

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
[18th to 22nd April 2016]

JUDGMENTS

Case Name: **AOB Holdings Limited**
v
[1] Financial Services Regulatory Commission
[2] Mr. Hordley Forbes, Receiver-Manager of
Antigua Overseas Bank Limited (In Receivership)

[ANUHCVAP2015/0038]
(Antigua and Barbuda)

Date: **Monday, 18th April 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. Richard Williams holding papers for Sir Richard L. Cheltenham, KA, QC, PhD**

Respondent: **Mr. Colin Williams, Director of Public Prosecutions, holding papers for the Respondents**

Issues: **Civil appeal – Winding up proceedings – Separation of powers doctrine- Jurisdiction – International Business Corporation Act – Reorganisation plan for bank in receivership – Winding up of bank postponed on several occasions by court to allow successive reorganization plans presented by appellant to be put to first respondent for approval – Whether learned judge erred in refusing to conduct his own evaluation of final reorganization plan presented by appellant and grant approval of same notwithstanding that plan had not been approved by first respondent – Whether learned judge breached doctrine of**

separation of powers by conferring upon the first respondent his judicial discretion by placing in hands of first respondent power to decide whether winding up court order would come into effect – Whether learned judge erred in failing to conduct trial on issues in dispute between appellant and first respondent – Whether as a result learned judge's decision was irrational, it not having been founded on a proper evidential basis

Result and Reason:

Held: dismissing the appeal with costs to be paid by AOB to the respondents, such costs to be assessed unless agreed within 28 days, that:

1. Prior to the amendments made to the Act in 2007, section 288 of the Act required the receiver-manager to begin proceedings in the High Court for the reorganization of a corporation after he had seized the administration and control of the corporation. There was, however, a legislative shift with the enactment of the amendments to the Act in 2007. The amendments made it clear that Parliament no longer wishes for the court in the first instance to determine whether a corporation should be permitted to reorganize its affairs. Parliament placed that determination in the hands of the Commission, who had requisite expertise to make such determination. Section 288(2)(c) of the amended Act provides for a reorganization plan to be approved by the Board of the Commission. In the circumstances, it was proper that the terms of the stay of the winding up order were to allow AOB to put forward a reorganization plan for the Commission's approval rather than for the court's approval. The learned judge therefore properly exercised his judicial function while ensuring that the exercise of this function did not trespass on the executive function of reorganizational approval given to the Commission and vice versa. This was a clear demonstration of the application of the separation of powers doctrine, rather than a breach of it. The doctrine does not only operate to protect the judiciary from encroachment by the other branches of government but also to protect the executive and legislative branches of government from encroachment by the judiciary.

Section 288 of the *International Business Corporations*

Act (as amended) applied.

- 2. AOB's assertion that the learned judge was in error in not conducting a trial on the issues which AOB says were in dispute between it and the Commission and that the court has broad powers under the Act permitting it to disregard the disapproval by the Commission of a reorganisation plan and itself engage in an evaluative analysis of the plan and approve it, seeks to eschew the abovementioned decided policy shift made by Parliament when it amended section 288 of the Act. The task of the approval of a reorganisation plan has been expressly given by Parliament to the Commission and it is not, therefore, open to the court to arrogate to itself this task.**
- 3. While it has always been, and remains, the court's function to review administrative actions so as to ensure that bodies such as the Commission or such persons are not acting in excess of their powers, or in a manner which is irrational or unreasonable or contrary to the basic principles of procedural fairness, a wholly different and comprehensive procedure is provided for addressing such complaints, namely, the administrative claim. The learned judge was quite right not to entertain AOB's suggested approach in these proceedings which could have adequately addressed its complaints in respect of the Commission's alleged unreasonableness or irrational conduct in considering AOB's proposed reorganisation plan with the full opportunity for obtaining adequate relief. It was inappropriate to seek to have the court engage in such a course in the context of having made a winding up order which had been stayed only for the purpose of being able to obtain the Commission's approval of one of its (AOB's) reorganisation plans. Accordingly, the learned judge was right in declining to do so and did not deprive AOB of its right of access to the court in holding that he lacked the jurisdiction to deal with the requests made by AOB.**

Case Name: **Esther Augustin aka Esther St. Marie,
representative for Marie Madeleine Marshall aka
Marie Madeleine Augustin (deceased)**
v
Paul Jason Auguste
[SLUHCVAP2013/0033]
(Saint Lucia)

Date: **Monday, 18th April 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. Ronald Marks holding papers for the appellant**
Respondent: **Mr. Richard Williams holding papers for Ms. Elaine French**

Issues: **Civil appeal – Contract – Agreement for Sale of land –
Whether learned trial judge erred in granting specific
performance of agreement**

Result and Reason: **Held: dismissing the appeal; amending the order to delete
the figure 168.95 square feet in paragraph 5 and
substituting 158.95 square feet therefore; and ordering
costs of the appeal to the respondent at two-thirds of the
amount awarded in the court below, that:**

- 1. An appellate court would be very reluctant to interfere
with a trial judge’s findings of fact where the trial judge
had the advantage of observing the witnesses give
their evidence and where there was an abundant of
evidence on which the judge could have made the
findings which he made.**

***Golfview Development Limited v St. Kitts Development
Corporation et al SKBHCVAP2004/0017 (delivered 20th
June 2007, unreported) followed; Central Bank of
Ecuador and others v Conticorp SA and others (The
Bahamas) [2015] UKPC 11 applied.***

2. The Agreement defined the property being sold as a one-eighth share of Parcel 177 measuring approximately 27,715.05 square feet. Following the completion of the partition of Parcel 177, the appellant was awarded Parcels 331 and 332 measuring 21,442 and 6,432 square feet respectively. The combined acreage of 27,874 is 158.95 square feet more than the amount specified in the Agreement of 27,715.05 square feet. This small increase in the amount of the land being sold to the respondent had no impact on the overall sale. Further, the Agreement had a formula for determining the price – \$3.50 per square foot. The terms of the Agreement were clear and did not give rise to any uncertainty. There is therefore no basis for interfering with the judge's findings that there was no uncertainty regarding the amount of land being sold under the Agreement.

Golfview Development Limited v St. Kitts Development Corporation et al SKBHC VAP2004/0017 (delivered 20th June 2007, unreported followed; *Central Bank of Ecuador and others v Conticorp SA and others (The Bahamas)* [2015] UKPC 11 applied.

3. Article 1387 of the Code states that if a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who has received it, by returning double the amount. Article 1388 goes further stipulating that a promise of sale with delivery and actual possession is equivalent to sale. In construing legislation, it is a basic rule of interpretation that regard must be had to the entire statute and not just the provision being interpreted. Applying this principle it is clear that where the respondent is in possession of the property that is the subject of the Agreement, there is no option to recede as in Article 1387.

Article 1387 of the *Civil Code of Saint Lucia*, Cap. 4.01, Revised Laws of Saint Lucia 2008 distinguished; Article 1388 of the *Civil Code of Saint Lucia*, Cap. 4.01, Revised Laws of Saint Lucia 2008 applied; *St Rose v Lafitte* (1992) 42 WIR 113 followed.

Case Name:

[1] Aquaduct Limited
[2] Bertille Da Silva
v
[1] Faelesseje
[2] Lesline Bess
(Court Appointed Representative of the Estate of
Othneil R. Sylvester deceased)

[SVGHCVAP2014/0017]
[Saint Vincent and the Grenadines]

Date:

Monday, 18th April 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. Stephen Huggins holding papers for Mr. Frederick Gilkes

Respondent:

Mr. Richard Williams for the First Respondent
Ms. Kay Bacchus-Browne for the Second Respondent

Issues:

Civil Appeal – Interlocutory Appeal – Preliminary Issues – Enforcement Proceedings – Provisional Charging Order – Objection to Grant of Final Charging Order – Part 48 of Civil Procedure Rules 2000 – Summary Proceedings – Whether there should be a separate trial of preliminary issues - Whether learned judge erred in fact and law by ruling that in giving directions for the filing of affidavit evidence and disclosure of documents the preliminary objection taken by appellants was implicitly ruled on – Whether learned judge conflated procedure appropriate to summary hearing of dispute with procedure for fair disposal of said dispute where dispute could not be fairly resolved summarily

Result and Reason:

Held: allowing the appeal and making the orders set out in paragraph 37 of the judgment below and ordering costs to the appellants in the court below and on the appeal, that:

1. The court and the parties should give careful consideration to the issues to be determined when making an order for a split trial. Where a claim is highly fact sensitive, it is important to establish the factual premise for the issue of law on which the judge was invited to rule. Preliminary issues should not be set in motion in a casual and unstructured way. There is a need for absolute clarity when a court orders the trial of a preliminary issue. The right approach to preliminary issues should be (inter alia) that the questions should usually be questions of law and should be decided on the basis of a schedule of agreed or assumed facts. The preliminary point of law taken by the appellants was that the court had no jurisdiction to resolve Sylvester's claim to a 50% beneficial ownership in Aquaduct by what appeared to be summary proceedings within the Part 48 charging proceedings. In the circumstances, the learned judge ought to have addressed that point directly and was plainly wrong by ruling that the directions she had given for the filing of further affidavit evidence and cross-examination after the appellants' objections implicitly amounted to a dismissal of the said objection.

