SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2010/1100

BETWEEN:

COECILLIA ST. ROMAINE

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Martinus Francois for the Claimant
Raulston Glasgow, Jan Drysdale, Gagina Foster-Lubin for the Defendant

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2011 May 30th
2012 May 30th

Decision

[1] BELLE J: The Virtual Claimant Eugene St. Romaine was arrested by the police on 2nd April 2004 and was charged for the murder of his daughter Verlinda Joseph contrary to Section 178 of the criminal Code of Saint Lucia. Based on the evidence referred to in these proceedings the police relied largely on the expert reports of Forensic Scientists Andrew Lloyd Palmer and Justin Rupert Lewis to support the arrest and charge. The evidence in this application also shows that it took about 2 years 7½ months to record the evidence of the 38 witnesses who were called at the preliminary inquiry. Among these witnesses were a number of experts who were bound over to give evidence at trial including Forensic Scientists Andrew Lloyd Palmer and Justin Rupert Lewis.

[2] The evidence also reveals that part of the reason for the delay was the number of requests for adjournments. This among other administrative logistical factors related to the resources of the court, and circumstances related to availability of personnel and the effects of the pressure of work,

brought about the extended duration of the preliminary enquiry over the period of 2 years 7½ months.

[3] The Virtual Claimant was committed to stand trial on 16th February 2007 by His Worship Andy Daniel in the Second District Court. At the time of writing Eugene St. Romaine has not yet been tried for the murder of Verlinda Joseph.

[4] In light of the delay in bringing the matter to trial the Virtual Claimant filed a claim seeking bail in SLUHCV2008/1233 on 17th December 2008. But according to the Claimant the Court refused to hear his application. This occurred in spite of the fact that the Virtual Claimant's name appeared on a list of persons committed for trial including inmates on remand at the Bordelaise Correctional Facility as of 31st March 2008, for which the committal papers had not been transmitted to the office of the DPP. The memorandum which to which the list was attached urged the Senior Magistrate to take all necessary steps to have the depositions and committal papers prepared and transmitted to the office of the DPP so that the said matters could be disposed of by the court expeditiously.

[5] The Claimant alleges that since no indictment had been filed as of 27th October 2009 the Virtual Claimant filed a constitutional motion in Claim No. SLUHCV 2009/0890 for declarations inter alia for a permanent stay of proceedings and/ or that the charge against the Claimant be dismissed on the ground that the Claimant would not be afforded a fair hearing within a reasonable time as guaranteed to him by virtue of section 8 (1) of the said Constitution.

[6] The Claimant alleges that as a result of the Constitutional Motion which was heard by the Honourable Justice Rosalyn Wilkinson on 17th November 2009 it was agreed that the Virtual Claimant would withdraw the said claim if his case was set down for trial at the Assizes immediately following in January 2010. The learned Judge's order stated: "1. That the Director of Public Prosecutions takes all necessary action forthwith to ensure that suit 516/2004 Inspector Emmanuel Joseph v Eugene St. Romain is set down for trial at the next sitting of the Assizes."

[7] The Claimant's affidavit evidence also included extensive reference to the circumstances of the preliminary inquiry and the alleged causes of the delay in bringing the matter to trial.

[8] The Virtual Claimant in an affidavit filed on 4th April 2011 stated that he sustained a thumb injury with a cutlass. The said injury was not treated and cured by the time he became an inmate at Boredelais Correctional Facility. This thumb injury became infected and the Virtual Claimant had to be examined at the Dennery Hospital. Soon the thumb became a subject of police investigation which apparently led nowhere in terms of any evidence relevant to the murder charge which the Virtual Claimant faces.

[9] The Virtual Claimant also complained that when he became an inmate at the Boredelais Facility he had no history of heart or chest problems. After three years at Boredelais he started experiencing severe heart and chest pains. He complained about this to the unit officer many times requesting to see a doctor and to have an X-ray or examination. The authorities refused to allow him to see a doctor or even a nurse and he is still suffering from the same heart and chest complaint.

[10] The Virtual Claimant also cited a number of applications by the DPP for additional evidence to be adduced. These matters presumably would have to be dealt with at case management in preparation for the Virtual Claimant's trial if not at the trial itself.

[11] Mr. St. Romaine goes on to state that at the end of the preliminary inquiry, cross-examination by him or his legal practitioner was reserved because the deponents had been bound over to attend at the trial at the next sitting of the High Court in the Criminal Jurisdiction to give evidence concerning his trial or otherwise to forfeit to the Crown the sum of twenty four dollars. St. Romaine also said that;

> "*Further I was informed by legal Counsel and verily believe that the said deponents would so attend to be cross-examined with adequate facilities provided to me by the state at its own expense, including Legal Counsel and/ or relevant expert assistance in order properly to conduct my defence and I had a legitimate expectation that such assistance would be provided at the said sitting of the High Court in the Criminal Assizes concerning me."*

[12] The Claimant also cites the court's decision to permit the forensic evidence of overseas based witnesses to be given by video link as a significant development in the case which is unconstitutional and which can only be remedied by those remedies which he prays for in his originating motion and which were also included and expanded upon in his amended Originating Motion filed on June 3rd 2011. These prayers are set out later in the judgment.

[13] It should be noted that one of the Claimant's major concerns is the accuracy of the DNA evidence which the prosecution intends to use against Mr. St. Romaine in the case. This challenge forms the basis of the Claimant's claim for the state to provide the Virtual Claimant with expert assistance. Counsel relied on the Jamaican decision of Pringle v The Queen, Privy Council Appeal No.17 of 2002 in which the Board engaged in an extensive analysis of the court's approach to DNA evidence in criminal cases. In that decision the Privy Council referred to the case of R v Doheny [1997] 1 Cr App R 369 and summed up the contribution of Phillips LJ to the relevant jurisprudence in that decision, in the fowling terms:

> " *As he pointed out at pp 373-374, the cogency of this evidence makes it particularly important that that DNA testing is rigorously conducted so as to obviate risk of contamination in the laboratory and that the method of analysis and the basis of the statistical calculation should be transparent to the defence so far as possible. It is just as important that the true import of the conclusion that results from the exercise is explained to the jury as accurately and fairly as possible, and that the jury are likely to need careful directions about the approach which they should take to this evidence in the summing up."*

