

COURT OF APPEAL SITTING

MONTSERRAT

Monday, 14th March 2016 to Friday, 18th March 2016

STATUS HEARING

Case Name:

**[1] Joseph Bass
[2] Derek William Bass
v
Ivan Allen**

[MNIMCVAP2015/0004]

Date:

Monday, 14th March 2016

Before:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. David Brandt

Issue:

Status of the matter

**Type of Oral
Result / Order
delivered:**

N/A

Result / Order:

**IT IS HEREBY ORDERED THAT:
The matter adjourned to next status hearing during the
next sitting of the Court of Appeal in Montserrat in the
week commencing 24th October 2016.**

Reason:

**The record of appeal is not yet available from the
Magistrates' Court.**

Case Name:

Commissioner of Police

v

Alaric Lynch

[MNIMCRAP2015/0002]

Date:

Monday, 14th March 2016

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Oris Sullivan with Mr. Kenroy Hyman

Respondent:

In person

Issue:

Status of matter

**Type of Oral
Result / Order
delivered:**

Directions

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The registrar shall cause the record of appeal to be served on the respondent within 14 days.**
- 2. The respondent shall file written submissions on or before 2nd May 2016.**
- 3. The matter is adjourned for hearing at the next sitting of the Court of Appeal in Montserrat during the week commencing on 24th October 2016.**

APPLICATIONS AND APPEALS

Case Name:

Shauvelle Hixon

v

The Commissioner of Police

[MNIMCRAP2015/0003]

Date:

Monday, 14th March 2016

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. David Brandt

Respondent:

Mr. Oris Sullivan with Mr. Kenroy Hyman

Issues:

Appeal against sentence – Possession of a controlled drug – Whether sentence of one year imprisonment imposed on appellant for possession of cannabis was wrong in principle – Whether the Court viewing the circumstances on the whole could not have reasonably decided to impose a sentence of one year – Whether the sentence was too severe – Whether the learned magistrate failed to consider the aggravating factors

**Type of Oral
Result / Order
delivered:**

Oral judgment or Decision

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:

The appeal having been withdrawn is accordingly dismissed.

Case Name:

Douglas Anderson

v
The Attorney General
[MNIHCVAP2015/0003]

Date: Monday, 14th March 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Fitzroy Buffonge holding papers for Mr. Jean Kelsick

Respondent: Ms. Karen Reid with Mrs. Sheree Jemmotte-Rodney

Issues: Application for leave to appeal – Application for adjournment – Ill-health of counsel for the appellant

Type of Oral Result / Order delivered: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

1. The hearing of the application for leave to appeal against the order of the learned judge is adjourned to the next sitting of the Court of Appeal in Montserrat during the week commencing 24th October 2016.
2. Costs to the respondent in the sum of EC\$1,500.00

Reason: The application was adjourned due to ill health of Mr. Jean Kelsick, counsel for the appellant in this matter.

Case Name:

**Ira Francis
v
The Queen**

[MNIHCRAP2015/0003]

Date:

Monday, 14th March 2016

Before:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. David Brandt

Respondent: Mr. Oris Sullivan with Mr. Kenroy Hyman

Issues:

Appeal against sentence – Unlawful Sexual Intercourse with a girl under the age of 16 years – Whether the sentence of 4 years imprisonment imposed on the appellant on being found guilty of 2 counts of unlawful sexual intercourse with a girl under the age of 16 years was too severe in all the circumstances of the case – Whether the sentence imposed in the appellant was excessive in regard to his guilty plea and lack of antecedents – Whether the learned trial judge had due and proper regard to the principles of sentencing as laid down in the case of Desmond Baptiste v The Queen

**Type of Oral
Result / Order
delivered:**

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The sentence of 4 years reduced to 2 years and 6 months.**

Reason:

The Court examined the record of appeal in particular, the record in relation to the sentencing exercise. The Court agreed with the submissions that the record

does not indicate that the learned trial judge used a notional sentence as he is required to do. In failing to do so the learned judge erred.

The Court stated that it reviewed the submissions of counsel also took into account the mitigating factors in this case, that is, the guilty plea and the lack of antecedents of the appellant and in the circumstances the Court is of the opinion that the sentence of 4 years is excessive and ruled that a sentence of 2 years 6 months would meet the justice of the case.