Mcloughlin v Jones [2002] QB 1312 applied; *Larkfleet v Allison Homes Eastern Limited* [2016] EWHC 195 applied; *Lady Arden in Royal & Sun Alliance Insurance plc frv T & N Limited* 2002] EWCA Civ 1964 applied; *Tilling v Whiteman* [1979] 1 All ER 737 applied; *SCA Packaging Ltd v Boyle* [2009] UKHL 37 applied; *Ashmore v Corporation of Lloyd's* [1992] 2 All ER 486 applied.

2. CPR 48.8(4) entrusts the judge with a discretion to give directions for the resolution of any objection that cannot be resolved summarily. The directions adverted to in this rule would place a court in a position to resolve, fairly and properly, the substantial issues of fact and law that had arisen between the

Estate and the Appellants as to the Estate's shareholding in Aquaduct. By giving directions, the learned judge *prima facie* accepted that the dispute as to the ownership of the shares could not be resolved summarily. Having determined that a summary resolution of those issues was not possible, the learned judge could not properly realise the objective of a fair resolution of that issue by the mere filing of further affidavit evidence. Given the importance of the issues, their resolution necessitated the rigours of a trial and most importantly, pleadings that would facilitate a fair trial. The learned trial judge was therefore unfair to the appellants and plainly wrong in her approach of adopting a procedure akin to that of a summary resolution of the dispute.

In Re U (children) [2015] EWCA Civ 334 applied; *Broughton v Kop Football (Cayman) Ltd* [2012] EWCA Civ 1743 applied; *Prince Abdulaziz v Apex Global Management Ltd & Anor (Rev 2)* [2014] UKSC 64 applied; *Royal & Sun Alliance Insurance plc v T & N Limited* 2002] EWCA Civ 1964 applied; *In The Matter of TG (A Child)* [2013] EWCA Civ 5 applied; *Re S-W (Children)* [2015] EWCA Civ. 27 applied.

3. A fair resolution of the important issue of the property rights of the various persons claiming ownership of the shares that ought to be charged in the charging proceedings required the filing of pleadings that defined the bases of the competing claims. The filing of affidavit evidence was no substitute for pleadings in determining and fairly resolving this issue. In relation to issues of disclosure, discovery and reception and treatment of evidence, the directions given were no substitute for Parts 28 and 29 of the CPR 2000 which would have been fully in play had the nature of the learned judge's directions been addressed to the trial of the dispute of fact that arose as distinct from the summary disposal of the dispute. Therefore, the learned judge was plainly wrong and caused the appellants substantial prejudice in dismissing the preliminary objection and embarking by way of proceedings that are not in accordance with the normal incidents of a trial under the CPR.

Parts 28 and 29 of the *Civil Procedure Rules 2000*

applied.

Case Name: Yates Associates Construction Company Ltd
v
Blue Sand Investments Limited

[BVIHCVAP2012/0028]
(Territory of the Virgin Islands)

Date: Wednesday, 20th April 2016

Coram: The Hon. Dame Janice Pereira D.B.E
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Mitchel, Justice of Appeal

Appearances:

Appellant:	Ms. Ashelle Morgan holding papers for Mr. Terrance Neale
Respondent:	Mr. Graham Bollers holding papers for Mr. Sydney Bennett, QC

Issues: Civil appeal – Building contract – Defective Construction – Appeal against trial judge’s findings of fact – Approach of appellate court to trial judge’s findings of fact – Expert evidence – Expert’s duty to the court – Part 32 of the Civil Procedure Rules 2000

Result / Reason: Held: allowing Yate’s appeal on all grounds save and except in relation to one finding of fact; dismissing Blue Sand’s cross-appeal on all grounds except one; ordering that Yates is entitled to its claim for miscellaneous charges set out in Certificate No. 13; making the orders as set out at paragraph 137 of this judgment; and making the costs order as set out at paragraph 139 of this judgment, that:

1. An appellate court reviewing the findings of a trial judge on the printed evidence in relation to a

question of fact tried by the judge without a jury and where there is no question of the judge misdirecting himself, should not interfere with the trial judge's decision unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the judge's conclusion. In the circumstances, the appellate court may consider that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. However, either because the reasons given by the trial judge are unsatisfactory, or because it is clearly appears so from the evidence, an appellate court may be satisfied that the trial judge has not taken proper advantage of his having seen and heard the witnesses and the matter will then become at large for the appellate court.

Watt or Thomas v Thomas [1947] AC 484 applied; *In re B (A Child)(Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911 applied; *Assicurazioni Generali SpA v Arab Insurance Group (BSC)* [2002] EWCA Civ 1642 applied; *Beacon Insurance company Limited v Maharaj Bookstore Limited* [2014] UKPC 21 applied.

2. Appellate court restraint against interfering with findings of fact, unless compelled to do so, applies not only to findings of primary fact, but also to the evaluation of those facts and inferences to be drawn from them. Where a judge draws inferences from his findings of primary fact which have been dependent on his assessment of the credibility or reliability of witnesses who have given oral evidence, and of the weight to be attached to their evidence, an appellate court has to be similarly cautious in its approach to his findings of such secondary facts and his evaluation of the evidence as a whole. It is only in exceptional circumstances that an appeal court is entitled to take a different view on credibility from that of the judge who has seen the witness, particularly when the judge has referred favourable to the demeanour of the witness concerned.

Central Bank of Ecuador and others v Conti Comp SA and others [2015] UKPC 11 applied; *Margaret Blackburn v James A.L. Bristol* GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) applied; *Henderson v Foxworth Investments Limited and another* [2014] UKSC 41 applied; *In re B (A Child)(Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911 applied.

3. Where the trial judge fails to make proper use of the advantage he or she possesses in analyzing and carrying out an evaluation of the evidence, the judge's decision cannot stand if the decision does not comport with the evidence that was adduced. The critical question before an appellate court is whether there was evidence before the trial judge from which the judge could properly have reached the conclusions that he or she did or whether, on the evidence, the reliability of which it was for the judge to assess, that the judge was plainly wrong.

Justus William v Evelyn Inglis SLUHCVAP2013/0032 (delivered 28th October 2015, unreported) applied; *Marie Makhoul v Cicely Foster et al* ANUHCVAP2009/0014 (delivered 23rd February 2015, unreported) applied; *Biogen Inc v Medeva plc* [1997] RPC 1, 45 applied; *Housen v Nikolaisen* applied [2002] 2 SCR 235; *Chiverton Construction Limited et al v Scrub Island Development Group Limited* BVIHCVAP2009/0028 (delivered 19th September 2011, unreported) applied.

4. In this case, the trial judge undoubtedly had the advantage of seeing and hearing the witnesses give their evidence. However in relation to Yates' claim, the trial judge made a number of factual findings which were not open to her on the evidence which was before her. There were clear inherent inconsistencies with a number of the trial judge's factual findings and these inconsistencies could not reasonably be explained or justified. In the circumstances, these factual findings made by the learned trial judge merited appellate intervention.
5. In relation to Blue Sand's counterclaim, the learned trial judge, in respect of most of her factual

findings, made proper use of the advantage she had as the trial judge. The findings of fact made by the judge in favour of Yates were clearly open to her on the evidence before her. Accordingly, the trial judge's findings could not be assailed.

6. Expert evidence must be considered together with all of the evidence which is before the court and which the judge has accepted. The judge must determine what weight to attach to the expert evidence. It is necessary for an expert to present the analytical process by which he or she reached the conclusion in the report. It is insufficient that an expert merely supplies his or her conclusion on a matter in issue between the parties. In this case, by Mr. Hodgkinson's own admission, he was never provided with a copy of Part 32 of CPR 2000. Further, he was not advised that he ought to have certified at the end of his report that he had not in fact received instructions from any other source, other than what he had declared. Mr. Hodgkinson relied on the report of experts who were not called as expert witnesses in the matter to provide his pricing quotation. Mr. Hodgkinson was therefore in breach of a number of the mandatory provisions of Part 32 of CPR 2000. On this basis the learned trial judge ought not to have accepted Mr. Hodgkinson's report and the costs of repairs therein or at the most she ought to have accorded very little weight to his report.

