ST. VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MCRAP 2010/022

BETWEEN:

[1] CASANKI QUOW OF BARROUALLIE
[2] OSRICK JAMES OF FANCY
[3] HADLEY BALLANTYNE OF GEORGETOWN

Appellants

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Hugh A. Rawlins — Chief Justice
The Hon. Mde. Ola Mae Edwards — Justice of Appeal
The Hon. Mde. Janice George-Creque — Justice of Appeal

Appearances:

Sir Richard Cheltenham, QC, with him Mr. Stephen Williams for the appellants
Mr. Colin Williams, Director of Public Prosecutions, with him Mr. Jerome Thomas for the respondent

---

2010: June 2, 4;
2011: February 21.

Criminal Appeal – assault causing actual bodily harm – section 193 of the Criminal Code – appellants jointly charged – summary trial by magistrate – appellants convicted – appeal against conviction – whether reasons given for convictions were inadequate amounting to an error of law and accordingly fatal to conviction

The appellants are Police Officers who were attached to the Criminal Investigations Department (CID). A magistrate convicted them of assault causing actual bodily harm to the virtual complainant, Jemark Jackson ("Jemark"). They were each fined $1,500.00 to be paid within 1 month. In default of payment, each appellant would serve 6 months in prison. They appealed their convictions on the ground that the magistrate failed to give adequate reasons for convicting them.

At the trial, the prosecution called 13 witnesses, including medical doctors, police officers and Jemark. The prosecution's case was that appellants Osrick James and Hadley Ballantyne held Jemark and one Kimron McDowall ("Kimron") for fighting, took them to the CID at the Central Police Station in Kingstown and arrested them. They took Jemark and Kimron to the holding cell

there during the night. Jemark alleged that appellant Ballantyne pulled out his gun and taunted them. Jemark further alleged that, during the night, appellant Casanki Quow beat him with a hose and was assisted by appellants James and Ballantyne, who also boxed him and threw him onto the ground and down some steps in the CID. Subsequently, Jemark informed a female police officer that he felt ill. He was taken to the hospital where he was treated and eventually discharged. He reported the matter to the Commissioner of Police and to one Mr. Jomo Thomas. An investigation was launched, as a result of which the appellants were charged some 8 months after the incident. The medical evidence that was adduced indicates that at the hospital Jemark complained of pain in the abdomen and medical examinations showed that he suffered severe respiratory distress. However, there were no visible signs of any external injuries on his body.

The appellants testified in their own defence and called another police officer and a vendor. The appellants denied beating Jemark or throwing him on the ground. They denied that they beat him or saw anyone beat or harm him. They testified that there were no steps in CID.

Held: dismissing the appeals and affirming the convictions and sentences:

1. The reasons given by an adjudicator for a decision should show an awareness of the salient issues, an appreciation of the relevant law, and an assessment of the material evidence particularly where credibility is at issue. Whether an adjudicator's reasons for decision are adequate depends on the circumstances of each case.

   Dicta in Aqui v Pooran Maharaj (1981) 34 W.I.R. 282, applied.

2. The general rule is that in giving reasons for a decision, an adjudicator should identify and explain each factor which was weighed in his or her appraisal of the evidence and was vital to the conclusion and the manner in which he or she resolved them. It is not possible to lay down firm guidelines for this process. If the critical issue is one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon. Reasons may be set out briefly in a judgment. The duty of the adjudicator is to give a clear explanation for a decision. However, an unsuccessful party should not seek to upset a decision on the ground of inadequacy of reasons unless, despite the advantage of considering the decision with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the adjudicator reached an adverse decision. Given the evidence that was adduced at the trial and the reasons that the magistrate gave in the present case, it should not be difficult for the appellants to understand why they were convicted.

   English v Emery Reimbold & Strick Ltd.; DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd.; Verrechia (Trading as Freighmasters Commercials) v Commissioner of Police of Metropolis [2002] 3 All E.R. 385 (CA), applied.

JUDGMENT

[1] RAWLINS, C.J.: The appellants are police officers who were attached to the Criminal Investigations Department (CID) of the Royal St. Vincent and the Grenadines Police Force. They were jointly charged and tried for the offence of assault causing actual bodily harm to Jemark Jackson on 18th November 2008 in Kingstown, contrary to section 193 of the Criminal Code.[1] Jemark was 15 years old at the time of the incident. The appellants were convicted for the offence on 2nd February 2010. Each appellant was fined $1,500.00 to be paid within 1 month. In default, each would serve 6 months in prison. They appealed on 6 grounds, but withdrew them when the appeal came for hearing. Instead, this court gave them leave to pursue their appeal on 1 new ground, which states as follows:

> "The reasons given by the Learned Trial Magistrate in support of the convictions were wholly inadequate and constitute an error of law."

The reasons for decision

[2] I think that it would be helpful to reproduce the learned magistrate's reasons for decision fully at this juncture. He stated his reasons as follows:

> "The Evidence elicited in this case left me with no doubt as to the guilt of the three Defendants/Appellants. The Prosecution called thirteen witnesses including four Medical Doctors, eight Police Officers and the Virtual Complainant Jemark Jackson. The Defence called five witnesses including the three Defendants/Appellants, a Civilian and a Police Officer. Jackson was in Police custody from about 12:00 PM on 18th November 2008 to about 12:40 AM 19th November 2008, when he was hastily rushed to the Milton Cato Memorial Hospital on the orders of Cpl. Bartholomew, who was in charge of CID and, who obviously panicked when he saw Jackson's condition. Jackson was almost in a state of collapse, crying and vomiting and complaining of serious pain in his belly and chest, yet not one single Police Officer from the prosecution and defence saw or heard any harm done to Jackson. However some of them conceded that he was normal and healthy when he was brought into CID. The defence claimed that Jackson said he fell from a step. There was no step in CID. No one saw him fall from anything or anywhere from the time he was arrested to the time he was taken to hospital. Jackson's evidence, however, was very compelling. He maintained a calm and confident demeanour throughout on the stand despite blistering cross examination. He stated that he was held down on a table by James (also called Charles by Jackson) and Ballantyne, while Quow beat him with a green hose pipe about his head and back. Then James and Ballantyne lifted him off the table and

[1] Cap. 124 of the Laws of St. Vincent and the Grenadines, Revised Edition, 1990.

slammed him on the ground three times. His chest hit the ground three times. He was 'bawling' for his chest and Charles kicked him. He felt 'dizzy'. They took him to the bathroom and washed his face. In their evidence the doctors agreed that Jackson suffered very serious internal injuries – acute pulmonary oedema consistent with blunt force trauma, and that had he not been taken to the ICU where he was intubated and placed on a mechanical ventilator for five days, he could have died.

