

COURT OF APPEAL SITTING
SAINT CHRISTOPHER AND NEVIS
10th – 14th February 2014

JUDGMENTS

Case Name: Che Gregory Spencer
V
The Director of Public Prosecutions

[SKBHCRAP2009/013A]
(St. Christopher and Nevis)

Date: Monday, 10th February 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Henry Browne, QC, with him, Mr. John Cato

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Murder – Whether learned trial judge erred in law in failing to properly direct the jury on of self-defence and provocation – Whether learned trial judge failed to adequately and accurately sum up the law on accident to jury

Result and Reason: Held: allowing the appeal and ordering a retrial, that:

1. An important direction that a judge must give to a jury in appropriate cases is that an intention to kill is not inconsistent with the establishment of the plea, not only of self-defence but also of provocation. But that does not necessarily mean that the direction should be in such terms as there are no prescribed words which must be

employed in or adopted in a summing up. It all depends on the way in which the issue is put to the jury. In the present case, it is clear that the learned trial judge did not specifically say to the jury that an intention to kill was not inconsistent with self-defence. However, this Court is satisfied that it was effectively conveyed to the jurors in clear and unequivocal terms that even if there was an intention to kill once the appellant was acting in lawful self-defence he ought to be found not guilty. There is no need to seek to restrict the form of words that a trial judge should use in giving directions on self-defence and the intention to kill or cause grievous bodily harm. It is within a trial judge's discretion how he approaches his summation. Accordingly, this ground of appeal is dismissed.

Sigismund Palmer et al v The Queen [1971] AC 814 applied; *Baptiste v The State* (1983) 34 WIR 253 applied; *Fabien LaRoche v The State* (Republic of Trinidad and Tobago Court of Appeal No. 32 of 2009 (delivered 20th April 2011, unreported)) applied.

2. It is proper and indeed necessary for a trial judge to tell a jury that murder is not established unless an intent to kill or to cause grievous bodily harm is proved, but the converse proposition, namely, that the accused is guilty of murder if such an intention is proved is not correct. For where the intention to kill or to cause grievous bodily harm results not from premeditation but solely from the loss of self-control induced by provocation the accused is guilty not of murder but of manslaughter. The learned trial judge failed to direct the jury that a plea of provocation may still arise even if the appellant had formed an intention to kill or inflict grievous bodily harm, with this intention arising from sudden passion induced by the provocation. Further, in his definition of provocation to the jury, the learned trial judge included the phrase "for the moment not master of his mind". This was a gross misdirection. This would have effectively conveyed to the jury

that the appellant would not have been able to form the necessary intention to kill or cause grievous bodily harm. On the evidence presented the jury may have easily found that the appellant had formed an intention to kill. As a result, the appellant might have been deprived of a verdict of not guilty of murder but guilty of manslaughter. In light of these misdirections, this ground of appeal accordingly succeeds.

R v Bunting (1965) 8 WIR 276 applied; *Baptiste v The State* (1983) 34 WIR 253 applied; *Antoine and Bass v R* (1968) 13 WIR 289 applied.

3. The learned trial judge did not give a clear exposition of the concept of accident. He failed to give a specific direction on the burden of proof paying particular regard to the issue of accident. He ought to have made it clear to the jury that it was not for the appellant to prove that the happenings resulting in the death of the deceased were an accident. In addition, he failed to specifically direct the jury that it was for the prosecution to negative accident so as to make them feel sure beyond all reasonable doubt that it was not an accident and was a wilful act. As such, this ground of appeal succeeds in so far as there was a miscarriage of justice.

Sherfield Bowen v The Queen (Antigua and Barbuda High Court Criminal Appeal HCRAP2005/0004 (delivered 20th June 2007, unreported)) followed.

4. Taking into consideration the particular circumstances of this case, the interest of justice requires that a retrial be ordered. Accordingly, the Director of Public Prosecutions is at liberty to retry the appellant for the offence of murder.