Part 32 of the *Civil Procedure Rules 2000* applied; *Potomek Construction Limited v Zurich Securities Limited* [2004] 1 All ER (Comm) 672 distinguished.

STATUS HEARING

Case Name:

Recardo Roberts

v

[1] Gene Hamilton

[2] Javan McIntosh

**[3] Nellie Roberts
[4] Nella Luke**

[SVGHCVAP2013/0011]

Date: Monday, 18th April 2016

Before: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Sten Sargent

Respondents: No appearance

Issue: Status of matter

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

Result / Order: [Oral delivery]

1. It is ordered that the core bundle of appeal and the notice of application to admit fresh evidence filed on 13th April 2016 be served personally on the respondents on or before 14th May 2016.
2. Notice of application to admit fresh evidence and the affidavits in support of Recardo Roberts are to be served on the respondents on or before 14th May 2016.
3. The skeleton arguments to be served on or before the 14th May 2016.
4. The respondents are to file and serve skeleton submissions on or before the 30th June 2016.
5. Hearing of appeal is traversed to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week of the 26th September 2016.

Case Name: Stanley Defreitas
v

[1] Transglobal Inc. (In Liquidation)
[2] International Financial Service Authority
[3] Horizon Bank International Limited
(In Liquidation)

[SVGHCVAP2013/0007]

Date: Monday, 18th April 2016

Before: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

Appearances:

	Appellant:	Mr. Joseph Delves
	Respondent:	Mr. Graham Bollers holding a watching brief on behalf of the Liquidator

Issue: Status of matter

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. It is ordered that the appellant is to serve the respondents with the notice of appeal filed on 21st March 2013 within 14 days of this order.
2. Matter is adjourned to the next status hearing in Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Case Name:

Marie Lewis
Attorney-on-record for Enid Santaris Henville aka Sentaria Henville nee Lewis, deceased Administratrix of the Estate of Isabelle Henville nee Lewis
Zoe Anna Lewis
Marie Lewis
Teresa Morgan nee Lewis
Phillip Lewis

**Herbert Lewis
V
Sylvester Simmons**

[SVGHCVAP2012/0006]

Date: Monday, 18th April 2016

Before: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

Appearances:

Appellant: Ms. Kay Bacchus-Browne

Respondent: Ms. Zhing Horne-Edwards

Issue: Status of matter

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

Result / Order: [Oral delivery]
It is ordered that leave is granted to the appellant to file
the record of appeal within 6 weeks of today's date.

Case Name: Kyle Bacchus
V
The Queen

**[SVGHCRAP2013/0021]
[SVGHCRAP2014/0002]**

Date: Monday, 18th April 2016

Before: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions

Issue: Application for bail

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

**Result / Order &
Reason:** [Oral delivery]
1. Bail application is dismissed. No proper grounds have been advanced; the appellant served 2 years of his 15 year sentence.
2. It is ordered that the record of appeal be prepared by the registrar in this matter.
3. The matter is adjourned to the next status hearing in Saint Vincent and the Grenadines during the week commencing 26th September 2016.

APPLICATIONS AND APPEALS

Case Name: Cameron Balcombe
V
Rawlston Stewart

[SVGMCVAP2014/0013]

Date: Monday, 18th April 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. Ronnia Durham-Balcombe

Respondent: Ms. Patrica Marks-Minors, with her, Mr. Ronald Marks

Issues: Application to discharge order of a single judge – Application for extension of time to appeal – Application for leave to appeal – Application for relief from sanctions

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

Result / Order: [Oral delivery]
1. The applications are granted.
2. Appellant to file notice of appeal by 25th April 2016.
3. The order of the single judge is set aside.
4. Application for extension of time is granted.
5. Appellant shall pay the respondent costs fixed in the sum of \$1,000.00. The said costs to be paid by 29th April 2016.

Reason: When considering an application for an extension of time to file a notice of appeal, the Court has a broad discretion and looks at all the facts and circumstances of the case. The Court in such cases will consider the length of the delay; whether the applicant has a real prospect of success on the appeal; and any prejudice that the respondent may suffer.

In the present case, there was a delay of over three (3) months from 22nd May 2015 to 8th September 2015. The Court considered this delay to be inordinate. However, notwithstanding the inordinate delay, taking into account all the circumstances and the manner in which the matter proceeded before the magistrate, notably, that the appellant appeared at every hearing of the matter but on the day when the matter was heard, the learned magistrate did not conduct a proper enquiry to satisfy herself that the appellant was served with a notice of hearing, the Court granted the applications.

Case Name: Leroy Haynes

V
The Queen

[SVGHCRAP2013/0028]

Date: **Monday, 18th April 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**

Respondent: **Mr. Colin John, Assistant Director of Public Prosecutions**

Issues: **Application to add further grounds of appeal – Application for legal aid to be assigned**

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

**Result / Order &
Reason:**

[Oral delivery]

- 1. Having regard to the gravity of the offence, the Court considers that the application for legal aid made by the appellant ought to be granted.**
- 2. Accordingly, the Court hereby directs that a legal practitioner be assigned to the appellant to assist him in the preparation of further grounds of appeal if deemed necessary and to assist in the representation of the appellant in the conduct of the appeal.**
- 3. The legal practitioner shall be selected by the registrar from the register of legal practitioners as prescribed by rule 53 of the Court of Appeal Rules.**

Case Name: **Ronald Burnley**

V
The Queen

[SVGHCRAP2013/0009]

Date: **Monday, 18th April 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. Kay Bacchus-Browne**

Respondent: **Mr. Colin John, Assistant Director of Public Prosecutions**

Issues: **Application to add grounds of appeal**

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

Result / Order &
Reason: **[Oral delivery]**
There being no objection to the addition of the ground being added by the applicant, to wit, that the sampling and testing by the analyst was not properly done, the application is hereby granted.

Case Name: **Keithroy Franklyn**
V
The Commissioner of Police

[SVGMCRAP2015/0033]

Date: **Monday, 18th April 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

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issue: Application for legal aid to be assigned – Possession of firearm and ammunition

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

Result / Order: The application for legal aid is refused.

Reason: The Court was of the view that this was not the type of offence for which the Court will assign legal aid.

Case Name:

**Kevon Williams
V
The Commissioner of Police
[SVGMCRAP2016/0015]**

Date: Monday, 18th April 2016

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

Appearances:

Appellant: In person

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: Legal aid to be assigned – Wounding and burglary

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The application for legal aid is refused.**

Reason:

The Court was of the view that this was not the type of offence for which the Court will assign legal aid.

Case Name:

**The Commissioner of Police
V
Lisa Hooper**

[SVGMCRAP2015/0037]

**Lisa Hooper
V
The Commissioner of Police**

[SVGMCRAP2015/0037]

Date:

Monday, 18th April 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 /
Respondent:**

Mr. Jomo Thomas for Lisa Hooper

**Respondent /
Appellant:**

**Mr. Colin Williams, Director of Public Prosecutions for the
Commissioner of Police**

Issues:

**Magisterial criminal appeal against conviction –
Possession of a controlled drug – Conspiracy to drug**

trafficking – Conspiracy to export controlled drug

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

Directions

Result / Order:

[Oral delivery]

It is hereby directed that the Registrar of the High Court request from the learned magistrate, Her Honor Ms. Rechanne Browne, the video/audio recording forming part of the proceedings below in SOC 521/13, 522/13 & 523/13 no later than Thursday 21st April 2016 for completing the record of appeal.

Reason:

Counsel for the appellant/respondent requested the audio/video recording in order to complete the record.

Case Name:

Sheldon Hooper

v

The Queen

[SVGHCRA2012/0030]

Shelton Hooper

v

The Queen

[SVGHCRA2012/0031]

Roland Hooper

v

The Queen

[SVGHCRA2012/0032]

Date:

Monday, 18th April 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. Ronald Marks for Roland Hooper
Sheldon Hooper and Shelton Hooper in person

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: High Court criminal appeal against sentence – Attempted Murder – Application for legal aid

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

Result / Order: [Oral delivery]
1. Legal Aid be granted to the appellants, Sheldon Hooper and Shelton Hooper.
2. The registrar shall assign a legal practitioner from the roster of legal practitioners to assist the appellants in the conduct of their appeals.
3. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Reason: The Court was of the view that the appellants, Sheldon Hooper and Shelton Hooper did not have the means to prosecute their appeal.

