

COURT OF APPEAL SITTING
SAINT CHRISTOPHER AND NEVIS
1st – 5th June 2015

STATUS HEARING

Case Name:	Lynn Bass v St. Kitts-Nevis-Anguilla National Bank Limited [SKBHCVAP2009/0004]
Date:	Monday, 1 st June 2015
Before:	The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Ms. Constance Mitcham, with her, Ms. Rivi Warner-Lake
Respondent:	Ms. Keisha Spence
Issues:	Status of matter
Type of Oral Result/Order Delivered:	N/A
Result / Order:	Further status hearing of this appeal to be held at the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week of 12 th October 2015.
Reason:	The parties agreed to meet sometime during the month (June 2015) to finalise the record of appeal.

Case Name:

Eugene Hamilton

v

[1] Cedric Liburd

[2] Leroy Benjamin

[3] Wayland Vaughn

[SKBHCVAP2011/0025]

Date:

Monday, 1st June 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Ms. Constance Mitcham, with her, Ms. Rivi Warner-Lake

Respondents:

**Mr. Delano Bart, QC for the 1st respondent
Ms. Simone Bullen Thompson for the 2nd and 3rd respondents**

Issues:

Status of matter – Appeal against quantum of fees awarded

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

Directions

Result / Order:

- 1. The appellant shall file the record of appeal, which the parties agree shall consist of the judgment below, the application for costs, all affidavits filed in the matter and the notice of appeal filed and served on or before 30th June 2015.**
- 2. The appellant is to file and serve written submissions on or before 21st July 2015.**
- 3. The respondent shall file and serve written submissions in reply, if necessary, on or before 28th August 2015.**
- 4. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing 12th October 2015.**

Case Name: Samuel Tyson
v
The Director of Public Prosecutions
[SKBHCRAP2011/0012]

Date: Monday, 1st June 2015

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

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez

Issues: Status of matter – Appeal against conviction and sentence – Indecent assault

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order:

1. Bail is granted in the sum of \$5,000.00 with one surety.
2. The appellant shall report to the Charlestown Police Station every Monday between 6:00 a.m. and 6:00 p.m.
3. The appellant shall surrender all travel documents to the Registrar of the High Court.

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

Date: Monday, 1st June 2015

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon, with her, Mr. Teshaun Vasquez

Issues: Status of matter – Appeal against conviction and sentence – Indecent assault

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order:

1. Bail is granted to the appellant in the sum of \$10,000.00 with one surety.
2. The appellant shall report to the St. Paul's Police Station every Monday between 6:00 a.m. and 6:00 p.m.
3. The appellant's travel documents shall remain in the custody of the Registrar of the High Court until the determination of this matter.

Case Name:

Nagico Insurance Company Limited
v
[1] Travia Douglas
[2] Shivoughn Warde
[3] Dwight Warde

[SKBHCVAP2014/0007]

Date: Monday, 1st June 2015

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

Appearances:

Appellant: Mr. Thomas Astaphan, QC, with him, Mr. Damian Kelsick

Respondent: Ms. Camilla Cato holding papers for Mr. Patrick Patterson, representing the 1st respondent

Issues: Status of matter – Appeal against decision on assessment of damages – Whether learned judge erred in finding appellant to be jointly liable with 2nd and 3rd respondents to pay damages to 1st respondent

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The 1st respondent has leave to file written submissions on or before June 15th 2015.
2. The appellants have leave to file and serve written reply on or before 30th June 2015.
3. The appellants have leave to file a Supplemental Bundle to include the actual notice of appeal and the order granted on or before 10th June 2015.
4. The hearing of this appeal is set down for the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 12th October 2015.

APPLICATIONS & APPEALS

Case Name: Khrystus Wallace
v
S.L. Horsford & Company

[SKBHCVAP2015/0001]

Date: Monday, 1st June 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: In person
Respondent: Ms. Felicia Johnson

Issues: Application for extension of time to file and serve
recognizance to prosecute appeal

**Type of Oral
Result/Order
Delivered:** Oral judgment or decision

Result / Order: [Oral delivery]
By consent, the application is withdrawn with costs
to be paid to the respondent by the applicant in the
sum of \$750.00, by 1st July 2015.

Reason: The Court was of the view that the application had no
merit. Nothing which was said showed that the
appeal had any chance of success.

**In the matter of SRP, LLC a limited liability
Company formed under the Nevis Limited
Liability Company Ordinance 1995
and
In the matter of an application by PAUL B.
TARTELL M.D., and IRWIN GEDULD the
Trustee of the 1996 Tartell Family Irrevocable
Trust, and the 2002 Paul B. Tartell Family
Trust, members of the Company, for and
Order for its Judicial Dissolution pursuance
to Section 52 of the aforesaid Ordinance**

[SKBHCVAP2014/0029]

Date: Monday, 1st June 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellants: Ms. Suzie St. Brice (for Mr. Paul Tartell and Mr. Irwin Geduld)

Respondent: Ms. Midge Morton (for Dr. Lee Mandel, MD), with her, Ms. Anmarieta Staines

Issues: Petition filed by appellants for dissolution of company SRP, LLC – Failure to comply with order of court dated 25th March 2014 – Whether learned judge erred in striking out appellants’ witness statement – Whether learned judge erred in striking out appellants’ petition for want of prosecution – Whether learned judge erred in exercise of her discretion

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The order of Williams J made on 6th October 2014 is hereby set aside.
3. The respondents shall bear the costs of this appeal fixed in the sum of \$1,500.00 payable by 1st July 2015.
4. The matter is remitted to the High Court.

