COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS
12th – 16th March 2012

JUDGMENTS

Case Name: **Marty Steinberg, Receiver and Others v Swisstor & Co. and Another (Territory of the Virgin Islands) [High Court Civil Appeal No. 12 of 2011]**

Date: **Monday, 12th March 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Justice of Appeal**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Ms. Marsha Henderson holding papers for Ms. Susan Demers of Price Demers & Co.**

Respondent: **Mr. Emile Ferdinand holding papers for Mr. William Hare of Forbes Hare and solicitors of Appleby**

Issues: **Interlocutory appeal – Whether claim statute barred under the Limitation Act – Qualification for applying for permission to serve proceedings out of the jurisdiction – Extension of time within which to serve a claim form – Limitation Act Cap. 43 of the Virgin Islands – CPR 7.3(3)(b) – CPR 8.13**

Result / Order & Reason: **Held: dismissing the appeal and affirming the decision of the trial judge, with prescribed costs to both respondents; and dismissing the respondent's notice with no order as to costs, that:**

1. **Section 25 of the Limitation Act is unavailable to the appellants because, in making his case, the Receiver's evidence does not identify any point in time when he says he first discovered the mistake. His evidence makes no attempt properly to grapple**

with the equally important and separate question when he could reasonably have discovered it. On 9th July 2004, within about a year after his appointment on 10th July 2003, he commenced proceedings against the respondents in the USA making the same claims as he now brings in the BVI. If the court were to be expected to act upon a case that the Receiver only discovered the mistake at some point after his appointment and prior to his US proceedings, then not only must that point in time be identified and explained, but a detailed account would perforce need to be given of the period between his appointment and that point in time, in order to show that he could not have reasonably discovered it before.

2. **On the service out of the jurisdiction issue and CPR 7.3(3), with all respect to the learned trial judge, there is no good reason to give a narrower construction to the words in our Rules "otherwise to affect" than was given to the words "in respect of" in the UK Rules. It is difficult to follow the reasoning whereby the judge concluded that the claim in this case did not "affect" a contract. The claim is for restitution where a contractual term has not been performed. The primary allegation is that both respondents are withholding monies which they should not have received under the contract had the formula been correctly applied. This claim clearly affects a contract, the interpretation, the meaning, and the implications that arise from the contract.**

   E.F. Hutton & Co (London) Ltd. v Mofarrij [1989] 1 W.L.R. 488 applied.

3. **The power in CPR 8.13 to extend the validity of the claim form is only to be exercised for "good reason" for the failure to serve the claim during the period of its validity. In this case, the appellants had given no reason at all why they had failed to apply in good time to serve the respondents in the manner they had previously served the US proceedings, but had instead waited to apply for permission to serve out and for an extension of time until two months after the period for service**

had passed. The judge had therefore been entitled to set aside the extensions for service of the claim form.

Hoddinott v Persimmon Homes [2008] 1 W.L.R. 806; [2007] EWCA Civ 1203 applied; Hashtroodi v Hancock [2004] EWCA Civ 652; [2004] 1 W.L.R. 3206; [2004] 3 All E.R. 530 cited.

4. **The respondents had a right to be sued by means of a claim issued within the statutory period of limitation and served within the period of its validity. Once the respondents could show, as they have, that they might be deprived of a defence of limitation if time for service of the claim form was extended it was enough for the extension to have been set aside. The statutory limitation period should not be made elastic at the whim or sloppiness of a litigant. Public interest requires that claimants adhere strictly to the time limit for service or else provide a good reason for dispensation. That not having been done here, the learned trial judge was entitled to exercise his discretion to set aside the extension of time.**

Dagnell and Another v J.L. Freedman & Co. (a firm) and others [1993] 1 W.L.R. 388 cited; City & General (Holborn) Ltd. v Royal & Sun Alliance plc [2010] 131 ConLR; [2010] BLR 639; [2010] EWCA Civ 911 applied.

APPLICATIONS AND APPEALS

Case Name: **Hesketh Trevor Chapman v Nevis Co-operative Banking Co. Ltd. (now called RBTT Bank (SKN) Limited)**
[High Court Civil Appeal No. 32 of 2003]

Date: **Monday, 12th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**

		The Hon. Mde. Janice M. Pereira, Justice of Appeal **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
Appearances:		
	Appellant:	**Ms. Joan Slack (replacing Mr. Geoffery Romany)**
	Respondent:	**Mrs. Leonora Walwyn, with her, Ms. Kurlyn Merchant**
Issues:		**Application for an adjournment**
Result / Order:		**By Consent:** **1. Solicitors for the parties shall meet within 14 days of today's date and agree on the documents which shall constitute the record since the relevant files are missing from the Registry.** **2. Solicitors for the appellant shall serve and file the Record of Appeal within 42 days of today's date.** **3. All subsequent proceedings shall be in accordance with the Rules.** **4. This appeal shall be listed for hearing at the next sitting of this court in St. Kitts in November 2012.** **5. Costs shall be in the appeal.**
Reason:		**The Court noted that the prior order for filing the Record was an Unless Order. The Record was to be filed within 42 days. However, if the Record was not filed, the appeal would not have necessarily been automatically dismissed. The Court was of the view that Mr. Romany ought to have been more proactive. However, since Mrs. Walwyn was not averse to reconstituting the file and allowing the appeal to proceed, the Court made the above order.**
Case Name:		**Sandra Williams v Alanzo David** **[Magisterial Civil Appeal No. 7A of 2011]**
Date:		**Monday, 12th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice**

