IN THE COURT OF APPEAL OF BELIZE, A.D. 2008

CRIMINAL APPEAL NO. 3 OF 2007

BETWEEN:

MICHAEL FAUX	**Appellant**
AND	
THE QUEEN	**Respondent**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Kevin Arthurs for the appellant.
Ms. Cheryl-Lynn Branker-Taitt, Deputy Director of Public Prosecutions, for the respondent.

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16, 17 October 2007, 13 March 2008.

MORRISON JA

1. At the conclusion of the hearing of this appeal on 17 October 2007, the court announced that the appeal would be dismissed and the appellant's conviction and sentence affirmed. These are the promised reasons for that decision.

2. The appellant was tried before Lucas J and a jury on an indictment containing a single count charging him with the murder of Sydney Bradley

on 9 June 2005. After a trial which concluded on 8 March 2007 the jury found him guilty of murder, and he was sentenced by the learned trial judge to imprisonment for life.

3. At the appellant's trial, the prosecution relied on the evidence of two witnesses as to fact, Mr. Clarence Hemmans, who was 15 years old at the material time, and Mr. Martin Bahadur, who was a constable in the Belize Police Department. The evidence of both witnesses was given after a voir dire early in the trial into the question of its admissibility and a ruling by the learned trial judge that this evidence was in fact admissible. While the correctness of that ruling was one of the matters canvassed on appeal, there was no challenge to the procedure adopted by the learned trial judge. As this court held in **Trevor Gill v R** (Criminal Appeal No. 15 of 2006, judgment delivered 22 June 2007) the decision to conduct a voir dire in these circumstances is entirely a matter for the discretion of the trial judge.

4. Mr. Hemmans' evidence was that on 9 June 2005, at about 10:00 p.m., he was standing in front of the alley where he lived at 165 West Canal Street, Belize City, in the company of his friend Sydney Bradley, his aunt and two cousins who lived at the same premises. They had been there for about half an hour and Mr. Hemmans and Mr. Bradley were there talking to each other when Mr. Hemmans noticed the appellant come up to a Chinese shop "cross the next side on East side" and then go back down Berkeley Street bridge. About five minutes afterwards, the witness saw the appellant coming back on a bicycle through Berkeley Street from the east side riding slowly, whereupon the appellant "ride the bike from through Berkeley Street then stand up middle of the canal side he pulled out a gun and fired four to five shots in our direction." The distance from where Mr. Hemmans, Mr. Bradley and the others were standing to where the appellant stood firing these shots was estimated to be about three hundred feet.

5. After the appellant had fired the first two shots, Mr. Hemmans testified that he and his aunt and cousins ran through the alley, when he saw Mr. Bradley fall to the ground. At this point, Mr. Hemmans turned back, picked up Mr. Bradley and carried him into his house at 165 West Canal Street, where the witness observed that Mr. Bradley was bleeding from his chest. Mr. Bradley was put to sit in a chair, where the following took place:

> "Q: And after you put him down to sit in the chair, what if anything happened next?
> A: He mentioned to my mother, my aunt that how Lee Mike shot him.
> Q: Can you recall his exact words?
> A: He said, "Lee Mike shot me, Lee Mike shot me".
> Q: How close or far were you to him when he said these words?
> A: Right beside him.
> Q: You said, he said "Lee Mike shot me, Lee Mike shot me", when he said it was Lee Mike to you did you know anyone by that name of Lee Mike.
> A: He didn't say it because I saw the person who shot him, he said it to my mother and aunt.
> Q: Yes, but did you, at that time know anybody by the name of Lee Mike?
> A: Yes.
> Q: Who do you know as Lee Mike?
> A: Michael Faux.
> Q: After he said these words that Lee Mike shot what if anything happen next?
> A: He just tell me to call the police."

6. In fact, the police had already been called by Constable Bahadur, who was Mr. Hemmans' next door neighbour, and Mr. Bradley was taken from

Mr. Hemmans' house and placed in a police car and rushed to Karl Heusner Memorial Hospital, where he succumbed to gunshot injuries later that same night.

