

COURT OF APPEAL SITTING
SAINT CHRISTOPHER AND NEVIS
6th – 10th June 2016

JUDGMENTS

Case Name:

[1] Dr. Martin G.C. Didier
[2] Dr. Kannan Mathiprakasam
[3] Dr. Guruswamy Ramachandrappa
v
Royal Caribbean Cruises Ltd.

[SLUHCVAP2014/0024]

consolidated with

Royal Caribbean Cruises Ltd
v
[1] Medical Associates Ltd
[2] Dr. Martin C Didier
[3] Dr. Kannan Mathiprakasam
[4] Dr. Guruswamy Ramachandrappa

[SLUHCVAP2015/0004]

Date:

Monday, 6th June 2016

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellants: **Mr. Garth Wilkin holding papers for Mr. Geoffrey DuBoulay**
(representing the appellants in appeal SLUHCVAP2014/
0024)

Respondents: **Mr. Arudranauth Gossai holding papers for Mr. Dexter**
Theodore (representing Royal Caribbean Cruises Ltd.)

Issues:

Interlocutory appeal – Civil appeal – Medical negligence –

Striking out pursuant to CPR 26.3(1)(b) – Summary judgment pursuant to CPR Part 15 – Contract – Agency – Tort – Duty of care owed to medical patient – Whether claim brought by respondent was statute barred – Interpretation of articles 2121(7) and 2122 of Civil Code – Indemnity – Contribution – Whether RCC was joint tortfeasor for purpose of claiming contribution pursuant to article 989C(1)(c) of Civil Code – Legal test for striking out statement of case or part of it – Legal test for summary judgment – Whether legal tests for striking out and summary judgment distinct and separate

Result and Reason:

Held: dismissing the Doctors' appeal but allowing their counter notice of appeal, and allowing RCC's appeal in part; setting aside the decision of the learned master striking out RCC's claim in tort so that it may proceed to trial; striking out RCC's claim in indemnity and/or contribution and/or restitution (pursuant to US law provisions and article 989C(1)(c) of the Civil Code); ordering that RCC's claim in contribution/indemnity at common law be allowed to proceed to trial; and ordering that costs be costs in the cause in the matter below, that:

- 1. The legal tests for entering summary judgment pursuant to CPR 15.2 and striking out a party's statement of case pursuant to CPR 26.3(1)(b) are not the same and should not be confused with each other. The summary judgment and strike out procedures are distinct – they have different procedural requirements, are used in different circumstances and have different legal consequences. In particular, the two cannot operate simultaneously. In disposing of a claim using the Part 15 summary judgment procedure, the legal issues in the case are considered by the court and then it is determined, on a balance of probabilities and in light of the affidavit evidence adduced by the parties, whether one party or the other has no real prospect of succeeding on the claim. A judgment entered on a summary judgment application is a judgment on the merits which operates as issue estoppel. No further litigation on the same issue(s) will be entertained by the court. On the other hand, an application for a party's statement of case to be struck out pursuant to CPR 26.3(1)(b) is decided by the court solely on the parties' pleaded cases before it. All facts pleaded in**

the statement of case are assumed to be true for this purpose and no additional evidence is adduced. If the court finds that the pleadings are untenable as a matter of law and disclose no reasonable ground for bringing or defending the claim, then the statement of case may be struck out. Striking out, however, does not produce a judgment on the merits and a party whose claim is struck out is not precluded from remedying its faults and bringing further legal proceedings in relation to the same dispute.

Citco Global Custody NV v Y2K Finance Inc BVIHCVAP2008/0022 (delivered 19th October 2009, unreported) followed; *Robert Edward Jones v Her Majesty's Attorney-General sued on behalf of New Zealand Police* [2003] UKPC 48 applied; *Swain v Hillman and Another* [2001] 1 All ER 91 cited.

2. A party's statement of case should not be struck out where the argument between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. The jurisdiction to strike out should be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information. It should also be taken into account that the examination and cross-examination of witnesses often change the complexion of a case.

Citco Global Custody NV v Y2K Finance Inc BVIHCVAP2008/0022 (delivered 19th October 2009, unreported) followed.

3. Concerning RCC's tort claim, the mere fact that it was at least arguable which article of the Civil Code applied for the purposes of limitation should have been an indication to the learned master that the claim ought to have been allowed to proceed to trial and that it was neither suitable for striking out nor for the entry of summary judgment. This argument clearly involved a substantial point of law which did not admit of a plain and obvious answer. The learned master accordingly

erred in proceeding to make a determination on this issue in order to decide whether the claim in tort ought to be struck out or not. This was an error in principle made by the learned master.

4. The law has territorial effect. It does not operate extra territorially. In order to claim contribution under article 989C(1)(c) of the Civil Code, the claimant must be a joint tortfeasor liable and not merely by virtue of a foreign law provision. Liability must be established in Saint Lucia, which is the jurisdiction within which article 989C(1)(c) operates. Nowhere in its pleadings did RCC make a positive assertion that it was a joint tortfeasor liable. In particular, this must not be left to an inference, but it must be an express averment. Accordingly, RCC's claim in contribution under article 989C(1)(c) of the Civil Code is not made out and is rightly struck out, although not for the reasons given by the learned master.

Fourth Transoceanic Shipping Co. Ltd. v Dr. Raymond Smith Appellate Jurisdiction 1996 No. 395 (Bermuda, unreported) applied; *Stott v West Yorkshire Road Car Co. Ltd. and Another* [1971] 2 QB 651 applied.

5. No challenge having been made in the court below to RCC's contribution/indemnity claim at common law, it would not have been appropriate for any aspects of this claim to be addressed on appeal.

APPLICATIONS AND APPEALS

Case Name:

Denzil Hinds

v

The Director of Public Prosecutions for the
Federation of Saint Christopher and Nevis

[SKBHCRAP2012/0022]

Date:

Monday, 6th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Elliott Mottley, QC, with him, Ms. Elizabeth Hinds

Respondent: Mr. Esan Granderson, Director of Public Prosecutions
[Ag.], with him, Mr. Vaughn Henderson, Crown Counsel

Issues: Contempt proceedings – Attorney-at-law summarily committed to prison for 10 days for contempt of court – Learned trial judge found comments and gestures made by defence counsel during cross-examination of complainant at trial highly offensive and inappropriate – In giving appellant opportunity to show cause why he should not be committed, appellant was provided only with copy of transcript of sitting to which contempt proceedings related – Learned judge refused appellant's request for transcript of entire trial in order for him to show cause – Whether learned trial judge erred in so doing – Whether learned judge erred in depriving appellant of opportunity to be represented by counsel of his choosing upon his request – Whether learned judge erred in law and/or misdirected himself in finding that words and/or conduct included in transcript were contemptuous – Whether learned judge erred in law and misdirected himself in failing to allow appellant adequate time and/or facilities upon his request to prepare his defence in contravention of his fundamental human right to secure protection of the law – Whether learned judge erred in imposing custodial sentence on appellant

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

Result/Order:

1. Appeal is allowed.
2. That the conviction of 23rd November 2012 is hereby quashed and the sentence imposed is hereby set aside.

Reason: The Director of Public Prosecutions conceded the appeal.

