JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 81/05

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)

JANET DOUGLAS V REGINA

Dr. Randolph Williams for the Applicant

Miss Paula Llewellyn, Senior Deputy Director of Public Prosecutions & Pearnel Charles, Jnr. Crown Counsel (Ag.) for the Crown

20th, 21st February 2008 & 13th March 2009

PANTON, P.

1. The applicant was convicted of the offence of murder on May 27, 2005, after an eleven-day trial in the Home Circuit Court before Reid, J. and a jury. She was sentenced to imprisonment for life, with a specification that she be not eligible for parole before serving twenty-five (25) years. Having failed to convince the single judge of the existence of any good ground for the grant of leave to appeal, she renewed her application before us.

2. Mrs. Isolyn McGill, a dressmaker, was the victim of this murder, which occurred on November 24, 2000. She was the wife of police Corporal Glen McGill who, prior to the murder, was in an intimate relationship with the

applicant. He was a detective constable at the time of the murder. By the time the matter came on for trial he had been promoted to the rank of detective corporal. He was searchingly cross-examined at the trial, with a view to showing that he could have been a participant in the killing of his wife. However, there was expert scientific evidence which disputed that theory.

Cause of death

3. The cause of death, as found by Dr. Desmond Brennan, who conducted a post mortem examination on the body on November 29, 2000, was hypovolemic shock secondary to a ruptured pulmonary artery, aorta, heart and lung. The doctor found that externally there were nineteen lacerations and three bruises to the body. The injuries were to the arms, forearms, face, clavicle, abdomen and chest areas. Internally, her intestines were pale, suggesting the loss of much blood, and there were penetrating wounds to the lungs and heart. Blood was in both chest cavities. The injury through the heart required, according to Dr. Brennan, a "very, very, very great" degree of force. The other injuries required moderate to severe degree of force. In the opinion of the doctor, the deceased had been attacked from the front and she had tried to resist the attack. There would not necessarily have been "spurting" of blood; rather, there would have been "flowing". In answer to counsel for the defence, during cross-examination, the witness said that he would have expected the attacker to be "more than likely ...soiled ...with blood".

4. Det. Cpl. McGill, perhaps the most important witness in the case, testified that in March, 2000, he was stationed at the Half-Way-Tree Police Station. His duties took him to the home of the applicant in the Half-Way-Tree Police Division for the purpose of investigating a case of burglary and assault with intent to rape that had been reported by her. A suspect was arrested and charged after the holding of an identification parade. However, the applicant eventually indicated a wish for the prosecution to be discontinued, and the Crown obliged. The applicant and Det. Cpl. McGill maintained contact, and an intimate relationship developed between them. The applicant was then living with her son, aged four, while Det. Cpl. McGill lived in Cornpiece District, Hayes, Clarendon with his wife, daughter, father and sister-in-law. However, at first, Det. Cpl. McGill had told the applicant that he lived with his "girlfriend, Isolyn".

5. The relationship between the applicant and the corporal was of much material benefit to the latter as the applicant showered him with gifts of clothing and jewellery in particular. Further, Det. Cpl. McGill would spend two nights each week with the applicant, and the rest of the week in the bosom of his family in Clarendon. The applicant, however, wanted more. She wished for Cpl. McGill to spend more time with her at her house. On a night in October 2000, while Cpl. McGill was at his residence in Cornpiece, he was called on his friend's telephone by the applicant who advised him that she was pregnant, knew where he lived, and would be coming there to inform Isolyn of their relationship and

the pregnancy. Cpl. McGill then took the opportunity to inform her that Isolyn was really his wife.

6. The applicant, accompanied by a male friend named Derrick, duly arrived at Cpl. McGill's gate at about 9.00 to 9.30 p.m. This shocked Cpl. McGill who thereupon called his father, a tailor. They went to the car where the applicant was introduced to the senior McGill. His son then proceeded to inform him of the 'pregnancy' of the applicant. Both men went into the applicant's car which was being driven by Derrick. They were driven to a nearby playfield where both McGills pleaded with the applicant not to inform Mrs. McGill of the relationship and the pregnancy. The applicant informed Cpl. McGill that she would refrain from telling Mrs. McGill if he decided to return to Kingston with her that night. Cpl. McGill obliged. In doing so, he advised his wife that he had an emergency in Kingston.

