SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCRAP 2009/017

BETWEEN:

PATRICK LOVELACE

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Ola Mae Edwards — Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mr. Don Mitchell — Justice of Appeal [Ag.]

Appearances:

Mr. Shiraz Aziz, Ms. Vynnette A. Frederick with him, for the Appellant
Mr. Colin Williams, Director of Public Prosecutions, Mr. Colin John with him, for the Respondent

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2011: June 9;
2012: February 27.

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*Criminal appeal against conviction – Murder – Accomplice testifying against the appellant – Corroboration – Lies in the appellant's cautionary statement – Whether Lucas direction was necessary – Failing to permit the defence to refer to evidence from earlier trial – Delay during the currency of the trial – Improper judicial intervention – Whether comments made by the trial judge undermined the credibility of the defence in front of the jury – Discharge of jury – Jury deliberations – Whether directions given by the trial judge to jury at adjournments were inadequate*

The appellant was found guilty of the murder of a 12 year old schoolgirl on 15th July 2009, after a retrial had been ordered by the Court of Appeal. The murder had taken place some 7 years earlier, on 1st July 2002. On the night of her death, the deceased Lokeisha Nanton was out at a street party with one Ramona Caruth and three others, including the appellant. Lokeisha was attacked by the appellant while she was on her way home from the street party with Ramona. The appellant sexually assaulted Lokeisha and then asked Ramona to help him to hang her from the branch of a mango tree. Ramona initially

refused but eventually assisted him, after he had threatened her. Ramona attempted to free Lokeisha after the appellant had run off, but was unable to do so.

Ramona appeared at both the initial trial and retrial as a prosecution witness. She had originally made six different statements to the police, only implicating the appellant in the sixth one. At trial, Ramona stated that the sixth statement was truthful, but that she had lied in the others out of fear, and also because she did not want the appellant to get into trouble. The appellant chose not to give evidence at trial, but his first oral statement and second cautionary statement were both admitted in evidence and put before the jury. The jury unanimously returned a verdict of guilty and the appellant appealed against his conviction. Counsel for the appellant contended that the appellant's retrial had been unfair because of grave errors made by the trial judge in directing the jury and conducting the trial.

Held: dismissing the appeal against conviction, that:

1. The trial judge properly conveyed to the jury that the statements made out of court by Ramona Caruth were not evidence that could be considered in the case and the jury would have had no doubt as to how to treat the existence of those statements. The judge was correct in stopping counsel for the accused at the trial from suggesting to the jury that they were entitled to call for Ramona's previous statements.

2. The jury must be discharged only if, in the circumstances that have arisen, there is a real danger of prejudice to the accused in their continuing to try the case. Whether to discharge the jury is purely a matter for the judge's discretion. The appellant's trial, though protracted, did not present complex evidence which the jury would have had difficulty retaining and remembering, and neither was there any real danger of prejudice to the appellant.

   Winsor v R (1865-66) L.R. 1 Q.B. 390 applied; Blackstone's Criminal Practice (2005) paragraph D12.20 cited; D & Heppenstall & Potter v The Queen [2007] EWCA Crim 2485 distinguished.

3. A jury should deliberate only when they are all together and in the charge of the jury bailiff. This is necessary to ensure that there is no risk of anybody outside their number becoming involved in their deliberations and also to ensure that the jury properly considers their verdict collectively so that each member can make an appropriate contribution to the verdict.

4. From the time the jury are empanelled they must be reminded by the judge that they must not discuss the case, or any aspect of it, with or be influenced by anyone not of their number, least of all outsiders or the media. During the course of the trial, it is the continuing duty of the trial judge to deal with any problems which arise with the jury and be alert to detect any signs which may lead to a risk of a mistrial. To this end the jury must be told of their right and duty both individually or collectively to inform the court clerk or the judge in writing if they

believe that anything untoward or improper has come to their notice. The judge can then deal with the matter in an appropriate way. He should also include in his summing up such suitable reminders warnings and directions as the circumstances require.

Regina v Connor and Mirza [2004] 2 W.L.R. 201 applied.

5. The absence of adequate directions from the judge concerning jury deliberations may not by itself warrant a finding that the appellant was prejudiced. The appellant would have to identify an irregularity which may have flowed from the absence of adequate directions to cast doubt on the safety of his conviction. Looking at the trial as a whole, the appellant suffered no injustice as a result of the absence of direction on one occasion and the truncated direction given to the jury on each adjournment, on the need not to discuss the case with anyone except themselves.

6. A witness who has taken a statement from an accused is not necessarily limited to testifying only to the formalities of the taking of the statement. Justice of the Peace Donald Peters was entitled to tell the jury that the appellant had been an athlete in his youth if he knew the appellant. The evidence was relevant to the issues before the jury and was not prejudicial.

7. The jury was likely to find that the appellant had been lying given the contradictions and inconsistencies in his first oral statement and subsequent written statement. The trial judge was required to give the jury a direction on any finding they might come to that the accused had been lying to the police. Although the judge's directions on lies contained some confusion and repetition, they were generally fair to the accused. (per Mitchell J.A. [Ag.], Edwards J.A. dissenting).

8. The inevitable consequence of the jury accepting the accomplice Ramona's evidence as to how the deceased's murder occurred and the involvement of the appellant, would be their rejection of the appellant's denial in his caution statement that he participated in her murder as described by Ramona. In that regard there would be no Lucas direction required and the general direction on the burden of proof would have sufficed. The trial judge failed to draw to the jury's attention that the only material issue that any lies found to be proven would relate to, is the issue of his liming activity, the persons with whom he was liming, and his presence in Kingstown that night and not Argyle. The trial judge also failed to point out that such lies could not corroborate the testimony of Ramona since she was an accomplice. Although the trial judge not having addressed all of the safeguards in relation to corroboration and lies told out of court was a material irregularity during the course of the trial, the jury could have properly convicted the appellant on the uncorroborated evidence of Ramona, had all the safeguards been properly addressed. (per Edwards J.A.).

R v Lucas [1981] Q.B. 720 cited.

JUDGMENT

[1] MITCHELL J.A. [AG.]: The deceased, Lokeisha Nanton, was a 12 year old schoolgirl at the time of her death. She played music with the Sion Hill Steel Orchestra in the island of Saint Vincent. Her mother, Francita Nanton, operated a shop in the vicinity of the place where the band practised. She testified that she last saw Lokeisha alive at about 9:00 p.m. on the night of 1st July 2002, shortly after Lokeisha's band practice. Yolanda Baptiste gave evidence that on that night she had been with Ramona Caruth, one Shanda Jackson, and the appellant Patrick Lovelace at a street party at South River Road in Kingstown. They had been having drinks when, at about 9 o'clock, Ramona had left them. She had returned a few minutes later with Lokeisha. Lovelace had bought them all drinks. Lokeisha had left for home some 20 to 25 minutes later. Ramona had accompanied her. Lovelace had departed some 10 to 15 minutes later, saying that he was going to a nearby washroom. However, he had returned to the street party some two hours later at about 5 minutes before midnight. Ramona had returned about 10 minutes after him. Thereafter Lovelace, Ramona and Shanda left the street party and went upstairs the market to Slick Restaurant to “lime” for a while.

[2] Lokeisha's nude, lifeless body was discovered early the following morning in a yard on the Cane Garden Road leading to her home. Her neck was tied with a piece of her torn shirt to a limb of a mango tree. The body was in a semi-kneeling position. What appeared to be blood was oozing from her nostrils and ears. She had died from strangulation. The DNA test performed at a laboratory in Jamaica and the examination by the local pathologist in Kingstown found evidence of violence and recent sexual intercourse.

[3] Eyewitness testimony of the circumstances surrounding the death was given by Ramona Caruth, Lokeisha’s friend. Ramona's evidence was that she was born on 2nd July 1986. She was therefore 15 going on 16 years of age on the night in question. She testified that when she left the street party with Lokeisha on the

night of 1st July 2002, they waited at the bus stop for a passenger bus to take them to the Sion Hill junction with the Cane Garden Road. They had to wait some time before a bus to Sion Hill arrived. They were walking along the Cane Garden Road towards Lokeisha's home when she heard Lovelace calling out to her from behind. He caught up with them and asked her to "set him up" with her friend Lokeisha. She objected, telling him that Lokeisha was under age. Lovelace slapped her, grabbed Lokeisha by the throat and dragged her under a mango tree. Ramona followed and fought with Lovelace, pulling at Lokeisha's hand to get her away from him. She did not succeed. Lovelace slapped her to the ground again.

[4] Lokeisha was screaming. Lovelace dropped her to the ground and hit her, knocking her out. He tore off Lokeisha's clothes and proceeded to have sexual intercourse with her. She had stopped moving while he had intercourse with her. When he got up from Lokeisha, he shook semen from his penis onto her clothes and asked Ramona to help him to hang her on the tree so that it would look as if she had hanged herself. She initially refused. Lovelace told her that if she spoke to anybody about what had happened he would do to her exactly as he had done to Lokeisha. She then assisted him by placing her hands around Lokeisha's waist and lifting her up. Lovelace used Lokeisha's shirt to tie her by her neck to a branch on the mango tree. He then left the scene running. Ramona was unsuccessful in her efforts to untie the tightly tied torn shirt around Lokeisha's neck while Lokeisha was still moving and asking Ramona to help her. She eventually left Lokeisha hanging from the tree and returned to South River Road where she had earlier been with the group. Lovelace was already there.

