

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

PASMORE MILLINGS

- and -

ANDRE ENNIS

Appellants

- v -

THE KING

Respondent

APPELLANTS' CASE

References to the Electronic Bundle are in the format: [EB/page number/paragraph or line number]. References to the Joint Bundle of Authorities are in the format: [AB/Tab number/EB page number]

INTRODUCTION

1. The Appellants, Mr Andre Ennis and Mr Pasmore Millings, appeal their murder convictions. As the trial judge, Hibbert J, said to the jury in 2012, the Appellants' guilt was based solely on the evidence of Mr George Cooper **[EB/1177/2]**:

“Now, we heard a lot about Mr. Cooper and you will no doubt think that the Prosecution’s case stands or falls on the evidence of Mr. Cooper. ... Now, there may be all sorts of reasons for an accomplice to tell lies to implicate other people. ... It is therefore dangerous to convict on the reliance of the evidence on the accomplice, Mr. Cooper, in this case, unless that evidence is corroborated; that is, independently confirmed by other evidence.”¹

¹ The importance of Mr Cooper’s evidence was repeated by Hibbert J. See e.g.: “*You have to look at [Mr Cooper’s evidence] because in this case the credibility of Mr. Cooper is paramount. You might well think that the case for the prosecution rests or falls with Mr. Cooper*”: **[EB/1203]**.

2. The Judge added that *“it is my duty to tell you there is no evidence in this case to corroborate the evidence of Mr. Cooper”* [EB/1308/16].
3. On 26 November 2007, Mr Cooper had himself originally been charged with the same offences as the Appellants. In fact, he was the only person against whom there was direct evidence: photographs taken at ATM machines on the day of, and the day after, the murders showed Mr Cooper smiling while withdrawing money using one of the deceased’s bank cards.
4. However, on 9 December 2010, following the grant of bail to Mr Millings in 2009 and Mr Ennis in 2010, Mr Cooper stated that he wished to give evidence for the Crown. The affidavits which the prosecution has sworn following the Board’s 19 May 2026 direction for disclosure demonstrate that there were extensive discussions between Ms Kathy-Anne Pyke for the prosecution and Mr Cooper’s attorney [EB/1707/5 – 1709/21]. On 11 January 2011, this resulted in a *nolle prosequi* being entered for Mr Cooper’s charges of murder and conspiracy to murder. On the same date, Mr Cooper pleaded guilty to conspiracies to kidnap and rob; for which, on 25 February 2011, he received a sentence of 5 years’ imprisonment. The Appellants do not know whether Mr Cooper’s role as a prosecution witness in this case affected the ultimate sentence he received, although ostensibly it appears that it did.
5. There was no independent evidence to support Mr Cooper’s account. There was no forensic evidence from the scene – such as DNA evidence – despite Mr Cooper stating that the Appellants tied up the deceased with clothing before murdering them with a knife. There was no DNA or other evidence from the four separate vehicles that were seized by the police and sent for forensic testing. This appears to have included the deceased’s car, in the trunk of which Mr Cooper asserted the Appellants put the murder knife and clothes on which the Appellants had wiped their bloodied hands. No evidence was called of any searches of the Appellants’ homes or their persons, which linked them to the murders. They were not identified in any CCTV or in the ATM photographs.
6. It was therefore incumbent on all to ensure that Mr Cooper’s evidence was adduced with conspicuous fairness. Regrettably, this was not what happened.

The Respondent's 2026 disclosure demonstrates that during the trial in June 2012 the Director of Public Prosecutions (DPP), Ms Llewellyn KC, approached Mr Cooper before he had finished giving evidence. Ms Llewellyn KC did so at a time when Mr Cooper had in fact retracted his evidence against the Appellants. Ms Llewellyn KC made these approaches without the permission of the Judge, and without speaking with defence counsel for either Appellant. Ms Llewellyn KC persisted in approaching Mr Cooper despite initially being rebuffed by him. Ms Llewellyn KC (in her words in the 12 June 2025 Nationwide90FM radio interview) "*summoned*" Mr Cooper's family members in an effort to persuade Mr Cooper to retract his retractions. Ms Llewellyn KC did this without taking any notes of these interactions, or having someone else there to monitor and note what was going on. This, itself, was set against a background where two other prosecuting counsel, Ms Keri-Ann Kemble and Ms Pyke, had, in the lead up to the trial, met with Mr Cooper to discuss the evidence in the case generally, and his evidence specifically. No notes of these meetings were taken. No explanation has ever been given as to why it was necessary for prosecuting counsel (instead of e.g. the police) to take the highly unusual step of talking to their only witness about their evidence.