Case Name:

**Sylvester Solomon
v
Cassandra Weekes**

**[MNIMCVAP2015/0001]
[MNIMCVAP2015/0002]**

Date:

Tuesday, 15th March 2016

Before:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances

Appellant: In person

Respondent: Mr. Chivone Gerald

Issues:

Civil appeal – Whether the learned magistrate erred in revoking his previous decision to recuse himself from the matter and proceeding to grant the interim order for the appellant to pay maintenance to the respondent for the minor children – Whether the learned magistrate erred in failing to examine the means of the appellant before ordering the monthly payments of EC\$800.00 for the maintenance of the minor children – Whether the order of maintenance of the learned magistrate was

based on a wrong principle or was such that the Court viewing the circumstances as a whole could not properly decide – Whether the learned magistrate acted unreasonably when he failed to grant the adjournment so that the applicant could obtain legal representation – Whether the learned magistrate erred when he granted the order in respect of Nomolas Blake Samuel Weekes, when the appellant has no child by that name.

Type of Oral
Result / Order
delivered:

Oral judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The appellant to pay to the respondent the sum of EC\$750.00 within 2 months.
3. The orders of the learned magistrate are affirmed.

Reason:

On the ground that the learned magistrate erred in deciding to hear the case given his earlier decision to recuse himself, there is nothing in the facts or in the circumstances of the case which shows that the magistrate erred in the exercise of his discretion in this way. Accordingly, this ground is dismissed.

On the ground that the learned magistrate erred in awarding maintenance of EC\$800.00 towards the maintenance of the two minor children because he failed to examine the means of the appellant before doing so, on an examination of the record it was found that it was the appellant who refused to allow the examination of his means. This ground of appeal is also dismissed.

On the ground that the learned magistrate erred in granting an adjournment of the matter on this issue we find that the learned magistrate considered the justice of the case and proceeded with hearing the matter given the several adjournments in the matter previously. The maxim justice delayed is justice denied is applicable here and any further adjournments in the matter would have resulted in innocent children being deprived of maintenance from their father. The

Court rejects this ground of appeal as well.

In respect of the ground of appeal pertaining to the child Blake Samuel Weekes or Nomolos Blake Solomon, the Court considers that the issue is a technicality and of no merit resulting in the appellant refusing to maintain the child on the basis of the preferred name either parent prefers to call the child. This ground of appeal is also disallowed.

Case Name:

William White

v

The Queen

[MNIHCRAP2014/0001]

Date:

Tuesday, 15th March 2016

Before:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Mr. Oris Sullivan with Mr. Kenroy Hyman

Issues:

Status of matter – Application to amend ground of appeal – Appellant’s skeleton arguments not yet filed

**Type of Oral
Result / Order
delivered:**

Directions

**Result/Order &
Reason:**

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the appellant to amend the grounds of appeal to include the ground that the counts on the indictment are bad for duplicity.**
- 2. The Appeal grounds will now read:**
 - (a) The counts on the indictment are bad for duplicity;**
 - (b) The forfeiture of appellant's taxi was wrong in law and in principle and or not permissible in law.**
 - (c) The seizure and forfeiture of the cash from the appellant was an error of law.**
 - (d) The sentence was manifestly excessive.**
 - (e) The fine of EC\$15,000.00 to be paid in two years or one year imprisonment was wrong in law and principle and or not permissible in law.**
 - (f) The sentence imposed of three years imprisonment and the fine of EC\$15,000.00 to be paid in three years was wrong in law and principle and was excessive.**
- 3. The appellant is to file and serve skeleton submissions and authorities on 16th April 2016.**
- 4. The respondent is to file and serve skeleton submissions and authorities in reply on or before 17th May 2016.**
- 5. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Montserrat during the week commencing 24th October 2016.**

Case Name:

**Damanie Victorie
v
The Queen**

[MNIHCRAP2014/0002]

Date: Thursday, 10th March 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Oris Sullivan with Mr. Kenroy Hyman

Issues: Appeal against conviction – Unlawful Sexual Intercourse with a girl under the age of 16 years – Whether the verdict in all the circumstances is unsafe or unsatisfactory - n Whether the failure of the Prosecution to disclose to the Appellant the fact that one of its main witnesses (Clement Cassell) had a previous conviction so that his Counsel could have challenged the credibility of the witness was of miscarriage of justice - Whether the Learned Trial Judge erred in failing to give the jury a good character direction in respect of the Appellant.