[5] The party being nearly over, the group left shortly after, walking down the road. They passed a lady selling barbecue and Lovelace bought Ramona something to eat. From the barbecue they proceeded to Slick's Bar. There, Ramona, Yolanda and Shanda entered into a wining dance contest with each other. Lovelace adjudged Shanda the winner. He subsequently sent Shanda home by taxi.

[6] According to Ramona, she, Yolanda and Lovelace went on from Slick's Bar to Yankee's Bar. Lovelace told Ramona that he had a birthday gift for her. That day was her 16th birthday. They caught a van at the bus stop and left together for Argyle where he gave her a jersey, a bottle of Stone Wine, a glass, and $20.00 cash. From there she caught a van back to Kingstown. While travelling on the van she heard on the news that they had found Lokeisha's naked body hanging from a mango tree.

[7] Ramona testified that when she returned to the Kingstown bus terminal from Argyle, she saw and spoke to Yolanda who was across Tokyo. Ramona subsequently spoke to someone else who took her to a police officer. She went with this police officer to the CID where she made a report about Lokeisha's murder. She gave a statement to the police. At her request she was placed in protective custody at the Montrose Police Station because she feared for her life. She subsequently gave four more statements at various dates in which she implicated some six other persons. She did not mention Lovelace. She gave different versions of the murder. This, she said later, was in an attempt to cover up for Lovelace, because she liked him, did not want him to get in trouble, and she was also afraid of him. She remembered his threat at the time when he raped Lokeisha and tied her to the tree. She implicated Lovelace only in her sixth statement to the police. This she gave on 29th November 2002. At the trial she said that this statement was truthful but that she had lied in the others.

[8] Ramona's first statement to the police had been on 2nd July 2002. In it, she claimed that two men, one of them a Coolie man, had been the perpetrators. She admitted at the trial that she lied in the first statement. Four days later, on 6th July, she gave the second statement. She told the police this time that two men, Joseph and Mike, were the culprits. Two days later, on 8th July, while in protective custody, she gave a third statement. In this one she implicated two different men, a Rasta man named Bob and one called Sefo. Two days later, on 10th July, she made a fourth statement, again speaking about Bob and Sefo. She claimed that Bob had had sex with Lokeisha and Sefo had had sex with her, Ramona. She did

not remember giving her fourth statement to the police on 22nd August 2002, requesting to be released from protective custody. Her fifth statement was made on 3rd September 2002. In it she claimed that her cousin Jason, who lived in St. Lucia, and another male, a St. Lucian named Jah-I, were the ones responsible for Lokeisha's death. Under cross-examination she said that she did not remember saying that the persons she had named as the culprits in the first, second, third and fourth statements had had sex with Lokeisha and her at the material time. She denied saying in her fifth statement that she did not tell the police the truth because Jason had threatened to kill her. She was shown the second, third and fourth statements at the trial and acknowledged that they bore her signature. She admitted that maybe she knew she was lying to the police when she signed the statements as true and correct.

[9] Yolanda Baptiste also gave a statement to the police and testified at the trial. According to her, on several occasions after the discovery of Lokeisha's body, Lovelace had asked her not to inform the police that he had been with the group on the night of 1st July 2002. She had at first promised him that she would not inform them. However, on 26th November she finally told the police that Lovelace had been present at the street party at the same time as Lokeisha.

[10] The police, as part of their investigation, arranged for Ramona to confront Lovelace at CID on 26th November 2002. Lovelace had at first told the police that he did not know what they were talking about and that Ramona was a lying girl. In the presence of Yolanda and a number of police officers, Ramona told Lovelace that she had been present at the street party in Kingstown with him, and that she had been present at Sion Hill when he had raped Lokeisha and had hanged her with her assistance from the mango tree. She reminded him of her visit to his home so that he could give her his birthday presents. Lovelace again responded that Ramona was lying on him. Yolanda confirmed Ramona's account of their presence at the street party. Donald Peters, a Justice of the Peace, subsequently on 27th November 2002 witnessed the taking of a written statement from Lovelace under caution by Detective Inspector Sydney James in which Lovelace first said

that he had not been in Kingstown on the night of 1st July 2002. Lovelace subsequently gave a different story in the caution statement and said he had been in Kingstown, but with some Trinidadian friends and he saw Ramona at South River Bar with a man called Dembi. He still denied all knowledge of Lokeisha's killing.

[11] The evidence at the trial disclosed that the police took swabs of Lokeisha's body as part of their investigation. Lovelace voluntarily gave a blood sample for forensic testing. The swabs and the clothing with blood and other stains found at the scene, together with Lovelace's blood sample, were delivered to the Forensic Science Laboratory in Jamaica the following day. There was no difficulty in the technician obtaining a DNA profile from the accused's blood sample. However, she testified that she had been unable to obtain any DNA evidence from the crime scene samples. In particular, the sperm found on Lokeisha's body was so degraded that no DNA trace could be obtained from it.

[12] Lovelace opted to give no evidence at his trial, nor did he call any witnesses. He relied on the written statement that he had given to the Justice of the Peace. That statement referred to the confrontation which had taken place at CID the day before with Yolanda and Ramona. In it, he denied that he had been with the group on the night of 1st July 2002. He claimed that he had met some Trinidadian friends at Paradise Inn Hotel at about 7:15 p.m. on the night in question. They had got to Kingstown around 8:30 p.m. He had seen Ramona at South River Road sitting on a wall with her boyfriend "Dembi" for whom he bought a beer. He had left Dembi and Ramona at South River Road at around 10:30 p.m. with his Trinidadian friends and had arrived at Slicks 2 Restaurant and Bar at about 10:45 p.m. There was a dance there. He had left the dance at about 2:30 a.m. and had caught up with his Trinidadian friends on Bay Street. They had walked up Huggins Street, past Yankee's Bar, up to the Bandstand area in Kingstown. He had caught a van to take him home at Argyle at about 4:20 a.m. He had arrived at his home at about 5:10 a.m. He denied that he had ever been at Sion Hill with Ramona and Lokeisha on the night of 1st July 2002.

[13] At Lovelace's trial for murder at the Criminal Assizes held in Kingstown in February 2006, his counsel urged the jury not to believe Ramona and to acquit the accused. However, the jury convicted him of the offence of murder and he was subsequently sentenced to death. He appealed to the Court of Appeal, which appeal was heard in May 2006. His appeal was allowed, and a retrial was ordered to take place in the High Court at the earliest possible time.

[14] Lovelace's second trial commenced on Friday 12th June 2009. The jury convicted him of the offence of murder on 15th July. He was subsequently, on 19th February 2010, sentenced to death. He now appeals against his conviction only. His amended grounds of appeal were filed on 1st June 2011. The court had the assistance of written skeleton arguments of learned counsel Shiraz Aziz for the appellant and of Mr. Colin Williams, Director of Public Prosecutions ("DPP").

[15] At the hearing of the appeal, Mr. Aziz indicated that he was no longer arguing ground 5, dealing with identification, or ground 9, the failure to deal with expert evidence. He argued the following grounds of appeal which are dealt with in the order they were raised.

Ground 1: Failing to permit the defence to refer to the transcript of an earlier trial
Ground 4: Failing to allow counsel to adequately put the accused's defence

[16] Mr. Aziz argued ground 1 together with ground 4. Ground 1 was that the learned trial judge erred by his failure to allow the defence to refer to the evidence in the original trial, which meant that the jury would have been deprived in that they would not have had evidence of previous inconsistencies and therefore would not have been able to properly assess the credibility of Ramona Caruth. Ground 4 was that the learned trial judge had not allowed counsel to adequately put the accused's defence during the trial.

[17] Mr. Aziz submitted that the transcript of the previous trial was vital. Counsel should have been permitted to put the transcript to the witness, Ramona. The transcript would have revealed the inconsistencies in the previous statements.

The judge had referred in his summing up to the several statements that Ramona had given to the police and that had been inconsistent with what she had said in court. The directions to the jury which the judge had then given would have confused them. He had told them that if they were of the view that a witness had said something different to the police from what they were now testifying then they should be warned that the law is that the previous statement was not in any way a part of the evidence at the trial. Mr. Aziz submitted that this was entirely incorrect as this evidence formed part of the investigation and therefore part of the criminal proceedings and were relevant to the trial. The jury must have regard to such evidence as it went to the heart of Ramona's credibility and reliability. Mr. Aziz referred to the words of the trial judge when he told counsel, “Don't mention anything about the first trial”. Mr. Aziz submitted that the judge was wrong to have stopped counsel for Lovelace in his closing address to the jury when he was suggesting to the jury that they were entitled before they retired to call for Ramona's five earlier statements to the police.

[18] The learned DPP's response to these submissions was that the entire transcript of the earlier trial had been in the possession of all counsel. It had been prepared for the use of both counsel and the court as early as the first appeal. The problem faced by the appellant, he submitted, was that there had not been any application to the court below to admit the transcript. Nor had counsel laid any foundation on which to base such an application. Ramona had never denied that she had lied. She was an admitted serial liar. That would have been the only purpose of admitting the previous statements, and in the event of her admission they were not necessary. In any event, he submitted, the trial judge had fairly and repeatedly presented the defence contentions to the jury.

[19] A close reading of the transcript reveals that counsel for the accused had just put to Ramona that, as the street party in town had not yet come to an end when she had left it, there must have been other persons present. The DPP had objected to this suggestion and had demanded to know whether counsel would be bringing a witness to testify as to what counsel was now asserting. It was in responding to

this objection that counsel for the accused glibly made reference to the answers that Ramona had given in cross-examination at the first trial. It was in that context that the trial judge admonished counsel not to mention anything about the first trial. The defence had indeed made no attempt to lay a proper foundation for an application to admit the earlier transcript. The defence had made no application to the trial judge then or at any other time to put the earlier transcript to the witness or to enter it into evidence. It is evident from the Record that the trial judge's prohibition of counsel referring to the earlier testimony in cross-examination, was justified.