7. Subsequent to Ms Llewellyn KC's approaches, Mr Cooper retracted his retractions against the Appellants, and they were convicted. The case law outlined in **Ground 2** compellingly demonstrates that **the prosecution's undisclosed and unheralded approaches to the only prosecution witness so seriously departed from accepted good conduct that the Appellants' trial was unfair, and that their convictions must be quashed**. This is irrespective of the strength of the evidence against the Appellants; which, in any event, was based on the self-serving and thoroughly compromised evidence of a plea-deal-cutting convict.
8. Unfortunately, there was another highly irregular decision in the trial. On 18 November 2007, Mr Millings was brought to the police station whereupon he met with Detective Sergeant Fearon, the investigating officer. DS Fearon's evidence was that Mr Millings gave a statement to the effect that he was present at the time of the murders, but that Mr Ennis was to blame. DS Fearon stated

he wrote down Mr Millings' alleged admission on a piece of paper. On DS Fearon's own evidence at trial, he did not invite Mr Millings to write the statement himself; he did not warn Mr Millings (properly or at all) of his right to an attorney; he did not get Mr Millings to read over and sign the alleged admission; no caution about the right to remain silent, or that the evidence may be used against Mr Millings was written onto the piece of paper; and he did not get Constable Pryce, who was there at the time, to sign the statement to confirm its accuracy. Then, on or around 28 November 2007, DS Fearon discarded the original piece of paper said to record Mr Millings' significant admission. DS Fearon did so, allegedly, while writing up his statement, which he did over an extended period of time, using different types of paper and ink - and without numbering, signing and dating each page.

9. **Ground 3** argues that it is beyond obvious that **Mr Millings' wholly compromised alleged admission was far too unreliable ever to have been admitted**. However, extraordinarily, not only was the alleged admission read to the jury, it became an exhibit which the jury took with them into their deliberations. While defence counsel may have instigated this, such wholly compromised prejudicial evidence ought never to have been provided in written form to the jury.
10. Regrettably, the Judge's summing up on this evidence did nothing to temper the prejudice. The Judge did not bring to the fore the multiplicity of points undermining the reliability of Mr Millings' alleged admission. Furthermore, **the Judge failed to direct the jury as to whether, and if so to what extent, Mr Millings' alleged admission was admissible against Mr Ennis**. The Appellants submit that the admission of Mr Millings' alleged admission and / or the Judge's summing up render their convictions unsafe, and that their convictions must accordingly be quashed.

GROUND / ISSUE 1: WHETHER THE RESPONDENT FAILED TO DISCLOSE ANY MATERIAL RELATING TO MR COOPER'S PLEA, AND, IF SO, WHETHER ANY SUCH FAILURE AMOUNTED TO A SUBSTANTIAL MISCARRIAGE OF JUSTICE?

11. The Appellants no longer pursue this Ground of Appeal.

**GROUND / ISSUE 2: WHETHER THERE WAS ANY IMPROPER CONTACT
BETWEEN MEMBERS OF THE PROSECUTION TEAM AND
MR COOPER DURING THE COURSE OF HIS EVIDENCE AT
TRIAL; IF SO, WHETHER THERE WAS ANY FAILURE TO
DISCLOSE MATERIAL RELATING TO SUCH CONTACT; AND,
IF EITHER IS ESTABLISHED, WHETHER IT AMOUNTED TO A
SERIOUS SUBSTANTIAL MISCARRIAGE OF JUSTICE?**

Introduction

12. The Appellants maintain that the nature and extent of the undisclosed approaches between Ms Llewellyn KC, the DPP, and her only witness, Mr Cooper, while he was giving evidence represents a departure from good practice that is “*so gross, or persistent, or prejudicial or irremediable*” that according to established Privy Council case law (discussed below) their convictions must be quashed. This gross departure from good practice was compounded by the meeting that Ms Kemble, Crown counsel, had with Mr Cooper some months prior to trial on 13 February 2012 where they discussed Mr Cooper’s evidence, and the evidence in the case more generally. Similarly, on 25 February 2012 there was a further meeting between Ms Pyke, who had conduct of the prosecution, and Mr Cooper, where his evidence was discussed. No notes of either meeting were taken.

Background

Mr Cooper retracts his evidence against the Appellants

13. The relevant background can be found in the SFI at **[EB/36/30-49]**. In summary, on 7 June 2012, during evidence in chief Mr Cooper addressed the Judge stating: “*You Honour I must be guided by my conscience and the bible I swore on. I must say this. Yesterday when I came here and I misled this honourable court ...*” **[EB/436/25]**.

The first adjournment

14. Mr Cooper is immediately stopped by the Judge, and Ms Llewellyn KC asks for an adjournment which is granted. The adjournment lasted from 10.25am to 11.02am [EB/438].

Mr Cooper maintained his retraction

15. Examination-in-chief of Mr Cooper then resumed. Mr Cooper stated that “*I refuse to continue to mislead this honourable Court*” [EB/440/9-10].