[14] The Privy Council also warned against what was referred to as "the prosecutor's fallacy" in R v Doheny and explained that phrase in this way:

> *"Let it be assumed that the evidence about the random occurrence ratio is that one person in 50,000 has a DNA profile which matches that which was obtained from the crime scene. The fact that the defendant has that profile tells us that he is one of perhaps fifty thousand people who share that characteristic. One can then say, having regard to the population of the area, what the statistical probability is that he was the perpetrator. But that is all that can be said about it. The question whether the statistic points to the defendant as the actual perpetrator will depend on what else is known about him. It is plain from the other evidence that he could not have committed the crime because he was elsewhere at the time, the fact that the Defendant's DNA profile matches that on the sample taken from the crime scene cannot be said to show that he did commit it. That proposition would have been negatived by the other evidence. So the probative effect of DNA evidence must depend on the question whether there is some evidence which can demonstrate its significance. And it is for the jury not the person who gives the evidence, to assess the significance in light of that other evidence."*

[15] The theme running through the entire Claim is that the state has breached Eugene St. Romaine constitutional right to a fair hearing, within a reasonable time, by an independent and impartial court established by law. This claim is based largely on alleged delay in bringing the matter to trial, the alleged inequality of arms based on the prosecutions multiplicity of expert witnesses and the step taken to adduce the evidence at trial by video link. The Claimant claims that the Virtual

Claimant would need assistance obtaining the required expert evidence to respond to the prosecution's experts.

The Claimant's Case as set out in Affidavit filed on April 4th 2011

[16] " *I have been informed by Legal Counsel and verily believe that as a result of the matters aforesaid, the provisions of section 3(1) and (5), Section 5 , Section 8(1), 8(2) (a), 8 (10) and (11) (a) and (b) of the said Constitution have been, are being or are likely to be contravened in relation to me and I hereby apply to this Honourable Court for redress in accordance with Section 16 (1) thereof.*

Therefore in all the circumstances of this case, and of my detention, I pray for a DECLARATION for a permanent stay of proceedings and /or that the charge against me be dismissed on the ground that I will not be afforded a fair hearing within a reasonable time as guaranteed to me by virtue of Section 8 (1) of the Saint Lucia Constitution Order 1978.

Further or in the alternative a DECLARATION for a permanent stay of proceedings and /or that the charge against me be dismissed on the ground that in all the circumstances of this case and of my detention the matters complained of are contrary to Section 8 (2) (a) of the Saint Lucia Constitution Order 1978 which guarantees to me the right to be presumed to be innocent until proved or has pleaded guilty.

Further or in the alternative a DECLARATION for a permanent stay of proceedings and /or that the charge against me be dismissed on the ground that the matters hereinbefore complained of are contrary to Section 5 of the Saint Lucia Constitution Order 1978 which guarantees to me the right not to be subject to torture or to inhuman or degrading punishment and other treatment.

A DECLARATION that the orders of the Court to grant leave to have the evidence of the said Justin Rupert Lewis, Forensic Scientist, Andrew Lloyd Palmer , Forensic Scientist, Christine Ann Kimber, Forensic Scientist and Alfred William Martin Forensic Odontologist by video link purportedly in accordance with Section 29 (2) and (5) (b) of the Evidence Act No.2 of 2005 are unconstitutional and unlawful in that they are contrary to my right to be afforded a fair hearing within a reasonable time as guaranteed to me by virtue of section 8(1) of the Saint Lucia Constitution Order 1978 and /or the right to have my trial held in pubic as guaranteed to me by virtue of Section (10) (11) (a) and (b) of the said Constitution.

A DECLARATION that the Order of the Court to grant leave to have evidence of the said Justin Rupert Lewis, Forensic Scientist, Andrew Lloyd Palmer Forensic Scientist ; and Alfred William Martin, Forensic Odontologist by video link purportedly in accordance with Section 29 (2) and (5) (b) of the Evidence Act No. 2 of 2005 are utra vires the Act and unlawful in that they are contrary to the literal interpretation of the said Act.

FURTHER OR IN THE ALTERNATIVE A DECLARATION for a permanent stay of proceedings and/or that the charge against me be dismissed on the ground that the matters complained of are contrary to Section 3(1) and (5) of the Saint Lucia Constitution Order 1978.

A DECLARATION that in all the circumstances of this case and of my detention the matters complained of in this claim are oppressive , arbitrary and unconstitutional and I am entitled to damages , including compensatory, aggravated and exemplary damages to be assessed by this Honourable Court

ANY FURTHER OR OTHER ORDER OR DIRECTION as the Court may deem necessary or proper in order to vindicate the constitutional rights as enshrined and guaranteed to me by virtue of Sections 2 to 15 inclusive of the Saint Lucia Constitution Order 1978

[17] The Claimant argues that in light of the length of the delay the failure to grant bail is and inhuman punishment in breach of his right to be treated as innocent until proven guilty.

[18] Counsel for the Claimant has argued that, in a criminal trial the defendant is innocent until proven guilty. Counsel made reference to the Canadian case R v Harrer [1995] 3 S.C.R.562] in which the court said:

"At base……..a fair trial …..is a trial that appears fair both from the perspective of the accused and the perspective of the community"

[19] The Claimant's counsel Mr. Francois challenged the order of Benjamin J of 27th July 2010 to have evidence of Justin Rupert Lewis, Forensic Scientist: Andrew Lloyd Palmer, Forensic Scientist; Christine Ann Kimber, Forensic Scientist; and Alfred William Martin, Forensic Odontologist taken by video link purportedly in accordance with Section 29 (2) and (5) (b) of the Evidence Act No.2 of 2005. Counsel argued that this decision is ultra vires and unlawful in that it is contrary to the literal interpretation of the said Act. He also argued that the interpretation of the Act to enable vulnerable witnesses other than deaf and mute witnesses to be deemed vulnerable witnesses would be unconstitutional because the effect would be to deprive the Virtual Claimant of a trial in public where witnesses would appear in person to give evidence in court and where if they were held to have committed perjury they could be prosecuted for having committed perjury in the jurisdiction.