Case Name: [1] Hazeline Maynard
[2] Donasha Wattley
as Administratrices of the Estate of Terrene
Johnson, deceased
v
[1] The Saint Christopher and Nevis Solid Waste
Management Corporation
[2] Oliver Maynard
[SKBHCVAP2015/0006]

Date: Monday, 6th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:
Appellants: Mr. Perry Joseph
Respondents: Mr. Arudranauth Gossai

Issues: Application to review interlocutory order of Court of Appeal made on 1st October 2015 – Application for conditional leave to appeal to Her Majesty in Council – Application for leave to appeal filed out of time – Whether in the opinion of the Court of Appeal there is outstanding issue of public importance which ought to be considered by Her Majesty in Council – Limitation period – Fatal accident – Public Authorities Protection Act (Cap. 5.13, Revised Laws of Saint Christopher and Nevis 2009) – Limitation privilege contained in s. 2 of Public Authorities Protection Act – Whether privilege of 6 month limitation period in s. 2 applies to and is thus enjoyed by 1st respondent established pursuant to Solid Waste Management Act (Act No. 11 of 2009, Laws of Saint Christopher and Nevis) – Whether learned master erred in finding that appellant’s claim statute barred pursuant to s.

2 of Public Authorities Protection Act – Whether it was open to learned master to conclude without benefit of evidence that at time of accident nature of function being carried out was garbage collection and that deceased was injured in course of 1st respondent carrying out its public duty conferred by the Saint Christopher and Nevis Solid Waste Management Corporation Act (Cap. 11.05, Revised Laws of Saint Christopher and Nevis 2009) – Whether claims made under Fatal Accidents Act caught by time limitation contained in s. 2 of Public Authorities Protection Act notwithstanding express time limitation contained in Fatal Accidents Act

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order &
Reason:

1. The application to review the judgment of the court given on 1st October 2015 is withdrawn and accordingly dismissed.
2. The application for conditional leave for appeal to Her Majesty in Council made on 1st October pursuant to s. 99(2)(a) of the Constitution is dismissed as the decision is not one of great public importance.
3. Costs shall be paid to respondent in the amount of \$1,500 to be paid within 7 days.

Case Name:

[1] Dan Bilzerian
[2] Keyapaha International Ltd.

v

[1] Laura Getz
[2] Robert Getz
[3] Victor Doche

[SKBHCVAP2015/0026]

[1] Dan Bilzerian
[2] Keyapaha International Ltd.

v

St. Christopher Club Limited

[SKBHCVAP2015/0027]

[1] Dan Bilzerian

[2] Vistas Infinitas International, LLC

V

St. Christopher Club, Limited

[SKBHCVAP2015/0029]

Date: Monday, 6th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Applicants: Dr. Dennis Merchant, with him, Mr. Jermaine Chiverton

Respondents: Ms. Angelina Gracy Sookoo, with her, Ms. Renal Edwards

Issues: Application for extension of time to apply for leave to appeal – Application for leave to appeal – Application to strike out notice of appeal – Application to set aside/vacate decision of single judge – Whether the application test applicable in this instance – Appeal against decision of learned master – Whether learned master erred in striking out claim filed by appellants in court below

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

Result / Order:

1. In relation to appeal no. 29 of 2015, the application seeking to set aside the decision of a single judge of the Court of Appeal made on 21st January 2016 is dismissed.
2. The notices of appeal filed in appeal nos. 26 and 27 of 2015 are struck out.
3. The applications for extension of time and to apply for

leave to appeal (in respect of all three appeals) are accordingly dismissed.

4. There shall be no order as to costs.

Reason:

With regard to the application in SKBHCVAP2015/0029 to set aside the decision of a single judge of the Court of Appeal, the single judge had concluded that the order sought to be appealed was an interlocutory order and therefore, one which required leave to appeal. The notice of appeal filed was therefore a nullity, leave to appeal not having been sought. The Court stated that it was of the firm view that the order of the learned master made on 6th October 2015 (which was appealed to the Court of Appeal and considered by the single judge) was in the nature of an interlocutory order pursuant to CPR 62.1 and therefore leave of the Court was required in pursuing an appeal against that order.

As was the case with appeal SKBHCVAP2015/0029, appeals SKBHCVAP2015/0026 and SKBHCVAP2015/0027 were also filed without leave first being obtained and were therefore nullities.

In respect of the applications for extension of time filed in all three appeals (SKBHCVAP2015/0026, SKBHCVAP2015/0027 and SKBHCVAP2015/0029), the Court noted that the grounds advanced were all the same. In those grounds and in the affidavit in support of the applications, the applicants failed, however, to address important matters which the Court would have to consider in deciding whether to exercise its discretion in their favour. Critically, an applicant must seek to address the length of and reason for the delay in order to satisfy the court that its delay in complying with the rules is excusable in all the circumstances. The Court stated that there had been inordinate delay (over 60 days) by the applicants in these matters. However, nowhere in the affidavits filed and in the grounds advanced did the applicants seek to address this issue by providing good and substantial reasons explaining the delay or justifying why the delay in complying with the rules should be excused. Furthermore, when the Court considered the matter in the round in exercising its discretion, it was not satisfied that the prospects of success were such as to override the deficiencies in explaining the delay.

Accordingly, the Court stated that it was unable to exercise its discretion in favour of the applicants by granting the extensions of time and the leave sought.

Case Name:

**Adam Bilzerian
v
[1] Gerald Lou Weiner
[2] Kathleen Ann Weiner

[SKBHCVAP2015/0015]**

Date:

Monday, 6th June 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

**Appellant /
Applicant:**

Dr. Dennis Merchant, with him, Mr. Jermaine Chiverton

Respondent:

Ms. Jean Dyer

Issues:

**Application to set aside decision made in party's absence
– Application by counsel for appellant to be removed from
record**

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

Oral Judgment or Decision

Result / Order:

- 1. With the leave of the Court, the application filed herein on 10th February 2016 seeking the setting aside of the decision of the Court of Appeal handed down on 27th January 2016 is hereby withdrawn.**
- 2. The applicant (Adam Bilzerian) shall bear the costs of the application fixed in the sum of \$1,200.00 to be paid within 14 days of today's date.**

Reason: The application to set aside the decision of the Court made in a party's absence was withdrawn because the applicant conceded that it was not in fact the case that the decision was made in the party's absence. The application had no merit.

In relation to the application made by counsel for the appellant to be removed from the record, the Court did not entertain it since the application had not been served on the appellant. The Court indicated that the application should have been served on either the applicant himself (Adam Bilzerian), or the person holding his power of attorney. Counsel indicated that the matter had not been served on either, and accordingly asked for the matter to be withdrawn.

Case Name: Kevin Andrew Horstwood
v
Adam Bilzerian
[SKBHCVP2016/0003]

Date: Monday, 6th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant / Respondent:	Mr. Terence Byron
Respondent / Applicant:	Dr. Dennis Merchant, with him, Mr. Jermaine Chiverton

Issues: Application to dismiss appeal – Whether appeal can be dismissed on ground that copy of notice of appeal received by respondent was unsigned by appellant –

Appeal against order of learned judge dismissing application to set aside summary judgment granted by judge of coordinate jurisdiction – Appellant not present at hearing when summary judgment granted – Whether learned judge had jurisdiction to set aside order of judge of coordinate jurisdiction – Whether learned judge erred in failing to appreciate that order not merely one obtained in error but was a nullity which court of coordinate jurisdiction can and ought to set aside – Whether service of application for summary judgment was proper

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

Oral Judgment or Decision

Result / Order:

- 1. Application to dismiss the appeal is dismissed. The notice of appeal duly filed on 5th April 2016 and signed and stamped and sealed by the Court Office, the Court finds that the appeal is properly filed.**
- 2. There shall be no order as to costs.**

Reason:

Due to an error of the Court, the respondent received a copy of the notice of appeal that was filed but not signed by the appellant. The Court copy of the notice was signed.

Case Name:

Allister Forde

v

The Director of Public Prosecutions

[SKBHCRAP2011/0024]

Date:

Monday, 6th June 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. John Cato (the appellant was also present)

Respondent: Mr. Esan Granderson, Director of Public Prosecutions [Ag.]