16. Following a summary of his previous evidence by Ms Llewellyn KC and an intervention from the Judge reminding him to tell the truth, Mr Cooper stated “*The truth is I was never on any hill, sir.*” [EB/442/8-9].

17. Mr Cooper stated that his attorney was not present when he gave his written statements. He further stated that DS Fearon brought the statement dated 4 January 2011 to him at the Horizon Remand Center and he signed it “*after being intimidated...*” [EB/446/14-25].

The second adjournment

18. At the request of Ms Llewellyn KC, an early adjournment for lunch was taken at 11.25am so that, in the words of the Judge, Ms Llewellyn KC could “*advise herself*” [EB/448/18-19]. The Court adjourned until 2pm.

Mr Cooper retracted his retraction

19. On return after lunch [EB/452], examination in chief of Mr Cooper resumed. Mr Cooper was asked why he said that he was not on any hill. Mr Cooper stated: “*I said that because I was in fear*” [EB/456/5]. He continued to retract all he said in the morning session with the words “*I was in fear*”.

Cross-examination

20. In cross-examination by Mr Cecil Mitchell (for Mr Ennis), in response to a question about whether he remembered an exchange between the DPP and himself in court, Mr Cooper responded that the DPP was “*enquiring about my*

well being". The Judge asked him to "*listen to what is being asked*", and matters moved on [EB/530/24-531/11].

21. In cross-examination by Mr Tavares-Finson (for Mr Millings), Mr Cooper stated that in March 2011, he met with "*two ladies*" who informed him that he was to be called upon to give evidence in this matter. Mr Cooper stated that he did not know where they were from (e.g. the DPP's office or the police). Mr Cooper further stated that he did not speak with DPP officials during either adjournment on 7 June 2012 [EB/592/18-593 and EB/600/5].

Defence disclosure applications

22. Following this, Mr Tavares-Finson made various disclosure applications about the meetings in the lead up to the trial. Mr Tavares-Finson equally sought confirmation as to whether Ms Llewellyn KC had spoken with Mr Cooper during the adjournments on 7 June 2012 [EB/614/14-20]. The Judge stated that if he was asked about his "*well being*" that should be indicated. The prosecution agreed to "*put that in a letter*" [EB/615/7-14].

23. On 13 June 2012, Mr Tavares-Finson revisited the issue of disclosure stating that he had received a letter from Miss Thompson, Deputy DPP, which contained the "*startling bit of information*" that junior Crown Counsel in the case, Ms Keri-Ann Kemble, was "*one of the two women who had visited Mr. Cooper in the lock-ups*". Counsel invited an order that Ms Kemble provide a statement to "*state the nature of the visit, to indicate what the terms*". The Judge said "*for such a person [Cooper] to be used, there must have been interviews and this is what is now being disclosed to you that there was an interview, and Miss Kemble was one of the persons who went to interview him, so that has been disclosed*" [EB/897-899].

24. Mr Tavares-Finson persisted and said he is entitled to the notes or statements taken, and he raised the possibility that Ms Kemble may become a witness. The Judge said that any decisions would have been taken by the DPP, not Ms Kemble. Mr Tavares-Finson stated that he was going to write to the DPP that evening requesting a statement from Ms Kemble. The Judge then stated to the

DPP that if Mr Tavares-Finson “wants a statement, I suggest that he can write to you, I am not making any orders” [EB/902/6-9].

Prosecution letter dated 12 June 2012

25. The letter from Ms Thompson is dated 12 June 2012 [EB/1512]. It stated at [10] that during the adjournment “*Counsel for the Crown made enquires of Mr. Cooper about his welfare and the welfare of his family*”. It provided further detail about the meeting between Mr Cooper and Ms Kemble on 13 February 2012: “*Enquiries were made about his safety and the safety of his family. He was then asked to explain in his own words the events of the November 6th to 8th 2007. He was also shown his photograph smiling in the ATM on the 7th November 2007. Just before Crown Counsel left Mr. Cooper's presence he was given a copy of his statements*”.

Ms Llewellyn KC's interview with Nationwide90FM on 12 June 2025

26. On 12 June 2025, Ms Paula Llewellyn KC gave an interview with Nationwide90FM. When asked, which case “*gave you the greatest pleasure*”, Ms Llewellyn KC replied, in the following terms, that it was the Appellants' case:

“Well I don't know, the Good Samaritan Case gave me a lot of pleasure. It was a difficult case, where these two young people, that one involved Elephant Man's brother and another, these two young people bumped into a motorcycle with this pillion rider and unfortunately they tried to assist them, they didn't report it to the police, and next thing you know their bodies were found in a particular space and place.