I am firmly of the view, on hearing and analyzing the evidence of **all** the Police Officers, that they (the Police) were not fair and truthful to the Court and that Jackson's evidence in conjunction with the evidence of the doctors ought to be believed. I therefore found the three Defendants/Appellants guilty as charged."

Bases of the appeal

[3] In their appeals, the appellants contended, in effect, that the learned magistrate erred in that he did not raise the issues that were to be determined in the case. They insisted that even if the magistrate resolved that Jemark sustained the alleged injuries while detained by the police, the magistrate should have provided a fuller analysis to show how he arrived at the decision. They contended, further, that the learned magistrate erred in dismissing all the evidence of all the police witnesses as untruthful. They insisted that the magistrate should have disaggregated the police witnesses whose evidence was peripheral to the issues and those that were central to the determination. The appellants also contended that the magistrate erred by not stating which aspects of the evidence of any witness he did not believe and his reason for not believing it. Accordingly, they insisted that he provided no clear explanation for the decision on the issue of credibility.

[4] In order to determine the appeals, I shall first set out the applicable legal principles on the adequacy of reasons for a magistrate's decision. Against that background, I shall then reproduce the evidence given at the trial as fully as is necessary for the purpose of this appeal. This will be followed by a summary of the submissions by learned counsel for the parties, and, subsequently, my analysis and decision.

The applicable principles

[5] It is settled principle that where a decision of a magistrate is appealed, particularly in a criminal case, reasons for the decision are required for the purposes of due process,

justice, fairness and transparency. Thus in Forbes v Chandrabhan Maharaj,[2] the Privy Council quashed a conviction for the possession of cannabis because the magistrate failed to state reasons for his decision. Statute also requires reasons to be stated for decisions. Thus, for example, section 109(3) of the Criminal Procedure Code of St. Vincent and the Grenadines, which is under the rubric 'Contents of judgment' states:

> "(3) Every judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the magistrate and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by such magistrate in open court at the time of pronouncing it;"

[6] The decision of the magistrate is not challenged for the formalities of dating and signing. Additionally, it is seen that the magistrate provided reasons for his decision. The critical question is concerned with the adequacy of those reasons, noting, however, that there is no precise, standardized or fixed formula that has established the parameters against which to measure the adequacy of reasons for a decision.

[7] Learned counsel for the appellants relied on statements by the Court of Appeal of Trinidad and Tobago in Aqui v Pooran Maharaj,[3] and a number of cases cited therein, to support their contention that the reasons provided in this case were inadequate. They also relied on a statement by Lord Phillips of Worth Matravers, MR, (as he then was) in English v Emery Reimbold & Strick Ltd.; DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd; Verrechia (Trading as Freighmasters Commercials) v Commissioner of Police of the Metropolis.[4] At paragraph 19 of the judgment, Lord Phillips stated:

> "[19] It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which was vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts

[2] (1997) 52 WIR 487 (PC). See also Alexander v Williams (1984) 34 WIR 340 in the context of due process.
[3] (1981) 34 W.I.R. 282.
[4] [2002] 3 All E.R. 385 (CA).

or the other gave answers which demonstrated that his recollection could not be relied upon."

[8] English v Emery Reimbold was concerned with 3 appeals. Two of these appeals were against decisions that a trial judge made in favour of the defendants on conflicting expert evidence. The claimants appealed on the ground that they did not receive fair trials because the judge failed to explain the reasons for the findings. The third appeal was concerned with the issue of costs. The judge stated a provisional view that there should be no order as to costs notwithstanding that the claimant had partially succeeded. In her written judgment the judge restated this view but provided no reasons for the decision. This case is important to the present appeal mainly to the extent that the Court provided guidance on appeals on grounds of inadequacy of reasons.

[9] Aqui v Pooran Maharaj was concerned with 3 charges preferred against the respondent under customs laws. He was acquitted on each charge by a magistrate. He was a customs' employee. The appellant was a supervisor in the Customs Department, who prosecuted the case. The prosecutor eventually pursued appeals against the acquittal on 2 of the charges, namely, knowingly removing whisky from the airport without proper authorization and knowingly attempting to evade the payment of duty. The Court of Appeal allowed the appeal against the acquittal and ordered a retrial. This was on the ground that the reasons for the magistrate's decision were inadequate because he failed to properly address issues that arose for consideration. One such issue concerned the evidence which the respondent gave at the trial concerning the part that an alleged BWIA air hostess allegedly played in what occurred at the airport. In his defence, the respondent alleged, in a statement to the police, that the air hostess brought the whisky into the island for him.[5] Other evidence at the trial that touched on this issue did not support the version given by the respondent.[6] The magistrate did not assess this evidence on this critical issue. One may only surmise that the acquittal of the customs officer meant that the court resolved this issue in the respondent's favour.

[5] See pages 285 and 286 of the report of the judgment.
[6] See pages 287 and 289 of the report of the judgment.

[10] Bernard JA noted in Aqui v Pooran Maharaj[7] that the magistrate merely summarized the evidence of each witness "in the briefest form" and then proceeded to the next stage. He further noted that the court found as follows:

> "(1) The [respondent] answered the questions as truthfully as he could.
> (2) Although he caused the goods to be removed from the baggage room, he did so merely to secure the package as there were reports of pilferage even from the vault.
> (3) There was no attempt to evade the payment of duty. He was quite frank when he spoke to Waddle and although he may not have acted prudently when he so secured the package in the trunk of his car there was no intention on his part to act dishonestly."

