

SAINT LUCIA

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. SLUCRD2025/1321

BETWEEN:

THE KING

AND

JAMES BRETNEY

Defendant

Before: The Hon. Justice Richard D. Schneider

Appearances:

Ms. Kelly Thomson Counsel for the Crown

Mr. Lorme Theophilus Counsel for the Defendant

The Defendant present in Court

Heard 2026: April 20,21,22,23,30; May 05th.
Decision 2026: May 19th

JUDGEMENT

- [1] **SCHNEIDER, J:** James Bretney stands charged that on Sunday the 30th day of August 2015, about 4:00am, at Reduit Beach in Rodney Bay, situate in the quarter of Gros-Islet and within the First Judicial District of this State, intending to cause grievous bodily injury, did cause the death of Sophia Delia Charles-Didier contrary to section 85(b) of the Criminal Code, Cap. 3.01 of the Revised Laws of Saint Lucia, 2013.

Theory of the Crown

- [2] The theory of the Crown, in brief, is that the accused, after spending several hours drinking with friends at various locations, arrived at the residence of his friend, Kenny Albert, driving a borrowed car belonging to Stephen Alexander. When he

arrived at about 3:30am he was given some food and a beer by Alexander. He met Sophia Didier, who was already there, and after ½ hour, or so, of talking and laughing said that he was going to leave. Alexander asked Mr. Bretney if he could give Sophia a ride home. Mr. Bretney agreed. From there, it is alleged, that Mr. Bretney drove to Reduit Beach where he had sex with Ms. Didier for about ½ an hour (on the beach). He was 'loving her up'....kissing her. Then the two, holding hands, entered the water. The Crown's theory is that at that point Mr. Bretney intentionally inflicted grievous bodily harm upon Ms. Didier that caused her death. Mr. Bretney then left the water without Ms. Didier and drove away. He returned a short time later and threw some items (not known) into the water.

The Evidence

- [3] The Crown called 10 witnesses. A review of the salient portions of the witness's testimony is set out along the timeline of the allegations rather than the order in which the evidence was called.
- [4] Stephen Alexander is 65 years old and is not employed. He lives alone. He owns a Suzuki, Pajero, pickup. It is blue and silver. He has known James Bretney for a number of years. On Saturday, August 29th, 2015, at about 1:30pm, he met Mr. Bretney at a bar by the police station. James Bretney and Lee were at the bar. "He asked me if I'd give him a ride to Castries. I said ok". Mr. Bretney was in the car with me, Lee, and Markus. We got there too early to meet with the mother of my child, so we decided to go to another bar and hang out. I had another drink and went to meet my child's mother at the bank. We stayed for another ½ hour and then left for home. We went to Mr. Bretney's shop and had another drink. "I can't understand myself. I dozed off". I asked Mr. Bretney to drive me home. Mr. Bretney said 'ok' and drove us home. I don't remember anything after that.... "sleep took me". Mr. Bretney was wearing a white T-shirt. He is a short guy... 5'3" ...5'4". He is a stocky fellow with short hair. No one else drove my truck. I didn't notice anything unusual about the truck. I didn't go to the beach.
- [5] I woke up at 1:00am and noticed that my jeep wasn't there. Then, I woke up a second time at 3:30 am and 5 minutes later I noticed the sound of a vehicle coming toward my home. It was my jeep. I don't know who was driving my jeep but they were not wearing a white T-shirt. I went back to bed. I next woke up at 8:00am. I went to the bar at 8:45 and saw Mr. Bretney come into the bar. He had a drink. "I asked him was it he driving my vehicle?" I don't remember if he had my vehicle. He said "yes". "But, I asked you to park my vehicle at my house and take a bus home". I asked Mr. Bretney for the keys. He said that he forgot them at home. I said "...let's go at my home to get another vehicle to get the keys." Walking back to my home a

friend of mine said your house is surrounded by the police. We walked past my house with Mr. Bretney to Lee's. Two hours later the police came to my shop. The police took Mr. Bretney.

- [6] Mr. Kenny Albert is a 67-year-old truck driver who was a friend of Mr. Bretney. He worked with him for 5 years at WASCO. Curiously, he did not recognize Mr. Bretney as being in the courtroom on the day he testified. He described Mr. Bretney as 'red skinned', 'costo' (stocky/muscular), plump, and short. He has not seen Mr. Bretney since August 30, 2015.

- [7] He knows Sophia, the deceased, as she "comes by me every Saturday". She came to relax, cook, and help out. Mr. Bretney appeared at his house in the early morning of August 30th, 2015, at 3:30am. He said that he was hungry, so Albert gave him some food and a beer. They were all talking, laughing and telling jokes.

- [8] Mr. Bretney arrived in a brown and green, or something, Mitsubishi 'jeep'. Mr. Bretney had apparently "drunk rum already". His eyes were "sleepy". He was 'limping' and 'doing things'. He'd never seen Mr. Bretney drunk before.

- [9] After ½ hour Mr. Bretney said that he was leaving. Albert asked if he could give Sophia a ride home to Rodney Bay. He said "ok". He saw Sophia get in the jeep and they left. He had never seen Mr. Bretney and Sophia together before this event. He never saw Sophia again.