And what gave me a great satisfaction was that the pillion rider he pleaded guilty and he turned around and assisted the prosecution. And even during the case, I was prosecuting it, because of certain security issues that came to his attention, he stopped almost mid-stream and I was able to use my experience to bring him back to engagement and the rest is history. He not only gave good evidence, there were two good convictions, the family were very satisfied. And the girlfriend who I came to know of that young man, who I had to summon to assist me to persuade him to continue to give the evidence, years after when he came out of prison they invited me to their wedding and I went. Yes, I went to the wedding and in fact their son, they almost made me a godmother. So, there is another part to being a prosecutor and the young

man has done very well in terms of turning his life around, you would be surprised how far he has reached. He and his wife.” [EB/1639-1640]

Correspondence from trial counsel in 2025

27. Messrs Mitchell and Tavares-Finson KC were asked what further steps were taken in relation to the “*enquiries*” made of Crown counsel and the suggestion of seeking a statement from Ms Kemble. Mr Tavares-Finson KC stated in a letter dated 31 March 2025 at [2] that “*Outside of the transcript we have no further recollection as to what transpired in the matter of Ms. Claudette Thompson’s letter*” [EB/1672]. Mr Mitchell in a letter dated 30 April 2025 stated that he cannot remember the Thompson letter, he did not write to the DPP about Ms Kemble’s contact with Mr Cooper, he no longer has the file and without the file he is unable to recall why he did not write to the DPP [EB/1673].

The Board’s disclosure Order and the Respondent’s disclosure

28. Following the grant of permission and pursuant to the Board’s Order for disclosure dated 19 May 2026 [EB/1699], the Respondent provided disclosure including a series of affidavits from Keri-Ann Kemble, junior Crown Counsel, dated 18 June 2026 and 2 July 2026; Claudette Thompson, former deputy DPP (now DPP) dated 18 June 2026 and 21 July 2026; Kathy-Ann Pyke, attorney at the office of the DPP who had conduct of the Appellants’ prosecution between 2009 and October 2011 dated 18 June 2026; and, Paula Llewellyn KC, former DPP who had conduct of the Appellants’ prosecution, dated 19 June 2026 and 16 July 2026. The content of these affidavits is dealt with, below.

The law

The principle that witnesses giving evidence are not to be approached

29. It is a well-established principle that approaches to witnesses should not take place before they finish giving evidence. Thus, in ***Williamson v HM Advocate*** (1979) JC 36 [AB/Tab 23/EB2039], the sheriff held a prevaricating prosecution witness in contempt and he was held overnight. The next day, the witness gave evidence against the appellant. It came out that while detained, the officer in the case (who had already given evidence) approached the witness twice. The

witness and the officer were both then examined, and their evidence was that the officer had asked whether the witness had been intimidated or threatened, and the officer had advised the witness to tell the truth. The sheriff refused the defence's application to exclude the witness' evidence subsequent to the meetings with the officer. The Lord Justice-General (Emslie) made the following general observation:

"We desire to add, however, that while approaches to witnesses in course of their evidence will not always be improper, the cases in which such approaches can be regarded as legitimate must be very rare indeed. In general, approaches to witnesses before their evidence has been concluded will normally be undesirable, for such approaches will at once put in issue the admissibility of any evidence given subsequent to the approaches and may put at risk the verdict in a particular trial."
[AB/Tab 23/EB2042]

The principle that advocates are not to approach witnesses giving evidence: the Scottish case law

30. The position is even more clear-cut for advocates: whereas a witness such as an officer in the case can be cross-examined without necessarily jeopardising the trial, for counsel to become a witness in their own case entails an inevitable risk of the trial collapsing. In ***McKie v HM Advocate*** (1997) SCCR 31, a child complainant became tearful during evidence. There was an adjournment during which the procurator fiscal approached the child in the presence of the carer but without reference to the defence, to see if she was able to continue giving evidence. As is recorded in the judgment of the Lord Justice-Clerk (Ross) at 37G-38A: "*The objection which was taken on behalf of the complainer simply was that one could not know what had happened in that room [between the procurator fiscal and the child witness] and for that reason the trial could not go ahead. It is not necessary to say more about these unfortunate proceedings because parties were agreed that in the circumstances the trial could not go ahead but that the diet required to be deserted.*" **[AB/Tab 22/EB2035G – 2036A]** The issue for the court was whether the sheriff was wrong to desert *pro loco et tempore* rather than desert *simpliciter*.