[11] It was the court that, out of concern, had invited counsel for the parties to make submissions on whether the reasons for decision which the magistrate gave amounted to a proper adjudication, having regard to the intricacies of the case revealed by the evidence.[8] Bernard JA stated the principles on which this issue was to be determined as follows:[9]

> "In the first place the fact of the matter is that in this particular case the magistrate purported to give the reasons for his decision. The question, therefore, is whether on the face of it and in the light of the conflict of evidence they could be said to constitute any, or any proper, reasons sufficient to satisfy the requirement necessary for a proper adjudication by a tribunal which has had the benefit of seeing and hearing the witnesses and of assessing their credibility. To say that something represents a particular product is one thing. Whether it is in fact so, is another matter! In insisting upon the need for reasons to be of a proper quality, once given, if they are to be of assistance to an appellate tribunal Sir Hugh Wooding CJ speaking for the Court of Appeal in *Sylvan v Ragoonath* (1966) 11 WIR at page 36 (a case in which reasons had in fact been given by the magistrate) observed *per incuriam*:
>
> > 'We cannot too strongly insist that reasons should show an awareness of the salient issues, an assessment of the material evidence and an appreciation of the relevant law'." [My emphasis]

[12] In Aqui v Pooran Maharaj, Bernard JA further elucidated the foregoing statement by Sir Hugh Wooding, CJ, by reference[10] to the following statement by the Privy Council in Ponnanpalam Selvanayagam v University of the West Indies:[11]

---

[7] At page 288a-c.
[8] See page 288d of the report of the judgment.
[9] At page 289b-e.
[10] At page 292g.
[11] (1983) 34 WIR 267, at page 270.

> "It is, of course, not necessary for a trial judge to make explicit findings on every disputed piece of evidence. If it is clear that he has the evidence in mind, it suffices for him to state his final conclusion… [Emphasis supplied]"

Bernard JA concluded that the role of the alleged air hostess was critical as she was a pivotal figure in the case because her existence was central to a determination whether the respondent acted dishonestly. He stated that it was therefore necessary for the magistrate to have made a specific finding as to her role in the affair. Alternatively, he must have shown that in coming to the decision he addressed his mind properly to the matter. Bernard JA found that since the magistrate came to a conclusion without addressing either of these matters, he had not shown that he benefited from the opportunity that he had to see and hear the witnesses. He ordered a retrial before another magistrate.[12]

The evidence in the present case

[13] Eight of the prosecution's witnesses were police officers who were at some time attached to the CID, and 4 medical doctors. The virtual complainant also testified. The appellants testified in their own defence and called another police officer, PC 240 Dwight James, and a vendor, Ms. Bushay.

The virtual complainant's evidence

[14] In his evidence, Jemark testified that on Tuesday, 18th November 2008, at about midday, he was sitting on a wall with one Kimron McDowall, in the vicinity of the Dr. J.P. Eustace Secondary School when a jeep arrived. The appellants, PC James, whom Jemark also referred to as Charles, and PC Ballantyne alighted from it. The officers spoke to them, held them and took them to the jeep. Kimron said something and PC Ballantyne slapped him. The officers put him (Jemark) into the back of the jeep with PC Ballantyne. Kimron was crying. PC Ballantyne elbowed Kimron and told him to shut up. PC James was in the front seat with the driver. The police took them to the Central Police Station to the CID. The officers spoke to another officer there. PC James then held him (Jemark) while PC Ballantyne held Kimron and took them to the holding area. The appellant Cpl Quow came,

[12] See from page 292h-295b. See also per Kelsick JA from page 296.

pulled out his gun and asked them (Jemark and Kimron) whether they wanted him to shoot them. They laughed. Other police officers came. Cpl Quow started hitting Kimron and slapped him (Jemark) by his ear. It bled.

[15] During the night they (Jemark and Kimron) were taken out of the holding cells to the area where the police officers were. One Cpl Barker questioned them about a case in the High Court in which he (Jemark) had given evidence. Cpl Quow hit him (Jemark) with a hose. He put up his hand. He sustained a cut on his finger. The officers put him on a table. PC Ballantyne and PC James held him while officer Quow beat him with a hose on his head and back. PC Ballantyne and PC James lifted him from the table and slammed him twice onto the ground. His chest hit the ground 3 times and he cried. Officer James kicked him. He (Jemark) asked to be allowed to go to the bathroom and he was taken by one officer Dopwell. He felt dizzy. The police took him back to the general office. Kimron asked the officers why they were beating him (Jemark) like that. PC Ballantyne came up behind and hit Kimron and struck him again with a gun. Kimron fell and was taken to the bathroom. The police then took them (Jemark and Kimron) to the holding area. He (Jemark) was on the ground. Kimron was on the bench. A police officer came and started to kick him (Jemark) and he vomited in the cell. PC Ballantyne threw some water in his face. He (Jemark) told the female police officer on duty that he felt ill. He was taken to the hospital where he vomited again. He told the doctor that the police beat him up. They treated him. He fell asleep and awoke the following morning on a ward: in the Theatre. When he was eventually discharged from the hospital he reported the matter to the Commissioner of Police and to one Mr. Jomo Thomas. After he was released from the hospital Cpl Quow charged him (Jemark).

[16] In cross-examination, Jemark said that he spoke to Dr. Dougan, who x-rayed him. He said that he did not have a fight with one Ronaldo Bute. He stated that he did not know one Ms. Bushay, but he recognized her when she was called. He denied that he had gone to attack one Ali Abraham at the school. He insisted that PC Ballantyne slammed him on the ground 3 times at the police station and he fell on his tummy. He insisted that Cpl Quow beat him with a pipe hose that caused marks on his back, while PC James kicked him in

his chest. He said that other Officers were present. He insisted that he did not fall from a step and he did not tell the doctors that he did.