Issues: Appeal against sentence and conviction for shooting with intent – Whether learned trial judge erred in telling jury that appellant was “telling lies” – Whether failure to give Turnbull direction should lead to quashing of conviction

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

Result / Order:

1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed. The sentence imposed is varied from 15 years to 12 years and is to run from the date of remand.

Reason: Notwithstanding the non-direction with respect to identification and the misdirection on alibi, the Court held that when the evidence was considered in its totality, there had been no miscarriage of justice. The appellant and virtual complainant knew each other and there was not a fleeting glance at the material time but rather, the virtual complainant got a good look at the appellant since they had a discussion/argument for over 5 minutes, there was ample lighting to see clearly (it was 7:00 a.m.), and the evidence of the virtual complainant was strong. Applying the authority *Michael Freemantle v The Queen* [1994] 1 WLR 1437, the proviso would apply. The Court was satisfied that even if the learned judge had given the directions on identification and alibi as the appellant pleaded, the jury would not have come to a different conclusion. In relation to the interruptions, the Court stated that the question to consider was whether those interruptions rendered the trial unfair.

With regard to sentencing, the Court stated that considering cases from around the region, the present case did stand out. The Court found that the sentence imposed on the appellant in the present case was excessive.

JUDGMENTS

Case Name: Dmitry Vladimirovich Garkusha
v
[1] Ashot Yegiazaryan
[2] Vitaly Gogokhiya
[3] Hackam Invest and Trade Inc.
[4] Limerick Building Holding Limited

[BVIHCMAP2015/0010]

Date: Monday, 6th June 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Elizabeth Harper

Respondents: Mr. DeLara MacClure Taylor

Issues: Commercial appeal – Whether learned judge erred in setting aside permission to serve out of jurisdiction – Whether BVI appropriate forum

Result and Reason: Held: allowing the appeal and setting aside the order of the learned judge; remitting the tort claims to the Commercial Court for trial in accordance with CPR; confirming the order setting aside permission to serve out for the tort claims relating to the 2008 Agreement and the claim for breach of contract; ordering that the \$1 million paid into court as fortification of the undertaking in the freezing order granted on 24th November 2014 be paid to the appellant 21 days after the date of this order; ordering that the \$75,000.00 paid by the appellant to the first respondent as an interim payment of the first respondent's costs in the court below be paid to the

appellant within 21 days of the date of this order; and awarding the appellant three-quarters of his costs in the court below and two thirds of those costs for the appeal, that:

1. As a general principle tort claims for inducing a contract with an exclusive jurisdiction clause fall within the terms of that clause and unless there are exceptional circumstances they should be dealt in accordance with the clause. The SPAs had exclusive jurisdiction clauses in favour of the BVI. The exclusive jurisdiction clauses covered not only disputes arising under and in connection with the agreements, but also disputes relating to the invalidity of the agreements which would include Mr. Garkusha's claim for rescission of the agreements. Consequently, if as Mr. Garkusha alleges, the tortious conduct induced him to sign the SPAs resulting in the claims for damages, those claims should be dealt with in accordance with the parties' chosen forum - the courts of the BVI.

Premium Nafta Products Limited and others v Fili Shipping Co Limited and others ("the Fiona Trust case") [2007] UKHL 40 applied; *Richard Vento and another v Martin Kenney & Co* BVIHCV2014/0061 (delivered 26th November 2014, unreported) approved.

2. In relation to the service out of the rescission claims, there are three requirements that a claimant must satisfy to be granted leave to serve a foreigner outside the jurisdiction, namely (i) there is a serious issue to be tried on the merits in relation to the foreign defendant; (ii) there is a good arguable case that the claim falls within one or more of the classes of claims in CPR 7.3; and (iii) in all the circumstances the BVI is clearly or distinctly the appropriate forum for the trial of the dispute, and the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. The appellant has satisfied all three requirements and the Court should exercise its discretion to permit service of the proceedings out of the jurisdiction.

Nilon Limited and another v Royal Westminster Investments SA and others [2015] UKPC 2 applied; Rule 7.3 of the Civil Procedure Rules 2000 applied.

3. The rescission claims to set aside the SPAs fall within the exclusive jurisdiction clauses of those agreements. The essential quality of an exclusive jurisdiction clause in a contract is that it represents the parties' choice of the forum that should resolve any dispute that arises between them regarding the contract. The BVI courts will respect that choice and will not allow one of the parties to depart from the selected forum unless there are "strong reasons" for so departing. In this case, there are no "strong reasons" or "exceptional circumstances" for the Court to allow Mr. Yegiazaryan to resist a claim against him in the BVI for rescission of the SPAs. Even if the companies have no present or potential value, which this Court does not accept, Mr. Garkusha is entitled to sue for the recovery of his companies and thereafter (if successful) to do with them what he sees fit.

Donohue v Armco Inc and Others [2001] UKHL 64 applied; *BAS Capital Funding Corporation et al v Medfinco Limited et al* [2004] 1 Lloyd's Law Reports 652 applied.

4. The 2008 Agreement does not have an exclusive jurisdiction clause. As a result, the tort claim for damages in respect of this agreement and the claim for damages for breach of the 2008 Agreement are not covered by the exclusive jurisdiction clauses. The resolution of disputes about the relative merits of trial in the BVI and trial abroad is pre-eminently a matter for the trial judge. An appeal should be rare and the appellate court should be slow to interfere. The learned judge having taken the relevant principles on forum conveniens into consideration in setting aside the permission to serve out and having found that these claims have none but an entirely formal and currently irrelevant connection with this jurisdiction, this Court will not interfere with the exercise of his discretion in relation to these claims.

Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460.

APPLICATIONS AND APPEALS

Case Name: Mark Brantley
v
Dwight C. Cozier

[SKBHCVAP2014/0027]

Date: Monday, 6th June 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Ms. Dia Forrester, with her, Mr. Gyan Robinson
Respondent:	Ms. M. Angela Cozier

Issues: Application for leave to appeal to Her Majesty in Council –
Application to correct judgment

Type of Oral Result / Order Delivered: N/A

Result / Order:

1. Application of the appellant/applicant to adjourn the application for leave to appeal to Her Majesty in Council and the application to correct errors in the appeal court judgment are adjourned;
2. Both applications are adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016;
3. Costs to the respondent in the sum of \$500.00.

Reason: Ms. Cozier made application for an adjournment. Dr. David Dorsett was unable to attend because of a Privy

Council assignment.

Case Name: **The Attorney General of St. Christopher and Nevis**
v
[1] Caribe (Realties) Canada Limited
[2] Betts Realty Limited
[SKBHCVAP2015/0025]

Date: **Monday, 6th June 2016**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Applicant: **Mr. DeLara MacClure Taylor**

Respondents: **Ms. Elizabeth Harper**

Issues: **Application for leave to appeal – Application for stay of execution – Whether order of mandamus made by learned judge compelling appellant to pay outstanding balance of monies pursuant to previous order dated 19th April 2013 as well as all awarded interest thereon was made unlawfully in breach of Crown Proceedings Act**

Type of Oral Result / Order Delivered: **Oral Judgment or Decision**

Result / Order:

- 1. The application of the Attorney General of Saint Christopher and Nevis for leave to appeal the decision and order of Her Ladyship, The Hon. Madam Justice Carter made on 2nd October 2015 and entered on the 8th October 2015 having being withdrawn, is accordingly dismissed;**
- 2. The application for stay of execution of said order is also dismissed;**

3. Costs to the respondents in the sum of \$1500.00.

Reason: Mr. Taylor made an application to withdraw appeal.

