

IN THE EASTERN CARIBBEN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER & NEVIS

SAINT CHRISTOPHER CIRCUIT

CASE SKBHCR 2023/0041

REX

V

DIVON TROTMAN

DIJON TROTMAN

APPEARANCES

The DPP Adlai Smith, senior crown counsel Mr Leslie Roberts, and crown counsel Ms Krystal Sukra for the prosecution.

Mr Hesketh Benjamin for the defendant Divon Trotman.

Mr Craig Tuckett for the defendant Dijon Trotman.

2025: AUGUST 01

VERDICT

In allegation of murder by two brothers using knife and concrete block

- 1 **Morley J:** Divon Trotman aka Junie now 25 (dob 08.04.00) and his older brother Dijon Trotman aka Bull now 26 (dob 14.03.99) have been tried on indictment, finalised on 29.04.25, at first by a jury sworn on 07.05.25, and after their discharge on 24.06.25 continuing by judge alone, up to 18.07.25, during 37 court days, facing 3 counts, being:
1. murder; and
 2. in the alternative, wounding with intent to murder; and
 3. again in the alternative, wounding with intent to do grievous bodily harm.

- 2 This is a third written verdict by judge-alone on St Kitts & Nevis, and by the instant judge, following changes in legislation in September 2024, the first being **R v Anthony Adams 2024** on 09.12.24, and the second being **R v Trevern Edwards 2025** on 29.04.25¹.
- 3 On 07.03.21 at 22.13hrs² at Parry's housing extension in Stapleton, Keon Fyfield aged 38 (dob 11.11.82) crashed his BMW car into the premises³ of Andre Mitchell, who coincidentally is Assistant Commissioner of Police (ACP), a bullet⁴ was recovered from the front passenger well of the BMW, Fyfield was found in a ditch constructed behind the house, nearby was a knife⁵ with a broken tip, also a concrete block with blood all about its base⁶, at hospital he was found to have the knife tip⁷ embedded through his skull, he had 8 stab wounds to his head, and 2 blunt force splayed lacerations to his skull⁸, and he died in hospital from a pulmonary embolism 17 days later on 25.03.21, having said to police at the hospital a passenger had pulled a gun on him in his car, that 'they' had got in, also gesturing he had received stab wounds. The trial has examined:
- a. What happened to him;
 - b. Who did it; and
 - c. With what intent.
- 4 The primary evidence implicating Dijon as inflicting the injuries was argued to be:
- a. His dna was said found on a wall at the crash scene;
 - b. He was identified as being at the scene by Michelle Henry;
 - c. He left the scene without trying to help Fyfield, who he must have known to be lying injured in the ditch, implying he had attacked him and wished him ill;
 - d. He was seen shortly after the crash by family friends Sandra Nisbett and Shernee Morton near the scene, bleeding, consistent with having been in the crash and an altercation;

¹ See www.eccourts.org/judgments for both cases.

² See ex 18, being the time of the electricity outage caused by the crash recorded by Skelec.

³ See ex 2.1, being a picture of the BMW wedged at an angle above ground against the home of ACP Mitchell.

⁴ See ex 9, being the 0.40 cal bullet.

⁵ See ex 8, being the knife, and ex 6.3, being a picture of the knife in at the scene.

⁶ See ex 9, being the concrete block, and ex 6.6 and 6.7, being pictures of the blood-covered block at the scene.

⁷ See ex 16, being the knife tip.

⁸ See ex 28, being the autopsy report on Keon Fyfield by Dr Adrain Nunez.

- e. He was treated for injuries at the Mary Charles hospital that night, consistent with having been in a crash and altercation; and
 - f. He told police lies about his whereabouts and the origin of his injuries to hide his guilt.
- 5 The primary evidence implicating Divon as inflicting the injuries was argued to be:
- a. He was seen earlier at 20.30hrs talking to the driver of the BMW;
 - b. He was identified as being at the crash scene by Michelle Henry;
 - c. He was identified as being at the scene by Marsha Mitchell, who said he was bleeding, consistent with having been in the crash and an altercation, and she watched him look in the passenger side of the vehicle consistent with his trying to recover something from where the bullet was later found;
 - d. Like Dijon, he left the scene without trying to help Fyfield, who he must have known to be lying injured in the ditch, implying he too had attacked him and wished him ill;
 - e. He was treated for injuries at the Mary Charles hospital that night, consistent with having been in a crash and altercation; and
 - f. He told police lies about his whereabouts and the origin of his injuries to hide his guilt.
- 6 From the circumstances, the Crown's case was the brothers had a disagreement with Fyfield, who they knew, acting together Divon pulled a gun on him in the passenger seat while Dijon was in the back seat, the car crashed in a struggle, and outside the car both launched a murderous attack on him, using a knife, and heard by ACP Mitchell 'banging' him 5-6 times, implicitly with the concrete block, Dijon seeking to get away over a wall, taking the bloodied block with him to do so, Divon returning to the passenger seat to recover likely a gun, where on the floor was the bullet, both Divon and Dijon being identified at the scene, having injuries from the crash and altercation, then going to the Mary Charles hospital, so keeping away from the JNF hospital to avoid questions where Fyfield was taken, later destroying their clothing which would have Fyfield's blood, then lying to police to hide their involvement, where the fact neither tried to help Fyfield as crowds had gathered at the crash scene inexorably implied it was they who had assaulted him.

History of case

- 7 The case first appeared in the High Court list on 28.09.23, and thereafter made slow progress through to trial, being listed 40 times, largely to secure expert defence evidence concerning why Fyfield died, to disconnect his death on 25.03.21 from the event on 07.03.21, there being appearances on the following dates:
 - a. In 2023, on 23.10, 25.10, 02.11, 08.12, 13.12, and 14.12.23;
 - b. In 2024, on 11.01, 05.02, 09.02, 16.02, 19.02, 23.02, 07.03, 22.03, 19.04, 26.04, 17.05, 24.05, 07.06, 28.06, 05.07, 12.07, 19.07, 26.07, 02.08, 12.09, 20.09, 04.10, 11.10, 18.10, 18.11, and 13.12.24; and
 - c. In 2025, on 17.01, 31.01, 03.03, 04.03, 15.04, 29.04, and 06.05.25.
 - d. Counsel Craig Tuckett presented from the earliest on 28.09.23 as representing both, and received assignment of public funds, though was only called to the Bar on 05.12.22, 9 months earlier, and as his juniority became strikingly evident during the follow-on proceedings, on 14.12.23 the court determined the brothers should have separate representation owing to differing evidence against each, whereupon senior counsel Hesketh Benjamin, a former magistrate was assigned to Divon on 09.02.24, Tuckett remained with Dijon, and it was hoped Tuckett would benefit from Benjamin's experience, about which there will be more later.
 - e. On 15.04.25, when fixing the case for trial, it was noted there were 32 witnesses, but Counsel Benjamin believed less than half would need to be cross-examined, and so it was thought the trial would last 3 weeks; though in the end, largely driven by Counsel Tuckett, almost every witness was required, with others added as the trial proceeded, being 34 live witnesses, during 10 weeks, through 37 court days, consuming the entire term, making this believed the longest trial ever on St Kitts.
- 8 On 07.05.25, a jury of 14 was sworn, there being two alternates as a murder trial, so that the 37 days of sitting were:
 - a. In May, on 07, 08, 09, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, and 29.05.25;
 - b. In June, on 02, 03, 04, 05, 06, 10, 11, 12, 23, and 24.06.25 (when the jury was discharged, the trial continuing as judge-alone); and
 - c. In July, on 01, 02, 03, 07, 08, 09, 10, 14, 15, 16, 17, and 18.07.25.

- 9 The jury had to be discharged on 24.06.25 because:
- a. On 30.05.25, juror 14 was discharged to be able to travel, it having been thought at empanelling the trial would be nearing its close by end-May, though was not, reducing the jury to 13;
 - b. On 23.06.25, juror 2 reported her mother had been approached to warn her to warn the juror not to convict, who had then texted all the jurors of the warning, and so juror 2 was discharged with agreement from counsel, reducing the jury to 12; and
 - c. On 24.06.25, juror 11 reported his pregnant girlfriend had been approached to warn her the defendants are dangerous as a witness had fled the country, such that she did not want her partner in the trial for fear of repercussion to herself and her unborn child, so juror 11 was discharged with agreement from counsel, reducing the jury to 11.
 - d. Initially, the defence wanted to keep the jury remainder, if at all possible, but also wanted to preserve the right to argue on appeal they should have been discharged as tainted by interference, while in parallel the Crown was minded to seek discharge as there was a risk the jury would wish to convict impermissibly to punish such interference, meaning the defence were seeking to pin the Crown by running the trial to conclusion, in the hope of acquittal, but preserving agreement with the Crown on appeal there should have been discharge, as a unified voice, thereby wishing to 'have their cake and eat it', to seek an acquittal but preserve a cast-iron appeal, meaning in this situation as it unfolded in argument the court was minded to discharge.
 - e. However, in any event, on a murder trial, being a capital charge, there must be a full jury, per **s33 Jury Act** cap 3.15, here meaning 12, so if dropping to 11, discharge was inevitable if trial on the murder was to continue.
 - f. *Obiter*, it should be noted the **Jury Act** seems out of date, first in force in 1914, as it refers to full juries of 9 (as occurs on Montserrat), not of 12 (as has evolved in practice on St Kitts), so that the Attorney General may wish to attend to this anomaly, and also to allow for a murder trial to continue with up to two less than a full jury, whatever the number.
 - g. In short, the number of jurors dipping below 12, all counsel eventually agreed discharge must follow in a murder trial.

- 10 There then followed defence argument the case should not proceed as judge-alone.
- a. Judge-alone has been made permissible by **s6 Judge Alone Trials Act 2024** (JATA), in force from 20.09.24, which states:
- (3) Subject to subsection (4), where the judge...discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied—
 - (a) that a circumstance giving rise to the question of the discharge of the jury has taken place, and
 - (b) that to continue the trial without a jury would be fair to the accused person or persons.
 - (4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial....
 - (8) In this section “circumstance in which the question of the discharge of the jury arises” includes a circumstance
 - (a) where the jury may have been inadvertently prejudiced against the accused;
 - (b) where one or more of the members of the jury has misconducted themselves;
 - (c) where one or more of the members of the jury acquires or possesses personal knowledge of the accused’s bad character;
 - (d) where the number of jurors falls below that which is required to give a verdict which may be lawfully accepted by the court;
 - (e) where one or more members of the jury has been or may have been subject to jury tampering;
 - (f) where the trial judge is satisfied that there is no prospect of the jury agreeing on a verdict.
- b. It was assessed a circumstance had arisen to discharge the jury, namely the trial had fallen below the required number of jurors under **s6(8)(d)**, and prejudice may have arisen under **s6(8)(a)**, with jury tampering under **s6(8)(e)**, while to continue would be fair to the accused under **s6(3)(b)** as the Act contemplates a professional judge, as here, will be able to assess the evidence evenly and put out of mind prejudicial material, including the suggestion of tampering, focusing purely on whether, on the testimony presented, the Crown has proved its case beyond reasonable doubt, while it is in the interests of justice to continue under **s6(4)** having been in trial up to then for 7 weeks, as otherwise there will be long delay to re-trial, likely several years awaiting transcripts, while the legislation was plainly designed to allow judge-alone to continue where as here a jury is discharged.
- c. Such other material as may be prejudicial the instant judge will put out of mind is as follows:

