

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

Criminal Case No. BVIHCR 2023/27

BETWEEN:

REX

v

SELROY HANLEY

Accused

Appearances:

Ms. Tracy Vidale, Principal Crown Counsel
Mrs. Valerie Gordon, Counsel for the Accused

2025: May 8th

**RULING ON APPLICATION TO EXCLUDE IDENTIFICATION EVIDENCE IN STATEMENT OF
DECEASED WITNESS**

- [1] **TEELUCKSINGH J.:** The accused, Selroy Hanley, is indicted on the count of Murder, in particular, that on 24th March, 2023, at Purcell Estate, on the Island of Tortola, in the Territory of the Virgin Islands, it is alleged that he murdered Trevon Elliot.
- [2] On 2nd May 2025, Defence Counsel filed an application to exclude the identification evidence of Trevon Elliot, on the basis that no identification parade was conducted by the police in accordance with section 110 of the **Evidence Act** 2006 of the Virgin Islands as amended.

- (3) On May 5th 2025, Crown Counsel made an application under section 58(1)(b) of the **Evidence Act** of the Virgin Islands, as amended, to tender the statement of the deceased, Trevon Elliot, dated August 31st, 2022. In the alternative, the Crown relies on section 162 of the **Evidence Act** of the Virgin Islands, as amended to tender the said statement. As part of this application, evidence was adduced from (a) Police Officer Pheiona George who recorded the statement of deceased, Trevon Elliot and (b) Ms. Ingrid Penn, Medical Social Worker, attached to the Dr. D. Orlando Hospital.

Voirdire

(a) Evidence of Officer Pheiona George

- (4) On 30th August 2022, Officer Pheiona George testified that she was at the Road Town Police Station when a report was made. Enquiries took Sgt. George and other officers to the basketball court in Purcell.
- [5] At around 9:35am, Officer George proceeded to Dr. D Orlando Hospital where she visited Trevon Elliot, who was in the emergency room, and was being attended to by doctors. He had what appeared to be an oxygen mask that was placed on his face-it was about his nose and mouth, and he had some bandages.
- [6] Officer George spoke to Trevon Elliot and heard him clearly. When he was speaking, she wrote the information in her notebook. She then transferred that information to a police statement form. She testified that she did not add nor did she remove any information from the statement.
- [7] The next day- Officer George visited, Trevon Elliot who was in the ICU at said hospital. She had in her possession a typed statement of Trevon Elliot. At the time, Officer Alfred and Social Worker Ingrid Penn were present. She wanted Ms. Penn to witness her reading the statement to Mr. Elliot as she had brought the statement, a day after recording same.
- [8] Sgt. George read aloud and slowly the statement to Trevon Elliot in the presence of Social Worker Ms. Penn and Officer Alfred. She observed that Mr. Elliot was listening attentively. On completion, Mr. Elliot was unable to sign his name to each page of the statement and in those circumstances he

then placed an X at the top of the statement where the signature is supposed to be, at the bottom of the second page and the bottom of the third page. Medical Social Worker Ingrid Penn was present and she wrote a preamble on the statement as to what she witnessed. Both Ms. Penn and W Sgt George also signed same.

[9] Sgt George subsequently obtained a search warrant in a name of Selroy Hanley that day which was executed at his residence in Purcell on Thursday 1st September, 2022 at 5:22am. Items pertaining to the said warrant were seized and photographed by the police. The accused was then informed of the report that Trevon Elliot made, he was cautioned and he made no reply.

[10] The accused was then arrested on suspicion of wounding and transported to Road Town Police Station. An audio visual interview was conducted with the accused during which he was shown photographs including that of the front page of a passport picture of Trevon Elliott. The accused confirmed that he knew that person as "Lofty."

[11] On 21st April 2023, the autopsy on the body of Trevon Elliott was performed. Sgt George identified his body. On 19th June 2023-Sgt. George obtained the death certificate of Trevon Elliot. Sgt, George continued enquiries and the accused was formally charged for the murder of Trevon Elliot.

[12] As part of the application, the Crown tendered through this officer the following items, namely:-

- {i) the statement from the deceased - CE1
- {ii) the search warrant for the home of the accused dated 31st August, 2022 - CE2
- {iii) the photograph of the deceased's passport which was signed by the accused during the interview - CE3
- {iv) the death certificate of the deceased - CE4
- {v) the CD of the audio visual interview{unedited) of the accused conducted on 1st September, 2022 - CE5
- {vi) the photograph of the deceased at the hospital on 30th August, 2022 - CE6

(vii} the photograph of the residence of the accused at Purcell where the search warrant was executed - CE7

- [13] Sgt. George indicated that she did not conduct an identification parade with the accused because during the investigation of this matter, identification was "not a problem." She explained that in his statement Trevon Elliot 'would have indicated a number of things that led us to Selroy Hanley.'
- [14] In his interview, the accused admitted inter alia, knowing the deceased as "Lofty" but never spoke or interacted with him. He would see Lofty in the Purcell area. He denied stabbing the deceased. The accused stated that on 30th August, 2022, he got up at about 4:30 am, did his daily routine of bathing and eating. He then got on his motor scooter that he would normally park by the car wash. He rode to work and arrived around 7 am or 7:02 or 7:03 am. He was a labourer at a construction site located at the BVI High school. He said that at 'no time' did he go down to Purcell that morning. He had lunch at around 12 midday as usual where he left the site and returned to work around 1 pm. The last time he saw the deceased was the day before at a place that sells blocks in the company of some other people. (CD of audio visual interview was tendered as CE5)
- [15] Under cross examination, Sgt. George testified inter alia, that on 30th August 2022, at the hospital, she observed Trevon Elliot was initially wearing a mask. However, when she spoke with him, the mask was removed. Sgt. George further testified that she was able to hear him clearly. She admitted she did not make a recording of their conversation on any device. She however made detailed notes in her notebook. She admitted that on 1st September, 2022, she showed a photo of the accused to Trevon Elliot but as he was unable to sign the said photograph, such was not incorporated in any of her statements. She stated she did not conduct any photo identification. Sgt. George confirmed that the accused was never asked to attend an identification parade and Trevon Elliot never pointed to the accused. Furthermore Sgt. George explained that she did not conduct a photo identification in this case as in her view, identification was *"never in question when it came to identifying Selroy Hanley."* Sgt George admitted under cross that no forensic analysis was done in this case.

(b) Evidence of Ingrid Penn

- [16] In 2022, Ms. Penn was employed with the BVI Health Authority at Dr. D Orlando Smith Hospital as a Medical Social Worker.
- [17] On 30th August, 2022, Ms. Penn testified that one of the physicians called her office. She then went to the emergency room on the third floor of the said hospital and had a conversation with a physician. She later met the patient Trevon Elliott at the hospital lying on a bed. He was unable to *"ambulate, in that, he was unable to stand or move his extremities."* She had a conversation with the patient for a few minutes and observed that he was in pain.
- [18] On 31st August 2022, she was called by an ICU nurse to assist the officers from Royal Virgin Islands Police Force. She heard Officer George read the statement to the patient and Mr. Elliott tried to sign but was unable to do so. He tried to grasp, to take the pen in his hand but could not bend his fingers. He then placed an X on the three pages of the statement. Ms. Penn then wrote a certificate on the statement to show that she was present. Ms. Penn further testified that she heard the statement read to Mr. Elliott and that she witnessed him placing the three X's to each page.