31. The reason the parties and the sheriff agreed that the trial had to be deserted was due to an established line of authority that a “*prosecutor is debarred from testifying in a case in which he is prosecuting*”: [AB/Tab 22/EB 2033/A-B]. The cases cited included **Graham v M’Lennan** 1911 S.C. (J.) 16. where the Lord Justice-Clerk (Lord Kingsburgh) held:

“I am clearly of opinion that no matter what the circumstances may be, the prosecutor in a criminal case cannot give evidence as a witness, and that the fact that the prosecutor did so in this case is a sufficient ground for quashing the convictions. I should have arrived at that conclusion independently of authority, but the matter is clearly settled by the case of *Ferguson v Webster* ...”. [AB/Tab 20/EB 2020]

32. Subsequent cases have clarified that this principle applies to those conducting the prosecution in court: see **Mackintosh v Wooster**, 1919 JC 15 where the High Court of Justiciary held that the complainer (a customs and excise officer) was not conducting the case in court: see Lord Justice Clerk and Lord Dundas. [AB/Tab 21/EB 2026]

33. The Appellants submit that such an approach properly applies to other common law jurisdictions.

The duty of an advocate to seek permission to approach a witness giving evidence: The English case law and practice

34. In fact, the caselaw demonstrates that if counsel wishes to speak with their witness before they have finished giving evidence, there is a **duty** on them to consult the other parties and to seek the permission of the Court. In **R v Reading and West Berkshire Stipendiary Magistrate ex parte Dyas** (2000) 164 JP 117, the Divisional Court dealt with a judicial review relating to a magistrate’s refusal to permit a defence solicitor to recall his client where the defendant had finished cross-examination, and the defence solicitor had applied for an adjournment to speak with his client without indicating that he may wish to re-examine him. Smith J (concurring with Rose LJ) stated:

“It seems to me that there was a misunderstanding between the stipendiary magistrate and the applicant's solicitor as to whether the applicant had completed his evidence at the stage when his solicitor

asked the magistrate to leave court so that he could speak privately to his client. The magistrate believed, as it seems to me, that the evidence was finished. He was entitled to assume so as it would be a most unusual application for a solicitor to ask to speak to his client in the middle of the evidence. In my view, **if the solicitor wished to take that unusual course the onus was squarely on him to make plain to the magistrate that he wished to take that unusual course and, if the magistrate were minded to grant permission, to give appropriate assurances as to the extent of the proposed discussion.**

In the absence of such an explicit application, the magistrate was entitled to assume, as he did, that the evidence was over and the solicitor merely wished to see if his client wanted to change his plea. On his return to court, it seems to me that the magistrate acted entirely reasonably in refusing to allow the applicant to resume his evidence.” (Emphasis added). **[AB/Tab 19/EB 2016]**

35. This principle ought to be uncontroversial, and it is encapsulated in the Bar Standards Board Handbook for the regulation of barristers in England & Wales, which provides that:

“rC8

You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) or independence (CD4).

rC9

Your duty to act with honesty and with integrity under CD3 includes the following requirements:

...

.5 unless you have the permission of the representative for the opposing side or of the court, you must not communicate with any witness (including your client) about the case while the witness is giving evidence;

...

gC25

Conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

1. breaches of rC8;
2. breaches of rC9; ...” (Emphasis added).

[AB/Tab 24/EB 2044 and EB 2046]

Privy Council case law

36. The Appellants have not been able to find a case where the appeal has been based on an approach by prosecuting counsel to their witness before the witness had finished giving evidence. However, the case law is clear that a prosecutor is “a *minister of justice*”, and that:

“The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.”: ***Randall v The Queen*** [2002] 1 WLR 2237 per Lord Bingham at [AB/Tab 9/EB 1876-7] citing Rand J in the Supreme Court of Canada in ***Boucher v The Queen*** (1954) 110 Can CC 263, 270.

37. In ***Randall***, prosecuting counsel persistently interpolated prejudicial comments while witnesses gave evidence and during the judge’s summing up. Lord Bingham stated that “*not every departure from good practice*” will render a trial unfair, especially where the departures “*are the subject of a clear judicial direction.*” [AB/Tab 9/EB 1886/28] He continued:

“28... But the right of a criminal defendant to a fair trial is absolute. There will come a point when **the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable** that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial.” (Emphasis added). [AB/Tab 9/EB 1886]

38. The Board found at [29] that the “*substance of a fair trial*” had been denied as “*prosecuting counsel conducted himself as no minister of justice should conduct himself*”, and that the trial judge failed “*to control the proceedings and enforce proper standards of behaviour*” [AB/Tab 9/EB 1886].