APPLICATIONS AND APPEALS

Case Name: Kareem Vinton né Glasford
v
[1] First Caribbean International Bank
(Barbados) Limited
[2] Bronwen Glasford
[SKBHCVAP2013/0017]

Date: Monday, 10th February 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: In person

Respondents: Mr. Emile Ferdinand, QC, with him, Ms. Keisha Spence for the 1st respondent

Issues: Application for leave to appeal – Application by 1st respondent to settle articles of sale

Result / Order: [Oral delivery]
1. The application for leave to appeal is hereby dismissed.
2. No order as to costs.

Reason: The Court found that there was no merit in the grounds of appeal advanced by the applicant. The grounds did not reflect any part of the order made by the learned master on 18th June 2013, which order leave was being sought to appeal.

The Court opined that where a person appeals or seeks leave to appeal an order, it is really the order itself that is being appealed and not any reason or discussion that may have surrounded the giving of that order. The order of the learned master did no more than grant an adjournment and give the respondents leave to file and serve a valuation report. The issues raised by the applicant in this

application in relation to the adjournment should properly have been addressed to the learned master at the time of the hearing.

Further, the adjournment granted by the learned master did not deprive the applicant of his right to raise issues or be heard on the matters which were being raised as grounds of appeal. No order had been made regarding substantive issues, and as such, the applicant was not precluded from making his arguments on the date to which the matter had been adjourned. The matters raised by the applicant in this application need not have engaged the Court of Appeal.

Case Name:	[1] Caribbean Building Systems (St. Kitts) Ltd. [2] Adam Bilzerian v First Caribbean International Bank (Barbados) Limited [SKBHCVAP2013/0011] (Saint Christopher and Nevis)
Date:	Monday, 10th February 2014
Coram:	The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
Appearances:	
Applicants:	No appearance
Respondent:	Mr. Emile Ferdinand, QC, with him, Mr. Garth Wilkin
Issues:	Application for leave to appeal and stay of execution – Application to strike out notice of application for stay of execution

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal and stay of execution are hereby struck out.**
- 2. The respondent shall have the cost of this application fixed in the sum of \$1,500.00 to be paid by the applicants no later than 24th February 2014.**

Reason:

Having regard to what transpired at the case management conference held on 31st January 2014 when counsel for the applicant indicated the arrangements that were being made for the conduct of the matter due to his inability to be present at the day's hearing, and comparing that with the content of the letter brought before the Court on the day of the hearing, and the Court noting the absence of both applicants to the application which had been pending before the Court since 20th April 2013, the Court held that it could only be concluded that the applicants were not serious about the prosecution of their application.

Case Name:

Reginald Anthony Hull

v

**[1] The Attorney General of St. Christopher
and Nevis**

[2] The Social Security Board

[SKBHCVAP2012/0029]

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Damian Kelsick, with him, Mr. Garth Wilkin

Respondents: Mr. O'Neil Simpson for the 1st respondent
Mr. Leon Charles for the 2nd respondent

Issues: Application to vary order of single judge – Whether or not a bailiff can be held personally responsible and the Crown vicariously liable for unlawful imprisonment in pursuit of the execution of an order of the magistrate to imprison a debtor – Jurisdiction of full Court to review decision of single judge – Whether order made by single judge in a procedural / interlocutory appeal reviewable by Full Court – Applicability of rule 62.16(A) and rule 62.10 of the Civil Procedure Rules 2000 (as amended by the 2011 CPR 2000 amendments) to an interlocutory appeal – Applicability of s. 10.3 of the Windward Islands and Leeward Islands (Courts) Order in Council, 1959 – Applicability of s. 5(6) of the Saint Christopher and Nevis Constitution Order 1983 – Whether warrant of committal invalid and therefore the unrest unlawful – Applicability of s. 4(5) of the Crown Proceedings Act, Cap. 5.06, Revised Laws of Saint Christopher and Nevis 2009

Result / Order: [Oral delivery]
Having read the submissions on paper the Court concludes that the Full Court has jurisdiction to hear the appeal.

