BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No. 19 of 2010

BETWEEN:

JULIAN FERNANDO WORRELL **Appellant**

AND

THE QUEEN **Respondent**

Before: The Hon Sir Marston C.D. Gibson, K.A., Chief Justice and The Hon. Justice Sherman R. Moore, CHB and The Hon. Mr. Justice Andrew D. Burgess, Justices of Appeal

2014: March 27 & June 19

Mr. Shiraz Aziz and Mrs. Angella Mitchell-Gittens Attorneys-at-Law for the Appellant

Mrs. Donna Babb-Agard, QC., Deputy Director of Public Prosecutions for the Respondent

DECISION

Introduction

[1] **MOORE JA:** This is another of those unfortunate cases in which a 15 year old boy has lost his life senselessly, as we say in Barbados, "Before he had seen a star pitched"; and a 19 year old boy will spend his formative years in

hopeless solitude, his future, if not ruined, certainly looking bleak, reflecting on a senseless act, and hopefully resolving not to repeat it while, as Oscar Wilde put it in the Ballad of Reading Gaol, "Looking wistfully at the day".

[2] On 9 June 2010, the appellant was found guilty of manslaughter before **Worrell J** and a jury and on 27 May 2011 was sentenced to 9 years imprisonment. He had been indicted jointly with Jarius Merton Mayers for the murder of Greg McDonald Taylor on 9 January 2007. During the course of the trial the prosecution withdrew the charge against Mayers and the jury returned a formal or directed verdict of not guilty.

The Facts

[3] On 30 December 2006, the deceased, Greg McDonald Taylor (Greg), with his father's permission, attended a fete known as "Teen Bash" at the Olympus Cinema at Sheraton Mall at Adams Castle, Christ Church. Greg left home in the company of some friends, including Kevin Blaggrove and Troy DaCosta (Troy) and his cousin, Tamisha Wilkinson.

[4] The show ended about midnight. Greg and his party left the Olympus Cinema and while they were walking in front of Courts, a furniture store, and the building housing the offices of Fedex Express, another group of boys approached them. One of those boys pushed Troy and slapped him in the face. Troy retaliated by slapping the boy.

[5] A fight ensued between the two groups of boys. During the fight Greg was kicked and cuffed about his body. Shem Parris (Shem) who was a member of the group that included Greg testified that he saw the appellant strike Greg on his head with a bottle. Greg collapsed and some of his friends tried to assist him by wrapping something around his head, which was bleeding profusely. Shem knew the appellant because they had attended the same school at the same time.

[6] Greg was eventually transported to the Queen Elizabeth Hospital by ambulance where he underwent emergency surgery. After surgery he was transferred to the Surgical Intensive Care Unit where he died at 5:40 a.m. on 9 January 2007.

[7] Dr. Stephen Jones, Consultant Pathologist at the Queen Elizabeth Hospital, conducted a post-mortem examination on Greg's body. Dr. Jones recorded, inter alia, the following findings: "a sutured laceration on left side of scalp with an area of contusion and abrasion; a depressed and comminuted and compound fracture of left parietal bone which extended into the bone just above the ear and towards the floor of the cranial cavity and subdural haematoma". The cause of death was recorded as severe traumatic head injury. Dr. Jones testified that the injury was consistent with having been

inflicted with a blunt object such as a bottle. He testified further that the injury could not have been caused by a cuff.

[8] The matter was reported to the police and they commenced investigations. On 1 January 2007 Sergeant 1196 Dudley Walrond recorded a statement from Shem. Later that day he went on duty to the residence of the appellant who subsequently accompanied Sergeant Walrond to the District "C" Police Station where he was interviewed by the said Sergeant Walrond in the presence of P.C. 462 Adrian Price. During the course of the interview the appellant made several oral statements under caution. The following record of that interview is taken from the evidence of Sergeant Walrond as recorded at page 121 line 23 to page 125 line 1:

