

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0067 & 0071 - joined

REX

V

TREVERN EDWARDS

APPEARANCES

The DPP Mr Adlai Smith and Mr Tashaun Vasquez for the Crown.

Mr Tim Prudhoe & Mr Craig Tuckett for the defendant.

2025: FEBRUARY 03

RULING

On whether trial by judge alone

- 1 **Morley J:** The Crown has made application for a trial without jury under the **Judge Alone Trials Act**, act 20 of 2024, (JATA), in force from 20.09.24 concerning Trevern Edwards aka 'Scar', aged 33 (dob 10.11.91). Edwards is facing allegations of two murders, joined by ruling on 24.05.24, being:
- a. Originally indictment SKBHCR2023/0067, for the murder of Jesse 'BJ' Lee aged 29 (dob 14.06.92) on 18.11.21; and
 - b. Originally indictment SKBHCR2023/0071, for the murder of Arthur Ezekiel Henry aged 67 (dob 09.03.55) on 24.03.22.

- 2 Coming to the High Court as paper committals from the Magistrates, the Henry murder first appeared in the list on 30.11.23 and the Lee murder on 19.01.24. Joinder was then granted as above and the trial is due to start on 17.02.25.
- 3 Application for judge-alone trial supported by argument was filed by the DPP on 09.12.24, and resisted by argument filed by counsel defending on 12.12.24. Oral argument was heard on 20.01.25, with written decision delivered today 03.02.25.
- 4 The alleged facts, and how seriously this case is viewed by the authorities, are set out in the joinder ruling of 24.05.24 at paras 2-4 and 6-9.

- 2 Edwards is said a 'gangster', with access to at least two guns, and Lee had been an associate, while Henry had been the victim-witness in a prosecution of Edwards for armed robbery of him on 11.03.22: both were 'executed' with shots to the head.
- 3 If convicted by jury of both murders, the Crown will likely seek the death penalty, still available on St Kitts & Nevis under **s2 and s3 of the Offences Against the Person Act** cap 4.21, first passed in 1873.
- 4 Edwards has previous convictions for burglary, larceny, malicious damage, and being armed with an offensive weapon, for which he has been fined and received minor jail sentences.
- 6 There are three civilian witnesses common to both cases:
 - a. Janayah Ryner, now 19 (dob 30.10.04) who made a statement common to both dated 05.04.22;
 - b. Skadeaj Dickenson now 25 (dob 26.03.99), who made a statement concerning Lee on 01.04.22 and concerning Henry on 05.04.22; and
 - c. Alandre Williams now 21 (dob 30.09.02), who made a statement on 02.04.22 mostly concerning Lee, but also reporting being with Edwards during the robbery of Henry on 11.03.22.
- 7 Concerning the murder of Lee, the prosecution statements distill the essential evidence as follows:
 - a. Tilano Archibald was Lee's girlfriend and mother of his two children. On 18.11.21 at 21.00, she saw Lee with a gun, dressed in black with black sneakers and a jansport pack, get into a rental car with Edwards together to steal marijuana. She never saw him again. Calling Edwards next day, he told her three gunmen had shot at them both and they had separated. Local searches by family, purportedly assisted by Edwards, did not find Lee.

- b. Janayah Rhyner was Edwards' girlfriend. In October 2021, he told her of a plot to kill him, but he would strike first, and in later days showed her a photo on his phone of a body not named by him face-down, wearing as described of Lee, implicitly him. He added days later during searches for Lee he had lied to police others had shot at them.
- c. Chelsea Selkridge was also Edwards' girlfriend. She spent time with him on her birthday 18.11.21, when he confessed he had just killed someone, who was 'BJ', he was serious, she was not to repeat this or he would send folk to kill her, showing the photo of the body face-down on his phone (as shown to Rhyner), adding the person killed had been planning to kill him and had a gun. He added later he and Skadeaj Dickenson had moved the body.
- d. Officer Charmaine Audain reported Edwards telling her on 19.11.21 he had been with Lee on 18.11.21 but dropped him at Cedar Grove, showing a path they had taken, and in formal interview later said he and Lee had been shot at by gunmen, (as above, said a lie to Rhyner).
- e. On the night of the killing, 18.11.21, Alandre Williams aka JJ was taken by Edwards with Skadeaj Dickenson to the body of BJ, dressed as described, to help move it, seen to have been shot twice in the head. Later Edwards said to him he had lied to police another had shot at him and BJ. At a further later time, Edwards then asked for help to move the body again, which in decomposition he had placed in a 'crocus' bag.
- f. On the night of the killing, 18.11.21, Skadeaj Dickenson aka DJ, per his statement of 01.04.22, was taken by Edwards with Williams to help move the body of BJ; then on 01.04.22, he pointed out to police where Lee's body was buried at Baysford mountain, bones being recovered, identified by dna.
- g. On 10.12.21, Edward's phone was seized, and on later analysis inter alia there is a photo timed at 00.59 on 19.11.21 of a body lying face-down dressed as Archibald described Lee, implicitly Lee, and shown to others as described.
- h. On 10.05.22, Edwards being already in custody on other matters (concerning Henry), he was formally interviewed and charged concerning the murder of Lee.