- i. I have read all the case papers, including all the witness statements, both in the committal bundle running to 203 pages, and as additional served during the trial, running to 18 further statements, and will focus on what is admissible and in evidence, not on what appears in the papers but has not been led;
- ii. In the police interview of Divon on 13.04.21 (ex 10) there are questions on page 9 asserting there was a dispute about money and hiring a car from Fyfield as being the background to the attack, though no evidence of this was produced, so that there is no motive offered;
- iii. In particular, I will not pay heed as follows:
 - 1. To report to the court by the ODPP⁹ Keon Fyfield is the brother of the current Prime Minister, meaning there will here be no adjudication based on seeking to please his office;
 - 2. To when Counsel Benjamin for Divon on 15.07.25 appeared to put on record his strategy at trial has been to put the Crown to proof, and pointedly said he has not suggested to any witness Divon was neither present nor involved, that he has no formal defence, possibly implying Divon does not in his instructions contest assaulting Fyfield, but instead I will examine the trial evidence on the basis he was elsewhere, as appears in his police interview and consistent with the defence of Dijon;
 - 3. To the further statement of Marsha Mitchell dated 02.05.25 reporting she believes the brothers have violent reputations and is in fear, so asking to give evidence by zoom rather than confront any defendants in court;
 - 4. To the further statements of Michelle Henry dated 28.03.24, 12.05.25, and 14.05.25, who is in witness protection, reporting she believes she has been placed on a kill list by the brothers, who are known to be assassins, having murdered at least one other, and that Keon Fyfield told her on his deathbed it was the brothers who assaulted him (which I had ruled on 02.06.25 inadmissible before the jury); and
 - 5. To the report to the court by the ODPP on 21.05.25 that Michelle Henry has warned Counsel Craig Tuckett is known to be a 'crook'.

⁹ Office of the Director of Public Prosecutions.

11 Concerning Counsel Tuckett, it is necessary to flag some oddities for full disclosure in case of possible appeal issues, in fairness to both the defendants, and to the ODPP, given how serious have been the allegations the defendants have faced, including the potentially capital charge of murder.

- a. Since 22.02.24 Counsel Tuckett has been under a charge of perverting the course of justice, for allegedly offering to bribe a rape complainant, due to be tried by Baptiste JA (rtd) visiting St Kitts from 13.10.25, and has been practising in the interim, where action under **s81 Supreme Court Act** led by the DPP to suspend him pending outcome was resisted on 31.05.24 by the Bar and AG Chambers¹⁰; in theory, this ought to mean it should not be an appeal point later he should not have been practising in this trial, though the issue may need to be addressed.
- b. Though during 8 years from 2014 he often failed exams to qualify as a lawyer, nevertheless during covid, which was a period of study and exams from home, he was passed by the Trinidad Hugh Wooding Law School in 2022, and so was called to the Bar of St Kitts & Nevis on 05.12.22 (not by this judge), meaning he has been given the standing of a qualified attorney, armed with a gown, able to claim the dignity and honour of being an honest barrister, and so notwithstanding his appearances in this trial (and in other cases) are littered with inquiry as to whether he knows any or enough substantive criminal law, or the laws of evidence, or the laws of criminal procedure, or the rules of advocacy, or the proprieties as between senior and junior, or his duty to maintain the dignity of the court and not to argue back with the Bench, nevertheless he is counsel, and so in theory this ought to mean it should not be an appeal point later his being at the Bar may be anomaly, raising query as to his competence, though again this may need to be addressed.
- c. During the trial, he frequently asked questions concerning Divon, when his client is Dijon, noticeably in court going to Divon to take instructions, though Divon's counsel is Counsel Benjamin, vastly more experienced, who had kept a low profile in his questioning style,

¹⁰ Chambers of the Attorney General of St Kitts & Nevis.

showing advocacy expertise, which was thoroughly unseated by the approach of Counsel Tuckett, which was to ask many questions of every witness, often of questionable relevance, not knowing the answers he might receive, embarking on a voyage of discovery, in a fishing expedition to see what he might catch, arguably often drawing attention to Divon, and firming up evidence or gathering new evidence against both brothers, including Divon who he did not represent, a striking example being his insistence on calling the pathologist Dr Adrian Nunez, whose evidence might have been anodyne, and agreed, but who produced under cross-examination by Counsel Tuckett compelling evidence of a ferocious attack on Fyfield, which could not have been an accident in a fall or car impact, and when quietly admonished by Counsel Benjamin to stop asking questions, pulling on his gown, could be seen by the court to wave away the senior; in mentioning this, in theory it ought to mean it should not be an appeal point later he took over representation of Divon as it is a matter of record, as above, he has been properly admitted to the Bar and it must be assumed he knows what he is doing, though again this may need to be addressed.

- d. Moreover, Counsel Tuckett has had no or inadequate notes of the trial evidence, making none when cross-examining, and not enough during examination of witnesses by others, such that he has often been criticised for misquoting evidence, caused by having no record of it, and has at trial-end asked for all of the judge's notes, and instead been given as a courtesy the notes of Crown Counsel Sukra to assist with his closing arguments.
- e. In fairness to Counsel Tuckett, as the case proceeded, in a sense as a learning experience for him, he improved and his submissions on the admissibility of dna material and his closing submissions in the last week of the trial were of very good quality; in mentioning this, it may mitigate any appeal point he should not have been counsel defending.
- f. An overall view is he has fought this case 'tooth and nail', doing his very best, sometimes making mistakes, cutting across his senior, taking many bad points, but also many good ones, and though he has lengthened the trial with his boundless questions of everyone, it should be said in my judgement Dijon has had effective representation.

- 12 A further oddity arose in that Senior Crown Counsel Roberts, who had had conduct of the case from its first appearance in the High Court, withdrew as active trial counsel on 10.06.25, owing to a personal circumstance, there being in parallel a frequent admonition from defence counsel and the Bench there had been a lack of attention to preparation, and to the Crown case theory, at which point the DPP became the primary advocate, working with Counsel Sukra, but this change did not alter the pace of trial progress, nor lead to revision of the trial work done thus far.

The trial

- 13 The trial exhibits, witnesses called, and the evidence agreed read or agreed received are set out at annex 1, in sections 1, 2, and 3 respectively.
- 14 The notable dates of the trial were as follows:
- a. Initial trial start was scheduled for 29.04.25, then 06.05.25, but the jury was finally sworn on 07.05.25.
 - b. On 10.06.25, Counsel Roberts withdrew.
 - c. On 19.06.25, a dna result came in from Cellmark in the UK purporting to link Dijon to the scene.
 - d. On 23.06.25, there was a visit by the court and jury to the locus in quo, in daylight and in darkness.
 - e. On 15.07.25, the DPP closed the Crown's case, and withdrew the murder charge, count 1.
 - f. On 16.07.25, after hearing evidence during earlier days, there was an argument on the admissibility of the new dna find, with ruling it was admissible, at which point there were no further submissions, it being accepted there was a case to answer on counts 2 and 3, and the defence cases opened, and closed, with no evidence called.
 - g. Closing arguments, with the Crown seeking to establish its case proved beyond reasonable doubt, resisted by the defence, were on 17 and 18.07.25, with the indictment adjusted to 2 counts on 17.07.25 to reflect the murder count withdrawn, and then adjournment to today 01.08.25 for the verdict in writing, as required within 14 days under **s8 JATA**.

Withdrawal of the murder count

- 15 The reason the murder count was withdrawn on 15.07.25, to be the subject of nolle prosequi, concerns the medical evidence.
- 16 Fyfield did not die of his injuries received on 07.03.21, but because while immobile in bed in hospital, he developed a deep vein thrombosis (dvt), which can be common, and which led here to a fatal pulmonary embolism on 25.03.21, meaning the clot moved to and flooded his lungs.
- a. From September 2023, the proceedings sought to examine whether Fyfield's death had been preventable. Funds of '\$5000' were agreed with the Registry to be released for the defence to seek expert medical review of the hospital notes.
 - b. A defence report was obtained from Dr Andre Morgan and Dr Heather Immanual dated 30.08.24 (ex 27), both qualified in the Caribbean and in North America, and who gave evidence on 01.07.25 which pointed to blood thinners, available at the JNF hospital per Dr Daveen Wilkin (ex 30), not having been administered to Fyfield until 23.03.21, when there was evidence in the notes they ought to have been arguably by 09.03.21, and at least by 15.03.21, but by 23.03.21 it was too late, meaning his standard of care had been notably 'sub-par'.
 - c. A prosecution report was obtained from Dr Alfred Walker dated 29.01.25 (ex 26), practising in Canada, and who gave evidence on 24.06.25, opining inter alia assessment as to whether the standard of care was very low should be put to the clinician who had dealt with Fyfield as his patient at the JNF hospital on St Kitts.
 - d. The clinician was Dr Cameron Wilkinson, being the medical chief of staff, who had made a witness statement dated 23.08.21, offered in the committal bundle at p104, now overseas, and who though poised to give evidence on 10.07.25, chose not to do so, citing he is busy and has moved on from St Kitts.

- e. Prosecution application to have his evidence instead given by Dr Natalie Osborne, by a statement dated 26.06.25, was refused as too late, while merely copying the statement of Wilkinson, adding only at its end 'NB This case was managed by Dr Cameron Wilkinson and me from admission', it being plain Dr Osborne was being placed in the invidious position of defending her absent senior, when Dr Wilkinson was aware the Crown had long required him to defend his treatment.
- f. In law, there is the 'but for' principle, which allows for legal culpability to flow from an unbroken chain of events, where here, but for the attack on Fyfield, he would not have been immobilised in hospital, and but for his being immobilised he would not have developed a dvt, and but for the dvt he would not have died of a pulmonary embolism; however, this chain can be broken by an intervening cause, or *novus causus interveniens*, about which there is considerable case law. The defence argument was to posit the failure to administer blood thinners, where risk of dvt is a commonly foreseeable outcome of immobilisation, was such sub-par treatment as to be an intervening cause, thereby breaking the chain of causation. In response, the Crown merely had to present evidence the attack was a significant cause of death, not the only cause, namely the attack had put Fyfield in the hospital to face mistaken treatment, and that notwithstanding there may have been better treatment in hindsight, the law takes the hospital as it finds it, namely doing its best in all the circumstances, which can include making mistakes. However, to do this Dr Wilkinson had to give this evidence, which may have included being cross-examined as grossly negligent, for the court to gauge whether the treatment did or may have created an intervening cause, which in fairness would mean not convicting the brothers of culpability for the death and therefore not of murder.
- g. In the absence of Dr Wilkinson giving evidence, the Crown could see the court could never be sure there had not been an intervening cause, even if in law unlikely; he needed to 'defend his wicket', and in not doing so, with great fairness the DPP withdrew the murder, for which the DPP is to be commended as acting wholly properly as a minister of justice.

The remaining two counts

- 17 It follows as I begin analysis of the evidence, the court for verdict is now concerned with what had been count 2 and in the alternative count 3, as perfected and renumbered counts 1 and 2 on 17.07.25 following withdrawal of the murder:

FIRST COUNT
STATEMENT OF OFFENCE

WOUNDING WITH INTENT TO MURDER: contrary to Section 10 of the Offenses against the Person at Chapter 4.21 of the revised edition 2009 of the laws of St Christopher and Nevis.

PARTICULARS OF OFFENCE

DIVON TROTMAN AND DIJON TROTMAN: On the 7th day of March 2021 at Parray's Housing Extension in the Parish of St. Peter in the Federation of St. Christopher and Nevis did wound KEON FYFIELD with intent to murder him.