Cross examination

- [19] Ms. Penn indicated inter alia that on 30th August 2022, she first saw Trevon Elliott early in the day. She could not recall if he had any bandages, mask or if he had a neck brace. At the time when she spoke to Trevon Elliott, he was not in the ICU. She could not remember when she spoke to him if the volume of his voice was soft or loud. She said when she spoke to him on the 30th, she did not have to lean down to hear what he was saying. She knew it was Trevon Elliott because the patient's band had his name and she spoke to him.
- [20] Ms. Penn indicated he appeared to be in pain because she observed he was a little 'squirmish' by that she concluded that by 'the facial features' and then she also spoke to him. That day no police officers were present.

[21] She then saw Trevon Elliot on the following day on 31st August, when he was in the ICU. There were two other officers from the Royal Virgin Islands Police Force with Mr. Elliot. When she got there, Ms. Penn confirmed that Officer George read a paper to him. She said that Officer George did not have to get close to Mr. Elliott to read the paper because she spoke loudly and slowly.

(c) Statement of Trevon Elliot {CE1}- Entire statement considered including the following portions:

(22] *".....My name is Trevon Elliot and this statement is about an altercation I was in where I received multiple stab wounds.*

In my statement I will be referring to my friend as Ta/a and the man responsible for my injuries as Beast.

On Tuesday 31st August, 2022, I woke up sometime around 6am. I then went outside to my friend Ta/a. We decided to go in the basketball court in Purcell between 6:30am and 7 m. I am not sure of the time exactly, we went to court to have a drink and a smoke. This is something I usually do because I live right next to the basketball court in Purcell. A few minutes into us having the drink Ta/a left to go to work. He left in his gray jeep I do not know the model of his jeep. I was then left alone on the basketball court.

"I then saw Beast, a man who lives at the back of the basketball court in a pink wooden house with a veranda. He was fixing his motor scooter which was parked at the wash. The wash is located between the basketball court and Purcell community center. Beast could get the motor scooters to start. I then remembered I forgot a mango I left at the entrance of the basketball court on the wall. I went to get it, when I was walking to the mango I noticed Beast walking down the wash as if he was going somewhere. I saw it was Beast, I saw him clearly, and nothing was in my way when I saw him. I believe I was just a few feet away from Beast like about six feet or less. It was morning so the area was bright day light and no rain was falling.

Beast then turned back and then walked towards my direction. I was standing at the front of the basketball court by the main gate where my mango was, the only gate a vehicle could pass. Beast then came close to me and said ah! Purcell man is punkn he then started swinging an ice pick at me the ice pick was one with a brown wooden handle and a spike metal bottom. He started to stab me

with the ice pick but I did not feel any of the stabbing. I held on to him to stop him and I believed his green long sleeve got torn.

Beast was wearing a green long sleeve green t-shirt and a long blue jeans at the time of that altercation. He is slim built and is dark in complexion (sic) his face is darker than his body, he has a short haircut. I know Beast very well he lives in the area where I live and I see him every day when he goes to work and when he gets off from work. We have had an altercation in the past sometimes late last year. Which left me with a long scar on my left hand and a lump in the middle of my head. This happened when he beat me with a shovel. He said I took his weed which was not true. I do not smoke weed. As a result of this altercation, we do not say anything to each other.

During the altercation I fell to the ground of the basketball court because I could not feel my feet. That's what Beast left I am not sure where he went. We were the only ones on the court when this happened nobody was passing at the time. But the area on the basketball court has camera from his brother's business place Kraven's.

Beast is the brother to the man who owns Kraven's. I know the owner's street name as Spart. I do not know his correct name but he is a short thick black skin man with dreadlocks. Kraven's is a little business place located on the Purcell Basketball court. They sell drinks and food there "

(d) **Interview of the Accused** (CE5)

- [23] This Court considered the contents of the entire interview of the accused including the portions referred to by Crown in her written submissions at paragraph 19.

Submissions of Counsel on Voir dire

- [24] This Court has considered the very helpful oral and written submissions of both Defence and Crown Counsel and the legal authorities filed therein.
- [25] Defence Counsel objected to the admission of the witness statement of Trevon Elliot on the basis that the police did not comply with the procedure as outlined in Section 110 of **the Evidence Act** of the Virgin Islands in conducting an identification parade. The Defence submits inter alia, that this accused did not refuse to cooperate or to participate in any identification parade or any other form of

identification procedure such as photo identification or video identification. Further, the Prosecution did not demonstrate that it was not reasonable to hold an identification parade as required by the legislation. Defence Counsel quite properly amplified her grounds of objection to include that not only was the accused was not invited to participate in an identification parade, he was also not invited to participate in other forms of identification. During the cross examination of Officer George, she testified that on 1st September, 2022, she showed a photo of the accused to Trevon Elliot at the hospital but he was unable to sign the said photo.

[26] Defence Counsel further submits that the accused is unable to test the accuracy of the contents of the deceased's statement and in the circumstances to admit the statement of Trevon Elliot would render the trial unfair.

[27] Furthermore, Defence counsel contends that the quality of the identification evidence in the statement is poor and there is no support for the correctness of the identification as the items that were seized from the accused's home were not forensically tested by the police. The accused in his interview raised an alibi when he stated that the morning in question he was at work and in such circumstances, disputed identification.

[28] Defence Counsel further urged that this Court be guided not only by the Evidence Act of the Virgin Islands 2013 (as amended) but also section 12 of that Act and the provisions of the **Police and Criminal Evidence Act 1984** (PACE) CODE D (UK legislation) in particular paragraph 3.12 pertaining to identification evidence and procedure.

[29] Crown Counsel submitted that based on the statement of Trevon Elliot tendered in the Magistrate's Court as part of the paper committal proceedings, in accordance with section 110(2) of the **Evidence Act**, the matters to take into account by a Court in determining whether it was reasonable to hold an identification parade, include, that the Court considers the quality of the identification evidence, which in this case was strong. Crown submits that the witness in his statement indicated that he knew the accused prior to the incident, for at least a year, when they were both involved in another altercation. The Crown's case is therefore one of recognition and not one of identification. Crown Counsel contends that the accused in his interview to the police did not dispute identification but

rather confirmed that he knew witness, Trevon Elliot. The accused further confirmed in the police interview, identifying details mentioned by Trevon Elliot in his statement such as the accused's nickname being 'Beast', that his wooden house is located to the back of the basketball court, he is the brother of the owner of Kravens' restaurant and the description of his clothing on the day in question. Furthermore, the deceased witness was able to sufficiently describe the accused so that it led the police to obtaining and executing a search warrant at the home of the accused at Purcell. Crown submits that as the deceased's evidence is one of recognition, it was not appropriate to hold a parade having regard to the relationship of the deceased and the accused in that they knew each other (at least by seeing each other) for about one year prior to the stabbing incident in August, 2022.