		The Hon. Mde. Janice M. Pereira, Justice of Appeal **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
Appearances:		
	Applicant:	**No appearance of or on behalf of the of applicant**
	Respondent:	**No appearance of or on behalf of the respondent**
Issues:		**Application for leave to appeal out of time – Application to strike out appeal – Application for leave to file supplementary affidavit and further skeleton arguments**
Result / Order:		**The matter is stood down.**
Reason:		**To allow Mr. Jerry Webbe, counsel on record for the applicant, to appear. Mr. Webbe apparently misunderstood the date of hearing.**

Case Name:	**Che Gregory Spencer v The Director of Public Prosecutions** **[High Court Criminal Appeal No. 13A of 2009]**
Date:	**Monday, 12th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
Appearances:	
Appellant:	**Dr. Henry Browne, with him, Mr. Hesketh Benjamin**
Respondent:	**Mrs. Pauline Hendrickson, Director of Public Prosecutions**
Issues:	**Appeal against conviction – Murder – Application for the matter to be traversed – Application for Dr. Henry Browne and Mr. Hesketh Benjamin to be appointed as**

counsel

Result / Order:

[Oral delivery]

1. **Dr. Henry Browne and Mr. Hesketh Benjamin are hereby appointed pursuant to the relevant provisions of the Supreme Court Act and the Court of Appeal Rules as counsel to Mr. Spencer to prepare and prosecute this appeal on his behalf.**
2. **The State shall bear their reasonable costs for the appointment under paragraph 1 of this Order.**
3. **This appeal is traversed to the next sitting of this court in this Federation.**

Reason:

The appellant came to the appeal undefended. He did not have the means to instruct counsel in a matter which was sufficiently serious to require counsel to appear for the appellant.

Case Name:

Vernlyn Zakers v The Director of Public Prosecutions
[High Court Criminal Appeal No. 14 of 2009]

Date:

Monday, 12th March 2012

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: **Dr. Henry Browne, with him, Mr. Hesketh Benjamin**

Respondent: **Mr. Garth Wilkin**

Issues:

Appeal against conviction – Possession of firearm and ammunition – Importation of firearm and ammunition – Whether the learned trial judge erred in law in not upholding the no case submission – Whether the learned trial judge erred in law by the manner in which strict liability was put to the jury (since one cannot

possess something unless one has knowledge of it) – Whether the summation on strict liability was a material misdirection – Whether the learned trial judge ought to have explained to the jury what circumstantial evidence was and whether the failure to do so amounts to a misdirection – Whether the learned trial judge erred in his summation in terms of what ingredient was necessary to prove the charge

Result / Order:

[Oral delivery]

1. **The appeal is allowed and the appellant's conviction quashed.**
2. **No retrial is ordered.**

Reason:

The learned trial judge ought to have distilled the evidence and let the jury know what evidence ought to have been relied on. The evidence was left to the jury to decipher with no assistance.

Furthermore, the learned trial judge did not assist the jury with the evidence of knowledge. Neither did he assist the jury with the evidence of possession; the directions on these issues were confusing. He did not explain the reverse burden of proof on the appellant, and the standard of proof required to rebut the presumption of possession. This would have rendered the trial unfair.

Given the time already served in respect of the sentence, coupled with the fact that the evidence in respect of the offence was not particularly strong, the Court found that it would not be in the interests of justice to order a retrial.

Case Name:

Anthony Phillip v The Director of Public Prosecutions
[High Court Criminal Appeal No. 25 of 2008]

Date:

Tuesday, 13th March 2012

Coram:		**The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**In person**
	Respondent:	**Ms. Greatess Gordon**
Issues:		**Appeal against sentence – Unlawful grievous bodily harm – Whether the matter should be discontinued in light of the fact that time has been spent**
Result / Order:		**[Oral delivery]** **The appeal is dismissed.**
Reason:		**The sentence had already been served.**

Case Name:		**The Director of Public Prosecutions v Keshaun Merchant** **[High Court Criminal Appeal No. 1 of 2011]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Ms. Rhonda Nisbett-Browne, with her, Ms. Greatess Gordon**
	Respondent:	**Mr. Chesley Hamilton**
Issues:		**Appeal against sentence – Possession of Firearm – Whether the learned trial judge acted outside his jurisdiction by giving the respondent a suspended sentence – Whether the sentence of 1 year was too**

lenient – Whether the learned trial judge failed to address his mind to certain guidelines and principles when passing the sentence on the respondent – Whether the aggravating factors far outweighed the mitigating factors

Result / Order:

[Oral delivery]

1. **The appeal is allowed.**
2. **The sentence of the trial judge is set aside.**
3. **The sentence imposed by this court is 3 years 8 months reduced by 2 months in aggregate for time spent on remand, beginning today.**

Reason:

On the facts of this particular case, the trial judge clearly erred in law in imposing a suspended sentence of 1 year in light of the provisions of the Alternative Sentencing Powers Act, 2003, which prohibited such a sentence in respect of the offence charged.