Case Name: Melvena Kelly
v
The Director of Public Prosecutions
[SKBHCRAP2012/0006]

Date: Monday, 6th June 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Ms. C. Marissa Hobson-Newman holding papers for Dr. Henry Browne, QC
Respondent:	Mr. Teshaun Vasquez, Crown Counsel, with him, Ms. Greatess Gordon, Crown Counsel

Issues: Appeal against sentence – Manslaughter

**Type of Oral
Result / Order
Delivered:** N/A

Result / Order: The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.

Reason: Both parties agreed that the report of the psychiatrist dated 24th May 2016 was too brief and that they would require a more detailed report. Counsel for the appellant requested an adjournment in order to facilitate obtaining

this detailed report.

Case Name: **Jahdell Browne**
v
The Director of Public Prosecutions

[SKBHCRAP2012/0008]

Date: **Monday, 6th June 2016**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Ms. C. Marissa Hobson-Newman holding papers for Dr. Henry Browne, QC
Respondent:	Mr. Tessaun Vasquez, Crown Counsel, with him, Ms. Greatess Gordon, Crown Counsel

Issues: **Appeal against sentence – Unlawful wounding – Manslaughter**

Type of Oral Result / Order Delivered: **N/A**

Result / Order:

- 1. Both parties having agreed that the report of the psychiatrist dated 24th May 2016 was too brief and that an enlargement of the report is required. Accordingly, the application to adjourn the hearing of this appeal is granted;**
- 2. This appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.**

Reason: **Counsel for the appellant made an application for an adjournment, indicating a need for a more detailed**

psychiatric report.

Case Name: Cameron Wilkinson
v
The Director of Public Prosecutions
[SKBHCRAP2013/0013]

Date: Monday, 6th June 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Tessaun Vasquez, Crown Counsel, with him, Ms. Greatess Gordon, Crown Counsel

Issues: Appeal against sentence – Unlawful carnal knowledge

Type of Oral Result / Order Delivered: N/A

Result / Order: The hearing of this appeal is adjourned to Friday, 10th June 2016 at 9:00 a.m.

Reason: No written submissions were filed. The Crown is to file written submissions by Thursday, 9th June 2016.

STATUS HEARING

Case Name: **Sylvester Merchant**
v
The Director of Public Prosecutions
[SKBHCRAP2013/0014]

Date: **Tuesday, 7th June 2016**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:
Appellant: **Dr. Henry Browne, QC, with him, Mr. John Cato**
Respondent: **Mr. Teshaun Vasquez**

Issues: **Status of matter – Appeal against conviction and sentence
– Unlawful carnal knowledge**

**Type of Oral
Result/Order
Delivered:** **Directions**

Result / Order: **It is ordered that:**
1. The Registrar of the High Court shall cause the record of appeal to be prepared and served on the parties on or before 31st July 2016.
2. The appeal is set down for hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.

Reason: **The transcript was completed but it had not been edited as yet.**

Case Name: **Sandy Nisbett**
v
The Director of Public Prosecutions

[SKBHCRAP2012/0014]

Date: Tuesday, 7th June 2016

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeal against sentence – Manslaughter

Type of Oral Result/Order Delivered: Directions

Result / Order: It is ordered that:

1. The Registrar shall cause the record of appeal from the recordings of the proceedings to be prepared and served on the appellant and Director of Public Prosecutions on or before 15th August 2016.
2. In the event that a record of proceedings is not available the record of appeal filed on 30th May 2016 and served on the parties shall constitute the record.
3. The appellant shall file written submissions on or before 15th September 2016 and the DPP shall file and serve submissions on or before 21st September 2016.
4. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th of October 2016.

Case Name: Wendell Welcome
v
The Director of Public Prosecutions

[SKBHCRAP2014/0003]

Date: Tuesday, 7th June 2016

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeal against conviction and sentence
– Unlawful carnal knowledge

Type of Oral Result/Order Delivered: Directions

Result / Order: It is ordered that:

1. The Registrar of the Court shall cause the record of appeal to be prepared and served on parties on or before 30th September 2016.
2. The matter is adjourned for further status hearing of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.

Reason: The transcript had not been completed as yet.

Case Name: Carl Matthew
v
The Director of Public Prosecutions
[SKBHCRA2013/0012]

Date: Tuesday, 7th June 2016

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Natasha Grey

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeal against conviction and sentence
– Shooting with intent to cause grievous bodily harm

**Type of Oral
Result/Order
Delivered:** Directions

Result / Order: It is ordered that:

1. The Registrar of the High Court shall cause the record of appeal to be prepared and served on the parties on or before 31st July 2016.
2. The appellant shall file and serve written submissions on or before 1st September 2016.
3. The DPP shall file and serve written submissions on or before 21st September 2016.
4. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.

Case Name: Joan Slack
v
[1] Billy Slack
[2] Camella Slack-Josephs
[3] Ian Slack
[4] Monica Slack-Haynes
[5] Yvonne Slack-Louisy
[SKBHCVAP2011/0019]

Date: Tuesday, 7th June 2016

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: No appearance

Respondent: No appearance

Issues: Status of matter

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

Result / Order & Reason: It is ordered that:
1. The appellant having filed a notice of discontinuance dated 13th May 2016, the appeal is accordingly dismissed.

Case Name: Kennedy David Ramsey
v
Aurelie Ramsey
[SKBHCVAP2011/0024]

Date: Tuesday, 7th June 2016

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Nassibou Butler
Respondent: Ms. Keisha Spence holding papers for Ms. Miselle O'Brien

Issues: Status of matter – Whether decision of the learned judge unreasonable and cannot be supported having regard to evidence – Whether learned judge erred in holding that there was no good reason for setting aside judgment made in appellant's absence – Rule 39.5(3)(a) of the Civil Procedure Rules 2000

Type of Oral Result/Order Directions

Delivered:

Result / Order:

It is ordered that:

- 1. The Registrar of the Court shall cause the transcript of the proceedings to be prepared on or before 1st September 2016.**
- 2. The Registrar of the Court shall notify the parties of the completion of the transcript.**
- 3. The matter is adjourned for further status hearing at the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.**

Reason:

There was no indication whether the transcript had been prepared. The notice of appeal was filed on 14th December 2011.

Case Name:

**Ramsbury Properties Limited
v
Ocean View Construction Limited
[SKBHCVAP2011/0020]**

Date:

Tuesday, 7th June 2016

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. M. Angela Cozier

Respondent: Ms. Sandra Maynard holding papers for Ms. Lenora Walwyn

Issues:

Status of matter

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

Directions

Result / Order:

It is ordered that:

- 1. The Registrar of the High Court shall cause the transcript of proceedings to be prepared on or before 1st September 2016.**
- 2. The Registrar shall notify the parties of the availability of the transcript as soon as it is completed.**
- 3. The matter is adjourned for further status hearing during the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.**

Case Name:

The Democrat Printing Company Limited

v

**The Right Honourable Dr. Denzil Llewellyn
Douglas**

[SKBHCVAP2013/0026]

Date:

Tuesday, 7th June 2016

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Jonel Powell, with him, Ms. Kim Loy Walker

Respondent: Ms. Angelina Gracy Sookoo, with her, Ms. Renal Edwards

Issues:

Status of matter

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

Oral Judgment or Decision

Result / Order:

Order by consent:

- 1. The parties agree pursuant to rule 62.9 sub 3 to dispose with the need to include transcript in the record.**
- 2. The appellant to file and serve the record of appeal**

- without the transcript on or before 30th June 2016.
3. The appellant to file and serve submissions with authorities on or before 3rd August 2016.
 4. The respondent to file and serve written submissions in response with authorities on or before 23rd September 2016.
 5. The appellant is at liberty to file and serve submissions in reply on or before 30th September 2016.
 6. The hearing of appeal is set down for the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.