Reason: The Court held that the learned trial judge, in striking out the appellants’ petition, erred in principle in the exercise of her discretion in all the circumstances of the case. The learned judge failed to have regard to the principle of proportionality as expressed in cases

such as *Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6 which was applied by this Court in *George Allert (Administrator of the Estate of George Gordon Matheson, deceased) et al v Joshua Matheson et al* (GDAHCVAP2014/0007 (delivered 24th November 2014, unreported)), when she struck out the appellants' witness statement and went further to strike out their entire petition.

The Court noted that the order of 25th March 2014 imposed no sanction for non-compliance with any of the directions and orders given on that date for moving the matter forward to trial. The Court further noted that that very order stated that the trial of the petition was to take place on a date to be fixed by the court not before November 2014. Thus, no date had been fixed for trial at that stage. Accordingly, the draconian step of striking out sought and obtained by the respondent, cannot, in the interests of justice, be the appropriate relief or sanction to be imposed for failure to file an affidavit in time, particularly since the Court already had before it the appellants' petition and an affidavit in support of that petition.

Case Name:

Lindsay Fitz Patrick Grant

v

[1] Rupert Herbert

[2] Leroy Benjamin

[3] Wentford Rogers

[SKBHCVAP2012/0001]

Date:

Monday, 1st June 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Ms. Marguerite Foreman, with her, Ms. Teshari John

Respondents: Ms. Angelina Gracy Sookoo for the 1st respondent
Ms. Simone Bullen Thompson for the 2nd and 3rd respondents

Issues: Interlocutory appeal – Costs – Quantum – Election petition – Quantification of costs in election petition – Whether learned judge erred in his assessment of costs in court below – Whether learned judge erred in finding that costs claimed by respondents (in amount of some EC\$1,310,000.00) against private citizen (i.e. an election candidate) were “reasonable” – Whether learned judge erred in finding that costs sought by respondents were reasonable notwithstanding fact that he had earlier found that counsel for respondents had not submitted bills to support their invoices and some invoices submitted could not be located – Whether learned judge erred in fact in failing to consider appellant’s statements in affidavit in response to application for quantification of costs which affidavit contained basis for view that costs applied for by respondents were exorbitant

Type of Oral Result/Order Delivered: N/A

Result / Order: The matter is stood down to 2:00 p.m.

Case Name: Dennis Carey
v
Kenyon Archer

[SKBMCVAP2013/0007]

Date: Monday, 1st June 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal

**The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondent: Ms. Miselle O'Brien

Issues:

Appeal against decision of learned magistrate dismissing appellant's claim for damages for assault and battery – Whether decision unreasonable and cannot be supported having regard to evidence – Whether decision of learned magistrate was such that magistrate viewing the circumstances reasonably could not properly have so decided – Whether learned magistrate erred in the exercise of her discretion in refusing appellant's application to be allowed to give evidence at close of his case concerning damage incurred by him as a result of assault and battery

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

N/A

Result / Order:

Matter stood down until 2:00 p.m.

Case Name:

**General Security Services Limited
v
St. Christopher and Nevis Solid Waste
Management**

[SKBMCVAP2013/0021]

Date:

Monday, 1st June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal**

[Ag.]

Appearances:

Appellant: Mr. Terence Byron

Respondent: Mr. Perry Joseph

Issues:

Contract – Security services to be provided to respondent by appellant – Whether terms of contract breached by appellant – Termination of contract by respondent – Sums owed to appellant at time of termination of contract – Case dismissed by learned magistrate – Whether learned magistrate erred in principle insofar as she based her decision on ground that it would be unjust for respondent to have to pay appellant 3 months wages in lieu of notice although this was effect of express intention of the parties stipulated in agreement between them – Whether learned magistrate erred in dismissing appellant's claim and awarding costs of \$1,000.00 against appellant having stated that: i) respondent is entitled to treat contract as never existing; ii) respondent is entitled to throw contract out the window along with the clause in it that spoke to the 3 months' notice; iii) the 3 months' notice would operate when there was an amicable discharge, such as if respondent found cheaper security firm – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether decision of learned magistrate based on wrong principle or was such that magistrate viewing the circumstances reasonably could not properly have so decided

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

Directions

Result / Order:

[Oral delivery]

1. The hearing of this appeal is adjourned until Thursday, 4th June 2015.
2. The appellant shall file and serve skeleton arguments by Tuesday, 2nd June 2015 at 1:00 p.m. since counsel has recently been retained.

Reason: The Court was of the opinion that the matter had been on the list for far too long and needed to be finalised.