Type of Oral Result / Order delivered: Oral Judgment or Decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is dismissed.
2. The conviction is affirmed.

Reason: Having considered the appellant submissions the Court found that the learned trial judge did give a proper character direction to the jury. The words used by the learned trial judge did convey to the jury, that

the appellant was a person of previous good character.

The Court was also satisfied that the learned trial judge dealt adequately with the issue of the propensity of the appellant to commit the crime as well as his credibility and veracity. This ground of appeal was thus dismissed.

The Court having looked at the matter in its totality found that the appellant should have been informed of the previous connection of the prosecution witness, Mr. Clement Cassell. However, the Court did not consider given the totality of the evidence that the evidence of Mr. Cassell was of sufficient weight but that it was the strong evidence of the virtual complainant of sexual intercourse taking place between the appellant and herself which formed the basis of the conviction of the appellant. The Court accordingly did not find that there is merit on this ground of non-disclosure.

In relation to the third ground of appeal, namely whether the trial judge failed to properly direct the jury on the defence raised by the appellant as a result of the admission of the skype conversations between the appellant and the victim, the Court heard the submissions by the prosecution on the statutory provisions allowing for the admission of this type of evidence namely: section 17 of the Criminal Justice Act 2003 of the United Kingdom and section 12 of the Evidence Act of Montserrat. The combined effect of these statutory provisions was that there was a sufficient legal basis for the admission of this evidence.

The Court found some discomfort with this evidence being put into the trial, not by the prosecution but by the defence, but accepted the submissions of the DPP, notwithstanding this issue and did not consider that the trial was unfair and the conviction unsafe.

Case Name:

Orin Evans

v
The Queen

[MNIMCRAP2015/0002]

Date: Friday, 18th March 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. David Brandt

Respondent: Mr. Oris Sullivan

Issues: Appeal against conviction – Murder – Whether the learned trial judge erred in failing to give proper instructions to the jury regarding the good character of the appellant – Whether the learned trial judge failed to place the defence of the appellant fairly and adequately to the jury – Whether the learned trial judge erred in upholding a no case submission by the defence when it was patently clear that an essential ingredient of the offence of murder that is, the cause of death was not proven – Whether the appellant suffered a miscarriage of justice when the learned trial judge failed to properly direct the jury on the issue of self-defence in particular, whether an intention to kill was not inconsistent with self-defence or the role of mistaken belief – Whether the learned trial judge dealt adequately with the issue of intention so far as self-defence is concerned.

**Type of Oral
Result / Order
delivered:**

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The conviction is quashed.**
- 3. The retrial of the appellant shall be before a different judge.**

4. Orin Evans is to be remanded pending his retrial.

Reason:

The appellant appealed his case against his conviction on several grounds. The critical ground of appeal concerns the failure of the judge to properly direct the jury on the issue of self-defence, particularly whether the intention to kill is not inconsistent with the issue of self-defence.

In the case presented on behalf of the appellant, a jury would have formed the impression that once they found that the appellant intended to kill when he inflicted violence with 2 x 4" stick on the deceased at his home, they were entitled to conclude that he was guilty of the offence of murder.

In his summation to the jury, the learned trial judge directed the jury that if they thought the appellant had an intention to kill he would be guilty of murder. Nowhere did he tell the jury that an intention to kill was not inconsistent with the defence of self-defence. This non-direction was fatal to the safety of the conviction. That appeal ground is simply insurmountable. In addition, the learned trial judge did not adequately instruct the jury on the defence raised.

As the appellant raised an incident which occurred on 3rd October 2013, at the time he was a prison officer who had to interact with prisoners and having suffered the misfortune of someone breaking into his abode, he chose to arm himself with a machete. This evidence was very important to the defence raised by the appellant. This failure to address this issue operated to the disadvantage of the appellant. The mere recital of the information was not sufficient. What was essential was for this information to be linked to the evidence surrounding the death of the deceased based on the prior disposition of the appellant. This was material to the defence and ought to have been brought to the fore by the learned trial judge in his directions.

These failures rendered the trial of the appellant unfair and the conviction unsafe.