Case Name:

Resenda Browne

v

[1] Nigel Romney

[2] Lionel Patrick

[SKBHCVAP2011/0026]

Date:

Tuesday, 7th June 2016

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Angelina Gracy Sookoo, with her, Ms. Renal Edwards

Respondent: Mr. Adrian E. Scantlebury

Issues:

Status of matter

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

Oral Judgment or Decision

Result / Order:

Order by consent:

1. The appellant shall file and serve copies of the record of appeal on or before 25th June 2016.
2. The appellant shall file and serve submissions with

- authorities on or before 23rd August 2016.
3. The respondent shall file and serve submissions and authorities in response on or before 21st September 2016.
 4. The appellant is at liberty to file and serve submissions in reply on or before 30th September 2016.
 5. Hearing of the appeal is set down for the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week of 10th October 2016.

Case Name:

**Delta Petroleum (Nevis) Limited
v
[1] OOJJ's LTD (Doing business as OOJJ's
Service Station)
[2] Othneil Hyliger
[SKBHCVAP2013/0016]**

Date:

Tuesday, 7th June 2016

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issues:

Status of matter – Contract law – Whether lease validly terminated in September 2008 – Proper order for costs that court below should have made

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

N/A

Result / Order:

N/A. The Court noted that the appeal is set down for hearing before the full court on the 9th of June, 2016.

APPLICATIONS AND APPEALS

Case Name: Eartis Harris
v
The Director of Public Prosecutions
[SKBHCVAP2013/0010]

Date: Tuesday, 7th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellants:	Ms. Natasha Grey
Respondent:	Ms. Greatess Gordon

Issues: Appeal against conviction – Indecent assault

Type of Oral Result / Order Delivered: Directions

Result / Order:

1. Matter is adjourned to the next sitting of the Court in the Federation of St. Kitts and Nevis during the week commencing 10th October 2016.
2. The appellant shall file and serve written submissions together with copies of authorities relied on no later than Thursday, 30th June 2016. The respondent is at liberty to file further submissions in response no later than Monday, 18th July 2016.

Reason: The matter was adjourned from the last sitting of the Court of Appeal to allow the appellant some time to retain an attorney. Counsel for the appellant explained that she only received the relevant case documents on Thursday the previous week and consequently did not have

sufficient time to review them.

Case Name:

**[1] Exzavier Elliott
[2] Junior Stephens**

v

The Director of Public Prosecutions

**[SKBHCRAP2012/0015]
[SKBHCRAP2012/0017A]**

Date:

Tuesday, 7th June 2016

Coram:

**The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellants:

In person

Respondent:

Mr. Esan Granderson, Director of Public Prosecutions [Ag.], led by Mr. Dane Hamilton, QC

Issues:

Appeal against conviction and sentence – Robbery – Assault – Application for adjournment

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

N/A

Result / Order:

- 1. Hearing of appeal is traversed to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis on application of both appellants to allow them to retain counsel to prosecute their appeal.**
- 2. The matter is adjourned to the week commencing 10th October 2016.**

Reason:

The appellants requested the adjournment to allow them a

further opportunity to retain counsel.

Case Name:

[1] Exzavier Elliott

[2] Jervin Rawlins

[3] Philip Jones

v

The Director of Public Prosecutions

[SKBHCRAP2011/0033]

[SKBHCRAP2011/0032]

[SKBHCRAP2011/0031]

Date:

Tuesday, 7th June 2016

Coram:

The Hon. Mr. Davidson Baptiste, Justice of Appeal

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

**The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

Mr. O’Grenville Browne with Ms. C. Marissa Hobson-Newman, led by Dr. Henry Browne, QC for the 3rd appellant (Philip Jones)

Mr. John Cato for the 2nd appellant (Jervin Rawlins)

Mr. Nassibou Butler for the 1st appellant (Exzavier Elliott)

Respondent:

Mr. Esan Granderson, Director of Public Prosecutions [Ag.], led by Mr. Dane Hamilton, QC

Issues:

Appeal against conviction and sentence – Robbery – Assault with intent to rob – Whether learned trial judge erred in law in failing to adequately or sufficiently or at all direct jury on defence of alibi raised in case – Whether learned trial judge erred in law in failing to adequately or accurately address jury on identification evidence and circumstantial evidence – Whether summation was unbalanced and unfair – Whether learned trial judge failed to properly address jury on law of joint enterprise – Application to amend grounds of appeal

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

Oral Judgment or Decision

Result / Order:

1. Appeal against conviction and sentence for Exzavier Elliott is dismissed and his sentence is affirmed.
2. Appeal by Jervin Rawlins and Phillip Jones against conviction and sentence is allowed but a retrial is ordered in respect of Jervin Rawlins and Phillip Jones.

Reason:

This case depended on circumstantial evidence, which the prosecution argued was of sufficient cogency to convict the appellants. The appellants, on the other hand, argued that the direction which the learned trial judge gave the jury in relation to circumstantial evidence was inadequate. The first appellant, Exzavier Elliott, had made a confession statement. In the summing-up, the trial judge did not specifically direct the jury that the confession statement was evidence against Elliott only and was to be disregarded as against the second and third appellants. Rather, the direction which was given was that the jury was to consider the evidence against each accused separately and evidence against one is not evidence against any other. Counsel for the third appellant, Dr. Browne, QC, submitted that the learned judge's failure to be more direct was fatal to the conviction of the second and third appellants, particularly since the case was based on circumstantial evidence. The Court agreed that the learned judge's failure to specifically direct in relation to the confession statement was sufficient to vitiate the convictions of the second and third appellants. The jury may well have come to a conclusion adverse to these two appellants.

With regard to the conviction of the first appellant, Exzavier Elliott, the Court was of the view that the evidence presented was adequate to sustain the conviction, especially when coupled with the confession statement. There was no good basis for quashing his conviction.

Case Name:

**Troy Hendrickson
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0004]

Date:

Wednesday, 8th June 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. John Cato

Respondent: Mr. Teshaun Vasquez

Issues:

Appeal against conviction and sentence – Unlawful carnal knowledge

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

Directions

Result / Order:

- 1. Hearing of the appeal is adjourned to next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.**
- 2. The appellant has leave to file and serve written submissions on or before 31st July 2016.**
- 3. The respondent has leave to file and serve written submissions with authorities on or before 31st August 2016.**

Case Name:

**Julian Clarence Charles
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0015]

Date: Wednesday, 8th June 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge – Application for leave to amend grounds of appeal

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

Result / Order:

1. The Court grants leave to the appellant to amend his notice of appeal to include the following grounds: (1) the indictment in respect of which he was tried and convicted was defective; (2) the appellant's good character was not adequately put to the jury; and (3) the defence was not adequately put to the jury.
2. These three grounds are in addition to his two grounds filed earlier, being: (1) the judge erred in fact and law in his directions to the jury and (2) the conviction and sentence were unsafe given the principles of sentencing.
3. The appellant is to file and serve skeleton submissions and list of authorities on or before 1st August 2016.
4. The respondent is to file and serve skeleton submissions in reply on or before 2nd September 2016.
5. The hearing of the appeal is adjourned to the next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.