7. Mr. Hemmans had known the appellant for about five to six years before that night and he had usually seen him and spoken to him almost every day, on the street and at school. On the night in question, he had seen him for some two to three minutes in good lighting produced by four well lit lamp posits at the "corner of the land and at the alley mouth where I live." The appellant was wearing blue jeans pants, a navy blue shirt and a "camouflage peak cap." Although Mr. Hemmans initially insisted that he had given a statement to the police the following day, 10 June 2005, positively identifying the appellant as the person who fired the shots that night, he accepted under cross examination that he had in fact given a statement some five days after the incident, that is, on 14 June 2005. Mr. Hemmans denied the suggestions put to him that he had not been present when the shooting took place and that the only reason he had named the appellant as the person who shot Mr. Bradley was "because you know that at the time Sydney Bradley and Michael Faux were quarrelling." Counsel for the appellant's attempt to elicit further evidence in cross examination, presumably to explain the reason for the "quarrelling", was stopped by the learned trial judge, who told counsel that "I don't want you to introduce hearsay."

8. Earlier that evening, Constable Bahadur, who lived at 163 West Canal Street, had been visited by Mr. Bradley (also known to him as "Buco" and "Boops"), who was his neighbour, while he was watching a basketball game on television. Mr. Bradley had looked in several times to see how the game was going and in due course stayed to watch the entire fourth quarter of the game. He left at a little after 10:00 p.m., while Constable

Bahadur remained at home chatting with his roommate (also a police officer). This is how Constable Bahadur described what happened next:

> "Whilst we were talking, at about 10:25 p.m. I heard a single gun shot. Approximately two seconds later, I heard approximately four more gun shots. I then got up and stood in my corridor of my apartment where my attention was drawn to my neighbours at the back, screaming and crying. I then went at the back of the yard of the apartment building where I still heard them screaming. I then exited the corridor made my way unto West Canal. Upon reaching outside I met a young lady, who works at the Department of Transport, however at that time I cannot recall her name, who also resides through the same alley with Sydney. I went through the alley where I heard people screaming and I was told something. I went in the house where I saw Buco was, I saw him standing holding his left side of his chest with his right hand and I saw the front part of his shirt full of blood. I then dial 911 and I began to assist another young man who I know as Clarence to take out Buco outside. As I was walking Sydney through the alley, towards West Canal I heard Sydney say, "boy a get f**k:, the man got me, the man got me". I asked him who got you, and he said, "Michael Faux"."

9. According to Constable Bahadur, Mr. Bradley was no more than three to four inches away from him when he made the statement set out in the preceding paragraph and spoke in a voice that was "clear and loud enough."

10. On 13 June 2005, Ms. Grace Flowers, a cousin of Mr. Bradley, identified his dead body at the hospital morgue to Dr. Mario Estradabran, who in due course performed a post mortem examination. Having given this

evidence, Ms. Flowers was asked by counsel for the prosecution whether to her knowledge Mr. Bradley and the appellant were known to each other, to which question she responded affirmatively, saying that they knew each other "very well". During the course of this wholly unnecessary excursion, the following exchange took place:

"Q: The person Michael Faux that you say you know for a while, before June 9 2005, can you recall how regularly you use to see him then?

A: After they grow up and want to hang out they stopped come around.

Q: But how regularly you would see him?

A: Faux don't usually come in the neighbourhood.

Q: I want to know, not that he would come and hang out with you, how regular would you see him, did you see him up to June 9 2005?

A: Yes because the Wednesday before he killed Sydney my son went to clear up my yard on rocky road and he bust like about nine shots.

Q: No that's not what I want, I want to know you.

THE COURT: Leave the witness alone because you ought to have, you know that rules you know, I'm blaming you for all this. Because I'm going to tell you now the witness you're getting the evidence from the witness which she does not have here in her deposition. So I don't know if you have alerted defense counsel so that he could know.

MS. MATURA: My Lord, it was just identification I was bring out, My Lord, it wasn't anything unusual.

THE COURT: That's unusual."

11. In the light of one of the grounds of appeal argued in the matter, we shall have to return to how Lucas J dealt with this gratuitous and obviously prejudicial piece of evidence later in this judgment (see paragraph 23 below).

12. The prosecution also relied on the usual evidence from police officers who investigated the matter as to the circumstances in which the appellant came to be arrested and charged in due course for the murder of Mr. Bradley, as well as evidence from a forensic scientist and a forensic pathologist.