[20] It should be stated that the Evidence Act was recently amended but the import of the amendment to this case is to remove the words "VULNERABLE DEAF OR MUTE WITNESSES" occurring in the heading of the Section and substituting the words "Giving Evidence outside the Courtroom" in Section 29 of the Act. But counsel argued that the witnesses mentioned cannot be considered vulnerable witnesses just because of the absence of the witnesses from the Saint Lucia. Counsel

argued that by looking at the heading one could conclude that a vulnerable witness was one who fell in the category of "deaf or mute."

[21] Counsel argued that the DPP would be guilty of misusing the legislation to produce an absurd result. He also argued that the statute should be read as a whole and in that regard it seemed that section 29 which referred to expert reports contemplated that the experts would give oral evidence.

[22] Counsel also relied on the mischief and eiusdem generis rules to argue that the "vulnerable" witness absent from Saint Lucia would be permitted to give evidence by video link, rather than that a witness absent from Saint Lucia being considered a "vulnerable" witness. Counsel was of the view that this interpretation would be in keeping with the rule that Parliament did not intend that the law have this effect on the traditional approach that witnesses should appear in court and give oral evidence.

[23] Counsel sought a declaration that the Order of the Court to grant leave to have the evidence of Justin Rupert Lewis et al given by video link is unconstitutional and unlawful in that it is contrary to the Defendant's right to be afforded a fair hearing as guaranteed to him by virtue of Section 8 –(1) of the Saint Lucia Constitution Order 1878.

[24] Counsel also submitted that this was a case fitting for an Order for a stay of proceedings or for the charge against him to be dismissed on the basis that matters complained of are contrary to section 5 of the Saint Lucia Constitution Order of 1978 which guarantees him the right not to be subjected to torture or to inhuman and degrading punishment and other treatment.

[25] The Claimant next argued that the failure to grant his client bail amounted to inhuman or degrading punishment contrary to Section 5 of the Saint Lucia Constitution Order. This is so he argues because of the lengthy time it has taken to prosecute the case and the appalling circumstances of including the fact that a multitude of experts is lined up to give evidence against him having given evidence at the Preliminary Inquiry the trial is heavily slanted in the prosecution's favour.

[26] Finally the Claimant claimed an entitlement to damages because the matters complained of are oppressive, arbitrary, and unconstitutional. He therefore asked for compensatory and aggravated damages.

[27] Counsel relied on decision of the Caribbean Court of Justice in Gibson v The Attorney General CCJ Appeal No CV1 of 2010 in which that court speaks to the failure of the state to allocate sufficient resources to ensure that prosecutions take place in a reasonable time. The approach taken is one of proportionality where the court weighs the competing interest of the public against those of the defendant. It was also important however to pay some attention to the steps taken by the accused to complain about the delay to bring the matter to trial.

The Delay Argument Refuted

[28] The facts surrounding the Claimant's son's detention and the delays involved are therefore of importance to the outcome of this matter. A number of affidavits were produced to refute the allegations made by the Claimant. The First of these was that of the Senior Magistrate Christine Lorna Phulchere. Mrs Phulchere addressed the issue of delay in the following manner:-

> *"14 . The claimant has also alleged that the right to a fair trial within a reasonable time has been infringed. Although a period of seven years has elapsed since the arrest of the accused the same in not unjustified given the tremendous difficulties faced by the Crown in bringing this matter to a conclusion.*
>
> *15. During the course of the preliminary inquiry of the Claimant a total of 38 witnesses were deposed. As Saint Lucia is an especially litigious jurisdiction it resulted in the matter being part heard as time had to be allocated to hear the numerous witnesses. As a result of the aforesaid it is routine for a magistrate to sit in more than one district in order to enable various courts to sit and hear matters filed before it.*
>
> *16. In addition magistrates hear and rule on all summary matters. At the time Magistrates also conducted all preliminary inquiries, hear and rule on matters of both a civil and criminal nature, hear all complaints or information for the recovery of fines, penalties, or forfeitures, which are not specially assigned by statute for the High Court and also act ex officio corners (coroners).*
>
> *17. The voluminous number of matters which a magistrate has to deal with sometimes leads to delays in dealing with matters.*
>
> *18. Magistrates also have the additional function of ensuring that notes taken as part of a preliminary inquiry are accurately reflected. This is essential as in many courts notes are still taken by hand and the assistance of the magistrate in clarifying inter alia undecipherable words is of essence. I have been advised by Magistrate Daniel and verily believe that this situation existed in this matter. Magistrate Daniel advises and I continue to believe that because of the length of the case that the proof reading of the matter took some time.*

19. In addition to the above it is significant that during the period of the preliminary inquiry the magistracy suffered with a number of magistrates leaving the employment. So acute was the problem that for a period of time lawyers had to be recruited to sit as magistrates in order to allow the system of justice to function.

20. In addition to the aforesaid reasons, the second district court due to administrative shortages was forced to refer all preliminary inquiries and other matters to Castries for transcribing."

[29] A much more extensive description of the progress of the matter was provided by Director of Public Prosecutions, Mrs Victoria Charles Clarke. She deposed to have personal knowledge of the prosecution of Eugene St. Romain's matter. Her description is as follows:

"5. The preliminary inquiry into the criminal case against the accused commenced before His Worship Robert Innocent on 30th June and continued on 14th July 2004. On these 2 occasions the learned Magistrate took the evidence of Crown witnesses.

6. Throughout the period 15th September 2004 to 15th September 2006 the Second District Court sat on 15 separate occasions to take the evidence of the Crown's remaining 32 witnesses. During that time I can recall that the preliminary inquiry continued before his worship Magistrate Harold Gale prior to concluding before His Worship Andy Daniel.

On the completion of the preliminary inquiry I specifically applied to the have the depositions of all previous witnesses read over to the accused as was required by the provisions of Article (1) and (2) of the Code. Although not disclosed in the depositions, counsel for the Accused (Mr. Kenneth Foster Q.C.) on that occasion dispensed with the above legal requirement.

8. The preliminary inquiry into the criminal charge against the accused spanned the period 30th June 2004 until 16th February 2007 (approximately 2 years 7 ½ months) and the evidence of 38 Crown Witnesses was taken by the court. The length of time of the preliminary inquiry was not only contributed to by the number of witnesses but also by the fact that a significant number of experts lived abroad were required to give evidence in the matter.