Case Name: **Evans Amory**
v
The Director of Public Prosecutions

[SKBHCRAP2012/0016A]

Date: **Wednesday, 8th June 2016**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: **In person**

Respondent: **Mr. Vaughn Henderson, Crown Counsel**

Issues: **Appeal against conviction and sentence – Indecent assault – Application for leave to amend grounds of appeal**

Type of Oral Result / Order Delivered: **Oral Judgment or Decision**

Result / Order:

- 1. The Court grants leave to insert the following grounds of appeal: (1) trial judge in summing up the case to jury misdirected the jury and (2) the sentence imposed was excessive.**
- 2. The appellant is to file and serve submissions and authorities on or before 31st July 2016.**
- 3. The respondent is to file and serve submissions and authorities in reply on or before 1st September 2016.**
- 4. Hearing of the appeal is adjourned to the next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.**

Case Name:

**Dwight Richards
v
The Chief of Police**

[SKBMCRAP2015/0002]

Date:

Wednesday, 8th June 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. O’Grenville Browne and Ms. C. Marissa Hobson-Newman, led by Dr. Henry Browne, QC

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues:

Appeal against conviction and sentence – Stealing – Whether there was sufficient evidence to support verdict – Whether learned magistrate erred in law in convicting appellant – Whether learned magistrate erred in her application of doctrine of recent possession – Whether order for payment of \$10,000.00 as compensation to virtual complainant excessive – Whether Court exceeded its jurisdiction in making said order for payment

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

Oral Judgment or Decision

Result / Order:

- 1. The appeal against conviction and sentence is allowed.**
- 2. The sentence of a fine of \$10,000.00 is set aside.**

Reason:

The evidence in the case was tenuous. The learned magistrate erred in her application of the doctrine of recent possession.

Case Name:

[1] Labreska Sweeney

[2] David Leon Jeffers

v

Chief of Police

[SKBMCRAP2016/0005]

Date:

Wednesday, 8th June 2016

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal

[Ag.]

Appearances:

Appellants:

Mr. O’Grenville Browne and Ms. C. Marissa Hobson-Newman led by Dr. Henry Browne, QC

Respondent:

Mr. Esan Granderson, Director of Public Prosecutions [Ag.]

Issues:

Appeal against conviction and sentence – Possession of firearm and ammunition without licence – Whether decision of learned magistrate unreasonable or cannot be supported having regard to the evidence – Whether learned magistrate erred in permitting admission of evidence which included statements made by each accused against each other – Whether sentence imposed was unduly severe

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

Oral Judgment or Decision

Result / Order:

- 1. The appeal against conviction and sentence is dismissed in relation to David Leon Jeffers.**
- 2. In relation to the appellant Labreska Sweeney, the appeal against conviction is dismissed. The appeal against sentence is allowed to the extent that the sentence of four (4) years imprisonment was varied to a fine of \$10,000.00 to be paid within nine (9) months in default the appellant would serve the remainder of her**

sentence.

Case Name:

**Clayton Laws
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0001]

**Jermaine Riley
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0002]

**Ali Percival
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0003]

**Jahmana Walters
v
The Director of Public Prosecutions**

[SKBHCRAP2013/0004]

Date: **Wednesday, 8th June 2016**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

Appearances:

Appellants: **All four appellants appearing in person**

Respondent: **Mr. Esan Granderson, Director of Public Prosecutions
[Ag.]**

Issues: Appeal against conviction and sentence – Kidnapping –
Application for legal aid

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

**Result / Order &
Reason:** On application of the appellants to be legally assisted in the prosecution of their appeals and upon indication of this Court by the Acting Registrar and Acting DPP that there is no statutory regime which provides for legal aid to be given;

And upon noting that the Court has assigned legal aid (other than in murder cases) in complex cases; and that this being a case of some complexity:

It is hereby ordered that:

1. The Registrar shall cause a legal practitioner or practitioners to be assigned by the State to the appellants for the purpose of prosecuting their appeals.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 10th October 2016.
3. Counsel assigned to the appellants shall file skeleton arguments/written submissions in support of the appeal on or before 15th September 2016.
4. Skeleton arguments/written submissions in response shall be filed by the respondent on or before 22nd September 2016.

Case Name: Quincy Davis
v
The Director of Public Prosecutions

[SKBHCRAP2013/0005]

Date: Wednesday, 8th June 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondents: Mr. Esan Granderson, Director of Public Prosecutions [Ag.]

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge – Application for adjournment

Type of Oral Result / Order Delivered: N/A

Result / Order: Consequent on an application by the appellant for an adjournment of the appeal in order that he may be legally represented in the appeal and with no objection by the counsel for the respondent, it is hereby ordered that:

1. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis scheduled in the week commencing 10th October 2016.
2. The appellant shall file and serve skeleton arguments/written submissions in support of his appeal on or before 1st September 2016.
3. Skeleton arguments/written submissions in reply to be filed by the 21st September 2016.

Case Name: Lynell Heath
v
Chief of Police

[SKBMCRAP2013/0029]

Date: Wednesday 8th June 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Marsha Henderson holding papers for Mr. Anthony Johnson (who is out of office dealing with issues of health)
The appellant was not present

Respondent: Ms. Greatess Gordon

Issues:

Appeal against conviction and sentence – Possession of firearm and ammunition – Whether decision of learned magistrate unreasonable and cannot be supported having regard to the evidence – Whether sentence imposed unduly severe

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

Directions

Result / Order:

The Court ordered and directed:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in St. Christopher and Nevis during the week commencing 10th October 2016.
2. Counsel on behalf of the parties shall assist the Court in completing the record of appeal to a sufficient extent to enable the appeal to be proceeded with.
3. If the record is not completed sufficiently or at all by the date of the next sitting of the Court of Appeal in the St. Christopher and Nevis, each of the parties shall make submissions to the Court as to whether the matter can be proceeded with in the absence of any missing documents whereupon the Court will determine whether the appeal is proceeded with or the matter otherwise disposed of i.e. whether it is allowed or dismissed.
4. Written submissions shall be filed by the appellant on or before 1st September 2016 and written submissions in response shall be filed by the respondent on or before 22nd September 2016.

Reason: Counsel for the appellant noted that a number of documents and exhibits in the matter were missing.

Case Name: Lindsay Fitz Patrick Grant
v
[1] Rupert Herbert
[2] Leroy Benjamin
[3] Wentford Rogers
[SKBHCVAP2012/0001]

Date: Wednesday, 8th June 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Marguerite Foreman with Ms. Teshari John-Sargeant
Respondents: Ms. Angelina Gracy Sookoo for the 1st respondent

Issue: Costs – Whether the learned trial judge erred by using the wrong regime to quantify costs

**Type of Oral
Result / Order
Delivered:** N/A

Result / Order: Judgment reserved.

Case Name: Randell Hanley
v
The Director of Public Prosecutions

[SKBHCRAP2012/0020]

Date: Wednesday, 8th June 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Appeal against sentence – Building breaking and Larceny
– Appellant sentenced to 10 years imprisonment

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

**Result / Order &
Reason:** Upon hearing from the appellant that he wished to proceed without legal representation and that he only wished to proceed on the appeal for his sentence and there being no submissions filed by either party;

And upon hearing further that the reason why the appellant sought to have his ten year sentence reduced was based on the fact that he believed it was unfair since he was already serving a seven year sentence connected to other criminal charges;

After hearing both parties and considering the decision of the lower court and the social inquiry report and criminal history of the appellant, the Court concluded that there were no reasons to disturb the sentence of the trial judge and as such the appeal against sentence was dismissed.

Case Name: Granville Bailey

v

Chief of Police

[SKBMCRAP2016/0008]

Date: Wednesday, 8th June 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Esan Granderson, Director of Public Prosecutions [Ag.]

Issues: Appeal against sentence – Possession of controlled drug
– Whether sentence of two years imprisonment excessive
– Appellant pleaded guilty and had no previous convictions – Whether magistrate took into account time which appellant had spent on remand in imposing sentence

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

Result / Order: The appeal against sentence is allowed to the extent that the magistrate's sentence is set aside and replaced by a 13 month sentence.