- [10] Dwain Francis is 37 years old. He works in the construction and fishing industries. On August 29th, 2015, he went fishing with his father and friends, Williamson Stephen, Sixtus Shortie, Stephen Sylvain, and Mary Emmanuel. They took a white truck owned by Stephen Sylvain and arrived at the beach at 7:00pm. While at the beach a jeep arrived at 4:00am at the entrance to the beach and parked by a lamp pole. "It was blue, I don't know what kind of vehicle." He then saw a woman and a guy get out of the jeep and have sex on the beach. He couldn't see facial features or body parts. He was at the back of her....behind her. This lasted 20 minutes. After, the guy was holding the woman's hand and they walked into the water. They casually walked into the water. I couldn't see what they were doing in the water. I didn't hear any sounds from them. I didn't hear screams. I didn't see the guy hit the lady. I didn't see a struggle. After they were in the water, the guy came out of the water by himself. I didn't see her exit the water. I can't say that she was still in the sea. He ran back to the jeep, then back to the water, then back to the jeep. When the guy left, there were no lights on it. When I didn't see the woman, I thought that something was wrong. It was 'very bright' due to moon light and the lamp pole. The jeep 'fled out'. We were 100 yards away from the event though our view was not

blocked. We then drove to where this took place with Stephen Sylvain driving. I didn't see the woman in the water. It was dark around there. The area by the sea was dark. Then, I saw the jeep returning to the beach. The guy was throwing something into the water. Stephen says "where woman he go in water with?" The guy responded "...which woman you talking about?" The guy stayed in the jeep and drove off. I was about 20' from the guy. I don't remember what he was wearing. He was about 5'11" and didn't have much hair. He was 'red-skinned', brownish skin. The guy was in his 40's. He was there about 1 minute. On the way out of the beach the guy knocked the gate with the jeep. We took the jeep's licence plate number. We then went and made a report to the police at Gros Islet Station. After the report we returned to the beach with the officers. I don't know whether the woman the police pulled out of the water was the same woman who went into the water with the guy. It was too far to get a description of the lady.

- [11] On September 1st the police picked me up and took me to Vieux Fort Station to an ID parade. There were 8 -10 guys on the line. There were some short guys in the lineup. And, there were some young boys in the lineup. There were even some police officers in the lineup. As soon as I entered the room, I saw him. I pointed him out to the officers. I realized it couldn't have been the police officers, couldn't have been the short men, couldn't have been 'the dark fellas', and couldn't have been the fellas with hair. I can't remember what the guy looked like.
- [12] Williamson Stephen (with an interpreter) indicated that he is 62 years of age and presently not employed. In 2015 his occupation was fishing. On Saturday August 29th he went fishing with a friend. We decided to spend the whole night at Reduit Beach. There were 5 of us. Dwain Francis, Stephen Sylvain, Sixtus Shortie, Williamson Stephen, and Mary Emanuel. Went in Stephen's white truck. There were a lot of people on the beach bathing. The moon was bright and there was a lamp pole. The five of us then came out of the water and were sitting around telling jokes. I looked and "saw a man loving a woman." I did not see the man arrive. He was holding the woman and kissing the woman. They were on the middle of the beach. Don't know what time it was. He was holding her hand and he brought her into the water. He had no clothes on when he came out of the water. When he held her hand she was not hesitating. After 5 minutes I saw the man walking fast and he went to his vehicle. I did not see the woman come out of the water. It looked like a jeep. It was blue and underneath the door it was grey. He started the jeep and went away. He returned without the woman. I didn't see her.
- [13] It was bright. I was about 100 yards away. I could not describe the man or the woman on the beach. She was so far out. I could not see her. After about 5 minutes the man returned throwing things out of the jeep. I did not see what he was throwing. We crossed in front of him and asked "what he do with the woman". He responded,

"Give me room to pass with that woman business you asking me." I was 6 feet away from the guy. I was in the back of the truck. He was there about 1 minute. He reversed the vehicle and knocked the gate. He drove in a 'reckless' manner. We crossed in front of him, the jeep was facing the water. The license plate was 8086. After the guy drove off, we went to the police station. When we returned to the scene with the police, I saw the woman floating. At the police station all 5 of us gave a statement. We collected our nets and went home.

- [14] September 1st I was brought to the police station. They had some fellas stand up behind a screen. They asked if I could pick out the person who was with the woman. I said "No".
- [15] (While Williamson Stephen gave a statement to the police in written English that he signed as being accurate, he cannot read or write.) "I didn't know what I was signing." I don't remember telling the police anything about being at Marie's Bar at 7:00pm. I'd never been there before, so I don't know.
- [16] PC Everette Deterville was on duty at Rodney Bay police station on August 30th when 4 men came in at 4:20am. They were in a white 2-ton truck. He took their statements. The 4 men had been fishing at the beach. He and PC Brown followed the men in the truck to a spot on the beach where they had previously observed a scene described to the officer. The lighting at this spot was 'very good'. There was an operational lamp post and a full moon. The 4 men pointed to the shoreline where they saw what appeared to be a lifeless female body floating. The body was dark skinned, 5'6", no bottoms/underwear on. Deterville went into the water and dragged the body out. He observed foam at her mouth. He could not detect breathing or a pulse. He found no other physical evidence other than a black slipper. If he had, that would have been recorded. He observed no marks of violence. They awaited the C.I.D. and then explained his findings to PC Mason.
- [17] PC Ed Emmanuel: On August 30th he received a call from Gros Islet police at about 5:40am. He would not know what the lighting would have been like at 4:00 in the morning when he arrived on scene to take photos. Flash photography was not required. Upon his arrival he spoke with PC's Mason, Deterville, and Brown. He was directed to a motionless body of a female, face down, with a black shirt, white bra, and no bottoms. To the right of her body was a slipper. Nearby was a black bag and a black purse. He collected the items and put them into an evidence bag. He put 'preservation bags' on the hands and feet of the woman who was pronounced dead by Dr. Celia Downes. He did not note any major injuries or signs of violence to the body of the deceased.