Having regard to the matters raised in this appeal, it is hereby ordered that:

1. The matter is adjourned to next sitting of Court in June 2014 to facilitate settlement negotiations between the parties.
2. In the event that a consensus is reached prior to the next sitting of the Court the parties shall be at liberty to file, prior to the said sitting, a consent order.

Reason: The Court held that warrants for committal in the terms given, being addressed to a company, were invalid and unenforceable, as was found by the learned master. Further, as the appellant was a

separate legal person who was not the debtor, the execution of the warrant, as well as the subsequent detention, were consequently unlawful. Section 5(6) of the Saint Christopher and Nevis Constitution Order 1983, being clear in its terms, makes provision for these types of circumstances.

The Court was of the view that, having regard to the agreed facts of the case, this was a simple matter of quantum that could be settled and invited the parties to resolve the matter amicably.

Case Name:

**Craig Bradshaw
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0009]

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. John Cato

Respondent: Ms. Greatess Gordon

Issues:

Appeal against sentence – Unlawful carnal knowledge – Request by appellant for adjournment to amend grounds of appeal and skeleton arguments to appeal both conviction and sentence

**Result / Order
& Reason:**

[Oral delivery]

- 1. On the request of counsel for the appellant, the hearing of this appeal is adjourned to the next sitting of the Court in the Federation of Saint Christopher and Nevis so as to allow counsel for the appellant to file amended grounds of appeal.**
- 2. Counsel for appellant is at liberty to file amended**

grounds of appeal and shall do so no later than Monday, 10th March 2014 and serve same on the respondent.

3. Counsel for appellant shall also file and serve on respondent, by Monday, 10th March 2014, further submissions in support of his amended grounds of appeal.
4. Counsel for respondent shall be at liberty to file and serve submissions in response to the amended grounds of appeal and submissions of the appellant, by Monday, 31st March 2014.

Case Name:

**Allister Forde
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0024]

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances

Appellant: In person

Respondent: Mr. O'Neil Simpson

Issues:

Appeal against sentence – Shooting with intent

Result / Order:

**[Oral delivery]
Hearing of this appeal is adjourned to the next sitting of the Court in the Federation of Saint Christopher and Nevis in June 2014. This is to enable the appellant to make adequate preparation for the conduct of his appeal.**

Reason:

The appellant had not retained counsel and had not

seen the transcript which had been collected from the High Court Registry on his behalf. He needed some time to put his affairs in order.

Case Name:

**James Ham
v
The Director of Public Prosecutions
[SKBHCRAP2010/0007]**

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Rape

Result / Order:

Matter stood down until 2:00 p.m.

Reason:

The appellant indicated that he wished to withdraw the appeal against conviction and proceed with the appeal against sentence. The matter was stood down to give him some time to consider whether he needed counsel to assist him in conduct of the appeal or whether he wanted to just proceed as he had indicated.

Case Name:

Jermul Jules
v
The Director of Public Prosecutions

[SKBHCRAP2011/0008]

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Mr. Travers Sinanan, Director of Public
Prosecutions**

Issues:

Appeal against conviction and sentence – Robbery

Result / Order

[Oral delivery]

- 1. Hearing of appeal adjourned to next sitting of the Court in week beginning 9th June 2014.**
- 2. Respondent at liberty to file and serve upon the appellant further submissions no later than Monday, 10th March 2014.**
- 3. Hearing of this appeal is adjourned to the next sitting of the Court within the Federation in the week beginning 9th June 2014.**

Reason:

The appellant had only received his copy of the transcript on the day of the hearing, which placed him at a serious disadvantage.

Mr. Sinanan provided the appellant with an additional copy of the respondent's submissions in court ex abundante cautela. The appellant needed some time to familiarise himself with the transcript and review the submissions.

Case Name:

**James Ham
v
The Director of Public Prosecutions**

[SKBHCRAP2010/0007]

Date:

Monday, 10th February 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Mr. Travers Sinanan, Director of Public
Prosecutions**

Issues:

Appeal against conviction and sentence – Rape

Order/Result:

**[Oral delivery]
Appeal against sentence is dismissed.**

Reason

The Court held that although the notional sentence for this offence may have been less than the sentence given to the appellant, the question was whether or not the trial judge erred in arriving at the sentence given.