[30] The Crown relied on several authorities including that of the Privy Council case of **Ronald John v The State**¹ and argued that in cases of recognition, the identification parade would serve no useful purpose. Based on that relationship between the parties in that they knew each other prior and in accordance with section 110(2) of the **Evidence Act**, it was unnecessary for the investigating police to conduct an identification parade or any other form of identification procedure such as video identification or photo identification. Crown relied on **Blackstone's Criminal Practice** 2021 Part F Chapter F19.1 and F.19.3 that in the case of recognition evidence, any identification procedure would serve no useful purpose.

[31] In the circumstances, the Crown argues that it would not be unfair to admit the recognition evidence of Trevon Elliott in the trial. The fairness of the trial can be safeguarded by the trial judge giving the appropriate warnings to the jury at the relevant stage as per section 112 of the **Evidence Act** and as recommended in the case of **Barnes et al v The Queen**² as per Lord Griffith at page 161.

The Law

(i) Admissibility / exclusion of statement of deceased witness

[32] Section 58(1)(b) of the **Evidence Act** of the Virgin Islands (as amended) states:

"in any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of

¹ (2009) UKPC 12

² (1989) Cr App R 153, 191

the document be admissible as primary evidence of that fact if.. the person who supplied the information recorded in the statement in question is dead.^o

[33) Section 162(2) of the Evidence Act of the Virgin Islands {as amended) states:

"where it appears to the satisfaction of the judge that the deponent is dead, the depositions, certified under the hand of the Registrar or other persons taking same shall, without proof of the signature to such certificate, be received and read in evidence, saving all just exception..."

[34) The relevant principles that govern the exercise of this specific common law exclusionary discretion are set out in the Privy Council Decision of Barnes, Desquottes and Others³, and in particular at page 339, where it is stated:

"In the light of these authorities, their Lordships are satisfied that the discretion of a judge to ensure a fair trial includes a power to exclude the admission of a deposition. It is however, a power that should be exercised with great restraint. The mere fact that the deponent will not be available for cross-examination is obviously an insufficient ground for excluding the deposition, for that is a feature common to the admission of all depositions which must have been contemplated and accepted by the legislature when it gave statutory sanction to their admission in evidence. If the Courts are too ready to exclude the deposition of the deceased witness, it may well place the lives of witnesses at risk, particularly in a case where only one witness has been courageous enough to give evidence against the accused, or only one witness has had the opportunity to identify the accused. It will of course be necessary in every case to warn the jury that they have not had the benefit of hearing the evidence of the deponent tested in cross-examination and to take that into consideration when considering how far they can safely rely on the evidence in the deposition. No doubt in many cases it would be appropriate for a judge to develop this warning by pointing out particular features of the evidence in the deposition which conflict with other evidence, and which could have been explored in cross-examination, but no rules can usefully be laid down to control the detail to which a judge should descend in the individual case. In an identification case, it will in addition be necessary to give the appropriate warning of the danger of identification evidence. The deposition must of course be scrutinised by the judge to ensure that it does not contain inadmissible matters such as hearsay or matter that is prejudicial rather than probative and any such material should be excluded from the deposition before it is read to the jury.

Provided that these precautions are taken, it is only in rare circumstances that it would be right to exercise the discretion to exclude the deposition. Those circumstances will arise when the judge is satisfied that it would be unsafe for the jury to rely upon the evidence in the deposition. It will be unwise to attempt to define

³(37) W.I.R. 329

or forecast in more particular terms the nature of such circumstances. This much however can **be said**, that neither the inability to cross-examine, nor the fact that the deposition contains the only evidence against the accused, nor the fact that it is identification evidence, will of itself be sufficient to justify the exercise of the discretion.

It is the quality of the evidence in the deposition that is the crucial factor that should determine the exercise of the discretion. By way of example, if the deposition contains evidence of identification that is so weak that a judge in the absence of corroborative **evidence would withdraw the case from the jury, then if there is no corroborative evidence the judge should exercise his discretion to refuse to admit the deposition for it would be unsafe to allow the jury to convict upon it. But this is an extreme case and it is to be hoped that prosecutions will not generally be pursued upon such weak evidence. In a case in which the deposition contains identification evidence of reasonable quality, then even if it is the only evidence it should be possible to protect the interest of the accused by clear directions in the summing up and the deposition should be admitted. It is only when the judge decides that such directions cannot ensure a fair trial that discretion should be exercised to exclude the deposition.**" (emphasis mine)

[35] In Pablo Sierra, Enrique Bouricaudy, Juan Gomez, Juan Quintana, Miquel Rodriguez and William Sanabria and the Queen Criminal Appeal No. 1-6 of 1990, the Court of Appeal in determining the admissibility of the deposition of an absent witness, relied on the Privy Council-case of Barnes et al v the Queen (supra).

[36] In Wendell Anthony and ors v the Commissioner of Police BVICRAP 2014/0016 the defendants challenged the admissibility of a statement given in the course of an investigation by the victim who had died in unrelated circumstances before the trial had commenced. The Court found that the victim's statement was admissible pursuant to section 58(1)(b) of the Evidence Act and that the Magistrate had no discretion in determining whether the statement was admissible but had a discretion as to whether it should be admitted on the facts and circumstances of the case.

[37] Justice of Appeal Michel stated at paragraph 16-

"... Although there are no statutory provisions in the BVI equivalent to the provisions of section 125 of the UK Act, section 78 of the Police Evidence Act 1984 and Article 6 of the European Convention on Human rights, there are judicial authorities, including Winston Barnes et al v The Queen, which hold that the court can exclude statements admissible under provisions equivalent to section 58(1)(b) of the BVI Act in the interest of the fair trial of an accused person "

(ii) Exclusion of Identification evidence - failure to conduct identification parade

[38] Section 110(1) of the Evidence Act (as amended) of the Virgin Islands refers to the exclusion of identification evidence:

"Identification evidence adduced by the prosecutor is not admissible unless-

(a) either-

(i) an identification parade that included the accused was held before the identification was made; or

(ii) it would not have been reasonable to have held such a parade; and

(b) the identification was made without the person who made it having been intentionally influenced to have made it.

(2) Without limiting subsection (1) the matters to be taken into account by a court in determining whether it was reasonable to hold an identification parade as mentioned in that subsection include -

(a) the kind of offence and the gravity of offence;

(b) the importance of the evidence;

*(c) the practicality of holding such a **parade** having regard among other things-*

(i) to whether the Accused refused to co-operate in the conduct of the parade, and to the manner and extend of, and the reason, if any, for the refusal; and

(ii) in any case, to whether the identification was made at or about the time of the commission of the relevant offence, and

(d) the appropriateness of holding such a parade having regard among other things, to the relationship between the accused and the other person who made the identification.