- [18] The next witness was PC Marcus Bastien who assisted PC Mason and proceeded to Babonneau with Insp. Hilary Emmanuel. They arrived at a concrete dwelling with a blue and silver Mitsubishi, Pajero parked beside the residence. He examined the vehicle visually. He opened the vehicle, with the Inspector present, though they had not obtained a search warrant for the vehicle (the court noted that it is impermissible to expand a residence-specific warrant to search a vehicle unless there are particular urgent exigencies in play; such as suspected firearms, offensive weapons, or hazardous materials, etc.... 'fishing expeditions' are not to be permitted). They saw, what appeared to be, sand on the left-front floor/foot well of the car (this was never confirmed). Other inconsequential items were observed to be in the car which was confirmed to be unclean and unkempt. The car was moved at about 2:30pm. From there he went to the mortuary to observe the autopsy of the deceased. He observed apparent injuries to the left side of the face and apparent swelling. Other apparent injuries were noted at the hairline and white foam around the mouth. There was sand on the body which was clothed in a black dress, white bra, with no underwear. Various swabs were taken. Bastien took pictures during the procedure. Apparently, no testing was done in respect of any of the exhibits. There is nothing in any of the exhibits collected that connects Mr. Bretney and Ms. Didier. There were no DNA samples analyzed, or fingerprints taken. In the 'wee hours of the morning', at 1 – 2:00am on the Thursday the examination of the scene was concluded. The lighting was 'low' and flashlights were used.
- [19] PC Stephen Mason is with the Criminal Investigation Department. On Sunday August 30th at 5:00am he was on station duty. He received information and travelled to Reduit Beach with PC Deterville. On scene, he observed the body of a female face down in the sand at the south end of the beach. She had a black top that was pulled up. The lighting was bright with a full moon and a lamp post. The body was covered in sand with white froth coming from in her nose. I saw no signs of violence on the body. A purse, wallet and slipper were nearby. I have no evidence of Mr. Bretney strangling Ms. Didier. No one saw Mr. Bretney drown Ms. Didier. No one saw Mr. Bretney cause Ms. Didier any harm. There were no scratches or signs of violence observed on Mr. Bretney. No pictures were taken of Mr. Bretney.
- [20] I had a conversation with Deterville, Sylvain, Shortie, Francis, and Williamson. I took statements from all of the witnesses in my notebook, which was not disclosed to the defence. I contacted PC Ed Emmanuel at the Crime Scene Office. Based on information received regarding the ownership of a blue and silver Mitsubishi, I obtained a search warrant for the residence of Stephen Alexander. No search warrant was obtained for the vehicle. The vehicle was searched by PC Bastien. Stephen Alexander was served with the search warrant. The vehicle was searched in that he did not object. No DNA samples were taken from the vehicle.

- [21] At 3:14am I went to the morgue and met with Dr. Stephen King and PC Bastien took photos of the autopsy.
- [22] I then met with Mr. Bretney at the station and obtained a search warrant for his residence. Mr. Bretney was cautioned but elected to make a statement. He said that he wanted his statement recorded. Mr. Bretney then wrote a statement. He signed his statement in the presence of JP Fontanelle.
- [23] I went back to the beach on Tuesday at 3:00am to make observations. Lighting was good at the time. Then, I met with Kenny Albert and took a statement. I then took at statement from Gregory Louison who is now deceased. His statement included the following:
- He is the cousin of Mr. Bretney who he describes as 5'8", light skinned, tough looking. He had met Mr. Bretney on August 29th between 7:30 and 8:00pm at a bar near Assou Canal. Hadn't planned on meeting Mr. Bretney. I just saw him, stood there, and had a few drinks. He had a blue/grey Mitsubishi. We then went to Piat at Wayne's Bar and had a few drinks. From there we went to Bexon to a party, on to a bar at Gros Islet, then on to Gravity Bar in Rodney Bay. Mr. Bretney ordered a Hennessy and a Piton for me. We sat at the bar, Mr. Bretney was walking about. He skipped out without paying for drinks. I stayed at the bar and got a ride home with another cousin. Mr. Bretney left me at Gravity Bar at about 2:30 – 3:00am.
- [24] On September 3rd I advised Mr. Bretney that he was being charged with murder.
- [25] Various items and swabs seized were sent for testing. I don't remember what. There was no letter sent requiring DNA testing of any of the exhibits. There were no DNA test results received regarding any of the exhibits. I have not seen the exhibits again. This would have been the responsibility of the Investigating Officer. I don't know where the exhibits are.
- [26] I was aware that 'Notices of Description' for each witness are to be based upon the description of the accused given by that witness. I have never been an ID officer. I prepare the Notices of Description; in this case I did not. Notices of Description are based upon the witness's description of the perpetrator. They are witness-specific. There should be a Notice of

Description and separate lineup for each witness. I agree that there is no description of the accused in the witness's statement. I don't know where the Notices of Description are. I can't remember whether there were any Notices of Description in this matter. I agree that they are not in the disclosure. Nor, is there any ID of Mr. Bretney. "That would appear to be correct". I am aware that there is an obligation to serve the Notice of Description upon the accused before the ID parade so that it can be challenged. Further, I am aware that there is no obligation upon the accused to attend.

- [27] At no time did I go back to the beach at 4:00am to record what the lighting conditions would have been like at the time of this incident.
- [28] PC Gregory Alexander is a retired police officer. On August 31st, 2015, he met with Inspector Emmanuel at Gros Islet police station and had a conversation with him. He collected witness statements and prepared forms to enter information from the witnesses. That is, Notices of Description for witnesses, Stephen, Sylvain, Francis, and Shortie. I understand the purpose of a Notice of Description.
- [29] On September 1st I attended Vieux Fort Station and introduced myself to Mr. Bretney. I told him to take part in the ID parade. He was told he'd be put in a lineup of people of similar appearance. I felt that this was the 'fairest' procedure; rather than a 'confrontation procedure'. A JP was present. Mr. Bretney was content to proceed with the procedure in the absence of his lawyer. I gave the Notices of Description to Mr. Bretney and he endorsed them as having been served. I read the Notice of Description to Mr. Bretney. I gave Mr. Bretney a copy and kept a copy that I gave to the Investigating Officer. I selected the lineup on the basis of 'height, build, similar appearance'. The form served upon Mr. Bretney sets out the procedure to be employed in the parade. It is not clear that Mr. Bretney understood that his participation was not obligatory.
- [30] Eight men were taken to a room and stood against a wall. I agree that the procedure "could be unfair" if the witness knew two of the men in the lineup (ie that the suspect could not have been either of them). I agree that if two of the people in the lineup were police officers (#9, #7) and that if Dwain Francis knew that two people were officers that the procedure would be "unfair". I agree that the people in the lineup were not wearing similar shirts and footwear. They wore similar 'sorts' of shirts. I agree that if there were young boys in the lineup they would be eliminated as possible suspects. I agree that if the suspect was 5'11", the lineup would be unfair. I agree that if, as with #6,

