[2011] UKPC 39
Privy Council Appeal No 0025 of 2010

JUDGMENT

Omar Grieves and others (Appellants) *v* The Queen (Respondent)

From the Court of Appeal of Jamaica

before

Lord Brown
Lord Mance
Lord Dyson
Sir Roger Toulson
Sir Paul Girvan

JUDGMENT DELIVERED BY
Sir Roger Toulson
ON

20 October 2011

Heard on 4-5 May 2011

Appellant	*Respondent*
Michael Birnbaum QC Stuart Biggs Natalie Roberts (Instructed by Lawrence Graham LLP)	Tom Poole Ms Meridiane Kohler (Instructed by Charles Russell LLP)

SIR ROGER TOULSON:

1. On 21 June 2002 at the Circuit Court Division of the Gun Court in Kingston (Mrs H Harris J and a jury), the appellants were convicted of the murder of Lancelot Todd on 30 December 1996. They had been convicted at an earlier trial together with a fifth man, Dwayne Larmond, but their convictions were quashed on appeal, and a retrial of the appellants (but not Dwayne Larmond) was ordered. They appealed against their convictions on the retrial to the Court of Criminal Appeal of Jamaica (Walker and Cooke JA and Harrison JA (Ag)). On 30 July 2004 their appeals were dismissed by a majority, Cooke JA dissenting. They now appeal with leave granted on 21 July 2010. The interval of six years between the dismissal of their appeals by the Court of Criminal Appeal and the grant of leave to appeal to the Board was explained by Mr Michael Birnbaum QC, who has appeared on their behalf. In short, the review of the case and preparation of the appeal were carried out pro bono, and the resources available for such work are small in comparison with the demand for them.

2. The case against the appellants rested on the identification evidence of two witnesses, namely the deceased's brother, Andrew Todd, and a police officer, Detective Sergeant Reynolds. Their appeals to the Court of Criminal Appeal were advanced on a number of grounds, most of which were rejected by all members of the court. The grounds on which Cooke JA would have allowed the appeals were that the trial judge failed to give adequate directions to the jury about inconsistencies or possible inconsistencies a) between the evidence of Andrew Todd and the ballistics evidence, and b) between the evidence of Todd and that of Reynolds. Those are the main grounds, but not the only grounds, which have been advanced by Mr Birnbaum on the present appeals.

3. The deceased was shot dead between about 2.30 and 3pm on 30 December 1996 in Barry Street, Kingston, near to Gold Street Police Station. He was killed by a single bullet which entered the back left side of his neck. The police station is on the corner of Gold Street and Barry Street. The front entrance is on Gold Street and there is a rear exit to Barry Street.

4. Gold Street runs north to south and Barry Street runs east to west. Travelling east along Barry Street from the junction with Gold Street, the next streets parallel with Gold Street are Foster Lane, High Holborn Street and Ladd Lane.

5. Todd's evidence was that he was standing at the junction of High Holborn Street and Barry Street, talking to a friend, when the deceased walked past in the direction of Gold Street. As the deceased passed the junction of Barry Street and

Foster Lane, a group of about six men came from Foster Lane into Barry Street with guns in their hands. They crossed Barry Street and one shot his brother in the back of the head. He said that in the group he recognised "Gummy", "Silly Bread", "Dubba" and "Buddy Roy". Those are the street names, respectively, of the appellants Hanse, Grieves, Peterkin and Larmond. He said that he had known each of them for some years and he saw their faces for what he estimated to be eight seconds. He identified Gummy as the person who fired the shot which struck his brother in the head. When asked in chief if he could remember what kind of guns the men were carrying, he said that it was a long time ago and he did not remember what type of guns they had. In cross examination he said that the man who was closest to his brother had a Mack 11 and that one of the men had a .38 (revolver). His description of the shooting was that one of the men (Gummy) went across the road to his brother and fired several shots. The others stopped in the middle of Barry Street but then also started to fire. He could not remember whether the man closest to his brother was holding his gun in his right or his left hand. He agreed in cross examination that on a previous occasion he had said that Silly Bread (Grieves), Dubba (Peterkin), Buddy Roy (Paul Larmond) and Dwayne Larmond had 9mm pistols.

