[2018] JMCA Crim 7

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 22/2011

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA

JANET DOUGLAS v R

Mr Robert Fletcher for the appellant

Miss Kathy Pyke and Mrs Taneshia Evans Gibbons for the Crown

27, 28 June 2016 and 16 February 2018

SINCLAIR-HAYNES JA

[1] The lifeless body of Isolyn McGill, also called 'Iso', was found on the Hillyfield Road in the parish of Clarendon with 18 wounds to her upper body, nine of which were stab wounds to her lungs, heart, pulmonary artery and abdominal cavity. An open ratchet knife with blood stains on the handle and blade was found 15 yards from the deceased.

[2] The appellant, Janet Douglas, a married woman with whom Sergeant Glen McGill (then Constable) the deceased's husband had an affair, was convicted for the

second time on 11 March 2011 for her murder. This was after a trial which lasted from 31 January 2011 through 21 February 2011 and 11 March 2011. The evidence against her was entirely circumstantial. Cole-Smith J sentenced her to life imprisonment and she was required to serve 40 years before becoming eligible for parole.

[3] On 21 April 2014, the appellant's application for leave to appeal her conviction and sentence were considered by a single judge who refused leave to appeal against her conviction but granted leave to appeal sentence. Before this court, the appellant renewed her application for leave to appeal her conviction.

The grounds of appeal

[4] Three grounds of appeal were originally filed by the appellant. On 21 June 2016, three supplemental grounds of appeal were filed on her behalf. At the hearing of the appeal, counsel Mr Robert Fletcher abandoned the original grounds filed by the appellant and was granted leave to argue grounds one and three of the supplemental grounds.

[5] Her complaint at ground one was that:

> "The learned trial judge failed in an otherwise exhaustive summation to adequately distill [sic] and isolate the facts from which the jury may have drawn their inferences leading to guilt and those facts which may have led them to a contrary view. The absence of this assistance denied the applicant/appellant the fairest possible consideration of her case."

At ground three she complained that:

> "The sentence is manifestly excessive."

The Crown's evidence

[6] The nature of the evidence requires that it be outlined in some detail.

Sergeant Glen McGill's evidence

[7] In March 2000, approximately five years after his marriage to the deceased, Sergeant McGill, who was then a constable of police, met the appellant at the Half Way Tree Police Station. Consequently, on a report made to that police station by the appellant, in which she alleged that her house had been burgled and that she was assaulted, Sergeant McGill became a member of the team which investigated the matter.

[8] Someone was subsequently arrested and charged for the offences of burglary and assault with intent to rob. The matter was placed before the court but attempts to contact the appellant proved futile. The appellant eventually contacted Sergeant McGill by way of telephone and enquired about the status of the case. She thereafter telephoned him regularly to tell him about strange sounds she said she heard in her yard which caused her to become fearful. She invited him to her house and he went "to check her premises". He also caused other police personnel to visit her home regularly to ensure her safety. They consequently developed a "good, cordial relationship".

[9] In October 2000, he received a call from the appellant who told him that she was afraid because she had heard strange sounds. He spent the night at her house ensuring her safety. She telephoned some days after and again complained of being afraid because of hearing noises. He spent the night at her house and a sexual relationship developed. Thereafter he slept at her house twice or thrice weekly. This led to him lying to his wife that he had extra duties to perform.

[10] It was Sergeant McGill's evidence that he told the appellant that he resided with his girlfriend Isolyn and their daughter. She declared her love for him and became "very very upset" whenever he expressed a desire to visit his family in Clarendon. She cursed and cried and said, "Weh yuh a guh dung fa, dem a gi yuh nothing, look weh mi ah gi yuh". She told him to leave Isolyn. She was also concerned about him having to travel to Clarendon on public transportation.

[11] Sometime late in October 2000, whilst Sergeant McGill was at the appellant's house, she informed him that she was pregnant. She showed him a pregnancy kit which indicated that she was pregnant. She appeared to be delighted but he was shocked. Upon being told by him of his intention to go home, she flew in rage and cried. She consequently suffered an attack of asthma. After the appellant was treated, he left her and went home.

[12] Whilst he was at home, Mr Barrington Dookan (also called Breda), his friend, telephoned him. He went to Mr Dookan's home and spoke to the appellant via the telephone. She demanded that he return to Kingston and threatened to tell his wife

about the pregnancy if he refused. He told her he would return to Kingston the following morning and ended the conversation.

[13] Sergeant McGill further testified that at about 9:30 that night the appellant arrived at his gate in a beige 626 Mazda motor car with Derrick, a friend of the appellant. He, his father and his friends, Dookan and Omar Facey, went to her. He introduced the appellant to his father.

[14] The appellant was determined to tell Isolyn that she was pregnant "and mash up everything and mash up his life". He confessed that Isolyn was his wife; and weeping, he beseeched her not to do as she had threatened. She told him that she knew he was married. His father, Peter McGill, pleaded with her. She told him that she would not, only on condition that he returned to Kingston with her.

[15] They drove away from his gate to Breda's where he told his father about the affair. He consequently told his wife that there was an emergency which required his return to Kingston and went to the appellant's home.

[16] All night the appellant cursed and insisted that he should leave his wife. She asked him if he believed that he would "come into her house, use her, get her pregnant and expect to live happy with [his wife]". He spent that night and the two following nights with her.

[17] She lent him her Mazda motor car to travel to Clarendon on condition that he ended the relationship with his wife. He promised to try. He returned to Kingston on Monday and stayed at the appellant's house for "about three or so days".

[18] The following Sunday he took his wife, child and father to Mocho to visit family. He returned to the appellant's house on Monday following, where he remained for about three days. She subsequently telephoned him and told him that Breda told her that he had taken his family to Mocho. She accused him of having had sex with his wife in the car. She cursed him loudly and told him that she had telephoned his wife and told her about their relationship and her pregnancy.

[19] On 9 November 2000 his daughter celebrated a birthday. The appellant drove him to his home so he could see his daughter. He testified that he was only able to run inside and hand his daughter a present and wish her "happy birthday".

[20] Sometime between 10 and 12 November 2000 the appellant telephoned him. She cursed loudly and told him that she had telephoned his wife using Breda's telephone and informed her about their relationship and her pregnancy and had invited her to Half Tree Police Station where they met.

[21] Although he was displeased, the appellant picked him up that night and he went to her house. Throughout the period he remained there, the appellant cursed him and cried about him not wanting to leave his wife. He remained there Friday and Saturday and left Sunday morning because she suffered an asthma attack.

[22] On the Sunday morning, the appellant's friend Derrick drove Sergeant McGill home in her car. He discussed the matter with his wife and accepted responsibility for the appellant's pregnancy. They agreed that it was their desire that that their marriage should work.

[23] The Monday following, he returned to the appellant's home to retrieve material for a course he was pursuing. He informed the appellant that he had reconciled with his wife and he would not return to her house because the relationship was over. He also returned the things she had purchased for him.

[24] On 16 November 2000, the appellant drove him to her house for him to receive a telephone call. He never received the call. She beseeched him to remain but he refused. She wept and suffered another asthma attack which caused him to administer her "pump". She, he said, uttered the following words, "So you and [your wife] happy you think a me alone a guh get hurt?" He left her and went home.

[25] Because of his wife's entreaties, on or about 17 or 18 November 2000, he eventually capitulated and provided her with the appellant's telephone number. Surprisingly, the appellant and his wife became friends and spoke regularly on the telephone.

[26] On 23 November 2000 at the Half-Way-Tree Police Station, the appellant told him that she had gone to Mineral Heights earlier that night to collect a prescription from her aunt's husband. She also went to his house and told his wife about the pregnancy and apologised to her "about the whole incident".

[27] The appellant told him that she had arranged for his wife and daughter to visit her on the weekend in Kingston because she had identified a house in Kingston for his family. She would pay the six months rent in advance and he would repay her. She also told him that she had offered to get his wife a job. Sergeant McGill said he expressed to the appellant his discomfort with the arrangement, but he refrained from interfering as he did not wish to hurt his wife.

[28] Later that day (23 November 2000), a colleague accompanied him to escort the appellant home because she expressed fear of going home at that time. He returned to the station where he remained until 6:00 the following morning.

[29] At about 8:00 am on 24 November 2000, he returned to the appellant's home to change his clothes. The appellant, while jokingly pinching and grabbing him, told him that he "was wicked". He thereafter went to work at the court.

[30] After leaving court he went to the bank. He then went to the Casa Blanca Hotel in Portmore with a lover where they spent about two hours. He had booked into that hotel using his friend, Mr Dookan's name. Later that day he headed home to Clarendon.