an individual with a beard was in the lineup that they would be eliminated. I agree that there are no descriptions of the perpetrator in the statements of Williamson Stephen or Dwain Francis. I therefore agree that there is no information upon which a Notice of Description could be created in respect of Williamson Stephen. I can't recall if there was a description of the perpetrator in the witness statement of Stephen Sylvain. I agree that the only description is that he was 'clear skinned'. I agree that individuals without 'clear skin', or without a 'flat haircut', or 'baldish head' would be eliminated. If the perpetrator was 5'11", a short person would stand out. Nowhere is there a Notice of Description. No one explained to Mr. Bretney the bases upon which he could object to the lineup.

- [31] Mr. Bretney was told he could take any position he liked. He picked position #5. "I have conducted about 7 previous parades....I can't remember." I then went to get witness Dwain Francis and met with him and a JP at the station. While some of the witnesses were in separate rooms, two were placed in the same room. I told Mr. Bretney that a JP would be present. Dwain Francis picked #5. Dwain Francis then left. Mr. Bretney was told he'd been picked and was cautioned, he said nothing. There was no objection to the lineup.
- [32] The same procedure was employed for "Sixtus Shortie". He was "not sure". He was dismissed. Mr. Bretney moved to position #3. The same procedure was employed for "Stephen Sylvain". He picked #7. The same procedure was employed for Williamson Stephen. He called #3. The parade was dismissed (there were 2 out of 4 positive ID's).
- [33] Dr. Steven King, a 'medical practitioner', conducted a post-mortem examination of Ms. Didier. He noted 'froth' from the nostrils and blood from the mouth of the deceased. Contusions or bruises were observed on the left cheek, left eyebrow, nose, tip of the tongue, the right parietal area of the head and over the occipital and left parietal area, bruises to the left upper back, right upper back, and a small laceration to the upper lip and back of the neck. A scar was noted on the right upper buttock. Bruises/hemorrhages were noted in the fine muscle of the larynx. The skull was intact. The lungs were swollen and hyper-inflated, the result of airways being blocked for expiration due to conditions such as asthma or trauma. Mucus found in the airways may be due to irritation or the inhalation of fluid. Various swabs were taken from multiple locations about the body of the deceased. Dr. King said that drowning in saltwater takes between 8 – 12 minutes. Asphyxia from drowning is the *most likely* cause of death.

- [34] The multiple bruises observed were *likely* caused by blunt force trauma. That is, the body hitting, or being hit by, a blunt object. It is *unlikely* that this would have been caused by sand. The bruises would *likely* have occurred at the time of or just before death and would have resulted in a certain amount of disorientation. In cases of 'normal' drowning one does not typically see significant pre-mortem trauma. The foam observed at the mouth is a classic finding in drownings. Bruises can last for days at a time, though these appeared to be fresh bruises and *likely* occurred within 1 hour of death. It is *unlikely* that the bruises would have been caused by Ms. Didier hitting against sand. Bleeding can occur post-mortem if in a 'dependent' area. Unusual or 'diverse' sexual practices such as choking during intercourse may cause similar injuries to the neck. None of the injuries observed on Ms. Didier were life threatening.

Submissions of Counsel

- [35] The following is a summary of the points argued by counsel.
- [36] Mr. Theophilus, on behalf of Mr. Bretney, submitted that because the Crown introduced evidence, through its witnesses, as to Mr. Bretney's lack of sobriety (ie that Mr. Bretney had been drinking throughout the day), the Crown had the obligation to demonstrate beyond a reasonable doubt that Mr. Bretney was not 'intoxicated'. That is, if Mr. Bretney committed the *actus reus*, he had the capacity to form the requisite intent. That, the Crown must refute the evidence of intoxication in order to prove the required mental element beyond a reasonable doubt.
- [37] It was submitted that the fatal part of the Crown's case is found within the identification procedures employed. For the two out of four witnesses who identified Mr. Bretney the procedure was flawed and unfair. And, that without these two witnesses, Mr. Bretney cannot be identified. That, the process employed and described by PC Gregory Alexander constituted an 'egregious breach of procedure'. Mr. Theophilus submits that the officer was feigning memory difficulties, implying that the witness knew full-well the deficiencies of the procedure employed. Mr. Theophilus submits that, in the result, the ID evidence ought to be entirely rejected rather than admitted and left to assessments of 'weight'. He underscores that with Dwain Francis there was no Notice of Description. He asks the court to consider *R v. Collymore & Bernard* (SLUCRD2016/0661A, 0662A, 0663A, 0664A, 0665A, 0666A, 0667A, Jan 29, May 6, 2020). He points to the officer's concession that the process was unfair. That the people included in the lineup produced an inherently unfair array. And, that Mr. Bretney was not informed of the bases upon which he could object to the lineup. He was not served with a Notice of Description. At the end of it all, there is no witness who can ID Mr. Bretney

through a fair ID procedure and that the Crown did not even establish a dock ID. The Crown therefore has no James Bretney.