Case Name: Garnet Shallow
v
The Queen

[SVGHCRAP2013/0015]

Date: Monday, 18th April 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. Andreas Coombs

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: High Court criminal appeal against conviction –
Wounding with intent – Oral application for an
adjournment by counsel for the respondent.

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

Result / Order: [Oral delivery]

1. It is hereby directed that the respondent take steps to obtain a copy of the record of proceedings in this appeal by Friday 29th April 2016.
2. The appellant, having filed and served submissions on 6th April 2016, the respondent shall file and serve submissions in response by Friday 6th May 2016.
3. The hearing of this appeal is accordingly adjourned to the next sitting of the Court of Appeal in the State of Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Reason: The appellant did not object to the respondent's application for an adjournment.

Case Name:

Iraul Murray
V
The Commissioner of Police
[SVGMCRAP2015/0007]

Date: Monday, 18th April 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

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against conviction –
Possession of a controlled drug – Possession of a
controlled firearm

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

Result/Order: [Oral delivery]
The appeal is dismissed.

Reason: The Court found that the learned magistrate did not err in
arriving at her decision and that there was no basis for
interfering with the decision of the learned magistrate.

Case Name: Anton Butler
v
The Commissioner of Police

[SVGMCRAP2015/0015]

Date: Monday, 18th April 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: No appearance

Respondent: Mr. Carl Williams, Crown Counsel

Issue: Magisterial criminal appeal against conviction – Assault

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

Result / Order: [Oral delivery]
1. The Registrar of High Court shall cause the notice of hearing to be served on the Appellant for the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 26th September 2016.
2. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Reason: The Court noted that the appellant was not served with the notice of hearing of the appeal.

Case Name: Junior Miller
v
The Commissioner of Police
[SVGMCRAP2015/0006]

Date: Monday, 18th April 2016

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

Appearances:
Appellant: In person

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against conviction – Possession of firearm without licence

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

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The conviction and sentence are affirmed.

Reason: The Court was of the view that there was no reason to disturb the findings of the learned magistrate.

Case Name: Mike Prescott
Michael Prescott
Showayne Phillips
V
The Commissioner of Police

[SVGMCRAP2016/0003]

Date: Monday, 18th April 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: In person

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against conviction and sentence – Possession of firearm without licence

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

Oral Judgment or Decision

Result /Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal is allowed against sentence. The sentences imposed by the learned magistrate are set aside.**
- 3. A sentence of four (4) years is substituted for Mike Prescott and Michael Prescott. A sentence of three (3) years is substituted for Showayne Phillips.**
- 4. The other sentences in respect of the possession of ammunition remain.**
- 5. All sentences to run concurrently.**
- 6. Time served to be taken into account.**

Reason:

The appellants, Mike Prescott, Michael Prescott and Showayne Phillips were arrested, charged and convicted of possession of firearm and ammunition without licence. Although essentially admitting possession by words and actions, the appellants pleaded not guilty. The appellants claimed that they had possession of the firearms for self defence and also that they intended to turn the firearms into the police.

With regards to the appeal against conviction, the learned magistrate decided that she was satisfied that the defendants were knowingly in possession of the firearms without a licence. The Court did not consider that the learned magistrate erred in law or that the learned magistrate misdirected herself or that the decision was unreasonable and could not be supported by the evidence. The Court saw no basis to disturb the findings of the learned magistrate. The Court was of the view that there was no merit in the grounds of appeal against conviction.

In relation to sentence, Mike Prescott, Michael Prescott and Showayne Phillips were sentenced to six (6) years imprisonment. The appellants argued that the sentences were excessive. A maximum sentence under the *Firearm Act* is seven (7) years. In *Odanno Frederick v Commissioner of Police SVGMCRAP2015/0010* (delivered

30th June 2015, unreported), the Court considered the notional sentence of five (5) years to be appropriate for firearm offences. The principle in *Desmond Baptiste v The Queen* SVGHCRA2003/0008 (delivered 6th December 2004, unreported) was that when considering the notional sentence the Court must move up or down depending on the circumstances, that is, both mitigating and aggravating. The Court was of the view that the learned magistrate did not identify the factors she took into account in imposing the sentences.

Applying the above principles, the Court overturned the sentence of six (6) years imprisonment and reduced it to four (4) years imprisonment in relation to Mike Prescott and Michael Prescott. In arriving at the sentence, the Court considered that Mike Prescott had two (2) previous convictions for unrelated offences and that Michael Prescott had one (1) previous conviction for an unrelated offence. The Court also considered the youthfulness of Mike Prescott and Michael Prescott at the time the offence was committed.

In relation to Showayne Phillips, the Court overturned the sentence of six (6) years imprisonment and reduced it to three (3) years. In arriving at this sentence, the Court considered that Showayne Phillips was 18 years old at the time the offence was committed; had no previous convictions; was not found in actual possession and was not wearing camouflage as was the case with Mike Prescott and Michael Prescott.

Case Name:

**Romaldo Browne
v
The Commissioner of Police
[SVGMCRA2016/0007]**

Date:

Monday, 18th April 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. Grant Connel

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues:

**Magisterial criminal appeal against conviction –
Possession of firearm and ammunition without licence –
Oral application by counsel for the appellant to withdraw
the appeal.**

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal is withdrawn and accordingly dismissed.**

Reason:

**The respondent did not object to the oral application
made by counsel for the appellant to withdraw the appeal.**

Case Name:

**The Commissioner of Police
v
Dillon Gill**

[SVGMCRAP2015/0053]

Date:

Monday, 18th April 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. Colin John, Assistant Director of Public Prosecutions

Respondent: Mr. Grant Connell

Issues: Magisterial criminal appeal against conviction – Intention to commit rape, indecent assault, possession of a firearm without licence – Application to withdraw appeal

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

Result / Order: [Oral delivery]
The appeal at the request of the appellant is withdrawn and dismissed.

Reason: The appellant withdrew his appeal with no objection by the respondent.

Case Name: Andrew Harry
v
The Commissioner of Police
[SVGMCRAP2016/0004]

Date: Monday, 18th April 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
Respondent:	Mr. Colin John, Assistant Director of Public Prosecutions

Issues: Magisterial criminal appeal against conviction and sentence – Assaulting a police officer acting in due execution of his duty – Assault causing actual bodily harm

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed and a sentence of three (3) years is substituted instead of five (5) years.**

Reason:

The Court found no reason to disturb the findings of the learned magistrate. The Court found no merit in the appellant's ground of appeal that the medical report did not disclose severe injuries. The Court was of the view that there was sufficient evidence before the magistrate to reach the decision that he did.

In relation to sentence, the Court found that the sentence of five (5) years imprisonment imposed by the learned magistrate was excessive in the circumstances where the maximum sentence was seven (7) years imprisonment. The Court was of the view that a custodial sentence was warranted given the antecedents of the appellant (10 previous convictions which included 3 offences relating to violence) and held that a sentence of three (3) years imprisonment would serve the justice of the case.

Case Name:

Carl Ollivierre

v

Dr. Juana Osborne

[SVGMCVAP2015/0005]

Date:

Monday, 18th April 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. Kay Bacchus-Browne

Respondent: Dr. Linton Lewis

Issue: Magisterial civil appeal – Damages for debt

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

Result/Order: [Oral delivery]
1. The matter is remitted to a different magistrate.
2. Both parties are at liberty to tender relevant documents.

Reason: The Court was of the view that there was unsatisfactory disclosure of relevant information at the hearing of the matter.

Case Name: Thaddeus Maloney
v
Gideon George
Ephraim Maloney

[SVGMCVAP2014/0012]

Date: Monday, 18th April 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. Maia Eustace

Respondent: No appearance

Issues: Magisterial civil appeal

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

Result / Order & Reason: [Oral delivery]
In accordance with the notice of discontinuance filed, the appeal is discontinued.

Case Name: Philbert Warrican
v
Elsworth Richards
[SVGMCVAP2014/0015]

Date: Monday, 18th April 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. Andreas Coombs

Respondent: In person

Issues: Magisterial civil appeal

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

Result/Order: [Oral delivery]
1. The matter is remitted to the magistrate for an assessment of the value of the work which the

magistrate found to be outstanding and which was required to be done by the respondent so as to assess the amount, if any, due to the respondent under the original contract.

2. The finding that the respondent was entitled to the sum of \$855.00 for additional work is not disturbed.

Reason:

The Court was of the view that the court below did not have the benefit of an assessment of the value of the incomplete work; accordingly, the evidence on this issue was insufficient.