The maximum sentence for the offence of rape is life imprisonment. The notional sentence for that offence would have to be weighed against the aggravating and mitigating factors in the case. The Court opined that aggravating factors in the present case may have “neutralised” the fact that the appellant had no prior convictions for this type of crime. All these factors would have been weighed by the trial judge.

To succeed on appeal, the appellant would have to show that the trial judge made some error in the determination of the notional sentence, that she

took something into account that she ought not to have taken into account; or that she disregarded something material so that it would have been totally unreasonable for her to have arrived at the sentence given.

In this case there were a number of particularly aggravating circumstances: the appellant had forced his way into the home of the virtual complainant; he held a knife to her throat while she begged and pleaded with him; the virtual complainant's seven year old son was present and he came into the room during the assault and enquired as to what was happening; when this occurred, the appellant just continued the assault in another room which the son subsequently came to and again viewed what was taking place. Additionally, the virtual complainant happened to be on phone with someone who heard her scream and raised the alarm. Even after indicating to the appellant that someone was on the line, this did not deter him.

The Court could find no reason to interfere with sentence imposed by the learned trial judge for the reasons she gave, having weighed all the factors in the case.

Case Name:

**Keon Fyfield
v
The Chief of Police**

[SKBMCRAP2013/0025]

Date:

Monday, 10th February 2014

Coram:

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

Appearances:

Appellant:

In person

Respondent: Mr. O'Neil Simpson

Issues: Appeal against conviction and sentence – Possession of ammunition and firearm

Result / Order: [Oral delivery]
1. Appeal against conviction, having been withdrawn, is hereby dismissed.
2. Appeal against sentence is allowed to the extent that the appellant's sentence is varied to time served.

Reason: The appellant withdrew the appeal against conviction and appealed against his sentence only, asking for his time on remand to be considered. In sentencing the appellant, the magistrate had not taken into account two months that the appellant had spent on remand.

Case Name: Winsroy Duporte
v
Fiona Halliday

[SKBMCVAP2008/0001]

Date: Monday, 10th February 2014

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

Appearances:

Appellant: In person

Respondent: Mr. Hesketh Benjamin

Issues: Payment of judgment debt – Whether learned

magistrate erred in ordering appellant to pay judgment debt – Jurisdiction of learned magistrate to order that appellant be imprisoned in default of payment of debt before further hearing for committal for being in contempt of court

Result / Order:

[Oral delivery]

- 1. Appeal is allowed.**
- 2. The matter is remitted to the magistrate to make a proper determination as to the means to pay the appellant.**

Reason:

The Court was not satisfied that the magistrate did a proper examination of the appellant's means to pay the judgment summons.

Case Name:

**Nigel Carty
v
Alston Williams**

**[SKBMCVAP2013/0004]
[SKBMCVAP2013/0005]**

Date:

Monday, 10th February 2014

Coram:

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

Appearances:

Appellant: Ms. Angelina Gracy Sookoo

Respondent: Ms. Natasha Grey

Issues:

Agreement between appellant and respondent for excavation and trucking services to be provided by respondent – Payment of outstanding sums

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The magistrate's order is varied to a total of three thousand three hundred and ten (\$3,310.00) made up of \$760.00 on invoice 001 and \$2,550.00 on invoice 000.**

Reason:

The Court was of the view that the respondent did get some of the money and some of the work was done, so a 50% claim award would be appropriate.

Case Name:

Wentworth Richardson

v

Amoy Nisbett

[SKBMCVAP2013/0014]

Date:

Monday, 10th February 2014

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Hesketh Benjamin

Issues:

Lease agreement – Rental of appellant's property by respondent – Whether learned magistrate erred in holding that appellant was in breach of implied covenant for quiet enjoyment of rented property – Whether decision of learned magistrate against weight of evidence

Result / Order:

[Oral delivery]

- 1. The appeal is withdrawn and accordingly dismissed.**

2. Costs to the respondent in the sum of \$300.00.

Reason: A notice of withdrawal was filed on the day of the hearing (i.e. on Monday, 10th February 2014).