The doctors' evidence

[17] Dr. Lennox Adams was the Registrar in the Department of Surgery at the Milton Cato Memorial Hospital. He stated that he saw Jemark at the Accident and Emergency (A&E) room and then at the Intensive Care Unit (ICU) of the hospital on 19th November 2008. He examined Jemark who was in respiratory distress and complained of pain in the abdomen and had difficulty breathing. This was consistent with there being extra fluid in his lungs. The diagnosis was inconsistent with his x-rays. He therefore ordered a repeat x-ray which showed swelling and bruising of the lungs. He looked at the report which was given to him by the doctor at A&E. Jemark's respiratory distress grew worse. This showed a history of trauma. After he spoke to Doctors Mandal and Dougan and realizing that Jemark's condition was very serious, Jemark was intubated and placed on a mechanical breathing machine. He was placed on medication and a team of surgeons was there in the event that he needed surgery. In his view, Jemark's condition could have been caused by blunt force trauma. There were no marks on the chest wall. He saw him just before noon. Jemark was transferred around 1:00 p.m. Initially Jemark was coherent, but that deteriorated as he had difficulty breathing and speaking. In cross-examination, the doctor stated that he asked Jemark what happened to him. He saw no external signs of injury, but saw the reports which indicated that there was a history of trauma.

[18] Dr. Hughes Dougan was a consultant surgeon at the Hospital. He stated that he did not speak with Jemark, but received the information in relation to him from the A&E Card. He was not able to get information from Jemark because when he saw him he was already in respiratory distress. He was given drips because of vomiting. Jemark's pulse was above what was expected of a young person. His blood pressure was normal. His SPO2 was low – 74%. He was given oxygen. Two chest x-rays were done. The first was normal. The second one showed that Jemark was in respiratory distress. He was tachycardiac and his abdomen was soft and not distended. There was no external evidence of injuries to the soft tissues of the body. The second chest x-ray showed pulmonary oedema and

fluid seeping into the lungs, which may have been caused by trauma. Under cross-examination, the doctor said that he was not the first doctor who examined Jemark. The report of the first doctor did not reveal any physical injury. He did not see any external injury. Jemark was transferred from the ICU to Ward care and then discharged from the hospital on 28th November 2008.

[19] Dr. Birendra Mandal was a consultant Anesthesiologist at the Hospital. She testified that she prepared and signed the medical report on Jemark, who was admitted to the ICU on 19th November 2008 from the A&E Unit. He was able to breathe on his own but his breathing was shallow and fast. His blood pressure was high because of the condition of his heart and lungs. He was unable to lie down because the air sacks were not functioning for the upper part of his lungs. His lungs were filled with fluid. On assessment, it was found that he had acute non-cardiogenic pulmonary oedema secondary to lung contusion. He was respirated, otherwise he might have died. The fluid may not have been in his lungs for a long time. Vomiting may have occurred because he swallowed fluid or ate. At the ICU Jemark was ventilated mechanically until his lungs recovered so that he breathed spontaneously. He was transferred to the Male Surgical Ward on 25th November 2008.

[20] In cross-examination, Dr. Mandal said that Jemark's condition was serious. She confirmed that when she examined him, she did not see any external injuries. She said that if a person falls from a high step the effect may not be the same as if the person was beaten with a gun or hard object when you may see marks. She further stated that, in her view, involvement in a fight 2 days before would not have caused the condition. She first saw him on 19th November 2008, at 1:15 p.m. when he was brought to the unit. It appeared to her that his injury occurred within that day and may have been caused by trauma.

[21] Dr. D.M. Jayarangaiah was a consultant physician attached to the Hospital. His medical report shows that Jemark was diagnosed with acute pulmonary oedema which may be secondary to post traumatic lung and cardiac contusion. According to the report, Jemark presented with symptoms of chest pain/abdominal pain, shortness of breath and cough with frothy sputum. At the time of the examination he was put on ventilator for respiratory support. He said that cardiac contusion is an injury or damage to internal tissues like a

blunt injury to the chest or ribcage. It could compress the lungs and heart, but the skin is not broken so that someone who is beaten may not show any external injury. He saw Jemark on 19th November 2008. He did not think that Jemark was going around with this condition. He had a first x-ray and in 2 hours another was done which showed that the injuries were a present development. In cross-examination, the doctor said that the injuries could have been caused by a fall and there may not be any external physical injury depending on the height from which a person falls. He did not see any bruises or other external injuries on Jemark's body.

The police evidence for the prosecution

[22] Police Cpl Elmore Alexander testified that on 17th November 2008, he was on duty at the CID when he received a phone call concerning a theft at Randy's Supermarket. He and PC Primus responded. There was also a theft at ACE Hardware. In both cases one Earl Abraham, Jemark and Kimron were detained. The missing items were recovered the same day. He handed over the investigation to Cpl Quow. On 18th November 2008, at about 3:00 p.m., he saw Kimron and Jemark at the CID. He spoke to them briefly and left. He saw PC Ballantyne but did not recall seeing other officers. He did nothing to Jemark and did not see anyone do anything to him.

[23] Station Sgt Sherol James testified that on 19th November 2008, she was on duty at the CID. At about 1:48 p.m. she received a telephone call from Dr. Lennox Adams concerning Jemark who was at ICU. She sent Cpl Vaughn Barker, who was also attached to CID, to locate Jemark's brother, Romano Richards. Cpl Barker confirmed that on 19th November 2008, he was dispatched to deliver the information to Romano Richards. He met Romano Richards at JP Eustace Secondary School, where he (Richards) was a teacher.

[24] PC Nelica Kirby was on reception duty at the CID on 18th November 2008. Jemark was in the holding area there. She could not recall that other prisoners were there. Jemark appeared normal. He did not leave the holding area at anytime. He refused to eat. She spoke to him. When she handed over duty to PC Jordon at 5:18 p.m. the record showed that the prisoners in custody were Jemark, Kimron and Mandella Lewis.