7. The applicant was upset with the corporal for "destroy(ing) her life" in favour of his wife who had nothing "to offer". She quarreled for about two to three hours. There was more quarrelling on other days, and during late October or early November, the applicant told Cpl. McGill that he should inform his wife of the relationship and then end the marriage. He told her he would try to do so. However, Cpl. McGill testified that he had no intention of ending his marriage. The applicant was quite upset that Cpl. McGill did not inform his wife, as suggested by her, the applicant. One day, while at work, Cpl. McGill received

a telephone call from the applicant informing him that she had told his wife "about everything", "about the pregnancy and the relationship", and had invited her "to come to town". Cpl. McGill said that the applicant informed him that his wife had actually accepted the invitation, and that they had met at the Half-Way-Tree Police Station. The applicant used these words to the corporal in the telephone conversation: "you think a fi mi one life you a go mash up?"

8. Later that very day, the applicant transported Cpl. McGill in her car to her home. She complained of not feeling well, and it appeared to Cpl. McGill that she was experiencing an asthmatic attack due to the rage she had been in as a result of his failure to give his wife details of the relationship. At the urging of the applicant, Cpl. McGill did not go home that night, a Friday, nor the next. Instead, he went home on the Sunday in the applicant's car, driven by Derrick on the instructions of the applicant. Cpl. McGill, on reaching home, duly confessed to his wife and expressed regret at the state of affairs that he had contributed to. On the previous Thursday, the applicant had driven him to his home, and had threatened to inform his wife of the relationship. Cpl. McGill had pleaded with her, and there was what turned out to have been a temporary reprieve seeing that it was on the next day that Mrs. McGill and the applicant had met at the Half-Way-Tree Police Station.

9. After Cpl. McGill had confirmed the situation between himself and the applicant to his wife, he decided to end the extra-marital relationship. In so

doing, he left behind at the applicant's house most of the gifts that he had received from her, and never slept there thereafter. At the request of his wife, he gave the applicant's telephone number to her. The applicant and Mrs. McGill spoke, and the applicant informed Cpl. McGill on the 23rd November that she had made preparations for Mrs. McGill and their daughter to visit her in the city over the following weekend, beginning Friday the 24th. The corporal said in evidence that he was uncomfortable with the idea of his wife and daughter spending the weekend with the applicant.

10. Now, on the 24th, he arrived home by bus between 6 and 7 p.m. The deceased was not at home. He went to Traxx Bar at the junction of Cornpiece Road and Hayes main road. While there, he saw the applicant's car being driven along the Hayes main road, coming from the direction of May Pen. He signaled it to stop. It did, and he noticed the applicant sitting in the driver's seat, spraying something from a bottle into the car. The applicant asked if "Iso" (meaning Mrs. McGill) was ready. Cpl. McGill told her that he had not seen her. He got into the front passenger seat of the car with a view to going home to see whether his wife had returned home. The applicant told him that she was upset that her (the applicant's) husband's aunt whom she had visited at Mineral Heights earlier, and had taken to the hospital, had vomited in the car, making it necessary for her to "get the car wash out" due to the foul smell. She said that she had to take out the seat covering and wash out the entire car. There was no

covering on the front passenger seat which Cpl. McGill said was damp at the time he entered the car and sat on it.

11. Mrs. McGill had not arrived home, so they went in search of her. At this stage, the car was driven by Cpl. McGill. It was by now about 8:00 p.m. They drove to May Pen, about five minutes away, made enquiries, but did not see Mrs. McGill. They returned to Cornpiece. The corporal cycled back on the road and made further enquiries. Later the applicant came to where he was and he told her that Mrs. McGill had been seen in the vicinity of Super Plus store. They drove into May Pen again but did not locate her. The applicant became upset saying that it appeared that Mrs. McGill did not want to go to Kingston, and had caused her (the applicant) to waste her time. She expressed the wish for Cpl. McGill to accompany her back to Kingston. Shortly after this, two detectives arrived at the residence with the tragic news of the discovery of the body of the deceased. Cpl. McGill was taken to the morgue where he noticed that the deceased had wounds to her face and throat, and that her jewellery and wristwatch were in place on her person.