39. Subsequent cases have confirmed that ***Randall*** is the key authority: see e.g. ***Bernard v The State*** [2007] 2 Cr App R 22 where, having cited these passages from ***Randall***, Lord Carswell stated that:

“29. ... In the context of the incorrect admission of evidence, the strength of the rest of the evidence will be material, but in a case of procedural unfairness their Lordships would regard the statement which they have quoted from *Randall* as the appropriate approach. Determination of such an issue involves weighing the seriousness of the irregularities. If the defects were relatively minor, the trial may still be regarded as fair. Conversely, if they were sufficiently serious it cannot be accepted as fair, no matter how strong the evidence of guilt. In such a case it may also be said that the defendant was deprived of his constitutional right of due process.” [AB/Tab 4/EB 1815]

40. Subsequent cases have underlined that where a trial judge has issued “corrective directions” to the jury, this is an important feature in assessing whether prosecutorial irregularities have rendered a trial unfair. Thus:

- i. In *Ramdhanie v The State* [2006] 1 WLR 796, an inflammatory prosecuting closing speech was tantamount to “*a material irregularity and unfairness in the trial process*” undermining the safety of the convictions (Lord Mance at [AB/Tab 10/EB 1901/35]). The Board noted that “*no specific caveat was introduced regarding any aspect of prosecuting counsel’s speech*” by the trial judge’s summation (Lord Mance at [AB/Tab 10/EB 1900/32]). The convictions were quashed.
- ii. In *Huggins v The State* [2008] UKPC 30, despite “*very reprehensible*” conduct on the part of prosecuting counsel, the conduct was not deemed “*so gross, persistent or prejudicial as to require [the Board] to condemn the trial as unfair.*”: [AB/Tab 6/EB 1847/34] per Lord Carswell. Lord Carswell noted in particular that “*the judge wisely took the opportunity to correct the misstatements of prosecuting counsel about a number of matters, in particular concerning the case being made by the defendants. She also warned the jury to disregard his remarks about the importance of a conviction. This was done in a separate segment of the trial, so that it had maximum impact and it could not become submerged in the content of a long and detailed summing-up. The Court of Appeal took the view, rightly in their Lordships’ opinion, that the corrective statement by the judge removed a good deal of the potential unfairness.*” [AB/Tab 6/EB 1846-7/33]

Submissions

41. The Appellants submit that the prosecution's conduct represented a "*departure from good practice [that was] so gross, or so persistent, or so prejudicial, or so irremediable that [the Board] will have no choice but to condemn [the] trial as unfair and quash [the] conviction[s] as unsafe*": **Randall** at [AB/Tab 9/EB 1886/28].
42. First, Ms Llewellyn KC's undisclosed decision to approach Mr Cooper during his evidence, and without consulting the Appellants' defence attorneys or seeking the permission of the Judge was an unheralded and gross breach of an advocate's basic "*duty*": see e.g. **ex parte Dyas** [AB/Tab 19/EB 2013]. The reasons why the breach was so gross are:
- i. The conduct fatally undermines the prosecutor's role as being a "*minister of justice*" who is required to perform their role "*with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings*": **Randall** at [AB/Tab 9/EB 1876-7], citing **Boucher**. As rC9.5 of the Bar Standards Board's Handbook provides, an advocate "*must not communicate with any witness (including your client) about the case while the witness is giving evidence*" [AB/Tab 24/EB 2044]. This is because, as the Handbook provides, such conduct could reasonably be seen by the public (including, importantly, the Appellants) to undermine a prosecutor's honesty and integrity (core duty 3), or independence (core duty 4), and represents conduct which is "*likely to diminish the trust and confidence which the public places in you or in the profession*" (core duty 5).
 - ii. Ms Llewellyn KC's conduct most obviously risked her becoming a witness in a case over which she had conduct. The Board is urged to accept the established Scottish case law line of authority to the effect that "*no matter what the circumstances may be, the prosecutor in a criminal case cannot give evidence as a witness*", and that such will lead to a conviction being quashed per **Graham v M'Lennan** at [AB/Tab 20/EB 2020]. In this regard, the reasons Ms Llewellyn KC risked

becoming a witness included that (a) she did not seek permission of the Judge, (b) it transpires that family members were “*summoned*” to meet with Mr Cooper, (c) Mr Cooper retracted his retractions following the meetings, and (d) no notes were kept of the meetings. Even if the motive was benign, the manner in which it was done – undisclosed, without permission, and with no discernible safeguards – meant that the trial proceedings were fundamentally unfair (as illustrated by the conclusion in *McKie*).

- iii. The fact that Ms Llewellyn KC “*summoned*” Mr Cooper’s (step)father and girlfriend to court “*to assist me to persuade him to continue to give the evidence*”, per the Nationwide90FM interview, only serves to exacerbate the grossness of the unfairness [EB/1639]. The extent of the contact these individuals had with Mr Cooper remains entirely unclear. Had their involvement been disclosed, they, too, would have become witnesses. **Introducing lay witnesses to her only prosecution witness while he was giving evidence demonstrated a lamentable lack of good professional judgement, which cannot be described as anything other than a gross departure from good practice.**
- iv. The failure to take any notes is of particular concern. Not merely because of the obvious need to do so, but because it appears that it was not Ms Llewellyn KC’s practice to take notes in cases involving highly unusual approaches by prosecuting counsel to a witness. In her affidavit dated 16 July 2026, having stated at [8] that she “*did not think of arming myself with a notebook and pen*” when she conducted the “*welfare check*”, she continued at [9] that: “*In fact, in my experience as a Prosecutor, on the rare occasion that I have had to conduct a welfare check on a witness during a trial, I have never armed myself with a pen or notebook to document the interaction between myself and the witness*” [EB/1741]. It is highly surprising that the DPP does not think it appropriate to take notes of exchanges which she herself considers to be “*rare*”.