(3) Where-

(a) the accused refused to co-operate in the conduct of an identification parade unless a legal practitioner acting for him or her was present while it was being held; and

(b) there were, at the time when the parade was to have been conducted, reasonable grounds to believe that it was not reasonably practicable for such legal practitioner to be present

(i) it shall be presumed that it would not have been reasonable for such legal practitioner to be present□

(ii) it shall be presumed that it would not have been reasonable to have held an identification parade at that time."

(39] Section 111 of the **Evidence Act** of the Virgin Islands

Exclusion of evidence of identification by pictures

(1) This section-

(a) applies in relation to identification evidence adduced by the prosecutor where the identification was made wholly or partly as a result of the person who made the identification examining pictures kept for the use of police officers; and

(b) applies in addition to section 110.

(2) Where the accused was in the custody of a police officer in connection with the investigation of an offence at the time when the pictures were examined, the identification evidence is not admissible unless

(a) the picture of the accused that was examined was made after the accused had been taken into that custody; or

(b) the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence, and the identification was made without the person who made it having been intentionally influenced to make that identification

(3) In any case other than that mentioned in subsection (2), the identification evidence is not admissible unless the pictures examined included a reasonable number of pictures of persons who were not, at the time when the pictures were made, in the custody of a police officer in connection with the investigation of an offence.

(4) Where the evidence concerning an identification of an accused that was made after examining a picture has been adduced by that accused, the preceding provisions of this section do not render inadmissible evidence adduced by the prosecutor, being evidence that contradicts or qualifies that evidence.

(5) In this section -

{a) "picture" includes a photograph; and

{b) a reference to the making of a picture, includes a reference to the taking of a photograph

[40] This Court relies on **Blackstone's Criminal Practice 2021 Part F Chapter F19.1**

"The visual identification of suspects or defendants by witnesses has long been recognized as potentially unreliable. Honest and convincing mistakes can be made by witnesses who entertain no doubt that they are right and even by witnesses who purport to identify persons already known to them. Much has been done ... to reduce the risk ... the procedures prescribed by PACE CODE D (in so far as it relates to visual identification) are designed to test the witness' ability to identify under controlled conditions any suspect, that the witness may claimed to have seen or recognized on the previous occasion. Procedures used by investigators to confirm identification include video identification, identification parade, group identifications and photo identification."

F19.3 "it does not follow that a (PACE) CODE D identification procedure must always be held whenever an identification issue arises. Such a procedure will serve no useful purpose in a 'recognition' case because the witness (even if mistaken) would almost inevitably 'identify' the person the witness has claimed to have recognized."

[41] In the case of **Ronald John v The State of Trinidad & Tobago**⁴, the only eyewitness in the case against the appellant was taxi driver, Jeffrey Lewis, who was hired by the appellant to take him to the scene of the robbery of a club. It was the course of the said robbery, the proprietor was murdered. The witness gave the police a detailed description of the appellant including the areas where the appellant lived. Lewis knew only the alias of the appellant as 'Dollars' and described the occasions he would see him in Port-of-Spain area in Trinidad while plying his taxi prior to the murder. The police never placed the appellant, Ronald John, on an identification parade as the police regarded his evidence as essentially recognition evidence. The appellant was subsequently arrested and charged for murder. At the Privy Council, one of the grounds contended by the appellant's attorney was that an identification parade ought to have been held in this case and that the absence of such a parade,

⁴ [2009] UKPC 12, 75 WIR 429

resulted in an injustice. It was further argued, that the Judge erred in not directing the jury that the failure to hold a parade constituted a substantial weakness in the prosecution's case.

[42] Lord Brown of Eaton-Under-Heywood delivering the majority judgment, *Paragraph 14*: "As a basic rule, an identification parade should be held whenever it would serve a useful purpose. This principle was initially stated by Hobhouse LJ in *R v Popat* [1998] 2 Cr App R. 208, 215 and endorsed by Lord Hoffmann giving the judgment of the Board in *Goldson & McGlashan v R* (2000) 56 WIR 444. Plainly an identification parade serves a useful purpose whenever the police have a suspect in custody and a witness who, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so, for example en route to a robbery). Often, indeed usually, that is the position and, when it is, an identification parade is not merely useful but assuming it is practicable to hold one, well-nigh imperative before the witness could properly give identifying evidence. In such a case, Lord Hoffmann said in *Goldson*, "a dock identification is unsatisfactory and ought not to be allowed," although he added: "Unless the witness had provided the police with a complete identification by name or description, so as to enable the police to take the accused into custody, the previous identification should take place in the form of an identification parade." (emphasis mine)

[43] Paragraph 15: "At the opposite extreme lies a case where the suspect and the witness are well known to each other and neither of them disputes this. It may be, of course, that on the critical occasion when the witness saw the crime being committed (or, for example, the person concerned en route), he thought it was the person he knew but was mistaken as to this. An identification parade obviously cannot help in this situation. Indeed, as Lord Hoffmann pointed out in *Goldson*, a parade then would be not merely unnecessary but could be" positively misleading:

"The witness will naturally pick out the person whom he knows and whom he believes that he saw commit the crime. In fact the evidence of the parade might mislead the jury into thinking that it somehow confirmed the identification, whereas all that it would confirm was the undisputed fact that the witness knew the accused. It would not in any way lessen the danger that the witness might have been mistaken in thinking that the accused was the person who committed the crime." (emphasis mine)

- [44] Paragraph 16: *"A third situation arises when the witness claims to know the suspect but the suspect denies this. This indeed was the situation in Goldson itself, certainly so far as one of the two accused was concerned. The witness, Claudette Bernard, herself shot in the face by one of the gunmen (who then shot dead her boyfriend lying next to her), subsequently identified them simply as men known to her by their street names. One of the two accepted that she knew him and the question in his case was simply whether she had recognized him on the occasion of the shooting (essentially, therefore, the second of the situations considered above); the other, however, whom she said she had seen two or three times a week on the street for three years but had spoken to only once and who had a girlfriend called Ginger, disputed that she knew him at all, said that he had no such girlfriend, and gave such evidence to that effect."*
- [45] At paragraph 26, the Board nevertheless concluded that the police in the case of Ronald John {supra} should have held an identification parade, being a case of capital murder and there was on the face of it, nothing to lose by holding a parade. The Board went on further in paragraph 27 to state that the failure to hold an identification parade in the case could not be however regarded as having caused a miscarriage of justice.
- [46] In the case of Violet Hodge v The Commissioner of Police⁵ at paragraph 32 whereby the Court of Appeal stated: *"The normal function of an identification parade is to test the accuracy of the witness' recollection of the person whom he says he saw commit the offence. It is settled that in cases of disputed identification, an identification parade should be held when it would serve a useful purpose per R v Popat (1998) 2Cr **APR.** 208. This principle is not all embracing as a situation may arise where there is no point in holding an identification parade. An example would be a case where it is incapable of serious dispute that the defendant was known to the witness. The situation as emerged in this case, where a witness claims to know the accused and the accused denied this, was foreshadowed by the Board in John V The State of Trinidad and Tobago* In addressing the question as to whether an identification parade would serve a useful purpose, Lord Browne considered three possible situations: first, where a suspect is in custody and a witness with no previous knowledge of him claims

⁵ BVIMCRAP2015/0005

to be able to identify the perpetrator of the crime; second, where the witness and the suspect are well known to each other and neither disputes this; and the third, where the witness claims to know the suspect and the suspect denies this (as in the present case).