SECOND COUNT
STATEMENT OF OFFENCE

WOUNDING WITH INTENT TO DO GRIEVOUS BODILY HARM: contrary to Section 17 of the Offenses against the Person at Chapter 4.21 of the revised edition 2009 of the laws of St Christopher and Nevis.

PARTICULARS OF OFFENCE

DIVON TROTMAN AND DIJON TROTMAN: On the 7th day of March 2021 at Parray's Housing Extension in the Parish of St. Peter in the Federation of St. Christopher and Nevis did wound KEON FYFIELD with intent to do him grievous bodily harm.

Directions of law

- 18 In approaching the evidence, I give myself the following directions:
- a. The Crown must prove its case so that I am sure; there is no burden on the defendants.
 - b. Each defendant requires separate consideration; they do not automatically stand or fall together.
 - c. It is the right of the defendants not to give evidence, which cannot be held against either as indicating guilt.

- d. It is the right of the defendants not to answer police questions where they choose not to, consistent with the caution, where an arrestee is told 'you do not have to say anything, but anything you do say may be given in evidence'.
- e. Dijon is of good character, which may make it less likely he committed the offences and more likely to be believed in police interview.
- f. Divon has a previous conviction on 16.03.20 at the Basseterre Magistrates court, for unlawful wounding for which he was fined \$3000ec, and though this means he is not of good character, I make it plain I do not consider this conviction adds in any way to the Crown's case, as its disposal suggests an offence of a different magnitude, and so as a matter of practicality I will treat him like Dijon as having no relevant convictions, which may make it less likely he committed the offences and more likely to be believed in police interview.
- g. In considering expert evidence, I remind myself I do not have to accept it, though should have good reason if not as I should expect an expert to know more on their expert subject than me.
- h. In considering eye-witness identification evidence, mindful of the particular dangers of being mistaken, I give myself a special warning an honest mistaken witness can be persuasive yet wrong, and so must consider **R v Turnbull 1976 3AER54**, examining:
 - i. The length of an observation;
 - ii. At what distance;
 - iii. In what lighting;
 - iv. Whether there were obstructions; and
 - v. Noting recognition is not automatically stronger as folk do sometimes think they recognise someone and are wrong.
- i. In considering the relevance of any lies told by either brother to the police, if any, I must first consider from **R v Lucas 1981 QB720**,
 - i. If a lie, and
 - ii. Whether there may be an innocent explanation;
 - iii. Only if not, might a lie be capable of supporting the Crown case as indicating guilt.
- j. In considering circumstantial evidence, I remind myself:

- i. There may be occasions where the evidence may invite inferences to be drawn, where in law an inference must not be a guess, or speculation, but a conclusion to be drawn from facts which lead to no other reasonable possibility.
- ii. Further, circumstantial evidence if arising needs to be approached in a particular way, meaning where there is no direct evidence of an event occurring, where here for example no one saw anyone assault Keon Fyfield, which instead would be an inference from the surrounding facts. A circumstantial case is not automatically weaker than an eye-witness or confession case. Many come before the court and each depends for its persuasiveness on the vanishing unlikelihood of coincidence, working cumulatively in geometrical progression eliminating innocent possibilities, so that if an innocent possibility remains, no matter if improbable, but being just reasonably possible, then such reasonable possibility should be accepted to the advantage of a defendant.
- k. In considering whether the brothers acted in a joint criminal enterprise, I must be sure they actively engaged together in the attack, or am sure if one did so, the second had foresight of the intent of the first and intended to assist or encourage, consistent with **R v Jogee 2016** UKSC8.

What happened to Keon Fyfield?

- 19 In assessing this case, I will first examine what happened to Keon Fyfield and with what intent.
- 20 I am sure of the following:
- a. At 22.13hrs on 07.03.21, Fyfield crashed his car because someone in the front passenger seat pulled a gun on him, causing him to accelerate and lose control while struggling with the firearm. The reason I am sure is I accept the evidence below.
 - i. On 04.06.25 at trial, with agreement of counsel¹¹, police officer Shaun Straker reported on 18.03.21 in hospital Fyfield had spoken to him, saying, per my note,

¹¹ Obiter, there could have been argument to exclude what Fyfield said to police officers Lyndie George and Shaun Straker, arguably as hearsay and not dying declaration, and at one point it appeared there would be, but in the end prosecution and defence

...he was parked in his car in the area, as he was parked someone had entered in the left passenger side, and that someone had pointed a gun at him, saying I got this for you, a struggle ensued, his foot pressed on the gas peddle, he crashed into the yard...I asked him if he could recall who the person was who entered the car and he said no.

- ii. On 04.06.25 at trial, with agreement of counsel, police officer Lyndie George reported on 20.03.21 in hospital Fyfield had spoken to him, saying

...they were in the car and one pull a gun, and he hold it with his hand, and brush it aside causing his fingers to get cut...He showed me a stabbing action, his right hand with downward stabbing action, he showed me something about holding the gun, he showed me an action, he held it, the gun, and brushed it aside, [demonstration performed with left hand], idr the hand he used, he showed me bruises on that particular hand...He showed a stabbing motion, downwards, and he indicated the back of his head. Icr which hand he used to demonstrate the stabbing motion. He did not say who 'they' were, I did not have a chance to ask, he started hyperventilating.

- iii. On 02.07.25 at trial, officer Carlton Duncan using a video (ex 32) demonstrated the rapid movement forward of the breach of a firearm when cranked to load or eject a round from the chamber, which I conclude is consistent with an action that could during a struggle with a firearm injure Fyfield's hand as complained, while the uncontested evidence was on 07.03.21 fire officer Linnell Richardson found a 0.40 round (ex 9) in the passenger footwell of the BMW consistent with a round having been ejected by a cranking, making me sure it came from a firearm pointed at Fyfield, over which there was then a struggle, with cranking, causing hurt to his hand as complained to officer George, noting also there is a cut on the left fourth finger of Fyfield in picture ex 29.9.
- iv. Though it was argued the round (ex 9) may have come from Fyfield, as he has a previous conviction of possession of a firearm and ammunition (ex 23), of unspecified calibre, for which on 21.10.08 he received imprisonment for 8 years, reduced on 10.02.14 to 5y4m, nevertheless, in all the circumstances I am sure the round not his, but belonging to a front passenger assailant, because of what he said, which I find I am sure was true.

by 04.06.25 agreed what he said should go before the jury, because the defence wanted it known he had not identified either Divon or Dijon, when he knew them, which may suggest therefore his assailants not them, while the evidence from Michelle Henry offered in a further witness statement on 14.05.25 that Fyfield had told her it was Bull and Junie in the car was ruled inadmissible.

- v. Moreover, the explanation given by Fyfield makes sense, as explaining why the crash occurred setting the context for his being assaulted after.
- b. Fyfield was stabbed 11 times, being in the head 8 times, with the knife recovered from the scene (ex 7). The reason I am sure is I accept the evidence below.
 - i. On 01.07.25 at trial, pathologist Dr Adrian Nunez offered his assessment from the autopsy on 29.03.21 (ex 28) of what injuries Fyfield had received on 07.03.21, and in support offered 17 post-mortem pictures (ex 29.1-17), where:
 - Ex 29.1 showed 1 stab through the left side of face, which on admission had been through the cheek, the bandaging being visible in picture ex 21.2 taken on 07.03.21;
 - Ex 29.2 showed 3 stab wounds, being 1 stab wound to the right side of upper front face, 1 stab wound as a superficial linear line on the right side of upper front face, and 1 stab wound as a superficial line across the right eyebrow and forehead;
 - Ex 29.5 showed 1 stab wound along the back of the head;
 - Ex 29.14 showed 3 stab wounds, being close together to the top of the skull, where one still had the tip (ex 16) of the knife (ex 7) embedded through the skull;
 - Plus there was another 7.5cm stab wound to the left arm which had not been photographed, but is in the autopsy report; while
 - Ex 29.9 showed 2 cuts, one being clearly a defensive stab to the left wrist, and the other being a cut to the left fourth finger, which I surmise may have been a defensive stab wound, or a pinch wound from grappling a cranking handgun.
 - ii. The knife (ex 7) was recovered under the left shoulder of Fyfield by Michelle Henry while being treated in the ditch, as shown in her locus video (ex 19) and handed to ACP Mitchell, who put it on a near a/c unit, where it was photographed as ex 6.3.
 - iii. The knife tip (ex 16) was recovered from Fyfield's skull during autopsy, and on examination by forensic officer Damian Challenger on 30.03.21 and by Cellmark

forensic scientist Damien Singleton on 27.08.21, both said in their separate opinions, matched and fitted the knife blade at where the blade is broken, meaning I am sure the multiple stabbings were by the knife recovered under Fyfield.

- iv. Dr Nunez opined to break the blade and penetrate the skull required considerable force, in the context of 8 stabbings to the head, and so I am sure evincing a murderous determination to plunge the blade into the brain.
- c. Fyfield was bludgeoned in the head at least twice with the concrete block recovered from the scene, being ex 8. The reason I am sure is I accept the evidence below.
- i. Dr Nunez further described blunt force injuries to the head, causing splayed wounds of irregular shape created by the force of impact, where:
 - Ex 29.4 showed brutal impact on the right back of head;
 - Ex 29.7 showed brutal impact on the left top of head.
 - ii. He opined the injuries were consistent with the use of the corners of the concrete block (ex 8) as blunt force impact.
 - iii. This is consistent with evidence given by ACP Mitchell after the crash he heard 5-6 bangings coming from the ditch area, which I conclude was use of the block to bang Fyfield's head at least twice.
 - iv. The concrete block as ex 8 can be seen photographed as ex 6.6 and ex 6.7 on the night of 07.03.21 at the north wall of ACP Mitchell's home, near the ditch in which Fyfield was recovered, where I am sure the bottom surface is evidently covered in blood, consistent with, and so I am sure, having been used as a weapon to inflict the blunt force injuries described.
- d. In the circumstances of how the crash occurred, a gun being pulled on Fyfield, and then the assault on Fyfield as described by Dr Nunez, while I cannot be sure the knife did not belong to Fyfield, as there is no positive evidence either way who owned the knife, I am sure he was acting in self-defence even if producing the knife, which would mean being then disarmed with the knife being used on him, so that self-defence does not arise on the part of any assailant.

- e. Further, while I cannot be sure exactly what happened moment by moment, as to whether Fyfield was stabbed first in the car (though no blood was reported about the driver headrest), or only in the ditch (where blood quantity and spatter seems indicative the attack was mostly there), or there was any altercation on the narrow lawn above the ditch (though no blood was reported in that area), or Fyfield was pushed into the ditch or fell into it getting out of his car, nevertheless I am sure his injuries reported by Dr Nunez were inflicted not in self-defence, consistent with his showing officer George how he was being stabbed to the head, so that if anyone was acting defensively it was Fyfield.

- f. Moreover, the injuries received were not an accident, as suggested by the defence, either as a result of the car crash, or falling into the ditch onto rebar captured in pictures at ex 6.1 and ex 31. The reason I am sure is because I accept the evidence below.
 - i. When asked, Dr Nunuez wholly rejected this hypothesis;
 - ii. The car windshield was not broken, only cracked, and so laceration could not have arisen as found, even if the airbags had not deployed, which the pictures in ex 2.3-5 showed they had;
 - iii. It does not account, if falling onto the sharp tip of a rebar for how there could be multiple head lacerations, including three together on the top of the head; and
 - iv. It does not account for the tip for the knife being through Fyfield's skull;
 - v. While the defence suggestion Fyfield may have multiply stabbed the top of his own head with his own knife while crashing the car is incredulous, to the mind of Dr Nunez and mine.