Case Name: Pinneys Hotel Development Ltd.
v
The Bank of Nevis Limited
[SKBHCVAP2015/0002]

Date: Monday, 1st June 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Applicant:	Ms. Camilla Cato holding papers for Ms. M. Angela Cozier
Respondent:	No appearance of respondent either by representative or counsel

Issues: Application for leave to withdraw appeal

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order: [Oral delivery]
Leave is granted to withdraw the application for leave to appeal and the application is hereby dismissed.

Reason: The Court was unaware as to what to do in relation to the issue of costs as there was no representation from the parties for such.

Case Name:

Lindsay Fitz Patrick Grant

V

[1] Rupert Herbert

[2] Leroy Benjamin

[3] Wentford Rogers

[SKBHCVAP2012/0001]

Date:

Monday 1st June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Marguerite Foreman, with her, Ms. Teshari John

Respondents:

**Ms. Angelina Gracy Sookoo for the 1st respondent
Ms. Simone Bullen Thompson for the 2nd and 3rd
respondents**

Issues:

**Interlocutory appeal – Costs – Quantum – Election
petition – Quantification of costs in election petition –
Whether learned judge erred in his assessment of
costs in court below – Whether learned judge erred in
finding that costs claimed by respondents (in amount
of some EC\$1,310,000.00) against private citizen (i.e.
an election candidate) were “reasonable” – Whether
learned judge erred in finding that costs sought by
respondents were reasonable notwithstanding fact
that he had earlier found that counsel for
respondents had not submitted bills to support their
invoices and some invoices submitted could not be
located – Whether learned judge erred in fact in
failing to consider appellant’s statements in affidavit
in response to application for quantification of costs
which affidavit contained basis for view that costs
applied for by respondents were exorbitant –
Application for adjournment by 1st respondent –
Costs no longer sought against appellant by 2nd and**

3rd respondents

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

Directions

Result / Order:

[Oral delivery]

- 1(a). Time will be allowed to finalise the terms of any consent order in respect of the second and third respondents and the appellant having indicated that they are seeking to arrive at terms for the entry of the consent order in relation to the appeal. Further time is hereby allowed to do so.**
- 1(b). On the finalisation of the terms of a consent order the parties shall file same with the Court and transmit it to the Court of Appeal Headquarters in Saint Lucia at any time following the finalisation, for approval by the Court.**
- 2. In relation to the appeal in respect of the 1st respondent and at the request of the 1st respondent the hearing of this appeal which shall be treated as an interlocutory appeal is adjourned to the next sitting of the Court in the Federation of Saint Christopher and Nevis. The costs of the day occasioned by this adjournment shall be borne by the 1st respondent fixed in the sum of \$1,500.00 to be paid on Tuesday, 16th June 2015.**

Reason:

The appellant and 2nd and 3rd respondents were in the process of negotiating a settlement and needed time to conclude it.

In relation to the 1st respondent, it was indicated that Senior Counsel who was representing him (Mr. Anthony Astaphan, SC) was out of the jurisdiction but would request an adjournment so that he could be heard in the appeal.

Case Name:

**Dennis Carey
v
Kenyon Archer**

[SKBMCVAP2013/0007]

Date:

Monday, 1st June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondent: Ms. Miselle O'Brien

Issues:

Appeal against decision of learned magistrate dismissing appellant's claim for damages for assault and battery – Whether decision unreasonable and cannot be supported having regard to evidence – Whether decision of learned magistrate was such that magistrate viewing the circumstances reasonably could not properly have so decided – Whether learned magistrate erred in the exercise of her discretion in refusing appellant's application to be allowed to give evidence at close of his case concerning damage incurred by him as a result of assault and battery

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

Oral judgment or decision

Result / Order:

[Oral delivery]

- 1. Appeal dismissed.**
- 2. Costs awarded to the respondent, Mr. Archer, in the sum of \$500.00 to be paid by Friday, 7th August 2015.**

Reason:

The Court held that it was not in a position to disturb the learned magistrate's findings of fact. The present

case did not reach a threshold for the Court to find otherwise. There was evidence before the learned magistrate upon which she could have properly concluded that the appellant had committed the offence.

Case Name:	Allister Forde V The Director of Public Prosecutions [SKBHCRAP2011/0024]
Date:	Tuesday, 2nd June 2015
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances	
Appellant:	Mr. John Cato
Respondent:	Mr. Travers Sinanan, Director of Public Prosecutions
Issues:	Appeal against sentence – Shooting with intent – Application for adjournment until October sitting of Court of Appeal in order to allow appellant to file an appeal against conviction
Type of Oral Result/Order Delivered:	N/A
Result / Order:	[Oral delivery] Hearing of this appeal is adjourned to the next sitting of the Court of Appeal during the week commencing 12th October 2015.
Reason:	The Court held that the hearing of this appeal had to be traversed, but that this was appalling, having

regard to the directions previously given by the Court of Appeal earlier in 2015 and well as those from the case management hearing on 19th May 2015. The appellant seemed to have done more than what counsel for the appellant had done, in at least putting forward consistently the position he wished to take. There were no grounds of appeal and indeed no appeal before the Court at that stage against conviction.