[25] Cpl Rudolph Bartholomew testified that the CID had 2 work teams. On Tuesday, 18th November 2008, he was the Non-Commissioned Officer (NCO) in charge of team 2 which worked from 8:00 a.m. At about 10:00 a.m. he went to see the Commissioner of Police in his office. When he returned after 1:00 p.m. he saw Jemark and Kimron in the holding area. He spoke to Cpl Quow. At about 12:45 a.m. on 19th November 2008, PC Oliver, the receptionist on duty, summoned him to the reception area. He saw Jemark sitting on the floor of the holding area holding his abdomen and crying. He appeared to be ill. He sent him to the hospital in the company of PC 240 James and PC Glasgow. They returned and reported to him. Cpl Bartholomew further testified that when he saw Jemark in the holding area he looked well. Kimron and one Zane Dopwell were also in the holding area. He did not recall that Jemark was removed from the holding cell in his presence.

[26] PC Sylvorne Oliver testified that on 18th November 2008, he was on duty at the CID as a receptionist from 11:00 p.m. to 3:00 a.m on the following day. He took over from PC Jordan who handed over Kimron and Jemark to him. When he arrived on duty he checked the holding cell. Kimron and Jemark were lying there and appeared to be sleeping. At about 12:40 a.m. on 19th November 2008, he heard Jemark groaning. Jemark asked him for a plastic bag. He gave it to him and Jemark vomited in the bag. He (PC Oliver) informed the NCO, Cpl Bartholomew, who came to the cell area and spoke to Jemark. Jemark was crying and complained of pains in his abdomen and chest. PC Dwight James and PC Glasgow were sent to take Jemark to the hospital in a vehicle driven by PC Lynch. In cross-examination, PC Oliver stated that from his reception desk he could have seen Jemark and Kimron if they were sitting in the holding cell but not if they were lying down. He confirmed that the appellants were on duty on the night of 18th November 2008. While on duty he did not see any of the appellants do anything to Jemark.

[27] PC Brian Jordan testified that on 18th November 2008, at about 5:45 p.m., he was on receptionist duty at the CID. Cpl Bartholomew was the NCO in charge of team 2. Jemark, Kimron and Mandela Lewis were in the holding area. When he handed over duties to PC Oliver at 10:55 p.m. Jemark and Kimron were there but Mandela Lewis had gone to the airport and did not return. While he was on duty he checked out PC Glasgow and PC Ballantyne. They went out on duty and he checked them back in. While he was on duty

Cpl Quow made an entry in the diary. Cpl Quow had sent for the diary and it was sent to the general office to him. The diary is kept at the reception desk. Mandela Lewis was taken to the airport by Cpl Quow, PC Barbour and PC Thomas, who returned to the station at about 7:05 p.m. They did not make any entry. He (PC Jordon) made an entry as it is the duty of the receptionist to log persons in and out. Cpl Quow was an NCO. It is normal that NCOs would log themselves in or out but Cpl Quow instructed him (PC Jordon) to log him out. On 18th November 2008, he was a member of team 2 as were the appellants.

[28] In cross-examination, PC Jordan confirmed that he made the entry of the persons who went to the airport. It was normal for someone whom he did not see to send for the book. He saw Jemark in the office earlier in the day. He could not recall whether he was there when Jemark came in. He did not see anyone do anything to Jemark. He saw no one take him out and beat him.

[29] Assistant Superintendent of Police Wilford Caesar testified that on 18th November 2008, he was second in command of the CID. He was informed of an allegation against the 3 appellants later that month. Jemark made the complaint against 5 named Officers. He (ASP Caesar) investigated the allegation. During the investigation he was informed that one of the officers had left the island. On 3rd July 2009, he informed the 3 appellants and one Cpl Alexander of this. He cautioned Cpl Alexander and Cpl Quow and questioned them. The questions and answers were recorded. On 8th July 2009 he cautioned PC Ballantyne and questioned him. On 8th July 2009, he cautioned and questioned PC James, who did not reply to the questions. During his investigations he took extracts from the diary showing the movements of Jemark before he was taken to the hospital. On 9th July 2009 he arrested and charged the 3 appellants and served each of them with a copy of the charge. On 5th October 2009 he served them with copies of medical reports. In cross-examination, ASP Caesar stated that he saw Jemark and Kimron at the CID and that charges were laid 8 months after the incident because he was then instructed to do so.

The evidence for appellant Quow

[30] Cpl Quow testified that on 18th November 2008 he was a member of team 2. Cpl Bartholomew was in charge of the team. After midday on that day ASP Caesar asked him to dispatch 2 men to JP Eustace Secondary School. He sent PC Ballantyne and PC James who returned with Kimron and Jemark. ASP Caesar and other officers were present when PC James and PC Ballantyne returned. ASP Caesar escorted Jemark while PC James went with Kimron. PC Ballantyne walked behind. He (Cpl Quow) had nothing to do with the men and did not see them after that day. PC Ballantyne and PC James returned to the office and continued their duties before they went out on another call. Cpl Bartholomew returned to the office. He (Cpl Quow) later left. He did not beat Jemark with a hose.

[31] In cross-examination, Cpl Quow said that on 18th November 2008, he saw Jemark in the general office but did not speak to him. He did not know of any report against him. He did not beat him and did not know that he was hospitalized on 19th November 2008. He did not know if anyone beat him or kicked him on that day. He had dispatched the officers to the JP Eustace Secondary School to deal with a report of a fight. He did not know who was involved in the fight. He did not know if the officers went to St. Martin School. He did not know that Jemark was wanted for any offence. He knew that Jemark made a report against him but he was not certain what the report was. He charged Jemark on 11th December 2008 for a theft which occurred on 17th November 2008. ASP Caesar gave him the file and instructed him to lay the charge. He charged one Ali, Kimron and Jemark. He charged Jemark on 11th December 2008. He completed the investigation. He did not read the file. He did not know that Jemark was hospitalized on 18th November 2008.