[20] Counsel for the defence at a later stage of the trial, while cross-examining Inspector Sydney James, did make a formal application to have the earlier conflicting statements made by Ramona to the police entered into evidence. The basis of this application, as counsel gave it to the judge, was that the statements "formed part of the basis for the total outcome of … [the] investigation". The judge's response was that he had never in his thirty years on the bench heard such an application.

[21] The earlier statements had limited admissibility and only the disputed parts of the contents of each statement could be admitted under the clear and unambiguous provisions of sections 14 and 15 of the Evidence Act.[1] Those sections read as follows:

> "14. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the case and inconsistent with his present testimony, does not distinctly admit that he has made such a statement, proof may be given that he did make it. Before such proof can be given, the circumstances of the supposed statement must be mentioned to the witness, and he must be asked whether or not he made such a statement.
>
> "15. A witness may be cross-examined as to recorded statements previously made by him relative to the subject matter of the cause, without such statement or a copy thereof being produced to him. If it is intended to contradict such witness by such statement or a copy thereof, his attention must, before such contradictory proof can be given, be called to

[1] Cap 158, Revised Laws of Saint Vincent and the Grenadines 1990.

> those parts of the statement or copy thereof which are to be used for the purpose of contradicting him. The court, at any time during the trial, may require the production of the statement or copy thereof for its inspection and it may thereupon make such use of it for the purpose of the trial as it shall think fit."

[22] These provisions allowed counsel for the defendant to cross-examine Ramona about her written out-of-court statements she gave the police which were inconsistent with her testimony. Ramona's answers could not be contradicted by putting the statements in evidence unless Ramona had been shown each of the statements and she had been given the opportunity to explain the contents of each statement. Cross-examining counsel did show Ramona the second, third and fourth statements but made no application to the court to put these statements in evidence. Counsel for the defendant was therefore bound by the answers of Ramona on the disputed matter unless the relevant part of the statement had been put in or read out to contradict her. It was not permissible for him to state that the statements contradicted Ramona unless Ramona admitted this or he had put the statements in evidence.

[23] Ramona had testified that she had not told the police at the start that the appellant had killed Lokeisha. She had testified that she did tell the police in written statements the names of persons other than the appellant who had been responsible for Lokeisha's death, but she did not remember the names she had mentioned. She admitted under cross-examination that she had said in her first statement that one of the two men was a Coolie man. When questioned about the details of the statements she had given, Ramona said that she did not remember mentioning the names Joseph and Mike in a second statement, and she did not remember about the statements as that had been years ago. She repeatedly said under cross-examination that she did not remember whether she had given the names Bob and Sefu, Jah-I and Jason to the police.

[24] The provisions in the Evidence Act previously mentioned also allowed defence counsel to put the statements into the hands of Ramona to refresh her memory, where she said that she did not remember, and to press her into admitting that she

had signed the statements at a time near to the event, and identifying her signature. This would enable defence counsel to cross-examine Ramona on the statements. However, defence counsel would be obliged to accept her answers without more. Where she had the statement before her and denied the suggested contradiction, or adhered to a statement which defence counsel suggested was inconsistent with the contents of the written statement before her, defence counsel would only be able to establish the contradiction by putting the statement in evidence so that the whole statement might be read.[2]

[25] Having regard to the law and to what took place at the trial, the procedural steps which would have justified putting the entire contents of Ramona's six out-of-court written statements in evidence had not been satisfied by defence counsel. Although parts of the judge's summation as to how the jury should treat the out-of-court statements of Ramona when taken in isolation may appear to be misleading, in my view, the cumulative effect of the full direction conveyed quite accurately that the contents of such statements were not evidence.

[26] The existence of Ramona's earlier police statements was relevant only to illustrate that she had told lies to the police, that she was an admitted liar, and that her evidence must be treated with great caution. But, she had already admitted that she had lied. In any event, the trial judge cannot fairly be said to have deprived the jury of any of Ramona's statements to the police. No proper application had been made to the trial judge either at a case management hearing or at the trial to admit any of them into evidence, and, indeed, no proper foundation had been laid for their admission. The trial judge was therefore entitled to deal with the matter in the way that he had done by virtue of sections 14 and 15 of the Evidence Act previously referred to above.

[27] Though the absence of the transcript was made a subject of appeal, no copy of it has been placed in the Bundle before this court so that the Court could be pointed to any evidence that would be relevant to this appeal. This court cannot now be

[2] Archbold (2008) para. 8-129, citing R v Riley (1866) 4 F. & F. 964.

invited to speculate about it. So far as Ramona's six earlier statements are concerned, they had not been admitted into evidence and their contents were not before the jury. The judge was therefore right to tell the jury that the earlier statements were not in issue and that the content of those statements was "neither here nor there". On the totality of the directions I am satisfied that it was conveyed to the jury that the statements that Ramona made out of court were not evidence that could be considered in the case and the jury would have had no doubt as to how to treat the existence of those statements. He was correct in stopping counsel for the accused at the trial from suggesting to the jury that they were entitled to call for Ramona's five earlier statements. In the premises, these grounds of appeal lack merit.

### Ground 2: The substantial delay that had occurred during the currency of the trial

[28] The second ground of appeal was that the trial judge ought to have discharged the jury after substantial delay had occurred during the currency of the trial, and in any event, after previous statements by an accomplice were ruled inadmissible but it was suggested that the jury consider, and furthermore the trial judge indicating to the jury that defence counsel was deliberately misleading the jury.

[29] This ground requires that I examine the dates on which the hearing proceeded. The trial commenced on Friday, 12th June 2009 and continued on Monday 15th, Tuesday 16th, Wednesday 17th, Thursday 18th, and Friday 19th June 2009. The Court of Appeal sat in Saint Vincent the following week of 22nd to 26th June 2009. On 30th June 2009, the trial resumed and after taking evidence, was adjourned to 9th July 2009. For some reason that is not clear from the Record, the matter was called up on 8th July 2009 and adjourned to 13th July 2009. On that day the prosecution closed its case and the court heard a no case submission in the absence of the jury. The judge ruled against the defendant. His counsel indicated that he chose to remain silent, was not calling any witnesses, and closed his case. The following morning, 14th July 2009, the court visited the *locus in quo*, after which the prosecution and defence made their closing addresses to the jury. The

following morning, 15th July 2009, the judge gave his directions to the jury and they retired to deliberate, returning some three and a half hours later with their verdict of guilty. The evidence was all heard on 16th, 17th, 18th, 19th and 30th June and 14th July 2009, six days of testimony. On 14th July 2009, there was the visit to the locus and final addresses. There was thus a gap of some 23 days between the end of the testimony and the visit to the locus and closing addresses.

[30] Mr. Aziz's main submission was that every man is entitled to have a fair trial. A prerequisite of such a fair trial is that there should not be any unnecessary or inordinate delay. The complaint made was that there had been so long a delay during the currency of the trial that it had been unfair and prejudicial to the appellant. The jury was entitled to have the evidence not presented to them in a truncated manner. Mr. Aziz urged the Court that the jury ought to have been discharged due to the 23 days in between the jury hearing evidence and the visit to the locus and the final addresses. The evidence had been so truncated that the jury would not have been able properly to follow it. Further, Mr. Aziz submitted, the jury ought to have been discharged once the judge had ruled incorrectly that the previous statements from Ramona were not evidence to be taken into consideration though during defence counsel's closing speech he had made reference to them and had invited the jury to call for them.

[31] Mr. Aziz relied on the case of D & Heppenstall & Potter v The Queen.[3] In that case, D and the other two appellants had been alleged to have conspired to evade excise duty on some 74 loads of alcoholic drink. The trial had been estimated to last 4 months. In the event, it lasted for some 235 days or some 11 months. The court sat on only 132 days and rarely did a hearing occupy a full day. All three appellants argued that so lengthy and disrupted was the hearing, and so inadequate was the summing up, that the trial was unfair and their convictions unsafe. As Lord Justice Moses said, the overriding requirement of a criminal trial is to ensure that the accused is fairly tried. The rules of practice are designed to

[3] [2007] EWCA Crim 2485.

achieve that result. He cited with approval[4] the words of Lord Bingham in Randall v R:[5]

> "The right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty."

The appeals were allowed, but for reasons other than the delay. The court found that the directions to the jury had been inadequate in identifying to the jury the issues which it had to decide. The court held that notwithstanding the length of time the case took and its disruption it would not on that count alone have regarded the trial as so unfair as to affect the safety of the conviction.

[32] This court's jurisdiction is limited to assessing whether the conviction is safe. Not every departure from good practice will render a trial unfair. The fairness of a trial can only be assessed in the factual context of the particular case. The purpose of the trial process is to give the prosecution a fair opportunity to establish guilt and to give the defence a fair opportunity for the defendant to advance his defence. The means by which that is achieved is by ensuring the jury has a reasonable opportunity to retain and assess the evidence laid before it, and by the judge directing the jury, fairly, as to the issues which it must determine. The trial, though protracted, did not present complex evidence which the jury would have had some difficulty in retaining and remembering. It is relevant that there was no application made by defence counsel for the jury to be discharged on the basis of delay.

