jury by suggesting as corroborative matters which did not connect the appellant David with the crime, and (b) failed to tell the jury that there was no evidence of Maffie against David.

(5) In the circumstances the trial Judge failed to give a proper warning to the jury with respect to the appellant David about the danger of convicting in the absence of corroboration."

It has been stated already that the witness Algernon Maffie had to be treated as an accomplice and as a witness with an interest to serve. The authorities clearly show that in these circumstances it was the duty of the trial Judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless it is corroborated. But as Salmon L.J. stated in *John O'Reilly v R* (1957) 51 Cr. App. R 345 at 349, "the rule that the jury must be warned does not mean that there has to be some legalistic ritual to be automatically recited by the Judge, that some particular form of words or incantation has to be used and if not used, the summing-up is faulty and the conviction must be quashed." No special form of words is required but the warning must be given in terms that the jury can understand.

In his summation the learned Judge said:

".....there is ample evidence upon which you ought to make such a finding, not only that he is an accomplice, but he is an accomplice with an interest to serve.

/And.....

And the law is very, very clear on this, Members of the Jury. There is no mystery in the law on this; the law says he is a dangerous witness. The law says you can accept his evidence if his evidence carries such conviction to your minds that you are prepared to take the responsibility of convicting, notwithstanding the danger of so doing. The law says his evidence ought to be corroborated, but if you, having seen and heard him and having listened to his story you feel you can accept his evidence without any support from independent testimony, you are free to do so. But when you do that you must be careful as it is a dangerous thing to do because he is here with an interest to serve and he was a party to this alleged crime. He is here maybe to save his own neck, so proceed with caution, Members of the Jury.

The law says it is a dangerous thing to accept his evidence without corroboration but you can do so if you feel, having seen and heard him, that he is speaking the truth."

He then explained to the jury the nature of corroboration. He said:

"Corroboration is required, not as a matter of law but as a matter of practice. It is some independent testimony which affects the accused by connecting or tending to connect him or them with the crime. It is evidence tending to confirm, support or strengthen other evidence. It must be evidence which implicates them, that is, which confirms in some material particular, not in every particular, not only that the crime was committed but that the accused committed the crime."

The learned Judge also pointed to various portions of the evidence as being capable of amounting to corroboration.

Dr. Williams' submission was that those portions of evidence suggested by the learned Judge as corroborative generally were not capable of corroborating Maffie in relation to David. That there was no evidence capable of being corroborative in relation to that appellant. But in this case the appellant David being one of several accused there was a duty on the part of the learned Judge to make it clear to the jury that there was no corroborative evidence in relation to the appellant David. We were referred to the following cases:-

/(1) R v Jenkins.....

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| (1) R v Jenkins 1 Cox C.C. 177                | (2) R v Baskerville (1916)<br>2 K.B. 656     |
| (3) R v Salesman (No.2) 6 W.I.R.<br>147       | (4) R v Henry & Manning 53<br>Cr. App. R 151 |
| (5) R v Evans & Allen (1964)<br>All. E.R. 401 | (6) R v Scott 5 W.I.R. 406                   |
| (7) R v Anslow (1962) Crim.<br>L.R. 101.      |  |

We do not think it necessary to set out the portions of evidence referred to by the trial Judge. Suffice it to say that those portions were capable of corroborating Maffie's evidence in relation to the other two accused.

In our view there was also evidence capable of being corroborative in relation to the appellant David. Maffie gave evidence about a meeting at Reid's home on a Sunday in January, 1981 where he, John, Reid and David discussed the matter of transport for the operation when David gave assurance he had enough money to get a reconditioned land-rover jeep or a Volkswagon. That Reid gave Maffie Perdue's telephone number and a message to Perdue. He (Maffie) phoned Perdue and they arranged a meeting in Antigua. Perdue said he would send money to David through the Royal Bank to cover the travel expenses. He (Maffie) made three checks with David about the money. He learnt from David that on 29th January, 1981 money was sent by Mike Perdue through Royal Bank of Canada to David. As a result he and Reid obtained LIAT plane tickets to Antigua and money for expenses.

On 30th January, 1981 he was picked up by David to go to meet Reid to go to Airport. Because of delay in finding Reid they did not leave that day.

On 31st January, 1981 he and Reid left by LIAT for Antigua for their meeting with Perdue.

From the summary of facts set out at the beginning of this Judgment and the outline of events just related it will be seen Maffie had given evidence that there was a conspiracy and that David was involved in that  
/conspiracy.....

conspiracy, one particular aspect of which was being involved in getting money to cover transportation of co-conspirators to meet to discuss the plot. Then Mario Toulon, the officer in charge of the foreign business department at the Royal Bank of Canada, gave evidence that on the 29th January, 1981 the Bank received a cable with instructions to pay David \$400 U.S. by order of Mike Perdue. David was notified. He came to the Bank and was paid the equivalent of \$400 U.S. in E.C. dollars. He signed acknowledging payment. Both the cable and the acknowledgement of payment or debit voucher were put in evidence.