12. Mr. Peter McGill, father of Cpl. McGill, gave evidence that the deceased had told him that she was going to Kingston with the applicant who had rented a house for her. The purpose of the visit was to be introduced to the landlord. Mr. McGill said he asked the applicant why she was doing all this for the deceased, seeing that he thought that she would have been bitter and wanted revenge.

Her reply was, "because you don't know me; I am a person that is loving and like to treat people good". According to Mr. McGill, the applicant had visited the house on the Thursday night.

13. Sgt. Evan Williams said he received a report at about 7:45 p.m. and that about five minutes thereafter he went to Hillyfield, the scene of the finding of the body of the deceased. He found a bloodstained ratchet knife about fifteen yards north of the body. He searched the clothing of the deceased and found in a wallet in the left side pocket of the jeans pants she was wearing, two supermarket receipts issued on that very day. One receipt was issued at 6.30 p.m., the other at 6.36 p.m. by Super Plus food store, 21 Sevens Road, May Pen. Sgt. Williams interviewed the applicant who told him that she had sent the deceased to buy pampers and hair products. After the deceased had left for the shop, she (the applicant) had left for Mineral Heights top to attend to a sick lady. When asked the identity of the location of this lady in Mineral Heights, the applicant said, "it hard fi find", adding that she had been asked by her baby father to take medication to the lady. She was unable to give the colour of the paint on the house. At page 529 of the record, she is reported by the sergeant as having said, she did not know how she found the house so easily, yet if she were to attempt to find it now, she would be unable to do so. Inspector Winston Lawrence testified that the applicant said she did not remember the name of the lady in Mineral Heights.

14. Sgt. Williams took the keys of the applicant's car from her. He opened the boot. Therein was a large pack of medium pink Cuties pampers, bearing Super Plus price tag. The applicant said that the pampers were hers, and that she had bought them for her son in the Azan store in downtown Kingston. In the glove compartment was a black "scandal" bag with "Smooth and Shine" hair moose and a bottle of "Body Concepts" lotion with Super Plus price tags. When shown the price tags, the applicant said, "Offisa, supermarket sell dem one anada product". Bloodstains were noted on the seatbelt, attached to the front passenger seat. The applicant refused to give a sample of blood or the clothes she was wearing to the police.

15. Karen Williamson, a cashier at the Super Plus store referred to earlier, was on duty in the cosmetics department on November 24. She had been employed in that department for about a year. On the day in question, it being a Friday, she worked alone. She identified the receipts as having come from the cash register that she operated on that day. The prices at Super Plus stores, she said, are not constant throughout the island.

16. Stacey-Ann Gibson, sister of the deceased, gave evidence that on the said afternoon of November 24, the deceased and the applicant had been conversing under a tree on the premises where the deceased lived and that the applicant gave the deceased $1000.00 to go shopping. The deceased left the premises on foot. About fifteen minutes after the deceased had left, the applicant then

left saying that she was going to take medicine to a lady and would be back before the deceased returned. She (the applicant) drove out in her car in the same direction that the deceased had gone. It was after this that Cpl. McGill came home. The applicant returned near 8.00 p.m. inquiring for the deceased, and complaining of feeling ill.

17. The motor car was examined by Miss Sherron Brydson, Government Analyst, attached to the Forensic Science Laboratory, on November 28, 2000. She found that only one floor mat was in the car; it was at the right front seat below the steering wheel. There was also a faint smell of disinfectant. Human blood was found on the left front seat and seat belt buckle as also the seat belt strap. There were also bloodstains on the upright of the driver's seat. Human blood in sero-sanguineous stains was also found on the driver's seat, front passenger seat, glove compartment, handbrake and on the ceiling. Miss Brydson conducted DNA tests on six of seven blood samples taken from the car and she obtained a result in respect of two of these samples. The samples from which a result was obtained were from the stain on the left front seat belt and the buckle of the same seat belt. They showed that there had been at least two individuals who provided the source of the DNA on the buckle. Miss Brydson concluded that more than one individual had been injured in the car as the samples had come from more than one person and that given the blood distribution, efforts had been made to remove human bloodstains from the motor car. Buccal swabs were taken from Cpl. McGill during the trial and examination by Miss Brydson resulted

in a finding that his DNA profile was not found "anywhere else apart from what (she) found in his mouth". She stated specifically that it was found neither in the car nor on the clothing of the deceased.