[33] Mr Aziz's next submission was that the debate and disagreement in open court which had ensued between defence counsel and the judge, causing the judge to say in front of the jury that counsel was misleading the jury, would have severely undermined the credibility of the defence in front of the jury. On several occasions throughout the trial the learned trial judge spoke harshly to or about counsel for the

[4] At. para. 29.
[5] [2002] 2 Cr. App. R. 17, at p. 284.

defendant in the presence of the jury. Particular examples include the very first day of the trial when the jury had not yet been sworn in but the entire panel was present in court. Counsel for the defendant was inexplicably absent. The defendant was in the dock with the potential jurors sitting in court. The judge expressed his disapproval of the absence of counsel for the defendant in the following terms:[6]

> "These are … the games lawyers play with the Courts. These are the sort of games they are … playing with this Court. ... And then they leave and conveniently absent themselves and then they will get up and … start talking nonsense about abuse of the process. They are abusing the process. … … I want the word … to go back to them. That's why I'm saying so openly. I am tired of lawyers playing games with the Courts and then turn around and blame the Courts for everything that goes wrong which they created. … But then you have lawyers who go on radio and … criticize the system to the effect that ... we are incompetent when they are incompetent – they. … You see, when human beings are born they creep before they walk. Some want to walk without creeping and when they do that this is what happens, you fall."

[34] Mr. Frederick, one of the three counsel appearing for the defendant at the trial, and the butt of most of the judge's intemperate remarks, was not without fault. There are occasions evident in the transcript when he behaved with scant respect for either the court or the jury. At one point when the learned DPP interrupted to object to his cross-examination of a witness, Mr. Frederick said, "Will you shut up and allow me to cross-examine?"[7] The court responded immediately by condemning the language used and complaining of the disrespect shown to the court. When Mr. Frederick denied that he had intended any disrespect, the trial judge's response was, "This is what you keep saying. You said that once and you're saying it again. What am I -- What am I … a little fool?"[8] Mr. Frederick duly apologised to the court, and was given a final warning.

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[6] Record of Appeal, pp. 8-10.
[7] Record of Appeal, p. 399.
[8] Record of Appeal, p. 400.

[35] During counsel's address to the jury, a most unfortunate exchange between him and the judge took place. Mr. Frederick had been quite out of order in suggesting to the jury that before their retirement they might call for Ramona's previous statements to the police. The trial judge had previously ruled that they were inadmissible. The judge reminded Mr. Frederick that he had previously ruled on that issue and that he was to leave it alone. Mr. Frederick persisted. When the judge sought to stop him from continuing with his demand for the statements, Mr. Frederick's response was, "…you have no right to tell me how to conduct my defence." The judge's response was, "But I have -- I have – I also have the right to stop you if you are misleading the Jury."[9]

[36] It is most unfortunate that the trial judge in his directions to the jury took the opportunity to get in one last swipe at counsel for the defence. During Mr. Frederick's cross-examination of various witnesses, and in his final address, he had sought to raise a doubt about Ramona's description of Lovelace's actions after he had completed the rape in shaking semen off of the tip of his penis onto Lokeisha's clothes. Counsel had suggested to the jury that this was one of the reasons why Ramona's testimony should not be believed. Shaking semen off the end of the penis, he urged, was an impossible act. The judge's words to the jury were:[10]

> "Learned Counsel for the Defence said, 'the first thing a man would do is to use his shirt to wipe his penis', maybe he's talking from experience, I don't know, you see."

[37] The law on improper judicial interventions has recently been clarified by the Board in Michel v The Queen.[11] In that case the Board noted with approval[12] the approach by the Court of Appeal in R v Hulusi.[13] where it adopted Lord Parker C.J.'s statement of principle in R v Hamilton:[14]

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[9] Record of Appeal, p. 565.
[10] Record of Appeal, p. 621, lines 15-17.
[11] [2009] UKPC 41.
[12] At para. 17.
[13] (1973) 58 Cr. App. R. 378 at 382.
[14] (unreported, 9th June 1969).

> "Of course it has been recognised always that it is wrong for a judge to descend into the arena and give the impression of acting as advocate. ... Whether his interventions in any case give ground for quashing a conviction is not only a matter of degree, but depends to what the interventions are directed and what their effect may be. Interventions to clear up ambiguities, interventions to enable the judge to make certain that he is making an accurate note, are of course perfectly justified. But the interventions which give rise to a quashing of a conviction are really three-fold; those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury .... The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence, and thirdly, cases where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way."

[38] The Board also commented[15] upon the clear enunciation of when judicial intervention leads to an unsafe conviction as outlined in Randall's case[16] where,

> "after remarking that 'it is not every departure from good practice which renders a trial unfair' and that public confidence in the administration of criminal justice would be undermined 'if a standard of perfection were imposed that was incapable of attainment in practice,' Lord Bingham continued:
>
> > "But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial." "

The Privy Council also compared the position in civil proceedings:[17]

> "The core principle, that under the adversarial system the judge remains aloof from the fray and neutral during the elicitation of the evidence, applies no less to civil litigation than to criminal trials. All will be familiar with Denning LJ's celebrated judgment in *Jones v National Coal Board* [1957] 2 Q.B. 55, 64, a personal injury claim ending with each party complaining that he had been unable to put his case properly:

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[15] In Michel v The Queen (supra note 11) at para. 27.
[16] Randall v R [2002] 2 Cr. App. R. 17, at p. 284.
[17] Michel v The Queen (supra note 11) at para. 31.

> "A judge's part ... is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevances and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the role of an advocate; and the change does not become him well. Lord Chancellor Bacon spoke right when he said that: "Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal." "

[39] Their Lordships' concluded[18] about the role of the trial judge:

> "Of course he can clear up ambiguities. Of course he can clarify the answers being given. But he should be seeking to promote the orderly elicitation of the evidence, not needlessly interrupting its flow. He must not cross-examine witnesses, especially not during evidence-in-chief. He must not appear hostile to witnesses, least of all the defendant. He must not belittle or denigrate the defence case. He must not be sarcastic or snide. He must not comment on the evidence while it is being given. And above all he must not make obvious to all his own profound disbelief in the defence being advanced."

[40] Mr. Aziz submitted that even if there had been any reprehensible conduct on the part of defence counsel, when one looks at the trial proceedings as a whole and considers the conduct and comments made from the inception of the trial, then it would only be right that this jury ought to have properly been discharged to ensure a fair trial.

[41] In my view, the trial judge should have considered whether any disciplinary remarks he wished to make about the conduct of counsel for a defendant accused of murder were better uttered in the privacy of his Chambers, so as not to risk irreparably damaging the integrity of the trial over which he was presiding. Certainly, he should have avoided making jocular and injudicious remarks about defence counsel to the jury. However, I have considered the Record in detail, and I am satisfied that taking all the evidence, the addresses, and the judge's summing

[18] Michel v The Queen (supra note 11) at para. 34.

up into consideration, the trial of the accused was not unfair. The judge's summation to the jury was full and detailed. He bent over backwards to place the defence before the jury. I do not believe that the appellant's case was harmed by the judge's harsh remarks about defence counsel. I consider this ground of appeal to be without merit.

[42] It was while arguing this ground of appeal that Mr. Aziz drew the attention of this Court to the direction the judge gave the jury at every adjournment. On the various occasions when court adjourned, he usually told them no more than, "The Jury during the adjournment you will not discuss this case with anyone else except amongst yourselves". Mr. Aziz urged that this had not been a full and clear direction, and that the trial judge had not given a satisfactory warning at any time. Mr. Aziz argued that such a truncated direction as the judge had given had been ambiguous and had amounted to a material irregularity. What the words meant was that if, after an adjournment, three of the jurors took a van to their home village it would be okay for them to discuss the case amongst themselves even though all twelve jurors were not present. He urged that this was a fatal error which challenged the fairness of the trial. The length of this trial and of the adjournments within it demanded, he urged, that detailed and accurate directions should have been given to the jury.

[43] There is no doubt that a proper direction to the jury would have encompassed that they must not talk to anybody about the case, save to the other members of the jury and then only when they are deliberating in the jury room. Counsel submitted for our consideration a short form of the direction set out in the judgment of Wolf C.J. in the case R v Barry-Lee Hastings.[19] However, this direction is to be given on an adjournment after the evidence has ended and the jury have begun their deliberations, and does not have any application to our situation. The Judicial Studies Board handbook gives a different and fuller version available to every judge of the proper direction that the trial judge should give the jury after every adjournment.

[19] [2003] All E.R. (D) 160 (Dec).

[44] There are clear reasons why a jury should deliberate only when they are all together and in the charge of the jury bailiff. The first reason is so that there is no risk of anybody outside their number becoming involved in their deliberations. Equally, and just as important, is the requirement that the jury should properly consider their verdict collectively so that each member can make an appropriate contribution to the verdict to which they either all agree or to which an appropriate majority agree after they have received the necessary direction as to a majority verdict.

[45] A defendant is entitled to be tried in accordance with the procedures laid down by law for the proper conduct of a trial. If he has not had a proper trial in accordance with those procedures, then it may reasonably be urged on his behalf that he is entitled to have any conviction set aside. In considering that matter this court has to exercise its statutory jurisdiction, bearing in mind its obligation to do justice to a defendant and to ensure that he has had a proper trial, to interfere with a verdict that is unsafe. If a defendant has not had a proper trial then he is entitled to have his conviction set aside. However, it is not every breach of a requirement of the procedural rules laid down by the courts which results in a trial being unfair. The courts are concerned with substance. They have to ask whether the defect which is relied upon goes to the justice of a conviction.[20]

[46] I am satisfied, looking at the trial as a whole, that there was no injustice to the appellant because of the truncated direction given to the jury on the need not to discuss the case with anyone else except among themselves. I would hope that in future, however, a fuller direction will be given for the benefit of the jury and to ensure the integrity of the trial.