13. The only other item of evidence on the prosecution's case that calls for specific mention is that of Ms. Audrey Cleland, a police Scenes of Crime Technician, through whom the prosecution sought to tender in evidence a number of photographs which she had taken of Mr. Bradley's body at the hospital morgue. After an objection taken by counsel for the defence, primarily on the ground that the photographs would serve no purpose but to inflame the jury unnecessarily, the photographs were ruled admissible by the learned trial judge and accepted in evidence.

14. After a visit to the locus, at which various matters of location and distance were pointed out to the jury, the prosecution closed its case, whereupon the appellant, upon being informed by the learned trial judge of his rights, elected to remain silent and to call no witnesses. The jury in due course returned a verdict of guilty of murder and, after hearing evidence and submissions in mitigation of sentence, Lucas J sentenced him to imprisonment for life.

15. Before this court, the appellant was represented by Mr. Kevin Arthurs, who sought and was granted leave to argue seven additional grounds of appeal, as follows:

1. The learned trial judge erred in law in admitting the res gestae statements.

2. The learned trial judge improperly excluded evidence in the cross examination by counsel for the defence as hearsay, such exclusion materially affected the posing of a proper defense and thereby deprived the appellant of a right to a fair trial as safeguarded under section 6(3)(d) and (e) of the Belize Constitution.

3. The learned trial judge failed to properly direct the jury as to how to treat the improper characterization of the prosecution witness which was highly prejudicial with no probative value.

4. The learned trial judge erred in failing to direct the jury in respect of the lesser charge of manslaughter which could be justified with regard to the evidence.

5. The learned trial judge's summing up was inadequate in directing the jury and to assist them in respect of their sworn duty to come to a true verdict.

6. At the end of the evidence for the prosecution and in light of the evidence in the voir dire, the trial judge should have removed the case from the jury and ordered that the jury enter a verdict of not guilty.

7. The judge erred in admitting the post mortem photographs of Sydney Bradley as they had no relevance to any point in issue, to the extent that their prejudicial effected out weighed their probative value.

Ground 1

16. In a detailed skeleton argument on this ground, Mr. Arthurs challenged the correctness of the ruling by the learned trial judge that evidence of what the deceased had said after receiving his injuries, as narrated by the witnesses Hemmans and Bahadur, was admissible as an exception to the rule against hearsay as forming part of the res gestae. Mr. Arthurs referred this court to a number of authorities in support of his submission that Lucas J had, while not misstating the correct principle of admissibility of such statements, misapplied that principle to the facts of the case. The learned judge, Mr. Arthurs submitted, had focused on whether the statements were made and not on whether the possibility of concoction could be disregarded. We were referred on this point to, among others, the cases of **Ratten v R [1971] 3 All ER 801**, **R v Andrews [1987] AC 281** and **Trevor Gill v R** (supra).

17. The learned Deputy Director of Public Prosecutions submitted, on the other hand, that Lucas J had directed himself properly on the point in accordance with the authorities and that the evidence had accordingly been correctly admitted.

18. The modern test of admissibility of statements said to form part of the res gestae was recently considered in **Trevor Gill v R**, (supra) in a judgment in which this court accepted that the correct approach to the question was that summarized by Lord Ackner in **Andrews** (supra) (at pages 300 – 301; see **Trevor Gill** (supra) at pages 12 – 14):

> "1. The primary question which the judge must ask himself is – can the possibility of concoction or distortion be disregarded?

2. To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection. In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, providing that the statement was made in conditions of approximate but not exact contemporaneity.

3. In order for the statement to be sufficiently "spontaneous" it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event. Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operative. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

4. Quite apart from the time factor, there may be special features in the case, which relate to the possibility of concoction or distortion. In the instant appeal the defence relied upon evidence to support the contention that the deceased had a motive of his own to fabricate or concoct, namely, a malice which resided in him against O'Neill and the appellant because, so he believed, O'Neill had attacked and damaged his house and was accompanied by the appellant, who ran away on a previous occasion. The judge must be satisfied that the circumstances were such that having regard to the special feature of malice, there was no possibility of any

concoction or distortion to the advantage of the maker or the disadvantage of the accused.