15. Furthermore the grant of adjournment from time to time at the defence counsel's (Mr Kenneth Foster QC) request further contributed to the delay in completing the preliminary inquiry. Although two defence counsel' s requests for adjournments were elicited through written requests to the court, a number of further adjournments were granted through oral representations by him. I refer to medical leave letter relating to Mr. Kenneth Foster QC from Dr. Christie Daniel dated 7th march 2005 and the written request for adjournment from the Chambers of Foster and Foster dated 16th March 2005 produced and shown to me and marked "VCC4" respectively"

[30] The DPP outlined a major problem with the transcripts from the Magistrate's Court which was due to inaccuracy. After some consulting with the Magistrate, these discrepancies were fixed. But the

period of time taken to resolve these matters was approximately 9 months, from March 2009 to 29 December 2009 when an indictment was filed.

[31] After being set down for hearing in the High Court on 11th January 2010 the matter was adjourned to March 1st 2010. On March 1st 2010 the accused St Romaine was scheduled to be arraigned but counsel for the accused was not present and the matter was adjourned to 4th March 2010.

[32] The DPP continued;

> *"On 4th March 2010 Martinus Francois appeared and indicated to the Court that he did not represent the accused in the criminal matter. The Attorney explained that he only represented the accused in a constitutional matter which had previously been filed in the civil courts. The said matter I am instructed by Crown Counsel Jan Drysdale and verily believe was set down for hearing on 17th November 2009 however on the said date counsel for the Claimant indicated that he wanted to withdraw the matter. It was ordered that the 'DPP take all necessary action to forthwith ensure that suit No: 516/2004 Inspector Emmanuel Joseph v Eugene St. Romain is set down for trial at the next sitting of the Assizes immediately following this order'. Thereafter the (constitutional) matter was dismissed.*
>
> *Mr. Francois went on to further explain that he believed that the attorney for the accused was Kenneth Foster. The accused when questioned by the Court agreed that Kenneth Foster was his attorney.*
>
> *Thereafter the Court instructed that the accused speak with Mr. Foster about the matter. The accused was also instructed that if he required a new attorney he should inform the court in order that one could be appointed to represent him in these proceedings. The matter was then adjourned to 15th March 2010.*
>
> *On 15th March 2010 Marcus Peter Foster appeared before the court and held papers for Mr. Kenneth Foster QC. The accused was arraigned and pleaded not guilty to the charges. The matter was then adjourned to 29th March for fixing a date for trial.*
>
> *On 14th April 2010 both Marcus Peter Foster and Kenneth Foster appeared for the accused. At the time I indicated that the state was ready to proceed and suggested the month of May 2010 as I had been able to confirm with all the witnesses the prosecution intended to call that that time was convenient. However Marcus Peter Foster counsel for the accused indicated that the month of May was not convenient and the matter was adjourned to 10th June for report."*

[33] The DPP went on to outline the basis for the decision to make an application to obtain the evidence of overseas based witnesses by video link. The process involved a number of adjournments with Mr. St. Romain's attorneys failing to appear and a new attorney Mr. Martinus Francois being

appointed to represent him in the criminal matter. This situation was reported by the DPP as follows:

> *"On 22nd July 2010 only the accused appeared before the Court. Neither counsel for the accused was present and the Court proceeded with the hearing of the application. Thereafter the Court reserved judgment until 27th July 2010.*
>
> *On 27th July 2010 once again the accused without the attorneys appeared before the Court. The application was granted and the matter was adjourned to 29th September 2010.*
>
> *On 29th September 2010 the accused without his attorneys appeared before the Court. However Martinus Francois was present and addressed the Court.*
>
> *The Court then appointed Martinus Francois as counsel for the accused and adjourned the matter to 21st October 2010 to inter alia facilitate Mr. Francois acquainting himself with the matter and to give Mr. Francois time to make any applications if he so desired were necessary.*
>
> *I state that prior to the appointment of Mr Francois as counsel for the accused, counsel Kenneth Foster and Marcus Peter Foster were not appointed by the Court to act for the accused but were in fact retained by the accused.*
>
> *I deny the assertions that delays in this matter were principally due to the prosecution requesting more time to contact expert witnesses. At the time when the application to have the expert testimony taken by video was granted the prosecution was seized with the information of when it would be convenient for the same to occur.*
>
> *On 21st October 2010 counsel for the accused did not make any applications and the matter was fixed for trial for 24th January 2011.*
>
> *On 24th January 2011 counsel for the accused sought a further adjournment on the ground that he had filed a constitutional motion which was set for hearing on the 27th day of January 2011. The criminal matter was adjourned to facilitate the hearing of the outcome of this matter.*
>
> *I state that at least 7 appearances before the court has to be adjourned at the behest of counsel for the accused which delayed the matter being fixed for trial.*
>
> *I state that at all material times the State in April 2010 had indicated its readiness to proceed to trial but once again actions of counsel for the accused further delayed the hearing of this matter.*
>
> *In relation to the accused request for the State to pay for and make accommodation to meet the travel request of certain experts I state that the accused did not at any time during these proceedings indicate this to the court or to me."*

[34] I accept the evidence of Chief Magistrate Phulchere and the Director of Public Prosecutions as true representations of the circumstances leading to the delays in this matter. It is therefore clear that

based on the known legal principles relating to the delay of trial that the Claimant will not succeed in a constitutional motion to prove that there was unreasonable delay caused by the state in bringing this matter to trial.

[35] The evidence shows that the Defence counsel requested a number of adjournments and actually withdrew from the case and caused present counsel to be appointed by the court. Thereafter counsel filed a constitutional motion which brought about the present phase of delay in proceeding with the trial.

[36] It is also clear from the evidence that the delay in this matter was due partly to the number of witnesses and the fact that several of them are experts from overseas. Consequently the attempt to have the witnesses give their evidence by video conferencing may be seen an effort to reduce the possibility of further delay in bringing the matter to trial.

[37] The evidence also shows that the decision to adduce evidence by video link was done in the absence of the accused counsel who were absent from the court at the time without proper excuse. In the circumstances the court's right to make the order cannot in my view be impugned.