Case Name: **Wentworth Richardson**
v
Jason Hamilton
[SKBMCVAP2013/0022]

Date: Monday, 10th February 2014

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

Appearances:
Appellant: In person
Respondent: Ms. Keisha Spence

Issues: Enforcement of judgment debt – Legal fees owed to respondent by appellant – Whether barrister can sue for legal fees owed to him by client – Whether learned magistrate erred in not giving sufficient weight to evidence presented to her by appellant – Whether learned magistrate erred in not allowing appellant to present his case in absence of solicitor who was on record as acting for him – Application for adjournment

Result / Order: [Oral delivery]
The matter is adjourned to the sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th June 2014.

Reason: The appellant made an application for the matter to

be adjourned to the next sitting for him to be able to seek legal representation.

Case Name:

**Calvin Johnson
v
Jermaine Johnson**

[SKBMCVAP2013/0023]

Date:

Monday, 10th February 2014

Coram:

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

Appearances:

Appellant:

Ms. Natasha Grey

Respondent:

Ms. Marsha Henderson

Issues:

Contract – Whether learned magistrate erred in failing to direct her mind to issue of whether there was intention to create a contract – Whether decision of learned magistrate was unreasonable and could not be supported having regard to the evidence

Result / Order:

[Oral delivery]

- 1. Appeal is dismissed.**
- 2. Costs to the respondent in the sum of \$666.66 being 2/3 of \$1,000.00 that was awarded in the court below.**

The Court of Appeal could find no basis to disturb the findings of the learned magistrate. There was no issue of intention to create a contract because there was a valid and existing contract. Further, the magistrate's decision was not unreasonable.

Case Name:

**Cecil Rock
v
National Bank Trust Company (St. Kitts-
Nevis-Anguilla) Limited
The lawfully appointed attorney for Joseph
Edwards and Ione Edwards**

[SKBMCVAP2013/0024]

Date:

Monday, 10th February 2014

Coram:

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

Appearances:

Appellant:

In person

Respondent:

Ms. Miselle O'Brien-Norton

Issues:

**Case management – Recovery of cost of cleaning
and repair services carried out on premises
previously rented by appellant – Bias**

Result / Order:

[Oral delivery]

- 1. Appellant to file submissions in this matter on or before Friday, 11th April 2014.**
- 2. Respondent to file submissions on or before 12th May 2014.**
- 3. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th June 2014.**

Case Name:

Keithroy Isaac

V
St. Clair Kelly

[SKBMCVAP2013/0025]

Date: Monday, 10th February 2014

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

Appearances:

Appellant: In person

Respondent: No appearance

Issues: Case management – Contract – Agreement for sale of motor vehicle – Whether contract legally enforceable

Result / Order: [Oral delivery]

1. Appellant to file submissions and authorities on or before Monday, 17th March 2014.
2. Respondent to file submissions in reply on or before 16th April 2014.
3. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 10th June 2014.

Case Name: Keithley Griffin
V
The Director of Public Prosecutions

[SKBHCRAP2011/0010]

Date: Tuesday, 11th February 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of

Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Henry Browne, QC

Respondent: Mr. O'Neil Simpson

Issues:

**Appeal conviction for unlawful carnal knowledge –
Request for adjournment**

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton arguments with authorities on or before 31st March 2014.**
- 2. The respondent is to file and serve skeleton arguments in reply with authorities on or before 30th April 2014.**
- 3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 9th June 2014.**

Reason:

Counsel for appellant requested an adjournment to facilitate the exchange of skeleton arguments.