Further, the learned trial judge erred in any event in principle, by having failed to carry out a proper balancing exercise in respect of the mitigating and aggravating factors. The Court was of the view that in the particular circumstances of this case the aggravating factors far outweighed the mitigating factors.

Case Name:

Warrington Phillip v The Director of Public Prosecutions
[High Court Criminal Appeal No. 2 of 2009]

Date:

Tuesday, 13th March 2012

Coram:

The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Dr. Henry Browne, with him, Mr. Hesketh Benjamin**

	Respondent:	**Sir Richard Cheltenham, QC**
Issues:		**Appeal against conviction and sentence – Murder – Whether the learned trial judge erred in law in failing to give clear and cogent directions as to how the jury should treat DNA evidence and the special care required or needed in the examination or analysis of the random occurrence ratio – Whether the learned trial judge failed to give a balanced summing up of the evidence thus resulting in a miscarriage of justice – Whether the verdict cannot be supported having regard to the evidence**
Result / Order:		**The decision is reserved.**

Case Name:		**Frederik Carl Kaesmacher v Katherine Anne Kaesmacher [High Court Civil Appeal No. 9A of 2011]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mrs. Marguerite Foreman, with her, Ms. Teshari John**
	Respondent:	**Ms. Marsha Henderson**
Issue:		**Whether the learned trial judge erred in the exercise of his discretion in giving sole custody to the mother**
Result / Order:		**By Consent:** **1. Paragraph 111 of the judgment which contains the Order of the Court is varied as follows to award:- joint legal custody of the minor children Max and Lexi is awarded to both parents with primary care**

and control to the mother; the father to have access to the minor children every other weekend commencing this weekend Friday 16th March 2012 to last from Friday at 5 p.m. to 6 p.m. on Sundays; additionally the father is to have access to the children on Tuesdays and Thursdays of each week unless otherwise agreed, picking them up from school at 3 p.m. giving them dinner and returning them to the mother by 7 p.m.

2. **Paragraph 112 remains as in the judgment and forms part of the Order. It reads:- The children to spend an aggregate of half of their school holidays with their father. By the aggregate they do not have to spend all of the holidays with the applicant at one time.**
3. **The appellant has carriage of the Order.**
4. **No order as to costs.**

Reason: **In all the circumstances of the case and having regard to the fact that the welfare of the children was paramount, the Court was of the view that a variation of the Order of the trial judge in the terms above would better serve the interests of the children.**

Case Name: **Dion Roberts v Chief of Police [Magisterial Criminal Appeal No. 10 of 2011]**

Date: **Tuesday, 13th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant: **Dr. Henry Browne**

Respondent: **Mrs. Pauline Hendrickson, Director of Public Prosecutions**

Issues: **Appeal against sentence – Aggravated Assault –**

	Whether the fine imposed by the learned magistrate was unduly severe and imposed without having any regard to the financial means of the appellant
Result / Order:	**[Oral delivery]** **1. The appeal against sentence is allowed.** **2. The conviction is affirmed, but the sentence is substituted by a fine of $450.00, which fine is to be paid within 3 months, or, in default, 1 month in prison.**
Reason:	**The sentence was excessive in all of the circumstances and was therefore reduced.**

Case Name:	**Morris Bennette and Another v Sandra Roberts [Magisterial Civil Appeal No. 4 of 2010]**
Date:	**Tuesday, 13th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:	
Appellant:	**Mr. Nassibou Butler**
Respondent:	**Dr. Henry Browne**
Issues:	**Road traffic accident – Whether the decision of the learned magistrate is unreasonable and cannot be supported having regard to the evidence – Whether the learned magistrate ought to have considered contributory negligence on the part of the claimant**
Result / Order:	**The matter is stood down.**
Reason:	**Dr. Henry Browne was in another court when the**

matter was called.

Case Name:		**St. Kitts-Nevis-Anguilla National Bank Limited v Avrilette Francis-Hendrickson and Another [Magisterial Civil Appeal No. 9 of 2010]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mrs. Miselle O'Brien-Norton**
	Respondent:	**Mr. Nassibou Butler**
Issues:		**Whether at all material times the appellant was entitled to rents due and owing – Whether the respondent occupied the premises as tenants**
Result / Order:		**[Oral delivery]** **1. The appeal is dismissed and the decision is affirmed.** **2. Costs in the sum of $750.00.**
Reason:		**The magistrate correctly found that there was no tenancy agreement between the respondent and Mr. Hendrickson's mother.**

Case Name:	**Learie Smith v Development Bank of St. Kitts/Nevis [Magisterial Civil Appeal No. 3 of 2011]**

Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. John Cato**
	Respondent:	**Mr. Jason Hamilton**
Issues:		**Whether the learned magistrate erred in failing to take into account that the default provision in the Debtor's Act, Cap. 5.07, Revised Laws of Saint Christopher and Nevis 2002, when making an order for the payment of a debt with a default provision, limited the term of imprisonment to 6 weeks**
Result / Order:		**The matter is stood down.**
Reason:		**To allow Mr. John Cato to collect the appeal Record and related documents.**

Case Name:		**Jerome Herbert v Delroy Carey** **[Magisterial Civil Appeal No. 7 of 2011]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**In person (he indicated that Dr. Browne was his counsel)**
	Respondent:	**Mr. Jason Hamilton**

Issues:	**Assault and battery**
Result/Order:	**The matter is stood down.**
Reason:	**Dr. Browne was in another court when the matter was called.**

Case Name:	**Pinneys Hotel Development Limited. v Sean Powell [Magisterial Civil Appeal No. 8 of 2011]**
Date:	**Tuesday, 13th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:	
Appellant:	**Mrs. Angela Cozier**
Respondent:	**Mr. Perry Joseph**
Issues:	**Whether the magistrate erred in finding that a contract existed between the hotel and Mr. Powell by which Mr. Powell was contracted as an independent contractor to construct a bar for the hotel**
Result / Order:	**[Oral delivery]** **The appeal is dismissed with $750.00 agreed costs to be paid to the respondent.**
Reason:	**The finding by the magistrate that there was a valid independent contract between Mr. Powell and the hotel was correct and supported by the evidence adduced at trial.**

Case Name:		**Learie Smith v Development Bank of St. Kitts/Nevis [Magisterial Civil Appeal No. 3 of 2011]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. John Cato**
	Respondent:	**Mr. Jason Hamilton**
Issues:		**Whether the learned magistrate erred in failing to take into account that the default provision in the Debtor's Act, Cap. 5.07, Revised Laws of Saint Christopher and Nevis 2002, when making an order for the payment of a debt with a default provision, limited the term of imprisonment to 6 weeks**
Result / Order:		**[Oral delivery]** **1. The appeal is allowed but only to the extent that the order of the magistrate is varied in its default provision to substitute 6 weeks imprisonment instead of 3 months.** **2. Payment under paragraph 1 of this Order shall commence from 1st May 2012.** **3. There is no order as to costs in today's proceedings.**
Reason:		**The magistrate had exceeded jurisdiction in the default provision of the order which limited the term of imprisonment that could be served in default of payment to 6 weeks.**

Case Name:		**Candace Andrew v Chief of Police [Magisterial Criminal Appeal No. 5 of 2010]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. Geoffery Romany**
	Respondent:	**Mr. O'Neil Simpson**
Issues:		**Appeal against conviction – Assault – Whether or not a custodial sentence can be substituted with a non-custodial sentence**
Result / Order:		**[Oral delivery]** **1. The appeal against conviction is withdrawn and accordingly dismissed.** **2. The appeal against sentence is allowed to the extent that the sentence is varied to a fine of $750.00 to be paid within 3 months, in default, the appellant shall serve 4 weeks in prison.**
Reason:		**The Court was of the view that the sentence of a term of imprisonment was excessive.**

Case Name:	**Jerome Herbert v Karen St. Juste [Magistrate Civil Appeal No. 4 of 2012]**
Date:	**Tuesday, 13th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**

Appearances:		
	Appellant:	**Mr. J. D. Quinlan**
	Respondent:	**Ms. Marsha Henderson**
Issues:		**Adjournment to next sitting**
Result / Order:		**[Oral delivery]** **1. The matter is adjourned to the Court of Appeal Case Management list for its next sitting in chambers in Saint Lucia.** **2. The solicitor for respondent shall file and serve an Affidavit of Opposition if necessary within 7 days of today's date.**
Reason:		**The matter was not ripe for the hearing of the appeal.**

Case Name:	**Bruce Nolan v The Chief of Police [Magisterial Criminal Appeal No. 11 of 2011]**
Date:	**Tuesday, 13th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:	
Appellant:	**No appearance of or on behalf of appellant**
Respondent:	**Mr. O'Neil Simpson**
Issue:	**Appeal against sentence – Possession of a controlled drug – Whether the sentence is excessive**
Result / Order:	**The matter is stood down.**

Reason:		**Counsel for the appellant, Dr. Henry Browne, was in another court when the matter was called.**

Case Name:		**Shamalda Maynard v The Chief of Police [Magisterial Criminal Appeal No. 12 of 2011]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**No appearance of or on behalf of the appellant**
	Respondent:	**Mr. O'Neil Simpson**
Issue:		**Appeal against sentence – Grievous bodily harm – Whether the sentence passed was based on a wrong principle or was such that the learned magistrate viewing the circumstances of the case could not reasonably have come to the decision that she did – Whether the sentence was unreasonable having regard to the fact that the appellant was a juvenile at the date of the offence, a first time offender and had pleaded guilty**
Result / Order:		**The matter stood down.**
Reason:		**Counsel for the appellant, Dr. Henry Browne, was in another court when the matter was called.**

Case Name:	**Sandra Williams v Alanzo David [Magisterial Civil Appeal No. 7A of 2011]**

Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant / Applicant / Respondent:	**Mr. Jerry Webbe**
	Respondent / Applicant:	**Mr. Geoffery Romany**
Issues:		**Application for leave to appeal out of time – Application to strike out appeal – Application for leave to file supplementary affidavit and further skeleton arguments**
Result / Order:		**[Oral delivery]** **The application to file appeal out of time is dismissed with costs in the amount of $400.00 to be paid by the applicant to the respondent.**
Reason:		**It was mandatory that the recognizance be filed in the magistrate's court within 3 days, and it was not filed within that time. There was therefore no proper appeal before the Court. The appeal was a nullity.**

Case Name:	**Bruce Nolan v The Chief of Police [Magisterial Criminal Appeal No. 11 of 2011]**
Date:	**Tuesday, 13th March 2011**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**

Appearances:

Appellant:	**Dr. Henry Browne**
Respondent:	**Mr. O'Neil Simpson**

Issue: **Appeal against sentence – Possession of a controlled drug – Whether the sentence is excessive**

Result / Order: **[Oral delivery]**
The appeal against is allowed to the extent that the sentence is varied from a fine of $35,000.00 to one of $20,000.00 to be paid in 3 months, in default, 2 years in prison.

Reason: **The fine was excessive in the circumstances of the case.**

Case Name: **Shamalda Maynard v The Chief of Police [Magisterial Criminal Appeal No. 12 of 2011]**

Date: **Tuesday, 13th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant:	**No appearance of or on behalf of the appellant**
Respondents:	**Mr. O'Neil Simpson**

Issue: **Appeal against sentence – Grievous bodily harm – Whether the sentence passed was based on a wrong principle or was such that the learned magistrate viewing the circumstances of the case could not reasonably have come to the decision that she did – Whether the sentence was unreasonable having regard to the fact that the appellant was a juvenile at**

		the date of the offence, a first time offender and had pleaded guilty
Result / Order:		**[Oral delivery]** **The matter is adjourned to Friday, 16th March 2012.**
Reason:		**Mr. Cato, counsel for the appellant on the Record, was not present in court.**
Case Name:		**Morris Bennette and Another v Sandra Roberts [Magisterial Civil Appeal No. 4 of 2010]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. Nassibou Butler**
	Respondent:	**Dr. Henry Browne**
Issues:		**Road traffic accident – Whether the decision of the learned magistrate is unreasonable and cannot be supported having regard to the evidence – Whether the learned magistrate ought to have considered contributory negligence on the part of the claimant**
Result / Order:		**The matter is adjourned to Friday, 16th March 2012.**
Case Name:		**Jerome Herbert v Delroy Carey [Magisterial Civil Appeal No. 7 of 2011]**

Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Dr. Henry Browne**
	Respondent:	**Mr. Jason Hamilton**
Issues:		**Assault and battery – Application to withdraw appeal**
Result / Order:		**[Oral delivery]** **1. Leave to withdraw the appeal is granted and accordingly, the appeal is dismissed.** **2. No order as to costs.**
Reason:		**The appeal was withdrawn.**

Case Name:		**Dion Roberts v Jasmine Carey [Magisterial Civil Appeal No. 1 of 2012]**
Date:		**Tuesday, 13th March 2012**
Coram:		**The Hon. Mr. Hugh A. Rawlins, Chief Justice** **The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Dr. Henry Browne**
	Respondent:	**Mr. Jason Hamilton**
Issue:		**Whether award of damages excessive**
Result / Order:		**[Oral delivery]**

1. **The appeal is allowed but only to the extent that award of General Damages is reduced from $10,000.00 to $9,000.00, and accordingly, the sum of $9,153.75 total damages is awarded to the respondent Jasmine Carey against the appellant, and, in addition, $1,000.00 costs in the Court below.**
2. **The appellant is to pay $650.00 costs to the respondent in this appeal.**

Reason: **The magistrate had erred to the extent that she miscalculated the loss of use of vehicle element.**

Case Name: **Trevor Hector v The Director of Public Prosecutions [High Court Criminal Appeal No. 15 of 2008]**

Date: **Wednesday, 14th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person**

Respondent: **Mrs. Pauline Hendrickson, Director of Public Prosecutions**

Issues: **Appeal against conviction and sentence – Housebreaking – Whether the issue of recent possession arose in this matter – Whether the sentence imposed was too severe**

Result/Order: **[Oral delivery]**

1. **The appeal against conviction is dismissed and the appellant's conviction is affirmed.**
2. **The appeal against sentence is allowed in part: the sentence of 9 years and 6 months is reduced to 8**

years and 6 months.

Reason: **The Court was of the view that there was sufficient evidence of recent possession coupled with other surrounding circumstances on which the jury could have properly convicted.**

The Court noted the appellant's long record, but reduced the sentence to encourage him to rehabilitate.