- [38] Mr. Theophilus notes that the Crown relies upon Mr. Bretney driving a particular vehicle to establish that he was the perpetrator. The Crown says that it is the continuity of Mr. Bretney's driving and having possession of Kenny Albert's car that establishes that he is the perpetrator. Mr. Theophilus says that the times recounted by the various witnesses do not add up and put Mr. Bretney in different places at the same time.
- [39] It was noted that there was no search warrant obtained to search Kenny Albert's vehicle though, it would appear nothing of significant consequence was obtained from the search. No DNA or fingerprint evidence was retrieved. No swabs were analyzed. No physical evidence of consequence was seized. There was nothing to establish a link between Sophia Didier and the vehicle. In sum the evidence reveals a "poor investigation".
- [40] No one saw what, if anything, took place between Mr. Bretney and Ms. Didier once they were in the water. We can't tell. What the witnesses did observe was that the perpetrator and Ms. Didier were holding hands as they entered the water. With respect to the throat injuries, Dr. King could not exclude 'sex play' as a contributor. The Crown asks that the *actus reus* be 'assumed' (no specific acts are alleged), and that the *mens rea* be 'assumed'. There is no evidence of a struggle. There is no evidence that the perpetrator hit Ms. Didier or drowned her. Are we to suppose Ms. Didier drowned? The Crown asks the court to assume that Mr. Bretney drowned Ms. Didier. All we know is that the cause of death was *likely* asphyxia caused by drowning.
- [41] Mr. Theophilus submits that there is no evidence of the *actus reus* or what it was supposed to be. There is no evidence of motive. All we know is that Ms. Didier drowned. That the man was running around. He leaves and comes back. Counsel asks the court to consider the cases of *Dorian Marshall* (ANUHCRA202/0001) and *Turnbull* ([1977] Q.B. 224) with respect to the identification evidence. Consider the impact upon observations made under frightening circumstances. Consider the 'Turnbull requirements'. The court is to look at the quality of the ID evidence. If poor, the process is improper and it is unfair to consider it. To convict here we must go to the realm of speculation. Can't make a safe finding of guilt for either murder or manslaughter. ID officer admits that the process was unfair. If not a fair ID process - acquit. No Notices of Description. Therefore, the officer was lying; he could not have prepared Notices of Description. Need Notice of Description for each witness taken from their statement. Definition of 'grievous bodily harm'? Crown to prove

intentionally maimed, disfigured, dangerous harm, or permanent disfigurement. Mr. Theophilus submits that if the identification evidence fails, Mr. Bretney must be acquitted.

- [42] Ms. Thomson, on behalf of the Crown, submits the evidence shows that at about 4:00am on August 30th, 2015, Mr. Bretney intentionally caused grievous bodily harm to Sophia Didier through blunt force trauma resulting in her death.

- [43] In the early hours of August 30th Mr. Bretney was driving a Mitsubishi car. He had the car beginning the night before at about 7:30pm when he was with Gregory Louison at a bar, through to the time when they drove to the Gravity Bar in Rodney Bay. He left Gregory Louison at the bar between 2:00 and 3:00am. Mr. Bretney then showed up at Kenny Albert's house with the same Mitsubishi 'jeep' at about 3:30am, where he stayed for about ½ hour. He was drunk when he arrived. Kenny Albert gave him something to eat and another beer. Kenny Albert asked Mr. Bretney to give Sophia Didier a ride home. He never saw her again.

- [44] The Crown says that while Mr. Bretney had been drinking throughout the night, there is no evidence that he was so intoxicated that he could not form the requisite specific intent.

- [45] PC Deterville pulled Sophia Didier from the water at 4:20am. From this the Crown asks the court to glean that Mr. Bretney was at Reduit Beach with Sophia Didier.

- [46] The Crown reviews the evidence of Dr. King and, in particular, the number of bruises or 'contusions' on her body and that the likely cause of death was asphyxia due to drowning rather than some other condition such as asthma. The Crown notes that the 'blunt force trauma' could have been caused by hands or feet and was *unlikely* the result of banging the body into the sand in the water. The various bruises/contusions observed by Dr. King were not life threatening though they could have caused a certain amount of disorientation. The Crown argues that this is all *consistent* with Ms. Didier being held down. The Crown notes that most accidental drownings do not have significant pre-mortem bruising. And, the evidence was that altered consciousness could *possibly* have occurred as a result of Ms. Didier's injuries. The Crown dismissed as fanciful the idea that 'sex play' could have resulted in Ms. Didier's neck injury in that none of the other injuries would/could have had a similar causation (there was no evidence on this latter point).

- [47] Williamson Stephen gave no description of the perpetrator in his statement so we can't rely upon his evidence as Mr. Bretney being the driver of the jeep.

[48] However, the 4 fishermen record the license plate on the jeep as 8086 and describe it as blue/silver. The Crown says that, apart from the formal ID evidence, what puts Mr. Bretney on the beach is that he is driving the jeep. The jeep was returned to Stephen Alexander at 3:30am and the keys were returned to him at about 8:00am on August 30th by Mr. Bretney. The Crown submits that the witnesses could not be certain of the various times indicated in their evidence, therefore inconsistencies should be overlooked (it was noted that none of the witnesses indicated in their testimony that the various times reported in their evidence were in the form of 'estimates'....it is generally not for the court to assume that the witnesses 'cannot be certain.'). The Crown relies upon the case of *R v Simms* (CR 9 of 2023, (SC T&C)) to support the proposition that the court may accept all, part, or none of what a witness reports. This is not controversial. The Crown refers the court to the case of *R v Collymore* on the issues surrounding the ID parade procedure. In that case, apparently, the accused was not given the opportunity to participate in the set-up of the lineup. I am also referred to *R v Turnbull* and *R v Dorian Marshall*.

[49] The Crown points out that intoxication is not a defense except in offences requiring proof of specific intent. I am referred to *R v Moodie* ([2015] JMCA Crim.16) and *R v Sookal* (cited in *Moodie*).