The appellant was granted an adjournment in the interests of justice.

Case Name: **Nevis Express Limited**
v
St. Kitts International Ground Services Limited

[SKBMCVAP2013/0017]

Date: **Tuesday, 2nd June 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Dr. Henry Browne, QC holding papers for Mr. Karlweis Liburd
Respondent:	No appearance

Issues: **Application for leave to have matter withdrawn**

Type of Oral Result/Order Delivered: **Oral judgment or decision**

Result / Order: **[Oral delivery]**

The matter is withdrawn with the leave of the court.

Case Name: **Claricia Belle**
v
Jeneve Mills

[SKBMCVAP2014/0001]

Date: **Tuesday, 2nd June 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: **Mr. Nassibou Butler**
Respondent: **Ms. Miselle O'Brien**

Issues: **Application to have consent order approved**

Type of Oral **Oral judgment or decision**
Result/Order
Delivered:

Result / Order: **[Oral delivery]**
The consent order filed on 1st June 2015 is hereby
approved and entered as an order of the Court with
consent.

Case Name: **Jeannie Walters**
v
Melvern Warner

[SKBMCVAP2014/0002]

Date: Tuesday, 2nd June 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Dr. Henry Brown, QC holding papers for Mr. Hesketh Benjamin

Issues: Appeal against an order of the learned magistrate for judgment summons

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order: The appeal is hereby dismissed. There is no order as to costs.

Reason:

The Court held that there was no merit in this appeal which was against the order of the learned magistrate made on 5th February 2014 under which a judgment summons was issued to enforce payment of a judgment debt created by an order of the Court made on 15th November 2013. The notice of appeal which, by its grounds, purported to challenge the learned magistrate's decision made on 15th November 2013, was filed on 21st February 2014, and would have, in any event, been out of time in relation to the 15th November 2013 decision.

Further, there was no reason to disturb the learned magistrate's order of 5th February 2014, ordering the payment of the judgment debt by installments of \$400.00 per month in the absence of the appellant, having regard to the circumstances and the failure of the appellant to appear notwithstanding the magistrate's finding of due service of the judgment summons upon her. The learned magistrate could

not be faulted for exercising her powers to proceed to hear the judgment summons in the absence of the appellant.

The Court further stated that would be no order as to costs on dismissal of this appeal.

Case Name:	Melvena Kelly v The Director of Public Prosecutions [SKBHCRAP2012/0006]
Date:	Wednesday, 3rd June 2015
Coram	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Hesketh Benjamin, with him, Dr. Henry Browne, QC
Respondent:	Mr. Teshawn Vasquez
Issues:	Appeal against sentence – Manslaughter – Application for adjournment to facilitate new psychiatric report
Type of Oral Result/Order Delivered:	N/A
Result / Order:	Hearing of the matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 12th October 2015.

Reason: To allow a revised psychiatric report in respect of the appellant to be obtained.

Case Name: **Jahdell Browne**
V
The Director of Public Prosecutions
[SKBHCRAP2012/0008]

Date: Wednesday, 3rd June 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Hesketh Benjamin, with him, Dr. Henry Browne, QC
Respondent:	Mr. Teshaun Vasquez

Issues: Appeal against sentence – Unlawful wounding – Manslaughter – Application for adjournment

Type of Oral Result/Order Delivered: N/A

Result / Order: Hearing of the matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week 12th October 2015.

Reason: The adjournment was granted to allow a revised psychiatric report for the appellant to be obtained.

Case Name:

**Sherwin Williams
v
The Director of Public Prosecutions**

[SKBHCRAP2012/0005]

Date:

Wednesday, 3rd June 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Sandra Maynard

Respondent:

Ms. Greatess Gordon

Issues:

**Appeal against sentence – Indecent assault –
Sentence of 10 years imposed on appellant –
Whether sentence imposed was too harsh**

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

Oral judgment or decision

Result / Order:

- 1. Appeal against sentence is allowed.**
- 2. The sentence of 10 years is varied to 6 years.**

Reason:

**The Court was satisfied that the learned judge erred
in imposing the maximum sentence on the appellant.**

**In this case, the aggravating factors outweighed the
mitigating factors. The Court held that the
appropriate starting point for sentencing would be 5
years, and then, taking the aggravating factors into
account, another year should be added on to this to
give a total of 6 years.**

Case Name:

**Kaspar Rouse
v
The Director of Public Prosecutions**

[SKBHCRAP2012/0025]

Date:

Wednesday, 3rd June 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. John Cato

Respondent: Mr. Teshaun Vasquez

Issues:

**Appeal against sentence – Wounding with intent –
Sentence of 6 years 7 months imposed by learned
judge – Whether sentence imposed was too harsh**

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

Oral judgment or decision

Result / Order:

**Appeal against sentence is dismissed. Sentence of 6
years and 7 months is affirmed.**

Reason:

**The appellant appealed his sentence of 6 years and 7
months imprisonment. The Court considered the
factors in mitigation which were that the appellant:
pleaded guilty; was in his youth; and was a
productive member of society. The Court also
considered the weight of the factors in aggravation,
namely, the use of a weapon, and the serious injury
caused to the virtual complainant, who sustained a
punctured lung. The learned judge did consider the
plea of guilty and gave the appellant a credit of one
third for this. The judge arrived at the sentence of 6
years, 7 months after starting off with a notional**

sentence of 10 years and then applying the one third discount for the appellant's guilty plea. However, counsel for the appellant felt that the judge should have given more weight to rehabilitation and the Social Inquiry Report.