> "About 1225 hours that same day in the presence of Sergeant 462 Price, I reminded the accused Worrell about the report made by Gregory Taylor, and I again told him that I was about to commence my interview with him and it was still his right to consult privately with an attorney-at-law if he so desired. The accused replied. "I talk to my lawyer yesterday and he told me to make no statements 'til court." In the presence of Sergeant 462 Price, I asked the accused Worrell what he could say about the report made to the police by Gregory Taylor, and cautioned him. He replied, "All I could tell you is that I was in the group." In the presence of Sergeant Price, I then asked the accused Worrell if he wanted to give a written statement in connection with the matter and cautioned him. He replied, "No". I then told the accused Worrell that I was going to ask him a series of questions and I cautioned him and told him that this caution applied to all the questions that I was going to ask, and I told him that I was going to record the questions and the answers at the same time.

Question: Who are the others that were in the group that you mentioned?

Answer: Jarius Mayers, Charles Prescod and Jason Welch.

Question: Who in the group was fighting with Greg Taylor?

Answer: Me.

Question: Did you hit Greg Taylor on his head?

Answer: No.

Question: Do you know who struck Greg Taylor on his head?

Answer: I know it was not me.

Question: Were you present when Greg Taylor was struck on his head?

Answer: I was out there.

Question: Do you know what Greg Taylor got struck with?

Answer: No.

Question: Did you throw any rocks?

Answer: Yes. I pelt a rock. Everybody was pelting rocks. I hit somebody that had his hair plait and he fell down.

Question: Do you know who you hit with that rock?

Answer: No.

Question: Do you know Greg Taylor personally?

Answer: No. All I could tell you is that he ran at me with a knife.

Question: Can you describe this knife?

Answer: No.

Question: You were identified by a witness as the person that struck Greg Taylor on his head with an object whilst two other fellas were holding him.

Answer: I was the first fella in the group to be spotted out by the fella that went to school with me.

Question: Do you know this fella that identified you?

Answer: I don't remember he name but he was a year under me and when the school closed down, he went to Deighton.

Question: What school are you referring to?

Answer: Louis Lynch.

Question: What do you mean by, 'went to Deighton'?

Answer: Deighton Griffith School.

Question: Did you go to Deighton Griffith School?

Answer: No. I was already done.

Question: Do you want to initial my notes in my notebook?

Answer: No because that might be the same thing as a statement.

[9] At the trial the appellant gave the following unsworn evidence:

> "Good Morning, my name is Julian Worrell, I am 22 years old. On the 1st January 2007 I was 19 years old. That night I attended a "Teen Bash". After the "Teen Bash" was finished, me and my friends were leaving. Whilst we were leaving, when I get 'round by the FedEx wall I see a fella run at me with a knife. I was by myself at the time. I end up scuffling with this fella. Whilst scuffling with this fella, I saw a fella run at me, so I push away this fella I was scuffling with and ran cross the car park. I was scuffling with this fella and whilst scuffling with this fella, another fella run at me with a knife. So I push

> away this fella that I did scuffling with and ran across the car park opposite the FedEx wall. While I was scuffling with this fella, I did not have anything in my hands or on me. When I left him he was still good and he was still standing. A little whilst after, I was still 'cross the car park and when the fight cool down, I went back 'cross part my friends were. Where part I ran from, part I was scuffling with the fella. And when I was back 'cross there I see a fella' pon the ground, he did look like the fella I did fighting with but I am not sure, and after that I went long".

The Appeal

[10] There are five grounds of appeal filed on the appellant's behalf. We discuss them seriatim, below.

[11] On the first ground of appeal it was contended on behalf of the appellant that the judge was in error when he failed to direct the jury on the issue of good character. Counsel submitted that it is up to defence counsel and, furthermore, good practice, to ensure that the judge is made aware that the defendant relies on his good character and that it is something which the judge ought to raise and clarify with prosecution and defence counsel in the case. Counsel's final written submission was:

> "That having seen and heard the witnesses, including Shem Parris, and in particular listening to the closing speech of Ms. Babb-Agard Q.C., the jury ought to have been guided by the trial judge on how to assess the witness' credibility, by giving to the jury a proper "good character" direction, the failure of which was a fundamental and fatal flaw to the proceedings".