Case Name:

Carletho Lemo

v

Kendra Adams

[SVGMCVAP2015/0003]

Date:

Monday, 18th April 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

Respondent: In person

Issues:

Magisterial civil appeal – Oral application by appellant for an adjournment

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

N/A

**Result / Order &
Reason:**

**[Oral delivery]
At the request of the appellant for time to retain a lawyer**

to represent her, the hearing of this Appeal is adjourned to the next sitting of the Court in the State of Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Case Name:

Osrick Young

v

The Queen

[SVGHCRAP2013/0006]

Date:

Tuesday, 19th April 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Samantha Robertson

Respondent:

**Mr. Colin John, Assistant Director of Public Prosecutions
holding papers for Mr. Karim Nelson, Crown Counsel**

Issues:

High Court criminal appeal against conviction – Murder

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

N/A

Result / Order:

**[Oral delivery]
Matter is stood down.**

Reason:

Counsel for the respondent was not present.

Case Name:

Annel Young

v

The Queen

[SVGHCRAP2012/0027]

Date:

Tuesday, 19th April 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Duane Daniel

Respondent: Mr. Carl Williams, Crown Counsel

Issues:

**High Court criminal appeal against convictions –
Attempted murder – Aggravated burglary – Oral
application for an adjournment**

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

Directions

Result / Order:

[Oral delivery]

Counsel for the appellant having received the record of appeal last week and having been served with the respondent's skeleton arguments today, 19th April 2016, and counsel therefore requiring time to address the matters raised on the appeal, it is hereby ordered and directed that:

- 1. The appellant files and serves skeleton arguments in relation to the grounds of appeal raised in this matter together with copies of any authorities relied on by 17th May 2016.**
- 2. The respondent shall be at liberty to file and serve submissions in reply by 3rd June 2016.**
- 3. The hearing of this appeal is accordingly adjourned to the next sitting of the Court in Saint Vincent and the Grenadines during the week commencing 26th September 2016.**

Case Name:

Osrick Young

v

The Queen

[SVGHCRAP2013/0006]

Date:

Tuesday, 19th April 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Ms. Samantha Robertson

Respondent:

Mr. Karim Nelson, Crown Counsel

Issues:

High Court criminal appeal against conviction – Murder

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

N/A

Result / Order:

Judgment to be delivered at 2:00pm.

Case Name:

Kenute Lynch

v

The Queen

[SVGHCRAP2012/0006]

Date:

Tuesday, 19th April 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Kay Bacchus-Browne
Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: High Court criminal appeal against conviction – Murder

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

Result / Order: Matter adjourned to 2:00pm

**Case Name: Osrick Young
v
The Queen**

[SVGHCRAP2013/0006]

Date: Tuesday, 19th April 2016

**Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Samantha Robertson
Respondent: Mr. Karim Nelson, Crown Counsel

**Issues: High Court criminal appeal against conviction and
sentence – Murder – Possession of firearm with intent to
commit an offence – Possession of firearm with intent to
injure**

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

Oral Judgment or Decision

Result / Order:

A retrial is ordered.

Reason:

The appellant was convicted of 3 offences: murder, possession of firearm with intent to commit an offence and possession of firearm with intent to injure. The Appellant was sentenced to 16 years imprisonment for murder and 5 years imprisonment on each of the possession offences, the sentences to run concurrently. The appellant appealed against conviction and sentence.

The appellant filed several grounds of appeal; however, only one ground of appeal needed to be addressed, namely, the ground of appeal concerning self-defence. The appellant argued that the defence of self defence was not properly put to the jury and in fact, that the learned trial judge had withdrawn the defence from the jury. Counsel for the Crown conceded this point. Accordingly, the Court allowed the appeal against conviction and quashed the sentence.

The remaining issue was whether or not a retrial should be ordered. Counsel for the appellant referred the Court to the case of *Newton Spence v The Queen* SVGHCRA1998/0020 (delivered 11th November 2002, unreported). In that case, Singh JA, at paragraphs 6 and 7 stated that:

“The ultimate consideration in deciding whether to order a retrial is whether the interests of justice so required...”

“[7] In deciding whether to order a retrial, this Court is required to carry out a balancing exercise, setting out the factors in favor and against the appellant and consider the matter in the round, then decide whether a retrial would amount to a misuse of the process of the Court.”

Singh JA set out several factors the court should consider in ordering a retrial, namely:

- (1) the seriousness or otherwise of the offence;
- (2) the prevalence of the offence;
- (3) the expense and length of time for which the court and jury would be involved in a new trial;
- (4) the fact that any criminal trial is to some extent an ordeal for the defendant and as such he ought not be condemned to go through a second trial through no fault of his unless the interests of justice require him to do so;
- (5) the length of time that will have elapsed between the offence and the new trial if one is ordered;
- (6) the availability of either prosecution or defence evidence; and
- (7) the strength of the prosecution's case.

Singh JA further stated that each case must be decided on its own facts.

The Court considered the seriousness of the offence and the fact that a life was lost. The Court was also of the view that the evidence of the prosecution was strong. The accused was found guilty and the conviction was quashed because of a technicality. The Court considered the prevalence of murder and gun related offences in Saint Vincent and the Grenadines. The Court also considered the fact that the appellant was incarcerated since 2009. The Court concluded, after weighing all the factors that the interest of justice would be best served by ordering a retrial.

Case Name:

Kenute Lynch

v

The Queen

[SVGHCRAP2012/0006]

Date:

Tuesday, 19th April 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Kay Bacchus-Browne

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: High Court criminal appeal against conviction – Murder

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

Result / Order: [Oral delivery]
1. The decision is reserved.
2. The court directs that pending delivery of the judgment, office of the Director of Public Prosecutions obtain the services of a psychiatrist for the purpose of conducting a psychiatric evaluation of the appellant and to submit a report to the Court and counsel by the 30th June 2016.

Reason: Counsel for the Appellant raised the issue of the psychological status of the appellant at the time that the offence was committed, namely, that his mother was crippled; one of his brothers was shot twice and another brother was shot and killed. It was noted that the learned trial judge did not order a psychiatric evaluation of the appellant during the sentencing phase.

Case Name: Anjay Charles
v
The Queen

[SVGHCRAP2013/0016]

Date: Tuesday, 19th April 2016

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

The Hon. Mr. Paul Webster Q.C, Justice of Appeal

Appearances:

Appellant: Ms. Kay Bacchus-Browne

Respondent: Mr. Carl Williams, Crown Counsel

Issues: High Court criminal appeal against conviction – Murder

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

Result / Order: Decision reserved.

Case Name:

**Antonio Gellizeau
v
The Commissioner of Police
[SVGMCRAP2013/0058]**

Date: Wednesday, 20th April 2016

**Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: Mr. Keith Scotland, with him, Mr. Mikhail Charles

Respondent: Ms. Sejilla McDowall holding papers for Mr. Gilbert Peterson

Issues: Magisterial criminal appeal against conviction – Money Laundering

Type of Oral Result / Directions

Order Delivered:

Result / Order:

[Oral delivery]

It is hereby ordered and directed that:

- 1. The respondent files and serves written submissions by Wednesday, 26th May 2016.**
- 2. The appellant shall be at liberty to file and serve reply submissions by Friday, 10th June 2016.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court in the State of Saint Vincent and the Grenadines during the week commencing 26th September 2016**

Reason:

Counsel for the respondent required time to consider the submissions of the appellant.

Case Name:

The Commissioner of Police

v

Vynette Frederick

[SVGMCRAP2015/0021]

Date:

Wednesday, 20th April 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:	Mr. Colin John, Assistant Director of Public Prosecutions
Respondent:	Mr. Andrew Pilgrim, QC, instructed by Mr. Keith Scotland and Ms. Maia Eustace

Issues:

Magisterial criminal appeal against conviction - Making false declaration – Perjury

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

Oral Judgment or Decision

**Result / Order &
Reason:**

[Oral delivery]

- 1. With the leave of the Court and at the request of the appellant, the appeal is withdrawn and accordingly dismissed.**
- 2. No order as to costs.**

Case Name:

Jolan Hepburn

v

The Queen

[SVGHCRAP2012/0023]

Date:

Thursday, 21st April 2016

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Ms. Sejilla McDowall, Crown Counsel

Issues:

High Court criminal appeal against conviction and sentence – Aggravated burglary – Rape – Wounding

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is allowed.**
- 2. The conviction is quashed and the sentence is set aside.**
- 3. The appellant be retried for the offence.**

Reason:

The Appellant was found guilty of the offences of rape, aggravated burglary and wounding and was sentenced to prison terms ranging from 18 years for rape and 7 years for wounding. The appellant appealed his conviction and sentence on the ground that the conviction cannot be supported by the evidence adduced.