6. Todd said that on being shot his brother fell to the ground. The attackers then ran away up Foster Lane and he rushed over to his brother, who was lying face down. He turned him over, could see that he was struggling and ran to fetch his mother. They lived in Ladd Lane. He heard what he described as a "gun salute" behind him. When he returned, his brother was being put into a police jeep which drove away. There was a crowd and he did not see Reynolds. In Barry Street he was spoken to by a police officer who took him to Central Police Station, where he made a statement. Central Police Station is five intersections to the west and two to the north of Gold Street Police Station.

7. Reynolds's evidence was that he was on duty at the Gold Street Police Station when he heard explosions and saw people running along Barry Street and Gold Street. He pulled out his firearm, a 9mm pistol, and cautiously went outside into Barry Street. He saw the deceased lying on the ground and noticed three of the appellants, whom he knew, running towards the deceased with firearms in their hands. The three were Grieves, Peterkin and Hanse. He did not see what firearms they were carrying but he fired a shot in their direction. They returned fire and ran up Foster Lane. He then went to the intersection of Foster Lane and Barry Street, looked up Foster Lane and saw the same three men coming back towards him in a tip-toed position. When they saw him they fired in his direction and ran away northwards up Foster Lane. He returned to the deceased, got out a police jeep and placed the deceased in it with the help of Sergeant Douglas. By then a crowd had begun to gather. He did not see Andrew Todd at the scene. He drove the vehicle to a hospital. As the deceased was being placed in the jeep Reynolds noticed that the body was shaking as if he was trying to move. He was pronounced dead at the hospital. From the hospital Reynolds took the body to a funeral home and then went on to Central Police Station. There he prepared warrants for the arrest of the appellants after having spoken to Todd.

8. Douglas said that he was on duty at Gold Street Police Station when he heard the sound of gunfire. Reynolds rushed outside and Douglas heard more gunshots. In cross examination he estimated that the total duration of the gunfire was about fifteen seconds. He went outside and saw the deceased, whom he recognised, lying on the pavement and struggling. Reynolds went for the jeep and Douglas helped him to place the deceased in it.

9. Sergeant Christie was on duty at Central Police Station when he heard the sound of gunfire nearby. He heard about fifteen to twenty shots in quick succession. A radio transmission came in that there was shooting in the area of Gold Street Police Station. He mustered all the men he could and with two vehicles drove to Gold Street Police Station. When he arrived, Reynolds had left but there was a crowd. He collected some spent ammunition from the scene. Altogether the police recovered four cartridge cases and two 0.38 bullets. He took into custody three people who were present at the scene, one of whom was the appellant Larmond. The arrested men were taken to Central Police Station. There Larmond was swabbed for traces of gunshot residue. An elevated level of gunshot residue was found on his hands. The forensic evidence was that this would only be found if the person had fired a gun within the previous five to six hours. Larmond's hands were swabbed about 5pm.

10. Christie said that while Larmond was sitting with others on a bench in the guardroom in the CIB office at Central Police Station, he took a statement from Todd in his office within the CIB office. He gave Todd's statement to Reynolds when Reynolds came on duty at 6pm. Although Reynolds was stationed at Gold Street, he worked a night shift at the Central Police Station from 6pm to 6am. Christie said that the first time he saw Reynolds on 30 December was when Reynolds came on duty at 6pm, although he had heard Reynolds on the radio transmission earlier that afternoon.

11. A ballistics expert, Mr Daniel Wray, gave evidence that the ammunition recovered from the scene had been fired by five firearms. The four cartridge cases were from three different semi-automatic 9 mm pistols. The two bullets were fired by two .38 revolvers. One of the 9mm pistols may, of course, have been the one used by Reynolds. The bullet retrieved from the deceased's body had in Mr Wray's opinion been fired by a .38 or .3 revolver. A Mack 11 is a form of semi-automatic pistol.