Such a direction he said, was most important because it related to the appellant's credibility and his lack of propensity to commit crime, especially the type of crime for which he was charged. Counsel relied on **R v Vye, R v Stephenson** and **R v Wise 97 Cr. App. Rep 134; Jagdeo Singh v The State PC Appeal No. 54 of 2004** and **Patrick Lovelace v The State, Criminal Appeal No. 17 of 2009 (St. Vincent & Grenadines) OECS Court of Appeal.**

[12] On this ground, counsel for the respondent submitted that the judge was under no duty to give a good character direction because the defence did not rely on the issue of the appellant's good character during the course of the trial. Counsel relied on **Mervin Weekes v R, Criminal Appeal No. 4 of 2000 (Unreported) (Weekes)** and **Sealey & Anor v The State (Trinidad and Tobago) [2002] UKPC 52 (Sealey).**

[13] The statutory basis for adducing evidence of the good character of the accused at his trial was enacted in **section 4(f) (ii)** of the **Evidence Act 1905 (Act 1905-4).** That **section** was a clone of section 1(f) (ii) of the Criminal Evidence Act 1898 of the UK Parliament. **Section 4(f) (i)** and **(ii)** provided:

> (f) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character unless

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputation on the character of the prosecutor or the witnesses for the prosecution".

[14] Notwithstanding that provision, in Barbados evidence of the good character of the accused was not adduced during the trial. However, if the outcome of the trial was adverse to the accused, character witnesses were called during the sentencing phase to testify to his good character in order to ameliorate the severity of his sentence. So the traditional use of evidence of good character followed a different stream in Barbados from the one followed in England.

[15] In 1994, Parliament enacted the **Evidence Act 1994 (Act 1994-4)** which came into force on 1 September 1994. That **Act** is now **Cap. 121** of the **Laws of Barbados** and **section 92** of the **Act** provides as follows:

"92. (1) This section applies in criminal proceedings.

(2) The hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence adduced by an accused that tends to prove that the accused is either generally or in a particular respect, a person of good character.

> (3) Where evidence that tends to prove that the accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not generally a person of good character.
>
> (4) Where evidence that tends to prove that the accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule and the credibility rule do not prevent the admission or use of evidence that tends to prove that the accused is not a person of good character in that respect."

[16] The issue of good character is for the accused to raise, not the judge. That said issue was settled by this Court in **Weekes** in which this Court embraced the following words of Lord Hutton recorded at paragraph 29 of **Sealey:**

> "The fact that the appellant did not have the advantage of a good character direction was not due to the fault of the trial judge; it was due to the fault of defence counsel. There is no duty on the trial judge to give directions on good character when the issue of good character has not been raised in evidence by the defence".

[17] Ordinarily, what we have said above would be enough to dispose of this ground as unmeritorious. However, having regard to the history of the use of good character evidence in Barbados, we should lay its ghost to rest.

[18] Even though **section 4(f)(i)** and **(ii)** and **section 92** betray different drafting techniques (that is not surprising since they are separated by a period of 89 years) the clear purpose of **section 4 (f)(i)** and **(ii)** was to enable the accused

to adduce at his trial, evidence of his good character whilst exposing him to rebuttal from the prosecution.

[19] Since the commencement of **Cap. 121,** defence counsel have exhibited a reluctance to break with, if not a disinterest in departing from, the traditional use of good character evidence as a defensive tactic in the course of criminal trials, perhaps out of fear of exposing the accused to the damaging rebuttal evidence from the prosecution. As a result, **section 92** has to date been seldom used in that manner and the only cases in which evidence of good character has been so used that have engaged the attention of this Court are **Shane Nurse v R, Criminal Appeal No 34 of 2004 (Unreported)** and **Sheldon Hope v R, Criminal Appeal No. 5 of 2009 (Unreported).** It is therefore not surprising that Mrs. Mitchell-Gittens who represented the appellant upon his trial chose to rely on evidence of the appellant's good character in the manner in which it had been traditionally used prior to 1 September 1994, that is to say, as a mitigating factor during the sentencing process, rather than during the course of the trial as a defensive tactic to influence the verdict of the jury.