[50] With respect to circumstantial evidence, the Crown argues that where two or more inferences may be drawn from the evidence; pick the one that is the 'common sense inference'. Here, Mr. Bretney admits driving the jeep and admits having the jeep at 2:00 – 3:00am. The court should accept the evidence of Kenny Albert. Mr. Bretney indicated that he did not give the car to anyone else. The Crown argues that Mr. Bretney had the opportunity. He could have travelled to all of the places where he was seen. And, he was the last person seen with Sophia Didier. From this, the Crown argues that the court should find that Mr. Bretney had the intent to render Ms. Didier unconscious. The Crown argues that the fact that the jeep 'sped off' should be taken as 'consciousness of guilt'. That throwing things (unknown) into the water should be taken as consciousness of guilt. That it is an irresistible inference that it was Mr. Bretney who drove the car to the beach. He had the keys all night. The Crown argues that the evidence shows beyond a reasonable doubt that:

- I. Sophia Didier died,
- II. That, Mr. Bretney caused Sophia Didier's death,
- III. That, Mr. Bretney had the intent to cause Sophia Didier grievous bodily harm, and
- IV. That, blunt force trauma caused Sophia Didier to enter into a state of altered consciousness.

Analysis:

The Offence:

- [51] Mr. Bretney is charged that he, intending to cause grievous bodily injury, did cause the death of Sophia Delia Charles-Didier contrary to section 85(b) of the Criminal Code.

The Crown must prove:

- 1) That Mr. Bretney's voluntary act or omission was a substantial cause of Ms. Didier's death, and
- 2) That Mr. Bretney intended to cause serious physical injury (grievous harm) to Ms. Didier.

- [52] In the present case the Crown seeks to prove all elements of the offence by way of circumstantial evidence and asks that the court infer that the *actus reus* actually occurred. That is, that Ms. Didier sustained grievous harm. And, that grievous harm was intentionally inflicted upon Sophia Didier by the accused rather than, for example, being banged about on the ocean floor.

Identification:

- [53] The identification procedure to be employed in Saint Lucia, as agreed by the Crown and the Defence, is provided for in S.O.47 of the *Police Act of Saint Lucia*. The procedure adopted is, first, statements are collected from each of the eyewitnesses. From those statements witness-specific Notices of Description are prepared. The accused is then to be served with the Notice of Description in advance of the parade and given the chance to challenge the accuracy of the statement, the contents of the Notice, and then, the parade.
- [54] In the present case it would appear as though, through the evidence of Gregory Alexander, no Notices of Description were prepared.
- [55] In *R v Collymore & Bernard* [at para 23], the court found that in S.O.47 of the *Police Act of Saint Lucia* there is provision for ensuring that prior to an identification procedure, a description of the suspect must be obtained. The *PACE* (*The Police and Criminal Evidence Act, 1984*), Code D (not binding) recommendation is that, where practicable, the Notice of Description be given to the accused before the identification procedure so that the parade may be challenged. However, in *Collymore* the court found that failure to provide the accused with a Notice of Description before the parade is not fatal. The court

found that the prejudice to the accused in receiving the Notice after the procedure would be minimal.... "The Defendant is still able to challenges (*sic*) differences and distinctions in the identification made and is still able to question the correctness of the identification made." [at para 26]. With respect, I am of the view that once a positive identification has been made from an unfair parade where, for example, there are only 4 rather than 8 realistically similar candidates, it is small consolation for the accused to argue after the fact that the process was flawed. The 'horse is out of the barn'. Especially for a jury, it is difficult to 'un-hear' a positive ID, instructions from the court regarding weight notwithstanding.

- [56] In the present case, as in *Collymore*, there is no evidence that Mr. Bretney was permitted to participate in the set-up of the parade, save and except his positioning in the lineup, and therefore did not follow the procedural requirements of S.O. 47.

- [57] In the present case, one parade was created for all four witnesses. The parades were not based upon descriptions in the witness's statements in that none were given. There were no Notices of Description produced at trial and, accordingly, the court is asked to find that none were made. Two of the four witnesses were kept in the same room at the time of the parade procedure. The accused was told that he was to participate in the parade and was not told that he had the option to not participate. He was not told that he had the right to challenge the process or the parade. It is not clear that the accused was given the opportunity to participate in a meaningful way with the set-up of the parade. He was told that he could select his position in the parade.

- [58] Best practices are that the accused be given the opportunity to have counsel present, to decline the parade, to object to the procedure, and to object to the participants in the parade. In the present case, as in *Collymore*, there are differences between the appearance of the suspect (selected by only 2 of the 4 witnesses) and the descriptions of the suspect obtained in the witness statements. Then, there was a parade created that appears to be nothing more than a random selection of men of differing heights, weights, age, skin colour, beard/no beard, haircut, and clothing. It is hard to think of how the parade might have been more flawed.... perhaps, by including women?

- [59] I am of the view that the flaws in the identification procedure are so significant that to consider that evidence would be unfair to the accused. The prejudicial effect of the identification evidence, if admitted, would far outweigh its probative value and it is therefore inadmissible. As set out in *R v Turnbull*, in circumstances such as these, where the Crown's case rests solely upon the identification of the accused

and the processes employed, the trial judge must direct the acquittal of the accused. Mr. Theophilus argues that this should be the outcome in the present case.

- [60] However, in the present case, while the identification process fell far short of any standard that would make it reliable and was therefore deemed inadmissible, there is other circumstantial evidence that places Mr. Bretney at Reduit Beach at the relevant time. He was in possession of the blue/grey Mitsubishi 'jeep' from 7:30 pm on the previous evening, through to 8:00am on August 30th. He was seen to have possession of the vehicle at various times, locations, and by various people. He was seen leaving Kenny Albert's place with Sophia Didier in the vehicle at about 4:00am. The 4 fishermen observe the vehicle come onto the beach at about 4:00am. The jeep on the beach is subsequently confirmed to be that of Stephen Alexander by its licence plate, make and model of vehicle, and its colour. Kenny Albert's house is very close to Reduit Beach. Mr. Bretney had not given the vehicle to any other person. While the identification evidence has been found inadmissible as unreliable, it is nevertheless, to my mind, an inescapable conclusion that Mr. Bretney was the driver of the jeep that came on to Reduit Beach at about 4:00am.