- g. Reflecting on the injuries he received, not in self-defence and not an accident, being wounds, which are a breaking of the skin, I am sure they evinced an intention to kill rather than some lesser intent, particularly as concentrated about the head, being 10 injuries to it (8 with the knife and 2 with the block), and even more particularly the stabbing through the skull.

21 It follows I do not need to know exactly everything that happened in moment by moment detail to conclude, after being threatened with a gun, leading to the crash, in the yard of ACP Mitchell Fyfield suffered a ferocious attack with the knife (ex 7) and concrete block (ex8), during which

he was stabbed repeatedly in his head, and through his skull, while effort was made to smash his skull with the block, all of which evinced and intention to kill him, so that whoever did this attack would be guilty of count 1, being wounding with intent to murder, and no further consideration of count 2 is necessary.

Who attacked Keon Fyfield?

- 22 The next question is who am I sure attacked Fyfield?
- 23 I am sure there was more than one attacker because Fyfield on 18.03.21 told Lyndie George that 'they' had got into his car, plural, when one had pulled a gun, therefore acting together, while also describing struggling with the gun, and separately a stabbing action, intimating he was attacked by two persons.
- 24 It is an undisputed fact Fyfield knew Divon and Dijon, both say as much in their police interviews (ex 10 and ex 11). However, I do not consider when Fyfield told Shuan Straker on 20.03.21 he could not *recall* who had been the passenger, that this rules out Divon, noting he did not say he did not *know* the person, which might be different. Further, though he did not mention it was Divon and Dijon in his car to anyone, including to his aunt Annette and mother Marlene, yet knowing them, from experience it is not uncommon for there to be poor memory of an event after head trauma, recalling Fyfield was bludgeoned twice with the block and had a knife tip in his skull, while it is also plausible he may have remembered but refused to call names, which is not an uncommon feature in crime, especially where Fyfield himself had spent substantial time in jail. In sum, that Fyfield did not name them does not rule them out.
- 25 Further, it is correct there is an absence of forensic evidence, such that there is no specific find of Dijon and Divon in the car, like dna, or fingerprints, nor on the bullet, nor on the knife, nor on the block. However, the absence of evidence is not evidence of absence, and so what evidence there is requires assessment.

Was Dijon at the scene?

- 26 Looking at the evidence, I will first examine if Dijon had been at the scene.
- 27 I am sure he was for the reasons which follow.
- 28 First, Dijon's dna was found at the scene. I am sure he tried to scale the west wall of the home of ACP Mitchell, leaving traces of blood from his bleeding right leg. This is because:
- a. At the Mary Charles hospital at 11.50pm on 07.03.21, Dijon is recorded as bleeding heavily from his right leg (noted during evidence on 07.07.25 from Dr Jenson Morton in contemporaneous hospital notes, being ex 39, as 'double plus' bleeding, being marked ++, requiring stitches).
 - b. On 08.03.21, Marsha Mitchell pointed out to ACP Mitchell what appeared to be blood on his west wall by a mango tree, suggestive of someone bleeding trying to scale the wall.
 - c. Dna from the apparent blood was recovered onto swabs by officer Damian Challenger on 29.03.21 and placed in bag D285710, marked 30.03.21, as photographed in ex 38.
 - d. Recent cut to Dijon's right leg can be seen in pictures of him at the police station on 10.04.21, notably ex 12.4.
 - e. Dijon gave a buccal sample by consent (ex 14) to officer Sylvester Roberts on 12.04.21, which was placed in a bag marked SR15/2021, photographed as ex 37.
 - f. The buccal and wall swabs were sent to Cellmark in the UK on 14.07.21.
 - g. In a report dated 27.08.21, Damian Singleton of Cellmark said the wall swabs had not been tested.
 - h. The buccal and wall swabs were returned to St Kitts police by Cellmark on 08.12.21.

- i. During the trial, it was clear if the blood on the west wall was not Dijon, this would be important to know as greatly assisting the defence, while also relevant to the Crown if it was Dijon, so the wall swabs were sent back to Cellmark on 03.06.25.
- j. On 19.06.25, Robert Harvey of Cellmark reported, using Dijon's dna on file from the buccal swabs received in 2021, he had found combining the wall swabs a low level dna profile from two making it more than a billion times more likely to come from Dijon and an unknown than from two unknowns, providing 'extremely strong support', being of the highest scientific kind, that Dijon contributed.
- k. I conclude Dijon's dna was on the wall, though Counsel Tuckett argued the statistical analysis invalid and math unreliable, by assertion, without demonstrating his thesis, showing no knowledge of calculating ratios, while also arguing the finding impermissible under **s155(8)(b) Evidence Act** as originating from a 'likelihood ratio', rather than a 'random occurrence ratio' as expressed in the legislation, but on which this court has already ruled in the case of **R v Lennox Gumbs 2024**, with extract at annex 2, though Counsel Tuckett did not offer reminder.
- l. Effort was made by the defence to exclude the dna finding as too late, but it was ruled admissible on 03.07.25, being laboratory evidence not subject to the vagaries of failing human memory, while the defence had been just as interested in the outcome to establish it was not Dijon, noting the defence could not produce a single example of dna being excluded in earlier cases.
- m. If Counsel Tuckett had taken less time in the case, it is likely the case would have ended before the report arrived, end-case originally scheduled for end-May, but his overlong examination of almost everyone cannot be reason to exclude the evidence he allowed to arrive while the trial still continued.
- n. Further effort was then made to exclude the dna as unreliable with examination of whether it may have been planted, with argument as follows.

- i. On analysis, there were errors in police statements, where:
 - 1. Damian Challenger had said in his police statement of 24.04.21 he had given the wall swabs to evidence custodian Daniel Jacobs on 29.03.21, though the bag was marked 30.03.21, and it transpired he never did;
 - 2. Latoya Lake Marshall had said in her police statement dated 09.08.21 she had collected the wall swabs from Jacobs on 14.07.21, and it transpired he had not had them, as in fact they had remained in a 'temporary storage' fridge throughout, being instead where she must have collected them; and
 - 3. Sylvester Roberts had said in his police statement of 12.04.21 he had given the buccal swabs to Jacobs on 12.04.21, but had not in fact done so until 20.04.21.
- ii. It turns out the buccal and wall swabs had been in the same fridge as 'temporary storage' accessible to many officers, not with Jacobs, between 12-20.04.21, allowing for the theoretical possibility, as potential for mischief, of Roberts and Challenger colluding to pervert the course of justice by taking Dijon's dna from the buccal swabs and placing it on the wall swabs.
- iii. To do this, the original buccal swab bag on 12.04.21 would have to be opened, then destroyed, replaced with a second bag (ex 37), and dishonestly written up by Roberts, while the original wall swab bag from 29.03.21 (or 30.03.21) would have to be opened, then destroyed, replaced with a second bag (ex 38), and dishonestly written up by Challenger.
- iv. Though the witness statement of Challenger was originally accepted by the defence and read on 27.05.25, and of Roberts read on 26.05.25, only Roberts was available to give evidence as the dna argument evolved, which he did on 10.07.25.
- v. During his evidence, I found him to be a reliable officer and I am sure he did not pervert the course of justice as floated by Counsel Tuckett, by destroying an original buccal swab bag, and then faking the initials of Dijon on the second bag, which would have been necessary for this plot to be true; instead I am sure ex 37 is a picture of the original bag on 12.04.21, as initialled by Dijon (noting the letters 'D' and 'T' the same as in his consent form, being ex 14, per visual comparison

created by Counsel Sukra in ex 44), and importantly which was sealed on 12.04.21, so that no contamination, accidental or deliberate, arose when the buccal swabs were in the same fridge as the wall swabs.

- vi. It follows I am sure Dijon's dna was not planted on the wall swabs, so that I am sure the wall swabs are a reliable finding of Dijon's dna at the scene.

29 Second, Dijon was identified at the scene by Michelle Henry who said in evidence on 02-04.07.25 (with square brackets inserted for context):

I know Junie, and Bull. I have known them for the majority of all their life, they went to school with my son. I saw them every day before 2021, they live just a little way from my house, I can see their house from my house. I know their father as Fitzgerald or Fitzpatrick I know him as Danny, I know the mother as K, I am not sure of her first name. In 2021, I know at the time, Junie had a gf, I did not know who her name was, but Bull had a gf named Passion...

[Discussing the lighting she brought to the scene] it was a blue searchlight, like a hurricane one, using a heavy duty battery, it is a good size, it can shine at a distance, the face is about hand size, the light was white with a far range, the part with the lens is bigger than the back.

[Walking with the hurricane lamp to the scene of the crash], then I saw Bull, come out of ACP Mitchell's yard...Mitchell has two gates, one small, and a big one for his vehicle, Bull was coming from the big gate, coming out of Mitchell's yard. I was approx. maybe about 5ft away...I knew it was him, because the searchlight was on him, being approx 5 or 6 feet away...

I could observe his face, but I did not ask him anything, my mind was focused on the moaning and where it was coming from. I was able to see Bull from the glare from my searchlights, we were tinging the searchlight all over to find the moaning sound, that is how my searchlights landed on him, I was shining just the one being the big long range searchlight, I observed Bull's face, I don't want to lie, it was approx 5 secs...When I saw Bull he was just coming out of the gate coming toward where Mr Phillip's house.

[Cross-examined by Counsel Tuckett] When going to ACP Mitchell's house, I saw Bull...I did not talk to him, he was facing me, on the other side of the road, he was in front of me, ...I looked for just enough to recognize he was he, my flashlight was in my hand, I pointed it in his face, I flashed my light at everyone, to see who was there...I saw Bull, he was coming from the gate, the big gate, I saw him coming from the big gate...I am trying to answer without sounding angry. I saw Bull coming out of the big gate. Put – you did not see Bull coming out of any gate – I said I did, so help me god.

- 30 I am sure this identification is correct and not mistaken, considering the *Turnbull* case, as it is of someone very well known to Michelle Henry using a large hurricane lamp shining it in his face, who was within close proximity for more than a glance, even though a moonless night with the street lighting out as local electricity had been cut off by the crash, while in addition I know Dijon's dna was at the scene, supporting her correctness.
- 31 Michelle Henry being correct to identify Dijon, even though with a torch at night, being consistent with the dna find, has the effect of making her identification of Divon compelling, about which I will say more later: if she got Dijon right, I consider it is more likely she got Divon right as well, bearing in mind where one is the other may well be too.
- 32 Third, shortly after the electricity went off due to the crash, Dijon was seen bleeding at the home of Sandra Nisbett where his friend Calvin Browne lived, asking to speak to his father on a phone to collect him, observed by Sandra, and Calvin's girlfriend Shernee Morton, who both gave evidence on 26 and 29.05.25 respectively. At the visit to the locus on 23.06.25, the distance from the crash to the home was calculated about 300m, However, Dijon did not go to his father's home, which is 50m from the home of Michelle Henry, and 150m from the scene. I conclude the reason he did not go home to his father was because he knew he had been identified by Michelle Henry, and as inquiry gathered the first place to find him would be there, so he avoided being found there while he was plainly in the area. When collected from Sandra's home by his father in his white jeep, who gave evidence on 05.06.25, he was taken directly to his mother in Bird Rock, some miles away, and so was successfully extracted.