[20] Mrs. Mitchell-Gittens is a competent and experienced defence counsel with a long practice in this jurisdiction. She chose to follow the traditional practice in Barbados and adduce that evidence at the sentencing stage in

order to mitigate the severity of the sentence. In our view, the reason for this is obvious. She must have thought that the appellant's conviction was a foregone conclusion. After all, he had admitted his presence at Sheraton and his participation in the fight, including throwing a stone which struck someone (he did not know who) and knocked him to the ground. He also testified, inter alia:

> "I see a fella 'pon the ground, he did look like the fella I did fighting with but I am not sure, and after that I went long".

His interview with the police and his evidence at the trial were all against his interest and damning.

[21] Even if Mrs. Mitchell-Gittens had elicited evidence of the appellant's good character she would still have been faced with the significant hurdle of the appellant's self-damning evidence that he was present, participated in the fight, injured someone with a stone and scuffled with someone. That evidence would still have been subjected to the scrutiny of the jury who would have had to consider it in light of credibility and propensity, the twin pillars upon which good character evidence rests. We think the outcome would have been no different.

[22] The defence, having not adduced good character evidence on behalf of the appellant at his trial, we are bound to follow **Weekes,** a previous decision of this Court. We therefore hold that this ground is unsustainable.

[23] The second ground of appeal has arisen out of a submission made by Mrs. Mitchell-Gittens at the close of the prosecution's case to the effect that the case against the appellant depended wholly or substantially on the correctness of the identification of him by Shem. She said that the evidence of identification was manifestly poor and unsatisfactory, especially since his assertion that he identified the appellant at the police station is denied by the police who say that no identification parade was held. She said that there was no evidence linking Julian Worrell to, or identifying him as the person who inflicted, the fatal injury. Mrs. Mitchell-Gittens cited **R v Turnbull [1977] Q B 224 (Turnbull)** and said the jury ought to have been directed to return a not guilty verdict at that stage.

[24] On behalf of the prosecution Mrs. Babb-Agard Q.C, submitted, , that the appellant had admitted to the police that he had fought with the deceased and had also told the police "I was the first fella in the group to be spotted out by the fella that went to school with me." That 'fella', she said, was Shem and the appellant's evidence "went in without opposition by my learned friend". Mrs. Babb-Agard, Q.C. submitted that notwithstanding the inconsistencies in the evidence of the prosecution, there was no doubt as to the identity of the person who fought with Greg.

[25] In overruling the submission the judge expressed his opinion in the following words:

> 'Having considered the evidence in respect of this matter and the submissions on behalf of the defence and also on behalf of the prosecution, this Court is of the opinion that there is sufficient evidence from which the defendant, the accused, should be asked to answer a case. This Court is of the opinion that the prosecution's case is such that its strength or weakness depends on the view to be taken of a witness' reliability and the particular witness here is the witness in respect of identification. Mr. Shem Parris; and that these matters, generally speaking, and other matters in respect of this case are within the province of the jury and a jury properly directed, this Court is of the opinion, would be in a position to deal adequately and properly with this matter as far as a verdict is concerned. In the circumstances, the submission is overruled."

[26] Before this Court, Mr. Aziz echoed Mrs. Mitchell-Gittens' submission made at the trial and also tried to convince us that the doctrine of parasitic accessorial liability ought to have been considered at the trial in relation to the part played by Jarius Mayers in the fight. On the facts of this case we find Mr. Aziz's contention unattractive and unconvincing.