[33] Lord Browne stated that in the first scenario, an identification parade would obviously serve a useful purpose. In the second it will not, as it carries the risk of adding spurious authority to the claim of recognition. In the third situation, two questions must be posed. The first is whether, notwithstanding the claim by the witness to know the defendant, it can be retrospectively concluded that some contribution would have been made to the testing of the accuracy of his purported identification by holding a parade. If it is so concluded, the question then arises whether the failure to hold a parade caused a serious miscarriage of justice."

[47] This Court notes the evidence of eyewitness Claudette Bernard in the case against **Goldson and McGlashan**⁶ was accepted by the Privy Counsel to be recognition evidence and the fact that there was no identification parade held, did not constitute a miscarriage of justice.

[48] Ms. Bernard's evidence was deemed to be recognition evidence even though she identified the gun men as people known to her only by the nicknames 'Sector', 'Yoogie' and 'Marlon.' The police went searching for people known by these names. Furthermore in that case of **Goldson** (supra), Detective Inspector Rowe was informed that McGlashan was called "Sector" but when he questioned him at the hospital, McGlashan replied that his name was Peter Phillips. He was arrested and charged. Mr. Irvin Goldson, who was alleged to be 'Yoogie', was arrested in August 1993 and charged.

[49] At the preliminary inquiry, Ms. Bernard indicated that she had known the men for 3 and 15 years respectively. At trial, testified in more detail about the nature of her acquaintance with them.

[50] In the case of **Mark France and Vassell v The Queen**⁷ in 2001, following a trial before Cooke J and a jury, the appellants were convicted of murdering Glenroy Sutherland. Their applications for leave to appeal against the conviction were dismissed by the Court of Appeal in 2003. On 16 March 2011, the Judicial Committee of the Privy Council advised Her Majesty that permission to appeal against the appellants' conviction should be granted.

⁶ (2000) 56 WIR 444

⁷ (2012) UKPC 28

[51] The facts are that one evening, Glenroy Sutherland was outside his home in Jamaica with his brother, Hubert, and three friends. A minibus approached and when it stopped, Hubert Sutherland looked towards the vehicle and he claimed that he recognized the appellant, Mark France, and another man whom he knew as "Legamoren. Each man had a gun in his hand. Mark France was seated in the front passenger seat area and Legamore was near the steering wheel. Both men pointed guns outside the window and fired, killing Glenroy Sutherland. Neither of the appellants gave evidence. Both made unsworn statements from the dock. They denied involvement in the murder. Vassell claimed that he did not know the deceased or his brother, Hubert. France did not expressly deny knowing the brothers but he did not acknowledge that he did. Both Appellants claimed that they did not know each other.

[52] One of the grounds of appeal was that the Judge did not direct sufficiently to the fact that no identification parade had been held. The Appellants also submitted that they had been subject to impermissible dock identifications and that the prejudice which this evidence had caused was compounded by the Judge's failure to address its adverse impact.

[53] On the issue whether Hubert Sutherland's identifying evidence of the appellants was Identification or recognition, Lord Kerr noted at paragraph 25 ***"Hubert Sutherland gave evidence that he had played football with Rupert Vassell for some four years at John Mills All Age School. This was from 1992 until 1996. They played every weekday evening and on Saturday and Sunday mornings. During this time he knew that Vassell lived on Lincoln Road. Following this period he used to see Legamore three times per week at a betting shop on Half-Way-Tree Road. This pattern continued throughout the period from 1996 until 1998 when the murder of Glenroy Sutherland occurred."***

Paragraph 26 "Mr. Sutherland claimed to have known Marie France for about eight years. He lived in Elgin Road which was a road that ran parallel to that where the witness lived, Greenwich Road. He saw him about five times a week. France rode a red 'CSR' motor cycle. He had the nickname "Twinnie", apparently because he had a twin brother who had died in 1997."

Paragraph 27. "Although counsel for the appellants submitted that these were not cases of recognition, there is really no basis on which that claim can be made. Mr. Sutherland described how he knew both appellants before the shooting of his brother. He gave evidence about his knowledge of where they lived. He was not challenged on that evidence. Nor was he challenged about his claim that Legamore attended the

betting shop on Half-Way-Tree Road or on the evidence that France rode a red CBR motor cycle. It is true that Mr. Sutherland did not know Legamore's proper name before the killing but that is nothing to the point His acquaintance with both men before the murder was extensive. He had countless opportunities to observe them. His claim to be able to identify them on the basis of those earlier contacts cannot be characterised as anything but recognition. The judge was plainly right to direct the jury that this was a recognition case and, for the reasons given at para 23 above, his directions as to how it was to be approached cannot be criticized."(emphasis mine)

[54) On the issue of the lack of an identification parade at paragraph 28, Lord Kerr referred to cases of *B v Popat*⁸, per Hobhouse LJ at 215 and endorsed by Lord Hoffmann giving the judgment of the Board in *Goldson and McGlashan v The Queen* (supra).

[55) Reference was made to the case of *John v State of Trinidad and Tobago* (supra) addressing the question of how to assess whether an identification parade would serve any useful purpose. Lord Kerr stated at paragraph 29:

"That in France's case there was no challenge whatever to Mr. Sutherland's claimed prior knowledge of him. France referred to Mr. Sutherland in his unsworn statement from the dock, by name and did not refer to his evidence about the circumstances in which Hubert Sutherland claimed to know him. The Board is satisfied that the holding of an identification parade in his case would have served no useful purpose."(emphasis mine)

Paragraph 32 Lord Kerr stated:

"It is at least open to question whether the diffident challenge made to Mr. Sutherland's claimed acquaintance with Vassell was such as to render an identification parade necessary. After all, it had been claimed that they met on a daily basis for four years and that Mr. Sutherland saw him on average three times a week in the two years before the murder. There was no challenge to the evidence that Vassell played football at John Mills School or that he attended the bookmaker's premises in Half-Way-Tree Road. Likewise, the address given for Vassell by Mr. Sutherland was not disputed nor that he was known by the nickname "Legamore". It is difficult to resist the conclusion that against this background, it is extremely likely that Mr. Sutherland would have picked out the man that he claimed to have known as "Legamore" for eight years and more and whom he had already identified to the police as one of the occupants of the minibus. It is, therefore, at least very doubtful that any useful purpose would have been served by holding an identification parade. In any event it cannot be plausibly suggested that the failure to hold an

⁸ [1998] 2 Cr App R 208

identification parade caused a serious miscarriage of justice. The appellants' arguments on this aspect of the appeal must be rejected."