[38] It is important to state however that the excuse given in the affidavits above that the Magistrates are assigned many different matters is not one which would provide a viable defence to the issue of delay. It is for the state to provide the necessary resources to ensure that trials are not delayed unduly. Where the state fails to do so, unreasonable delay cannot be justified.

[39] A more important aspect of the response to the allegation of delay arises from defence counsel's requests for adjournments and absences from court. Also the fact that the original lawyers who were retained by the Virtual Claimant eventually withdrew from the case does not support the Virtual Claimant's case for delay. The subsequent constitutional motions would not count either way in my view. But the delay would have been compounded by the institution of these proceedings.

[40] It is also notable that the Complainant never objected to the trial on the basis of delay until the 2009 Constitutional Motion which was subsequently withdrawn.

Counsel for the crown cited the decision in Mungroo v R (1992) LRC 591 where the Privy Council held in relation to S.10 of the Constitution of Mauritius; the equivalent of Saint Lucia's Section 8.

"While the right contained in s. 10 of the Constitution of Mauritius (Saint Lucia's section 8.) injected a need for urgency and efficiency into the prosecution of offenders and demanded the provision of adequate resources for the administration of justice, the court in considering whether delay amounted to an infringement of s. 10 must have regard to the reasons for and the consequences of the delay and the context of the prevailing economic, social and cultural conditions and system of legal administration."

[41] Saint Lucia's Section 8 reads:

"8(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

[42] Counsel for the Claimant also made much of the meaning of right to a fair trial within a reasonable time including Bolell v The State [2006] UKPC 46 and Darmalingum v The State [2000] 1 WLR 2303 inter alia but in light of my finding that based on the facts of this case the delay cannot be attributed solely to the actions of the State. I do not think these cases take us any further than those cited below.

[43] When weighed against the interest of justice, it can be said that the delay in this case is not sufficient to condemn the proceedings to a stay or dismissal on the ground that the Claimant/ Virtual Claimant's constitutional rights pursuant to Section 8 (1) of the Constitution of Saint Lucia to a fair trial in a reasonable time have been breached.

The Law

[44] It is my view that in light of the authorities cited including Barker v Wingo [1972] US 514, Gibson v The Attorney General CCJ Appeal No. CV1 of 2010, Bell v The Director of Public Prosecutions and another [1985] 32 W.I.R, 317 R v Flowers [2000] WLR 2396, Shaman Rosemond v The Attorney General Claim No. SLUHCV 2003/0985 in relation to the relevant constitutional provisions referred to in aid of the Claimant's claims for relief, and the statutory provisions in particular the Evidence Act 2002 (as amended) I arrive at the conclusions below following some discussion of the law and facts of the case.

The Video Link Decision

[45] Counsel questioned the effect of Section 29 of the Evidence Act which was the legally facilitated the video link order. I do not agree with counsel's view of the impact of the rules of construction on

the legislation. Section 29 does place a person who is outside of the jurisdiction in the category of "vulnerable witness." However I do have the view that the defence should have had an opportunity to argue the point of the availability of the witnesses i.e. whether they were indeed "vulnerable" and the very fact that taking the evidence by video link places the matter of "equality of arms" of the parties squarely on the table.

[46] In my view however before looking at the equality of arms issue I think one has to consider whether the "vulnerable" witness defined in accordance with the amended Evidence Act could have been intended to refer to any witness whom the prosecution chooses not to bring to court because he or she is overseas. In this case an approach which is based solely on the prosecution's choice is dubious when it is considered that these witnesses were bound over at the Preliminary Inquiry to give evidence in the High Court. Based on this alone the legitimate expectation of the accused/ Virtual Claimant would have been that these witnesses would have attended court pursuant to being bound over to appear. Why would they be considered vulnerable if they were bound over to give evidence at trial?

[47] In my view the court having declared these witnesses " vulnerable" should also have recognised that these "vulnerable" witnesses were experts who would probably be cross-examined at length and that the facility for doing so on a video link would require extensive guidelines to be set in Saint Lucia and abroad. Indeed it was essential that the evidence would be clearly understood and that the court would not be hindered in describing its true significance to the jury. See Pringle referred to above.

[48] From a constitutional point of view the important issue in relation to any reading of the Evidence Act with regard to the definition of the "vulnerable" witness is the impact that a declaration that such a witness is "vulnerable" would have on the trial. It is instructive that section 29 of the Act makes a distinction between those vulnerable witnesses who "shall" (subsection (1)) be taken to be a vulnerable witness, and whose evidence must be taken subject to certain specified conditions and those who the Court "may" (subsection (2))on the application of a party or a witness or on the judge's own initiative, direct, is to give evidence in a manner described in subsection (5). It is inconceivable that the provision could be interpreted as being mandatory simply because a witness is absent from the jurisdiction.

[49] I therefore believe that the decision to take the expert evidence by video link could provide an overwhelming advantage to the prosecution in having these witnesses give their evidence in an environment which would not be subjected to the full clinical control of the court and in circumstances where their demeanour may not have be clearly visible especially when under cross examination.

[50] These circumstances in my view would give rise to the need to give supplemental orders which alleviate the imbalance by regulating the process of taking video link evidence in a manner which is as transparent as the circumstances permit.

[51] The court would also need to consider whether it would be prudent to order the state to appoint separate experts to represent the accused. Failure to attend to these matters in the circumstances of everything which has occurred in this case would have rendered the trial unfair pursuant to Section 8 of the Constitution of Saint Lucia.

[52] Section 8 (10) of the Constitution of Saint Lucia states:

> *"Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority , including the announcement of the decision of the court or other authority shall be held in public."*

[53] Section 8(11) provides the exceptions to this general rule which in the case of the Virtual Claimant would in subsection (11) (b) of Section 8 would be such thing as the court or other authority may by law be empowered or required to do in the interests of defence, public safety or public order. The court has no evidence that the expert witnesses circumstances fall into this category.

[54] However In opposition to counsel's contention on the matter of section 29 of the Evidence Act counsel for the Defendant argued that the Claimant should be prohibited from seeking constitutional relief on this ground because an appeal was available to him against the order of Benjamin J. I agree that an appeal would have been appropriate in relation to the decision to take the expert evidence by video link.

[55] However in this case it is very important to follow the sequence of events. There was an order that the matter would proceed to trial with all of the witnesses being heard in the normal way. It is only after further adjournments that the application to adduce evidence by way of video link was

introduced. Nevertheless the complaints against the order could have been raised on appeal against the said order.