Counsel for the appellant refined this ground ground of appeal to include specific complaints about the summation of the learned trial judge. The Court read the summation and noted other areas which properly warranted appellate intervention.

Counsel for the Crown conceded the appeal against conviction. It was clear that the learned trial judge made serious errors in his summation and misdirected the jury concerning the following: recent complaint, corroboration, bad character and hearsay evidence. In addition, the learned trial judge did not put the defence of the appellant, namely, alibi, to the jury.

The remaining issue was whether or not a retrial should be ordered. Counsel for the Crown argued that the interests of justice would be best served by a retrial. Counsel for the appellant strongly opposed a retrial citing the fact that the appellant was incarcerated since 2012 and the fact that one of his alibi witnesses is now of advanced age and that looking at the overall situation it would not be just to order a retrial.

The Court was of the view that considering all the facts and circumstances, it would be in the interests of justice, to order a retrial. The Court expressed the view that because of the time the appellant has been in custody that his retrial be expedited.

Case Name:

**Noel Douglas
v
Gregory Ferrari**

Date: Thursday, 21st April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jomo Thomas

Respondent: Mr. Ronald Marks, with him, Mr. Jemalie John

Issues: Magisterial civil appeal – Oral application for extension of time for leave to appeal

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

Result/Order: [Oral delivery]

1. The oral application for extension of time to appeal against the December 2012 decision is dismissed.
2. The appeal against the quantum of damages is dismissed.
3. The decision of the magistrate is affirmed.
4. Costs to the respondent agreed at \$700.00.

Reason:

With respect to the oral application for extension of time to appeal, the appellant withdrew his appeal against liability and argued before the Court that this was an error. The application was to vacate the order made by the learned magistrate and then seek leave to appeal. The Court was of the view that such an application should be made in writing and there is no application in writing before the Court. In any event, the Court considered that a long time has elapsed since the decision of the magistrate and the explanation given for the delay, that is, the appellant believed he was acting according to the rules of the Court, was not satisfactory.

With respect to the appeal against quantum, the sole issue to be determined was the quantum of damages

awarded to the respondent. The original claim was for \$8,000.00. At the assessment hearing there was evidence that the value was \$6,500.00. This was the only evidence before the magistrate and the Court was of the view that that the learned magistrate properly acted on the basis of the evidence before him. There was no basis on which the Court could be persuaded to disturb the findings of the magistrate.

Case Name: Garvin Providence
v
The Commissioner of Police
[SVGMCRAP2016/0005]

Date: Thursday, 21st April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Joseph Delves

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against sentence –
Possession of firearm and ammunition without licence –
Oral application by counsel for the appellant to withdraw
as counsel – Oral application by appellant for an
adjournment

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

Result / Order: [Oral delivery]
On the application of the appellant, the hearing of this
appeal is adjourned to the next sitting of the Court of

Appeal in Saint Vincent and the Grenadines during the week commencing 26th September 2016.

Reason: There was no objection by the respondent to the application for an adjournment by counsel for the appellant.

Case Name: **Joel McLean**
v
The Commissioner of Police
[SVGMCRAP2015/0043]

Date: Thursday, 21st April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal

Appearances:

Appellant: Ms. Kay Bacchus-Browne

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against sentence –
Possession of firearm without licence

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

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The sentence of four (4) years for the possession of unlicensed firearm is affirmed.
3. The sentence of one and half (1½) years for the possession of ammunition without licence is also affirmed.

Reason:

The Appellant plead guilty to the offence of possession of an unlicensed firearm and ammunition without licence. He was sentenced to four (4) years imprisonment in respect of the firearm offence and 1½ years for the unlicensed ammunition offence. The sentence was appealed on the ground that it was excessive. Learned counsel for the appellant submitted that the learned magistrate had erred in reaching the sentence passed on the appellant by not considering several factors including the appellant's young age of 28 years; and the fact that the appellant plead guilty at earliest opportunity and had shown remorse.

The appellant's counsel further contended that the magistrate erred in stating that the appellant was not remorseful when a counselor's report regarding the appellant's state of mind was submitted to the magistrate.

The Crown conceded that the learned magistrate erred in not applying certain factors when deciding the sentence to be imposed.

The Court considered the maximum sentence that the magistrate could have imposed was seven (7) years and that the notional sentence to be imposed would have been five (5) years. The Court considered the appellant's guilty plea at earliest opportunity was a mitigating factor, however the appellant's possession of two (2) loaded guns at the time of his arrest an aggravating factor. The Court was also of the view that the remorsefulness of the appellant could not have been a major factor in the magistrate's determination of sentence to be imposed.

The Court noted the high prevalence of gun crime in the state. The Court drew attention to the reasoning set out in the earlier decision made by the Court of Appeal during its sitting, namely, *Mike Prescott et al v The Commissioner of Police* in particular the criteria to be applied by the Magistrate. The Court found that the magistrate had applied the correct criteria the maximum sentence that could have been handed down was four (4) years imprisonment.

Case Name:

**Therdio McKie
V
The Commissioner of Police
[SVGMCRAP2015/0004]**

Date:

Thursday, 21st April 2016

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams, Crown Counsel

Issues:

**Magisterial criminal appeal against sentence –
Possession of firearm without licence – Possession of
ammunition without licence**

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

N/A

Result / Order:

**[Oral delivery]
Appeal is adjourned to Friday 22nd April 2016 at 9:00 am.**

Reason:

**Counsel for the respondent requested an adjournment,
and there was no objection by the appellant.**

Case Name:

**Roger Clarke
V
The Commissioner of Police**

[SVGMCRAP2016/0006]

Date: Thursday, 21st April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Magisterial criminal appeal against sentence – Using the property of another without consent of the owner

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

Result / Order: [Oral delivery]
The appeal is allowed to the extent that the payment of \$1,500.00 forthwith is set aside and that the five (5) months imprisonment for nonpayment is varied to the extent that appellant is given three (3) months to pay the fine of \$500.00.

Reason: Furthermore it was an aggravating factor that the offence was committed whilst the Appellant appeals his conviction on the grounds that his punishment was excessive in all circumstances.

The learned magistrate had reasoned that the sentence handed down to the appellant reflected his early guilty plea. The maximum sentence for the offence was one (1) year imprisonment and the appellant was given one (1) year. The Court was of the view that this sentence could not reflect the appellant's early guilty plea. The Court noted however that the magistrate has noted the appellant's seven previous offences which included offences of dishonesty. The Court found this factor of the previous dishonesty offences to be an aggravating factor. In the circumstances the Court could find no reason to

upset the one (1) year sentence imposed by the magistrate.

The magistrate invoked a bond of 22nd May 2015 which the appellant was ordered to pay \$1,500.00 forthwith with default one (1) year imprisonment. The magistrate invoked the bond and imprisoned the appellant for an extra six (6) months. In that regard the Magistrate had erred in that she imposed a one (1) year sentence in default instead of the correct six (6) months granted for by the bond default.

Case Name:

**Eliyet Guy
v
The Commissioner of Police
[SVGMCRAP2014/0052]**

Date:

Thursday, 21st April 2016

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

**Appellant: No appearance
Respondent: Ms. Sejilla McDowall, Crown Counsel**

Issues:

Magisterial criminal appeal against conviction – Damage to property – Resisting arrest

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

Directions

Result / Order:

**[Oral delivery]
1. The respondent to file and serve written submissions with list of authorities on or before 15th June 2016.**

2. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Saint Vincent and the Grenadines during the week commencing 26th September 2016.
3. The Registrar of the High Court shall serve notice of hearing of the appeal on the appellant at least six (6) weeks prior to the sitting of the Court.

Reason: The appellant was not served with the notice of hearing. The Court also noted that the respondent did not file its written submissions.

Case Name: **Augustine Cupid**
V
The Commissioner of Police
[SVGMCRAP2015/0054]

Date: Thursday, 21st April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Sejilia McDowall, Crown Counsel

Issues: Magisterial criminal appeal against conviction – Indecent Assault – Assault causing actual bodily harm – Damage to property – Wounding – Oral application to withdraw the appeal

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

Result / Order: [Oral delivery]
The appeal having been withdrawn by the appellant is accordingly dismissed.

Case Name: Therdio McKie
V
The Commissioner of Police
[SVGMCRAP2015/0004]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: Magisterial criminal appeal against sentence –
Possession of firearm without licence – Possession of
ammunition without licence

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

Result / Order: The appeal is dismissed.