Analysis & Findings

- [56] There is no dispute that Trevon Elliot is dead - as per the death certificate tendered in this application; and that a statement was recorded from Trevon Elliot by Officer Pheiona George in which Trevon Elliot placed an X on each of the pages of the statement.

Quality of the recognition evidence to determine admissibility - Is a fair trial possible?

- [57] I refer to the seminal principles enunciated in the Privy Council case of **Barnes, Desquottes and others** (supra). In deciding whether to exercise its common law discretion to exclude the admission of the statement of Trevon Elliot, this Court must have regard to the quality of the evidence in the said statement as per the Turnbull guidelines:

- (i) How long did the witness have the accused under observation?
- (ii) At what distance?
- (iii) In what light?
- (iv) Was the observation impeded in any way, as for example, by passing traffic or people?
- (v) Had the witness ever seen the accused before?
- (vi) How often?
- (vii) If only occasionally, had he any special reason for remembering the accused?
- (viii) How long elapsed between the original observation and the subsequent identification to the police?
- (ix) Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by the witness and his actual appearance?

[58] In applying the Turnbull guidelines to the present case:-

(a) lighting condition

Trevon Elliot stated that the time of the stabbing occurred in the morning. sometime between 6:30am and 7am. He also said **"it was morning so the area was bright daylight and no rain was falling."**

[59] (b) observation impeded/or not

In his statement. Trevon Elliot indicated, "I noticed **Beast** walking down the wash as if he was going somewhere. I saw it was **Beast**, I saw him clearly, and nothing was in my way when I saw him."

(c) Distance from the assailant at different points of observation

When Trevon Elliot first observed the accused, he stated **"I believe I was just a few feet away from Beast like about six feet or less."**

Elliot also stated, **"Beast then turned back and then walked towards my direction Beast then came close to me and said all " Purcell man is punk" he then started swinging an icepick at me, the ice pick was one with a brown wooden handle and a spike metal bottom. He started to stab me with the Ice pick but I did not feel any of the stabbing. I held on to him to stop him and I believe his green long sleeve got torn."**

There is an inference that assailant was standing relatively close to deceased to be able stab him with an ice pick and for the deceased to hold onto shirt of the assailant.

(d) Description of the assailant by the witness and actual description of the accused

Elliot in his statement described the assailant **" He is slim built and is dark in complexion his face is darker than his body, he has a short haircut"**

(e) Did the witness see/know the assailant prior to the incident?/ had the witness seen the accused before?

Trevon Elliot stated he knew the accused well prior that morning in question and would see him regularly in the area of Purcell. The deceased knew him for at least a year before the incident when he and the accused had an altercation **".../ know Beast (e)very well he lives in the area where I live I see him every day when he goes to work and when he gets off from work."**
"...we have had an altercation in the past sometime late last year."

In his statement, Elliot gave details as to the accused's place of abode as pink house in Purcell Estate, he knew the accused's nickname as Beast and that he is brother of the owner of Kravins.

The accused also confirmed in his interview that he knows the deceased even though he did not speak to him nor had any dealings with him. He knew the deceased as 'Lofty' and that he picked coconuts and other fruits. He would see Trevon Elliot in the area. ***"I see he recently like I seeing he everyday now... Sack and then I see a couple of months ago I was seeing he so me don't know what had happen."*** The accused explained further he would see the deceased ***"for like the past 2weeks or so."***

(ij) Any special reason for the witness remembering the accused

Trevon Elliot in his statement ***"...we have had an altercation in the past sometimes late last year, which left me with a long scar on my left hand and a lump in the middle of my head. This happened where he beat me with a shovel. He said I took his weed which was not true, I do not smoke weed. As a result of this altercation, we do not say anything to each other."***

[60] Applying these principles to the present application, this Court finds that there is no basis for the exercise of the common law exclusionary discretion. The statement of Trevon Elliot contains evidentiary material that is prima facie of a reasonable quality. Even though this is the only evidence in the case, this Court is of the view that it is possible to protect the interests of the accused by clear directions and warnings in the summation, so as to ensure a fair trial. Warnings will be given to the jury to alert them to the danger of acting on "paper evidence" which is untested before them. Those warnings include telling the jury that they have not had the opportunity of observing the demeanour of the witness and also that they have not had the benefit of hearing the witness tested under cross-examination. The jury will also be warned that there is a risk or danger involved in acting on such untested evidence. The judge is required to identify for the jury, giving specific examples where appropriate, areas of actual and potential weakness, conflicts and contradictions in the evidence and areas on which cross-examination might have been useful. Weaknesses in the evidence will also be identified to the jury at the relevant stage and any other necessary warning such as the Turnbull direction with regard to the danger of acting on identification/recognition evidence. There will be the editing of any inadmissible and prejudicial material before the statement of Trevon Elliot is read into evidence. In my view, it is in these circumstances that a fair trial of the accused is possible when accompanied by the appropriate warnings to the jury. Section 112 of the Evidence Act further outlines warnings to the jury relative to identification/ recognition evidence.

Should an identification parade or any other identification procedure (photo or video) be held in this case?

[61] The Court finds that the evidence of Crown's sole identifying witness, who is deceased, is one of recognition. In this case, both accused and the deceased knew each other prior to the incident. Neither the Crown nor the Defence (as per the accused in his interview with the police), is disputing that Trevon Elliot and the accused know each other.

[62] The identifying details set out by the deceased in his statement are confirmed by the accused. The Crown's sole identifying witness, Trevon Elliot was able to identify the assailant who stabbed him by his alias Beast. He states **"the man responsible for my injuries as Beast."** The accused in his interview confirmed that one of his aliases is **"Beast."**

[63] The deceased in his statement provided personal details about the accused. He knew that the accused lived in Purcell and the colour of the house was pink-"... / **saw Beast a man who lives to the back of the basketball court in a pink wooden house with a veranda...**" In his interview the accused confirmed he lived in Purcell Estate, he resides about 5 to 10 feet behind Kravens, a restaurant that is on the basketball court and that Kravens is owned by his brother. The deceased knows the accused and his relatives. In his statement, Trevon Elliot further indicated that the assailant, Beast, is the brother of the owner of the restaurant Kravens is located on the basketball court:-

"...Beast is the brother to the man who own Kraven's. I know the owners Street man as Spart. I do not know his correct name but he is a short thick back skin man with dreadlocks. Kraven's is a little business place located on basketball court. They sell drinks and food there ¹¹

[64] The deceased knows that the accused owns a motor scooter and was able to identify a specific area by the wash where it would be parked in the Purcell area. According to the deceased on the morning in question, the accused **"was fixing his motor scooter which was parked at the wash. The wash is located between the basketball court and Purcell community center. Beast could get the motor scooters to start..."** In his interview, the accused confirmed that he owned a motor scooter that he would park at the wash by the basketball court. Although he indicated that on morning in question, it was working and he used it to get to work, the accused admitted that the scooter did

have certain mechanical problems and even had to fix the carburetor that weekend before the said interview.