[56] The problem that arises as a result of the failure to appeal is that the case appears destined to be unfairly stacked against the Virtual Claimant. But in this case the Claimant's counsel is to blame for not apposing the application and one cannot acquiesce in a state of affairs and then later be heard to say that it was unfair. I would therefore dismiss this application for Constitutional relief against the order to take the evidence by video link and to quash the decision as being ultra vires the Evidence Act.

General Discussion of the Legal Issues

[57] For further guidance I find it instructive to rely on the authority of Gibson v The Attorney General CCJ Appeal No. CV1 of 2010 because that decision encapsulates and discusses a number of the principles relevant to this case. In Gibson the Learned Justices of the CCJ had the opportunity to examine the meaning of Section 18 of the Barbados Constitution which equates with section 8 of the Saint Lucia Constitution.

The Right to a fair trial and the equality of arms

[58] Gibson was a case primarily about delay in commencing the trial of an accused person in a criminal case. But the court also had to consider the obligation of the state to provide an expert witness. The court of Appeal had recognized that Gibson had made out a case for such an expert but there was no constitutional provision for payment for an expert.

[59] The CCJ held: *"Since nothing in Section 18(2) is intended to derogate from the right to a fair hearing guaranteed by section 18 (1) (See Hinds v The Attorney General of Barbados [2001] 59 WIR 75 at (7)) Gibson's claim to have the services of a forensic odontologist and his complaint about inequality of arms are better assessed in the context of his right to a fair trial. Where the inequality of arms is so serious and the accused so handicapped that the mere inequality is likely to have a significant impact on the outcome of the trial , the accused in entitled then to argue that his fundamental right to a fair trial contained in section 18 (1) is being infringed. In the circumstances of his case it was open to Gibson to demonstrate that without the services of a forensic odontologist his pending trial would not be fair. Since the Constitution permits him to*

complain of threatened infringements of his fundamental rights, he was not obliged to wait and make his allegation at the trial. In a case like this one, the complaint should ideally be made as soon as possible by way of a constitutional application brought in a timely manner."

[60] It is therefore clear, based on the authorities that the Virtual Claimant did not have to wait until the evidence was led by video link to object or until the end of the trial to appeal because in their view the trial was rendered unfair because of the inequality of arms.

The substance of the ratio decided in Gibson was as follows:

Delay

[61] One of the Claimant's main complaints is against the delay of 7 ½ years taken to bring the matter to trial. But there are many issues to be considered before the court will act on the complaint of delay to find that there is a breach of a constitutional right to a fair trial in a reasonable time. In Gibson the court stated the following:

> *"The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system. Further, the more time it takes to bring a case to trial the more difficult it may be to convict a guilty person. For a variety of reasons witnesses may become unavailable or their memories may fade, sometimes seriously weakening the case of the prosecution which carries the burden of proof. Defendants released on bail for lengthy periods have an opportunity to commit other crimes if they are so disposed. The longer an accused is free awaiting trial, the more tempting becomes the opportunity to skip bail and avoid being tried. On the other hand, keeping remanded persons in custody for excessive periods increases prison populations and aggravates the evils associated with overcrowded jails. Moreover, there is a financial cost to the public in maintaining a person on remand.*
>
> *[41] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life. By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution*

ascribed a significance to this right that too often is underappreciated, if not misunderstood.

[42] To be fair, inordinate delays are not unique to the State of Barbados. They are prevalent in other Caribbean States as well. But this provides no justification for countenancing delay. Some States have actually made assiduous efforts to address the problem. The authorities in Saint Lucia, for example, have embarked upon such a course. It has involved the overhaul of the entire criminal justice system harnessing in the process the efforts of all the important sectors that have roles to pay in it whether from the Executive, Legislative or Judiciary. From all accounts it would appear that the measures taken, which seemed not to have required enormous expenditure, are yielding some measures of success.

[43] But we feel in duty bound to draw to the attention of the relevant authorities the urgent need to address it in a thorough and comprehensive manner if it is not already being so addressed. As the apex court responsible for interpreting and applying the rights set out in the Barbados Constitution, this Court cannot remain oblivious of well-founded concerns that breaches of the right to trial within a reasonable time are systemic in nature. If on the other hand it is apparent that prompt measures are being taken to address this problem in a decisive manner then a court is likely to take cognizance of such measure when it has to assess the reasonableness of lapses of time or the remedies that should be applied.

[44] For every accused person whose charge has not been withdrawn the State is obliged to afford a hearing that is: (a) fair; (b) before an independent and impartial tribunal established by law, and (c) held within a reasonable time."

[62] The circumstances of the delay in this case have been outlined above. Part of the delay was caused by the lack of adequate resources in the court system. But some delays were caused by defence counsel who were often absent and requesting adjournments. Indeed when the prosecution was ready for trial in 2010 the defence was not and this caused further delay. The delay therefore cannot be ascribed totally to the failing of the state. In these circumstances as earlier stated, the court will not find that there should be any draconian remedy imposed in favour of the Claimant.

Redress for breach of the right to a fair trial

[63] The CCJ in Gibson spent time analysing the right to a fair trial and the varied forms of redress in response to a trial which is not fair:

[45] "Thus, if a trial is not likely to be or has not been fair, then, as stated earlier, the breach vitiates the trial process. Similarly, a court will not sanction a trial before a tribunal whose characteristics threaten to or actually fall short of basic

requirements of independence and impartiality. Redress for an infringement of either of these rights cannot be limited by any overriding public interest in part because, unless the charge is altogether withdrawn or dismissed, it will normally be possible to convene a new trial on conditions that are fair or to hold one before a proper tribunal as the case may be. It is possible, so to speak, to re-set the clock so as to grant the accused the full measure of the right in question."

[64] When one considers that this is a case which relies heavily on DNA evidence, secondly that there are multiple experts, thirdly that because of the delay ,in which both the state and the Virtual Claimant must share the blame and finally that the state now wishes that the expert evidence should be given by video link, I do not think it is stretching the constitutional provision of the right to a fair trial to find that the Virtual Claimant's trial cannot be fair unless some steps are taken to redress the obvious imbalances which have come about as a result of both prosecutorial and judicial decisions over which the Virtual Claimant had no control.