5. As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement and is therefore a matter for the jury. However, here again there may be special features that may give rise to the possibility of error. In the instant case there was evidence that the deceased had drunk to excess, well over double the permitted limit for driving a motor car. Another example would be where the identification was made in circumstances of particular difficulty or where the declarant suffered from defective eyesight. In such circumstances the trial judge must consider whether he can exclude the possibility of error."

19. In his ruling on the admissibility of the evidence of Mr. Hemmans and Constable Bahadur as to what they had heard Mr. Bradley say after the attack on him, Lucas J referred specifically to **Andrews** (supra) and went on to state as follows:

"The first question the Judge is to consider is can the possibility of contortion or distortion be regarded. I have considered the evidence of Clarence Hemmans and P.C. Bahadur, I conclude that Sydney Bradley utterancy [sic] was an instinctive reaction to being shot that he had no opportunity to concoct or make false allegations against the accused. Andrews v R also defines spontaneity, at page 423, Lord Ackner says, in order for the statement to be sufficiently spontaneous it would be so closely associated with the events which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event,

which provided the trigger mechanism for the statement, was still operative. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

Under this heading, that is spontaneity of the statement by the now deceased Sydney Bradley, I am satisfied that it's two separate statements made by Bradley were spontaneous. Although Clarence Hemmans did not say how long after the shooting Sydney Bradley made the statement "Lee Mike shot me", to Hemmans' mother and aunt, it ought to have been made I calculate under five or six minutes after which time P.C. Bahadur took to reach the house where Sydney Bradley was from the time he heard the first shot. Both times were relatively short. In my view, the deceased did not have the time to concoct a story he was concern about his recovery, go and look for help. P.C. Bahadur testified that Bradley mentioned the name of Michael Faux in response to P.C. Bahadurs' [sic] question to him. That is, "who got you?" The answer is admissible and forms part of the res-gestae principle despite the identity [sic] of the accused was made prompted by a question. The other – provided by the case of Andrews is the possibility of error in the fact narrated in the statement. I am not convinced that there is possibility for error in the facts narrated by the two witnessed. Also there are no special features in this case which gives rise to the possibility of error."

20. In our view, the approach of the learned trial judge to this question cannot be faulted. The utterances attributed to Mr. Bradley, after he had been himself the victim of what must have been an unexpected and startling attack, clearly satisfied the test of being "an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection" (**Andrews,** supra, per Lord Ackner at page 300). The possibility of concoction or

distortion, upon which Mr. Arthurs laid great stress in his submissions on this point, was in our view excluded by the circumstances of involvement and pressure of the event in which the statements were made. The suggestion in cross examination of Mr. Hemmans that there was some special feature of motive or malice (that the appellant and the deceased "were quarrelling") was not in our view sufficient or sufficiently cogent to displace the conclusion that there was no real possibility of any concoction or distortion of the statements attributed to Mr. Bradley, "to the advantage of the maker or the disadvantage of the accused" (**Andrews**, supra, per Lord Ackner at page 301). This ground of appeal accordingly fails.

Ground 2

21. By this ground, the appellant challenged the learned trial judge's refusal to allow his counsel to explore in cross-examination the matters referred to at paragraph 7 above. In his skeleton arguments and again in his oral submissions before us, Mr. Arthurs referred us to **Subramaniam v Public Prosecutor [1956] 1 WLR 965** for the well established distinction between hearsay evidence and what is described in the authorities as original evidence (see, for instance, **Andrews**, supra, per Lord Ackner at page 417).

22. The question in respect of which complaint is primarily made by Mr. Arthurs was put to Mr. Hemmans in cross-examination:

> "Isn't it true that Sydney Bradley told you that he felt that his death was coming?"

The learned judge disallowed the question on the ground that the answer would necessarily involve a breach of the rule against hearsay, indicating his view that "The rule for evidence is the same for the Crown and the Defence." While it is possible to conceive circumstances in which the

answer to this question might be allowable as original evidence to show the speaker's state of mind at the time he made the statement (see, for example, **Blastland v R [1986] AC 41)**, it is difficult to see how Mr. Bradley's state of mind as to whether he would face death soon might be relevant without more to the question at issue in the instant case, that is, the identity of his assailant. If the evidence was not admissible as original evidence, then there can be no doubt that the learned trial judge was correct in treating it as purely hearsay evidence and therefore inadmissible.