Reason: The Court did not find any basis upon which to disturb
the sentence imposed by the learned magistrate. The
Court found that there was no merit in the appeal.

Case Name: **The Commissioner of Police**
V
Lisa Hooper
Lisa Hooper
V
The Commissioner of Police
[SVGMCRAP2015/0037]

Date: **Friday, 22nd April 2016**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant / **Mr. Jomo Thomas for Lisa Hooper**
Respondent:

Respondent / **Mr. Colin Williams, Director of Public Prosecutions for the**
Appellant: **Commissioner of Police**

Issues: **Magisterial criminal appeal against conviction –**
Possession of a controlled drug – Conspiracy to drug
trafficking – Conspiracy to export controlled drug

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

Result / Order: **[Oral delivery]**
Matter stood down.

Case Name: **Shurn Kyron Chewitt**
V
The Commissioner of Police

[SVGMCRAP2014/0037]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: Magisterial criminal appeal against sentence – Obtaining goods by deception – Oral application to withdraw the appeal

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

Result / Order: [Oral delivery]
Leave is granted to the appellant to withdraw the appeal and the appeal is accordingly dismissed.

Case Name: Desmond Pavy
v
The Commissioner of Police

[SVGMCRAP2015/0051]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions

Issues: Magisterial criminal appeal against sentence – Possession of a controlled drug – Escaping lawful custody

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

Result / Order: [Oral delivery]
The appeal against sentence is dismissed.

Reason: The appellant submitted that his sentences for possession of a controlled drug and escaping lawful custody should run concurrently. Counsel for the respondent opposed the submission and maintained that the sentences should run consecutively.

The Court was not of the view that the sentences should run concurrently. The appellant was serving a nine (9) year prison sentence when he escaped custody and returned to his homeland of Trinidad and Tobago. The appellant was subsequently returned to Saint Vincent and the Grenadines. He pleaded guilty to escaping lawful custody and was sentenced to two (2) years imprisonment.

The Court was of the view that this was not a matter to attract a concurrent sentence. The learned magistrate correctly exercised her discretion to impose consecutive sentences. The Court was of the view that the matters were separate and if the sentences were to run concurrently, it would mean that the appellant would serve no sentence for the escape. The Court considered that this would set a bad precedent.

Case Name: John Dollaway

V
The Commissioner of Police
[SVGMCRAP2015/0052]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Magisterial criminal appeal against sentence – Unlawful and malicious wounding

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

Result/Order: [Oral delivery]
The appeal is struck out due to the absence of the appellant.

Reason: The appellant was served with notice of the hearing in December 2015. Despite service, the appellant did not appear.

Case Name: Kadir Nedd
V
The Commissioner of Police
[SVGMCRAP2015/0026]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Magisterial criminal appeal against conviction and sentence – Unlawful and malicious wounding

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

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The sentence is affirmed.

Reason: The appellant appealed against his conviction but withdrew his appeal against sentence. With respect to the appeal against conviction, the Court found no basis to disturb the sentence imposed by the learned magistrate.

Case Name: Adolphus Adams
v
The Commissioner of Police
[SVGMCRAP2015/0032]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jomo Thomas

Respondent: Mr. Karim Nelson, Crown Counsel

Issues:

Magisterial criminal appeal against conviction – Unlawful assault

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal against conviction is dismissed.**

Reason:

The appellant appealed his conviction of three (3) counts. Two of the counts related to assault and the third count referred to making use of threatening language. The appellant advanced three (3) grounds of appeal:

- 1. That the learned magistrate misdirected herself and failed to address her mind to the possibility of accidental touching.**
- 2. The verdict goes against the weight of the evidence.**
- 3. The magistrate misdirected herself by failing to recognise that the appellant was on his private property when he asked the respondents to remove from his private property and the respondents then challenged him to come onto the public road.**

Both virtual complainants were employees of VINLEC and were there in relation to their work. The appellant evidently took issue and exception to their presence in his property. The Court noted that the appellant had a Security Company on his property.

The learned magistrate heard evidence and in the reasons for her decision said that the appellant's statement to the virtual complainant as stated by one of the virtual complainant's ("Wilkinson"), which she believed to be true: "I want to shoot and kill one of you VINLEC man alyo MC...", coupled with the appellant raising his shirt and placing his hand on what appeared to be a gun, was an

assault without more.

The learned magistrate found the evidence of Wilkinson to be truthful and accurate as he testified only to what he saw. The Court was of the view that the learned magistrate was well positioned to make findings of fact, to assess the credibility of witnesses and to arrive at the conclusion which she did. This Court was of the view that it was in no position, given the findings made, to upset the decision of the learned magistrate as on the evidence there was a clear basis for her conclusions and findings.

There was some discussion as to the charge laid under section 289(c) of the *Criminal Code*, Cap. 171, Revised Laws of Saint Vincent and the Grenadines 2009. Although in the particulars it refers to a public place, the offence does not require that the offence occur in a public place. Accordingly, the Court found no basis to upset the conviction.

Case Name:

**Andrel John
v
The Commissioner of Police
[SVGMCRAP2015/0020]**

Date:

Friday, 22nd April 2016

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Mr. Jaundy Martin
Respondent: Mr. Colin John, Assistant Director of Public Prosecutions**

Issues:

Magisterial criminal appeal against conviction – Causing actual bodily harm

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal is dismissed.**

Reason:

The appellant appealed his conviction of the offence assault occasioning actual bodily harm. The charge related to a domestic dispute between the appellant and his wife. The appellant appealed his conviction on 4 grounds. He argued grounds 1 and 3 together, and then grounds 2 and 4.

Ground 1 complains that the decision was wrong in law and ground 3 complains that the learned magistrate's decision as to the cause of the virtual complainant's injuries was unfair, unjust or procedurally irregular in the absence of direct evidence from the doctor. The learned magistrate made a finding that only a Medical Doctor is qualified make.

Ground 3 relates to the magistrate's findings that the injuries reported on the form appear to be inflicted by a person administering blows and inconsistent with self-inflicted injuries. The appellant argued that this was outside the competence of the learned magistrate and this finding could only be arrived at by a medical doctor. Counsel for the appellant submitted that, the learned magistrate, not so qualified was not entitled to make this finding. While the Court agreed that such a decision could only be arrived at by a medical doctor, the Court was of the view that this did not dispose of the matter.

The magistrate heard the evidence given by the Virtual complainant, evidence of violence inflicted upon her that day and found that her evidence was consistent with and corresponded with the medical form. The learned magistrate itemised the injuries sustained:

- Both cheeks severely swollen with red marks**
- Swelling to the periorbital region**
- Dark discoloration to the lateral aspect of both hands**

Counsel for the appellant argued that the learned

magistrate's finding was not based on the medical form. She used the form to corroborate the evidence which she accepted from the virtual complainant as to the assault upon her that morning and the injuries she received.

The respondent argued that even if the injuries were not self-inflicted, this does not undermine the learned magistrate's findings. The Court agreed with counsel for the respondent.

The Court enquired of counsel whether the offences could be proven without the medical evidence. Mr. John, Crown Counsel helpfully referred the Court to the definition of assault occasioning actual bodily harm as stated by Blackstone. From the definition, the Court was of the view that the magistrate was so entitled to find the appellant guilty of the offence having accepted the testimony of the virtual complainant. The Court was also of the view that there was also adequate evidence for the magistrate to have arrived at her decision.

Grounds 2 and 4 argued by counsel for the appellant, did not advance the Appeal. Accordingly, there was no basis to upset the finding of guilt and the conviction of the appellant.

Case Name:

The Commissioner of Police

V

Lisa Hooper

Lisa Hooper

V

The Commissioner of Police

[SVGMCRAP2015/0037]

Date:

Friday, 22nd April 2016

Coram:

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

The Hon. Mr. Paul Webster Q.C, Justice of Appeal

Appearances:

Appellant: Mr. Jomo Thomas for Lisa Hooper

Respondent: Mr. Colin Williams, Director of Public Prosecutions for the Commissioner of Police

Issues:

Magisterial criminal appeal against conviction and sentence – Possession of a controlled drug – Conspiracy to drug trafficking – Conspiracy to export controlled drug

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appellants appeal in respect of possession of 1235 grams of cocaine with intent to supply is allowed.**
- 2. The appellant's appeal in respect of conspiracy to commit drug trafficking and conspiracy to export 1235 grams of cocaine is dismissed.**
- 3. The appeal of the Commissioner of Police in respect of the sentences is allowed and the sentences are quashed.**
- 4. In respect of the offence of conspiracy to commit drug trafficking, the appellant is sentenced to two (2) years imprisonment with a fine of \$27,000.00 payable in six (6) months, in default six (6) months in prison.**
- 5. In respect to the offence of conspiracy to export 1235 grams of cocaine, the appellant is sentenced to two (2) years imprisonment.**
- 6. Sentences are to run concurrently.**

Reason:

The appellant, Lisa Hooper, was convicted of three (3) offences: (1) possession of 1235 grams of cocaine with intent to supply; (2) conspiracy to commit drug trafficking; (3) conspiracy to export 1235 grams of cocaine. She was sentenced for the offences as follows:

- a. In relation to the offence of possession with intent to supply she was fined \$27,000.00; \$13,500.00 forthwith, in default, two (2) years imprisonment. Balance to be paid by 23rd June 2014, in default, two (2) years**

imprisonment.