Case Name:

Neil Harvey
v
The Director of Public Prosecutions

[SKBHCRAP2011/0019]

Date:

Tuesday, 11th February 2014

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Wounding with intent – Appeal against conviction withdrawn by appellant – Appeal against sentence only – Notional sentence – Balance of aggravating and mitigating factors

Result / Order:

[Oral delivery]

- 1. The appeal against conviction, having been withdrawn, is dismissed.**
- 2. The appeal against sentence is also dismissed.**

Reason:

The Court could find no basis upon which to disturb the sentence imposed by the learned trial judge. The judge properly weighed the aggravating and mitigating factors, and the aggravating factors outweighed and “neutralised” the mitigating factors.

The aggravating factors considered and noted by the learned trial judge in the judgment were as follows:

- a. The medical evidence revealed very serious wounds that would have resulted in death had the virtual complainant not received medical attention in time;**
- b. The prevalence of this type of offence in the society;**
- c. The offence was committed at a public social activity being held at a race track;**
- d. The age of the appellant;**
- e. One of the appellant’s previous convictions was for this type of offence.**

The Court noted that, having considered all the aggravating factors in the case, the learned trial judge still did not impose the maximum sentence of 10 years.

Case Name:

**Jamie Wilkinson
v
The Director of Public Prosecutions**

[SKBHCRAP2011/0013]

Date:

Tuesday, 11th February 2014

Coram:

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

Appearances:

Appellant:

Mr. John Cato

Respondent:

Mr. O'Neil Simpson

Issues:

**Appeal against conviction and sentence –
Wounding with intent – Motion to amend grounds of appeal – Self defence – Use of force in self defence –
Balance of aggravating and mitigating factors –
Whether trial judge failed to give proper direction on self defence and use of force in self defence –
Whether trial judge's statement that "... the accused was the aggressor" was usurpation of jury's function as finders of fact – Whether trial judge in summation should have directed jury that in considering issue of self defence, they should consider whether the accused had an honest belief he was being subjected to immediate peril**

Result / Order:

**[Oral delivery]
Appeal against both conviction and sentence is dismissed.**

Reason:

Having reviewed the summation of the judge in its entirety, the Court was of the view that the judge

had sufficiently directed the jury on the issue of self defence. The summation, when considered as a whole, would have conveyed to the jury that they were required to consider the issue of the appellant's honest belief that he was in danger and acted in self defence.

The learned trial judge, on several occasions directed the jury that the burden was on the prosecution to prove that the appellant was not acting in self defence. The judge indicated that the appellant was not required to prove that he was acting in self defence.

On the issue of sentence, both sides agreed that the notional sentence was between five and seven years. The mitigating factors were the age of the appellant (20 years), the appellant having no previous convictions and the appellant's involvement in both local and regional sporting activities as a cricketer. The aggravating factors were the seriousness of the offence and the fact that the injuries were life threatening.

The Court found that the mitigating factors and aggravating factors balanced out each other and accordingly, there was no need to disturb the sentence imposed by the learned trial judge.

Case Name:

**Joseph Herbert
v
The Director of Public Prosecutions
[SKBHCRAP2011/0014]**

Date:

Tuesday, 11th February 2014

Coram:

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Criminal appeal against conviction and sentence – Buggery

Result / Order: [Oral delivery]
Hearing of the appeal adjourned until the next sitting of the Court in Saint Christopher and Nevis during the week commencing the 9th June 2014.

Reason: The appellant requested an adjournment because he had only received transcript the previous week, on 4th February 2014.

Case Name: The Attorney General of St Christopher and Nevis
v
[1] Hon. Sam Condor
[2] Hon. Shawn K. Richards
[SKBHCVAP2013/0005]

Date: Wednesday, 12th February 2014

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

Appearances:

Appellant: Mr. Anthony Astaphan, SC, with him, Mr. Sylvester Anthony (instructed by Ms. Angelina Gracy Sookoo)

Respondents: Mr. Vincent Byron (instructed by Mr. DeLara MacClure Taylor)