[31] He arrived home at 6:30 pm. His wife was not home. He inquired about her whereabouts and he went in search of her. At about 7:30 pm whilst he was at a bar, he saw the appellant. She was driving her motor vehicle. She drove off the Hayes main road and unto a lane. He signalled her and she stopped the vehicle. Whilst he

was walking towards the car, he saw the appellant spraying what appeared to be air freshener in the car.

[32] He entered the car and sat on the front passenger's seat which he said felt damp. The appellant told him that she had gone to Mineral Heights to visit her husband's aunt who had fallen ill. Whilst transporting her husband's aunt to the May Pen Hospital his aunt vomited. She consequently washed the car to rid it of the smell of "vomit and the stench".

[33] He enquired of the appellant about his wife's whereabouts and she told him that she had given his wife $1,000.00 to purchase pampers for his sister-in-law's daughter. The appellant drove him to his house. He did not see his wife. He drove with the appellant to May Pen in search of her but did not find her.

[34] He returned home and he saw a police car at his gate. Consequent on a conversation with the police, he went to Johnson's Funeral Parlour. There he saw his wife's body on a stretcher with "multiple cuts all over" her body. He was unaware of her having any enemies who would have wanted her dead. According to him at that time, that is, 24 November 2000, he had had "very good" relationship with his wife. His father supported his evidence that at that point in time he and his wife were enjoying a good relationship.

Ms Stacy-Ann Gibson

[35] Ms Gibson is the deceased's sister. She saw the appellant at about 4:00 pm on 24 November 2000 at the deceased's home. The appellant drove a light coloured car.

The appellant spoke with the deceased about the deceased visiting Kingston for the weekend to search for a house to rent. The appellant appeared to "talk normal". She was not angry.

[36] The appellant inquired why her (Ms Gibson's) nine months old daughter wore "cloth nappy" instead of "pampers". Ms Gibson told the appellant that she could not afford to buy them. The appellant gave the deceased $1,000.00 with which to purchase pampers and hair products in May Pen.

[37] The deceased left in a taxi for May Pen. The appellant remained at the house and spoke with Peter McGill for about five to 10 minutes. Thereafter appellant left to take medication for an old lady at Mineral Heights. She drove in the direction the deceased had travelled.

[38] Sergeant McGill, she said, arrived home at 7:00 pm. He changed his clothes and left. At about 7:30 pm the appellant returned and complained of feeling ill. Mr Peter McGill asked her why she took so long in returning and she told him that "the lady was vomiting".

[39] Sergeant McGill returned soon after and enquired about the deceased. She (Ms Gibson) told him that the deceased had left a long time and had not returned. The appellant and Sergeant McGill left in the appellant's car to go in search of the deceased.

[40] Under cross-examination, it was Ms Gibson's evidence that she did not hear the deceased tell the appellant that she was going to May Pen to meet Sergeant McGill and to purchase groceries.

Ms Carlette Johnson

[41] On 2 February 2011, Ms Johnson testified that on 24 November 2000 she saw the deceased in Super Plus, a supermarket and pharmacy in May Pen. The deceased purchased a pack of medium sized pink pampers and lotion. She (Ms Johnson) bought a bottle of hair mousse for the deceased and she gave the deceased the change from the purchase.

[42] Outside of Super Plus, she wrote a telephone number on a piece of paper which she gave to the deceased. The deceased placed the paper into her bag and they walked to a park which was across from the bus stop.

[43] Between the hours of 6:00 and 7:00 pm, she observed a brownish, greyish car which was driven by someone of "brown complexion". She was unable to say whether the driver was male or female nor could she say how many persons were in the car because it was dark and she could not see inside the car. The car stopped. The deceased, who appeared to be happy and excited, entered the car.

Mr Peter McGill

[44] Mr Peter McGill testified that in November 2000, Sergeant McGill, the deceased, his granddaughter, the deceased's sister and her child resided with him at

Cornpiece in Clarendon. Sometime early in November 2000 he met the appellant who informed him that she was pregnant for Sergeant McGill.

[45] She threatened to tell Sergeant McGill's wife about the pregnancy and told him that she would not be the only loser. That statement was made in the presence of Sergeant McGill and his friends Messrs Facey and Dookan. It was Mr McGill's evidence that he never understood what she meant. She however did not tell the deceased about the affair because Sergeant McGill returned to Kingston with her.

[46] On 24 November 2000 at about 4:00 pm, the appellant drove a beige car to his house. In his hearing, the deceased told him that she needed to purchase some things in May Pen but she did not have the money. The appellant offered to provide the money but he did not see her give the deceased the money.

[47] The deceased left home at about 5:00 pm. The appellant had told him that she was going to Mineral Heights to deliver medication for someone. He asked the appellant why she did not take the deceased in her vehicle since she, the appellant, would have been travelling in the same direction. She told him that she was unfamiliar with the May Pen road.

[48] He enquired of the appellant her reason for making arrangements to rent a house in Kingston for the deceased because he thought that she would have been "bitter and want revenge". She told him that she liked to help people. About 15 minutes after the deceased left, the appellant left in her car and headed in same direction towards May Pen.

[49] Sometime between 6:00 pm and 6:30 pm Sergeant McGill arrived. The deceased had not returned. Sergeant McGill left the house in search of her. The appellant and Sergeant McGill returned at about 7:30 pm. in her car and he enquired of the appellant why she remained so long in Mineral Heights. The appellant replied that the person to whom she had taken the medication had vomited in her car and she needed to wash the car.

[50] Sergeant McGill appeared to be worried about the deceased and the appellant appeared to be nervous. The appellant and Sergeant McGill went in search of the deceased but they returned without her. After their return, a police car arrived at the gate and Sergeant McGill spoke with the occupants. Having spoken with the occupants Sergeant McGill "bawled out" and began crying. He appeared weak and very sad. In the presence of the appellant, the police informed him that a body was found by the road. The appellant appeared "nervous and frightened".

[51] Sergeant McGill left in a police vehicle. The police returned about half an hour after and instructed the appellant to accompany them to the station. The police also requested the keys to the appellant's car. The car was searched and removed by a wrecker.

[52] The police questioned the appellant about a floor mat for the left side of her car and she told them that she had washed it because the person to whom she had taken the medication had vomited on the said mat. She appeared "very kind of nervous" and "very scared".

[53] It was also Mr McGill's evidence that between early November 2000 when the appellant had threatened to tell Sergeant McGill's wife about her pregnancy and the affair with Sergeant McGill and 14 November 2000, the deceased and Sergeant McGill "were getting on very well".

[54] On 29 November he attended a post mortem examination on the body of the deceased and he identified the body to be that of Isolyn.

[55] He admitted under cross examination that he sometimes has difficulty remembering things and he may even "mix up ... date[s] and all these kinds of things". He was however adamant that on the night of 24 November 2000 he did not see Sergeant McGill alone in the appellant's car whilst it was being driven.

Retired Detective Sergeant Evan Williams

[56] It was Detective Sergeant Williams who discovered Isolyn's body on the Hillyfield Road on 24 November 2000 at about 7:45 pm. Near the body were items of jewellery (wristwatch, rings and earrings). Apart from the bloodstained knife he also found two receipts, among other things, in a wallet which he removed from the left pocket of the pants the deceased wore. The receipts were dated 24 November 2000 and the time 18:30 and 18:36, respectively, were noted thereon. He caused the deceased's body to be removed and he returned to the station.

[57] Detective Sergeant Williams testified that whilst at the station, he spoke with Sergeant McGill, who was crying, stomping his feet and looked sad. Sergeant McGill said, "A wanda if a Janet [the appellant] kill mi wife".

[58] He went to Sergeant McGill's house in Cornpiece to speak with the appellant. She was standing beside her husband's Mazda motor car which she had driven. He cautioned her and told her that he received information that earlier that evening she had spoken with the deceased. She accepted his assertion without demur but told him that at about "5:30 or minutes to six" she had given the deceased money to go to May Pen. The deceased left the house and she left afterwards for Mineral Heights. She told him that she had taken medication for "a sick old lady". She was however unable to provide him with a name. Nor was she able to find the house again because that was the first occasion she had gone there.

[59] According to her, he said, she was merely doing a friend a favour. She described the house as "a big upstairs white house". It was however the retired detective sergeant's evidence that there was no such house in Mineral Heights at that time. The appellant, he testified, told him that she did not go to May Pen and she did not even know May Pen.

[60] In the trunk of the car which the appellant drove, he saw a large pack of 24 medium pink Cuties pampers with a Super Plus price tag. The appellant told him that they were hers and that she had purchased them earlier that day at Azan's store. He removed a black plastic bag from the glove compartment. The bag contained a Body Concept lotion and a Smooth and Shine hair mousse which she said she purchased at Azan's together with the pampers.