Was Divon at the scene?

- 33 I will now examine if Divon was at the scene.
- 34 I am sure he was for the following reasons which follow.
- 35 First, he was identified by Michelle Henry, who as above knows him well. Having recited what she said about Dijon, below is what she said about Divon.

[Walking from her home to the crash scene with the hurricane lamp], on coming up to the breadfruit tree I spotted Junie, I saw him, he was close by a breadfruit tree, where the lady

from the national bank has her driveway. Between the driveway and breadfruit tree I saw Junie. I had the searchlight, shining it all over, he was about 3ft, not that far from me, I could recognize his face, it was a big searchlight, the light extended so I could see him, I saw the blood on his shirt and I asked him if he ok, he said ok, yes, I'm ok, I asked if there was anyone else in the vehicle and he said no other... [Comparing for how long she saw Bull and Junie], as for Junie, I saw his face longer, as I got the opportunity to ask Junie and to see the blood on his clothes and to ask if alright and if anyone else in the vehicle.

[Cross-examined by Counsel Benjamin], after I asked Junie if he was ok, he was standing close to the breadfruit tree, I was standing close enough to see he was Junie, because of the darkness and timespan, I cannot remember what he was wearing, but I know there was blood on his clothes, I am not sure if the clothes were dark. I assume the blood come from the car... I do not remember if there was moonlight, it was 4 years ago, I remember he had blood on him because of my searchlights, I did not look up [to see if there was a moon], the searchlight is not too much limited, in my opinion, the circumference of the lens was as wide as my hand, you have not asked me about the glare, it spread far, it was a hurricane light...

[Cross-examined by Counsel Tuckett, Henry repeatedly referring to 'Junie'] I said I saw Junie, he had on clothes, short pants...it was jean pants, I do not remember the colour, it was 4 years ago...Question - How can you say you saw blood – from my searchlights they were exactly on it, I only asked him if ok because I saw the blood...you are just here to frustrate me...I did not see Junie come out of the big gate, I only saw Junie at the top of the hill...

- 36 I am sure this identification is correct and not mistaken, considering the *Turnbull* case, as it is again of someone very well known to Michelle Henry, using a large hurricane lamp shining it in his face, who was within close proximity for more than a glance, for longer than seeing Dijon, even though a moonless night with the street lighting out as local electricity had been cut off by the crash, she talked with him, reinforcing the identification, while in addition I know from the dna find she has correctly identified Dijon at the scene, making her identification of his brother more reliable.
- 37 Second, he was identified by Marsha Mitchell, who had been the tenant of ACP Mitchell and who attended the crash scene as soon as it happened. She did not know Divon, but giving evidence by zoom on 07, 12, 14, and 15.05.25, as the first trial witness, and not able to see the defendants in court, on oath saying she had not seen any social media or news reports which may have contained Divon's picture, nevertheless she picked him out from a photo array of 14 faces (ex 1) on 12.05.25 correctly as man 3. Of this man she saw, she said:

[Giving evidence on 07.05.25], I panicked, I thought it was an accident, but after I hear noise, people talking, rumbling, 'junie junie look what you did', it was coming from down in the ditch. I could not see down in the ditch, from where I was standing, then there was a calm, I then saw someone climbing up from the ditch over the vehicle to come out of the ditch, and he was then walking toward me and I asked him is there anyone else down there with you and he left. He came toward me to exit through the sliding gate. He came 3ft to me. It is fair to say we were almost face to face. I could see his face, his body, I could see clear enough. As to the time on it, it was about 10secs. I was talking to him, there looked on the right side of his face to be blood, he was sweating, his hair was corn-rowed in one. When going through the gate, other people had come, I saw his back, it had dirt and grass, and when walking up the road to the housing scheme, a person called out 'Junie', while he was walking...he was walking up the road, a fat lady said 'Junie are you ok, wait for the ambulance, there may be internal damage', the lady told him he probably has internal damage, not visible, he did not pay her any attention...the complexion was dark, dark. A lady called out to him and said 'Junie'.

[On 12.05.25], I saw a fat lady. I recall what she said, when he came out of the ditch up the road, called him by name 'Junie', he should wait for the ambulance, he did not pay her any mind and continued to walk away. She said he had a baby mother, she wondered if she was with him at the time of the incident. As he walked through the gate walking up the road, she was calling 'Junie, you may have internal injury', he walked through the gate, going up the road, the fat lady said, 'Junie, wait for the ambulance, you might have internal injury', he did not pay any attention he kept on walking, after he walked away she said he had a baby mother and she was wondering if she was with him at the incident. Then about 2mins, after, he came back into the yard, went to the vehicle at the passenger side, and he started to search as if looking for something, but he did not stay long as it seemed as though in haste to leave, and he finished the search, he went up the road, and the fat lady was still concerned about the baby mother...and then I heard a groaning as if someone was in pain.

[On 14.05.25], I looked at the person Junie for about 3secs. The distance was about 3ft. There was no obstruction. I had seen this person about 3 times before. And after the incident I saw him in town. I saw the person climbing over the front bumper of the vehicle, raising his hand, climbing over the front bumper. He braced his hand on the wall to help him over the front bumper. He came to the opposite part of the garbage bin to come round to go to the slide gate...He came back to vehicle, he went to the passenger side, he seems as if he was searching for something. Inside the car. He just went to the car, opened the door and started searching. Having opened the door, he started to look inside, not long, about 4secs, I could not see if he took anything from the vehicle as the front door was open, he closed it back and he left.

[Cross-examined by Counsel Benjamin], the person walked toward me, upstairs. The lights were out, but you could see because it was full moon. Put – there was no full moon – yes it was full moon. By the reflection of the light the moon was giving off, you could see. The

person had come to a stop, to open the gate, to go outside the gate. It was a sliding gate. It is not remote, you use your hand to slide it. I have seen that person before...I did not know his name. No one told me the person's name, I only learn of the name on the night of the incident. The person was coming out of the ditch, using his hand to climb over the front part of the vehicle. I saw the vehicle, I was about 10ft from it.... I heard the name 'Junie'..., it was not completely dark, you can see, I know the face, I have seen it before, I saw the face for 3 seconds...The fat lady referred to Junie, he was walking. I heard the person calling by name, that he must wait, he may have internal injury, but he was moving away from the area, as if not wanting to stay in the area, ... both were standing on the road pavement, she was about 4ft from him when calling 'Junie stay in case of internal bleeding'. She was standing as the person was walking.

[Cross-examined by Counsel Tuckett], ...I said the person came back. He had no shirt on, still. He opened the passenger side door. He did not stay long, and closed back the door, and then he left again...[Putting her statement of 07.04.21], I said I saw his hair in corn row up in one. I cannot recall anyone else with hair like this. I describe him having blood on right side of his face. I do not remember anyone else having blood on any part of their face. I also said there was dirt to the back of his head...I also say he had green leaves on his bare back...[putting from her statement the man came back to the passenger side 2mins after the exchange with the fat lady] I saw the person for about 4secs, when he came back...Emerging at first, I said I was fully focused on him, he had my full attention, this was because I was more concerned about him, the accident had just happened, you want to check if he was hurt, so I was more focused on that individual.

[To the judge], the closest distance the man got to me, was 3ft. He was about 3secs at a distance of 3ft from me. I was looking at his front, face to face. I was looking at his face, while I was asking him the question, 'is anyone else with you, is anyone else there', and he said no. I do not wear glasses, I had no eye condition in March 2021, nor now. The person returned, he went to the passenger door of the car. In returning, he had to come through the open gate, he was 4ft from me. It was not long, he was only passing me. He was sideways. When he returned, I saw his face, and just that I recognize him from the first time he left. He was not long, he was passing, in all I cannot put a time on it. It seemed as if he was searching. He opened the door he started looking around inside the car. Not long, about 4 secs, not long. I could not tell from observing if he had found anything. When he left the car, he was about 4ft from me, facing me, he was approaching me, then going through the gate, his body became sideways. It was about 4secs, it could be more, it is just an estimate. Approaching me, coming from car, to leave through the gate, I estimate I saw his face for about 5secs, thereabouts.

- 38 I am sure this identification is correct and not mistaken, considering the *Turnbull* case, for the following reasons:

- a. Marsha Mitchell relates seeing the person twice, once emerging around the bumper, then second returning to the passenger side of the car.
- b. I am sure the so-called 'fat lady' on the road heard calling the name 'Junie' concerned for internal injury and his 'baby-mother' was Michelle Henry, consistent with her evidence and her body shape, who also identified Divon, whose nickname is indeed 'Junie', while Shemeika Francis his girlfriend was indeed pregnant on 07.03.21, saying so in evidence on 28.05.25.
- c. The first sighting was at a closest distance of 3ft for 3secs face to face, with words exchanged if there was anyone else in the car, denied, and the second at a closest distance of 4ft for 4secs, without obstruction, which I consider to be an opportunity through two occasions to make a reliable positive identification.
- d. The identification which occurred was by using a photo array on 12.05.25, where the witness on oath had each of the 14 faces shown twice to her on sharescreen, being collated as ex 1, without prompt, not having seen the array before, then correctly picking number 3.
 - i. It was unusual to conduct such a procedure during trial, and no one knew what would be the outcome, while it is trite there ought to have been an earlier identification procedure, routinely overlooked in cases by police on St Kitts & Nevis, not thinking to use a photo array but instead thinking there must be a parade, which is thought too difficult to muster on a small island with a small population.
 - ii. Legal argument had occurred on 08 and 09.05.25 about how an identification procedure might be conducted during the trial when on 07.05.25 SC Counsel Roberts casually thought he could perform a dock identification by zoom of Divon through Marsha Mitchell, which was stopped by the instant judge as wholly unsatisfactory, inviting persons in the dock be identified where there was a risk such would lead to suggestion to the witness to conclude whoever was in the dock should be identified even if not sure.

- iii. The result of the legal arguments was to adopt an approach known in the US. In particular there was a review of jurisprudence in the case of **State of Connecticut v Smith 1986**¹², where in-court identification was not ruled impermissible, per Callahan J stating:

We know of no authority which would prohibit, as unduly suggestive, an exclusively in-court identification. Mangrum v. State, 155 Ga.App. 334, 335, 270 S.E.2d 874 (1980)." State v. Nelson, supra, 4 Conn.App. 516, 495 A.2d 298. The defendant's protection against the obvious suggestiveness in any courtroom identification confrontation is his right to cross-examination. Laury v. State, 260 A.2d 907, 909 (Del.1969); State v. Drew, 360 So.2d 500, 516 (La.1978); Cooper v. State, 599 P.2d 419, 422 (Okla.Crim.App.1979); see Manson v. Brathwaite, 432 U.S. 98, 113 n. 14, 97 S.Ct. 2243, 2252 n. 14, 53 L.Ed.2d 140 (1977). The innate weakness in any in-court testimonial identification is grounds for assailing its weight rather than its admissibility. In re W.K., 323 A.2d 442, 444 (D.C.App.1974).

The manner in which in-court identifications are conducted is not of constitutional magnitude but rests within the sound discretion of the trial court. United States v. Satterfield, 572 F.2d 687, 690 (9th Cir.1978); United States v. Williams, 436 F.2d 1166, 1168 (9th Cir.1970); United States v. King, 433 F.2d 937, 938 (9th Cir.1970); People v. Powell, 105 App.Div.2d 712, 714, 481 N.Y.S.2d 157 (1984); see United States v. Williams, 704 F.2d 315, 319 (6th Cir.1983).