The defence

18. The applicant gave the usual unsworn statement, typically done by accused persons in this jurisdiction, in which she confirmed the intimate relationship of which Cpl McGill had spoken. She said that she discovered that he was a con man so she terminated the relationship. He continued to antagonize her, she said, so she reported it to his police friends. The applicant also confirmed that she had made arrangements with the deceased for her to come to Kingston to spend the weekend with her. She drove her vehicle to Cornpiece, Clarendon, to transport the deceased to Kingston but she was not ready as she said she was waiting for her husband to arrive. The deceased left saying she would soon be back. Meanwhile, she (the applicant) went to Mineral Heights to deliver medication to a Miss Palmer. On her return, the deceased had not returned. Cpl. McGill came shortly after and on discovering that the deceased was not at home, borrowed the applicant's car to go in search of her. He later returned saying that he had not seen her. It was getting late so, according to the applicant, she told Cpl. McGill that she had to return to Kingston and suggested that he and his wife and daughter should travel into Kingston by bus the next morning. Cpl. McGill, she said, suggested that she and he should go

and look for the deceased one more time. This, they did but did not find her. She denied knowledge of, or involvement in the killing of the deceased.

19. The statement of one Carlette Johnson was admitted in evidence as part of the defence. In it, Miss Johnson states that she knew the deceased who was her classmate. On the evening in question, she and the deceased had gone into Super Plus together and the deceased had purchased a pack of pink pampers, mousse hair product and pink body lotion. After the purchases, they stood in front of the post office talking when a car had drove up. The deceased said, "But wait, nuh Glen dat?", and then entered the car. At first, the deceased had opened the front door of the car, but closed it and then entered through the rear door.

Grounds of appeal

20. At the commencement of the hearing of the application, counsel abandoned the original grounds filed by the applicant, sought and received leave to argue eight supplementary grounds of appeal. These were:

> (i) The learned trial judge failed to direct the jury that in the absence of statistical information from the expert on the relative frequency of the DNA markers in the Jamaican population they could not form a view whether or not the blood stains found in the car came from the deceased.
>
> (ii) The learned trial judge failed to direct the jury that there was no evidence connecting the blood stains found in the motor car to the applicant.

(iii) The directions of the learned trial judge taken together with the extensive dialogue with prosecuting counsel in the presence of the jury, confused the jury and did not assist them to assess the weight, if any, to be given to the DNA evidence. (Transcript Vol.III p.1081 line 4 –p.1100 line 17, p.1113 line 14 – p.1122 line 20).

(iv) The failure of the prosecution (a) to submit the finger nail scrapping (sic) removed by Dr. Brennan from the body of the deceased for scientific analysis and/or (b) to disclose the results of such analysis, deprived the applicant of relevant scientific evidence which may have strengthened the defence or weakened the prosecution's case. The applicant was not afforded adequate facilities to prepare her defence in the circumstances.

(v) The directions of the learned trial judge on lies were inadequate.

(vi) The comments by the learned trial judge to the jury did not make it clear that in exercising her right to not answer questions put by the police when she was in custody no adverse finding should be made against the applicant. (Transcript p.1067 line 22 – p.1075 line 1)

(vii) The learned trial judge misdirected the jury on the evidence when he said that the receipts for goods purchased from Super Plus were found in the car. (p.1080 line 11 – 1081 line 3), (p.511 line 24 - p.512 line 17)

(viii) The learned trial judge misdirected the jury when he said "the unsworn address she made is not part of the evidence". (p.1103 line 5 – 8)

The challenge to the treatment of the scientific evidence

21. The first four grounds of appeal set out above were in respect of the scientific evidence and may be dealt with in three categories; the fingernail scrapings, the bloodstains, and the DNA evidence.

(a) the scrapings

This ground alleges that the applicant was deprived of relevant scientific evidence, and was accordingly prejudiced in the preparation of her defence. The evidence on this aspect came from Dr. Brennan and Sgt. Evan Williams. The doctor said that he took scrapings from the fingernails of the deceased and gave them to the police. However, the police deny receiving same, and Ms. Brydson certainly did not receive any. If indeed scrapings were taken, and there is no reason to think they were not, then there appears to have been at least an incident of carelessness in the investigative process, subsequent to the taking of the scrapings. Much store ought not to be placed on these scrapings as they were not analysed by Ms. Brydson, so their evidential value can only be regarded as speculative. There having been no analysis, it cannot be said that the applicant has been deprived of relevant evidence. In the circumstances, the ground is without merit.