[61] Attached to both the lotion and mousse were also Super Plus' price tags. The appellant said the items were hers. She had purchased them with the pampers from Azan's. Sergeant Williams testified that upon informing her that she could not have purchased the items from Azan's, she said, "But officer, supermarket sell dem one another products". He examined the interior of the car again and observed what appeared to be bloodstains on the front passenger seat and the seatbelt. A tin of air freshener was seen on the back seat of the car. Like Sergeant McGill, he said that the seat felt damp and the car smelt of air freshener.

[62] The appellant was escorted to the station where the Detective Sergeant Williams requested the clothing and a blood sample. She refused to comply. Sergeant McGill however complied with his request and handed over the clothing he was wearing. Sergeant McGill, he said, was "cooperative" during the interview and he provided the police "with a lot of information". It was his evidence that Sergeant McGill was a suspect until they received the forensic report.

[63] On 25 November 2000, he went to Super Plus which was located at 21 Sevens Road in May Pen and spoke with Ms Karen Williamson, an employee at Super Plus. He showed her the receipts which were taken from the pants pocket of the deceased. In the general area of the supermarket he observed pink medium Cuties pampers with Super Plus price tags. The tags bore the same price as that which was found in the car.

[64] On 27 November 2000, in the presence of the appellant, Ms Williamson identified the items on the receipts as having been cashed by her at 18:30 and 18:36. The appellant was consequently charged with the murder of the deceased, and upon caution, she opted to remain silent.

[65] On 29 November 2000 the appellant eventually gave Detective Sergeant Williams her clothes. He took the items of clothing, that is pants, shirt, merino, tie and shoes, he received on 25 November 2000 from Sergeant McGill and the appellant's pants, T-shirt, brassiere, wristwatch, two rings and shoes to the forensic laboratory. He later attended the post mortem examination on the body of the deceased which was performed by Dr Desmond Brennan.

[66] At the post mortem examination, he received the deceased's clothes from Dr Brennan, as well as hair and blood samples, which he took to the laboratory on 1 December 2000. He described the deceased as short and slim and the appellant as stout, "five eleven, six foot" in height and of a brown complexion.

[67] Under cross-examination, Detective Sergeant Williams denied that he asked the appellant about the floor mats which were missing from the car and she told him that she had taken a lady to the hospital and the lady vomited in the car. Nor did he ask the appellant to explain the reason why some seats were covered and others were not. His evidence was that he saw seat covers in the area of the trunk where the spare tyre was kept.

[68] He denied that he found a pack of Craven A cigarettes in the car and that he received nail clippings from Dr Brennan at the post mortem examination. It was his evidence that he ordered an examination of the car for the deceased's fingerprints, but did not receive a report. He explained that if no fingerprints were found, then he would have been told that "there was nothing to photograph or nothing to lift" and he would have been unable to verify the accuracy of that information. He refuted the assertion that the appellant told him the lady she visited at Mineral Heights, was "a Miss Black".

Ms Karen Williamson

[69] Ms Williamson was a purchasing manager in the cosmetics department at Super Plus. On 24 November 2000 she was on duty and she assisted customers. On 25 November 2000, at about 3:00 pm she was spoken to by Detective Sergeant Williams who showed her two receipts which bore her signature and the date, 24 November 2000 with times 18:30 and 18:36. She recognised the receipts as having originated from the cosmetics section of Super Plus. They bore her signature.

[70] On 27 November 2000 at about 2:30 pm, she attended the May Pen Police Station and identified a bottle of mousse and a Concept II lotion as products from her department. She also identified the receipt a second time and she gave the police a statement.

Retired Deputy Superintendent Winston Lawrence

[71] It was Deputy Superintendent Lawrence's evidence that he was the senior investigating officer. On 24 November 2000 he observed the absence of nail tips from the appellant's left thumb and middle finger and from her right little finger. The deputy superintendent testified that on 28 November 2000 he conducted a question and answer with the appellant in the presence of her attorney. Forty-eight questions were asked of her and she answered 45.

[72] He questioned her about the absence from her fingers of the aforesaid tips which he had noted when she attended the station on 24 November 2000. He also enquired of her whether she was the owner of the Mazda motor car which had been taken to the station on 24 November 2000.

[73] It was the deputy superintendent's evidence that on 24 November 2000 Sergeant McGill was questioned at approximately 9:00 pm to ascertain whether he had participated in his wife's killing but he did not take Sergeant McGill's clothing for testing. Nor did he take the appellant's. Neither the appellant nor Sergeant McGill was a suspect at that juncture. It was also his evidence that before appellant became a suspect, in response to the questions he asked, she told him that she had gone to Mineral Heights to take medication to a lady who was ill. He denied that the appellant told him that her brother had washed the car and removed the mats which were at her house.

[74] He obtained a search warrant on 29 November 2000 for the appellant's house. Upon searching her house, he saw items of male clothing which she said she had purchased for Sergeant McGill. The appellant did respond to the question asked of her, whether upon ending the relationship, Sergeant McGill had left the items of clothing she had purchased for him.

Dr Desmond Brennan

[75] Dr Brennan's evidence was that on 29 November 2000 he performed a post mortem examination on the body of the deceased. The cause of death was "hypovolemic shock, secondary to ruptured pulmonary artey, aorta, and heart, due to multiple stab wounds" inflicted by a sharp implement. His external findings revealed the body had lacerations to the (i) right cheek, (ii) right chin, (iii) left lower chin, (iv) right clavicle (under right medioclavicular line), (v) right clavicle in the right parasternal edge, (vi) fifth right intercostal space (the right side), (vii) left sternoclavicular joint, (viii) mid-left infraclavicular line, (ix) fourth intercostal space about the left parasternal line, (x) lateral left lower quadrant of breast, (xi) eight left intercostal space along the left anterior axillary line, (xii) sixth left intercostal space to left mid axillary line, (xiii) ninth left intercostal, (ivx) mid left arm, (vx) distal third of left forearm, and (xvi) aspect of the right wrist.

[76] There were also three bruises to the body. The internal findings showed blood in both chest cavities and penetrating wounds to the lungs, heart, left pulmonary artery and abdominal cavity.

[77] It was Dr Brennan's evidence that he took a blood sample and fingernails scrapings from the body of the deceased. He placed them in red top test tubes which he labelled and handed to Detective Sergeant Williams.

Ms Sherron Byrdson

[78] Miss Sherron Byrdson, forensic analyst, testified that on 28 November 2000 she examined a Mazda motor car, at the May Pen Police Station. There was a 21-pack box of Craven A cigarettes at the front of the car and the car "smelled of disinfectant". She collected blood samples from the car but she did not test those blood samples to ascertain the blood type.

[79] Human blood was found on the front passenger seat, seatbelt, seatbelt buckle and on the upright of the driver's seat. The serosanguineous stains (pale blood stains as a result of blood being diluted with liquid) found on the hand brake lever and ceiling of the car (the front section) were human in origin.

[80] Miss Byrdson opined that an injured person or persons were at the front of the car because of the distribution of blood. It was also her opinion that efforts were made to remove bloodstains from the car. That opinion was formed because of the presence of serosanguineous stains and the smell of disinfectant.

[81] On 29 November 2000, she was given items of clothing taken from the appellant and Sergeant McGill and a ratchet knife. Those items, except the ratchet knife, tested negative for the presence of the blood. On the said day, she received items of clothing taken from the body of the deceased together with samples of

blood, hairpiece and hair taken from the deceased's head. The sample of blood belonged to the group A blood type, which was the blood type found on the clothing taken from the deceased.

[82] On 13 May 2005, Miss Byrdson collected buccal swabs from Sergeant McGill. His DNA profile was not found in the car. She opined that it was not possible that he was one of the injured person or persons who came in contact with the front passenger seat. The samples taken from the buckle of the front passenger seatbelt indicated that "there was a mixture of more than one person's DNA". No DNA result was obtained from the ratchet knife.

[83] Under cross-examination, Miss Byrdson testified that she saw seat covers in the car trunk but there was no result for blood on them and she did not receive any finger nail clippings.

The appellant's evidence

[84] The appellant denied killing the deceased. She said that she "wouldn't do that". Her evidence regarding the commencement of her relationship with Sergeant McGill did not differ from his except that she denied that she contacted him about the status of the matter which was in the Half Way Tree Court. She said it was he who telephoned her about it.