8 Concerning the murder of Henry, the prosecution statements distill the essential evidence as follows:

- a. Mabel Morton last saw Henry in church on 23.03.22 and did not answer on 24.03.22 when she called on him.
- b. Henry had reported Edwards on 12.03.22, who he has known since a child, making police statements on 14 and 15.03.22, that on 06.03.22 Edwards had asked for a 'crocus' bag (which may link to hiding Lee, as above), and on 11.03.22 Edwards and Williams had threatened him with respectively an uzi and pistol, tying him up, warning he would be shot in the head, and ransacking his home for money.
- c. Officer Nalie Joseph conducted a search for Edwards and guns on 12.03.22, finding neither.

- d. Officer Shaun Straker arrested Williams on 15.03.22, charging him with assault on Henry with intent to rob on 16.03.22, but could not find Edwards, who surrendered to police on 31.03.22, then on 02.04.22 being similarly charged as Williams.
- e. Janayah Rhyner received messages in March 2022 from Edwards on facebook he was wanted for robbing Henry, and would 'deal' with him for talking to police, later confirming he had 'dealt' with him, Henry had punched him, saying further he and Dickenson had hid his body, and when Rhyner next saw Edwards on 26.03.22, who she knew had two guns, he had a swollen face.
- f. Skadeaj Dickenson, per his statement of 05.04.22, described being present when Edwards murdered Henry, together visiting Henry's home at 08.00 on implicitly 24.03.22. Edwards fought with Henry for talking to police, who bloodied his nose, angry he pulled out his gun, ordering him to the floor, tying his hands behind, then ordering him to walk through an abandoned estate to the forest by a big tree, where he shot him point blank in the face; Dickenson then refused to help with the body, later showing police on 05.04.22 where the shooting had occurred, leading to recovery of the body.
- g. Dr Caronette Frank on 05.04.22 reported the decomposing body of Henry was recovered from a shallow grave at Fountain estate, later identified by DNA evidence.
- h. David Joseph spoke with Edwards on 23.03.22 who wanted to see Henry to 'deal' with him, and around 14.00 on 24.03.22, Edwards said he had fought with Henry, known as 'karate-man', his nose had been damaged, he had shot Henry once in the head, watching smoke rise from the wound, killing him so he would not be a witness against him, and had moved his body to Black mountain.
- i. Tia Thompson is another girlfriend of Edwards who on about 25.03.22 saw he had a damaged nose and he explained he had 'dealt' with a man.
- j. Edwards surrendered to custody on 31.03.22 over the robbery of Henry, but as the investigation evolved, after Henry's body was found on 05.04.22 he was charged with his murder on 13.04.22.

9 Focusing, on the Crown's case:

- a. Lee was executed by Edwards with two shots to the back of the head on 18.11.21 because believed plotting to kill him, but not being found until 01.04.22 was merely missing.
- b. Edwards, with Williams, was later wanted for the armed robbery of Henry on 11.03.22, reported by Henry on 12.03.22.
- c. Williams was arrested on 15.03.22, but Edwards could not be found.
- d. Edwards executed Henry with a single shot to the front of his head on 24.03.22 for talking to police.
- e. Edwards confessed
 - i. to killing Lee to girlfriends Chelsea Selkridge and Janayah Ryner, and

- ii. to killing Henry to David Joseph, and to girlfriends Tia Thompson and Janayah Rhyner.
- f. Edwards was seen by Skandej Dickenson to execute Henry on 24.03.22, who had also helped on 18.11.21 move the body of Lee with Williams.
- g. The bodies, being concealed at Baysford mountain and the Fountain estate, were proximate.
- h. Edwards surrendered to police on 31.03.22 as wanted for the robbery of Henry, but then on 01.04.22 Dickenson pointed out the body of Lee, and on 05.04.22 pointed out the body of Henry, leading to Edwards being charged with the Henry murder on 13.04.22 and the Lee murder on 10.05.22, the detailed investigation into the two murders taking place after Edwards' arrest on 31.03.22 for robbing Henry, who may have thought on surrendering that he ought soon to be released as Henry could not be found, while Lee had not been, but under intense police work his associates Dickenson and Williams told on him, and three girlfriends plus Joseph to whom he had confessed.
- i. The heart of the Crown case is that Edwards, playing murderous gangster with an uzi and pistol, had built around him what he thought was a body of loyal criminals and supporters, but who then turned on him.

- 5 Decision on judge-alone trial requires:
- a. Setting out the St Kitts context; and then
 - b. Setting out the legislation.