12. Another ballistics expert, Mr Fred Hibbert, gave evidence that most Mack 11 firearms which he had seen fired 9mm or .45mm cartridges but he also testified that guns have been adjusted to fire all kinds of missiles.

13. None of the appellants gave evidence, but they all made statements from the dock denying that they were at the scene of the shooting.

14. Evidence was given on behalf of Grieves by Miss Petrona Bennett. She said that she was at the corner of Gold Street and Barry Street when she met the deceased walking along Barry Street. At that point a man ran from Foster Lane across the street, pulled out a gun from his pocket and fired a single shot, hitting the deceased in the back of the head. She had seen the man before. She had not spoken to him but someone had pointed him out as "Hit man" or "Short man". After the shot was fired the deceased fell on his face and the man ran away up Foster Lane. She followed him for a short distance and then returned to where the deceased was lying. She felt his heart and shouted to a woman to call his mother because he was not yet dead. She then left the scene. As she reached High Holborn Street she saw his brother Andrew running towards the scene. She said that none of the appellants were present at the shooting. She later heard that the deceased was dead, but she did not report what she had seen to the police because of the community in which she lived. If her evidence was truthful, everyone who spoke of hearing a number of shots must have been untruthful or mistaken and the recovery from the scene of ammunition from a number of firearms must have been co-incidental.

15. In the previous trial Todd had at one stage acknowledged that he might have been mistaken in his identification of Dwayne Larmond. However, he admitted to no doubts in relation to the appellants. The likelihood of Todd and Reynolds independently making honestly mistaken identifications of Grieves, Hanse and Peterkin, all of whom were known both to Todd and to Reynolds, would have been slender. This was no doubt realistically appreciated by those acting for those appellants. (The appellant Larmond's case was slightly different because he was identified only by Todd, but in his case it was a striking feature that he was taken into custody not long afterwards, in the vicinity of the shooting, and he was found to have gunshot residue on his hands which pointed to his having recently used a firearm.) It is therefore not surprising that the cross examination of Todd and Reynolds took the form of an attack on their integrity as witnesses, rather than suggesting that they had been honestly mistaken.

16. Todd was cross examined on the basis that he never saw the shooting and that he had conspired with Reynolds to fabricate a case. Reynolds was cross examined on the basis that his evidence was intended falsely to reinforce the evidence of Todd. Reynolds did not make his first witness statement until 18 March 2007, more than ten weeks after the incident. He was also the investigating officer. He had talked to Todd and knew what Todd's evidence was. It was suggested on behalf of Grieves that Reynolds was motivated by malice towards Grieves because Grieves had made a complaint to a human rights organisation about a previous occasion when Reynolds had arrested him and Grieves had applied for habeas corpus. It was also suggested on behalf of Grieves that Reynolds was not at Gold Street Police Station at the time of the incident.

17. There was evidence that Todd named the four appellants by their street names in his first witness statement taken at Central Police Station on the afternoon of the killing. There was a suggestion to police officers that Todd might have been influenced in identifying Paul Larmond by being able to see him sitting under arrest in the guardroom at the police station, but Todd himself (who gave evidence before the police officers) was not questioned about it and Larmond made no mention of seeing Todd at the police station in his statement from the dock.

18. Todd could not have colluded with Reynolds before making his first witness statement, in view of the unchallenged evidence of Christie that Christie took the statement during the afternoon before Reynolds came on duty at Central Police Station at 6pm. It was, however, logically possible that Reynolds may have been influenced in what he said in his witness statement made ten weeks later and in his oral evidence by his knowledge of the evidence of Todd. It was certainly unfortunate that an officer who was a witness of fact as to the incident and gave important identification evidence should also have been an investigating officer, in which capacity he had read Todd's statement and interviewed him before making his own witness statement. The main questions for the jury were whether Reynolds used that advantage to fabricate the evidence which he gave against the appellants other than Paul Larmond (whom he did not implicate), or possibly was influenced in his recollection by Todd's evidence, and whether the evidence of Todd was fabricated.