[85] Her evidence as regards how she discovered he was married, how she first met Iso and the events leading up to the death of Iso, is entirely at variance with his. Her evidence was that in September 2000, she was told that Sergeant McGill was

married to the deceased. She confronted him at the Half-Way-Tree Police Station but he denied that he was married. He maintained that he had a daughter, who lived with his father and that his daughter's mother lived in the same district. She however subsequently confirmed that he was married and accused him of being a liar. She spoke with him later that evening and she told him that she "never want to see him come back through [her] door".

[86] He told her he did not want to be with the deceased and he attempted to persuade her to reconsider but she refused. About three or four days later, he visited her house for clothes for work.

[87] It was the appellant's evidence that she was introduced to the deceased by Sergeant McGill at the Half-Way-Tree Police Station sometime late September 2000. She subsequently spoke regularly with the deceased on the telephone. The deceased often visited her in Kingston and they had a good relationship. She transported the deceased to Pablos or Pings to purchase fabric.

[88] The appellant denied ever telling Sergeant McGill that she was pregnant or that she threatened to tell the deceased that she was pregnant. According to her, she had a good relationship with the father of her children. In fact on 11 November 2000, she returned from a visit in the United States of America with him and the children.

[89] She testified that on 23 November 2000, at about 8:00 pm, she visited Miss Mavis Blackwood (her husband's aunt) in Mineral Heights to pick up a prescription.

Whilst there, Miss Blackwood became sick. She had diarrhoea and was vomiting and she took her to the Denbigh Hospital.

[90] Thereafter she went to the Half-Way-Tree Police Station because it was late (about 1:00 am on 24 November 2000) and she needed to be escorted home. At about 1:00 am on 24 November 2000 Sergeant McGill and another police officer escorted her home. It was at that point in time she told Sergeant McGill that Miss Blackwood had vomited in her car.

[91] Under cross-examination she was confronted by her unsworn statement to the court on 25 May 2000 during her first trial in which she had told the court that the lady in Mineral Heights to whom she delivered the medication was Miss Palmer and not Miss Blackwood. Her answer was that she could not remember saying so. It was her evidence that the person was Mavis Blackwood also called Miss Black.

The appellant's version of what transpired that fateful evening

[92] On 24 November 2000, at about 5:00 pm, she went to the deceased's house to transport her and her daughter to Kingston as they had arranged to spend the weekend with her. The deceased had plans of relocating to Kingston and obtaining employment there. In furtherance of those plans, she had arranged to look at a house in Portmore.

[93] Whilst at the deceased's home, the deceased told her she was not ready to go with her because she was awaiting the arrival of her husband who was to give her money to buy groceries. About 20 minutes after her arrival at the deceased's house,

the deceased went "next door" to receive a telephone call. She returned and told her that she was going to May Pen "because [Sergeant McGill] reach [sic] May Pen". She offered to take the deceased to May Pen but the offer was declined. The deceased told her that she would take a taxi and instructed her (the appellant) to wait at the house for her.

[94] At that juncture the persons at the house were the deceased, the deceased's daughter, Mr McGill, Ms Gibson and her baby. It was also her evidence that she (the appellant) spoke to Ms Gibson and enquired why her baby was wearing "nappy". Ms Gibson, she said, told her she did not have any money to buy "pampers". She consequently gave Ms Gibson $1,000.00 to buy "pampers" and Ms Gibson, gave the money to the deceased to buy them.

[95] She remained for about half of an hour after the deceased left before going to Mineral Heights to take the medication to Miss Black. Miss Black was not home, so she left the medication with her nephew and at about 6:30 pm she returned to Cornpiece to take the deceased and her daughter to Kingston. The deceased had not returned home.

[96] Sergeant McGill arrived at the home sometime after. He wore long sleeved shirt without a tie, grey pants and black shoes. She enquired of him if he had seen the deceased. He told her he had not. Sergeant McGill then changed into a T-shirt, short pants and sneakers.

[97] He requested the use of her car to enable him to go in search of the deceased and she acceded to his request. Unaccompanied, he drove away and returned about two or three hours later and told her he did not see the deceased. She suggested that they both use her car to go in search of the deceased. He agreed and they left in the car which Sergeant McGill drove to May Pen. Their search was unsuccessful and they returned to Cornpiece.

[98] Whilst at the house, a police officer came and informed Sergeant McGill that his wife was involved in an accident. Sergeant McGill consequently left. A short while after, Detective Sergeant Williams came to the house. Without proffering any explanation, he requested a search of the vehicle.

[99] During the search Detective Sergeant Williams removed a pack of pink "pampers" which he showed her. She denied having any knowledge of the said "pampers" or how they came to be in her car. She informed Sergeant Williams that apart from her, the only person who drove the car that evening was Sergeant McGill.

[100] She was taken to the police station. About an hour or an hour and a half later she was taken outside of the police station. There she saw Detective Sergeant Williams standing beside her car with a plastic bag in his hand. He asked her if it belonged to her and she denied that it was hers. The plastic bag contained air mousse and lotion.

[101] The appellant denied telling Detective Sergeant Williams that she had purchased the "pampers", hair mousse and lotion at Azan's. She denied his claim that

she told him that she could not find the place she had taken the medication for Miss Black. She explained that she used air freshener whenever she smoked inside of her car. It was her evidence that the pack of Craven A which was found in the car was hers. She however denied using air freshener on 24 November 2000.

[102] Her evidence was that the sexual relationship with Sergeant McGill ended in September 2000 but they continued to enjoy a "mutual relationship" and he went to her house to change his clothes. That arrangement she said, was not one arranged by her, but by Sergeant McGill and the deceased.

[103] She testified that on 29 November 2000, Deputy Superintendent Lawrence went to her house with a search warrant and searched her house. He found the floor mats for her car and she told him they were at her house because her brother had washed her car.

[104] Under cross-examination, she admitted that she had changed her name from "Edna Hornet" to "Janet Douglas" by way of deed poll. She denied that she wanted a permanent relationship with Sergeant McGill. She testified that all she wanted from their relationship was "just sex". She denied being obsessed with him and that she wanted the deceased out of the way. It was her further evidence that at the time she was involved in the relationship with Sergeant McGill, she was also intimately involved with another man.

[105] She however accepted that she was angry upon discovering that Sergeant McGill had lied to her about his marital status. She also agreed to having a strong personality; standing up for herself and not allowing anyone to push her around.

[106] She admitted that she suffers from asthma, but refuted the assertion that she cried, until she had an asthma attack when Sergeant McGill informed her that he was leaving to visit his wife.

[107] She became aware of Sergeant McGill's place of residence in June 2000, because she had accompanied him to his house to deliver something for his father and daughter. She however denied that on 23 November 2000 she had gone to Clarendon to "scout out the area". She also denied picking up the deceased on 24 November 2000 in May Pen or that she had a conversation with Mr Peter McGill after the deceased left, on that day. She agreed that she wore tips on her nails and that they were missing as they had fallen off her nails before she went to Cornpiece on 24 November 2000.

Ground 1

> "The learned judge failed in an otherwise exhaustive summation to adequately distill and isolate the facts from which the jury may have drawn their inferences leading to guilt and those facts which may have led them to a contrary view. The absence of this assistance denied the applicant/appellant the fairest possible consideration of her case."

The appellant's submissions

[108] Counsel Mr Robert Fletcher submitted that a case of circumstantial evidence required very careful attention to the critical facts and the inferences which were possible to be drawn. Counsel indicated that the evidence was divided into facts which:

> "a. provided the background to the relationship between the husband/the main [C]rown witness and the applicant/appellant;
>
> b. provided information about the conflict that developed which may have caused one or other party to have a motive to do the killing;
>
> c. established the fact of death of Mrs McGill;
>
> d. yielded the materials from the car which suggested that she (the deceased) was in the car of the applicant/appellant; and
>
> e. addressed a series of possible lies and 'strange behaviours' which were enough to cast suspicion on the appellant/applicant."

[109] Counsel also pointed out that the issues were squarely drawn on all the items of evidence between the parties. He argued that a critical factual issue that required determination was the identity of the driver of the car at the material time. He posited that the answers to the following questions would have resolved the critical issue:

> 1. Did Sergeant McGill borrow the applicant's/appellant's vehicle to go and look for his wife who seemed late in returning from May Pen?
>
> 2. Did the applicant/appellant go in search of her when she said she left to go to Mineral Heights?

3. Did they both go?

[110] Counsel directed the court's attention to the evidence that the deceased had entered a car which description lent itself to the inference that the car was the appellant's. The learned judge, counsel argued, was therefore obliged to assist the jury in isolating the items of evidence which constituted the Crown's case. The judge, he said, should further have assisted them by isolating the evidence which negated the Crown's case.