Reason: The sentence of the applicant was reduced after having regard to:

1. The appellant's plea of guilty which was entered at trial, which entitled him to a one-third reduction in sentence which appeared to have not been factored in by the learned magistrate.
2. The three months that the appellant had already spent on remand; and
3. The Crown's willingness to concede that the notional sentence should be two years.

Case Name:

Andrew Hicks

V

Chief of Police

[SKBMCRAP2016/0001]

Date:

Thursday, 9th June 2016

Coram:

**The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues:

Appeal against sentence – Theft – Whether sentence of 3 years for theft of mobile phone was unjust and excessive – Appellant pleaded guilty to offence at earliest opportunity – Appellant in his twenties and had no previous convictions – Stolen property returned to owner

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

Oral Judgment or Decision

Result / Order:

- 1. Appeal against sentence is allowed;**
- 2. Sentence of three (3) years varied to time served.**

Reason:

Counsel for the respondent conceded that the 3 year sentence was excessive in the circumstances.

Case Name:

**Kishmo Clarke
v
The Chief of Police**

[SKBMCRAP2015/0008]

Date:

Thursday, 9th June 2016

Coram:

**The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant: Dr. Henry Browne, QC (the appellant was not present)

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues:

Appeal against conviction and sentence – Possession of cannabis – Possession of cannabis with intent to supply – Whether decision of learned magistrate can be supported by the evidence – Whether sentence imposed unduly harsh

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

Oral Judgment or Decision

Result / Order:

The appeal is dismissed.

Reason:

The Court was informed that the appellant had already served his sentence.

Case Name:

**Trevon Rogers
v
Chief of Police**

[SKBMCRAP2015/0013]

Date: Thursday, 9th June 2016

Coram: The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues: Appeal against sentence – Driving without due care and attention – Failure to give specimen of blood for laboratory test – Appellant pleaded guilty on both charges – Appellant fined \$1,000.00 to be paid in 3 months in default 3 months imprisonment hard labour for driving without due care and attention and \$500.00 to be paid in 3 months in default 3 months imprisonment hard labour

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

Result / Order: Appeal is dismissed and sentence is affirmed.

Reason: The appellant was previously disqualified for a similar conviction. The learned magistrate was concerned about the safety of the public and exercised his discretion on correct principles. There was no reason to interfere with the sentences imposed.

Case Name: Thuan Audain
v
The Chief of Police

[SKBMCRAP2015/0001]

Date: Thursday, 9th June 2016

Coram: The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Chesley Hamilton

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues: Appeal against conviction and sentence – Unlawful possession of ammunition – Whether learned magistrate misdirected himself on facts of case and erred in law – Whether sentence imposed on appellant too harsh

Type of Oral Result / Order Delivered: Directions

Result / Order:

1. Hearing of the appeal is adjourned to the next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th October 2016.
2. Appellant to file and serve skeleton arguments with authorities on or before 12th August 2016.
3. Respondent to file and serve skeleton arguments with authorities on or before 16th September 2016.

Reason: Counsel for the appellant requested an adjournment to allow him some time to file written submissions.

Case Name: Lennox Gumbs
v
The Chief of Police

[SKBMCRAP2015/0016]

Date: Thursday, 9th June 2016

Coram: The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. O’Grenville Browne and Ms. C. Marissa Hobson-Newman led by Dr. Henry Browne, QC

Respondent: Mr. Teshaun Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Possession of firearm and ammunition – Whether decision unreasonable or cannot be supported having regard to the evidence – Whether sentence passed based on wrong principle or was such that a magistrate viewing circumstances reasonably could not properly have so decided – Whether sentence imposed was unduly severe

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

Result / Order:

1. Appeal against conviction and sentence is dismissed;
2. Conviction and sentence affirmed.

Reason: The appellant did not pursue his appeal against conviction. In relation to his appeal against sentence, the Court held that based on previous convictions for a similar offence the sentence of 6 years was not unreasonable.

Case Name:

Carl Francis
v
Jennifer Carty

[SKBMCVAP2015/0002]

Date: Thursday, 9th June 2015

Coram: The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances

Appellant: Mr. Terence Byron

Respondent: Ms. Marsha Henderson

Issues: Whether learned magistrate erred in making no order as to costs after claim withdrawn by respondent – Whether appellant was entitled to costs on basis that claim had no merit – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether learned magistrate had jurisdiction to try claim

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

Result / Order: By consent:
1. The appeal is allowed.
2. The respondent to pay to the appellant the sum of \$1,200.00 to cover the cost of the magistrate's proceedings on or before 30th September 2016.
3. No order on costs of the appeal.

Reason: The court's order was based on the consent of the parties.

Case Name: Ian Liburd
v
Gwendolyn Saunders
[SKBMCVAP2014/0009]

Date: Thursday, 9th June 2016

Coram: The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Marsha Henderson

Issues: Loan agreement between appellant and respondent – Whether learned magistrate erred in ordering that appellant pay sum which respondent claimed was outstanding on loan – Whether legal evidence which substantially affected merits of case was rejected by learned magistrate – Whether illegal evidence was admitted by Court – Whether decision is unreasonable or cannot be supported having regard to evidence

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

Result / Order: The appeal is dismissed.

Reason: A notice of discontinuance was filed on 6th June 2016.

Case Name: Delta Petroleum (Nevis) Limited
v
[1] OOJJ's LTD (Doing business as OOJJ's Service Station)
[2] Othneil Hyliger
[SKBHCVAP2013/0016]

Date: Thursday, 9th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. John Carrington, QC, with him, Mr. Adrian Scantlebury

Respondent: Ms. Sherry-Ann Liburd-Charles and Ms. Liska Hutchinson
for the 2nd respondent, Mr. Othneil Hyliger, who was
present

Issues: Contract law – Whether lease validly terminated in
September 2008 – Proper order for costs that court below
should have made

**Type of Oral
Result/Order
Delivered:** N/A

Result / Order: Judgment reserved. Notice will be given to the parties for
time of the delivery.

Case Name: Terrance Ritchen
v
Chief of Police

[SKBMCRAP2015/0012]

Date: Thursday, 9th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondents: Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against sentence – Unlawful possession of firearm and ammunition – Whether custodial sentence of 7 years hard labour imposed by learned magistrate excessive

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

Result / Order:

1. The appeal is allowed.
2. The sentence imposed is varied from 7 years to 5 years.

Reason: The Crown was willing to concede that the appellant's 7 year sentence was excessive due to the fact that he had entered a guilty plea. The maximum penalty for the offence of unlawful possession of a firearm and ammunition is 10 years. The Crown recommended that the starting point for arriving at an appropriate sentence should have been 8 years. Taking the guilty plea into consideration, when the 1/3 reduction is applied, it would bring the sentence to approximately 5 years. The Court concluded that 6 years would be a more appropriate starting point, but, considering the criminal history of the appellant, held that a varied sentence of 5 years was fair in all circumstances.

Case Name: Chase Hamilton
v
Chief of Police

[SKBMCRAP2016/0007]

Date: Thursday, 9th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Gillian André
Respondent: Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against sentence – Possession of ammunition without licence – Appellant sentenced to 5 years 7 months imprisonment – Whether sentence imposed by learned magistrate unduly harsh

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

Result / Order & Reason: The appeal is allowed only to the extent that the sentence is varied to 5 years in place of 5 years and 7 months in applying the discount for the early guilty plea but taking into account the prior convictions using a starting point of 6 years. That time runs from the date of incarceration.