[32] Cpl Quow gave his account of his movements between 6:00 p.m. and 6:00 a.m. on 18th to 19th November 2008. That evidence indicates that he responded to a number of calls and returned to the Station at about 10:00 p.m. when he made the entry in the diary of his return. He freshened up and then fell asleep. He was on duty until after 10:00 a.m. the following morning. He heard of what happened to Jemark during that morning. Regulations require that a prisoner in custody should be checked every hour during the

day and half an hour during the night. He knew Jemark before 18th November 2008. Cpl Quow said that he was present when Jemark was brought to the station. Jemark and Kimron were standing in the general office, while PC James was speaking to ASP Caesar. He did not see Cpl Alexander that day. The men were taken to the reception area by ASP Caesar. PC James was holding Kimron. When Jemark and Kimron arrived at the police station some girls and Zane Dopwell were there. PC Kirby brought over Mandela from the cell to the office after Jemark came in. He (Cpl Quow) did not go into the reception area. He went above the fire area to freshen up. He did not send for Jemark and does not recall that Jemark was in the general office. PC Ballantyne and PC James were there but they did not hold Jemark. He did not know what condition Jemark was in when he came into the office. He did not see PC Ballantyne and PC James throw Jemark to the ground.

The evidence for appellant James

[33] PC Osrick James testified that on 18th November 2008, he worked at the CID on team 2. Cpl Bartholomew was in charge. He was dispatched, by Cpl Quow, with PC Ballantyne to the JP Eustace Secondary School to investigate a fight. He spoke with Ms. Bushay, a vendor, who had called the police. She told him that Jemark and his friends were fighting but they ran. They (the police) drove around the block. They met Jemark and Kimron sitting outside the school gate. They (the police) took them to the CID where they met ASP Caesar in the general office. Cpl Bartholomew was not there. He handed Jemark over to ASP Caesar. ASP Caesar held Jemark at the back of his neck. He (PC James) held Kimron. They took them to the reception area. Cpl Ballantyne followed them. Cpl Quow was sitting at the back and did nothing. The holding area is next to the reception area. He (PC James) was then dispatched to Paul's Avenue to investigate a report. He returned to the station and wrote up files in the general office. He was to take up receptionist duties from 11:00 p.m. to 3:00 a.m. He went to the dorm to rest leaving Cpl Quow and Cpl Ballantyne. At 4:00 a.m. he went to the general office and was dispatched on duty to the hospital to relieve PC James and PC Glasgow. It was at that time that he knew that Jemark was hospitalized. He did nothing to Jemark. He did not throw him to the ground. He did not see anyone beat him. When he (PC James) arrived at the hospital

Jemark was lying in a bed in A&E. He asked Jemark whether he was alright and he said yes.

[34] In cross-examination, PC James stated that when ASP Caesar questioned him about Jemark he did not answer. He (PC James) proceeded on vacation. He returned in December 2008. On 18th November 2008, they had left the station in a vehicle driven by PC Lynch. They were not dispatched to the St. Martin Secondary School but they went to St. Martin. While in St. Martin they received information. He did not know Jemark was wanted for theft. Officer Lynch did not tell him that Jemark was wanted and they should go for him. Jemark was not there when they arrived. He escorted Jemark and Kimron to the CID.

[35] It is notable that when a statement which he (PC James) wrote on 21st November 2008, was brought to his attention, he admitted that he lied when he wrote that statement. He said that he lied to ASP Caesar because the report was written 3 days later when he was asked to write it, and he wrote something that was untrue. He admitted that he took Jemark to the station and arrested him as a suspect in a fight. He took Jemark to CID and gave him over to ASP Caesar. He said that he did not hold anyone by the neck. ASP Caesar held Jemark by the neck. He held Kimron by the hand. PC Ballantyne was in the back of the vehicle and he (PC James) was in the front. Jemark appeared to be strong and healthy at the time. He saw him sometime after 4:00 a.m. on 19th November 2008 at the hospital. He did not recall seeing Cpl Alexander then. He knew Jemark for 8 or 9 years and they never had any dispute. Jemark was arrested a few times. He did not feel disgust towards Jemark on 18th November 2008. He did not kick or box Jemark. He did not throw him on the floor and did not see Cpl Quow beat him.

The evidence for appellant Ballantyne

[36] The third appellant, PC Ballantyne testified that on 18th November 2008, he was attached to team 2 at the CID and Cpl Bartholomew was in charge. PC Ballantyne went to the JP Eustace Secondary School with PC Osrick James. They then went to Bottom Town and returned. On their return they saw Jemark and Kimron sitting on a wall. PC James spoke to them. They took Jemark and Kimron to the CID where PC James spoke to ASP

Caesar. Cpl Quow was present, but Cpl Bartholomew was not. Jemark and Kimron were taken to the holding area by ASP Caesar and PC James, while he (PC Ballantyne) followed. He had nothing else to do with Jemark and Kimron. He then returned to duty with PC James. They were sent to Kingstown Hill. At that time he saw Kimron but not Jemark. He was told where Jemark was. He did not hold or beat Jemark. He did not see PC James kick him or Cpl Quow beat him. He had nothing else to do with Jemark.

[37] In cross-examination, PC Ballantyne stated that he was dispatched to JP Eustace Secondary School with PC James in a vehicle driven by PC Lynch. He was dispatched to the St. Martin Secondary School. The 3 officers went to St. Martin School, then to the police station and then to JP Eustace Secondary School where he saw Jemark and Kimron on a wall. PC James arrested them for fighting.

[38] PC Ballantyne further stated that he gave 2 different statements in the matter because he was asked to write a report. He admitted that he gave 2 different stories. He said that the first report was a random one and the second was given under oath. One report did not have all the details. They picked up Jemark for a fight. When he stated that they picked him up for theft that was wrong but it was not a false report. He admitted that the report was not truthful because Jemark was picked up for a fight. He knew that Jemark was wanted for theft by Cpl Alexander. All of the persons who took Jemark to ASP Caesar took him to the cell. He did not find that strange. He saw Cpl Alexander at the station.