[27] Mrs. Babb-Agard, QC relied on her submission made at the trial. In essence the nature of her submission was that the evidence was not tenuous. She argued that the weakness or strength of the prosecution's evidence "depended on the view to be taken of the witnesses", including the appellant's reliability and therefore, in overruling the no case submission the judge acted properly. She said that counsel for the appellant has not

advanced any substantial reason for this Court to conclude that the judge exercised his discretion on wrong principles of law and, therefore, this Court should not interfere with the judge's exercise of discretion. Finally she relied on the following passage from **Criminal Evidence, 2nd Edition – Paul Roberts & Adrian Zuckerman:**

> "The second limb of the rule of Galbraith attempts to strike a balance between the demands of rationality in adjudication (which in turn promotes the ends of justice and protects the innocent from wrongful conviction), and the almost equally compelling policy of reserving questions of fact in criminal adjudication to the jury. In most cases, the policy of judicial deference to lay fact-finding prevails. The judge should not intervene, for example, just because he personally finds a witness unconvincing..."

[28] In our view Mrs. Mitchell-Gittens reliance on **Turnbull** was misplaced. At paragraph D 15.57 of **Blackstone's Criminal Practice 2011** the learned authors state:

> "The correct approach to submissions of no case to answer in prosecutions turning upon identification evidence was laid down by the Court of Appeal in **Turnbull [1977] QB 224** ... namely that, if the quality of the identification evidence on which the prosecution case depends is poor and there is no other evidence to support it, the judge should direct the jury to acquit. However, supporting evidence capable of justifying leaving a case to the jury, even where the identifying evidence is poor, need not be corroboration in the strict sense".

[29] This is not a case that depended wholly or substantially on the correctness of the identity of the appellant. He, out of his own mouth, had identified

himself as being present, participating in the fight, hitting someone with a stone and struggling with someone whom he thought was the person he later saw lying on the ground. The only person mentioned in the evidence as lying on the ground following the fight was Greg. Faced with that evidence we should have been most surprised had the judge done otherwise.

[30] The doctrine of parasitic accessorial liability was illustrated thus at paragraph 42 of **R v Gnango [2011] UKSC 59:**

> "Parasitic accessory liability arises where (i) D1 and D2 have a common intention to commit crime A (ii) D1, as an incident of committing crime A, commits crime B, and (iii) D2 has foreseen the possibility that he might do so.

[31] In our view that doctrine is just an extension of the law on accessories and aiders and abettors as contained in **section 17 (1)** of the **Criminal Procedure Act, Cap. 127** which provides:

> "Any person who aids, abets, counsels or procures the commission of any arrestable offence or misdemeanour, whether the misdemeanour is one at common law or by virtue of any Act, may be indicted tried and punished as a principal offender."

[32] It is a fact that the appellant and Jarius Mayers were jointly charged and the prosecution during the course of the trial withdrew the charge against Mayers and the case proceeded against the appellant as the sole accused. Admittedly, there was evidence before the court to the effect that Mayers held the deceased whilst the appellant struck him. However, the application

of that doctrine in the circumstances of this case was not raised at the trial and therefore did not arise for consideration of the judge. In any event, it is not relevant to this case because (a) there was only one crime charged – there was no crime A and no crime B and (b) the appellant was not disadvantaged by the absence of Mayers from the dock because the prosecution still had to prove its case against the appellant and would have had to prove its case against Mayers also, had the case against him not been withdrawn.

[33] The prosecution's case depended largely on the view taken by the jury of (a) the evidence of Shem and (b) the police interview with the appellant. The contents of the appellant's interview with the police were never challenged. Notwithstanding the inconsistencies in Shem's evidence, the appellant corroborated the incriminating aspects of that evidence. Both counsel reminded the judge of the decision in **R v Galbraith 73 Cr. App. R. 124** in which Lord Lane CJ said at page 127:

> "How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of an inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission

> being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

[34] We hold that there is no substance in this ground.

[35] The third ground of appeal reads:

> "The verdict of guilty of Manslaughter is inconsistent with the evidence, and in particular the issue of causation given the tenuous and inconsistent evidence of cause of death."