[20] Taken verbatim from paras. 22 and 23 of the judgment of Woolf C.J. in the Barry-Lee Hastings case (supra note 19).

Ground 7: The cautionary statement of the accused taken by Donald Peters, Justice of the Peace

[47] This ground was that the trial judge had committed a further irregularity in that Donald Peters, Justice of the Peace ("JP") ought not to have been allowed to provide evidence as an independent witness of his personal knowledge about the appellant, as this was highly prejudicial and used as corroboration to support the evidence of Ramona Caruth, the accomplice. The submission was that his evidence ought to have been confined to the taking and signing of the statement.

[48] The Record revealed that the JP had in his youth been a champion runner in Saint Vincent. The accused had been a runner as well, and was well known to the JP. The police force of Saint Vincent and the Grenadines has the practice of bringing an independent person, such as a JP, into the police station to take the written statement of a suspect, and do not normally take the statement themselves as is done in other countries of the OECS. This procedure has been designed to ensure, submitted counsel, that the accused is dealt with in a fair and impartial manner. Counsel submitted that what had transpired had not been fair. Mr. Peters had told the jury that the appellant was known to him as a long distance runner. That would tend to corroborate Ramona's story that he had managed to get to the top of Sion Hill on foot at about the same time that she and Lokeisha had managed it in a bus, which they had admittedly had to wait a period of time for.

[49] There is no rule that a witness who has taken a statement from an accused should be limited to testifying only to the formalities of the taking of the statement. I am satisfied that if Donald Peters knew the appellant and knew that he had been an athlete in his youth then he was entitled to tell the jury so. The evidence was relevant to the issues before the jury and was not prejudicial. In my view this ground of appeal lacks merit.

Ground 8: The consequence of lies in a cautionary statement

[50] This ground of appeal was to the effect that the learned trial judge erred in law by directing the jury on lies and the consequences of lies in a cautionary statement not tested and admitted to be lies.

[51] The accused never gave evidence at the trial, but his first oral statement and his second cautionary statement were both admitted in evidence and put before the jury. In the first he had denied that he had been in Kingstown on the night in question but had been at his home in Argyle, i.e., he raised an alibi. In the second, made after the confrontation with Ramona, he admitted that he had gone into Kingstown on the night and had seen Ramona. While these were inconsistent statements, the accused had never conceded that anything in either of them was a lie. Therefore, Mr. Aziz submitted, the judge should not have directed the jury that an accused may sometimes lie to bolster a defence or save himself embarrassment.

[52] What the judge actually told the jury about lies and the consequences of lies was:[21]

> "Now, even if you conclude that the alibi of the accused was false, that does not entitle you to convict him. So at the end of the day if the Prosecution proves to you that the alibi he gave was false it doesn't entitle you to jump to conclusions that it is him. The Prosecution must still establish his guilt. Alibis are sometimes invented to bolster a genuine defence. You understand that. People sometimes lie when they have a strong defence but they think that lying they might strengthen their defence. So that -- you have to be careful if the Prosecution proves to you that his alibi is false you do not jump to conclusions that he is guilty. Go back to the Prosecution's case, look at all the facts presented, satisfy yourselves so that you are sure in your minds before you can say, 'this man was at Sion Hill that night. He was there with Ramona Caruth. He raped Lokeisha, hang Lokeisha on a tree as Ramona says', and that you believe Ramona. That is the only time you can say he is guilty.
>
> "Now, I will also have to take you through how to treat the whole complex issue of lies, when a person lies -- an accused person lies, if you feel the accused person is lying. If a witness is lying, it's easy. If a witness is

[21] Record of Appeal, pp. 602-607.

lying, you disbelieve and that is the end of the Prosecution's case. If you -- for instance in this case, if you come to the conclusion that Ramona Caruth was lying, to me that's the end of the case, all the other evidence is neither here nor there. But if you decide an accused person is lying it has certain peculiarities, certain -- it has a certain character and there's a way -- I have to tell you how to treat the whole issue of lies coming from an accused.

"Now, in this case he hasn't said anything to you. The only issue of lies come from his statement, the caution statement that was witnessed by Donald Peters. You remember Peters the former long-distance runner who says he knows the accused because both of them used to run? That statement the accused gave to the police under caution, the Prosecution says contain [sic] certain lies -- contradictions, if I may use a more polite word. But, the Prosecution is indicating that Mr. Lovelace told lies in relation to where he was in his alibi. And he's said that to Sergeant James in his caution statement. You will have that statement to take to the jury room. But Sergeant James in his testimony indicates that initially Mr. Lovelace had said that on the night of the 1st he was at home at Argyle and subsequently in this statement to him this part of the evidence changed and he said he was in town and he had seen Ramona at the street bar but that she was with Dembi. I've already told you that.

"Now, these two statements, according to the Prosecution, cannot be correct because he cannot be in two places at the same time. It will therefore mean that if you accept that he said both of these things one of them has to be a lie. You would have to determine whether you believe that he told Sergeant James these things. That is one. And then you have to decide whether they are inconsistent. The Prosecution is asking you to find that Patrick Lovelace lied about his whereabouts on the night of the 1st of July. And you may be of the opinion that he did lie. You may be of that opinion. The mere fact, however, that the defendant or an accused person told lies is not in itself evidence of his guilt. So if an accused person -- you feel an accused person has told you lies that in itself is not evidence of his guilt. It maybe [sic] many reasons for which an accused will tell lies and some of these reasons maybe [sic] innocent. For instance, he may have been under a lot of pressure having been arrested, charged for this offence or about to be charged, so he becomes confused and mumbles, 'no, I was at Argyle; no, I was at the street bar; no, after that I went to Yankees'. He could have been out of confusion. There are many reasons why accused persons tell lies. For example, he may tell a lie to bolster a true defence or to protect somebody else or to conceal some other distasteful conduct short of the offence for which he is charged. You may well find that in the caution statement Patrick Lovelace may have told lies. That is a matter entirely for you to determine. So I will advise you in the manner in which you treat lies.

"If you do find in the caution statement made by the accused to the police and you are satisfied that he told lies, it is a matter which you treat with some care. A statement made by an accused out of Court -- because this statement -- caution statement, was made out of Court, it was not a statement he made in here. He made the statement under caution to the police officer at the police station. So, a statement made by an accused out of Court whether it is true or false does not prove anything else -- anything unless it constitutes an admission. But in this case this statement is not an admission. But, a statement shown to be false may in certain circumstances go indirectly to show something, for instance, guilty knowledge. In other words it could be something from which you can draw an inference as to guilty knowledge. I hope you understand that. But you can only draw any such inference if the following requirements are satisfied: 1) you must be satisfied that the statement is false and that the accused knew that it was false, and then 2) it must be a statement relevant to the offence with which the accused is charged, 3) you must take into account the fact that when he made the statement the accused was not on oath, finally 4) you must take into account any reason other than the accused guilt of the offence which there was or may have been for not telling the truth, for instance, to save himself from embarrassment or to protect someone or for any other reason of that kind. So that -- an accused person telling a lies [sic], if you decide he's telling a lie, if you decide that what he said in that statement is a lie, does not entitle you to jump straight to the conclusion that he is guilty. You may draw the inference that by telling lies there is some guilty knowledge on his part. You may draw that inference. But you can only draw that inference if you satisfy these four conditions: that you have sat -- you have to be satisfied that the statement is false, and the accused knew that it was false, it must be a statement relevant to the offence with which the accused is charged.

"Now, in this case that statement was given in relation to investigations pertaining to -- to this murder of Lokeisha Nanton. And you must take into account that when he made the statement the accused was not on oath. Finally -- on oath here is different from caution at the police station. And 4) you must take into account any reason other than the accused guilt of the offence which there was or may have been for not telling the truth, for instance, to save himself from embarrassment or to protect someone or for any other -- other reason of that kind.

"Now, Ladies and Gentlemen of the Jury, if you were to find that the accused lied in the caution statement you are obliged to return to the Prosecution's case and to examine all the evidence lead [sic] by the Prosecution in order to determine whether the Prosecution have proven their case against Lovelace so as to make you feel sure of his guilt. It is for the Prosecution to make you feel sure of his guilt. So having done the exercise in relation to lies if you conclude okay, he lied, put aside the lie -- put that aside, come back to the Prosecution's case and satisfy

> yourselves from the evidence so that you are sure in your minds before you can say that he is guilty. But because he lied does not entitle you to jump straight into conclusions that he is guilty."

[53] Mr. Aziz made a number of submissions concerning the above directions. If the appellant had given evidence, and if, through cross-examination, it had been proved that he was lying, then the judge could fairly have given the above direction. When an accused has contradictions in his statements to the police, but he does not admit they are lies, the judge may well decide to direct on lies. But, in this case what the jury had been told about lies would have impressed on them that the appellant must have been lying. The judge might instead have directed the jury that the caution statement had set out an alibi, but he had later said that he had been in Kingstown, so he had given two versions. That would be an inconsistency, but that did not necessarily make it a lie, i.e., that he was deliberately trying to mislead the police and the jury. The accused had never admitted that the inconsistency was a lie, yet the judge had invited the jury to use the inconsistency as a lie and had suggested that they might infer guilty knowledge from the lie.