The Court, after hearing the arguments of counsel on both sides, took the view that the sentence of 6 years and 7 months was appropriate.

Case Name:

George Welsh
v
The Director of Public Prosecutions
[SKBHCRAP2012/0009]

Elroy Williams
v
The Director of Public Prosecutions
[SKBHCRAP2012/0010]

Junior Sabratie
v
The Director of Public Prosecutions
[SKBHCRAP2012/0011]

Curtis Long
v
The Director of Public Prosecutions
[SKBHCRAP2012/0012]

Date:

Wednesday, 3rd June 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Hesketh Benjamin (for George Welsh)
Mr. Nassibou Butler (for Curtis Long)
Mr. John Cato (for Junior Sabratie)
Mr. Elroy Williams in person

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues: Appeals against sentence – Robbery – Accessory before the fact – George Welsh sentenced to 13 years imprisonment – Elroy Williams, Junior Sabratie and Curtis Long sentenced to 13 years and 3 months imprisonment – Whether sentences imposed were too harsh

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order: The appeal against sentence is allowed to the extent that the sentences are varied accordingly:

1. Junior Sabratie and Curtis Long are sentenced to 11 years imprisonment. Time spent on remand of 11 months to be deducted from sentence.
2. Elroy Williams is sentenced to 10 years. Time on remand is to be deducted from that amount.
3. George Welsh is sentenced to 8 years imprisonment. Time on remand is being deducted from this 8 years.

Reason: The appellants pleaded guilty to the offence of robbery and were sentenced to 13 years and 3 months imprisonment (except George Welsh, who was sentenced to 13 years imprisonment). The maximum sentence for this offence is 20 years imprisonment. The offence was clearly very well planned and executed, with Elroy Williams as the

chief planner and involved in recruiting the appellants. He even described it as a “big pay day”. The robbery was carried out in masks with arms. There were 17 persons on the bus which was robbed and it occurred on a popular tourist site. It was obvious to the Court that the aggravating factors greatly outweighed the mitigating factors.

The Court, noting that the maximum sentence was 20 years, took the view that an appropriate notional sentence would be 12 years. This 12 years would be subject to a one third discount based on the guilty pleas of the appellants. In imposing sentence, the learned trial judge ought to have considered the respective roles of each appellant in the commission of the offence. The Court was conscious of the fact that Elroy Williams was the chief planner and executor. The Court also took into account the fact that the appellants Junior Sabratie and Curtis Long were the ones who were armed with firearms, and it stated that the sentencing ought to reflect this fact.

George Welsh provided transportation to the other appellants to get to the site. The Court was of the view that his sentence must reflect the exact nature of his participation, and accordingly, ought to be less than the sentences imposed on the other appellants. Using the benchmark of 12 years and discounting this by one third for their guilty pleas, the Court arrived at 8 years. This 8 years must be revised upward to take into account the great aggravation of this crime. The Court held that an additional three years would be appropriate, which would take the sentence to 11 years. Therefore, the Court was of the view that the sentence for Junior Sabratie and Curtis Long should be 11 years.

With respect to Elroy Williams, the Court had regard to the critical role he played in the commission of the offence, but was inclined to reduce his time by 1 year insofar as he was not armed with a firearm. With respect to George Welsh, the Court noted that he had provided the transportation for the other appellants to get to the scene and took the view that his sentence must reflect the role he played. The Court therefore held that a sentence of 8 years would be appropriate,

since his role was not the same as Junior Sabratie and Curtis Long who were armed with firearms, nor as that of Elroy Williams who was chief planner and executor.

Case Name:

[1] Exzavier Elliott

[2] Jervin Rawlins

[3] Philip Jones

v

The Director of Public Prosecutions

[SKBHCRAP2011/0033]

[SKBHCRAP2011/0032]

[SKBHCRAP2011/0031]

Date:

Wednesday, 3rd June 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

**Mr. Hesketh Benjamin (for Philip Jones)
Mr. John Cato (for Jervin Rawlins)
Mr. Exzavier Elliott in person**

Respondent:

Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

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

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

Directions

Result / Order:

1. The appellants Philip Jones and Jervin Rawlins are to file written submissions on or before the 4th July 2015.
2. The appellant Exzavier Elliot is to file submissions on or before the 4th August 2015.
3. The respondent is to file skeleton submissions on or before 11th September 2015.
4. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 12th October 2015.