Grievous Harm:

- [61] Grievous harm is serious injury that goes beyond minor or routine assault, such as wounds, serious fractures, or injuries that endanger life or cause long-lasting disability. Grievous harm is not a function of the *number* of injuries but rather their nature and cumulative effect. Something more than an ordinary assault. It is to be noted that the Crown's witness, Dr. King, indicated that while multiple injuries were observed on Ms. Didier, the injuries sustained by Ms. Didier were not life threatening. Therefore, can it be said that anyone caused Ms. Didier 'grievous harm'? The fact that she drowned is not, by way of the evidence, connected other than by speculative inference, to the injuries (not life threatening) that may have caused disorientation. Other unlikely causes include asthma.

Intoxication:

- [62] Although a Crown witness, Kenny Albert, testified that Mr. Bretney was "drunk".... "He drink rum already", I am of the view that this does not then require the Crown to negative "intoxication" (ie a mental illness akin to automatism induced by intoxication") beyond a reasonable doubt (unless it is otherwise proved), in order to establish the requisite *mens rea*. An intoxication defence requires that the party

asserting the defence (ie Mr. Bretney) would have to lay the initial evidential base. The initial evidentiary burden is upon the accused. It must be established that the accused was so intoxicated that he did not know what he was doing or that the act was wrong. This essentially requires evidence of a mental illness caused by intoxication.

- [63] The policy is that an accused cannot voluntarily put himself into an abnormal state that would be known, or reasonably expected, to result from the consumption of a particular quantity of alcohol. If an evidentiary foundation is established by the defence, the Crown would be obligated to negative the defence beyond a reasonable doubt (see for example: *R v Brown*, 2022 SCC 18). As set out in *Director of Public Prosecutions v Beard* ((1920) 14 Cr. App. R. 159, at p. 194), “evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely to establish that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his acts.” No such evidentiary bed has been laid in the present case. The fact that the accused had been drinking or appeared to be drunk must be considered in the mix when determining intent, but the *actus reus* and the *mens rea* must still be proved beyond a reasonable doubt by the Crown.
- [64] Intoxication is a highly unusual state of impairment that occurs when a person is so intoxicated that they either 1) cannot consciously control their behaviour, or 2) are completely unaware of their actions. Intoxication is not the same as ordinary drunkenness or memory loss. Being impaired, even heavily, is not a defence to criminal conduct. To raise this defence, the accused must demonstrate (typically through expert evidence) that they experienced an extreme and involuntary state, akin to a mental disorder, during the commission of the alleged offence. An obligation to ‘negative’ intoxication does not arise in the present case.

Consciousness of Guilt:

- [65] The Crown argues that the jeep fleeing from the beach should be taken as evidence of ‘consciousness of guilt’. That, throwing things (unknown) into the water should be taken as consciousness of guilt. With respect, fleeing from a scene may be equally consistent with an individual wanting to remove himself quickly from a very difficult situation where he anticipates he may be wrongly implicated or accused. It is known that fleeing from a scene, making false statements, concealment of evidence, fabricating alibis, or evasion from detection may all be seen as ‘consciousness of guilt’. Yet, these behaviours may also be the product of ‘panic’ or fear. In the present case it is not controversial that the jeep

left the scene in a hurry. What is to be made of that? Indeed, fleeing from the scene may reflect consciousness of guilt. At the same time, it may be the product of a misguided attempt to extricate oneself from a situation where an innocent party is fearful that he may be found guilty of wrongdoing. Without more, this evidence is highly prejudicial and of equivocal probative value; I treat the evidence that Mr. Bretney fled the scene as neutral. I would give it no weight.

Motive:

- [66] There is no obligation upon the Crown to prove motive. It is not an element of the offence that needs to be proved but it can play a key role in assisting the court to infer intent from the surrounding circumstances proven and the actions of the accused. Where there is a clear motive established it is much easier to connect the circumstantial evidentiary dots to create a compelling picture.
- [67] Where no motive is apparent it may be less clear that the accused intended any particular outcome or had any particular 'plan'. Or, where the evidence is equivocal, that the accused would have had any reason that would drive a particular course of conduct. A lack of motive may raise a reasonable doubt where what the accused is alleged to have done does not fit within any apparent narrative and does not make sense. That is, the allegations are contextually jarring or inexplicable. Where a course of conduct is illogical, inconsistent, or inexplicable within a particular context it may be that the lack of motive goes a long way to raising a reasonable doubt with respect to intent. A lack of motive may weaken the Crown's narrative however, as observed, in the present case, there is no narrative proffered or even suggested. Here, the behaviour alleged to have been perpetrated (not specified) by the accused is completely unexplained. Indeed, it is at odds with the context *vis-a-vis* the accused and Ms. Didier, as depicted by the Crown witnesses. The allegations are not just inconsistent with the context suggested by the evidence, the behaviour alleged is contrary to what one would expect (ie counter-intuitive).
- [68] It is not alleged that the accused raped Sophia Didier, and would therefore want to 'keep her quiet'. It is not alleged that there was any acrimony between Mr. Bretney and Sophia Didier. Quite the contrary. They were laughing and joking at Kenny Albert's house. He was 'loving her up' and kissing her on the beach. They were making love on the beach. They were holding hands when they went into the water. There were no sights or sounds of acrimony or conflict. There were no observations of flailing arms, splashing in the water, any sort of struggle, or screaming which one would have expected. None of this was observed, yet the 4 witnesses apparently had a very good view of the scene. Where in this picture

does it make sense that Mr. Bretney would form the intent to cause Ms. Didier grievous harm? Does the absence of any apparent motive raise a doubt?