- iv. In-court identification not being impermissible, but within the discretion of a court, where suggestiveness was to be minimised, and best eradicated, a photo array was considered appropriate.
- v. The photo array sought therefore to follow procedures offered in '*Identification procedures: photo arrays and line-ups model policy*' from 2015 found at the New York State Division of Criminal Justice Services.
- vi. In all the circumstances, including that Marsha Mitchell was on zoom, had not seen the faces of those in the dock, gave evidence she had not seen pictures of those arrested, I ruled the 14-face photo array was not suggestive, where unknown to her Divon was at position 3 and Dijon at position 6, each of the 14 pictures to be shown to the witness twice, and being not suggestive was therefore here permissible, to be conducted live before the jury, to see what would be the result, which was that she picked out Divon as the person she heard called 'Junie'.

¹² 512 A.2d 189 200 Conn. 465 STATE of Connecticut v. Patrick D. SMITH. Supreme Court of Connecticut. Argued March 12, 1986. Decided July 15, 1986.

e. Defence argument was intelligently raised there was no moon and therefore if Marsha Mitchell is mistaken about the moon, her identification is not reliable. It is correct as a matter of astronomy, agreed in ex 3, there was no full moon at the time of the crash at 22.13hrs on 07.03.21, so it was incorrect for Marsha Mitchell to insist there was one, though it rose almost 4hrs later at 02.51 on 08.03.21. Further she said she thought the person 5ft9, when the prison records Divon as 6ft2 in ex 33. More, she believed she had seen the person, not knowing the name, 3 times earlier than 07.03.21 and one time after, on 01.04.21, meaning she may have superimposed a person, being Divon, onto the person she saw on 07.03.21. However, I reject the argument these anomalies mean it is reasonably possible she is mistaken, because:

- i. The father of Divon, Fitzgerald Hendrickson said on 05.06.25 he also thought him 5ft9, pointing to how gauging height incorrectly is not an automatic indicator of an identification as unreliable.
- ii. Common-sensibly, it is possible up to a point to see a person at night without the moon.
- iii. She saw the person twice at close proximity.
- iv. It is correct Divon had a corn-row hairstyle, as can be seen in pictures at the police station on 13.04.21, at ex 13.3, which supports her identification.
- v. Further, it is correct Divon was bleeding as she describes she saw on the night of 07.03.21, because he is recorded later at the Mary Charles hospital at 11.55pm per ex 39 as having lacerations to his left arm, left cheek, and frontal scalp, requiring stitches, which again supports her identification.
- vi. And Michelle Henry identified Divon separately.

39 Concerning the cross-examinations of both Michelle Henry and Marsha Mitchell, it was a noticeable feature in the trial that Counsel Tuckett, representing Dijon, asked many questions about Divon, though Counsel Benjamin tried to stop him, as mentioned above, arguably reinforcing the evidence of identification by both witnesses, particularly by Michelle Henry, who became vexed with him, and who referred in some exasperation before the then jury at least 14 times to 'Junie' by name being at the scene when he cross-examined her.

Videos

- 40 A feature of the trial to mention was the use of videos. There were 4:
- a. Ex 19 – video with transcript of Michell Henry at the scene on 29.05.25;
 - b. Ex 24 – video of the scene by Counsel Sukra on 11.06.25;
 - c. Ex 32 – video with transcript of demonstration by Carlton Duncan on 13.06.25 of cranking a firearm and ejecting a round; and
 - d. Ex 43 – video with transcript of Marsha Mitchell at the scene on 23.06.25.
- 41 Video is a modern technology available on any smart phone, and it can be of assistance in showing a scene and recording where persons were at a scene when making observations of what they say they saw. *Obiter*, it may be that most witness statements in the future will be videos, rather than edited written police statements.
- 42 The video of Carlton Duncan cranking and ejecting was admitted without objection as best evidence in that it was better as a visual presentation rather than verbal description, and meant there was no need dangerously to be cranking a gun with ammunition in the court.
- 43 The video made of Counsel Sukra of the scene in daylight on 11.06.25 was agreed admitted as, prior to the locus visit on 23.06.25, it allowed all parties, including the jury, to better understand the geography of the premises of ACP Mitchell, and in particular to see the location, shape and depth of the ditch, the location at the north wall of the block (ex 8) in pictures exs 6.6 and 6.7, and where there had appeared to be blood on the west wall by a mango tree.
- 44 The videos of Michelle Henry and Marsha Mitchell had shown where they had been at the scene when they made observations, as they would not attend the locus visit in the presence of the defendants, Henry being in witness protection and Mitchell being fearful. There was defence objection, largely as counsel wanted them to attend the locus, with the implication they would have to confront the defendants, but having ruled they need not, the videos were ruled permissible as best evidence, being a reliable record, with transcripts, of what each said, and where they thought they had been standing.

If at the scene, was it Divon and Dijon who attacked Keon Fyfield?

45 Having concluded I am sure Divon and Dijon were at the scene, I will now examine if they attacked him, inflicting as above the injuries reported by the pathologist Dr Adrian Nunez.

46 I am sure they did attack him and inflict the injuries for the reasons which follow.

- a. It was agreed evidence read from the statement of Catherine Henry dated 08.04.21 that Divon had been with the BMW driver at 8.30pm on 07.03.21, by inference Keon Fyfield, which was 1.5 hours before the crash, raising expectation Dijon was nearby as the brothers had spent the day together with others liming, per Divon's girlfriend Shemeika Francis up to after 8pm.
- b. Both had recorded injuries (ex 39) consistent with having been in a crash and altercation; indeed Divon said in his interview on 13.04.21 (Ex 10) he had been in an altercation, leading to his injuries, meaning a fight, though with someone called Copper in Cayon, explicitly acknowledging his injuries from a fight, though I find lying about it not being with Fyfield, while Dijon in his interview on 10.04.21 (ex 11) said his injuries from a bike crash, explicitly acknowledging them from some sort of vehicle incident, though I find lying about it not being from Fyfield's BMW crashing.
- c. The reason I know these are lies in police interview is because:
 - i. Divon said his injuries were in the afternoon of 07.03.21, when it is not reasonable and therefore highly improbable then to wait until 11.50pm for treatment, while it is a wholly improbable coincidence both Divon and Dijon received separate injuries at separate times, rather than from the one incident together, then both requiring hospital treatment together that night; and
 - ii. Dijon said his injuries, being from a bike, had occurred on 07.03.21, which is a lie because his father said they were a week before then, which is not consistent with bleeding on 07.03.21, as seen by Sandra Nisbett and Shernee Morton nearby in the area, while leaving his blood at the scene, also lying to police he did not know

if Divon came with him to the hospital when his mother Karis described driving both Divon and Dijon there.

- d. Moreover, I know Divon's girlfriend, Shemeika Francis in her statement of 31.03.21 on which she was cross-examined as hostile on learning what she had said may not be assisting the brothers, had said to police, but before they were arrested on respectively 09.04.21 and 12.04.21, thereby implicating them:

[Sometime after 9pm] Divon rush came in the house [at Bird Rock]...without a shirt, and he had blood on his left chest, below his left eye. He was looking frighten...I then start to ask him what happen, but he would not answer. He also had blood coming from the back of his head, I then told him to give me the clothes so I can wash them out but he didn't. ...A couple of minutes after I saw Bull...with blood coming from his foot...I then call his mum and told her if she can come drop us Mary Charles hospital...Junie received stitches to his shoulder...Bull also received stitches...when they reach home they took off the bloody clothing and put them in the garbage bin so the garbage truck can go with them the Monday morning [meaning the morning after the crash, which had been on the Sunday night].

- e. From what is in Shemeika's statement, which I accept is the truth, I conclude:
- i. The brothers destroyed their clothing, rather than wash it, to be rid of connection to Fyfield, whose blood would likely be present, because they knew they had assaulted him; and
 - ii. Divon was lying in his police interview he was at his mother's home in Birdrock when the crash occurred; and
 - iii. Dijon was lying in his police interview he had been at his father's home asleep when the crash occurred (recalling also the evidence of Sandra Nisbett and Shernee Morton).
- f. Assessing these lies to police, I conclude they were not uttered as a mistake or in fear or in embarrassment, or even stupidity, but to distance themselves from the scene, at which they knew they had been in an attack on Fyfield, having met him earlier seen by Catherine Henry, and so these lies applying the *Lucas* case are capable of supporting their guilt.

- g. Further, I conclude the blood-covered block (ex 8, and in pictures exs 6.6 and 6.7) was plainly used in the attack, but found near the north wall, having been moved from where Fyfield was attacked, which I conclude was by Dijon, to use the block unsuccessfully to help scale the wall, as evinced by his blood being on the near west wall, putting Dijon into the attack on Fyfield by using the block, which he then carried away.
- h. Additionally, from how two different weapons were used, and the quantity of injuries, namely the block, and the knife (ex 7), and ACP Mitchell hearing 5-6 bangings, I conclude there were two assailants, meaning both brothers struck Fyfield blows, where Divon had the knife, which would be consistent with Marsha Mitchell hearing voices at the ditch where one says 'Junie Junie look what you done', as reference by Dijon to Divon during the attack, likely to Divon breaking the knife tip in Fyfield's skull.
- i. A further point arises, namely Divon refused a dna sample on 13.04.21 (ex 15), which I do conclude was deliberately to avoid it being possible to link his dna to the scene, as he was bleeding and observed so by Michelle Henry and Marsha Mitchell.
- j. Proof Divon was an assailant and who had arrived in the car is his going back to the car to find something in the passenger well, observed by Marsha Mitchell, which I conclude was either for the gun he pulled or the bullet ejected (ex 9).
- k. Finally, it speaks powerfully to Divon and Dijon together having deliberately harmed Fyfield that they both did not try to help him, but simply left the scene, it seeming to observers Divon wanted to get away rather than wait to be examined by paramedics, with Divon even pretending to Marsha Mitchell and Michelle Henry there was no one else involved, when by inference he well knew Fyfield had been the driver and was lying injured in the ditch.

47 I have not found the following evidence to be of assistance:

- a. The testimony of Orrette Stuart Gray, who though thinking he saw either Divon or Dijon at the scene, who he knows up to a point, could not be sure who or if either, being adamant he could not and would not make a positive identification, though did confirm there had been a

person coming around the front of the BMW spoken to by Michelle Henry, who called a name he could not remember.

- b. The testimony of the ambulance crew treating Fyfield, being Colette Francis, Quamie Charles, and Vinique Wilkin, and query whether they should have been required by Counsel Tuckett when they have important public duties saving lives.
- c. Moreover, I consider the elaborate and lengthy cross-examinations by Counsel Tuckett of anyone who had been at the scene, not just the ambulance crew, on what medical treatment Fyfield had received, and by who, in what order, who had been where in the ditch assisting, doing exactly what, whether lights were shining, and with what bandaging applied, all designed to see if he could show minor inconsistencies, to have been of no help in settling any important trial issue.