(b) the bloodstains

The complaint here is that the learned judge failed to inform the jury that there was no evidence connecting the bloodstains found in the motor car to the applicant. However, an examination of the record shows, at page 1087, that

after having listed certain articles that had been examined by Ms. Brydson, the learned judge said:

> "Although all of those items were taken from the accused there wasn't any presence of blood found. The prosecution is not saying that blood was on these items, that's not the purpose of this, but from any proper analysis, you should have a sort of complete picture of what was analysed and its findings. What was significant was on Exhibit 24A and B were the shoes taken from the accused, there was no blood found there." (lines 2 to 12)

This passage shows clearly that the complaint is without merit.

(c) the DNA evidence

In this respect, the complaint is two-fold. Firstly, the applicant is contending that, given what he says is the absence of statistical information on the relative frequency of the DNA markers in the Jamaican population, the learned judge should have told the jury that they could not form a view as to whether the bloodstains in the car came from the deceased. Secondly, the dialogue between the prosecutor and the judge in the presence of the jury confused the jury and did not help in assessing the weight of the evidence.

22. In respect of the first complaint, it is necessary to examine the evidence that was given by the Government Analyst. She said that deoxyribonucleic acid (DNA) is found in the nucleus of each cell in the human body and this is a sort of blueprint of the individual. It is inherited from one's parents, thereby making it double stranded, and is organized into chromosomes. She said that along the DNA strands are characteristics that are utilized for the purpose of analysis.

Eight of these areas along the DNA strands are targeted, and each area is called a marker. Within each marker, she continued, there will be a number which can be the same for each parent or it can be different. So, each person will have a total of two of these figures. Incidentally, each individual's DNA is unique to that individual unless the person is an identical twin, or triplet.

23. Ms. Brydson said she performed DNA analysis on six of the seven blood samples that she collected, and obtained a result "only on two". These two came from the stain on the left front seat belt and the buckle of the seat belt. All the markers gave a result. She added:

> "...each marker...has a particular frequency in the Jamaican population. To get a combined frequency of all eight ... the product rule is applied, which is to multiply all eight frequencies and that works out to be 1.9 in one billion or one in five hundred and twenty-six million, that's the frequency or the chance of finding somebody else with this profile in the population." (p.764 lines 12-23)

It seems therefore that the complaint as to the absence of statistical information as to the relative frequency of the DNA markers in the Jamaican population is without basis.

24. From the analysis that Ms. Brydson did, she concluded that the blood on the seat belt came from at least two individuals. However, she did not give any evidence which could have assisted in identifying those individuals. And, indeed, she would not have been in a position to give such evidence unless there were

identifiable persons connected to samples that had been provided for analysis. She specifically said:

> "...I cannot say that this combination is the same as Mrs. McGill, it is a mixture, it could have come from anybody else, but I cannot exclude, it could be Mrs. McGill's." (p.814 lines 20-23)

25. It is correct that the learned judge did not specifically say to the jury that the blood of the deceased was not identified by the Government Analyst as being in the car. He really ought to have made this clear, given the mixture of blood that was found in the car, and the failure to obtain the necessary markers from the analysis. However, that omission by the judge cannot be regarded as fatal to the prosecution's case, in view of the other evidence indicating the presence of the deceased in the car. Indeed, the defence presented evidence indicating that the deceased went into the car. Items purchased by her shortly before she entered the car were found in the car. That was the evidence presented to the jury and they were entitled to accept or reject it. The analyst's evidence was only to the effect that she could not say that Mrs. McGill's blood was not in the car.