Case Name:

**Carl Warner
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0020]

Date:

Thursday, 4th June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Dr. Henry Browne, QC

Respondent:

Mr. Giovanni James

Issues:

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

Type of Oral

Directions

**Result/Order
Delivered:**

Result / Order:

1. The appellant shall file and serve written submissions together with copies of the authorities relied on no later than Friday, 7th August 2015.
2. The respondent shall file and serve supplemental written submissions in response, if necessary, by 8th September 2015.
3. Hearing of appeal is adjourned to the next sitting of the Court of Appeal, commencing 12th October 2015.

Reason:

To allow the appellant to prepare written submissions.

Case Name:

Emmanuel Mills

v

The Director of Public Prosecutions

[SKBHCRAP2011/0007]

Date:

Thursday, 4th June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. O’Grenville Browne, with him, Dr. Henry Browne,
QC and Ms. C. Marissa Hobson-Newman**

Respondent:

Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

**Appeal against conviction and sentence – Rape –
Attempted Robbery – Burglary – Application for
matter to be adjourned to the next sitting of Court of
Appeal**

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

Directions

Result / Order:

1. The appellant shall file and serve written submissions together with copies of the authorities relied on no later than Friday, 7th August 2015.
2. The respondent shall file and serve supplemental written submissions in response if necessary by 8th September 2015.
3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal commencing the 12th October 2015.

Reason:

To allow the appellant to prepare written submissions.

Case Name:

Glenville Isles

v

The Director of Public Prosecutions

[SKBHCRAP2011/0030]

Date:

Thursday, 4th June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. O’Grenville Browne, with him, Dr. Henry Browne,
QC and Ms. C. Marissa Hobson-Newman**

Respondent:

Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Attempted

murder – Whether conviction sound in law – Whether learned trial judge gave proper directions to jury on issue of identification – Whether learned judge gave proper directions to jury on issue of alibi – Whether there was violation of appellant’s rights which resulted in miscarriage of justice – Whether sentence was too harsh

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

Oral judgment or decision

Result / Order:

The appeal is allowed, the matter is remitted to the High Court to be retried for the offence of attempted murder.

Reason:

This was an appeal against conviction for attempted murder on the grounds of the misdirection of the learned trial judge on the issue of identification and the judge’s failure to give the Turnbull direction. The second ground of the appeal was that the judge failed to give directions on alibi.

The Court was of the view that the learned trial judge failed to give the requisite directions in relation to the recognition in circumstances where the case turned on the virtual complainant’s recognition. The learned trial judge needed to give a stern warning on identification/recognition since the virtual complainant said she recognized the appellant in circumstances where the lighting was an issue, the length of time was an issue, the window had a screen, and the fact that the virtual complainant was awakened from her sleep. The learned trial judge should have brought this to the jury’s attention in his summation. He failed to even advert the jury’s attention to the applicable principle and warning that was required.

In *Yourrick Furlonge v The Queen* ANUHCRA2009/0006 (delivered 27th January 2014, unreported), this Court underscored the importance of the trial judge paying attention to the Turnbull warning. The learned trial judge simply did not pay

regard to the Turnbull directions and did not point out the strengths and weaknesses of the recognition evidence.

In the circumstances, the Court was of the view that there was a miscarriage of justice and that this was fatal, and sufficient to vitiate the conviction. The Court also pointed out that the case of *Freemantle v R* [1994] 3 All ER 225 was clearly distinguishable from the appeal at Bar. In that case the identification evidence was exceptionally strong.

On the question of alibi, the appellant had indicated that he was not at the scene of the crime and did not shoot the virtual complainant. He gave evidence that he was elsewhere. He called an alibi witness. The learned judge did not at any time refer to the appellant's alibi evidence. It was for the judge to tell the jury that it was not for an accused person to prove his alibi, but quite the contrary, he had nothing to prove and that even if the jury did not believe his evidence they needed to go back and look at the prosecution's case and see if they had proved their case beyond all reasonable doubt. The learned trial judge should have indicated to the jury that the prosecution had the duty to disprove the alibi beyond a reasonable doubt.

The learned trial judge did not address the alibi issue as is required in the case of *R v Lesley* [1996] 1 Cr App R 39 (CA). Also, the learned trial judge seemed to have placed the onus of proof on the appellant. This was fatal and a serious miscarriage of justice. This appeal is therefore quashed since the conviction was unsafe.

On the issue of whether a retrial should have been ordered, the Court took the view that, given the totality of the circumstances of the case, bearing in mind a gun was used, given the interest of the society, the interest of the virtual complainant in being shot in the face, justice weighed in favour of a retrial. The Court was of the view that it is not just to allow an accused person to escape the trial of a serious offence like this based on a technicality in the trial. Based on the case of *Sheffield Bowen v DPP*,

and due to the errors made by the learned trial judge, the matter is remitted to the High Court to be retried by DPP in the interests of justice.