In our view this evidence from Mario Toulon is evidence which tends to show that the story of Maffie that David was involved in acts in furtherance of the conspiracy is true. That is, he was involved in receiving money from Mike Perdue a conspirator to cover travel expenses of the conspirators to travel to Antigua to continue discussions about their plot. It was evidence which tended to confirm Maffie's evidence in a material particular.

There was therefore evidence capable of being corroboration in relation to David. Other corroborative evidence was indicated earlier. The learned Judge having assisted the jury by indicating the kind of evidence which was so capable of amounting to corroboration it was not required of him to point out all the evidence which was so capable. He properly left it to the jury to decide whether the evidence he referred to or any other such evidence the jury considered did in fact amount to corroboration.

In the circumstances we consider that the learned trial Judge's direction on the issue of corroboration was adequate and sufficiently explicit. These grounds of complaint fail.

The fourth ground is as follows:-

"(6) (a) The learned trial Judge wrongly admitted in evidence statements made by alleged co-conspirators in the absence of the accused persons and not in furtherance of the conspiracy charged;

/(b) In .....

(b) In the alternative the prejudicial effect of such statements outweighed any probative value.

The complaint is firstly against the following portions of evidence from Maffie who having identified the contract they discussed in *inquis* went on to say "It was agreed by words, actually Perdue said, when we succeed with the Coup, a special depot would be built and money would be made available for the person running the depot. That money would be used to buy ganja that the dreads grow and this would be shipped to the U.S. market to make money so that would ease the problem with the dreads and their produce....."

He also said in ~~cross~~-examination "Perdue made the plan for the ganja deal. I was just a listener."

Secondly against this evidence also from the special agent John Colberg "Droege (another conspirator) also stated that they would operate a cocaine laboratory and would use Maniana to transport cocaine and marijuana from Dominica to the U.S.."

We would observe first that the second passage complained of was elicited in cross-examination. But apart from that a review of the evidence discloses that the statements by the conspirators complained of are only part of their statements as to what was the whole plot, the grand design if you wish. These statements could indicate a further reason for their conspiracy to do what was charged and these statements were made while the conspirators were discussing how to carry out the operation or fulfil the design. In our view the statements were all admissible.

The alternative head of this complaint raises the question whether the learned trial Judge ought to have exercised his discretion and excluded the evidence which we have ruled was admissible. The statements were relevant as indicating one reason for the conspiracy and were made as part of the discussions about the execution of the conspiracy. Consequently on the facts of and the circumstances surrounding this case we do not see that a proper exercise of the Judge's discretion required

/s/ ...

that he exclude these portions of evidence. The appeal also fails on this ground.

The grounds of appeal against conviction argued on behalf of both the second and third appellants are as follows:

"(6) That the learned trial Judge misdirected the jury when he directed them that in determining the "believability" of the witness Algernon Maffie the jury could look to other witnesses to assist the jury in "supporting" the said "believability" or "credibility" of the said witness apart from the issue of corroboration.

(8) That he failed to find that the offence upon which I was convicted was not known at law and did not amount to any criminal offence.

(9) It was a misdirection for the learned trial Judge to tell the jury....."be very careful when you are drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no co-existing circumstances which weaken or destroy the inference". This amounted to a positive direction to draw an inference of guilt.

(10) The learned trial Judge misdirected the jury when he told them that the inconsistency of Maffie's evidence on a previous occasion went towards credibility only.

(11) The learned trial Judge totally failed to direct the jury on the question of the "unlawfulness" of the alleged conspiracy."

I turn first to the complaints that the offence upon which the appellants were convicted was not known at law and did not amount to any criminal offence. The statement of offence laid was "Conspiracy to overthrow the lawfully constituted Government of the Commonwealth of Dominica by force of arms." Counsel for the appellants referred to the Treatise Criminal Law by Glanville Williams and submitted that Conspiracy must be to do one of the unlawful acts catalogued in that book. That the charge to overthrow a lawfully constituted Government is not one of the unlawful acts so catalogued but is a new head of conspiracy. He further argued that the appellants could have been charged with Conspiracy to commit Treason under the Treason Act - U.K. 1351 or with Conspiracy to commit a Treasonable Practice under the Treasonable Practices Act (No. 14) of the Laws of Dominica. He sought to lend weight to his submission by

/s/ [Signature]

arguing that the count is bad because the appellants do not know which aspect of treason they are charged with.

The classical definition of criminal conspiracy was propounded by Wiles J. in *Mulcahy v R* (1868) L.R. 2 HL 306 as "a conspiracy consists in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means.....". In more modern times conspiracy is defined as the agreement of two or more persons to effect any unlawful purpose. Vide *Kenny Outlines of Criminal Law* 19th Edition, para. 426.

All the learning of the subject reveals that the scope of conspiracy is very wide. There are authorities which show that the unlawful object may not be an existing crime of the ordinary sort and there are examples where the lawful object falls under the wrong of public mischief. In *R v Newland* (1954) 1 Q.B. 158 it was held to be criminal a conspiracy to defeat by dishonest devices the clear intention and purpose of an Act of Parliament. Counsel for the State referred to *Shaw v D.P.P.* (1962) A.C. 220 in which 4 law Lords expressed the view that it was a criminal to agree to commit a public mischief. In the latter case, Viscount Simonds said "In the sphere of Criminal Law I entertain no doubt that there remains in the Courts of Law a residual power to enforce the supreme fundamental purpose of the Law, to conserve not only the safety and order but also the normal welfare of the State, and that it is their duty to guard it against attacks which may be the more insidious because they are novel and unprepared for....."