- [65] The deceased indicated in his statement that he knew the accused well prior that morning in question and would see him regularly in the area of Purcell. The deceased knew him for at least a year before the incident as both he and the accused had an altercation with each other.

"...I know Beast {e}very well he lives in the area where I live I see him every day when he goes to work and when he gets off from work." and "...we have had an altercation in the past sometime s late last year..."

- [66] The accused confirmed in his interview that he knew the deceased by seeing him in Purcell area. even though he does not speak to him nor have any dealings with him. The accused in his interview admitted that he knew the deceased as 'Lofty' and knew that that he picks coconuts and other fruits. He described him as a "bum" and explained **"well I he a coconut man. He does go pick thing for people, them coconut and mango and breadfruit and them..."** When asked by the officer in the interview if he knew if the deceased did any other work in addition to picking coconuts, the accused stated **"No. That is what I know he to do, pick coconut them and thing."**

- [67] The accused further admitted that he used to see the deceased in the area and prior to the interview he had been seeing the deceased every day for the past two weeks:-

"I see he recently like I seeing he everyday now... Back and then I see a couple of months ago I was seeing he so me don't know what had happen."

It was asked by Officer George if he would see Lofty every day to which he answered **"For like the past 2 weeks or so."**

The accused stated in his interview that he knew the deceased **"From the time I come out of jail I know Lofty... bout 2021 or so late 20211 believe I come out of jail or late 2020. No I believe it were late 2020 I come out of jail you know."**

- [68] When the accused was shown a picture of Trevon Elliot by Officer George during the interview which he identified as Lofty saying **"that is Lofty" "cause he got lots of beards and you know what I mean. I does see he though the hood..."**

Before saw picture, "the accused was able to give a physical description of the deceased "he probably my complexion. Dark like me Or a little lighter. I ain't know, I ain't know' He described the deceased as having 'short hair'."

He further stated he saw the deceased earlier that week, on Monday. He told the police in the interview" . ***And you know what I mean. I does see he. You know what I mean. I know who he is...*** ”

[69] In addition to these personal details of the accused, the witness, Trevon Elliot, provides the police a physical description of the accused. In his statement as being ***"he is slim built and is dark in complexion his face is darker than his body, he has a short haircut."***

[70] The accused is aware of the specific area that he last saw the deceased would frequent in Purcell, namely the place that sells concrete blocks as he, the accused drove by in his scooter. According to the accused, the deceased was there ***"chilling. He regular thing chilling with the with he partner them.¹¹ and gave specifics of the location to the police "...the same road as Mc Kelley's. You see where part them Barber Shop um One Mart Parking 1-ot is,- where part the rail them."***

[71] The police conducted an audio visual interview under caution with the accused two days after the stabbing in which there will be the opportunity for a jury to determine if such physical description as given by the witness, Trevon Elliot, corresponds with the actual physical appearance of the accused.

[72] This Court notes that in both the cases of Ronald John (supra) involving the evidence of eyewitness Jeffrey Lewis and Goldson and others (supra) with eyewitness Claudette Bernard, there was a dispute as to identification on the part of the Defence as they contended that the particular eye witness in the respective cases of Goldson and Mc Glashan (supra) and Ronald John (supra) did not know the appellants prior to their being arrested for the particular murders. Yet such evidence of Claudette Bernard and that of Jeffrey Lewis were accepted by the Privy Council as recognition evidence and the failure to hold an identification parade in the respective cases was not viewed as a miscarriage of justice. Claudette Bernard only knew both of the gunmen by nicknames and not

their proper Christian names. She identified Mc Glashan as 'Sector and Goldson as "Yoogie. Similarly Jeffrey Lewis knew the appellant by his nickname,' Dollars.' In the case before me, the deceased witness Trevon Elliot refers to his assailant by the alias of 'Beast' which is confirmed by the accused in the unchallenged interview that one of his aliases is 'Beast.' Furthermore, prior to the murder, eyewitness Claudette Bernard knew both Sector and Yoogie for about 3 and 15 years respectively as she testified in the Magistrate's Court. At trial Bernard expounded on the nature of her acquaintance with the appellants.

[73] Jeffrey Lewis in the case of Ronald John stated that he had see "Dollars" some months previously, one or twice a week and he would see the appellant hanging around the area on queen and Nelson Streets in Port-of-Spain and so he was able to recognize him, although he Lewis did not know 'Dollars' personally. Similarly, in this case, Trevon Elliot states he knew his assailant prior to the incident. He said he knew 'Beast', his assailant, very well, as he lived the area, in Purcell Estate, and would **"see him every day when he goes to work and when he gets off from work."** The accused was someone that according to Elliot, he had an altercation with him in the past **"sometimes late last year"** and had beaten him with a shovel on his head. According to Elliot **"he said I took his weed"** and as a result of that altercation **"they do not talk."** The accused was not someone whom Elliot knew only by seeing in the area but was physically attacked by this very person about a year prior to Elliot being stabbed.

[74] There were other identifying details relative to the appellant Dollars such as his place of abode given by eyewitness Jeffrey Lewis in the case of Ronald John (supra) led to the police arresting Dollars at his residence in Pioneer Drive, Port-of-Spain. Similarly, details were given by this deceased eyewitness as to the specific pink colour of Beast's house and its precise location being a wooden house with a verandah behind the basket ball court in Purcell. In this case, the detailed particulars of identification of the accused in Trevon Elliot's statement dated 31st August, 2022, led Officer George that very day to obtain a search warrant in the name of the Accused and she and other officers then proceeded to his home the next morning at Purcell and executed same. The particulars of identification provided by the statements of Claudette Bernard in the case of Goldson (supra) and that of Jeffrey Lewis Ronald John (supra) were considered recognition evidence and pointed the

police in the direction of arresting the suspects. The Privy Council held that in each case, an identification parade would have served no useful purpose.

[75] This Court is of the view that the evidence contained in the statement of Trevon Elliot is one of recognition and no useful purpose would be served by either an identification parade being held or a photo identification involving a series of photos.

[76] This Court reminds itself of paragraph 25 in the case of Ronald John (supra),

"... on a true analysis of the evidence, an identification parade in this case would have served less purpose not only than in either Pop or Pipersburg but also than in Goldson itself.... unlike the position in Goldson, this was a case where the witness provided the police with sufficient particulars of identification "to enable the police to take the accused into custody".