Redress for breach of reasonable time guarantee

[65] The CCJ states in Gibson:

"*This is not the case when the reasonable time guarantee has been breached. Once there has been excessive delay in trying an accused, a court may issue orders aimed at expediting the trial or provide some form of relief to the accused but there is nothing that the court can do to remedy the breach that has occurred in a way that will undo the past delay and its effects on the accused and the society. It is not possible to wipe the slate clean and revert to the status quo ante."*

[47] This is not possible in the case of the reasonable time guarantee as one cannot turn the clock back. Secondly, while breach of the other two guarantees automatically vitiates the trial, the Constitution itself clearly suggests that breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.

[48] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. One must not lose sight of the fact, however, that it is the responsibility of the State to bring

an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee."

[66] The CCJ asked:

The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee? The CCJ continued as follows:

[50] *"In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the Executive Branch of Government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A government failure to allocate adequate resources, or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee.*

[51] When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach. In particular the court should pay special attention to the steps, if any, taken by the accused to complain about the delay since, as was pointed out by Powell J of the US Supreme Court in Barker v Wingo*, delay is not an uncommon defence tactic.*

[52] A permanent stay or dismissal of the charge cannot be regarded as the inevitable or even the normal remedy for cases of unreasonable delay where a fair trial is still possible. Quite apart from prejudicing the operation of section 13(3), to so hold, as some other jurisdictions have done, would create too great a risk of unnecessarily placing trial courts in the uncomfortable position of having to choose between equally undesirable alternatives, namely: to permit a possibly dangerous criminal to avoid being tried or else to raise to an unacceptably high level the threshold for deeming unreasonable obviously inordinate delay. Having an inevitable permanent stay or dismissal of the charge as the single sanction for breach of the reasonable time guarantee may well reward the guilty, who escape being brought to justice, even as it does little or nothing for the innocent who cannot regain the time they have lost suffering under a cloud of suspicion or worse, being remanded in custody. We accept the view of the Inter-American Court of Human Rights that "the State's duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time." The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges. The guarantee is an

incentive to the state to provide a criminal justice system where trials are heard in a timely manner.

[53] But equally, we do not agree that a mere breach of the reasonable time guarantee could never yield a permanent stay or dismissal of the charge and that instead such relief should be reserved only for instances where the trial will be unfair or the accused can show prejudice. As previously indicated at section 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate. Given the high level of public interest in the determination of very serious crimes, however, it will only be in exceptional circumstances that a person accused of such a crime will be able to obtain the remedy of a permanent stay or dismissal for the breach only of the reasonable time guarantee. Of course, such a remedy will be readily granted in cases where the delay has rendered it impossible to hold a fair trial."

Release on Bail as possible redress

[67] The Claimant says that the Virtual Claimant attempted to apply for bail but the application was not entertained by the trial judge. The CCJ in Gibson suggested that release could be the appropriate remedy.

[54] *"If the accused is in custody then the court must have regard to section 13(3) of the Constitution which requires the release on bail of the accused. If at the trial there is a conviction then the trial judge should always consider a reduction in the severity of the sentence in light of the delay. In this context the question may arise as to whether the severity of a mandatory sentence can be reduced on this ground but this is a matter that is far too important for us to comment upon without receiving specific submissions on it from counsel.*

[55] Gibson was released on bail by Blackman J, either on the date the judge gave his judgment on 2nd February 2007 or some time very shortly thereafter. But at the date of the hearing before this Court he was back in custody in relation to the murder charge because on 5th November 2007 he committed burglary and theft while on bail.

[56] Instead, we held that at this stage the appropriate relief was to: uphold the finding that there had been a breach of Gibson's right to a hearing within a reasonable time; alter the conditions for his release by granting him bail with a surety in the sum of $10,000.00 on the condition that he report twice weekly on Mondays and Fridays at the police station closest to his residence and by ordering further that any passport or travel document now in his possession or issued to him be deposited and retained by the Commissioner of Police pending completion of his trial or the dismissal of the charge against him; stay temporarily the criminal

proceedings and issue the additional orders alluded to at above so as to ensure either that a fair trial is held as soon as possible or else an opportunity be provided for arguments to be made to us as to whether the stay ought to be removed or be made permanent."

Award of damages

[68] The Claimant claimed damages in this case. The CCJ examined the appropriateness of awarding damages for delay and breach of the guarantee of a fair trial.

> [57] "As to the issue of the propriety of an award of damages which was specifically raised in this case, we disagree with the court below that such an award could have been warranted if Gibson had established proof of damage or if he had been unlawfully detained or abused. Depending on the circumstances an award of damages may be an appropriate remedy for breach of any of the fundamental rights including a breach of the right to be tried within a reasonable time. It would, however, be repugnant to the public conscience that such an award should be afforded to an accused for the breach of that latter right when there is still possibility that the accused may be tried and convicted for the offence with which he has been charged. An award of damages for breach of the reasonable time guarantee should be considered as an appropriate remedy only where the accused will no longer be tried or has been tried and acquitted or where his conviction has been quashed. And even in those cases the making of such an award should be regarded as automatic but would depend on the particular circumstances of each case. It would therefore be inappropriate now to make any award of damages for this breach."

Remedy for poor medical treatment in prison and failure to grant bail

[69] The Virtual Claimant's allegation of the failure of prison authorities to properly treat his alleged chest and heart pain is not sufficient ground to stay the prosecution or quash the indictment in this matter as being oppressive. There are avenues for complaining about ill-treatment in prison. In my view the right to a remedy against the severity of the injury or neglect in prison would have to be weighed against the importance of putting the remanded man on trial in a healthy state,

[70] I have not been persuaded that the apparent neglect of the Virtual Claimant's health or failure to grant bail are sufficient to establish a breach of a constitutional guarantee that no person shall be subjected to torture or to inhuman or degrading punishment or treatment. There is no evidence of a deliberate neglect of the Virtual Claimant to the detriment of his health. The evidence does not establish that this treatment was a matter of policy or a deliberate attempt to inflict harm. In this respect I rely on the decision of the Court of Appeal in Harding v The Superintendent of Prisons

and the Attorney General, Civil Appeal 13 of 2000 and the discussion of Sing JA of the concepts relevant to section 5 of the Constitution of Saint Lucia. I do not see how the dicta in Queen v Hughes (Privy Counsel Appeal No. 29 of 2009) can assist the Claimant in this case in relation to inhuman and degrading punishment.