Ground 3

23. The appellant's complaint on this ground relates to the evidence of Ms. Grace Flowers set out at paragraph 10 above. Before summarizing Mr. Arthurs' submissions on this point, it may be helpful to see how Lucas J dealt with the prejudicial evidence of Ms. Flowers in his summing up to the jury. This is what the learned judge said:

> "You have had the opportunity of hearing the witnesses testify in court. In deciding whether or not a witness word or believe you should bring your own common everyday experience to such matter. You should consider such things as his/her ability, his/her demeanor when testifying including answering questions before you. The witness power of recollection. Any interest bias or prejudice he/she might have; any inconsistencies in the testimony of that witness and the answers if any, of such witness in respect to the inconsistencies. There was a witness who came here, the fourth witness, Grace Flowers, I just want to give you an example of prejudice and bias. She was brought here to my understanding just merely to say which is important that she went to the Karl Heusner Memorial Hospital Morgue where she identify the body of Sydney

Bradley. Then Ms. Matura asked her, well after she said she knew the accused and she knew that Sydney Bradley knew the accused because they were from the neighborhood. So Ms. Matura asked her, when last did you see the accused before the 9th June, 2005? She blurted out something about some shooting, you heard it; that is prejudicial, nobody asked her that. So I am telling you now, do not take into consideration what Ms. Grace Flowers said about what the accused had done, even if you believe what she said. Suppose he was shooting before, he's not being charged here for discharging a firearm in a public place. He is here for murder. So it is Ms. Grace Flowers who blurted that out. Nobody asked her that, so I am telling you don't use that evidence in this trial, for or against the accused, for or against the prosecution. So that was what I was saying, you must look at the bias of prejudice of a witness."

24. Mr. Arthurs submitted that these directions were inadequate and that Lucas J ought to have dealt with the matter immediately upon the prejudicial evidence having emerged by advising the appellant of his right to apply for the jury to be discharged and a new trial ordered. Instead, Mr. Arthurs contended, Lucas J had left the evidence "marinating" in the jury's mind for over a week before giving a wholly inadequate direction on the matter. In support of this submission, he referred us to Murphy on Evidence (7th edition), **Javier Ramirez v R** (Criminal Appeal No. 20 of 2005, judgment delivered 27 October 2006), a decision of this Court, and **Hamilton v R (1963) 5 WIR 361**, a decision of the Court of Appeal of Jamaica.

25. Ms. Branker-Taitt for the prosecution accepted that the evidence complained of was both prejudicial and irrelevant, but submitted that in the circumstances the learned trial judge dealt with the matter adequately in the directions which he gave and that no miscarriage of justice had

accordingly occurred. In any event, she submitted further, **Ramirez** (supra) did not say that the judge in these circumstances can only deal with prejudicial evidence at the time it was given and that case was distinguishable from the instant case, in which the judge had in fact immediately upbraided counsel for allowing the evidence to be given. In all the circumstances, Ms. Branker-Taitt contended, Lucas J had done enough to mitigate the impact of the prejudicial evidence.

26. The problem of how to deal with the inadvertent disclosure to the jury of inadmissible evidence is never an easy one for a trial judge. As Murphy notes (at page 73) -

> "If the jury is exposed to evidence which may be held to be inadmissible, the resulting prejudice to the party affected may require the discharge of the jury and a consequent retrial. At the very least, the judge must take the unsatisfactory course of directing the jury to disregard the evidence, which may have the opposite effect of drawing more attention to it."

27. **Ramirez** (supra) was a case in which a prosecution witness complained to the trial judge (in the presence of the jury) that the accused had threatened him in the cell block at the police station. Instead of telling the jury that they ought not to draw any inference adverse to the accused as a result of what the witness alleged, the trial judge indicated to crown counsel that "You may need to follow up on that that your witness has been threatened", thus implicitly accepting that the accused had in fact made the alleged threats. It is in this context that Mottley P made the statement relied on by Mr. Arthurs that "in as much as allegations were made in the presence of the jury, the judge ought immediately to warn the jury not to draw any adverse inference against [the accused] having regard to the nature of the charge of abetment against him."