Case Name: **William Benjamin v The Director of Public Prosecutions**
[High Court Criminal Appeal No. 6 of 2009]

Date: **Wednesday, 14th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Chesley Hamilton**

Respondent: **Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mr. O'Neil Simpson**

Issues: **Appeal against conviction – Murder – Whether the learned trial judge erred in law when at the request of learned Senior Counsel for the Prosecution he withdrew the defence of provocation.**

Result / Order: **[Oral delivery]**

1. **The appeal against conviction is dismissed and the conviction is affirmed.**
2. **The appeal against sentence is also dismissed, and the sentence of life imprisonment is affirmed, the said sentence commencing from the date on which he was first incarcerated.**

3. **Pursuant to paragraph 2 of this Order, in the absence of a proper parole regime, the appellant may apply to the High Court after 25 years for a review of the sentence supported by all necessary documents and reports.**
4. **The Court is of the opinion that if a parole regime is put in place prior to the expiration of 25 years the Appellant shall be subject to that regime instead of the provisions of paragraph 3 of this Order.**

Reason:

The Court held that the summation by the trial judge on provocation was correct.

Under the common law, which was applicable in the present case, the learned trial judge had the discretion whether to put the issue of provocation to the jury or not.

The Court considered the English case of R v Ethel Amelia Rossiter [1992] 95 Cr. App. R. 326 and pointed out that the distinguishing feature between that case and the present case was the relevant provision in the English Homicide Act 1957, which mandates a judge to put the issue of provocation to the jury. The Court also noted that the Antiguan case of Confesor Valdez Franco v The Queen, Antigua and Barbuda Criminal Appeal No. 3 of 1997 (delivered 24th November 1997, unreported) was based on a provision in the Antiguan legislation which is similar to the 1957 English Act.

Case Name:

Shervin George v The Director of Public Prosecutions [High Court Criminal Appeal No. 28 of 2008]

Date:

Wednesday, 14th March 2012

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant:	**Dr. Henry Browne, with him, Mr. Hesketh Benjamin**
Respondent:	**Mrs. Pauline Hendrickson, Director of Public Prosecutions**

Issues:

Appeal against conviction – Accessory to Murder – Whether the appellant knew that an offence was being committed – Whether the prosecution failed to prove a prima facie case against the appellant – Whether the learned trial judge failed to tell the jury that they can only draw inferences from proven facts and not speculation – Whether the actus reus was proven in relation to the appellant and whether in light of this the conviction was unsafe – Whether the prosecution failed to prove evidence to show that the appellant Mr. William Benjamin (in High Court Criminal appeal No. 6 of 2009) – Whether there was any physical or forensic evidence pointing to the appellant's involvement in the murder – Whether the words used in the appellant's statement were properly explained by the learned trial judge to the jury and whether the learned trial judge failed to point out to the jury what was the appellant's involvement in the case

Result / Order:

[Oral delivery]

1. **The appeal against conviction is dismissed and the conviction is affirmed.**
2. **The appeal against sentence is allowed to the extent that the sentence below of 20 years imprisonment is reduced to a sentence of 15 years to run from the date of the appellant's first incarceration.**

Reason:

The participation of the appellant was not de minimis. However, the Court was of the view that a sentence of 20 years was excessive since the appellant had no previous convictions. The Court noted that the appellant did not plead guilty, and went through a full trial. A sentence of 15 years was a reasonable substitution for the sentence of 20 years.

On the issue of the words used in the appellant's statement and the directions given by the learned trial judge which meant that he was charged as an accessory after the fact, the Court was of the opinion that the inferences that could have been drawn were properly left to the jury to determine.

Case Name:	**Director of Public Prosecutions v Fitzroy Challenger and Another [High Court Criminal Appeal No. 1 of 2009]**
Date:	**Wednesday, 14th March 2012**
Coram:	**The Hon. Mr. Hugh A. Rawlins, Chief Justice The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.] The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]**
Appearances:	
Appellant:	**In person**
Respondent:	**Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mr. O'Neil Simpson**
Issues:	**Whether as a general principle when a sole count of murder is withdrawn it is the duty of the trial judge to leave manslaughter to the jury – Whether the learned Director of Public Prosecutions can bring an appeal by reference to the Court of Appeal on a point of law as an hypothetical issue without specific statutory authority**
Result / Order:	**[Oral delivery] The appeal is withdrawn and accordingly dismissed.**
Reason:	**There being no legislative authority in Saint Kitts & Nevis for a reference on a point of law, there was no proper appeal before the Court.**

The Court was also minded not to engage in an academic exercise.

Case Name: **Ketron Springette v The Director of Public Prosecutions [High Court Criminal Appeal No. 11 of 2009]**

Date: **Wednesday, 14th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise Blenman, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person**

Respondent: **Mrs. Pauline Hendrickson, Director or Public Prosecutions, with her, Mr. O'Neil Simpson**

Issues: **Appeal against conviction – Wounding with intent – Whether the identification in this case was so tenuous as to render the conviction unsafe – Whether the learned trial judge misdirected the jury on the evidence of identification – Whether the appellant's statement to the police should have been admitted – Whether the sentence imposed was too severe**

Result / Order: **[Oral delivery]**

1. **The appeal against conviction is dismissed and the conviction is affirmed.**
2. **The appeal against sentence is also dismissed and the sentence is affirmed.**
3. **The sentence shall run from the date of first incarceration.**

Reason: **There was sufficient evidence upon which the trial judge could properly have left the issue of identification to the jury. The judge's summation on**

identification was adequate. The statement given by the appellant was free and voluntary. The appellant was properly convicted and the sentence was within the bounds of reasonable discretion.