Case Name: St. Kitts Nevis Trading and Development
Company Limited
v
Monica McCall
[SKBMCVAP2015/0004]

Date: Thursday, 9th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Ms. Keisha Spence
Respondent: Ms. Natasha Grey
(The respondent was also present)

Issues:	Employment law – Wrongful dismissal – Whether employee sending customer to competitor constitutes gross misconduct – Quantum of damages where employee terminated without notice – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether learned magistrate allowed into evidence inadmissible hearsay evidence from respondent
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	1. The appeal is dismissed. 2. Costs to the respondent in the amount of two-thirds of the costs awarded to the respondent in the court below.
Reason:	The Court concluded that on the facts, reasonable notice at common law would be eight month's salary in lieu of notice. This followed a factual finding by the magistrate that the summary dismissal of the respondent was unreasonable and an award for damages in favour of the respondent was justified. The Court had regard to the case of <i>Evelyn Henry v Mount Gay Distilleries Limited</i> [1999] UKPC 39 where the Privy Council said that the question whether misconduct is such as to justify summary dismissal is a question of 'fact and degree'. As such it is a matter to be decided by the trial judge and not by the appellate court. Following the reasoning of the Privy Council in this case, whether there was misconduct is a question for the magistrate and not for the Court of Appeal. The magistrate having made the determination that the conduct did not constitute misconduct or gross misconduct such as to justify the respondent's summary dismissal, the Court would therefore determine that she was not properly dismissed and was therefore entitled to damages. As indicated by the Privy Council in the <i>Henry</i> case, there is no basis upon which the appeal court should disturb the finding of the learned magistrate. On the question of the award of damages made by the

learned magistrate, the Court, having looked at the factors that the magistrate took into consideration, concluded that the award of eight month's salary in lieu of notice was justified. Reference was made to *Julie Saunders and Merlin Saunders, Administrators of the Estate of John Saunders (Dec'd) v St. Kitts Sugar Manufacturing Corporation* where this Court of Appeal held that having regard to the age, expertise, length of service and other qualities of the employee in the case, an award of 10 months was considered reasonable. In the present case, the magistrate made a determination that 8 months was reasonable based on the fact that the employee was a supervisor, worked for 21 years and it took 8 months for her to find alternative employment. Based on the factual findings of the magistrate, the exemplary work record of the employee and the disadvantages that flowed from her forced unemployment, the Court determined that there was no reason to disturb the decision of the lower court.

Case Name:

**Michael Garnette
v
Licensing Authority**

[SKBMCRAP2014/0008]

Date:

Friday, 10th June 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Keisha Spence

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues:

Appeal against conviction – Driving without due care and attention

Type of Oral Result / Order Delivered:	Oral Judgment or Decision				
Result / Order:	The appeal, having been withdrawn by the appellant, is accordingly dismissed.				
Reason:	Counsel for the appellant made an application to withdraw the appeal.				
Case Name:	Collette Hanley v Nevis Co-operative Credit Union Limited [SKBMCVAP2015/0007]				
Date:	Friday, 10 th June 2016				
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.] The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]				
Appearances:	<table border="0"> <tr> <td>Appellant:</td> <td>Mr. John Cato</td> </tr> <tr> <td>Respondents:</td> <td>Mr. Ricaldo Caines</td> </tr> </table>	Appellant:	Mr. John Cato	Respondents:	Mr. Ricaldo Caines
Appellant:	Mr. John Cato				
Respondents:	Mr. Ricaldo Caines				
Issues:	Mortgage agreement – Appellant’s mortgage payments to respondent in arrears – Whether learned magistrate erred in law in concluding that court had jurisdiction under Cooperative Services Act, 2011 to try matter				
Type of Oral Result / Order Delivered:	Oral Judgment or Decision				
Result / Order:	Appeal is dismissed with costs to the respondent agreed at \$2,000.00.				

Reason: The Court held that there was no merit in the appellant's submission that the learned magistrate lacked jurisdiction to try the matter.

Case Name: Ronald Isaac
v
Patricia Samuel

[SKBMCVAP2014/0011]

Date: Friday, 10th June, 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Chesley Hamilton

Respondent: Mr. Hesketh Benjamin

Issues: Civil appeal – Assault and battery – Whether decision of learned magistrate unreasonable having regard to the evidence – Findings of fact made by learned magistrate

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: The appeal against liability is dismissed and the order in respect of quantum for general damages of \$4,000.00 is set aside and \$3,000.00 is substituted.

Reason: The learned magistrate's decision on liability turned on who he believed and his findings of fact. The Court held that there was no basis to interfere with those findings and the appeal against liability was accordingly dismissed.

The appeal against the award of general damages was allowed and the damages reduced from \$4,000.00 to \$3,000.00 on account of the fact that the respondent contributed to the confrontation and the magistrate took account of the respondent's embarrassment in assessing the general damages.

Case Name:	Cameron Wilkinson V The Director of Public Prosecutions [SKBHCRAP2013/0013]				
Date:	Friday, 10th June 2016				
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.] The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]				
Appearances:	<table><tr><td>Appellant:</td><td>In person</td></tr><tr><td>Respondent:</td><td>Mr. Teshaun Vasquez, Crown Counsel</td></tr></table>	Appellant:	In person	Respondent:	Mr. Teshaun Vasquez, Crown Counsel
Appellant:	In person				
Respondent:	Mr. Teshaun Vasquez, Crown Counsel				
Issues:	Appeal against sentence – Unlawful carnal knowledge				
Type of Oral Result / Order Delivered:	Oral Judgment or Decision				
Result / Order:	1. Appeal is allowed. 2. Sentence of 6 years is varied to time served.				
Reason:	The Court was not happy with the state of the evidence relating to the complainant's mental state and noted that the appellant had served most of his sentence. In the circumstances, the Court saw fit to vary the sentence to time served.				

Case Name:

Mervin Matthew

V

Chief of Police

[SKBMCRAP2016/0004]

Date:

Friday, 10th June 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Ms. C. Marissa Hobson-Newman, with her, Mr. O’Grenville Browne for the appellant

Respondent: Ms. Greatess Gordon for the respondent

Issues:

Appeal against sentence – Possession of cocaine – Possession of cocaine with intent to supply – Importation of cocaine – No means test conducted

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

Oral Judgment or Decision

Result / Order:

The appeal against sentence is allowed to the extent that the time for payment of the fine imposed is extended to Thursday, 15th September 2016 and in default 12 months imprisonment.

Reason:

On 18th March 2016, the appellant was ordered to pay a fine of \$50,000.00. The Crown conceded that it would be reasonable to allow the appellant three additional months make the full payment.

Case Name:

[1] Dave Matthew

[2] Felix Bass

v

The Magistrate

[SKBMCRAP2013/0013]

Date:

Friday, 10th June 2016

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Terence Byron

Respondent: Ms. Greatess Gordon

Issues:

Magisterial civil appeal

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

Oral Judgment or Decision

Result / Order:

The appeal is allowed, the matter is remitted to the magistrate to summon the sureties in accordance with the law for the purpose of their showing cause as to why the sum of \$50,000.00 to which the appellants were bound as sureties ought not to be escheated.

Reason

The Crown conceded the appeal.

Case Name:

Cassim Akeem

v

[1] Althea Stapelton

[2] Alakia McKoy by her next friend Althea Stapleton
[3] Akeela McKoy by her next friend Althea Stapleton

[SKBMCVAP2013/0011]

Date: Friday, 10th June 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Nassibou Butler
(The appellant was not present)

Respondents: Mr. Hesketh Benjamin

Issues: Appeal against quantum of damages awarded by learned magistrate for assault and battery – Whether learned magistrate awarded respondents damages without having any or sufficient regard to financial means of appellant – Whether decision of learned magistrate was unjust and unfair

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

Result / Order & Reason: The appeal is dismissed as same is without merit. The appellant shall bear the costs of this appeal agreed in the sum of \$1,000.00.