Context

- 6 St Kitts & Nevis as a federation of two islands has a population of about 50000, with about 35000 on St Kitts. During 2023 and 2024, the number of murders approached 30 per year, so that notionally if projected against a population of 100000, the figure would be 55-60per100k, making it technically the likely highest per capita murder rate in the world¹. There are many guns, and many listless young men without family structure, who join gangs to give them purpose and a sense of belonging. On 04.11.24, owing to the level of crime, there was a town hall gathering on Nevis, of ministers, academics and the public, this judge being present, in which it was reported that there are 15 gangs on St Kitts and 2 on Nevis. From casework in court, I am aware of the following gang names: the KMS (killer mafia soldiers), TNT (tek no talk), Tek Life, the ORs (the

¹ See <https://worldpopulationreview.com/country-rankings/murder-rate-by-country>, where Jamaica is reported with the highest murder rate at 53.3 per 100k.

old road men), the Bad Seeds, the YKZ (young kings), TMF (take money fast), the Black Knights, the Gullygang, and the Monkey Hill Boys, while there are known also to be groups in Lodge and Conaree.

- 7 Illegal guns abound, likely brought onto the island with drug shipments making their way through the local waters, while they are then hidden, in homes, yards, maybe neighbours' yards, sometimes at rural locations, and sometimes in lobster pots, which provide easy import of guns via boats agreeing precise GPS coordinates on mobile phones in the pitch dark of sea night, thereby lifting pots and depositing contraband. The weapons are mostly automatic pistols, of mainly calibres 9mm, 0.38, and 0.40, though others are found too. Military rifles and machine pistols are also known to be used, there having been recovered known to this judge since 2022 two AK47 automatic assault rifles (on 16.08.22 and 19.01.24), an AR-15 automatic assault rifle (on 22.07.24), and a TEC-9 automatic machine pistol (on 20.11.24). The instant case involves an Uzi machine pistol in the murder of Henry, and a military M-16 assault rifle was used in the murder of Kishorn Edwards aka Duppy on 04.07.17, tried by this judge in 2022.
- 8 I am the sole High Court Judge on St Kitts sitting in serious crime, and since appointment in March 2021, among many other cases, there have been 6 gangster trials before me with a jury sworn and no murder convictions. The allegations were as follows:
 - a. During 03-31.05.22, on indictment 2021/0017, there was the jury trial of *T'sean Hendricks, Jerod Stapleton and Ellister Thomas*, accused of the murder of Duppy, as above, where the main prosecution witness, who was a female accomplice to lure Duppy to his death, pre-trial put out a video on social media recanting her testimony, and a second witness, who had heard a next-day confession in casual conversation, became hostile, denying the truth of his police statement. The trial resulted in acquittals.
 - b. During 18.04-04.05.23, on indictment 2021/0013, there was the jury trial of *Antonio Pascal*, in a feud between the TNT and Monkey Hill Boys, who on 30.05.18 burst into the yard of Cardie Stapleton and as one of two shooters shot anyone there, murdering Jamoie Stapleton, and wounding two others. The three primary prosecution witnesses, all Pascal's

accomplices, did not attend court. They were in hiding despite a manhunt on both islands. However, when two witnesses learned that their statements had been read in court, they did in fact attend court in order to deny their truth to the jury. The trial resulted in a hung jury. Of note, his co-defendant shooter Eson Gaiton, then a juvenile, had his proceedings discontinued by the magistrate when the same three witnesses refused to attend his separate committal proceedings (whereas Pascal as an adult was able to be committed on the papers), while Leshan Henry, one of the missing witnesses was later shot dead on 19.07.24.

- c. During 07-20.03.24, on indictment 2023/0040, there was the jury trial of *Eson Gaiton* for the murder on 10.07.22 of Junior Mervyn Stephens by stabbing him in the neck during a fete, caught on video, with Stephens a member of the Black Knights and Gaiton a member of the TNT (having been at large after discontinuance of the Stapleton murder as above). In this case, the three civilian prosecution witnesses each produced a video, handed in collated together on one USB to the ODPP casually by an unidentified Gaiton associate just before trial, each withdrawing their testimony and publicly apologizing for having made police statements. The trial resulted in a hung jury.
- d. During 18-19.04.24, on indictment 2023/0065, there was the trial of *Calbert Powell* for the murder of Javrell Alford during jouvert on 26.12.22, stabbing him, where Alford was in the YKZ and Powell in the ORs. The primary civilian prosecution witness became hostile, which on analysis, along with other weaknesses in the investigation, led to the prosecution discontinuing.
- e. During 29.04-13.05.24, on indictment 2023/0028, there was the trial of *Tabari Roberts* for a shooting double-murder at his home on 11.01.21, being a resident of McKnight which is a stronghold of the KMS, with a gun supplied by police officer *Jelani Duncan*. Owing largely to witness reluctance, indeed terror at giving evidence, being tearful on voir dire asking not to be compelled, the prosecution settled on pleas to manslaughter. Of note, on 23.07.24, Roberts' aunt Sandra, who was present each day in court during the trial, was then shot dead on her doorstep.