19. Mr Birnbaum criticised the following features of the summing up:

1. the judge's general direction on discrepancies;

2. the judge's general form of *Turnbull* direction;

3. the judge's direction about the inconsistencies between Todd's evidence and the ballistics evidence;

4. the judge's failure to analyse the evidence relating to Todd's and Reynolds's movements at the time of the shooting;

5. the judge's failure to identify other specific weaknesses in the identification evidence; and

6. the judge's failure to give a special warning about the evidence of Todd because of a reference made by him to the appellants having been involved in the murder of his aunty-in –law.

20. The judge gave the jury the following general direction on discrepancies:

> "Now, in all cases, as in this case, you find what you call inconsistency and discrepancy, some are material to the issue in the case and some are immaterial.
>
> Now, a discrepancy may arise because of the inability of a witness to express himself or herself, or to remember or recall an event or because of his or her powers of observation. But, a discrepancy, too, may be a warning of course, but you will have to decide which is applicable.
>
> Now, if you find that a discrepancy is material, it is for you to say whether it goes to the root of the crown's case, that is for you to decide how it impacts on the crown's case. If you think it is immaterial it is open to you to disregard it."

21. Mr Birnbaum submitted that the effect of this direction was to tell the jury that a discrepancy was relevant only if it went to the root of the prosecution's case. The Board is not persuaded that this is what the jury would have understood the judge to be saying. In substance, the direction amounted to saying that a discrepancy might be material or immaterial to the issue in the case, and that it might or might not have an innocent explanation. If the jury considered that it was material, it was for them to decide how far it impacted on the prosecution's case. The form of direction could have been better expressed but was not such as to mislead the jury or imperil the safety of the convictions.

22. The judge gave the jury a largely standard form of *Turnbull* direction. Mr Birnbaum's main criticisms were that the judge failed properly to deal with what could be regarded as important inconsistencies in the prosecution's case, but he made two criticisms of the general form of the judge's *Turnbull* direction.

23. The first related to the following passage in the summing up:

> "Now, in Jamaica, there are a number of persons who bear similar resemblance to each other, in any given district, town or community, and persons can be easily mistaken, one person can be easily be mistaken for another. There are cases in which some persons even make mistakes with the identification of persons, with respect to those who are close to them or even their own relatives. There have been cases with

> some serious miscarriage of justice in other countries because of mistaken identification of persons. ”

24. It was submitted that the inclusion of the words “in other countries” was tantamount to telling the jury that the problem of misidentification which had occurred in other countries was not a problem in Jamaica. In the judgment of the Board, the addition of the words “in other countries” was irrelevant but innocuous. It did not imply that the jury need not concern itself about the risk of misidentification, which was the whole purpose of the warning. Indeed, the judge related her warning to Jamaica by her reference to a number of persons in Jamaica bearing similar resemblance to each other.

25. The other criticism of the judge’s general form of *Turnbull* direction concerned the following part of her direction:

> “You should consider the distances from which the witnesses said they saw the person or persons, whether they had seen their faces? Whether it is day or night? Whether the witnesses knew the accused persons before? How often the witnesses had seen them? When was the last occasion on which they were seen? And if there was anything blocking their view of that person?”

26. The criticism of this passage is that the judge omitted from her list the question “how long did the witness have the accused under observation?”, which is an important factor and was identified as such in *Turnbull*. However, the judge went on to remind the jury of the evidence given by Todd and Reynolds about how long each of them claimed to have seen the faces of the appellants, and she concluded that part of the summing up by saying:

> “Now, it is for you to say whether witnesses, if you believe, had sufficient light, sufficient time, and they were sufficiently close to those persons to have recognised them and correctly identified them as the persons they said that they had seen on Barry Street that day and that is for you to say whether they had been mistaken.”

27. Reading the summing up as a whole, the Board does not consider that there is any substance in that ground of criticism.