[111] He argued that although the judge was not required to give special directions, she ought to have applied the principles enunciated by the House of Lords and stated in **Loretta Brissett v R** (unreported) Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 69/2002, judgment delivered 20 December 2004. The common law requirement is the standard direction on the burden of proof. Counsel argued that the judge's directions were more in line with the authorities prior to the decision in **Loretta Brissett v R**.

[112] It was incumbent on the learned judge, he submitted, to isolate the evidence which constituted the "circumstances relied on" which pointed in one direction only. The judge was also required to assist the jury by indicating the evidence which might have left "gaps". Counsel further contended that failure must have created confusion in the minds of the jury as they were left to disaggregate the important facts without assistance.

[113] Her exhaustive reading back of the evidence to the jury, he submitted, did not do justice to the complexity of the case. Although in her very long summation, she gave an exhaustive account of each item of the evidence adduced by both the Crown and the defence, she failed to organise the evidence in a clear manner which would have assisted the jury in determining the important issues.

[114] Mr Fletcher also complained that the learned judge failed to disaggregate the facts from which the inferences could have been drawn. The learned judge ought to have assisted the jury as to the different versions so as to ensure that they clearly understood the parties' account of the facts. Instead they were left to "wade through" a recounting of the complicated permutations which they had already heard whilst the evidence was adduced.

The Crown's submissions

[115] Miss Pyke acknowledged that the directions which the learned judge gave were reminiscent of the Hodge's direction (**R v Hodges**, 2 Lewin 227 (1838) 68 ER 1136). She however submitted that the summation as a whole reveals clear, precise and detailed directions on the applicable law and the salient aspects of the evidence. The jury would therefore not have been in any doubt that they could not convict the appellant unless they were satisfied beyond a reasonable doubt, that on the evidence presented by the prosecution, the appellant was guilty.

[116] Counsel submitted that the prosecution's case was not complex. The issue was essentially whether the fatal injuries to the deceased were inflicted by the appellant.

She submitted that in proving that they were, the Crown relied on evidence which demonstrated the requisite conduct of motive and opportunity.

[117] It was her further submission that viewed as a whole; the summation was consistent with the requirements stated in **McGreevy v DPP** [1973] 1 All ER 503. The jury was consequently given ample assistance and guidance on the correct approach to their assessment of the evidence.

[118] Counsel however submitted that if this court was of the view that the summation ought to have included particular highlights and organization of the evidence, that failure would not have led to a miscarriage of justice which would result in the conviction being quashed. She argued that a failure to give clear and precise directions on circumstantial evidence will not necessarily result in the quashing of a conviction. For that preposition, she relied on **R v Ronald Higgins** (unreported) Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 55/1987, judgment delivered 29 January 1988.

[119] Counsel urged the court to apply the proviso on two bases. The first was that the jury were clearly and properly directed in accordance with **McGreevy v DPP** to carefully examine the Crown's case and ensure that they were satisfied of the appellant's guilt before they could convict. Secondly, the evidence elicited by the prosecution presented very strong and cogent basis for findings of facts from which the inference could be drawn that it was the appellant who killed the deceased. A jury properly directed would have convicted even if the directions had been given.

Law/analysis

[120] The Privy Council case of **Peter Michel v The Queen** [2009] UKPC 41 gives proper guidance to a judge in rendering a fair summing up so that any observer would leave the proceedings believing that the accused was given a fair trial. In rendering the decision of the Board, Lord Brown noted that judges in a criminal trial ought "to assist the jury to arrive at the truth". At paragraph 33 he went on to elucidate what is expected of a trial judge in a criminal case when assisting the jury by quoting Simon Brown LJ, giving the judgment of the Court of Appeal in **R v Nelson** (**Garfield Alexander**) [1997] Crim LR 234 (transcript dated 25 July 1996):

> "Every defendant, we repeat, has the right to have his defence, whatever it may be, faithfully and accurately placed before the jury. But that is not to say that he is entitled to have it rehearsed blandly and uncritically in the summing up. No defendant has the right to demand that the judge shall conceal from the jury such difficulties and deficiencies as are apparent in his case. Of course, the judge must remain impartial. But if common sense and reason demonstrate that a given defence is riddled with implausibilities, inconsistencies and illogicalities ... there is no reason for the judge to withhold from the jury the benefit of his own powers of logic and analysis. Why should pointing out those matters be thought to smack of partiality? To play a case straight down the middle requires only that a judge gives full and fair weight to the evidence and arguments of each side. The judge is not required to top up the case for one side so as to correct any substantial imbalance. He has no duty to cloud the merits either by obscuring the strengths of one side or the weaknesses of the other. Impartiality means no more and no less than that the judge shall fairly state and analyse the case for both sides. Justice moreover requires that he assists the jury to reach a logical and reasoned conclusion on the evidence .... Judges who go to the trouble of analysing the competing cases and who give the jury the

> benefit of that reasoned analysis ... are to be congratulated and commended, not criticised and condemned."

[121] In **McGreevy v DPP** the House of Lords stated the applicable directions which judges in this jurisdiction are required to give in a criminal trial as follows:

> "In a criminal trial it is the duty of the judge to make it clear to the jury in terms which are adequate to cover the particular features of the case that they must not convict unless they are satisfied beyond reasonable doubt of the guilt of the accused. There is no rule that, where the prosecution case is based on circumstantial evidence, the judge must, as a matter of law, give a further direction that the jury must not convict unless they are satisfied that the facts proved are not only consistent with guilt of the accused, but also such as to be inconsistent with any other reasonable conclusion."

[122] At page 507, the House of Lords stated that:

> "The particular form and style of a summing up, provided it contains what must on any view be certain essential elements, must depend not only on the particular features of a particular case, but also on the view formed by a judge as to the form and style that will be fair and reasonable and helpful. The solemn function of those concerned in a criminal trial is to clear the innocent and convict the guilty."

The judge's directions on circumstantial evidence

[123] Although aspects of the learned judge directions to the jury on circumstantial evidence, at pages 1228 to 1230, as conceded by Ms Pyke, were redolent of the **Hodge's** case, she nevertheless repeatedly emphasised the necessity of being sure of the appellant's guilt before convicting by directing them thus:

"Circumstantial evidence consists of this; that when you look at all the surrounding circumstances, that pointed to the facts which you find proved, you find such a series of undesigned, unexpected coincidences that as reasonable persons, you find your judgment is compelled to one conclusion only. All the circumstances relied on must point in one direction and one direction only and that direction must be the guilt of the accused. If the circumstantial evidence falls short of that standard, if it does not satisfy that test, if it leaves gaps, then it is of no use at all.

Circumstances may point to one conclusion but if one circumstance is not consistent with guilt, it breaks the whole thing down. You may have all the circumstances consistent with guilt, but equally consistent with something else too. That is not good enough. What you want, is an array of circumstances, which points only to one conclusion and to all reasonable minds that conclusion only, namely the guilt of the accused

Now, when you consider the facts and you find the fact[s] in this case, it may well be that none of the facts taken separately point exclusively to the guilt of the accused and each might be equally consistent with innocence as with guilt, but it may well be, that when you consider the totality of them, they institute such series of undesigned, unexpected coincidence as to satisfy you that the facts are such as to be satisfy you that the facts are such as to be inconsistent with any other rational conclusion other than the accused is the guilty person. But, you must remember that if the totality of the evidence is consistent with innocence, as well as with guilt, or if the totality of the evidence amounts to only a high degree of mere suspicion, then the prosecution would not have proven their case and in either case, your verdict would be not guilty.

...

Mr. Foreman and members of the jury you have to put all the pieces together and see if a face comes up or no face comes up. **If a face comes up, you must be sure beyond a reasonable doubt. If you find that the accused is lying, you cannot convict her because she is lying. You have to look at the prosecution's**

> **case and see if the prosecution has satisfied you to the extent that you feel sure._ If you are in doubt, reasonable doubt, you give her the benefit of the doubt. It is only when you are satisfied to the extent that you feel sure that you can return a verdict of guilty. If you are not sure, you have any doubt, not guilty**." (Emphasis added)

[124] Soon after the commencement of the summation to the jury at page 963 she admonished them that they could not return a verdict of guilt unless they were sure of the defendant's guilt. At pages 962 and 963 she conveyed in plain language that if they entertained any reasonable doubt they should acquit, stating:

> "Now, Mr. Foreman and Members of the Jury, it isn't always possible to prove the matter which has to be proved in criminal trials by direct evidence, that is to say evidence from a witness who can say I saw with my own eyes or I heard with my own ears. Some things have to be proven indirectly and the law recognizes this, so the law requires you as judges of the facts to draw inferences from the facts which you find to be proved, that is, to come to common sense conclusions based on the evidence which you accept.
>
> ...
>
> **The Prosecution must prove the guilt of the accused so that you feel sure**. **That means, that the Prosecution must put before you evidence which satisfies you until you feel sure that she is guilty. Nothing less than that will do. If after considering all the evidence you are sure that the accused is guilty, you must return a verdict of guilty. If you are not sure, if you have any reasonable doubt, then your verdict must be not guilty.**" (Emphasis added)

[125] In our view, it was made pellucid to the jury by the learned judge that they could not convict the appellant unless they were satisfied beyond a reasonable doubt that she was responsible for the murder of the deceased.