- f. During 03-26.06.24, on indictment 2023/0066, there was the jury trial of *Craig Richardson* for the murder of Kishaun Ritchen on 23.09.21, by sneaking up on him while eating a street burger and shooting him through the head, in a dispute over street-selling ganja, where Richardson was said a member of the Gullygang. There were complications in persuading the primary prosecution witness to give evidence for fear of reprisals and in need of formal witness protection. The jury acquitted.
- 9 In addition, on 20.07.24, *Akeem Archibald* who was my juror number 5 in the 2024 Trinity array, was murdered by an AR-15 on automatic firing 11 bullets, shooting him 7 times, while on his motorbike leaving the home of his girlfriend. He had been on a jury (in chair 8) convicting on 24.05.24 a member of the TMF on indictment 2023/0062 for armed robbery of a supermarket on 06.12.19.
- 10 The level of murder and lawlessness has produced much anxious public discussion. The perception has grown in law enforcement that jurors are fearful for their safety in such a small community as St Kitts, where their identity and home addresses are assumed to be known to malefactors. Court staff too are frightened because they are identifiable. It is now a predictable widespread belief that those who sit on juries fear a knock on the door from a gangster associate. After being sworn, they are only ever after daily referred to by number, rather than by name. Jury sensitivity about who is attending court, or outside the building as the jury leave at the close of the daily hearing, is often reported to the bailiffs, with twice a request by the jury in previous trials that a supporter of a defendant is excluded from sitting in court due to perceived staring at jurors.
- 11 Further, concerning the murder of Archibald, though it has not yet been shown to be because he was a juror, it has nevertheless not been shown to the contrary. It remains a plausible case theory he was murdered because he was a juror, and so a chill has run through the island concerning jury service, leading to the array being disbanded on 22.07.24 as its members were understandably disturbed to learn of their colleague's execution, raising island-wide the spectre of possibility that a jury, through fear, may well not convict gangsters.

- 12 It is against this background, of evident unreliability of witnesses, recanting testimony, suggestions of tampering, also of profound fear on the part of witnesses, and in addition predictable fear on the part of the jury, with abundant murders occurring, that the **JATA** legislation was introduced. At its core, inter alia it is designed to make trials of gun-toting gangsters by judge alone, in order to spare jurors the agony of self-interest, and to permit greater sensitivity and understanding on the part of the court as to the usually frightened or hostile witnesses, where a judge of experience may more readily discern the truth when a witness is reluctant.

Legislation

- 13 For this application, the significant sections of **JATA** are:

3. Application of this Act.

(1) This Act shall apply to criminal proceedings pending on the commencement date of this Act and criminal proceedings instituted on or after the commencement of this Act.

5. Prosecution may apply for trial by Judge alone in certain circumstances.

(1) The prosecution may apply to the court for a trial to be conducted by a Judge without a jury on any one or more of the grounds set out in subsection (2).

(2) The grounds upon which an application may be made under subsection (1) are the following—

(a) that in view of the nature and circumstances of the case, there is a danger of jury tampering or intimidation of witnesses;

(b) that a material witness is afraid or unwilling to give evidence before a jury;

(c) that the case involves a criminal gang element and would be properly tried without a jury;

(d) that the complexity of the trial or the length of the trial, or both, is likely to make the trial so burdensome to the jury that the interests of justice require that the trial should be conducted without a jury; or

(e) that it is likely that, if a jury were selected, pre-trial publicity may influence its decision.

(3) An application under subsection (1) shall be heard and determined by a judge in the absence of a jury and both the prosecution and the accused person shall be given an opportunity to make representations with respect to the application.

(4) If the judge is satisfied that the relevant ground as specified in subsection (2) of this section, has been established, he shall make an order that the trial shall be conducted

without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial, but if he is not so satisfied he shall refuse the application.

(5) No appeal shall lie against the order of the judge granting or refusing an application under this section for the trial to be conducted without a jury.

- 14 The Act permits at **s3 JATA** for Edwards' case to be considered for a judge-alone trial, even though it was committed to the High Court before **JATA** was in force. Here, the relevant sections to assess are **ss5(2)(a)-(c) JATA**, concerning the jury, witnesses and gangs. Representations have been made by both prosecution and defence, as to whether under **s5(4)** the judge is '*satisfied*'... *the ground has been established*'. There is no appeal from this decision, per **s5(5) JATA**; though for completeness of analysis, it is possible that a challenge could be mounted to a judge's decision to order a judge-alone trial by way of judicial review, if there are grounds to assert the decision was irrational on the basis that no reasonable tribunal would decide that the requirement in **s5(4)** was met; or procedurally flawed as being conducted in breach of the principles of natural justice, being without hearing; or where there are grounds to assert actual or perceived bias by the judge.
- 15 It follows that the significant issues to contemplate are:
- a. What gateway under **s5(2) JATA** is applicable;
 - b. What is the test to satisfy the judge; and
 - c. Is a decision ordering judge-alone trial unreasonable.