48 To draw the case to a conclusion, though I cannot be sure of every single moment, I am sure:

- a. Divon and Dijon were with Keon Fyfield around 8.30pm on 07.03.21, Divon being seen at the car;
- b. Divon and Dijon entered his car, Divon in the front, Dijon in the back;
- c. Divon pulled a gun on Fyfield at about 22.13hrs, leading to a struggle with the gun, leading to a round ejecting into the passenger footwell, and to the car crashing;
- d. Divon and Dijon received injuries in the crash and altercation which followed, requiring stitches later at the Mary Charles hospital;
- e. Divon stabbed Fyfield in the head with the knife (ex 7), while Dijon bludgeoned him with the concrete block (ex 8), both acting together, following the attack in the car which caused the crash;
- f. Dijon took the block he had used to try unsuccessfully as a step to climb the high north wall, and then left his dna on the west wall, which was lower;
- g. At the same time as Dijon went to the west wall, Divon returned east to the car to recover the gun or bullet;
- h. Both lied to police about their injuries and whereabouts to hide their guilt;
- i. Divon refused a buccal sample to avoid being connected to the scene, knowing he had been bleeding;
- j. Both destroyed their clothes to avoid being found with Fyfield's blood on them;

- k. Both had not helped Fyfield because they had attacked him;
- l. The nature of the attack was not in self-defence, nor were the injuries accidental, nor were they caused by any other lawful purpose;
- m. More, the nature of the injuries inflicted, being multiple head wounds as found by the pathologist, particularly bludgeoning the head with the block and stabbing the knife through the skull, I infer evinced a joint intention unlawfully to kill; and therefore
- n. The brothers acted in a joint criminal enterprise, each participating in the actus reus with shared mens rea.

49 It is the cumulative effect of the evidence which weighed as a whole convicts each, drawing together many threads to weave a tapestry depicting their murderous attack. No one thread proves the case; it is their interlinking combination which has undone them.

50 In consequence, for the reasons explained, I find Divon Trotman and Dijon Trotman, separately but both, guilty of wounding Keon Fyfieldd with intention to murder him, as count 1. The maximum sentence is 25 years.

51 *Obiter*, if Dr Cameron Wilkinson had attended court to defend his treatment of Fyfield, there is the distinct prospect they would have been held culpable for his death under the 'but for' principle, and convicted of murder, where the maximum sentence (the Crown not seeking death) would be life imprisonment.

52 Their sentencing hearing on wounding with intent to murder will take place during next term, which will start on 17.09.25, and in the interim they will remain remanded in custody.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

1 August 2025

ANNEX 1

REX
V
DIVON TROTMAN
DIJON TROTMAN

A1-SECTION 1 – LIST OF 47 EXHIBITS prepared by Crown Counsel Krystal Sukra

EX NO	DESCRIPTION OF EXHIBIT
1.	Photo ID Array (14 headshots including both Defendants, compiled during trial in May 2025 by Vivian Caesar and Senior Crown Counsel Leslie Roberts; created by editor Kareem Caines) Divon – pic 3 Dijon – pic 6
2.	Photographs of Crashed Vehicle at ACP Mitchell's home (2.1 to 2.9, taken on 7 March 2021 by Lajaune Yearwood)
3.	Online Literature on Moon Phase on 7 March 2021 (obtained by defence Counsel Craig Tuckett)
4.	3D Google Earth Map of the relevant area in Stapleton (created by Vivian Caesar)
5.	Daytime Photographs of ACP Mitchell's home taken 8 March 2021 (5.1 to 5.8, taken by Lajaune Yearwood)
6.	Nighttime Photographs of Ditch and Backwall of ACP Mitchell's home taken 7 March 2021 (6.1 to 6.11, taken by Lajaune Yearwood)
7.	Knife recovered from the Scene (found by Michelle Henry underneath Keon Fyfield in the ditch and given to ACP Mitchell; taken into custody by Lajaune Yearwood on 7 March 2021)

8.	8-inch Concrete Block recovered north wall (ex 6.6) (found by Damien Challenger near mango tree towards backwall northwest of ACP Mitchell's home, taken into custody on 29 March 2021)
9.	Bullet round (found by Linell Richardson on passenger's side floor of the car and given to FSO Hodge; taken into custody by Lajaune Yearwood on 7 March 2021)
10.	Audio Recording and Transcript of Interview with Divon Trotman dated 13 April 2021 audio and transcript (10.1 and 10.2, admitted through Xavique Wilkes)
11.	Audio Recording and Transcript of Interview with Dijon Trotman dated 10 April 2021, audio and transcript (11.1 and 11.2, admitted through Xavique Wilkes)
12.	Photographs of Dijon Trotman in Police Custody taken 10 April 2021 (12.1 to 12.9, taken by KeJohn Richardson)
13.	Photographs of Divon Trotman in Police Custody taken on 13 April 2021 (13.1 to 13.3, taken by Echelle Clarke)
14.	Consent of Dijon Trotman to give DNA Sample on 12 April 2021 (prepared by James Francis)
15.	Refusal of Divon Trotman to give DNA Sample dated 13 April 2021 (prepared by James Francis)
16.	Tip of knife (recovered from the skull of Keon Fyfield by pathologist Dr. Adrian Nunez at autopsy on 29 March 2021)
17.	STELLARIUM Screenshots of Night Sky over Stapleton Estate (17.1 from the night of 7 March 2021 without the moon; 17.2 from the night of 24 August 2021 with full moon; obtained by SCC Roberts)
18.	SKELEC Report of Power Outage on 7 March 2021 timed at 22.13hrs (obtained by counsel Craig Tuckett)
19.	Video of Scene Reconstruction with Michelle Henry on 27 May 2025 (19.1 is the first video; 19.2 is the transcript of the first video; 19.3 is the second video; 19.4 is the transcript of the second video; obtained by DPP Smith)

20.	Screenshot of Google Earth Map showing locus neighbourhood (obtained from original 3D Google Earth Map by SCC Roberts)
21.	Photographs of Keon Fyfield in Hospital (21.1 to 21.4, taken on 7 March 2021 by Lajaune Yearwood)
22.	Medical Form re Keon Fyfield written by Dr Sebastian
23.	Conviction Record of Keon Fyfield (obtained from CRO by SCC Roberts)
24.	Video taken by Crown Counsel Krystal Sukra of ACP Mitchell's yard on 11 June 2025
25.	Copy of Cellmark report of Damien Singleton dated 27 August 2021
26.	Dr Walker's medical report dated 29 January 2025
27.	Dr Andre Morgan's Report dated 30 August 2024, co authored by Dr Heather Immanual
28.	Dr. Adrian Nunez autopsy report, dated 15 April 2021
29.	17 Post-Mortem photos of Keon Fyfield through Dr Adrian Nunez (29.1-17)
30.	Letter from Dr Daveen Wilkin dated 30 April 2025 letter, agreed read into evidence, showing hospital resources
31.	Screenshot of re-barb in/around ditch, in ex 19 video with Michelle Henry.
32.	Video of Carlton Duncan showing how to use a firearm (32.1) Transcript of said video (32.2)
33.	Letters from prison agreed read into evidence, dated 13 May 2025 – Height record of Divon as 6ft2 (33.1) Height record of Dijon as 6ft1 (33.2)
34.	Conviction of Divon, noting wounding on 16 March 2020, fined \$3000 EC

35.	Certificate of no conviction of Dijon
36.	Robert Harvey DNA Test report dated 19 June 2025, finding purported match on wall swab to Dijon
37.	Picture of bag containing buccal swabs by Robert Harvey
38.	Picture of bag containing wall swabs by Robert Harvey
39.	Letter from Dr Jensen Morton along with medical records prepared by senior nurse on duty in relation to the brothers at Mary Charels hospital on night of 07.03.21
40.	Statements of Javern Weekes, all dated 16 June 2025, showing their evolution during 16 June, to 1 July, to 2 July 2025 Weeks 1 (40.1) Weeks 2 (40.2) Weeks 3 (40.3)
41.	Police station diaries relating to the buccal swabs dated 12 April 2021 (41.1) Log entries by Daniel Jacob showing buccal swabs as '21SK2124' collected by Javern Weekes 29 May 2025 (41.2) Picture of Buccal swab bag marked SR152021 (being ex 37) created by CellMark (41.3) FedEx airway bill to CellMark dated 30 May 2025 concerning an item marked 'exhibit bag' (41.4)
42.	Station diary entry dated 30 March 2021 showing wall swabs taken by CPL D Challenger at the home of Andre Mitchell (42.1) Log entries by Jacobs showing '21SK2098' serial numbers for the autopsy fingernails passed to Javern Weekes dated 2 June 2025, where the wall swabs in bag D285710 are said to be stapled together to bag 21SK2098 (42.2) Picture of exhibit bag D285710 (being ex 38) created by CellMark (42.3) FedEx Airway bill dated 3 June 2025 concerning an item marked 'DNA Analysis' (42.4)
43.	Video of Marsha Mitchell Part 1 23 June 2025 - 4:48 seconds (43.1) Video of Marsha Mitchell Part 2 23 June 2024 – 48 seconds (43.2) Transcript of Video; noting, first video is to page 3 to where Marsha says "sure", then second video begins under where Marsha says "sure". (43.3)

	The two videos and transcript being admitted through Javern Weekes on 9 July 2025 as he made the video with a digital camera
44.	Screenshot top/bottom – created by CC Sukra, for visual comparison, put to Sylvester Roberts – showing handwriting of 'Dijon Trotman' on consent form (ex 14) and 'DT' on the buccal swabs bag (ex 37)
45.	Log out/ Log in register of evidence custodian Jacobs showing movement of exhibits marked 21SK2124 and 21SK2098 (45.1- 45.4)
46.	Photo of back of buccal swabs bag (ex 37)
47.	Photo of back of wall swabs bags (ex 38)

A1-SECTION 2: TRIAL WITNESSES - 34 witnesses called

- 1 Marsha Mitchell (eye-witness, identifies Divon)
 - a. Witness statement on 07.04.21, p61 of the case committal papers (Ws 07.04.21-p61);
 - b. Additional statements (As) 02.05.25, 27.05.25;
 - c. Appeared in video at scene dated 23.06.25 taken by Javern Weekes, ex 43;
 - d. Gave evidence by zoom (Ebz) on 07, 12, 14, 15.05.25 (appearing on 4 days).
- 2 Andre Mitchell (eye-witness)
 - a. Ws 21.03.21-p117;
 - b. As 10.05.25, 19.05.25;
 - c. Gave evidence in court (Eic) on 19, 20, 21.05.25;
 - d. Plus visit to locus, 23.06.25 (4 days).
- 3 Orrette Stuart-Gray (eye-witness)
 - a. Ws 09.04.21-p86;
 - b. As 14.04.25;
 - c. Eic 21, 22.05.25;
 - d. Plus visit to locus, 23.06.25 (3 days).
- 4 Linnell Richardson (fire officer at scene)
 - a. Ws 09.04.21-p102;
 - b. Eic 22.05.25 (1 day).
- 5 Sandra Nisbett (family friend of Trotmans)
 - a. Ws 04.04.21-p55;
 - b. Eic 26.05.25 (1 day).
- 6 Steve Nisbett (family friend of Trotmans)
 - a. Ws 04.04.21-p53;
 - b. Eic 26.05.25 (1 day).
- 7 Anette Fyfield (aunt of Keon Fyfield)
 - a. Ws 19.04.21-p97;
 - b. As 23.05.25;
 - c. Ebz 27.05.25 (1 day).
- 8 Marlene Fyfield (mother of Keon Fyfield)
 - a. Ws 06.05.21-p99;