[126] The learned judge was not obliged to adhere to any particular formula. Although "fact intensive", as submitted by Ms Pyke, this case, is a simple one. The issues which were joined, for example whether the appellant insisted on Sergeant McGill leaving his wife, whether she was accompanied by him or whether he went alone in search of his wife, were simple issues which were diametrically opposed and were purely for the determination of the jury. Not only did she give the necessary burden of proof and standard of proof directions, she directed the jury's mind to seemingly inconsistencies in the Crown's case and left the conclusion entirely up to them. In our view, the learned judge, in highlighting them and directing the jury as to burden of proof and standard of proof, would have sufficiently assisted them. As stated by the House of Lords at page 507 in **McGreevy v DPP**:

> "It is not to be assumed that members of a jury will abandon their reasoning powers and, having decided that they accept as true some particular piece of evidence, will not proceed further to consider whether the effect of that piece of evidence is to point to guilt or is neutral or is to point to innocence. Nor is it to be assumed that in the process of weighing up a great many separate pieces of evidence they will forget the fundamental direction, if carefully given to them that they must not convict unless they are satisfied that guilt has been proved and has been proved beyond all reasonable doubt."

[127] Lord Morris of Borth-Y-Gest, in delivering the judgment in **McGreevy v DPP**, emphasised at page 510 that:

> "It requires no more than ordinary common sense for a jury to understand that if one suggested inference from an accepted piece of evidence leads to a conclusion of guilt and another suggested inference to a conclusion of innocence, a jury could not on that piece of evidence alone be satisfied of the guilt beyond all reasonable doubt unless they wholly rejected and excluded the latter suggestion. Furthermore, a jury can fully understand that if the facts which they accept are consistent with guilt but also consistent with innocence they could not say that they were satisfied of guilt beyond all reasonable doubt. Equally a jury can fully understand that if a fact which they accept is inconsistent with guilt or may be so that they could not say that they were satisfied of guilt beyond all reasonable doubt."

The judge's treatment of the evidence in relation to Sergeant McGill and the appellant

[128] In our view, the learned judge fairly balanced the scales in dealing with the evidence adduced in relation to Sergeant McGill and the appellant. Having exhaustively outlined the evidence, she adequately distilled and isolated the pertinent facts by highlighting the crucial aspects without usurping the jury's function. She made it quite plain to them that they were not judging either Sergeant McGill's or the appellant's morals. They were "deciding who killed Isolyn".

[129] She directed their attention to the fact that Sergeant McGill had remarried and refreshed their memories that counsel had asked him if that wife was "still alive". In so doing she highlighted evidence which could have negatively affected the jury's

view of his credibility. Indeed it could have led the jury to the conclusion that he had a motive for killing his wife.

[130] The learned judge also refreshed their memories as to conflicts in his evidence regarding the time he arrived home on the fateful day. At one point he said at "6:30 p.m. or thereafter" but he agreed that he could have reached his house at 7:30 and then said that he could not recall. She reminded them that when confronted by his previous statement, he accepted that he had said it was 7:30 and said that 7:30 was the truth.

[131] In respect of the elder Mr McGill's evidence as to when Sergeant McGill arrived, the learned judge not only highlighted the inconsistencies in his evidence, she also directed their attention to the discrepancy between his and the Crown witness' evidence.

[132] Having highlighted the inconsistencies in his evidence, the learned judge rightly left the conflicts to jury for their determination as to their significance and the effect if any they had on his credibility. She properly reminded the jury of the elder Mr McGill's evidence regarding the appellant's testimony as to the time he arrived and again reminded them that Mr McGill sometimes confused dates. She stated:

> "He said I saw Miss Douglas came [sic] back to the house from Mineral Heights, it was about 7:30. He said he asked her why she stayed so long. He said the person whom she gave the medication vomit in the car, and she had to wash it out.

Now, he was cross-examined by Dr Williams. And he said I tried to remember as much as I can. Sometimes it's complicated, I get mixed up with the date, because this is the question that Dr. Williams asked him: Did you, some time ago, say that your son came home at 8:00 p.m., it was not appropriate, it was a mistake. When Mr. McGill came in, Miss Douglas was at the house, had come back an hour before, my son did not come in 8:00, my son came in 6:30 and Miss Douglas 7:30. When he came back, when he came in at 6:30, he went back out, and he came back not 8:00 p.m., it was about 7:30. I can't remember what I said on the previous time, and then he was shown a document, and he said I see my signature on the paper, the statement I gave to the Court at Clarendon, and the Registrar read it to him. I heard what the Registrar said about 8:00 p.m. that Glen McGill, my son, came in. He said I have already said 8:00 p.m., it is a mistake, not the proper time. I was swearing on the Bible when I gave evidence in Resident Magistrate Court. He said the Magistrate read it back, and said I could make changes. If it is wrong, he said, I was guessing time. At the time I did not have a timepiece with me. He said I did not change it, 8:00 p.m. was my best estimate.

He said Miss Douglas was at the house one hour before the son came in. He said I remember when the police came and Miss Douglas sitting on the veranda. He said don't really remember about the rain. It is true Miss Douglas said he should divorce his wife and she said she would not be the only loser. and the attorney put it to him that he gave evidence in Clarendon, he gave a statement to the police and signed it. I mentioned that at the time, he said I gave a statement to the police and went to Clarendon in 2002 and he gave evidence. He said I recall I mentioned it somewhere, whether to the police or court. I know that I have mentioned it somewhere. It supposed to be somewhere recorded, and it is not my fault. I know I mentioned it.

He said I remember when the police searched the car. I was at Corn Piece, Miss Douglas was there. I don't remember if she was sitting or standing. She gave the police the car key and they were searching the car. He insisted that Miss Douglas was there. He said I saw Miss

Douglas became friendly after the first meeting or so. I did not, I have already told you that I did not see when she hand over money to Iso, but I know she did it because Iso did not have any money. He said on the 24th of November, 2000, I didn't see Glen McGill drive Miss Douglas car alone on that night. I don't know about Mr. McGill drive Miss Douglas car alone by himself. And this is what learned defence counsel said to him: I put it to you that you never heard Miss Douglas say to Mr. McGill that she will not be the only loser; she never say this. Answer: Must I state it to you again, sir, that I mentioned it somewhere at some time. That is what he is saying. He said I don't recall him driving the car alone that night. I told you, sir, that I don't recall him driving the car alone that night. It is true that she told me that a lady vomited in her car on the twenty-fourth.

Now, he was re-examined by learned counsel for the Crown, and he said that Glen came in at about 6:30 at one stage. He said Miss Douglas came in about 7:30, but he said that Miss Douglas came to the house 3:30 to 4:00, and she was there, and then she left and went 7 to Mineral Heights. Glen came in 6:30 and go out and come back, and when Miss Douglas came in from Mineral Heights, she and McGill come in the car. That is the time she come from Mineral Heights.

Now, Mr. Foreman and members of the jury, you have to look at his evidence, because he is saying that he speaks about 8:00 p.m. when Glen came in and now he said 6:30, but when he was re-examined, you know, because learned counsel for the Defence is saying that based on his evidence Miss Douglas had come in an hour before, but he is saying that from his evidence that is in re-examination, when Miss Douglas came from Mineral Heights it was she and Mr. McGill came in the car, that is the time she come from Mineral Heights. Mr. Foreman and members of the jury, you have to look at his evidence and see what you make of it. Because at one stage he said 7:30, and then that is when Miss Douglas came, and Glen came 6:30, and afterwards he said 8:00 o'clock. But he is saying that when Miss Douglas came, she came back with Mr. McGill. You have to look at what he is saying to see if you can believe him, or you don't believe him, or you can

> believe some of what he said, or none of what he said, or you can believe a part of what a witness said, or reject another part. It is how you look at it.
>
> Mr. Foreman and members of the jury, you also looked at his age, you saw when he went into the box how he had to go into the box, and you saw how he gave his evidence, and answered to learned counsel. I try to remember as long I can but sometimes I get complicated, I get mixed up with dates. I think I might have said 8:00p.m. It is not appropriate, it is a mistake. You have to look at what you make of it. It is his evidence." (Pages 1040 to 1045)

[133] The learned judge could have also told the jury that a possible reason for the conflicts was that Sergeant McGill and his father had prevaricated so as to deflect suspicion from Sergeant McGill. This however was not a complex case as pointed out by Ms Pyke which would have required such further assistance from the judge. It was entirely for the jury to accept or reject his evidence.