26. The second complaint in respect of the DNA evidence concerns the dialogue between the learned judge and counsel for the Crown in the presence of the jury. No submissions were addressed to us on this ground by Dr. Williams for the applicant, apart from the written statement that the jury must have been confused. However, counsel for the Crown submitted that the dialogue was

merely aimed at ensuring compliance with the guidelines outlined in the case ***Michael Pringle v. R.*** (2003) 62 WIR 287. Examination of the transcript shows that prior to concluding his summation to the jury, the learned judge inquired of counsel: "Is there anything? Am I missing anything?" This was clearly an invitation to counsel to indicate whether in their opinion he had omitted to give the jury any necessary direction. Counsel who then appeared for the applicant at the trial said he did not think so, whereas Ms. Llewellyn, who appeared then as now, in turn inquired whether the judge had directed on expert witnesses. She then expressed concern as to how the judge had dealt with Ms. Brydson's evidence "in terms of the profile of Mrs. Isolyn McGill that she derived from the blood sample". The discussion that followed at pages 1114 to 1122 of the record provided the material for this complaint.

27. Ms. Llewellyn had suggested to the learned judge that "just out of caution" he should enunciate the profile and the figure given by Ms. Brydson and leave it to the jury to decide what they think of it in all the circumstances of the case. The judge then expressed the hope that he had not glossed over something and proceeded to repeat the findings of Ms. Brydson in respect of the samples and the markers. He, perhaps unusually, inquired of the jury: "Are you following?" whereupon it is recorded that the "jury" responded "Yes" (p.1115 lines 17 & 18). There followed a discussion as to whether there had been evidence as to a "partial match" or not. It may be wondered why the services of the court reporter were not utilized at this stage to clarify what may or may not

have been said. The learned judge then instructed the jury that "...the analyst can only take it to that. It is for you to make a determination of fact whether the partial combination is related to the deceased, Miss Isolyn McGill, or not related to her"(p.1121 lines 14 – 18). He went on to say: "Given the full profile of either...", when he was interrupted by Ms. Llewellyn and a further exchange took place as to what the analyst had actually said. Then, without comment on the latest intervention by Ms. Llewellyn, the judge addressed the jury thus, "All right. Consider your verdict...". He continued however to give further instructions on another aspect of the case in a manner which Ms. Llewellyn obviously felt required further intervention on her part. This was in relation to the evidence of the defence witness Carlette Johnson whom the jury had not seen or heard.

28. It is quite obvious that the learned judge had invited comments from counsel before it could be said that he had completed his summation. The result was the toing and froing between him and counsel for the Crown as to what was the evidence and what should have been said to the jury. It was most undesirable for this to have taken place in the presence of the jury, in a manner which does not seem to have resulted in a clear resolution of the issues discussed in relation to Ms. Brydson's evidence. It is therefore difficult to say that the jury was not confused by what had taken place. They may have been left with the view that there had been indeed a match so far as the DNA was concerned.

Inadequate directions on "lies"

29. The complaint that the directions by the judge on lies that may have been told by the applicant was inadequate is without foundation. At pages 938 and 939 of the record, the learned judge gave directions that were more than adequate in the circumstances of the case.

Comments on applicant's refusal to answer questions

30. At page 1069, lines 4-14, the learned judge said this to the jury:

> "Of course, you may well consider that these questions are questions she could have answered, but, if she, because on the advice of an attorney, elected not to answer, that is, you must consider that factor, take that into account why she did not answer and perhaps if she did on her own, she might have opted to answer. I'm not speculating to this, but there are some questions that you might have thought that she would have answered. I will come to one or two in the meantime".

The judge was referring to the series of questions that the police, quite properly, put to the applicant. He was ambivalent on this question of the right of the applicant not to answer, in that he at times said she need not have answered, then at other times as stated above, he gave the impression that she might have, or ought to have, answered. He said he would have returned to some of them that the jury might have thought she would have answered. This clearly was an undermining of the legal right of the applicant in the situation.

31. So far as the other two grounds are concerned there is no merit. There was nothing wrong with the judge inviting the jury to draw what inference they

may from the finding of the receipts. So far as the direction as to the unsworn statement is concerned, this is in keeping with the law as stated in ***DPP v. Walker*** [1974] 21 W.I.R. 406.

32. From the conclusions at which we have arrived (paragraphs 27 and 29) in respect of the protracted dialogue between the learned trial judge and counsel for the Crown in the presence of the jury, and the comment by the judge on the failure of the applicant to respond to certain questions posed by the police, we are duty bound to quash the conviction. These aspects of the case have had a negative impact on the fairness of the trial. However, in the interests of justice we order that a new trial be held as early as possible.