Gateways and the test to be applied

- 16 The prosecution's application at para 2 of the submission filed on 09.12.24 is formally made under **s5(2)(a) JATA** – namely that there is a '*danger...of intimidation of witnesses*', though the body of the argument goes on at paras 15-17 to consider '*danger of jury tampering*', while during oral submissions on 20.01.25, there was consideration of whether the case '*involves a criminal gang element*', under **s 5(2)(c) JATA**. I will deal with each in turn.

- 17 Concerning **s5(2)(a) JATA** from this court's previous trial experience, there can be no doubt there is a '*danger of intimidation*' of witnesses. By '*danger*', I assess this to mean likelihood, with consequent need to avert the danger arising. By '*intimidation*', I find this to mean where persons or island circumstance create pressure on a witness to recant or refuse to give evidence. I am satisfied that it is likely that in this case witnesses will feel under pressure to resile from what they said to police, due to the murderous island circumstance, in which witnesses are in fear of giving evidence against others because they may be targeted by friends of Edwards resulting in death or serious injury. In this regard, the murder of Henry is relevant because the reason for his killing was said to be because he was a witness. Further, the witness Selkridge (a young girlfriend) actually states in her witness statement of 30.03.22 that she was warned not to talk to police on pain of being killed, saying '*if I talk he [Edwards] would send people to kill me*'. In addition, there are two other girlfriends at risk, being Rhyner and Thompson, both of whom are young and vulnerable to threat, it being notable Rhyner specifically expressed fear of Edwards in her statement of 05.04.22. Two more witnesses are gangsters associated with Edwards, being Dickenson and Williams, who by informing on their gang leader, will be accused of 'ratting' among criminals, raising the real danger that each will recant their evidence rather than be seen to be disloyal to their gang leader and thereby at risk of retribution in the form of murder as happened to Henry. I find therefore that the nature and circumstances of this case are such that there is a danger of intimidation of witnesses and that the **s5(2)(a) JATA** criterion is satisfied.
- 18 As regards **s5(2)(a) JATA** in respect of the jury - from this court's previous trial experience, there can be no doubt that there is a '*danger of tampering*'. By '*tampering*', I assess this to mean interference, in the sense that there is a likelihood that persons or island circumstance will interfere with jury members' sense of safety and security with a view to influencing them to return a particular verdict. There are many ways in which this can be achieved. This may involve serious acts such as violence or threats of violence to them or their families or it may not necessarily require an overtly hostile act, it may be just a look from someone across a distance. In addition, as I have said, the island circumstance as described at para 10 above, is in itself sufficient to amount to 'tampering' in that I am satisfied that it creates a real risk that jurors will fear serious threats and reprisals. As a result, I am satisfied that in this small St Kitts community, a jury will be worried, even paranoid, that they may be monitored or threatened by associates of Edwards.

- 19 For all these reasons, I am satisfied that having regard to the nature and circumstances of this case, there is a real danger of jury tampering in the case and it follows that if so, then it is realistic to fear that the jury either in whole or in part may not be true to their oaths, namely to try Edwards on the evidence and to return verdicts according to the evidence without fear or favour. Instead, there is a danger that they will substitute what is in their personal interest, namely to acquit so they be unharmed, or refuse to agree and so be hung.
- 20 Of note, the courtroom is temporary and small. The 12 jury seats are open to the court, not behind a balustrade, and the court doors open straight to the outside where the public congregates. When the jury enter and leave the court, they walk past where the defendant is seated at the back of the court, not in a marked off dock. The work of the jury in such a confined environment has an intimacy to it, which adds to them feeling exposed and vulnerable. As I have concluded at paras 10 and 18 above, actual threat by a malefactor is not needed for me to be satisfied that there is a danger of ‘tampering’ because the island circumstance itself is sufficient to tamper with their peace of mind and sense of safety. This is reinforced by the murder of the juror Archibald which sets a tangible precedent of the risk they face by serving on a jury. For all these reasons, I find that the criteria under **s5(2)(a) JATA** in respect of the danger of jury tampering is satisfied.
- 21 As regards **s5(2)(c) JATA**, there is no doubt that this case involves a criminal gang element. Executing rivals, and witnesses, and using reliable and loyal associates to bury bodies, toting a pistol and Uzi, taking pictures of a body to show off, and threatening to kill if someone talks, is the very essence of criminal gang behaviour. Being a member of a criminal gang involves a spoken or unspoken code of loyalty to gang members above all else. This code of behaviour expects them to put loyalty to each other above the law and to break the law and interfere with the proper administration of the criminal justice system by intimidating and threatening witnesses and tampering with jurors, as thought needed, always with the threat of even more serious repercussions such as death or serious injury. It is for this reason that **JATA** provides that cases involving a criminal gang element such as this would properly be tried without a jury. I am satisfied that this is such a case.