The judge's treatment of the issue whether Sergeant McGill and the appellant both went in search of the deceased

[134] It was Mr Fletcher's submission that one of the critical issues was whether Sergeant McGill borrowed the appellant's car and went alone in search of his wife or whether they both went, that is Sergeant McGill and the appellant.

[135] Regarding the appellant's assertion that Sergeant McGill borrowed the car and went alone in search of his wife, at page 1012 of the learned judge's summation, she reminded the jury of an inconsistency in Ms Gibson's evidence which could have led the jury to the form the opinion that Sergeant McGill had gone alone in search of his wife:

> "She said when Miss Douglas came back it was dark. She said I see Glen McGill use Miss Douglas's [sic] car to go and look for Mrs McGill. And in cross-examination by learned counsel for the prosecution she said both of them went in the car to look for Mrs. McGill."

[136] The learned judge also reminded the jury of Ms Byrdson's, the forensic analyst's, evidence that Sergeant McGill had provided the investigators with his DNA whereas neither blood sample nor DNA was obtained from the appellant. She pointed out that Sergeant McGill's DNA was not found in the blood stains which were in the car nor was his DNA found on Isolyn. At pages 1136 to 1137 the learned judge, regarding Ms Byrdson's evidence, stated:

> "And she said based on the observations, it is possible that the bovine hair could have been cause [sic] by someone going to area where cattle frequent and entered the vehicle in the front passenger's seat. Now she said on the 13th of May, 2005**,** she took buccal swabs from Mr. Glen McGill for DNA analysis. She said that DNA is the material inherited from both of our parents, it's like the blueprint of the individual. The DNA of an individual is unique to that individual. Unless that individual is an identical twin or triplet. She says DNA is found in every cell of the body. She said it was easier to swab McGill's mouth as opposed to taking a blood sample and cells in his both [sic] would have DNA as well. And she says there are about five steps involved in the process of DNA. She said after he [sic] did DNA analysis of stains on the left front seat belt, stain on left front seat buckle, front passenger's seat up right of driver's seat, sample on handbrake lever, she obtained a full profile which was not that of McGill and it was not that of Isolyn McGill." She did not get a reference sample from the accused or anybody else in which to compare the profile, so she did not know who it come from. She said there was a mixed profile that she found and she could not give a statistical possibility in terms of mixture because it was not concluded and in [sic] injured person or persons were in

> the front of the vehicle. She said the stain on the left front seat and buckle is not possible Mr. McGill could have been one of the injured person or persons who came into contact with the front seat, that is the evidence of Miss Bryson. All Miss Bryson can say is that there is human blood found in the car. She does not know to whom it belonged. This evidence, Mr Foreman and members of the jury, is a matter for you.
>
> MISS PYKE: M'Lady, statistical possibility. I am sorry, but since you are at this point that the statistical possibility...
>
> HER LADYSHIP: I couldn't go into that she because she says it was human blood in the car.
>
> MISS PYKE: What I meant, m'Lady, in terms of Mr. McGill being one out of a certain number of persons she spoke of the statistical possibility."

[137] At page 1135, the learned judge had previously described blood found on the deceased, stating that:

> "The denim pants labelled Isolyn McGill had human grouping blood A**,** the brassiere also had it and there were 9 cuts on the blouse, 8 at 12 ' the front and 1 at upper back. She told you the size of the cuts that she saw**.** Human blood group A present on the front and back, blood sample group A and she examined five areas and found them to be human. The hair, piece of hair was different from the deceased hair. He said the samples collected from the car as well as the knife and the clothing alleged to be taken from the scene, as well as the blood sample allegedly taken from Isolyn McGill she did DNA testing."

Did the appellant go to Mineral Heights on the 23rd or the 24th?

[138] The learned judge pointed the jury to the disparity between the evidence of Sergeant McGill and the appellant as to when the appellant went to Mineral Heights

and someone vomited in her car. She reminded them that the appellant's evidence was that it was the 23rd that she went; whereas Sergeant McGill said it was the 24th.

[139] She refreshed their memories as to Sergeant McGill's evidence that he had received his salary and intended the give his wife money "to take to town" because he knew she was "leaving for the weekend to go to Kingston". She reminded them that he denied telephoning his wife on the 24th and that she went to "Breda's house" to receive call and returned and told them that, "Glen reach May Pen".

[140] Whether Sergeant McGill went in search of Isolyn with the appellant or whether he went alone and the date on which the appellant went to Mineral Heights were matters which were entirely within the purview of the jury. The learned judge, having directed the jury on the manner in which to treat with discrepancies and inconsistencies properly placed them before the jury for their determination. In our view, the learned judge's treatment of those issues cannot be faulted. Ground 1 one therefore fails.

Ground 3

"The sentence was manifestly excessive."

[141] Mr Fletcher complained that in sentencing the appellant, the learned judge placed greater emphasis on the principle of retribution to the exclusion of the principle of rehabilitation. According to counsel, the principles of deterrence and prevention are clearly subsumed in a sentence of 40 years.

[142] Counsel submitted that in spite of the obvious revulsion the learned judge felt about the manner in which the offence was committed, the principle of rehabilitation ought to be considered in respect of every convicted citizen and ought to have been given greater weight in this matter. He referred the court to the cases **Daniel Robinson v R** [2010] JMCA Crim 75 and **R v Sydney Beckford and David Lewis** (1980) 17 JLR 202.

[143] Mr Fletcher argued that the appellant has been in custody for 15 years and that time spent in custody ought to be taken into account. He relied on the Caribbean Court of Justice case, **Romeo DaCosta Hall v R** [2011] CCJ 6 (AJ).

[144] It was his further contention that the information provided by the lawyer and the antecedent history were largely based on the appellant's instructions. An objective and clear understanding of the facts of the appellant's life was necessary. Counsel postulated that the absence of such information left the sentencing process relatively uninformed.

[145] The provision of more information would have allowed the court to determine an appropriate sentence that "fits the crime as well as the convicted person". Counsel argued that "an extensive social enquiry report was needed". It was also his submission that there is enough in this matter to suggest that a psychiatric evaluation would have been useful.

Relevant law/analysis

[146] It is generally accepted that the task of sentencing is perhaps one of the most difficult. In determining an appropriate sentence, an appropriate starting point must be identified. Consideration must be given to the relevant aggravating and mitigating features. In appropriate cases, consideration must also be given to reduction for a plea of guilt, including the point at which the plea was entered. Time spent on remand (pre-sentencing period) and post sentencing is a factor to be considered.

[147] It is also settled law that there are four principles which must guide judges who are confronted with the task of sentencing. They are: retribution, deterrence, prevention and rehabilitation. Rowe JA (as he then was), in the case of **R v Sydney Beckford and David Lewis**, a case of a gang rape, explained the reasons it is necessary in determining an appropriate sentence, that those principles be foremost in the mind of a judge. It is useful to quote it:

> "There is no scientific scale by which to measure punishment, yet a trial judge must in the face of mounting violence in the community impose a sentence to fit the offender and at the same time to fit the crime. Lawton LJ in **R v Sergeant** (1975) 60 Cr. App. 74 at p. 77, reminded judges of the four classical principles which they must have in mind and apply when passing sentence. We make no apology for the extensive quotation:
>
> > 'What ought the proper penalty to be. We have thought it necessary not only to analyse the facts, but to apply to those facts, the classical principles of sentencing. Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to

have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

I will start with retribution. The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crimes, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand, courts must not disregard it. Perhaps the main duty of the court is to lead public opinion. Anyone who surveys the criminal scene at the present time must be alive to the appalling problem of violence. Society, we are satisfied, expects the courts to deal with violence. The weapons which the courts have at their disposal for doing so are few. We are satisfied that in most cases fines are not sufficient punishment for senseless violence. The time has come, in the opinion of this Court, when those who indulge in the kind of violence with which we are concerned in this case must expect custodial sentences.