Case Name: **Kasim Buchanan**
V
The Director of Public Prosecutions
[SKBHCRA2012/0016]

Date: **Thursday, 4th June 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: **In person**
Respondent: **Ms. Greatess Gordon**

Issues: **Appeal against conviction and sentence – Wounding with intent – Application to withdraw appeal against conviction and for leave to appeal only on issue of sentence**

Type of Oral Result/Order Delivered: **Oral judgment or decision**

Result / Order: **Appeal against sentence is allowed to the extent that the sentence of 12 years imposed by the judge is varied and the sentence is time served since the appellant has served 4 years 9 months in prison.**

Reason: **The Court was of the opinion that, the appellant being a first time offender, the sentence should reflect same.**

The Court took cognizance of the fact that the sentences passed around the Caribbean have been low for the offence of wounding with intent. The maximum penalty for this offence in Saint Vincent and the Grenadines is 5 years. The sentences imposed have generally been 3 years and below. In the Territory of the Virgin Islands where the maximum sentence is life imprisonment, sentences for wounding with intent have been on a lower scale for cases of wounding without the use of weapons.

In *Ovel Matthew v The Queen* (BVI Criminal Case No. 28 of 2009 (unreported)), a 5 year sentence was imposed on the appellant for him beating his girlfriend by boxing, choking and kicking her. She spent 3 days in the hospital.

In *Elton Beazer et al v The Queen* (BVIHCRA2001/0001 (delivered 17th September 2001, unreported)), where two men beat bar maids with sticks and punched them, the Court of Appeal varied the sentence of one of the appellants from 7 years to 5 years.

In this jurisdiction, the starting point for sentencing for wounding with intent has been 5 years and above, where there was use of a weapon.

The Court took cognizance of the fact that the Crown in this case conceded that the sentence imposed was excessive, having regard to the fact that no weapon was used as well as the seriousness of the injuries sustained by the virtual complainant.

The Court opined that since the maximum sentence for wounding with intent is 20 years, the sentence of 12 years was too high, having regard to the fact that no weapon was used in this case. It was held that a 4 year sentence would be an appropriate starting point. However, the Court stated that it must also look at the mitigating factors, which included the fact that the appellant had no previous convictions. The Court also considered the aggravating factors: the fact that the attack was unprovoked, and that the appellant stamped on the face of the virtual complainant whilst

wearing working boots, being cognizant of the damage that working boots can do to a face.

Case Name:

Kern Flemming

v

The Queen

[SKBHCRAP2012/0024]

Date:

Thursday, 4th June 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Indecent assault – Application to withdraw appeal against conviction – Application for leave to appeal against sentence only – Whether learned judge erred in not stating appellant's sentence from time he was in custody – Whether sentence of 6 years excessive

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

Oral judgment or decision

Result / Order:

Appeal against sentence is not allowed but sentence is clarified.

Reason:

The Court considered that having regard to the circumstances of this case, there was no basis for disturbing the sentence of 6 years. However, by way of clarification the term of 6 years would be computed

from the date of remand.

Case Name: **General Security Services Limited**
v
St. Christopher and Nevis Solid Waste
Management

[SKBMCVAP2013/0021]

Date: **Thursday, 4th June 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Terence Byron
Respondent:	Mr. Perry Joseph

Issues: **Contract – Security services to be provided to respondent by appellant – Whether terms of contract breached by appellant – Termination of contract by respondent – Sums owed to appellant at time of termination of contract – Case dismissed by learned magistrate – Whether learned magistrate erred in principle insofar as she based her decision on ground that it would be unjust for respondent to have to pay appellant 3 months wages in lieu of notice although this was effect of express intention of the parties stipulated in agreement between them – Whether learned magistrate erred in dismissing appellant’s claim and awarding costs of \$1,000.00 against appellant having stated that: i) respondent is entitled to treat contract as never existing; ii) respondent is entitled to throw contract out the window along with the clause in it that spoke to the 3 months’ notice; iii) the 3 months’ notice would operate when there was an amicable discharge, such**

as if respondent found cheaper security firm –
Whether decision of learned magistrate unreasonable
and cannot be supported having regard to evidence –
Whether decision of learned magistrate based on
wrong principle or was such that magistrate viewing
the circumstances reasonably could not properly
have so decided

Type of Oral
Result/Order
Delivered:

Oral judgment or decision

Result / Order:

Appeal is allowed. By consent no order as to costs.

Reason:

The Court was of the opinion that this appeal must succeed because the appellant was entitled, pursuant to the written contract, to be paid the equivalent of 3 months' wages, the contract having been summarily terminated contrary to its clause 4. It was not open to the learned magistrate to imply terms of fairness or justice where the words were clear in the contract. In the words of Lord Hoffmann in the Privy Council case of *Attorney General of Belize and Others v Belize Telecom Limited* [2009] UKPC 10, 'The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. ... It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed'.

Case Name:

Carl Warner
v
The Director of Public Prosecutions

[SKBHCRA2011/0020]

Date: Friday, 5th June 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

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

Respondent: Mr. Giovanni James

Issues: Appeal against conviction and sentence – Assault – Application for adjournment – Withdrawal of appeal against conviction – Whether sentence of 10 years too harsh

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order:

1. Appeal allowed in relation to sentence. Sentence is varied from 10 years to 6 years. Time on remand to be taken into account.
2. The appellant having withdrawn the appeal against conviction, the appeal against conviction is accordingly dismissed.