- 22 Counsel defending may argue that the application concerning gangs under **s5(2)(c) JATA** was not specifically raised in the prosecution submissions filed on 09.12.24. I find however that defence counsel had sufficient notice of the likelihood of this ground being raised given that it falls squarely within the facts and circumstances of this case. The ‘gang’ nature of this case is inescapable and integral to the allegations. Moreover, the cause of the intimidation and tampering under **s5(2)(a)** is precisely because the offender is in a gang, this being ‘*in the nature and circumstance of the case*’ as the section contemplates, and which is the reason why I am satisfied that there is a danger that jurors and witnesses will fear reprisals.
- 23 In coming to these conclusions, I have considered the requirement in **s5(4) of JATA** that I must be ‘*satisfied*’ that one of the grounds in **s5(2)** has been established. If I am so satisfied, then **s5(4)** states that I, “*shall make an order that the trial shall be conducted without a jury.*” The requirement therefore is mandatory, and I do not have a discretion. Whether I am ‘*satisfied*’ requires the exercise of a value judgment involving weighing up the evidence and surrounding circumstances, which I have done as above.
- 24 Given judge-alone trial is widely permissible and in theory capable of being fair, what is the test to apply?
- 25 There is no help in **JATA**, which simply says under **s5(4)** the judge must be ‘*satisfied*’ a ground has been ‘*established*’ for judge-alone trial under **s5(2)**.
- 26 A closer look at **s44 Criminal Justice Act 2003 (CJA)** in the UK is of interest, which allows for non-jury trial where there is danger of jury tampering, as here:

44 Application by prosecution for trial to be conducted without a jury where danger of jury tampering

- (1) This section applies where one or more defendants are to be tried on indictment for one or more offences.
- (2) The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury.
- (3) If an application under subsection (2) is made and the judge is satisfied that both of the following two conditions are fulfilled, he must make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application.

(4) The first condition is that there is evidence of a real and present danger that jury tampering would take place.

(5) The second condition is that, notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

(6) The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place—

(a) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place,

(b) a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants,

(c) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

27 Applying the UK test considering jury tampering, noting the examples at **s44(6) CJA** are not exhaustive, first under **s44(3)** there must be evidence of a real and present danger of it; I am sure this applies to St Kitts. Then second, under **s44(4)** the likelihood must be so substantial as to make judge-alone trial in the interests of justice; I am sure here the likelihood is indeed so substantial that truly it is in the interests of justice a jury is not sworn to try this case as I think, from the lawlessness on-island, generating fear of reprisal, with the Archibald murder expected at the forefront of local thinking, it is likely a jury, understandably, will put their own safety interests ahead of convicting.

28 Of further interest is the leading case of **Misick et al v Rex 2015** 1 WLR 3215 on appeal from the Turks & Caicos Islands (TCI) to the Privy Council.

29 The *Misick* case considers where a complicated fraud alleged by the former TCI premier, and others, has been tried for many years by judge alone, decided first by Harrison J, a former Court of Appeal President in Jamaica, as permitted by **s4 Trial without a Jury Ordinance 2010**:

(1) Notwithstanding anything to the contrary in any other law, a judge may order that a trial be conducted without a jury if he is satisfied that the interests of justice so require.

(2) An order under subsection (1) may be made on the application of any party to the trial or by the judge of his own volition.

(3) In making a determination as to whether the interests of justice require that the trial be conducted without a jury, the judge shall have regard to all the circumstances prevailing, including any or all of the following_

- (a) the nature of the charges;
- (b) the complexity of the issues or matter to be determined, and any steps which might reasonably be taken to reduce the complexity of the trial;
- (c) the length of the trial, and any steps which might reasonably be taken to reduce the length of the trial;
- (d) the likelihood that, if a jury were selected, pretrials publicity may influence its decision;
- (e) or if there is any information tending to suggest that jury tampering may arise.

30 The test is said to be the *'interests of justice'*, taking into account at **s4(3)(a) TWAJO** the *'nature of the charges'*, here being gangster murder, and at **s4(3)(e)** *'any information tending to suggest that jury tampering may arise'*, where here the information is improbably no gangster has been convicted by a jury on St Kitts in nearly 4 years during 6 trials, while there has recently been the murder of a juror, all suggesting tampering, in the sense as above the island-wide circumstance has been placing pressure on jurors to put their safety ahead of convicting, which in combination mean I am sure judge-alone trial is in the interests of justice.