Case Name: **Anthony Francis v The Director of Public Prosecutions**
[High Court Criminal Appeal No. 13 of 2009]

Date: **Thursday, 15th March 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Justice of Appeal**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **No appearance of or on behalf of appellant**

Respondent: **Mr. O'Neil Simpson**

Issues: **Appeal against conviction – Armed robbery**

Result / Order: **[Oral delivery]**
The appeal is dismissed for want of prosecution.

Reason: **The appellant was not present to prosecute his appeal and, in any event, had already served his sentence.**

Case Name: **Jermin Gaskin v The Director of Public Prosecutions**
[High Court Criminal Appeal No. 12 of 2009]

Date: **Thursday, 15th March 2012**

Coram:		**The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**In person**
	Respondent:	**Mr. O'Neil Simpson**
Issue:		**Appeal against conviction – Armed robbery – Whether the learned trial judge failed to take into account the time which the appellant had spent on remand**
Result / Order:		**[Oral delivery]** **1. The sentence remains the same.** **2. The sentence is to start from date of remand.**
Reason:		**The learned trial judge ought properly to have addressed her mind to the time which the appellant had spent on remand when passing the sentence. Also, it should have been shown that this time was deducted from the sentence period imposed.**

Case Name:	**Wycliffe Liburd v The Director of Public Prosecutions** **[High Court Criminal Appeal No. 18 of 2009]**
Date:	**Thursday, 15th March 2012**
Coram:	**The Hon. Mde. Janice M. Pereira, Justice of Appeal** **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:	
Appellant:	**In person**
Respondent:	**Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mr. O'Neil Simpson and Ms.**

Greatess Gordon

Issue: **Appeal against conviction – Murder – Application to have matter traversed to the next sitting of the Court in November 2012**

Result / Order: **[Oral delivery]**
The hearing of the appeal is traversed to the next sitting of the Court of Appeal in November 2012 on the application of the appellant.

Reason: **The appellant was unrepresented and required more time to prepare his appeal.**

Case Name: **Lennus St. Jules v The Director of Public Prosecutions**
[High Court Criminal Appeal No. 2 of 2010]

Date: **Thursday, 15th March 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Justice of Appeal**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person**

Respondent: **Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mr. O'Neil Simpson and Ms. Greatess Gordon**

Issues: **Appeal against conviction and sentence – Arson – Whether the evidence supports the finding of guilt – Whether the sentence passed by the learned trial judge was too harsh in light of the fact that the appellant was a first time offender**

Result / Order:

[Oral delivery]

1. **The appeal against conviction is dismissed and the conviction is affirmed.**
2. **The appeal against sentence is dismissed and the sentence is affirmed.**

Reasons:

Based on the evidence that was before the trial judge, the trial was conducted fairly; the summation could not be faulted.

Although the appellant contended that he did not have any previous convictions, the Court observed from the record that there was a prior conviction from the lower court.

The learned trial judge took into consideration the seriousness of the offence. He indicated that this was the worst case of arson that he had ever seen. In the circumstances, the Court could find no good reason to reverse the sentence of the trial judge.

Case Name:

Anthony Joseph v The Director of Public Prosecutions
[High Court Criminal Appeal No. 19 of 2010]

Date:

Thursday, 15th March 2012

Coram:

The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. John Cato**

Respondent: **Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her Mr. O'Neil Simpson and Ms. Greatess Gordon**

Issues:

Appeal against conviction – Unlawful carnal knowledge – Whether corroboration was required as a

matter of law – Whether the learned trial judge misdirected the jury on the issue of recent complaint – Whether the judge ought to have directed jury that corroboration was required

Result / Order:

[Oral delivery]

1. **The appeal against conviction is dismissed and the conviction is accordingly affirmed.**
2. **The appeal against sentence is dismissed and the sentence is accordingly affirmed.**

Reason:

The Court could not find any reason to disturb the appellant's sentence. The learned trial judge had already reduced the sentence from 10 to 8 years and taken into account the time spent on remand by the appellant, his good behaviour and also the evidence of the persons who spoke well of his character.

Case Name:

Warrington Phillip v The Director of Public Prosecutions
[High Court Criminal Appeal No. 2 of 2009]

Date:

Thursday, 15th March 2012

Coram:

The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Dr. Henry Browne, with him, Mr. Hesketh Benjamin**

Respondent: **Sir Richard Cheltenham, QC**

Issues:

Appeal against conviction and sentence – Murder – Whether the learned trial judge erred in law in failing to give clear and cogent directions as to how the jury should treat DNA evidence and the special care required or needed in the examination or analysis of the random occurrence ratio – Whether the learned

trial judge failed to give a balanced summing up of the evidence thus resulting in a miscarriage of justice – Whether the verdict cannot be supported having regard to the evidence

Result / Order:

[Oral delivery]
The appeal against conviction is dismissed.