43. Second, so-called judicial “corrective directions” – identified as being of signal importance by the Board in *Randall*, *Bernard*, *Ramdhanie* and *Huggins* –

were entirely absent in the Appellants' case. This is understandable given that the prosecution did not seek the leave of the Judge or the permission of defence counsel to approach Mr Cooper. In any event, even if the extent and nature of the contact had been disclosed at some stage during the trial, no "corrective direction" would have been possible: The only way fairly for the matter to have been explored was for Ms Llewellyn KC to be cross-examined, and this would have resulted in the trial collapsing: see **Graham v M'Lennan** [AB/Tab 20/EB 2017].

44. Third, the Appellants underline that given the nature and depth of the departure from good practice, the strength or otherwise of the evidence against them cannot save the convictions. As Lord Carswell stated in **Randall**, "*The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial.*" [AB/Tab 9/EB 1886/28]. To hold otherwise would mean that the Appellants were "*deprived of [their] constitutional right[s] of due process*": **Bernard** at [AB/Tab 4/EB 1815/29] per Lord Carswell. In any event, the Appellants maintain that the evidence against them was fundamentally compromised, coming from a witness who had retracted his evidence against the Appellants following undisclosed contact with the DPP and his family members, and who avoided a murder charge by blaming the Appellants.
45. Fourth, the Appellants underline that the prosecution's gross procedural irregularity could easily have been avoided. In particular, to the extent that Ms Llewellyn KC had genuine concerns as to Mr Cooper's welfare, the proper process should have been, at a minimum, (i) to raise it with the Judge and counsel for the defendants in the absence of the jury, and (ii) to invite someone such the officer in the case or welfare officer at court (if such existed) to approach Mr Cooper (with representatives of the defendants' legal team in sight of what was said), and, in any event, (iii) to ensure that a detailed note was taken of any and all interactions.
46. Fifth, the Appellants have significant doubts as to the reality of the concerns said to have been articulated by Mr Cooper. The Justice Protection Act 2001 ('JPA') came into force on 5 December 2001 [AB/Tab 2/EB 1778]. It was

designed to “*establish a programme to give protection or assistance to certain witnesses and other persons*”. Section 3 JPA established the Justice Protection Scheme to provide participants with “*protection or assistance or both*”. Section 4(1) JPA established an “*Administrative Centre*” to “*develop, manage and maintain the Justice Protection Programme*” (‘JPP’). Section 4(4)(a) to (i) details the considerations the Administrative Centre must have regard to in determining “*whether to include a prospective participant*” in the JPP. Those criteria include:

- “(c) the seriousness of the offence to which any relevant evidence or statement relates;
- (d) the nature and importance of any relevant evidence or statement;
- (e) whether there are viable alternative methods of protecting and assisting the prospective participant;
- (f) the nature of the perceived danger to the prospective participant;
- (g) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the programme;”

[AB/Tab 2/EB 1785]

47. Section 9(1) provides that the DPP has a **duty** to submit an application to the Administrative Centre where “*satisfied that the circumstances so warrant*”. Subsection (3) directs the DPP to include in the application “*detailed information on (a) the significance of the case; (b) the prospective defendant; (c) the testimony of the prospective participant*”, and (d) *the anticipated benefits of a successful prosecution*”. **[AB/Tab 2/EB 1789]**

48. Mr Cooper, it appears, was never a part of the JPP. This is despite:

- i. Mr Cooper’s statement dated 9 December 2010 that he was “*willing to speak the truth about the killing of Taiwo McKenzie and Janelle Whyte and to give evidence for the prosecution. I am desirous of getting protection as my life may be in danger.*” **[EB/239]**.
- ii. Ms Kemble’s affidavit dated 18 June 2026 that on 13 February 2012 that she “*accompanied my senior, then Acting Deputy Director of Public Prosecutions, Mrs. Kamar Henry-Anderson, to the Horizon Remand*

Centre to interview the crown witness, George Cooper. Mrs. Henry-Anderson and I asked Mr. Cooper about his own safety and the safety of his family members.” [EB/1702/3].