28. There is, however, no general rule that, where in the course of a trial there is the accidental disclosure by a witness for the prosecution of evidence of the accused's bad character which is prejudicial to the accused, the jury should immediately be warned to disregard it or should immediately be discharged. The reference in **Hamilton v R (1965) 5 WIR 361, 363** to the duty of the trial judge "to inform the prisoner of his right to apply either for the jury to be discharged and a new trial ordered or to proceed with the trial before the same jury that heard the prejudicial statement of the witness", is explicitly a reference to the case of an unrepresented accused. In such a case, failure so to advise the accused will be a material irregularity in the course of the trial necessitating the quashing of any conviction, unless the proviso can be applied (see Blackstone 's Criminal Practice 2004, paragraph D 72.21, citing **Featherstone v R [1942] 2 All ER 672**). Where, however, as in the instant case, the accused is represented by counsel, who makes no application upon the accidental disclosure, the trial judge's duty is to deal with the matter as best as he thinks fair in all the circumstances. In this regard, a trial judge has a discretion in the light of the facts of the particular case and the manner in which he chooses to exercise this discretion will not lightly be interfered with on appeal (see **Weaver v R [1968] 1 QB 353**, especially per Sachs LJ at 359-360). Lucas J opted not to draw unnecessary attention to the matter at the time of the inadvertent disclosure and to deal with it in his summing up instead. This was a matter for him in the exercise of his discretion and it cannot be said, in my view, that in choosing to deal with it in that way he fell into error. The learned judge's warning to the jury, which is set out at paragraph 23 above, was full, fair and more than adequate to advise the jury that they should exclude from their consideration altogether Ms. Flowers' unfortunate disclosure.

Ground 4

29. Mr. Arthurs submitted that the evidence of Mr. Hemmans was insufficient to establish the specific intent needed to ground a charge of murder and that in the circumstances the learned trial judge ought to have left a verdict of manslaughter to the jury. His failure to do so, it was submitted, amounted to a material non-direction which deprived the appellant of the opportunity of a conviction for the lesser offence of manslaughter.

30. We disagree. The evidence of Mr. Hemmans was that the appellant "stand up middle of the canal side … pulled out a gun and fired four to five shots towards our direction." In our view, this evidence was sufficient to establish, if believed, a specific intention to kill and there was no basis for the judge to have left to the jury the alternative verdict of manslaughter.

Ground 5

31. Mr. Arthurs' submissions on this ground, which were framed in very general terms, concentrated on the issue of identification, the complaint being that the learned trial judge had failed to direct the jury as to how to treat evidence of identification and in particular that he had failed to point out to the jury material weaknesses in the prosecution's evidence. Although Mr. Arthurs again very helpfully provided a detailed skeleton argument on this ground, he was content at the hearing of the appeal to leave the court with the general submission formulated above. In our view, there is no merit in this complaint: not only did Lucas J give the jury a very full and entirely adequate identification warning along **Turnbull** lines in relation to Mr. Hemmans' evidence identifying the appellant, he also directed them as to the special need for caution in respect of the res gestae evidence, bearing in mind that what the deceased is alleged to have said was not tested by cross examination. These directions were, in our view, entirely adequate,

Ground 6

32. This ground essentially restates ground 1 and was therefore bound to fail once the main ground failed.

Ground 7

33. Mr. Arthurs submitted finally that the admission of evidence of the post mortem photographs of the deceased "was at best a superfluous shrine to evoke added sympathy or rage" to the detriment of the appellant. Suffice it to say that despite Mr. Arthurs commendable efforts, it was not demonstrated to this court that the admission in evidence of these photographs could have had such a prejudicial effect so as "to make it virtually impossible for a dispassionate view of the critical facts of the case to be thereafter taken by the jury" (see **List v R [1966] 1 WLR 9, 12**, per Roskill J, a case very helpfully cited by Mr. Arthurs).

Conclusion

34. It is for all of these reasons that this court dismissed this appeal and affirmed the appellant's conviction and sentence.

MOTTLEY P

CAREY JA

MORRISON JA