[36] Mr. Aziz's written submissions on this ground begin as follows:

> "It is submitted that the verdict of guilty to Manslaughter is inconsistent having consideration to the evidence and the issue of causation, or in the alternative the no case submission ought to have been upheld there being tenuous and inconsistent evidence of cause of death.
>
> There are authorities which have been examined and principles extracted, when considering whether a verdict is inconsistent having regard to the evidence".

He then sets out the principles, extracted by Pitchford LJ in **R v RB [2013] EWCA Crim 2301,** that are relevant to inconsistent verdicts. He also quoted the following statement of Rose LJ from **R v Bell,** Court of Appeal (England) 15 May 1997:

> "... there are, of course, exceptional cases, of which Cilgram [1994] Crim LR 861 provides an example, where a verdict may be quashed because, although there is no logical inconsistency,

> the particular facts and circumstances of the case render the verdict unsafe. However, it is to be noted that in Cilgram this Court, differently constituted, expressly rejected the submission that, where a complainant's credibility is in issue and her evidence is uncorroborated, guilty verdicts must be regarded as unsafe because the jury also returned not guilty verdicts in relation to some of the complainants allegations".

[37] On the facts of this case it does not seem that the submission and cases mentioned at paragraph 36 above are relevant because in this case there was only one count in the indictment and one verdict returned by the jury, whereas in those cases there were multiple counts and inconsistent verdicts arising out of the same evidence. As Mr. Aziz's oral argument unfolded, it became clear that there was some confusion. We were able to distill from his oral argument that his contention was two-fold: first, that the injury sustained by Greg was not caused by the act of the appellant and second, that the injury suffered by Greg was not the cause of his death. In substance Mr. Aziz's submission was that the verdict of 'guilty of manslaughter' was contrary to the evidence or inconsistent with the evidence simpliciter and not an inconsistent verdict.

[38] The first argument was that the discrepancies and inconsistencies in the prosecution's eye-witness evidence made it unreliable. The second argument was that the evidence of Dr. Keisha Thomas-Gibson (who pronounced death) and Dr. Sempa, and the absence of any evidence from

Dr. Semei all of whom had seen Greg whilst he was alive, showed that there was no link between his death and the injury inflicted on him. To support the second contention, counsel relied on the following evidence given by Dr. Sempa who was on duty on 9 January 2007: Dr. Sempa stated:

> "The patient's tube came out accidentally, he aspirated; he was re-intubed; he arrested and was hypoxemic, CPR was done, could not be revived, 4.45 am to 5.40 am the resuscitation lasted, Adrenalin, Atropine and Vaspressin given, patient declared dead at 5.40 am".

[39] Mrs. Babb-Agard Q.C, submitted that analysis of the evidence showed that the fatal injury was inflicted by the appellant and even if that injury was not the sole cause of death it was a substantial cause of death. She relied on **R v Holland (1841) 2 M & E Rob 351; R v Davis (1883) 15 Cox 174; 1 Hale 428** and **R v Cheshire [1991] 1 WLR 844 (Cheshire).**

[40] The question of causation arose for consideration in **Cheshire** and after reviewing a number of authorities, Beldam LJ stated at **pp 851-2**:

> "…when the victim of a criminal act is treated for wounds or injuries by a doctor or other medical staff attempting to repair the harm done, it will only be in the most extraordinary and unusual case that such treatment can be said to be so independent of the acts of the defendant that it could be regarded in law as a cause of the victim's death to the exclusion of the defendant's acts…
>
> Even though negligence in the treatment is the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing

death, that they regard the contribution made by his acts as insignificant".

[41] In our opinion the evidence of the eye-witnesses, including that of the appellant, was enough for the jury to conclude that the appellant inflicted the fatal blow.

[42] The evidence of Dr. Jones as to cause of death was firm and consistent. He also said that the brain was of a dusky appearance which indicated that the brain was dead before the heart had stopped beating. We hold that this ground must fail.