Reason:

The Crown conceded that the learned trial judge erred in imposing the maximum sentence on the appellant. The Court stated that the judge ought to have taken into account the aggravating and mitigating factors in the case. In this case, the aggravating factors outweighed the mitigating factors.

Both counsel for the Crown and counsel for the respondent agreed that the appropriate sentence should be in the range of 5 years and 7 years. The Court ultimately held that the justice of the matter required that the appellant be given a 6 year sentence.

Case Name:

**Charles Bowry
v
Licensing Authority**

[SKBMCRAP2014/0009]

Date:

Friday, 5th June 2015

Coram:

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

Appearances:

Appellant:

In person

Respondent:

Mr. Giovanni James

Issues:

Whether appellant's conviction unsafe – Whether sentence imposed excessive

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

Oral judgment or decision

Result / Order:

The appeal against conviction and sentence is dismissed.

Reason:

With respect to the appeal against sentence, the Court noted that the appellant (at the time of the hearing of the appeal) was serving a term of 16 years imprisonment. He had requested more time to pay the fine which had been imposed by the learned magistrate, which fine was in the sum of \$1,500.00 and payable by 6th June 2014, in default 30 days imprisonment.

The Court was of the view that the appropriate disposition would be that the penalty imposed by the magistrate should run concurrently with the term of

16 years which the appellant was serving at the time.

In relation to the appeal against conviction, the Court held that there was no merit in the appeal.

Case Name: **Alfred Adams**
v
Mary Adams

[SKBMCRAP2011/0008]

Date: **Friday, 5th June 2015**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: **Mr. Karlweis Liburd**
Respondent: **Mr. Hesketh Benjamin**

Issues: **Whether learned magistrate erred in ordering that appellant pay maintenance in amount of \$100.00 per week – Adultery committed by respondent – Whether order made by magistrate was contrary to letter, spirit, and intention of s. 121 of the Magistrate’s Code of Procedure Act (Cap. 3.17, Laws of Saint Christopher and Nevis)**

Type of Oral Result/Order Delivered: **Oral judgment or decision**

Result / Order:

- 1. By consent the appeal is allowed. The order of the learned magistrate is that the appellant pays \$100.00 per week is varied to \$50.00 per week to take effect from 14th May 2011.**
- 2. The arrears of \$10,200.00 is to be liquidated by the appellant making payments of \$400.00 per month**

from the end of June 2015 until the entire sum is paid.

3. No order as to costs.

Reason: The parties consented to the making of the above order.

Case Name: Kerone Roache
v
The Chief of Police

[SKBMCRAP2013/0006]

Date: Friday, 5th June 2015

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. John Cato

Respondent: Mr. Giovanni James

Issues: Appeal against sentence – Whether sentence imposed was excessive

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order: 1. By consent, the appeal against sentence is allowed.
2. The fine imposed is varied to \$1,000.00 to be paid on or before the 6th September 2015.

Reason: The parties consented to the making of the above order.

Case Name:

**Sean Smith
v
The Chief of Police**

[SKBMCRAP2013/0033]

Date:

Friday, 5th June 2015

Coram:

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

Appearances:

Appellant:

Ms. Natasha Grey

Respondent:

Ms. Greatess Gordon

Issues:

Appeal against conviction and sentence – Aggravated assault – Appellant charged by police with battery under s. 12(1) of Small Charges Act (Cap. 75, Revised Laws of St. Christopher Nevis and Anguilla) which carries maximum sentence of 2 months imprisonment hard labour – Court deemed assault by appellant sufficiently serious for it to amount to aggravated assault upon a female in accordance with s. 12(2)(b) of Small Charges Act which carries maximum sentence of 6 months imprisonment hard labour – Appellant sentenced to 6 months imprisonment hard labour – Whether learned magistrate erred in imposing a greater sentence than that for which appellant was charged

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

Oral judgment or decision

**Result / Order
& Reason:**

- 1. By consent the appeal against conviction is allowed.**
- 2. The appellant having been denied the right of legal**

representation, his trial was unfair. Consequently, the sentence imposed is quashed.

Case Name:

**Miles Walters
v
The Chief of Police**

[SKBMCRAP2014/0012]

Date:

Friday, 5th June 2015

Coram:

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

Appearances:

Appellant:

**Mr. O’Grenville Browne, with him, Dr. Henry Browne,
QC and Ms. C. Marissa Hobson-Newman**

Respondent:

Mr. Teshaun Vasquez

Issues:

Whether learned magistrate adopted correct procedure at appellant’s trial – s. 77 of the Magistrate’s Code of Procedure Act (Cap. 3.17, Laws of Saint Christopher and Nevis)

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

Oral judgment or decision

**Result / Order
& Reason:**

- 1. By consent the appeal against conviction is allowed, due to the failure of the magistrate to comply with the mandatory requirements of section 77 of the Magistrate’s Code of Procedure Act.**
- 2. The conviction is accordingly quashed and sentence is set aside.**