Circumstantial Evidence:

- [69] With respect to circumstantial evidence, the Crown argues that, where two or more inferences may be drawn from the evidence; pick the one that is the 'common sense inference'.

- [70] I am of the view that the process is not so facile. I am of the view that, with respect to circumstantial evidence, I can be satisfied that the accused is guilty if it is, by inference, the *only* reasonable conclusion to be made upon the evidence (see for example: *R v Villaroman*, 2016 SCC 33).

- [71] As the court in *Villaroman* stated, if there are reasonable inferences other than guilt, the Crown's evidence does not meet the proof beyond a reasonable doubt standard. The court must consider other plausible theories and other reasonable possibilities that fit with the evidence which are inconsistent with guilt.

- [72] If there are reasonable inferences other than guilt to be drawn from the evidence, the Crown has not met the standard of proof beyond a reasonable doubt. Other plausible theories do not need to be the most compelling in the array of possibilities; they only need to be reasonable possibilities. The Court must consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt albeit, less likely.

- [73] Could it be, for example, that while Mr. Bretney and Ms. Didier were in the water, some misadventure befell Ms. Didier, and she was knocked about on the ocean floor? Mr. Bretney, not finding Ms. Didier in the dark water (as described by witnesses), panicked and fled? Perhaps, less likely, but the Crown has not provided a competing narrative. There may be others.

- [74] The essential component of self-instruction on circumstantial evidence is that the trier of fact must be satisfied that the only rational inference that can be drawn from the circumstantial evidence is that the accused is guilty. The mere existence of any rational, not-guilty inference is sufficient to raise a reasonable doubt. A right-minded observer (juror?) might very well say "Why would Mr. Bretney intend to cause Ms. Didier grievous harm? From what we've heard, that makes no sense.

But, if ('costo') Mr. Bretney did intend to cause Ms. Didier grievous harm, he did a very poor job!"

- [75] In the present case there is no Crown theory. Neither on the evidence nor in the Crown's submissions is there a suggested narrative that glues the circumstantial 'dots' together to provide the court with a sufficiently clear, compelling, picture as to what transpired. Nor, in particular, is there a picture suggesting Mr. Bretney might be in a state of mind where he would intentionally inflict grievous harm upon Ms. Didier. There is no story.

Conclusions:

- [76] As discussed above, in the present case the identification procedures were so defective that they have been deemed inadmissible. The court will not rely upon them. Nevertheless, I am of the view that the Crown has proven beyond a reasonable doubt, through his continuous possession of the Mitsubishi 'jeep', that Mr. Bretney was the man on the beach with Ms. Didier at the relevant time.
- [77] There is insufficient evidence to suggest that Mr. Bretney was incapacitated by alcohol in a way (akin to a mental disorder) that would cause him to not intend what he was doing or not know that what he was doing was wrong.
- [78] That Mr. Bretney fled the scene; I take as equivocal and therefore neutral. I would not, without more, take that fact to reflect consciousness of guilt any more than I would take it to reflect an innocent man wanting to extricate himself from a situation that could unfairly find wrongdoing. These are both plausible alternatives.
- [79] The Crown must prove beyond a reasonable doubt 1) that Mr. Bretney caused the death of Ms. Didier, and 2) at the time of doing so intended to cause her grievous harm. There is no direct evidence as to either of these two required findings. To my mind, what has been proven is that he was in the water with Ms. Didier and that she drowned. As well, there were several bruises (not life threatening) on her body observed during the course of her subsequent medical examination/autopsy. That he committed the *actus reus* (ie some death-resulting behaviour, not specified) or that he had the intent to cause grievous harm, the Crown asks the court to infer.

[80] Gaps between circumstantial 'dots' cannot be glued or cemented together with speculation to paint a picture sufficiently compelling to found the necessary inferences and imputations. In the present case, it is unclear exactly what picture the court is being invited to find? What is Mr. Bretney said to have done? How did he do whatever it was that the court might be invited to find that he did? Did whatever the things were that the court is invited to find cause grievous harm? And, can the circumstantial dots be clearly connected such that the requisite intention to cause grievous harm can be imputed to Mr. Bretney?

[81] Again, the present case depends upon circumstantial evidence. While motive needn't be proven by the Crown, in this case there is no coherent story or narrative that in anyway makes sense of what the Crown asks the court to infer. If anything, the narrative reflected by the Crown's evidence suggests that Mr. Bretney would not have intended to cause Ms. Didier grievous harm. On the beach he was doing anything but.

In summary:

- The various injuries noted by Dr. King were not life threatening,
- By themselves, they did not clearly constitute 'grievous harm/injury',
- The fact that, at some time after the injuries were sustained, Ms. Didier drowned does not, by itself, convert or elevate those injuries to the realm of 'grievous harm',
- There is no clear causal connection between the injuries and Ms. Didier's subsequent drowning,
- There is no clear evidence that Mr. Bretney inflicted the noted injuries,
- Or, If he did inflict those injuries, there is no clear evidence that he intended to do so.

[82] In the present case, the circumstantial dots are, to my mind, too far apart and cannot be glued together with speculation. In the present case I do not have a sufficiently clear picture of the event to safely arrive upon a finding of guilt. I am of the view that in the present case there are reasonable inferences other than guilt that can be drawn from the evidence and for that reason I find that the Crown has not proven the case beyond a reasonable doubt either in respect of the charge as set out in the indictment or any lesser included offence. I would therefore acquit the accused.

IT IS HEREBY ORDERED:

1. The Defendant is hereby acquitted of the charge in respect to this matter.

Justice Richard Schneider (Ag.)
Backlog Court Judge

BY THE COURT

REGISTRAR