But we are also satisfied that although society expects the courts to impose punishment for violence which really hurts, it does not expect the courts to go on hurting for a long time, which is what this sentence is likely to do. We agree with the trial judge that the kind of violence which occurred in this case called for a custodial sentence. This young man has had a custodial sentence. Despite his good

character, despite the excellent background from which he comes, very deservedly he has had the humiliation of hearing prison gates closing behind him. We take the view that for men of good character the very fact that prison gates have closed is the main punishment. It does not necessarily follow that they should remain closed for a long time.

I turn now to the element of deterrence, because it seems to us the trial judge probably passed this sentence as a deterrent one. There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders. Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences. We think it unlikely that deterrence would be of any value in this case.

We come now to the element of prevention. Unfortunately, it is one of the facts of life that there are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection

> which the public has is that such persons should be locked up for a long period. This case does not call for a preventive sentence.
>
> Finally, there is the principle of rehabilitation. Some 20 - 25 years ago there was a view abroad, held by many people in executive authority, that short sentences were of little value, because there was not enough time to give in prison the benefit of training. That view is no longer held as firmly as it was. This young man does not want prison training. It is not going to do him any good. It is his memory of the clanging of prison gates which is likely to keep him from crime in the future'."

Were the relevant principles considered and applied by the learned judge?

[148] In **Romeo DaCosta Hall v R**, Mr Justice Rolston Nelson stated at paragraph [26] that:

> "The judge should state with emphasis and clarity what he or she considers to be the appropriate sentence taking into account the gravity of the offence and all mitigating and aggravating factors, that being the sentence he would have passed but for the time spent by the prisoner on remand."

[149] Detective Constable Rajiv Lindsay provided the court with the appellant's antecedent report which stated that she was 40 years and a fashion designer. Her given name was Edna Hornett which she changed by way of deed poll to Janet Douglas. According to the appellant, she was adopted by Gloria Chevannes and Eric Douglas.

[150] She migrated to the United States where she resided after attending the Mannings High School for three years. She was unable to provide the names of the schools she attended in the United States.

[151] The court was told that she is married and is the biological mother of two children, of whom two were adults and three adopted children, of whom one is a minor. According to the report, they are all dependent on her for support.

[152] The report revealed that she had two previous convictions recorded against her name in Jamaica, namely: obtaining money by false pretences, for which she was sentenced to nine months imprisonment at hard labour; and escaping custody which offence was committed whilst she was in custody for this matter and for which she was sentenced to 18 months at hard labour.

[153] In imposing the sentence of 40 years the judge adverted to the 11 years the appellant had spent in custody . At pages 1246 to 1247, she said:

> "Stand up, Miss Douglas. I must commend Dr. Williams and Mr. Hines for the defence in which -- for their defence, they did a marvellous job. They tried to make a silk purse out of a sow's ear. They worked with what they had and I must commend them.
>
> When I look at the evidence, especially Dr. Brennan's evidence, and I see the way in which Mrs. McGill was murdered, it was unnecessary. When you look at the stab wounds that the doctor described, I ask myself how would a human being do that to somebody else. When I look at the evidence of Mr. McGill, the father, he said you said you won't be the loser and he couldn't understand what you meant. You were so determined, the way how you planned the murder from beginning to end**. I realize**

> **that you have served 11 years, I take that into consideration, but you had no mercy for Mrs. McGill or the McGill's family. You did what you did and you have to get some punishment for it.**
>
> Your learned counsel have asked me to consider 15 years, but I have thought long and hard and it was when I looked on what you brought upon that family I don't know if they will ever be able to forget it.
>
> You went into the box that is your right, which you did and you showed even now, I think, I don't see any remorse for what happened. It is commendable that your attorney says you have, you are married and you have children that you adopted, you mother children that isn't your own, that is commendable also, but I ask myself how could you get yourself in this position after you had gone to such a noble high school and you have been exposed to secondary education and you have done what you have done." (Emphasis supplied)

[154] The learned judge embarked on the task of sentencing the appellant without requesting a social enquiry report which could have assisted her in imposing an appropriate sentence. Indeed a psychiatric evaluation would also have been desirable in light of manner in which the deceased was killed. In sentencing the appellant, the learned judge considered the aggravating features. Although she adverted to the fact that the appellant was married and that she had adopted children, which she considered commendable and obviously a mitigating factor, her focus was solely on the retributive element.

[155] That fact notwithstanding, the important question is whether the sentence of 40 years is appropriate, that is, not only it "fits the crime but must also consider the offender". **Alpha Green v R** (1969) 11 JLR 283 at 284, a case from this court,

Waddington P (Ag) cited Hilbery J's following statement in **R v Ball** (1951) 35 Cr App Rep 164. He said:

> "The principles on which a Court of Appeal acts when asked to review a sentence of imprisonment are summarised by Hilbery, J., in **Ball** (1), as follows:
>
> > 'In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles then this Court will intervene'."

[156] That statement was also cited with approval by Morrison P in **Meisha Clement v R** [2016] JMCA Crim 26. Furthermore, section 14(3) of the Judicature (Appellate Judicature) Act provides:

> "(3) On an appeal against sentence the Court shall, if they think that a different sentence ought to have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal."

Should the sentence of 40 years be disturbed?

[157] Section 2(2) of the Offences Against the Persons Act states:

"Subject to subsection (3), every person convicted of murder other than a person-

(a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or

(b) to whom section 3 (1A) applies,

shall be sentenced in accordance with section 3(1)(b)."

Section 3(1)(b) reads:

"Every person who is convicted of murder falling within -

...

(b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years."

[158] In arriving at an appropriate sentence, the learned judge also ought to have stated a starting point by referring to similar cases. In **Omar Reid v R** [2011] JMCA Crim 62, a period of 25 years was the period ordered to be served prior to being eligible for parole. That period was deemed appropriate for the murder of a woman whose body was dumped into a pit toilet. In **Ketey Lawrence v R** [2012] JMCA Crim 15, 20 years were considered appropriate for an offender who was convicted for the death, by stabbing, of a man who was in "the company of the his former girlfriend".

[159] More recently, in **Lescene Edwards v R** [2018] JMCA Crim 4, this court imposed a sentence of 20 years for the murder of a woman who was shot by her

lover. The evidence against the accused was also entirely circumstantial. In **Loretta Brissett v R**, also a case of circumstantial evidence, the appellant was sentenced for the murder of Franklyn Johnson with whom she shared a visiting relationship. This court affirmed the trial judge's sentence that the appellant was to serve 25 years before becoming eligible for parole. In that case, the remains of the deceased were found in a pit toilet.

[160] In **Melody Baugh-Pellinen v R** [2011] JMCA Crim 26, the learned trial judge, in sentencing the appellant who was charged for murdering her husband, stipulated that she should serve 21 years before becoming eligible for parole. The deceased had been shot twice to his head and neck. The evidence against the appellant was circumstantial. That sentence was deemed appropriate by this court.

[161] This court in **Jeffery Perry v R** [2012] JMCA Crim 17 considered a sentence of 45 years before eligibility for parole to be appropriate in circumstances where the appellant had cut the throats of three young children. A sentence 35 years for the gruesome rape and murder of two women was considered appropriate in **Alton Heath, Desmond Kennedy, Marlon Duncan and Chadwick Gordon v R** [2012] JMCA Crim 61.

[162] Likewise, the instant case was a premeditated murder which was obviously well planned. Extreme violence was used against the deceased whom the appellant befriended and lured to her death. She was stabbed multiple times. The appellant was apprehended and taken into custody on 24 November 2000, the same day the

deceased was murdered. After the second trial, she was sentenced on 11 March 2011. She would therefore have spent 11 years including the time spent on remand before trial and the time spent in custody as a result of the sentence imposed after the first trial. The learned judge did mention this period in passing sentence but failed to deduct it from the period of 40 years which she imposed. In **Callachand and another v State of Mauritius** [2008] UKPC 49, a Privy Council decision from Mauritius and referred to in **Romeo DaCosta Hall v R**, an appeal from Barbados in which the Caribbean Court of Justice, held that credit ought to be given for time spent on remand. This court has adopted the position that credit ought to be given for time spent in custody before sentencing. By virtue of the recently published Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, credit for time spend in custody prior to sentencing is mandatory.

[163] We are of the view that a period of 31 years before becoming eligible for parole is an appropriate sentence. However credit ought to be given for time spent in custody before her second conviction. The sentence that should be imposed therefore is imprisonment for life with the appellant to serve 20 years before being eligible for parole.

Disposal

[164] In light of the forgoing:

1. Application for leave to appeal against conviction is refused.

2. Appeal against sentence is allowed.

3. Sentence is set aside.

4. Substituted therefor is a sentence of life imprisonment with the stipulation that the appellant is to serve 20 years before becoming eligible for parole.

5. Sentence is to be reckoned as having commenced on 11 March 2011.