28. There is more substance to the criticisms of lack of analysis with regard, firstly, to the inconsistency between the evidence of Todd and the ballistics evidence and,

secondly, to the effect of the evidence of Todd and Reynolds when considered together.

29. An important part of the guidelines laid down in *Turnbull* [1977] QB 224 is that the judge should remind the jury of any specific weaknesses in the identification evidence. Later authorities establish that this duty entails explaining why something is a weakness which may cast doubt on the reliability of the identification, unless to do so would be to state the obvious. In *Langford v Dominica* [2005] WL 5249870, paragraph 23, the Board commended the advice given by Ibrahim JA in the Court of Appeal of Trinidad and Tobago in *Fuller v State* (1995) 52 WIR 424, 433:

> "It is not sufficient merely to read to [the jury] the factors set out in *Turnbull's* case and at a later time to read to them the evidence of the witnesses. That is not a proper summing up. The jury have heard all the evidence in the case when the witnesses testified. It will not assist them if the evidence is merely repeated to them. What they require from the judge in the final round is his assistance in identifying, applying and assessing the evidence in relation to each direction of law which the trial judge is required to give to them and also in relation to the issues that arise for their determination."

30. In the same case the Board also emphasised, at paragraph 22, that the *Turnbull* principles do not impose a fixed formula for adoption in every case. It will be sufficient if the judge's directions comply with the sense and spirit of the guidelines.

31. In *Turnbull* the court was concerned with the particular problem of mistaken identification by honest witnesses. Part of the standard warning is that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. In later cases the courts have considered to what extent a *Turnbull* direction is required where the issue is whether the identifying witness has fabricated his evidence rather than whether he has made an honest mistake. Mr Birnbaum accepted that the following passage in the current edition of *Archbold*, at paragraph 14-15, is an accurate and succinct summary:

> "A *Turnbull* warning is not required and would only confuse a jury where (a) the defence attack the veracity and not the accuracy of the identifying witness…There is, however, an obvious need to give a general warning even in recognition cases where the main challenge is to the truthfulness of the witness. The first question for the jury is whether the witness is honest; if he is, the next question is the same as that which must be asked of every honest witness who purports to make an identification, namely, whether he is right or might be mistaken:

> *Beckford v R* 97 Cr App R 409, PC; but the judge need not go on to give an adapted *Turnbull* direction (reminding the jury that people can make mistakes in recognising relatives, etc.,) where such a direction would add nothing of substance to the judge's other directions: *Capron v The Queen* unreported, June 29, 2006, [2006] UKPC 34 (considering *Beckford* and *Shand v The Queen* [1996] 2 Cr App R 204, PC): and see *R v Giga* [2007] Crim LR 571, CA."

32. In *Shand* [1996] 1 WLR 67 the defence case was that the identifying witnesses were deliberately lying, and it was not suggested that they were mistaken. Lord Slynn, delivering the judgment of the Board, said at page 72:

> "The importance in identification cases of giving the *Turnbull* warning has been frequently stated and it clearly now applies to recognition as well as to pure identification cases. It is, however, accepted that no precise form of words need be used as long as the essential elements of the warning are pointed out to the jury. The cases in which the warning can be entirely dispensed with must be wholly exceptional, even where credibility is the sole line of defence. In the latter type of case the judge should normally, and even in the exceptional case would be wise to, tell the jury in an appropriate form to consider whether they are satisfied that the witness was not mistaken in view of the danger of mistake referred to in *R v Turnbull* [1997] QB 224."

33. That statement was reiterated by the Board in *Aurelio Pop v The Queen* [2003] WL 21161224, at paragraph 12.

34. In the present case it was logically possible, as Mr Birnbaum submitted, that there might have been a combination of fabrication and mistake; but, as already observed, the possibility that both identifying witnesses were simultaneously mistaken was remote. In cases where the real issue is whether the identification of defendants by witnesses who know them was fabricated, the potential relevance of weaknesses will be to that issue. Mr Birnbaum submitted that a weakness includes anything capable of being regarded as a weakness. On his argument, anything which could be regarded by the jury as a reason for suspecting that an identifying witness had lied requires to be identified as such by the judge. That comes close to saying that the judge must put to the jury every potential argument for questioning the credibility of a witness. Such a proposition goes beyond the authorities and is unsound. *Turnbull* requires the judge to remind the jury of any specific weaknesses which have appeared in the identification evidence. It does not require the judge to remind the jury more generally of every argument which there may be for not believing a witness.