[54] A perusal of the Record reveals that the appellant's first oral statement and his subsequent written statement were both in evidence. There were internal contradictions and inconsistencies, placing him in different places at the same time. The first oral statement made to Sergeant James, and which had been disputed and challenged by Yolanda Baptiste and Ramona, differed from his written statement made to the JP. In the circumstances, the jury were likely to find that the appellant had been lying. In my view, the learned trial judge was required to give the jury a direction on any finding they might come to that the accused had been lying to the police. Having read the directions, I am of the view that though they contained some confusion and repetition, they were generally fair to the accused. I do not find any merit in this ground of appeal.

Ground 3: Corroboration

[55] Ground 3 of the grounds of appeal was to the effect that the learned trial judge's directions in law as regards corroboration were confusing and would not have assisted the jury in dealing with the evidence of an accomplice.

[56] The judge's directions on corroboration were as follows:[22]

> "… it is dangerous for the Jury to convict on the evidence of an accomplice if there is no corroborative evidence.
>
> "It is not necessary to find corroboration. It is -- it is desirable if you can find corroboration or evidence -- corroboration means evidence independent of that witness' evidence - evidence to support what she is saying. It is desirable to find that but it is not an essentiality, it is not -- it is not the condition. But the law says if you can look for other evidence to support her evidence then that may help you in deciding whether you accept her evidence because of the dangerous nature of it because she's an accomplice.
>
> "Now, as I've said, corroboration means independent evidence from that witness' evidence. It may be direct evidence or it may be circumstantial evidence which does not come from the accomplice but which confirms in some material way not only the evidence that the crime has been committed but also that the accused committed it. So you have to be very, very careful with Ramona Caruth's evidence. But again you should take care before convicting based on the evidence of an accomplice. That is the general rule. However, if after you have listened to Ramona Caruth's evidence in this Court, you are sure that she recounted what happened to Lokeisha Nanton and that she told you she was sure that the person who murdered Lokeisha was Patrick Lovelace and if you are satisfied that when she said all this from the witness stand she was telling you the truth then you are entitled to convict the accused for the offence. So [irrespective] of whether there was corroborative evidence or not if you listen to Ramona Caruth's evidence and you warn yourselves of the dangers of convicting on her evidence alone, in that she may be telling lies or trying to implicate somebody else or trying to take herself away from the crime; if having given yourselves all that warning, gone through that mental exercise, if you are satisfied with her story so that it makes you sure in your minds and you have no reasonable doubts in your minds, you can convict on her evidence alone. If you find corroborative evidence or evidence from independent witnesses, sources, that support her story, fine, it even makes it stronger for you to accept her story.

[22] Record of Appeal, pp. 596-598.

> "But the law is saying you can convict on her evidence alone having warned yourselves of the dangers and having satisfied yourselves that despite those dangers in convicting on her evidence as an accomplice alone, you are sure that she's telling the truth. Once you make that determination you can find him guilty based on her evidence alone in this case.
>
> "In your determination of whether Ramona told you the truth or whether she's credible or reliable, you are entitled to examine the evidence lead [sic] by the other witnesses to see if there are major consistencies with her evidence and you may use the consistencies in which you find in the evidence of the other witnesses in your assessment of Ramona Caruth's credibility or reliability. This is what I have said before."

[57] Mr. Aziz submitted that while the judge had set out the fact that Ramona was an accomplice, and that it would be dangerous to convict without corroborative evidence, and that it was not necessary for the jury to find corroborative evidence, he had failed to direct the jury either as to what evidence there was that could amount to corroboration or whether there was no evidence that could amount to corroboration. The jurors, he submitted, had been left unaided to do the mental gymnastics about what could or could not be corroboration. Further, the judge had failed to draw a distinction between direct and circumstantial evidence and how to approach inferences. This was a case, he submitted, where a fuller and proper direction ought to have been provided to assist the jury. He relied on the Privy Council case from Grenada of R v Rennie Gilbert.[23] There, Lord Hobhouse delivering the opinion of the court in a rape case referred to the well established rule on the direction on corroboration in sexual offences cases. He said:[24]

> "… the jury must be directed that it is dangerous to convict the defendant upon the uncorroborated evidence of the complainant alone; the judge must tell the jury which evidence would, if they accept it, be capable of amounting to corroborating evidence; but he can go on to tell them that they can convict on uncorroborated evidence if, having paid due heed to the warning, they are nevertheless convinced of the defendant's guilt."

The direction in question that Mr. Aziz referred us to related to the specific direction that must be given in sexual offences cases concerning the notorious

[23] [2002] UKPC 17.
[24] At para. 8.

unreliability of the evidence of victims in sexual offences cases. Rennie Gilbert's case is not an authority on accomplice directions. Nevertheless, the proper procedure in relation to the judge's duty to point out to the jury what evidence there is that is capable of amounting to corroborative evidence is the same in both sexual offences and accomplice cases. In this case, it is evident that the trial judge did not assist the jury in identifying which parts of the evidence independent of the accomplice's testimony were capable of amounting to corroboration.

[58] An accomplice who has not been charged is both competent and compellable as a witness for the Crown. Even where an accomplice has, unlike in the present case, been jointly charged and indicted for the offence, there are procedures which govern and permit such a person to testify. The trial judge has a discretion whether to warn the jury to exercise caution before acting on the evidence of an accomplice. It depends on the particular circumstances. Failure to give a warning will not necessarily furnish grounds for a successful appeal.[25] The trial judge having opted to give a warning might have pointed out the bits of evidence in the case that might have amounted to corroboration by the jury, if accepted by them as true. That would have been helpful to the prosecution's case. His failure to do so would have been to the benefit of the appellant, not to his disadvantage, so he cannot complain of them now. In this case the trial judge gave a very detailed warning, aspects of which he repeated. I cannot see any merit in this ground of appeal.

[59] Mr. Aziz next submitted that even though the court may find that any one ground of appeal might not have established that the trial of the accused had been unfair, when they are all taken together, especially in such a high profile case, one would have to ask whether the accused could have had a fair trial. This is an attractive argument. Each of the grounds of appeal might individually have been found to be without merit, yet the cumulative effect of the defects and improprieties in the trial

[25] Blackstone's Criminal Practice (2007) para. F5.5.

that Counsel has brought to this court's attention might cumulatively lead the court to the conclusion that the trial of the appellant had not been fair.

[60] However, even this last ditch defence must fail. Taken all together I am satisfied that there was an abundance of evidence circumstantial as well as direct that must have drawn the jury irresistibly to the conclusion that the accused was guilty of the murder of Lokeisha Nanton. There is no reason to find that the trial was unfair. I would therefore dismiss his appeal against conviction.

Don Mitchell
Justice of Appeal [Ag.]

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

[61] EDWARDS, J.A.: I have had the privilege of reading the judgment of my learned brother Mitchell J.A. [Ag.]. I agree with the outcome of the appeal, but respectfully add my observations and reasoning where there are differences in our views.

[62] Regarding the issues in grounds 1 and 4, I would add that the only error that the learned judge made was when he obviously misspoke by elevating the contents of Ramona's previous out of court written statements in which she may have admitted lying, as evidence that the jury should put aside. At pages 638 to 639 of the Record, the judge told the jury:

> "Remember I have said to you the law is statements made out of Court are not evidence in this matter…. The only evidence you need consider is the evidence that emanated from the witness stand from the witnesses. So the fact that she gave six statements out of Court and even if she admits that she lied in those statements that is evidence you have to put aside."

It was not evidence at all as he had correctly stated previously; and a proper direction would be that "it was not evidence and you should put it aside." However this misdirection was trivial and would not affect the safety of the conviction. At page 600 of the Record the learned judge made it very clear to the jury how they should deal with the fact that Ramona gave six statements and admitted in court that she had lied in five of them. I therefore agree with the conclusions at paragraph 27 of my brother's judgment.

Protracted Trial and Absence of Jury Management Affecting Fairness of Trial - Grounds 2 and 6

[63] I address these grounds to afford additional guidance in the area of proper jury management during a protracted trial. I consider this vital to the proper administration of criminal justice.

[64] Learned Counsel Mr. Aziz submitted that the directions given to the jury on how they should behave during frequent and protracted adjournments spanning 23 days in one instance were inadequate. He submitted that the inordinate period of delay warranted the jury being discharged. In Winsor v R[26] Erle C.J. dealt with the issue as to when a jury should be discharged. This case provides authority for saying that a jury should not be discharged unless a high degree of need for it arises; and it is purely a matter for the judge's discretion as to whether the jury should be discharged. It is significant that throughout the appellant's protracted trial none of his counsel made an application for the jury to be discharged. The learning in Blackstone's Criminal Practice (2005)[27] points out that the position is different should the judge be invited to discharge the jury and refuse to do so. If the accused is then convicted, he may appeal on the basis that continuing with the original jury casts doubt on the safety of his conviction. In short, the jury must be discharged only if, in the circumstances that have arisen, there is 'real danger' of prejudice to the accused in their continuing to try the case. On the facts of the appellant's case, no danger of real prejudice has been demonstrated.

[26] (1865-66) L.R. 1 Q.B. 390.
[27] At p. 1474 (para. D12.20).

[65] The learned DPP submitted that the trial, though protracted, did not present complex evidence which the jury would have some difficulty in retaining and remembering over the protracted periods. He submitted that the period of delay did not affect the safety of the appellant's conviction.