Issues: Whether Attorney General proper party to claim – Whether court’s jurisdictions under ss. 36 and 96 of Saint Christopher and Nevis Constitution Order 1983 could be merged and properly heard and determined together – Whether learned judge erred in holding that natural and ordinary meaning of proviso to s. 26(2) of Constitution was that the Senate does not increase in number from three to four until person who is already senator also holds office of Attorney General – Whether appointment of fourth senator by Governor General on advice of Prime Minister justiciable – Senators (Increase of Number) Act, 2013 – Effect of s. 44(2) of Constitution – Whether s. 44(2) operates as absolute and unequivocal constitutional ouster of jurisdiction of High Court to invalidate passing of 2013 Act – Application for adjournment by respondents

Result / Order: [Oral Delivery]
The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing 10th June 2014.

Reason: The appellant’s skeleton arguments were filed and served on 10th February 2014. Therefore the respondents had not been given sufficient time to file their skeleton arguments in response (as provided for by CPR 62.11(2)).

Case Name: The Rt. Hon. Dr. Denzil L. Douglas – Prime Minister
v
[1] Hon. Sam Condor
[2] Hon. Shawn K. Richards
[SKBHCVAP2013/0006]

Date: Wednesday, 12th February 2014

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

Appearances:

Appellant: Mr. Delano Bart, QC, with him, Dr. Henry Browne, QC

Respondents: Mr. Vincent Byron (instructed by Mr. DeLara MacClure Taylor)

Issues: Whether learned judge erred in holding that it was unlawful to appoint Mr. Jason Hamilton as senator and Attorney General because there was no vacancy among existing three senators – Proper construction of Saint Christopher and Nevis Constitution Order 1983 – Application to consolidate appeals SKBHCVAP2013/0005 and SKBHCVAP2013/0006 – Application for adjournment by respondents

Result / Order: [Oral Delivery]
The hearing of the application is adjourned and the hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing 10th June 2014.

Reason The appellant's skeleton arguments were filed and served on 10th February 2014. Therefore the respondents had not been given sufficient time to file their skeleton arguments in response (as provided for by CPR 62.11(2)).

Case Name: Leonora L. Walwyn
v
[1] Eustace Archibald
[2] RBTT Bank (SKN) Limited

[SKBHCVAP 2010/0012]

Date: Thursday, 13th February 2014

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

Appearances:

Appellant/Applicant : Mr. Terence Byron, with him, Ms. Talibah Byron

Respondents: Ms. M. Angela Cozier (for the 1st respondent)

Issues: Application for leave to appeal to Her Majesty in Council – Purchase of land – Loan agreement between first and second respondents – Loan balance paid by appellant – Subrogation – Bank's rights as equitable mortgagee subrogated to appellant

Result / Order: [Oral delivery]

The application is allowed and the applicant do have leave to appeal to Her Majesty in Council on the following usual conditions:

(1) That the appellant/2nd-named defendant/applicant do within twenty-one (21) days hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of five hundred pounds sterling (£500.00) or the equivalent in East Caribbean currency for the due prosecution of this appeal and payment of all costs as may become payable by the appellant/2nd-named defendant/applicant in the event of her not obtaining an order granting her final leave to appeal or of her appeal being dismissed for non-prosecution or of Her Majesty in Council ordering her to pay costs of the appeal;

(2) That within ninety (90) days from the date

hereof, the appellant/2nd-named defendant/applicant do take all necessary steps for the purposes of procuring the preparation of the record, the settling of such record with the solicitors for the respondent and the certification of the record by the Registrar of the Court of Appeal and dispatch thereof to Her Majesty in Council;

- (3) That the record shall be prepared in accordance with Rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction Rules) Order 2009 and its Practice Direction and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay when final permission to appeal has been granted;
- (4) That the applicant shall make an application to the Court for final permission to appeal to Her Majesty in Council supported by the certificate of the Registrar that the security for costs of the hearing has been given within the time prescribed by this Order to the satisfaction of the Registrar; and
- (5) That the costs of the application for conditional leave to appeal be costs in the appeal.

Reason:

The Court was satisfied that by virtue of the provisions of section 99(1)(a) of the Saint Christopher and Nevis Constitution Order 1983, the applicant was entitled, as of right, to leave to appeal to Her Majesty in Council.