35. The judge dealt with the inconsistency in the evidence of Todd about the firearm used to shoot the deceased and the ballistics evidence as follows:

> "Now it is for you to say whether or not the shooting has taken place in the circumstances as outlined by Mr Todd. Now, he has told you that the others also fired at his brother.
>
> Now, in cross examination he said, Mr Todd said, that he is familiar with guns. He says he knows a 0.3 revolver. He knows a 9mm revolver and he knows a AK-47, and he said the person who did the shooting had a Mack 11. It is Mr Wray's opinion, the ballistics expert, that the bullet taken from the body was from a 0.38 type or a 0.3 revolver. It is for you to say what you make of it. "

The judge added:

> "Now, in examination-in-chief, Mr Todd said he had not known the type of gun he had seen, however, in cross-examination, he said that – when he was reminded by [counsel for Hanse] – he said that he saw the men (sic) who did the shooting carrying a Mack 11."

36. Mr Birnbaum submitted that it was not enough for the judge, having identified the inconsistency between Todd's evidence and the ballistics evidence, simply to tell the jury that "It is for you to say what you make of it".

37. Their Lordships agree. The judge ought to have said that the ballistics evidence pointed strongly to Todd being wrong in suggesting that the deceased was shot with a Mack 11. (It was theoretically possible on Hibbert's evidence that he might have been shot with an adapted Mack 11, but that would have been speculation.) The judge should also have directed the jury that they needed to consider whether this affected their view of the truthfulness and reliability of Todd's evidence that the deceased was shot (or shot at) by a group including the four appellants.

38. As to that, there were a number of relevant points to consider. Although the judge reminded the jury that in examination in chief Mr Todd had said that he did not know the type of gun he had seen, she did not remind them of his full answer, which was that he could not remember because a long time had passed. By then it was five and half years since the murder. Nobody could have been surprised if he could not remember what type of guns had been carried, especially since the incident had been fairly brief. He also said, when asked further questions in cross examination, that one

of the attackers had a .38 revolver, and it is an agreed fact that the deceased was killed with a bullet from a .38 revolver. His identification of the appellants had been made within a short time after the killing; he identified them by their street names in a witness statement made by him on the afternoon of the killing. Despite the criticism properly made of the judge's direction, she did draw the discrepancy between Todd's evidence and the ballistics evidence to the attention of the jury; and it is unrealistic to suppose that, if she had dealt with the matter more fully, the discrepancy between the ballistics evidence and Todd's evidence in cross examination, more than five years after the murder, could have led the jury on that account to doubt the reliability of the identification of the appellants made by Todd within two or three hours after the killing.

39. As to the accounts given by Todd and Reynolds, there was no inherent contradiction between them. If both were telling the truth, the sequence of events was as follows:

1. Todd witnessed the shooting of his brother.

2. He ran to where his brother was lying, saw his condition and ran to fetch their mother.

3. After he had left, Reynolds came out of the police station because of the sound of gunfire. He witnessed further shooting.

4. Todd returned to the scene. By this time the deceased was being taken away. He had a conversation with a police officer as a result of which he went to the police station and made a statement.

40. The judge ought to have assisted the jury by analysing the evidence in that way, rather than merely reciting it, but there would have been nothing improbable in the analysis. It was natural that Todd should have run to fetch his mother on seeing the deceased's condition. There was evidence from others, as well as Reynolds, that there was a second round of gunfire after Reynolds came out. Todd said that he heard gunfire from behind him after he had left the scene. Douglas said that he heard two rounds of shooting, the first before and the second after Reynolds went out, and that evidence was not challenged by any of the appellants' counsel in cross examination. If the deceased was still showing signs of life, as more than one witness testified, it is not strange that the attackers should have returned to finish the job. Nor is it remarkable that by the time that Todd returned the deceased was being placed in the jeep and that Todd and Reynolds did not see one another.