[71] It would be wrong to hold such an episode of neglect to require a dismissal or stay of the Virtual Claimant's trial or damages. Such remedies would not be proportionate to the need to try the Virtual Claimant for a serious crime and to see to it that he was not able to avoid trial by fleeing. This part of the claim must therefore fail. In this respect I follow both the Harding decision and the Gibson decision.

[72] I must state at this point that although I have identified some aspects of the Virtual Claimant's situation as possibly rendering his trial unfair, I am of the view that this court can make orders to ensure that his trial will not necessarily be unfair. I am also of the view that by way of further case management certain steps could be taken to inject greater transparency and balance into the process. The Constitution permits this kind of remedy in Section 16(2).

[73] It must be noted that in the discussion of the facts and the law I have held that the circumstances as they stand would render the trial unfair because of the overwhelming superiority of the prosecution's case in relation to forensic experts where they were bound over to give evidence at trial and where the reason given for seeking the video link order was that it had become too difficult to bring all of the witnesses for a specific trial date because of adjournments of previous agreed trail dates for which the witnesses had agreed to attend. While the video link Order cannot be reversed by this Court, steps can be taken to ensure that the said Order does not render the trial unfair.

[74] It is also instructive that a number of these witnesses appear to provide no useful evidence against the Virtual Claimant. The cost and convenience involved in bringing them is therefore totally the prerogative of the DPP's office. These issues in my view render the decision to permit them all to have evidence adduced by video link somewhat dubious based on the scheme of the Evidence Act.

[75] I therefore hold the view that based on the facts of this case the appointment of a forensic expert to assist the defence should not be overly onerous on the state to ensure that there is some balance on the handling of the forensic evidence for the purpose of clarity on these matters of DNA.

[76] I am also of the view that although there should be no punitive decision taken in relation to the delay in this case, the delay has resulted in an accused person spending some 8 years in prison without trial. In my view this is undue delay and in breach of the provisions of Section 8 of the Constitution. The Virtual Claimant is not responsible for all of the delay, he should therefore not be required to suffer the loss of his liberty beyond the point which was envisaged that his matter would have gone to trial in 2010. The Virtual Claimant should therefore be granted bail.

[77] In the circumstances I make the following orders:

1. The prayer for a Declaration for a permanent stay of proceedings and that the charge against the Virtual Claimant Eugene St Romaine be dismissed on the ground that he will not be afforded a fair hearing within a reasonable time as guaranteed by virtue of Section 8 –(1) of the Saint Lucia Constitution Order is denied.

2. The prayer for a Declaration in the alternative for a permanent stay of proceedings and /or that the charge against him be dismissed on the ground that in all the circumstances of this case and of his detention the matters complained of are contrary to Section 8 –(2) (a) of the Saint Lucia Constitution Order 1978 which guarantees the right to be presumed to be innocent until proved guilty is denied

3. The prayer in the alternative for a Declaration for a permanent stay of proceedings and /or that the charge against him be dismissed on the ground that the matters hereinbefore complained of are contrary to Section 5 of the Saint Lucia Constitution Order 1978 which guarantees the right not to subjected to torture or to inhuman or degrading punishment and other treatment is denied.

4. I hold that the Order of the Court to grant leave to have evidence of the said Justin Rupert Lewis, Forensic Scientist; Andrew Lloyd Palmer, Forensic Scientist; Christine Ann Kimber, Forensic Scientist; and Alfred Martin Foreign Odontologist by video link in accordance with section 29 (2) and 5 (8) of the Evidence Act No.2 of 2005 is voidable in that it is contrary to the

Virtual Claimant's right to be afforded a fair hearing within a reasonable time as guaranteed to him by virtue of Section 8- (1) of the Constitution of Saint Lucia and his right to have his trial held in public as guaranteed by virtue of Section 8 (10) (11) (a) and (b) of the said constitution. However the Claimant should have appealed against the order and the matter therefore should not have been brought at this time for constitutional redress and the prayer to quash the decision is therefore denied.

5. The prayer for a Declaration that the orders of the Court to grant leave to have evidence of Justin Rupert Lewis, Forensic Scientist; Andrew Lloyd Palmer, Forensic Scientist; Christine Ann Kimber, Forensic Scientist; and Alfred William Martin, Forensic Odontologist by video link purportedly in accordance with Section 29 (2) AND (5) of the Evidence Act No.2 of 2005 are ultra vires the Act and unlawful in that they are contrary to the literal interpretation of the said act is denied.

6. The prayer for a Declaration in the alternative for a permanent stay of proceedings and /or that the charge against the Virtual Claimant be dismissed on the ground that matters complained of are contrary to Section 3 (1) and (5) of the Saint Lucia Constitution Order 1978 is denied.

7. The prayer for a Declaration that in all the circumstances of this case and of his detention the matters complained of in the Claim are oppressive, arbitrary and unconstitutional and he is entitled to damages, including compensatory, aggravated and exemplary damages to be assessed by the Honourable court is denied; save and except for the circumstances set out above in paragraph 4 of this order in which I have declared the order to hear expert evidence by video link voidable. However the situation as it stands renders the trial imbalanced against the Virtual Claimant. I think that an appropriate form of redress would be that the Virtual Claimant be granted the services one forensic DNA expert at the expense of the state in terms to be determined by the Criminal Division and I so order.

8. I also order that the Virtual Claimant be granted Bail in the sum of $60,000.00 with two sureties who are able to produce property or proof that they would be able to pay such a sum should the Virtual Claimant fail to appear for trial and that the Virtual Claimant not interfere with prosecution witnesses and report to the police station nearest to his residence, which residence would have to be satisfactory to the prosecution , three times per week namely each

Monday Wednesday and Friday, and finally that the Virtual Claimant surrender all travel documents to the Registrar of the High Court forthwith.

9. The matter is therefore referred to the Criminal Division of the Court for the necessary case management in preparation for trial.

10. There will be no order as to costs

Francis H V Belle
High Court Judge