[66] Contrary to the practice of earlier years (when juries were normally kept sequestered from the moment of their empanelling until the trial had concluded), it is now standard practice to allow them to separate both for luncheon and overnight adjournments. It inevitably follows that they will have the opportunity to speak about the case with those who are not members of their array. It is therefore very necessary to warn the jury on the first occasion they separate that that is something they must not do. In R v Prime,[28], Lord Widgery C.J. said:[29]

> " 'It is important in all criminal cases that the judge should on the first occasion when the jury separate warn them not to talk about the case to anybody who is not one of their number. If he does that and brings that home to them, then it is to be assumed that they will follow the warning and only if it can be shown that they have misbehaved themselves does the opportunity of an application [for discharge] arise.' "[30] (My emphasis).

In the appellant's case, the jury was empanelled and put in charge of the appellant on 12th June 2009, and the trial adjourned to 16th June 2009 without any warning being given to the jury. However, Mr. Aziz has made no allegations of misconduct by the jury during the entire protracted trial period.

[67] It is the duty of the trial judge to regulate the conduct and course of business during the trial. The judge may take whatever legitimate steps are necessary to maintain proper decorum and an appropriate atmosphere in the court room during trial. There are no local statutory provisions or rules which speak to the type of instructions that a judge should give the jury during recess periods. In the absence of such controlling statutory provisions in the Criminal Procedure Code[31] and the Jury Act,[32] or established local rules, all matters relating to the

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[28] (1973) 57 Cr. App. R. 632.
[29] At p. 637.
[30] Blackstone's Criminal Practice (2005) at p. 1479 para. D12.22.
[31] Cap. 125, Revised Laws of Saint Vincent and the Grenadines 1990.

orderly conduct of the trial or which involve the proper administration of justice in the court are within the discretion of the judge, subject only to section 3(2) of the Criminal Procedure Code.

[68] Section 3(2) mandates that the procedure and practice observed by and before the Crown Court in England must be applied in the absence local statutory provisions. Also, section 12 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act[33] provides for judges of the High Court to exercise in court all or any of the jurisdiction vested in the High Court in accordance with the practice and procedure in the High Court of Justice in England for the time being in force.

[69] The current practice and procedure in England regulating guidance to jurors during the trial process are to be found in Part IV: Further Practice Directions Applying in the Crown Court. Part IV, paragraphs 42.5 to 42.9 state the following:

> "Guidance to Jurors
>
> (IV.42.5) The following directions take effect immediately.
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> (IV.42.6) Trial judges should ensure that the jury is alerted to the need to bring any concerns about fellow jurors to the attention of the judge at the time, and not to wait until the case is concluded. At the same time, it is undesirable to encourage inappropriate criticism of fellow jurors, or to threaten jurors with contempt of court.
>
> (IV.42.7) Judges should therefore take the opportunity, when warning the jury of the importance of not discussing the case with anyone outside the jury, to add a further warning. It is for the trial judge to tailor the further warning to the case, and to the phraseology used in the usual warning. The effect of the further warning should be that it is the duty of jurors to bring to the judge's attention, promptly, any behaviour among the jurors or by others affecting the jurors, that causes concern. The point should be made that, unless that is done while the case is continuing, it may be impossible to put matters right.

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[32] Cap. 21, Revised Laws of Saint Vincent and the Grenadines 1990.
[33] Cap. 18, Revised Laws of Saint Vincent and the Grenadines 1990.

(IV.42.8) The Judge should consider, particularly in a longer trial, whether a reminder on the lines of the further warning is appropriate prior to the retirement of the jury.

(IV.42.9) In the event that such an incident does occur, trial judges should have regard to the remarks of Lord Hope at paras 127 and 128 in R v Connors and Mirza [2004] 2 WLR 201[34] and consider the desirability of preparing a statement that could be used in connection with any appeal arising from the incident to the Court of Appeal Criminal Division. Members of the Court of Appeal Criminal Division should also remind themselves of the power to request the judge to furnish them with any information or assistance under rule 22 of the Criminal Appeal Rules 1968 (SI 1968/1262) and section 87 (4) of the Supreme Court Act 1981."

[70] In Regina v Connor and Mirza,[35] a case dealing with the secrecy and confidentiality of jury deliberations, Lord Hobhouse of Woodborough at paragraph 148 gave these guidelines which I hastily commend for adoption by trial judges in our jurisdiction in future. He stated as follows:

> "(a) There have been statements in the past that the duty of confidentiality applies from the moment the jurors are empanelled or so long as they are in the "jury box". … The modern position is more sophisticated and the statement of principle should reflect this. Obviously from the time the jury are empanelled they must be reminded by the judge what the words "in accordance with the evidence" mean: they must not discuss the case, or any aspect of it, with or be influenced by anyone not of their number, least of all outsiders or the media. The judge will usually remind them of this when they first disperse on the first day of the trial (assuming the trial is not over by then). Then, during the course of the trial, it is the continuing duty of the trial judge to deal with any problems which arise with the jury and be alert to detect any signs which may lead to a risk of a mistrial. To this end

[34] Lord Hope, at paragraphs 127 and 128, stated: "127 The second refinement relates to the information which is provided to the Court of Appeal by the trial court. [Speaking of the New Zealand rule 22 of the Criminal Appeal Rules 1946 and the Criminal Procedure (Scotland) Act 1995, section 113] …. These provisions enable the appeal court in those jurisdictions to make use of the fact that the judge who presided over the trial, and had the advantage of being able to observe the jury as the trial progressed, is in a good position to tell the appeal court if there were any signs of irregularity while the jurors were in the jury box. … 128 Section 87(4) of the Supreme Court Act 1981 provides that Criminal Appeal Rules may require courts from which an appeal lies to the Criminal Division of the Court of Appeal to furnish that division with any information or assistance which it may request for the purpose of exercising its jurisdiction. Requests to the court of trial for such information or assistance may be communicated by the registrar: see rule 22 of the Criminal Appeal Rules 1968 (SI 1968/1262). These powers are wide enough to enable … the Court of Appeal to call for a report from the trial judge if it is alleged that there was an irregularity at the trial. There will be no need for it to take that step if all the information that is required to deal with the allegation can be provided by members of the court staff. …."

[35] [2004] 2 W.L.R. 201 (H. L. (E.)).

> the jury must be told of their right and duty both individually or collectively to inform the court clerk or the judge in writing if they believe that anything untoward or improper has come to their notice. The judge can then deal with the matter in an appropriate way. He already has to deal with such matters as improper approaches to the jury, an unexpected recognition of or knowledge of a defendant or a witness and personal difficulties of jurors and has a power, within limits, to discharge individual jurors. He may of course, if necessary, discharge the whole jury and start again. He should also include in his summing up such suitable reminders warnings and directions as the circumstances require." (My emphasis).

[71] I note that in the appellant's case, for lunch adjournments and daily adjournments throughout the entire trial the jury was only told by the trial judge that "you will not discuss this case with anyone else except amongst yourselves". This was an inadequate direction to the jury. The absence of adequate directions may not by itself warrant a finding that the appellant was prejudiced. The appellant would have to go further and identify an irregularity which prejudiced him and which may have flowed from the absence of adequate directions to cast doubt on the safety of his conviction. In the premises I agree with the conclusions of Mitchell J.A. [Ag.].

Lies and the Lucas Direction – Ground 8

[72] In relation to the judge's directions regarding the lies in the appellant's caution statement (ground 8), a Lucas direction was not necessary in my view. However, assuming it was, the directions would have to be tailored to meet the factual situation presented in this case where the appellant did not testify, he made no admission that he was lying about his alibi, and the only eye witness to the murder was the accomplice Ramona Caruth.

[73] The prosecution was relying on the appellant's inconsistent statements as to where he was on the night of 1st July 2002, as lies capable of providing support or corroboration that he was involved in the murder of the deceased. The learned DPP Mr. Colin Williams, in his opening and closing address to the jury[36] told them

[36] At pp. 42 and 536.

that if they came to the conclusion that the appellant was telling lies in support or to conceal his own role in the murder, they can use the fact of telling lies as part of the prosecutions evidence against the appellant. The DPP said:[37]

> "His Lordship will guide you in law to be careful that you can't just dismiss his statement as unreliable. But the law also provides that look, you can use -- where a person has told lies in certain circumstances, if there is no innocent explanation for those lies - in other words he is just trying to hide some behaviour or to cover up something, you know, to -- to -- that is if there is no other innocent explanation - could be that he telling a lie because it reinforces what we are saying. It touches in certain material respects upon the testimony from the Prosecution."

[74] The prosecution was not using the lies merely to challenge the credibility of the appellant, but to lead the jury into thinking that the appellant must be guilty of murdering Lokeisha because he lied.

[75] It is well established that in appropriate cases where the defence relies on an alibi, or where the prosecution alleges that the accused told lies about his alibi; or where the accused admits telling such lies; or where the judge envisages that the jury may say that the accused lied about where he was in his alibi and use the lie as evidence against the accused showing an implied admission of guilt, in any of these cases the judge should give a direction along the lines indicated in R v Lucas.[38] However, it is not necessary to give a Lucas direction in every case in which an accused tells lies.

[76] On the other hand, a Lucas direction is not necessary, and if given may confuse the jury, in factual circumstances where the jury found the accused guilty on the evidence of the prosecution witnesses, and the prosecution witnesses' testimony contradicted the defence case. In such a case the rejection of any explanation given by the accused obviously left the jury with no choice but to convict as a matter of logic. That situation would be covered by the general directions on the burden and standard of proof and a Lucas direction would be otiose.

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[37] At p. 536 of the Record of Appeal.

[38] [1981] Q.B. 720; [1981] 2 All E.R. 1008. See also Archbold (2003) para. 4-402 (p. 474) and para. 14-23 (p. 1324) and Blackstone's Criminal Practice (2003) para. F1.12 (p. 1959).