Case Name:

[1] Tessa Blondelle Crag Chaderton
[2] Gwenda Skelton
v
Vernon Mills (aka Verna Mills)

Date: Thursday, 13th February 2014

Coram The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Marguerite Foreman, with her, Ms. Teshari John and Ms. Leah Crag-Chaderton

Respondent: Mr. Glenford Hamilton, with him, Ms. Deidre Williams

Issues: Construction of agreement – Interpretation of will – Whether learned master erred in finding that agreement executed by deceased was valid and enforceable agreement for sale – Whether learned master erred in declaring (in effect) that the testator could not devise property he did not own – Whether learned master erred in holding that doctrine of election did not apply to case

Result / Order: [Oral delivery]
1. The appeal is dismissed except that this court declares that the appellants are the children of the deceased named as the residuary legatees under his will dated 28th August 1990.
2. Costs shall be borne by the estate of deceased.

Reason: The Court agreed with the finding of the learned master that the deceased could only dispose of by his will what he owned at the date of his death and, the deceased having agreed to convey to the respondent 50% of his entitlement in the Round Hill Estate (the beneficial interest in which would have passed to the respondent on the death of the testator), he could only have disposed of, by his will, the remaining 50%.

The Court further agreed with the learned master

that the portion of land bequeathed to the respondent by the will of the deceased was 50% of the portion of his estate which was bordered red. This then would have the result that the portion of the Round Hill Estate outside of the area bordered red would pass to the residuary legatees under the will.

The Court disagreed with the contents of paragraph 68 of the learned master's judgment that the residuary legatees were indeterminate, and found that the reference made to "my children" in the will was intended to refer to the appellants. The evidence which was before the learned master, which was consistent with her own observation in paragraph 70 of the judgment, was that the appellants were the children of the testator. This also appeared to have been conceded by counsel for the respondent in the course of the appeal and no other persons in fact claimed to be the offspring of the deceased.

The Court further held that when the deceased named his children as his residuary legatees under the will, the appellants became entitled to his residuary estate. The Court confirmed the finding of the learned master that the agreement dated 23rd August 1990 was a valid and subsisting agreement.

The issue raised by the appellants concerning an election to be made by the respondent as to whether to take a benefit either under the agreement or the will, did not arise on the facts of the case.

Case Name:

[1] The Hon. Gaston Browne, Leader of the
Opposition

[2] The Hon. Lester B. Bird

[3] The Hon. Asot A. Michael

[4] Mr. Eisen Baptiste

[5] Ms. Paulet Hinkson

v

- [1] The Constituencies Boundaries
Commission**
**[2] The Attorney General of Antigua and
Barbuda**
**[3] The Speaker of the House of
Representatives**
**[4] The Prime Minister of Antigua and
Barbuda**
**[5] The Attorney General for and on Behalf of
Her Excellency The Governor General**

[ANUHCVP2013/0026]

Date: Friday, 14th February 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant: Mr. Anthony W. Astaphan, SC, with him, Ms. Samantha Marshall

Respondent: Mr. Douglas Mendes, SC, with him, Mr. Michael Quamina (for the 1st and 2nd respondents)

Issues: Civil appeal – Constitutional law – Constituencies Boundaries Commission – Antigua and Barbuda Constitution Order 1981 - Constituencies Boundaries Commission Guidance Act, 2012 – Election petition – Whether the Commission engaged in gerrymandering – Bias – Whether Commission was biased – Consultation – Information provided – Time allotted for consultation – Whether consultation adequate

Result / Order: [Oral delivery]

1. The appellant has the liberty to present a note on the basis for costs to be awarded. The note is to be presented to the Court via the Chief Registrar and the respondent by Wednesday, 19th February

2104. If the appellant chooses not to submit the note, he shall inform the Chief Registrar and respondent by email.

- 2. Judgment is reserved. Notice of the date of the decision will be given to the parties when the decision will be given.**