In this case however it is not a question of exercising a residual power to expand the law to fit in this indictment. Early in his submission, Counsel for the appellant in answer to the learned President accepted that "to overthrow a lawfully constituted Government by force of arms" is unlawful. This was not surprising. It was in keeping with his submission that the acts alleged in the indictment could ground a charge under the Treason Act U.K. 1351 or the Treasonable Practices Act Cap. 54. In other words the appellants own submission recognises that the acts alleged could ground a charge of conspiracy to commit a crime. For our part we have no doubt  
/that.....

that if persons conspire to remove a lawfully elected Government by force of arms they are pursuing an unlawful purpose. The Court having found a conspiracy to pursue an unlawful purpose charged an offence which fell within the long accepted definition of conspiracy. We have no hesitation in holding that the charge of which the appellants were convicted is maintainable in law. The appeal fails on this ground.

Ground 11 was not strenuously pursued and we found no merit in that ground.

As to Ground 6, Counsel complained about the following passage in the Judge's summation. "But if you feel that because of his previous bad character and you find him to be an accomplice and that he is here to save his own neck and you need something to assist you in order to find out whether you must say he is talking the truth or not then you must look for other independent supportive evidence and I have given directions on that already." Counsel contended that in this passage were combined the issues of credibility and corroboration which are to be kept separate and the passage thereby dissipated earlier directions on the issues. Such a microscopic examination of a summation is not helpful. The summation is to be considered as a whole. When the particular passage is related to the earlier directions about which the learned Judge himself reminded the jury and which are accepted as unassailable, we do not find that in the context of the whole summation the passage can be said to have misled the jury.

We make the same observation in relation to the remaining grounds. The passage complained of in Ground nine in our view had within it the direction that the jury had to be sure that the inference of guilt was the one to be drawn but in addition it was one sentence in the context of a direction as to how to draw inferences from the circumstances disclosed in the evidence. The learned trial Judge said:

"What the law says, you have to look at all the circumstances as disclosed in the evidence. Draw inferences, reasonable inferences from those circumstances and conclude whether or

/not.....

not there was in fact a conspiracy. You are not entitled to make excursions into the realm of speculation, do not speculate. You are entitled to draw reasonable inferences from the facts proved but if in doing so, you find that there are two or more inferences that can with equal reasoning be drawn, then the one more favourable to the accused is to be drawn. This type of inferential evidence, Members of the Jury, is known in law as circumstantial evidence. You are permitted to infer from the facts proved, other facts necessary to complete the element of guilt or establish innocence. This situation may arise where you may find that from the proof of some fact, the existence of another fact may naturally be inferred without any proof from the mere probability of it having occurred but in drawing those inferences, the facts and circumstances must be narrowly examined if only because evidence of this kind may be fabricated or cast suspicion on another.

You remember the defence of Patrick John; he says this is a fabrication, a frame-up. So, be very careful when you are drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no co-existing circumstances which would weaken or destroy the inference. It has sometimes been said, Members of the Jury, that circumstantial evidence can be regarded as the best evidence; Sometimes it is so said, it is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. This case is based on factual evidence and on circumstantial evidence."

The jury would have clearly understood what was their duty in drawing inferences from circumstantial evidence.

As to Ground 10, the direction given by the Judge on how the jury should deal with a previous statement made by the witness Maffie inconsistent with the evidence he gave in Court was in keeping with the required direction on such an issue.

He said "That is a discrepancy on a statement made by him on a previous occasion. What was said on a previous occasion is not evidence of the truth in this case. We only deal with the evidence that was led in here. What was said was put to him to show to you, Members of the Jury, that on a previous occasion he might have made a previous inconsistent statement and that will only go towards credibility, not that what he said **then** was true. It just goes to attack his credibility. He says "I did not lie when I said that. What we were looking at is Reid's copy. Probably the Judge  
/made.....

made a mistake when he wrote "entries made by Perdue". He is giving an explanation. It is a matter for you whether you accept it." Again we found no merit in this ground.

The appeals of all against conviction are accordingly dismissed.

#### SENTENCE

As to sentence, there was not before us any statement of the learned trial Judge as to the salient features which operated on his mind when he was assessing sentence.

However there can be no doubt about what some of those features were.

It is clear that the offence is one which in any language must be regarded as a serious offence. Such an offence would call for a realistic sentence in terms both of punishment of the offender and the deterrent affect. We bear in mind that the punishment which may be imposed is not limited. In all the circumstances there is nothing about the sentences which shock in any way. The first appellant appears to have been very fortunate. We find no justification for interfering.

The appeals against sentence are also dismissed. All the sentences imposed are confirmed.

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G.C.R. MOE,  
Justice of Appeal

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L.L. ROBOTHAM,  
Chief Justice

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E.H.A. BISHOP,  
Justice of Appeal.