[43] Counsel abandoned the fourth ground of appeal which alleged: "the learned trial judge erred in exercising his discretion to allow the jury to start deliberations at the late hour of the day, having regard to the length of the summation and the possible state of mind of the jurors as they retired at that late hour".

[44] The fifth ground alleges that "the verdict is unsafe and unsatisfactory". Counsel argued that "even if the Court find that no particular ground causes concern for the safety of the conviction, when one takes the cumulative effect of all the irregularities into account, the verdict must be deemed unsafe". He submitted that "the conviction be quashed and no retrial ordered". In his argument before this Court counsel said that he could find no fault with the summation.

[45] Counsel for the respondent submitted that given the adequacy and thoroughness of the summation, the assessment by the jury of the evidence of the witnesses whom the jury had the privilege of seeing and hearing, there was insufficient ground for interfering with the jury's verdict.

[46] The thrust of the argument of counsel for the appellant at the trial and before this Court was the number of discrepancies and inconsistencies in the prosecution's evidence. Here we embrace paragraphs 17 and 19 of **Michael McDonald Huggins v The Queen [2004] UKPC 7** and make thereto the adaptations necessary and say for the purposes of this case: The incident which the prosecution witnesses, especially Shem, were attempting to describe was just the type of incident where one would expect there to be discrepancies. It took place suddenly and without warning. It was night time under street lights. There were two groups of teenagers moving swiftly, throwing missiles and fists, scuffling with one another, using pieces of wood, brandishing a knife. There was a melee and general confusion; and no two eyewitnesses would have seen the same thing at the same time. It was fast moving as the groups were chasing each other, and it was violent. Precision about the details cannot be expected in these circumstances. Against that uncertain background, the common thread that ran through the evidence of the prosecution's eyewitnesses was that the deceased was struck

by the appellant. That common thread is strengthened and corroborated by the unchallenged statements of the appellant and his evidence from the dock. It is in this context that the evidence must be viewed.

[47] On a charge of murder, the appellant was found guilty of manslaughter. There were two groups of teenagers. They fought with missiles, bits of wood and fists. There was also evidence that Greg was kicked about the body and the appellant said that someone ran at him with a knife. The upshot was that when the fight was over and the dust had settled Greg lay mortally wounded, his skull fractured. The appellant confessed his part in the fight and that evidence was not challenged.

[48] The appellant was involved in the unlawful and dangerous act of fighting. The law is that:

> "When the act which a person is engaged in performing is unlawful, if at the same time it is a dangerous act, that is, an act which is likely to injure another person, and quite inadvertently the doer of the act causes the death of that other person by that act, then he is guilty of manslaughter." **DPP v Newbury [1977] AC 500 at 506, 507.**
>
> In **R v Church [1966] 1 Q B 59** Edmund Davies LJ said at **70:**
>
> "An unlawful act causing the death of another cannot, simply because it is an unlawful act, render a manslaughter verdict inevitable. For such a verdict inexorably to follow, the unlawful act must be such as all sober and reasonable people would inevitably recognise

> must subject the other person to, at least, the risk of some harm resulting therefrom albeit not serious harm".

[49] In his summing up, the judge having reviewed the issues in the case, gave the jury the following direction on manslaughter:

> "If you believe that it was the accused man Worrell who inflicted the fatal injury to Greg Taylor but at that time, Mr. Foreman and your members, he did not have the intention to cause grievous bodily harm or intention to kill, Mr. Foreman and your members, but he would have realised that at least some harm would have been caused to the deceased man, Mr. Foreman and your members, well, you will not find him guilty of murder, Mr. Foreman and your members, you would have to find him guilty of manslaughter."

[50] In our view, the judge acted properly when he left the issues for consideration by the jury. He also gave the correct direction on manslaughter. We have been persuaded that the verdict is safe.

Disposal

[51] In the circumstances, the appeal is dismissed and the conviction and sentence are affirmed.

Chief Justice

Justice of Appeal

Justice of Appeal