- b. Conspiracy to commit drug trafficking – three (3) years imprisonment, suspended for three (3) years.
- c. Conspiracy to export 1235 grams of cocaine – three (3) years imprisonment, suspended for three (3) years.

The sentences were to run concurrently. The Ms. Hooper has appealed her conviction. The respondent, the Commissioner of Police, has appealed the sentences imposed.

The Ms. Hooper advanced five (5) grounds of appeal. Ground 1 was that the learned magistrate erred when she began the trial and refused the appellant's request to view the video tape of the appellant allegedly frequenting the co-accused's hotel room. The Court noted that the police in fact did not have that tape; therefore, the Court found that the issue raised in ground 1 could not be sustained and the ground of appeal was accordingly dismissed.

Ms. Hooper's second ground of appeal was that the learned magistrate erred when she began the trial and refused the appellant the opportunity to view a log of incoming and outgoing calls. The Court was of the view that this ground of appeal could not be sustained. The Police did not have such a telephone log and this ground of appeal was accordingly dismissed.

Ms. Hooper's third complaint was that the learned magistrate erred when she failed to apply the case law to the charges where the evidence was inefficient to prove all the elements of the charge. In support of this ground of appeal, counsel for Ms. Hooper referred to the case of *R v Lambert* [2001] UKHL 37. Counsel pointed out that the prosecution did not establish possession by the appellant. Counsel stated that there was no custody or control by the appellant and knowledge and these ingredients were vital in sustaining a charge of possession. The Court was concerned in relation to this aspect of the case.

The evidence which the Crown relied on at trial came from Nathan Smith, the co-accused. He pleaded guilty and was then used as a primary witness in the case against Ms. Hooper. Nathan Smith was a British National. The appellant met him at the airport, took him to the Hotel, bought groceries and generally treated him well.

Nathan Smith was checking in at the airport when his bag was checked. In the bag were three (3) sealed tins which on examination were found to contain cocaine. His evidence was that the tins were given to him by the appellant. The Court noted that the appellant was not with Nathan Smith at the airport when the tins were found in his bag.

Counsel for the Appellant contended that given the factual matrix, there was no possession by Lisa Hooper. The respondent contended however that the factual matrix is peculiar. The respondent suggested that one can be found guilty of possession even if the drug is in the custody of someone else. The Court did not take issue with this proposition as it was supported by case law. Counsel for the respondent also referred the Court to provisions in the Laws of Saint Vincent and the Grenadines.

The Court was of the view that given the peculiar factual matrix of this case, it is not possible to fix the appellant with possession of the drugs. However, the Court accepted that one can be found in possession even if the drugs are in someone else's custody; however, in this case, possession by the appellant was not established. On that basis, the Court allowed the appeal with respect to possession of a controlled drug.

The Court was not of the view that the same consideration applied to the other charges. There was sufficient evidence before the learned magistrate to convict the appellant on the other two (2) charges and the Court found no basis to upset those convictions under this ground of appeal.

Ms. Hooper also appealed also appealed on the ground that the learned magistrate failed to give reasons for finding the appellant guilty. Counsel for the appellant referred to the Saint Vincent and the Grenadines case of *Casanki Quow et al v Commissioner of Police* SVGMCRAP2010/0022. Counsel for the appellant stated that the learned magistrate did not give reasons at the time of sentence and the reasons were given much later and in any event were inadequate to sustain a conviction.

The Court looked at the reasons and held the view that the reasons could be gleaned from the learned magistrate's reasons for decision. The Court was of the view that it could not be said that a perusal of the magistrate's reasoning would leave one in doubt as to the reasoning for her findings. Accordingly, the Court held that there was no merit in this ground of appeal.

Ms. Hooper's last ground of appeal concerned the decision of the learned magistrate to compel the appellant to take the oath and be cross examined on an audio/video. This, the appellant contended ran afoul of the appellant's right to remain silent. Counsel for the appellant argued that that appellant was forced to be sworn give evidence and be cross examined. Counsel for the appellant contended that this procedure was irregular. He indicated that the record of appeal was defective and it would suggest material irregularity in the trial process.

The Court held that if the counsel for the appellant was aware of this he ought to have taken the necessary steps to remedy this situation and should have filed the relevant affidavit evidence. This was not done. The Court was therefore left with the printed record as is. During the arguments counsel for the appellant suggested that the prosecutor/police officer could be called to give evidence. The Court stated that this is not the procedure in the Court of Appeal and the Court can only proceed on the record of appeal which is before it. This Ground of appeal therefore failed.

The Commissioner of Police appealed against sentence. In his appeal the learned the learned Director of Public Prosecutions pointed to the vast disparity in the sentences imposed on Nathan Smith and that of Ms. Hooper.

Nathan Smith was, on a guilty plea, sentenced to two (2) years imprisonment whereas Ms. Hooper, having gone through a trial, was fined \$27,000.00; \$13,500.00 forthwith in default two (2) years imprisonment. Balance to be paid by 23rd June 2014, in default two (2) years imprisonment.

The learned Director of Public Prosecutions argued that there undoubtedly is a vast disparity in the sentences imposed on the Ms. Hooper and that of Nathan Smith and

there appeared to be no rational basis for this disparity. The Learned Director of Public Prosecutions informed the Court that the matters were heard before different magistrates.

The Court was of the view that the sentence imposed on Ms. Hooper lenient and that the appeal of the Commissioner of Police was well founded. In the circumstances the Court allowed the appeal of the Commissioner of Police against the sentence imposed in relation to drug trafficking conspiracy and conspiracy to export.

Case Name: Meshach Lewis
V
The Commissioner of Police
[SVGMCRAP2015/0011]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Ronald Marks, with him, Mr. Jemalie John
Respondent: Mr. Colin Williams, Director of Public Prosecutions

Issues: Magisterial criminal appeal against conviction and sentence – Unlawful and malicious wounding

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

Result / Order: [Oral delivery]
The appeal is dismissed and the sentence is affirmed.

Reason: The appellant appealed his conviction of 3 years imprisonment for the offence of unlawful wounding. The Court was of the view that counsel for the appellant did not point to any error in principle on the part of the learned magistrate in imposing the 3 year sentence. Counsel for the appellant suggested that the appellant be allowed to pay compensation as opposed to the custodial sentence. In his sentencing remarks, the learned magistrate noted the fact that: there was a full trial; a previous conviction for similar offences; the appellant committed the act while on bail; and the weapon was a cutlass. Given the circumstances of the case, the Court found no error in principle by the learned judge in imposing a three (3) years sentence.

Case Name: Erickson Browne
Raymond Stephenson
v
The Commissioner of Police
[SVGMCRAP2016/0002]

Date: Friday, 22nd April 2016

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Duane Daniel
Respondent: Mr. Colin John, Assistant Director of Public Prosecutions

Issues: Magisterial criminal appeal against conviction – Stealing

Type of Oral Result/Order Oral Judgment or Decision

Delivered:

Result/Order:

[Oral delivery]

- 1. The appeal against the conviction of the 2nd appellant, Mr. Raymond Stephenson, is allowed. The Appellant is discharged.**
- 2. The appeal against the conviction of the 1st appellant, Mr. Erickson Browne, is allowed.**
- 3. The conviction is quashed.**

Reason:

The prosecution conceded the appeal against the 2nd appellant, Mr. Raymond Stephenson. In relation to the first appellant, the evidence presented against him did not satisfy the Court that the burden of proof against him was discharged. The learned magistrate took into consideration what she described as the fact that the appellant did not deny the allegations and proceeded in a manner attaching weight to this in her decision making. In fact, the appellant denied the allegations. The Court was not satisfied with the strength of the evidence and found that there were several inconsistencies in the evidence. In the circumstances, the appeal by the first appellant was allowed.