31 Reviewing the decision by Harrison J to proceed to judge-alone trial, Lord Hughes observed, *inter alia*:

51 In the present case, the test for departure from jury trial imposed by **section 4 TWAJO** is that the judge be 'satisfied that the interests of justice so require'. There is no statutory pre-condition of fact for such an order. The judge is required to have regard to all the circumstances, including, but not only, those listed....Some, such as the nature of the charges (factor (a)) will not be capable of dispute. Others, such as the complexity of the case and what might be done to reduce it (factor b), the length of the trial (factor (c)) or the likelihood of publicity impacting on jurors so as to influence their decision (factor (d)) are themselves principally matters of degree, for evaluation, rather than matters of fact for proof. Factor (e), information tending to suggest a risk of jury tampering, might involve the determination of past fact, but will also boil down principally to questions of prediction, likelihood and the practicability of precautions, weighing each in the light of the other....The Board has no doubt, whatever may be the position in relation to other legislation in other jurisdictions, that the decision required by TWAJO is not susceptible of analysis in terms of proof or the standard of it. The judge and the Court of Appeal reached the correct conclusion....

53 It should be emphasised that the possibility of trial by judge alone, provided for by **TWAJO**, is an exceptional departure from the normal mode of trial for serious offences before the Supreme Court of the Islands which is, by **section 3(1) of the Criminal Procedure Ordinance**, trial by judge and jury. Just as under the differently worded English and New Zealand legislation, departure must be justified. An order for trial by judge alone can be made only where the interests of justice require it, just as in England it can be made only where it is necessary. Under both statutory tests, the evaluative exercise mandated for departure from jury trial incorporates the considerable weight of the value of such trial. They incorporate the proposition that trial by jury for serious offences is a valuable right of both the defendant and the public and is, in common law countries, the norm on which criminal justice is based. Departure from it must be confined to whatever classes of case or circumstance for which the legislation provides, and must be plainly justified. Neither formulation permits an order to be made simply because it is more convenient, or marginally preferable.

54 The judge adopted this approach. He directed himself that jury trial was ‘the cornerstone of the assurance of fairness and justice in the criminal law system’ and reminded himself of Lord Devlin’s famous description of it.... Having done so, he approached his decision on the basis that ‘Trial by jury is undoubtedly the tried and tested means of achieving fairness in serious criminal trials, unless its efficacy is likely to be undermined.’ Having so directed himself the judge worked through the relevant factors seriatim and concluded that the interests of justice did indeed require, in this very unusual case, trial by judge alone. The Board has no doubt that he was entitled so to conclude.

- 32 Applying *Misick*, noting a judge-alone decision requires ‘*principally matters of degree, for evaluation, rather than matters of fact for proof*’, and ‘*questions of prediction, likelihood and the practicability of precautions, weighing each in the light of the other*’, I am wholly satisfied in the sense I am sure judge-alone trial is here required.
- 33 It is to be noted in the *Misick* case, referring also to the New Zealand case of **R v Ita 2011 NZCA**, there is rumination the test seems whether a judge concludes on balance judge-alone trial is required.
 - a. However, in this case of *Trevern Edwards*, to be transparently clear, I am not making a finding by applying an on-balance test, though I could.
 - b. Instead, on the facts in this case, and the island context, the finding I make is this, sureness, which may be more than needed: in sum, I am satisfied as being sure, not merely on balance, judge-alone trial is here required in the interests of justice, that as a matter of prediction and practicality per Lord Hughes, there is a likelihood of tampering with the jury, and intimidation

of witnesses, the case involving a criminal gang element, whether or not there is an overtly hostile act by a malefactor, and in my judgement this is a reasonable conclusion in all the circumstances of the tragic on-island lawlessness.

Reasonableness

34 A jury trial has high regard in a democracy, as explored by Lysander Spooner in his famous 1852 *'Essay on the trial by jury'*, where in the trial all are equal, allowing a defendant to be judged by his peers, rather than a Judge who enjoys an elevated position within the criminal justice process. Juries can refuse to convict, even where legislation may expect it, where their sense of fairness is offended, and so are famously a bulwark against tyranny. Jurors are anonymous, coming from the community and returning to it, and should be without fear of reprisals for their decisions, passing judgement with the same care as they would want their own jury to take if under charge. In words well-read by lawyers in the book *Trial by Jury*, of Lord Devlin in 1956, *'Trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives.'* Whilst respecting this fundamental principle, a legislature is free to enact law which circumscribes the right to trial by jury in cases where otherwise there is a real danger of subversion of the jury system and the trial process. Given the background to the legislation summarised at paras 6 to 12 above, it is plain that the purpose of **s5 JATA** is to respond to these particular risks by prescribing particular circumstances in which a defendant might be deprived of trial by jury, each of which has been prescribed by a pressing social need on this island, to ensure that the criminal justice system is not subverted in cases where a judge is satisfied that the issues described in **ss5(2)(a)-(e)** are present – as I am satisfied that they are.