41. There were, however, two pieces of evidence which did not fit with the scenario and the jury's attention should have been drawn to them. One was Douglas's estimation that the total duration of the two sets of shooting was about 15 seconds. That estimate cannot be reconciled with the evidence of Todd or of Reynolds. Todd cannot have run to where his brother was lying, turned him over, looked at his condition and run off within the space of fifteen seconds. Reynolds's account that he exited from the police station cautiously after hearing the first outburst of gunfire, and that there was then further gunfire, was also not consistent with the entire episode taking as little as 15 seconds. However, Douglas was being asked for a time estimate several years after the event. Time estimates by someone who is not looking at a watch are notoriously difficult. The other piece of inconsistent evidence was that of Christie, who spoke of hearing a volley of about fifteen to twenty gunshots in quick succession. He did not speak of hearing a second volley, but he did say that he would quite often hear gunshots being fired in that area of the south side of Kingston and so the incident was not an unusual one.

42. The two points are minor points. Their Lordships do not consider that, taken together, they would or might have given the jury cause for doubting that there were two episodes of gunfire, the first while Reynolds was in the police station and the second after he had come out on to the street (by which time Todd had left to fetch his mother).

43. Mr Birnbaum submitted that there were a number of other weaknesses in the identification evidence. The only point which in the opinion of the Board requires to be mentioned is the point that there was significant contact between Todd and Reynolds after Todd had made his initial statement but before Reynolds made his witness statement. The judge reminded the jury that Reynolds had said that he had interviewed Todd at Gold Street Police Station, after Todd had made his initial statement, and she reminded the jury of the suggestion that Reynolds bore malice towards some of the appellants. The jury was therefore well aware not only that Reynolds had discussed the case with Todd but that it was being suggested that Reynolds had fabricated his evidence.

44. The complaint that the jury should have been given a direction to treat the evidence of Todd with special care arises from a remark made by him while he was being cross examined on behalf of the appellant Larmond. The cross examination began with the question "Why did you say that your brother was no longer friends of these young men?" Todd's answer was "Dem and him have a certain thing going like, they kill one of my aunty-in-law." In her summing up the judge directed the jury:

> "Now, he also told you his brother and the accused were friends, but at the time of his death, they were no longer friends. Now, he was asked why he said that and he gave an answer. The answer he gave was that

> his brother and himself were no longer friends because they had killed his aunty-in-law. I must warn you, Mr Foreman and members of the jury, I must implore you, members of the jury, completely disregard this bit of evidence given by Mr Todd. Do not take it into account, dismiss it from your minds, please. Place absolutely no weight on it."

45. Mr Birnbaum submitted that the judge was right to give the jury a strong warning that they should disregard that piece of evidence as against the appellants, but that she should have gone further because the answer raised the possibility that Todd had a grudge against the appellants, based on a belief that they had killed a relative, and that this called for a special warning. However, the suggestion that Todd bore a grudge against the appellants in connection with that matter was not put to him at any time in his cross examination. After asking the question and receiving the answer which he did, counsel for Larmond wisely moved immediately to a different subject. In the circumstances their Lordships do not accept that any criticism can properly be made of the judge for the way in which she dealt with the matter.

46. In Jamaica the appellate criminal jurisdiction is governed by the Judicature (Appellate Jurisdiction) Act, section 14(1) of which provides:

> "The Court on any…appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:
>
> Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

47. Having considered fully the arguments advanced on behalf of the appellants in writing and orally, their Lordships are not persuaded that there has been a miscarriage of justice. On the contrary, if and to the limited extent to which the Board has concluded that any criticism can be made of the judge's directions, the Board is positively satisfied that no miscarriage of justice has thereby occurred. They will therefore humbly advise Her Majesty that the appeals should be dismissed.