[39] PC Ballantyne admitted that although he took the oath to speak the truth he said things that were untrue and he knew that it is an offence to do so, possibly perjury. He said that Jemark did not fall down any step. When Jemark was arrested, the first time that anyone held him was when he was escorted to the holding area. Jemark and Kimron were handed to the receptionist and then he (PC Ballantyne) left on duty with Cpl Alexander. They went to Questelles and returned in 3 to 4 minutes. He (PC Ballantyne) did not see PC James when he returned. He saw Cpl Quow in the general office. He left the station with Cpl Quow for Middle Street. They returned. He did not see Cpl Quow beat Jemark. They did not hold Jemark down. He did not throw him on the floor. Cpl Quow had a weapon, but he did not see him point it at Jemark and threaten him. He (PC Ballantyne) did not slap

Kimron. Kimron sat next to him in the back of vehicle but he did not elbow Kimron. He recalled a Cell World burglary case in the High Court. Jemark gave evidence for the Crown because he reported he found items in the bushes. He knew that Cpl Alexander was at the police station when Jemark and Kimron were there and he (PC Ballantyne) said that Cpl Alexander wanted to see them. He (PC Ballantyne) was not present when Cpl Alexander told them that he knew he would have caught them because night is longer than day. He did not see anyone slap Kimron. He did not know that he was bleeding from his ear. He did not take Jemark and Kimron from the holding cell during the night. While in the general office he (PC Ballantyne) and Cpl Quow did not speak of the Cell World case. They did not ask Jemark why he did not tell the judge that he found the things in the house. Cpl Quow did not then go for a hose and beat Jemark while he (PC Ballantyne) and PC James held him down. He (PC Ballantyne) and PC James did not throw Jemark on his stomach 3 times. He did not see PC James kick Jemark. He (PC Ballantyne) did not strike Kimron with a weapon behind his head.

[40] PC Ballantyne further testified, in cross-examination, that he was told by PC Oliver that Jemark had difficulties at about 3:00 a.m. on 19th November 2008. At the time he (PC Ballantyne) was in the dorm. Sgt. James was also there. He (PC Ballantyne) did not go to the dorm after he took over receptionist duties from PC Oliver. At that time Kimron was the only person in custody. PC Oliver told him that Jemark was not well, but did not tell him that he was vomiting. He knew that Jemark was detained at the hospital. He was concerned about Jemark's condition after Jemark did not return from the hospital. There were no steps in the holding area. He knew nothing about beating Jemark and had stated this in the report that ASP Caesar asked him to write. He first knew that Jemark made an allegation that he was beaten by the police after he (PC Ballantyne) was cautioned. He then recalled that he was asked the question before he was cautioned. He first heard of the allegation that Jemark made about being beaten from the newspaper in 2009.

The evidence for appellants' witnesses

[41] Ms. Adynna Bushay confirmed that she was selling outside the JP Eustace Secondary School on 18th November 2008. She saw children, including Jemark, and one 'Ragan'

fighting. The day before Jemark and Kimron were there stamping one another. She called the police on both days. When the police came on 18th November 2008 she told PC Ballantyne that the boys left already so "make a block". The police did and returned about 15 minutes later and spoke with Jemark and Kimron. They took them in a vehicle and left. She had called the police because her son was robbed on the same day.

[42] PC 240 Dwight James testified that at about 12:45 a.m on 19th November 2008, he was out on duty with a party of CID personnel. He was in a vehicle driven by PC Lynch when he received a telephone call from Cpl Bartholomew. He returned to the police station, as a result of conversation and drove PC Glasgow to A&E department at the hospital. He spoke with the staff nurse and then to Dr. Rodgers. In cross-examination, PC Dwight James stated that he did not ask the nurse to tell Jemark not to say what happened at the police station. He did not hear PC Glasgow say that either. Dr. Rodgers told him that Jemark's chest was x-rayed. After the x-ray Jemark was discharged into his (PC James') custody. They got to the gate but returned to the hospital because Jemark had vomited. He took him back to A&E. He called Cpl Bartholomew and another PC James came to relieve him. He said that in his statement, on 22nd November 2008, he said that he did not know what Jemark was treated for. He had stated that the doctor said that he had gas.

The submissions and decision

[43] Sir Richard Cheltenham, QC, submitted that adequate reasons for decision required the magistrate to identify the critical issues for resolution. In the second place, he was required to explain the manner in which he resolved those issues. He said that one live issue which he needed to resolve was the time when Jemark received the injuries complained of and found by the doctors, given the evidence of Ms. Bushay, for example, that he was involved in fights on 17th and 18th November 2008.[13]

[44] In my view, it is obvious that the magistrate resolved that Jemark sustained the injuries while detained at the police station. A fuller analysis of the evidence towards that conclusion would have helped. Sir Richard submitted that the doctors all agreed that

[13] The evidence of Ms. Bushay at pages 28 and 29 of the record.

Jemark suffered trauma; had symptoms of respiratory distress, abdominal pain and vomiting and was diagnosed with 'acute non-cardiogenic pulmonary oedema secondary to lung contusion'. He said that Dr. Mandal found that, notwithstanding this, no external physical injuries were visible. It is noteworthy, however, that she opined that the internal injuries occurred within the day when Jemark fell ill and that Dr. Jayarangaiah testified that someone who is beaten may not show any external injury. He said that the second x-ray showed that the injuries were a present development.