- b. Ebz 27.05.25.
- 9 Shemika Francis (girlfriend of Divon, offering alibi for both Divon and Dijon)
 - a. Ws 31.03.21-p50;
 - b. Eic 28.05.25 (1 day).
- 10 Shernee Morton (girlfriend of Calvin Browne)
 - a. Ws 04.04.21-p58;
 - b. Eic 29.05.25 (1 day).
- 11 Michelle Henry (eyewitness, identifying Divon and Dijon)
 - a. Ws 04.04.21-p82;
 - b. As 28.03.24, 12.05.25, 14.05.25;
 - c. Appeared in video at scene dated 27.05.25 taken by Xavique Wilkes, ex 19;
 - d. Ebz 02, 03, 04.06.25 (3 days).
- 12 Lyndie George (Officer who inter alia spoke with Keon Fyfield in hospital)
 - a. Ws 10.04.21-p115;
 - b. As 30.05.25;
 - c. Eic 04.06.21.
- 13 Shaun Straker (Officer who inter alia spoke with Keon Fyfield in hospital)
 - a. Ws 23.04.21-p110;
 - b. As 13.12.23;
 - c. Eic 04, 05.06.25 (2 days).
- 14 Fitzgerald Hendrickson (father of Divon and Dijon)
 - a. Ws 13.04.21-p94;
 - b. Eic 05.06.25 (1 Day).
- 15 Karis Trotman (mother of Divon and Dijon)
 - a. Ws 11.04.21-p91;
 - b. Eic 05.06.25.
- 16 Javier Greene (phone expert)
 - a. Ws 22.04.21-p131;
 - b. Eic 06.06.25 (1 day).
- 17 Vivian Caesar (investigating officer)
 - a. Ws 21.04.21;
 - b. Eic 06.06.25;

- c. Plus visit to locus, 23.06.25 (2 days).
- 18 Quamie Charles (ambulance)
 - a. Ws 08.04.21-p75;
 - b. Eic 11.06.25 (1 day).
- 19 Vinique Wilkin (ambulance)
 - a. Ws 08.04.21-p65;
 - b. Eic 11.06.25 (1 day).
- 20 Xavique Wilkes (lead investigator)
 - a. Ws 22.04.21-p147;
 - b. Produced on 22.05.25 police interviews of
 - i. Divon on 13.04.21, ex 11;
 - ii. Dijon on 10.04.21, ex 10.
 - c. Eic 22.05, 11, 12.06.25;
 - d. Plus visit to locus, 23.06.25 (4 days).
- 21 Kshante Walters (girlfriend of Dijon)
 - a. Ws 11.04.21-p89;
 - b. Eic 12.06.25 (1 day).
- 22 Lajeune Yearwood (csi officer)
 - a. Ws 16.04.21-p121;
 - b. Visit to locus, 23.06.25.
- 23 Dr Alfred Walker (prosecution medical expert)
 - a. As 29.01.25 (expert medical report – ex 26);
 - b. Ebz 24.06.25 (1 day).
- 24 Collette Francis (ambulance)
 - a. Ws 08.04.21-p70;
 - b. Eic 01.07.25 (1 day).
- 25 Dr Andre Morgan (defence medical expert)
 - a. As 30.08.24 (expert medical report – ex 27);
 - b. Ebz 01.07.25 (1 day).
- 26 Dr Heather Immanual (defence medical expert)
 - a. As 30.08.24 (same report as Morgan – ex 27);
 - b. Ebz 01.07.25 (1 day).

- 27 Dr Adrian Nunez (pathologist)
 - a. Ws 15.04.21-p107 (autopsy report – ex 28);
 - b. Eic 01.07.25 (1 day).

- 28 Carlton Duncan (firearms expert)
 - a. As 13.06.25;
 - b. Appears in video demonstrating bullet ejection - ex 32;
 - c. Eic 02.07.25 (1 day).

- 29 Javern Weekes (officer collecting forensic exhibits in 2025)
 - a. As 16.06.25, 07.07.25;
 - b. Eic 02, 07, 08, 09.07.25 (4 days).

- 30 Robert Harvey (Cellmark dna expert)
 - a. As 19.06.25 (being his dna report – ex 36);
 - b. Ebz 03.07.25 (1 day).

- 31 Dr Jenson Morton (dr producing medical notes from the Mary Charles hospital)
 - a. Ws is a letter dated 12.05.25 producing Mary Charles Hospital notes, leading to notes being exhibited - ex 39;
 - b. Eic 07.07.25 (1 day).

- 32 Daniel Jacobs (custodian of forensic exhibits)
 - a. As 02.07.25;
 - b. Eic 09, 10.07.25 (2 days).

- 33 Sylvester Roberts (took buccal swabs from Dijon on 12.04.21)
 - a. Ws 12.04.21-p128;
 - b. As 08.07.25;
 - c. Eic 10.07.25 (1 day).

- 34 Latoya Lake Marshall (forensics director)
 - a. Ws 09.08.21-p137, 04.11.21-p141;
 - b. As 13.07.25;
 - c. Ebz 15.07.25 (1 day).

A1 - SECTION 3 - EVIDENCE AGREED TO BE RECEIVED OR READ WITHOUT CALLING WITNESS

- 1 Read into the court record on 26.05.25 - Sylvester Roberts, Ws 12.04.21-p128 – metal tip recovered from autopsy on 29.03.21, **Ex 16**.
- 2 26.05.25 - Shernel Alford – Ws 19.05.21-p123 – on 30.03.21, finds blood on internal foot rail on the driver's side, not later ascribed.
- 3 26.05.25 - Keyjuan Richardson, Ws 26.04.21-p124 – **Ex 12.1-9**, pics of injuries to Dijon Trotman, recorded on 10.04.21.
- 4 26.05.25 - Echelle Clark, Ws 23.04.21-p130 – **Ex 13.1-3**, pics of injuries to Divon Trotman recorded on 13.04.21.
- 5 26.05.25 - James Francis, Ws 13.04.21-p126 – Dijon gave dna on 12.04.21, **Ex 14** p165; Divon did not give dna on 13.04.21, **Ex 15** p169.
- 6 27.05.25 - Malien Johnny, Ws 12.04.21-p143 – Dijon surrenders to police on 09.04.21 via OGBrowne, plus seizes phone.
- 7 27.05.25 – Damien Challenger, Ws 24.04.21-p134 – reporting findings on 07, 08, 29.03.21.
- 8 05.06.25 - Catherine Henry – Ws 08.04.21-p79 – on 07.03.21, was at the scene, and saw Divon with BMW at about 20.30hrs which later crashed.
- 9 12.06.25 - Latoya Lake Marshall – Ws 09.09.21-P137, and 04.11.21-p141 – re sending swabs to Cellmark.
- 10 12.06.25 - Cellmark report – Damien Singleton – dated 27.08.21-p178 – **ex 25**.
- 11 02.07.25 – Resource letter – Dr Daveen Wilkin – dated 30.04.25 – **ex 30**.
- 12 03.07.25 – Letters dated 13.05.25 from the prison describing the height of Dijon as 6ft 2 and of Dijon as 6ft1 – **ex 33.1-2**.
- 13 03.07.25 – Conviction sheet for Divon, showing fine for wounding – **ex 34**.
- 14 03.07.25 – Conviction of Dijon, showing good character – **ex 35**.

- 15 Note however, once there was the additional dna find on 19.06.25 by Robert Harvey, there followed the calling of Sylvester Roberts on 10.07.25 and Latyoe Lake Marshall on 15.07.25, at which point their witness statements, though read, were the subject of cross-examination.

ANNEX 2

**EXTRACT FROM RULING IN EARLIER CASE
ON ADMISSIBILITY OF LIKELIHOOD RATIO IN DNA ANALYSIS**

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKBHCR 2022/0016&17

REX

V

LENNOX GUMBS

APPEARANCES

The DPP Mr Adlai Smith and Mr John Coombs for the Crown.

Mr Craig Tuckett for the defendant.

2024: DECEMBER 09

RULINGS

On similar fact evidence, DNA admissibility, and discharge of jury for trial oddities

...

DNA evidence

63 Finally, Counsel Tuckett raised a curious point about the DNA evidence, on which I ruled orally also on 24.10.24. He argued that the probabilities to associate DNA with Gumbs were

all inadmissible as not based on a consensual intimate sample, and separately as based wrongly on a 'likelihood ratio' instead of on a 'random occurrence ratio'. The argument was premised on **s155(8) Evidence Act**, which states that the results of a DNA test shall not be admissible in evidence unless—

- (a) the accused person was, as required by subsection (5) of this section, informed beforehand the reason why his or her sample was being taken;
- (b) the scientist who carried out the DNA test adduces evidence of DNA comparisons together with calculations of the random occurrence ratio;...

However, the sample contemplated in **s155(5)** is an intimate one, such as hair or a buccal swab. Gumbs purported DNA was instead obtained by UK Cellmark scientist Robert Harvey taking samples from a mask (ex 9.2) found in Gumbs' backpack (ex 13) on 25.02.21, and from clothing he was wearing on 28.02.21, namely his shirt and pants (exs 11 and 12). He was not asked for an intimate sample, as it was expected that this would be refused, but instead, as is now common practice, DNA was taken from items worn and seized. The defence therefore had the opportunity to argue that the items were worn by another and to test whether the jury can be sure that the DNA came from the defendant, but not the admissibility of the finding. Gumbs was not told that the reason for the clothing being seized was to enable them to be DNA tested (as would be required for an intimate sample), precisely because the items were not an intimate sample. It follows there can be no objection to admissibility of the DNA evidence.

- 64 There was then a comparison done by UK Cellmark scientist Andrew Davidson between DNA found on the mask, shirt and pants, with DNA found on the Sol red gasjug (ex 5) the Sol lighter (ex 6), and the Koscab red gasjug (ex 21). His evidence was that where there were partial results variously from at least two DNA contributors, applying recent advances in the extreme sensitivity of DNA testing, and during the past 4/5 years in statistical analysis led by Professor David Balding¹³, where a likelihood ratio is examined, with the question, which is more likely, namely that two unknown persons have handled the items or that Gumbs and an unknown have handled them, with the result:

¹³ https://en.wikipedia.org/wiki/David_Balding

- a. For the Sol lighter it was 175000 times more likely Gumbs and an unknown had handled it;
- b. For the Sol red gasjug it was 200 times more likely Gumbs and an unknown had handled it; and
- c. For the Koscab gasjug it was 1000000000 times more likely Gumbs and an unknown had handled it.

65 The point advanced by Counsel Tuckett was that a 'likelihood ratio' is impermissible and therefore inadmissible, as the Act requires the application of a 'random occurrence ratio'. He argued this is entirely different, though has no background in probabilities and statistics.

66 It is right to say, as explained by Andrew Davidson on 07.10.24, that there is different nomenclature to assessing probability ratios; for example there are concepts like 'match probability', 'random man not excluded', and 'likelihood', as discussed with Davidson, but all are mechanisms merely for assessing the improbability of a random occurrence. In my judgement, in **s155(8)(b) Evidence Act**, which was first in force in 2011, the expression 'random occurrence ratio' is a generic term, and should legally be interpreted so, not an exclusive one or limited one, frozen in time, instead allowing for improvement in statistical analysis, as has been occurring in the past 5 years since the Act came into force 13 years ago, ultimately for the purpose of calculating improbability of coincidence. As such, the use of what is today called a 'likelihood ratio' is embraced by the expression 'random occurrence ratio', and so the analysis is admissible.

67 The alternative would be that Counsel Tuckett's argument would have rendered inadmissible almost all DNA results in the past 5 years in criminal cases on St Kitts as now the likelihood ratio predominates as DNA analysis advances.

The Hon. Mr. Justice Iain Molrey KC

High Court Judge

9 December 2024