[77] In R v Lucas, Lord Lane C.J. expressed the opinion that that there must be four safeguards as a condition of out of court lies being acceptable as corroboration: (i) the out of court lie must be deliberate; (ii) it must relate to a material issue; (iii) the jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a cause of shame or out of wish to conceal disgraceful behaviour; and (iv) the statement must be clearly shown to be a lie by evidence other that of an accomplice who is to be corroborated, that is to say by admission or evidence from an independent witness.

[78] Returning to the learned trial judge's directions to the jury, the judge did not address the fourth safeguard at all, and did not adequately address the second safeguard in my view. This was a case in which Ramona was the appellant's accomplice. The only other prosecution witness who testified about the appellant's whereabouts in Kingstown on the night of 1st July 2002 before the deceased was killed in Sion Hill was Yolanda Baptiste. Her testimony was confined to the Kingstown liming activity. She did not testify about the Sion Hill event when Lokeisha was killed.

[79] Yolanda testified that Ramona and the appellant met her in Chinatown at about 7:00 p.m. that night and she went up the road with them and they limed; and after they met Shanda and continued liming together, Ramona excused herself and left them at about 8:45 to 9:00 p.m. Ramona returned after 9:00 p.m. minutes to 10:00 p.m. with a teenage girl who she introduced to them as Lokeisha. The appellant continued to lime with them, bought them rounds of drink. Lokeisha stayed with them for about 25 minutes and then Ramona left them along with Lokeisha. About 10 to 15 minutes later, while Shanda and the appellant were still together, the appellant left and said he was going to the washroom. And she next saw the appellant return alone about 2 hours later. They waited for Ramona as the appellant said he was waiting for Ramona. Eventually, Ramona arrived and joined them about 10 minutes later. The liming continued until Shanda left them, and then after 2:30 a.m. she, Ramona and the appellant went by Yankees and then the appellant and Ramona caught a Georgetown van to go home to Cedars

where they were living. Yolanda testified that she returned to town later in the evening and saw the appellant and Ramona sitting together on a bench. Ramona got up and came towards her (Yolanda) with tears in her eyes and she was crying. Yolanda stated that she subsequently saw the appellant who told her police was at his door continuously and if police ask her anything about the liming night she should tell them she don't know anything. On a subsequent occasion the appellant again repeated what she should tell the police if she was questioned.

[80] It turns out therefore that there was evidence from the independent witness Yolanda, which was different from what the appellant said in his caution statement about being at home alone in Argyle on the night of 1st July 2002, and alternatively being present in Kingstown liming with Trinidadian people. The inconsistency/perceived lies of the appellant could corroborate only Yolanda's testimony applying the fourth safeguard of Lord Lane C.J. in Lucas. Thus the lies would relate only to the material issue as to where the appellant was in Kingstown, in whose company he was prior to the deceased's death for the period that Yolanda testified about (7:00 p.m. to 10:30 p.m.), and that he was not liming in the company of Trinidadians, but in the company of Ramona, Shanda, Yolanda and for a limited time, the deceased Lokeisha. Yolanda's evidence did not establish that the appellant played a role in the murder of Lokeisha in Sion Hill as she was not at Sion Hill and did not see the appellant again until about 12:30 p.m.

[81] The trial judge told the jury:[39]

> "Now, I will also have to take you through how to treat the whole complex issue of lies, when a person lies -- an accused person lies, if you feel the accused person is lying. If a witness is lying, it's easy. If a witness is lying, you disbelieve and that is the end of the Prosecution's case. If you -- for instance in this case, if you come to the conclusion that Ramona Caruth was lying, to me that's the end of the case, all the other evidence is neither here nor there. But if you decide an accused person is lying it has certain peculiarities, certain -- it has a certain character and there's a way -- I have to tell you how to treat the whole issue of lies coming from an accused.

[39] At pp. 603-606 of the Record.

"Now, in this case he hasn't said anything to you. The only issue of lies come from his statement, the caution statement that was witnessed by Donald Peters. You remember Peters the former long-distance runner who says he knows the accused because both of them used to run? That statement the accused gave to the police under caution, the Prosecution says contain [sic] certain lies -- contradictions, if I may use a more polite word. But, the Prosecution is indicating that Mr. Lovelace told lies in relation to where he was in his alibi. And he's said that to Sergeant James in his caution statement. You will have that statement to take to the jury room. But Sergeant James in his testimony indicates that initially Mr. Lovelace had said that on the night of the 1st he was at home at Argyle and subsequently in this statement to him this part of the evidence changed and he said he was in town and he had seen Ramona at the street bar but that she was with Dembi. I've already told you that.

"Now, these two statements, according to the Prosecution, cannot be correct because he cannot be in two places at the same time. It will therefore mean that if you accept that he said both of these things one of them has to be a lie. You would have to determine whether you believe that he told Sergeant James these things. That is one. And then you have to decide whether they are inconsistent. The Prosecution is asking you to find that Patrick Lovelace lied about his whereabouts on the night of the 1st of July. And you may be of the opinion that he did lie. You may be of that opinion. The mere fact, however, that the defendant or an accused person told lies is not in itself evidence of his guilt. So if an accused person -- you feel an accused person has told you lies that in itself is not evidence of his guilt. It maybe [sic] many reasons for which an accused will tell lies and some of these reasons maybe [sic] innocent. For instance, he may have been under a lot of pressure having been arrested, charged for this offence or about to be charged, so he becomes confused and mumbles, 'no, I was at Argyle; no, I was at the street bar; no, after that I went to Yankees'. He could have been out of confusion. There are many reasons why accused persons tell lies. For example, he may tell a lie to bolster a true defence or to protect somebody else or to conceal some other distasteful conduct short of the offence for which he is charged. You may well find that in the caution statement Patrick Lovelace may have told lies. That is a matter entirely for you to determine. So I will advise you in the manner in which you treat lies.

"If you do find in the caution statement made by the accused to the police and you are satisfied that he told lies, it is a matter which you treat with some care. A statement made by an accused out of Court -- because this statement -- caution statement, was made out of Court, it was not a statement he made in here. He made the statement under caution to the police officer at the police station. So, a statement made by an accused out of Court whether it is true or false does not prove anything else -- anything unless it constitutes an admission. But in this case this

statement is not an admission. But, a statement shown to be false may in certain circumstances go indirectly to show something, for instance, guilty knowledge. In other words it could be something from which you can draw an inference as to guilty knowledge. I hope you understand that. But you can only draw any such inference if the following requirements are satisfied: 1) you must be satisfied that the statement is false and that the accused knew that it was false, and then 2) it must be a statement relevant to the offence with which the accused is charged, 3) you must take into account the fact that when he made the statement the accused was not on oath, finally 4) you must take into account any reason other than the accused guilt of the offence which there was or may have been for not telling the truth, for instance, to save himself from embarrassment or to protect someone or for any other reason of that kind. So that -- an accused person telling a lies [sic], if you decide he's telling a lie, if you decide that what he said in that statement is a lie, does not entitle you to jump straight to the conclusion that he is guilty. You may draw the inference that by telling lies there is some guilty knowledge on his part. You may draw that inference. But you can only draw that inference if you satisfy these four conditions: that you have sat -- you have to be satisfied that the statement is false, and the accused knew that it was false, it must be a statement relevant to the offence with which the accused is charged.

"Now, in this case that statement was given in relation to investigations pertaining to -- to this murder of Lokeisha Nanton. And you must take into account that when he made the statement the accused was not on oath. Finally -- on oath here is different from caution at the police station. And 4) you must take into account any reason other than the accused guilt of the offence which there was or may have been for not telling the truth, for instance, to save himself from embarrassment or to protect someone or for any other -- other reason of that kind.

"Now, Ladies and Gentlemen of the Jury, if you were to find that the accused lied in the caution statement you are obliged to return to the Prosecution's case and to examine all the evidence lead [sic] by the Prosecution in order to determine whether the Prosecution have proven their case against Lovelace so as to make you feel sure of his guilt. It is for the Prosecution to make you feel sure of his guilt. So having done the exercise in relation to lies if you conclude okay, he lied, put aside the lie -- put that aside, come back to the Prosecution's case and satisfy yourselves from the evidence so that you are sure in your minds before you can say that he is guilty. But because he lied does not entitle you to jump straight into conclusions that he is guilty."

[82] The trial judge failed to draw to the jury's attention that the only material issue that any lies found to be proven would relate to, is the issue of his liming activity, the

persons with whom he was liming, and his presence in Kingstown that night and not Argyle. The trial judge also failed to point out that such lies could not corroborate the testimony of Ramona since she was an accomplice.

[83] The inevitable consequence of the jury accepting the accomplice Ramona's evidence as to how the deceased's murder occurred and the involvement of the appellant, would be their rejection of the appellant's denial in his caution statement that he participated in her murder as described by Ramona. In that regard there would be no Lucas direction required and the general direction on the burden of proof would have sufficed in my view.

[84] Having decided to give a Lucas direction, it behoved the learned trial judge to address all of the safeguards, particularly where the only eyewitness to the murder was an accomplice, and the appellant never admitted lying. This is a material irregularity during the course of the appellant's trial in my humble view. However, I am satisfied that the jury could have convicted the appellant quite properly on the uncorroborated evidence of Ramona had they been appropriately warned about the safeguards previously discussed. In the circumstances there would be no miscarriage of justice. Accordingly, I would apply the proviso, and dismiss the appeal against conviction.

Ola Mae Edwards
Justice of Appeal