[45] Sir Richard insisted that the issue of how Jemark sustained the injuries, particularly in the absence of marks of external injuries called for analysis and a specific finding. He said that by omitting to do so this court should conclude that the magistrate was not alive to the salient issues in the case. This, he said, was particularly because while there was evidence that there is no step in the police holding area; the magistrate concluded that there was no step in the CID, and, thereupon, apparently rejected one of the defence's theories as to how Jemark might have sustained his injuries. That, according to Sir Richard, was not however the end of the matter, given that Dr. Dougan stated in the first paragraph of his report: "This 15 year-old male was brought to the Accident & Emergency (A & E) unit at the Milton Cato Memorial Hospital on 19/11/08 alleging that he had fallen and hit his stomach on a step". I observe that it appears that Dr. Dougan obtained that evidence from the A&E card.[14] While I agree that the learned magistrate did not specifically address the issue concerning the time when Jemark sustained the injuries, the doctors' evidence indicate that the injuries were very recent and sustained within the day.[15]

[46] Sir Richard asked the court to note that while Jemark insisted that the appellants beat him and slammed him on the ground 3 times and appellant Osrick James kicked him, the appellants denied beating him. This, said Sir Richard, immediately raised the issue of credibility and whose version of events should be believed as material issues which the magistrate should have resolved, but did not.

[14] See the first sentence on paragraph 18 of this judgment.
[15] See paragraphs 17, 20 and 21 of this judgment.

[47] Credibility was undoubtedly a critical issue. It would have helped, in my view, if the magistrate attempted more dispassionately to assess the evidence going to this issue rather than to dismiss the evidence of all of the police witnesses as untruthful. This was particularly so because police witnesses testified for the prosecution and some of them, for example, St/Sgt. Sherol James, Cpl Barker and PC Nelica Kirby gave merely formal or linking evidence. I agree with Sir Richard that the magistrate should have disaggregated the police witnesses whose testimony was peripheral to the issues for determination from the testimony of those that were central to the determination. This would have accorded with the statement in the postscript in English v Emery Reimbold that an adjudicator should give a clear explanation for his or her decision.

[48] The learned DPP agreed that the reasons given in Aqui v Pooran Maharaj were inadequate. He insisted, however, that the magistrate in the present case provided adequate reasons for convicting the appellants. He referred, in particular, to the 'Postscript' in English v Emery Reimbold,[16] in which the court considered the 'Strasbourg jurisprudence' arising out of Article 6(1) of the Convention and made the following statement:

> "In each of these appeals, the judgment created uncertainty as to the reasons for the decision. In each appeal that uncertainty was resolved, but only after an appeal which involved consideration of the underlying evidence and submissions. We feel that in each case the appellants should have appreciated why it was that they had not been successful, but may have been tempted by the example in Flannery's case to seek to have the decision of the trial judge set aside. There are two lessons to be drawn from these appeals. The first is that, while it is perfectly acceptable for reasons to be set out briefly in a judgment, it is the duty of the judge to produce a judgment that gives a clear explanation for his or her order. The second is that an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the judge has reached an adverse decision." (Emphasis by the DPP).

[49] The DPP asked us to note the guidance provided in English v Emery Reimbold, which states as follows:[17]

---

[16] At paragraph [118] of the judgment.
[17] This is from note (3) of the head note seeking to reproduce paragraph 26 of the judgment.

> "Where permission to appeal has been granted on the grounds of inadequate reasons, the appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to consider whether the reason why the judge had reached his decision was apparent. If the court were satisfied that the reason was apparent and constituted a valid basis for the judgment, the appeal would be dismissed. If, however the reason was not apparent, the appeal court would have to decide whether to proceed to a rehearing or to direct a new trial." (Emphasis by the DPP).

[50] I see no conflict or divergence between the principles on the adequacy of reasons stated in English v Emery Reimbold on the 'Strasbourg jurisprudence' and the principles in Aqui v Pooran Maharaj and Ponnanpalam Selvanayagam v University of the West Indies. Importantly, all of these cases stress that whether reasons are adequate is a function of the circumstances of each case. English v Emery Reimbold simply provides an extension of the principles enunciated in Aqui v Pooran Maharaj evidenced in the highlighted aspects of the extracts in paragraphs 48 and 49 of this judgment.

[51] The learned DPP submitted that the appellants cannot truly state that they do not understand why they were convicted when the reasons provided by the magistrate confirm that having heard the evidence, he was "left with no doubt as to the guilt of the three Defendants/Appellants". It is clear, the DPP submitted, that the magistrate found the virtual complainant to be a credible witness when the magistrate stated as follows:

> "Jackson's evidence however, was very compelling. He maintained a calm and confident demeanour throughout on the stand despite blistering cross examination."

[52] The learned DPP further submitted that it is clear from the evidence that Jemark's credibility was in sharp contrast to the appellants' evidence. This, he said, was because some of them were shown to be untruthful and admitted making false statements to their superiors in relation to the incident. The DPP insisted that the magistrate correctly concluded that all the police officers were not fair and truthful to the court and that Jemark's evidence in conjunction with the evidence of the doctors ought to be believed.

[53] This is a case of assault occasioning actual bodily harm. It does not involve complex legal issues. Credibility is an evidential issue. The learned magistrate could have provided a fuller analysis in the resolution of this issue. He could have explained why he distrusted

the evidence of the police witnesses and what aspects he disbelieved. However, he clearly resolved the issue of credibility in favour of Jemark on his own evidence and on the support which the medical evidence lent to his evidence. Jemark's evidence was consistent in the story that it told of the assault upon him by the appellants, acting in concert, and of the injuries that he sustained. His evidence was unshaken in cross-examination. The doctors' evidence bore out the serious nature of the injuries. Dr. Mandal and Dr. Jayarangaiah placed the time within which he sustained the injuries within the time-frame to which Jemark spoke. In my view, therefore, although the learned magistrate could have better analyzed the evidence, the appellants cannot correctly assert that they are unable to understand why the magistrate convicted them given the evidence and the reasons that the magistrate gave.

[54] In the premises, I would dismiss the appeals and affirm the convictions and sentences of the 3 appellants.

Hugh A. Rawlins
Chief Justice

I concur.

Ola Mae Edwards
Justice of Appeal

I concur

Janice George-Creque
Justice of Appeal