[77] In his statement to the police, Trevon Elliot referred to several identifying details of the assailant, namely, his place of abode as a pink house in Purcell Estate behind the basket ball court, his nickname as being 'Beast,' he was the brother of the owner of Kravens. There was a further description of the green long sleeved jersey that the deceased said he held on and tom it in the process. All these details sufficienUy identified the accused as the assailant so that on 31st August 2022, it may be argued Officer George knew exactly who she was looking for and where to find him in Purcell. It is in these circumstances, the officer was able to execute a search warrant in the accused's home (CE2) looking specifically for "one brown wooden handle ice pick and a green long sleeve t shirt or any clothes with blood stains." W Sgt George testified during the hearing of this application that she did not conduct an identification parade because **"during the time of the investigation, identification wasn't a problem"** and further explained **"during the time Trevon Elliot gave his statemen□ he indicated a number of things that led us to Selroy Hanley."** In re- examination, Officer George stated **"based on the investigation identification was never in question when it came to identifying Selroy Hanley."**

[78] This Court also reminds itself of paragraphs 14 - 16 in Ronald John v R (supra) by Lord Brown which addressed the question of how to assess whether an identification parade would serve any useful purpose. The first situation considered by Lord Brown is where the suspect is in custody and

the witness with no previous knowledge of the suspect claims to be able to identify the perpetrator of the crimes.

- [79] This Court is of the view that the first situation identified in case of **Ronald John**, does not arise based on the circumstances of this case where there is no dispute that the accused and the identifying eye witness, Trevon Elliot know each other.
- [80] The second situation as outlined in the John case, is however applicable to this case where the witness and the suspect are well known to each other and neither disputes this.
- [81] In such a scenario, Paragraph 15 of the case of **Ronald John** (supra) is applicable to this case where ***"an identification parade obviously cannot help in this situation as Lord Hoffman pointed out In Goldson, a parade would not be merely unnecessary but could be positively misleading" as "the witness will naturally pick out the person whom he knows and whom he believes that he saw commit the crime. In fact the evidence of the parade might mislead the jury into thinking it somehow confirmed the identification."***
- [82] With respect to that second situation, Lord Kerr noted at paragraph 28 of judgment of **Mark France and Vassell** (supra) that ***"the holding of an identification parade would serve no useful purpose because "it carries the risk of adding spurious authority to the claim of recognition."***
- [83] This Court is of the view that third situation in **Ronald John** (supra) does not apply to the circumstances of this case, where an identification parade ought to be held, where the witness claims to know the suspect but the suspect denies it.
- [84] As indicated, I am of the view that based on the aforementioned authorities of **Goldson** (supra), **Ronald John** (supra) and **Mark France and Rupert Vassell** (supra), an identification parade in this case would have served no useful purpose where the witness's evidence, Trevon Elliot, is one of recognition.

- [85] In the case of **Sean Martin v The Queen**⁹. Justice Floyd referred to section 110(1) of the **Evidence Act** (Virgin Islands). At paragraph 28 of the said ruling Justice Floyd noted that the Act continues to list the matters to be considered when determining whether it was reasonable to hold an identification parade. Section 110(2) of the said Act refers to whether the identification was made at or about the time of the commission of the offence and considers the relationship between the accused and the other person who made the identification.
- [86] The Judge held in that case that **"given the long term knowledge of the Defendant by the witness Patterson and the circumstances of that relationship, I am satisfied that this is a case of recognition evidence. Based upon that relationship and in accordance with section 110(2) of the Evidence Act, it was unnecessary for the investigating police to conduct an identification parade or any other form of confirmatory procedure when considering the evidence of Mr. Patterson."**
- [87] The learned trial judge further stated at paragraph 29 that he was satisfied that *"the provisions of the Evidence Act were followed"* and that the said provisions were *"sufficient in and of themselves and no recourse to be provisions of the UK legislation, PACE, was necessary in this case."*
- [88] At paragraph 30 of the ruling, Justice Floyd was satisfied that ***"Mr. Patterson's evidence of identification was not intentionally influenced, such that an identification parade was required, pursuant to s. 110 (1)(b) of the Evidence Act. His observations were made before he attended the scene and was spoken to by his nephew and others. In any event, what transpired once he arrived at the scene and how that may impact his evidence as a whole, can be explored in cross-examination. Indeed, all of the issues relating to the evidence of Mr. Patterson raised by the Applicant can be explained in cross-examination. They are matters affecting weight and credibility rather than the admissibility of the evidence in the first place."***
- [89] Similarly in the case at bar, as the evidence of Trevon Elliot is of one recognition, given the circumstances of the relationship between the accused and the sole identifying witness, Trevon Elliot - there being no dispute that both parties know each other, It was therefore not necessary for the

⁹ BVI HCR No. 16 of 2019

police to conduct an identification parade) It was not appropriate to hold a parade having regard to the relationship of the deceased and the accused who knew each other at least one year to the stabbing incident in August 30th 2022. Furthermore as this evidence is one of recognition, it was not necessary for the police to engage in any other form of identification procedure (whether by video or photo identification pursuant to section 111 of Evidence Act).

[90] Under cross examination, Officer George testified that when she showed the photo of the accused to Trevon Elliot on 1st September, while he was in the hospital, she was not doing a photo identification as she did not see the need to do a photo identification. This Court reminds itself This Court reminds itself of **Blackstone's Criminal Practice** 2021 Part F, F-19.1 and F-19, - as any identification procedure whether by way of identification parade, video identification and/ or photo identification would serve no useful purpose in a case of recognition such as this case, because the witness, Trevon Elliot (even if mistaken) would almost inevitably 'identify' the person he has claimed to have recognized as the assailant. The conducting of such identification procedures carries "the risk of adding spurious authority to the claim of recognition." (borrowing the words of Lord Browne in the Privy Council case Ronald John v The State).

[91] On 31st August, 2022, Trevon Elliot gave a statement to Officer George in which he gave particulars identifying the assailant that led to the police obtaining a search warrant in the name of the accused, Selroy Hanley to execute at his home in Purcell. On that said day, the police knew the person they were looking for. In the circumstances, any showing of a photo of the accused to the deceased the next day on 1st September did not in any way influence the identification of the accused as the assailant since the search warrant in the accused's name had been obtained the day before, but such action on the part by Officer George does not affect that the evidence contained in the statement of Trevon Elliot is one of recognition.

Disposition

[92] It is in these circumstances, the statement of Trevon Elliot will be admitted in this trial pursuant to Section 58(1)(b) of the **Evidence Act of the VI** as amended. I do not find the statement is to be excluded, pursuant to the common exclusionary discretion. I am also of the view that the recognition evidence as contained in the statement of Trevon Elliot is of a reasonable quality. Furthermore, I find that a fair trial of the defendant is possible, once the necessary warnings/cautions are given to the jury and that there is to be the editing of any irrelevant or prejudicial material from the statement of Trevon Elliot.

[93] I wish to commend and thank both Principal Crown Counsel, Ms. Tracey Vidale and Mrs. Valerie Gordon for their thorough submissions and assistance in this matter.

Angelica Teelucksingh
High Court Judge



By the Court

Registrar