35 In addition, it is important to add that on St Kitts jury trial is not an absolute right. Notably it is not enshrined in the **St Kitts & Nevis Constitution**, where **Article 10** provides for a right to a 'fair hearing' in front of an impartial court established by law. Importantly, **Article 10** does not specify, nor require trial by jury:

10. Provisions to secure protection of law.

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

- 36 Clearly, an *'independent and impartial court established by law'* includes the High Court, as it does the Magistrates Court, where already there are many offences which a magistrate decides alone. The independence and impartiality of the Judge is to be presumed unless, *'the fair - minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased'*, per dicta from Lord Hope at para 103 in **Porter v Magill 2001** UK HL 67.
- 37 Moreover, almost all civil trials have been judge-alone through much of Common Law history, without demur, pointing clearly to how a judge in complex and important matters is trusted to make a fair decision. There is no justifiable reason to consider that a judge in a criminal trial would do anything other than try the case fairly and according to the evidence.
- 38 Further, in the UK **ss 43-44 CJA** provide for prosecution application for non-jury trial in cases of fraud complexity, and where there is danger of jury tampering as discussed. Also, in Northern Ireland the Diplock Courts were set up in 1973, mostly abolished in 2007, though are still used in certain circumstances, under the **Northern Ireland (Emergency Provisions) Act 1973** to deal with offences of violence in the context of the 'Troubles', in which armed militias such as the IRA and UVF wrought local terror, leading to the assumption that juries could not function fairly in such an intimidating community. What this means is judge-alone murder trial is not unknown in the UK.
- 39 It is also relevant that during the covid pandemic 2020-22, some jurisdictions adopted judge-alone trials as a temporary measure because jury trials could not occur owing to the need for social distancing. This was in response to a pressing need to get trials done, given the many defendants languishing in custody. Antigua & Barbuda was an example of this in the Caribbean.
- 40 Moreover, in the Commonwealth, whether because favoured in principle or continuing post-covid, judge-alone trials are permitted where appropriate on prosecution application in Australia,

New Zealand, and South Africa, and also in Caribbean jurisdictions for example Jamaica, Antigua & Barbuda, Dominica, Belize, and TCI.

- 41 In the inquisitorial system established by the *Code Napoleon*, and exported through continental Europe, and to many other countries, including to the French, Dutch, Spanish and Portuguese Americas, Asia and Africa, judges try criminal cases alone, while the same is true in communist countries, meaning in fact judge-alone trials in criminal cases are more globally widespread than jury trial.
- 42 In international criminal law, the UN Tribunals do not have juries, but instead appoint a panel of three or more judges. This is the case at the International Criminal Court in the Hague, and also the UN ad hoc tribunals for Yugoslavia, Rwanda, Lebanon, Cambodia, Sierra Leone, and East Timor.
- 43 This all supports the fact that a criminal trial by judge-alone has significant international precedent and supports the proposition that judges are rightly regarded as being capable of faithfully trying a defendant and giving a true verdict according to the evidence.
- 44 In addition, there is academic literature which has found in a judge-alone trial there is a higher chance of acquittal and lower sentence², so any sensitivity that a judge may favour the prosecution appears empirically misplaced.
- 45 The advantage that a judge has, consistent with the drafting of **s5 JATA**, is a judge is immune from intimidation and tampering of the types envisaged by **s5(2)** and is able to deal fairly and fearlessly with case management issues that arise in these sorts of cases, such as reluctant, intimidated witnesses. The purpose of the legislation is to ensure that the cases in which the judge is satisfied fall within the categories set out in **s5(2)**, proceed to trial, and that the trial is conducted without fear or favour so that a true verdict is reached.
- 46 Any judge has seen a lot. Each is recruited for their 'judgement', the very word being attached to their standing, being that ability with training, experience, sensitivity, and hopefully acute

² See eg: <https://bocsar.nsw.gov.au/documents/publications/cjb/cjb251-300/CJB264-Report-Effect-of-judge-alone-trials.pdf>

mental faculty, to seek out the truth, getting it more right than not, though making allowances for mistakes, reviewable on appeal, always alive to being in error, which does happen, but trying hard to guard against it, constantly self-reflecting, and resolutely applying the legal test as the burden and standard of proof, having spent a lifetime in courts as an advocate and later on the Bench, dealing daily with people, having taken an oath to decide cases without fear or favour, always in the interests of justice, not in self-interest.

- 47 Further in a judge-alone trial, written reasons must be given, convicting or acquitting, unlike in a jury trial, so a decision can be thoroughly examined by counsel and appeal judges to see if mistaken, where its flaws can be distilled as to assessment of the facts or application of law.
- 48 In all these circumstances, where a judge is experienced and a decision written, it is not unreasonable to suppose a defendant will receive a fair trial before an intelligent, honest judge.
- 49 I would like to thank counsel both prosecuting and defending, mentioning the DPP and Crown Counsel Vasquez, also Defence Counsel Prudoe in particular for his legal research, who hails from TCI which is the origin of the *Misick* case, and for their intelligent submissions on what is locally a novel point of law and procedure.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

3 February 2025