Reason:

The principles relating to the use of DNA evidence in court were not in dispute. In Joseph Hazel v The Queen, Saint Christopher and Nevis Criminal Appeal No. 6 of 2004 (delivered 13th November 2006, unreported), Rawlins J.A. (as he then was) dealt with the weight to be given to DNA evidence and the need for the trial judge to assist the jury with such evidence.

Counsel for the appellant, Dr. Browne, contended that because the evidence was that Dr. Noppinger had found DNA from "at least two persons", an inference could be drawn that there was DNA from a third party. The Court refused to accept this. One DNA profile matched the appellant and the second matched the deceased. The Court held that nothing turned on the use of the phrase "at least two persons" because the results of the DNA analysis did not support the suggestion that there was any DNA from a third person.

The learned trial judge went on to remind the jury that Dr. Noppinger was asked how common or rare his DNA finding would be in relation to the right-hand of the appellant and Dr. Noppinger estimated that he would have had to test 1.3 quadrillion people to find that profile again. That was an adequate expression of the random occurrence ratio or the match probability that DNA evidence provides. The jury would not have been further assisted by a long discourse on precisely how one arrives at the random occurrence ratio. In the circumstances, the jury would not have had any problem with the way the DNA evidence was dealt with by the learned trial judge.

Dr. Browne raised the need for a Turnbull direction in

relation to the identity of the pick-up with respect to the evidence of Aquilla Rawlins. This was not a ground of appeal nor was the submission foreshadowed in any of the appellant's skeleton arguments. The Court accepted the submission of Sir Richard Cheltenham, QC that counsel could not simply raise that point in oral argument. Furthermore, the Court was of the view that the evidence on a whole was of such cogency that the learned trial judge's failure to have given a Turnbull direction, if one were required, would not have vitiated the conviction.

In relation to the first ground of appeal, even though the learned trial judge omitted to say that the DNA evidence relating to the left hand was inconclusive, the evidence of the 15 loci points comparison with regard to the appellant's right hand was strong evidence connecting him to the crime. There was no evidential basis to support the secondary DNA transfer theory advanced by Dr. Browne. Also, there was the overwhelming evidence of the deceased's DNA found on the appellant's right hand on the night of the murder, linked with the circumstantial evidence, as well as the evidence of motive and the evidence of opportunity, notwithstanding any omissions by the trial judge in fully expanding on the inconclusiveness of the DNA on the left hand. Consequently, there was no doubt as to the jury's entitlement to find the appellant guilty of the offence for which he was charged.

The second and third grounds of appeal were not pressed by counsel for the appellant. In any event, the Court found that the learned trial judge gave the jury a balanced summing up and that the verdict could be supported having regard to its correctness. The DNA evidence, coupled with the circumstantial evidence, was of considerable strength, and even if the Court were to hold that the trial judge failed to direct the jury as to the inconclusiveness of the DNA evidence in relation to the left hand, or as to the possibility of DNA transference (notwithstanding the lack of any evidential basis for sustaining this suggestion), or that the DNA evidence was not as satisfactorily explained as it could have been, the evidence against the appellant was so overwhelming that, in any event, the

proviso in section 44(1) the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act Cap. 3.11, Revised Laws of Saint Christopher and Nevis 2002 could be applied.

Case Name:		**Shamalda Maynard v The Chief of Police [Magisterial Criminal Appeal No. 12 of 2011]**
Date:		**Friday, 16th March 2012**
Coram:		**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. John Cato**
	Respondent:	**Mr. O'Neil Simpson, with him, Ms. Greatess Gordon**
Issues:		**Appeal against sentence – Grievous bodily harm – Whether the sentence passed was based on a wrong principle or was such that the learned magistrate viewing the circumstances of the case could not reasonably have come to the decision that she did – Whether the sentence was unreasonable having regard to the fact that the appellant was a juvenile at the date of the offence, a first time offender and had pleaded guilty**
Result / Order:		**[Oral delivery]** **The appeal against sentence is allowed to the extent that the sentence of 5 months imprisonment is varied to 3 months.**
Reason:		**The learned magistrate did not give adequate credit to the appellant, having regard to his guilty plea and the fact that he was a first time offender.**

Case Name:		**Morris Bennette and Another v Sandra Roberts [Magisterial Civil Appeal No. 4 of 2010]**
Date:		**Friday, 16th March 2012**
Coram:		**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal** **The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**
Appearances:		
	Appellant:	**Mr. Nassibou Butler**
	Respondent:	**Dr. Henry Browne**
Issues:		**Road traffic accident – Whether the decision of the learned magistrate is unreasonable and cannot be supported having regard to the evidence – Whether the learned magistrate ought to have considered contributory negligence on the part of the claimant**
Result / Order:		**[Oral delivery]** **1. The appeal is dismissed and the decision is affirmed.** **2. Costs to the respondent in the sum of $750.00.**
Reason:		**The decision of the learned magistrate was supported by the evidence. The Court could find no reason to upset the magistrate's finding that on a balance of probabilities Mr. Bennette's action was the cause of the accident. There was no basis on the evidence for contributory negligence.**