- iii. Ms Llewellyn KC’s affidavit dated 19 June 2026 that on 6-7 June 2007, Mr Cooper’s (step)father’s house was “*firebombed*” and that “*Other threats were issued to him which made him quite afraid and intimidated*” [EB/1735/22]. In this regard, the Appellants note that no disclosure of the police’s attendance at Seaview Gardens has been provided, and that there is no evidence of any investigation, prosecution or conviction.
- iv. Ms Llewellyn KC stated at [EB/1736/30] that she was “*extremely alarmed and concerned*” for Mr Cooper’s welfare, but it does not appear that she submitted an application to the Administrative Centre of the JPP, even though section 9 JPA appears to impose a duty to do so.

49. Sixth, more generally, the Board is invited to treat Ms Llewellyn KC’s evidence with a significant degree of caution:

- i. Ms Llewellyn KC was one of the most senior and experienced legal officers in Jamaica. Despite this, and despite having no notes of the contact she had with Mr Cooper, she purports to include in her affidavit dated 19 June 2026 **detailed verbatim quotes** from conversations which took place over 14 years ago (see [EB/1735/22] and [EB/1736/25]). It is not reasonable for a senior legal officer of many years’ experience to purport to cite verbatim from conversations which took place a decade and a half ago when there are no notes. It is indicative of a regrettably lackadaisical approach to the highly serious issues this case raises.
- ii. Ms Llewellyn KC fails to deal with the interview she gave to Nationwide90FM in June 2025. She simply states at [EB/1737/35] of her 19 June 2026 affidavit that “*it was never my habit to conduct interviews with the media during a trial out of respect for the sub judice rule*”. She then states that she cannot recall doing any such interview “*during the course of the trial*” [EB/1737/36]. However, a cursory reading of the

Appellants' Précis and Grounds makes clear the interview the Appellants were referring to. The fact that she provides no clarification in her affidavit dated 16 July 2026 demonstrates a lack of proper engagement with this appeal [EB/1740-1741].

50. Seventh, these serious departures from good practice were compounded by:

- i. The meeting that Ms Kemble, Crown counsel, had with Mr Cooper some months prior to trial on 13 February 2012 where it is said that *"Enquiries were made about his safety and the safety of his family. He was then asked to explain in his own words the events of the November 6th to 8th 2007. He was also shown his photograph smiling in the ATM on the 7th November 2007. Just before Crown Counsel left Mr. Cooper's presence he was given a copy of his statements"* [EB/1513]. Ms Kemble stated in her affidavit dated 2 July 2026 that she took no notes of this meeting [EB/1739/2].
- ii. The meeting that Ms Pyke, who had conduct of the case on behalf of the DPP, had with Mr Cooper on 25 February 2012 where they discussed Mr Cooper's evidence [EB/1709/20]. Ms Pyke stated in her affidavit dated 18 June 2026 that no notes were taken of this meeting [EB/1709/21].

51. The Appellants submit that it is improper for prosecuting counsel with conduct of a matter in court to meet with the prosecution's only witness to discuss his evidence specifically, and / or the evidence in the case generally. At the very least, there ought to have been notes of these meetings, and the fact of the meetings ought to have been disclosed well before trial: see e.g. the discussion in **Blackstone's Criminal Practice**, 2026, D15.100 [AB/Tab 25/EB 2049]. It is a concerning recurrent theme of this case that experienced prosecutors fail to take any notes of significant meetings they had.

Conclusion

52. To conclude, therefore, Ms Llewellyn KC's conduct was so gross, persistent, prejudicial or irremediable as to deny the Appellants their due process right to

a fair trial. Had the Judge been aware of the extent of the conduct, there is no corrective direction he could have given. The trial ought to have been deserted. Irrespective of the strength of the evidence, the Appellants' convictions are unsafe, and their convictions must be quashed.

GROUND / ISSUE 3: WHETHER DS FEARON'S, THE INVESTIGATING OFFICER'S, EVIDENCE RECORDING MR MILLINGS' ALLEGED STATEMENT ADMITTING INVOLUNTARY PRESENCE BUT ATTRIBUTING BLAME TO MR ENNIS WAS PROPERLY ADMITTED AT TRIAL AND, IF NOT, WHETHER ITS ADMISSION AMOUNTED TO A SUBSTANTIAL MISCARRIAGE OF JUSTICE?

Background

DS Fearon's statement written on or around 28 November 2007

53. In relation to Mr Millings' purported admission, the relevant part of DS Fearon's statement reads:

"About 11am that said morning [18 November 2007] I was on duty at the Constant Spring Police Station when W/Cons R[illegible] Pryce of Crime Stop took Shane Brown to me.

I identified myself to him, cautioned him and informed him that I am investigating the double murder of Taiwo McKenzie and Janell Whyte committed between 1pm 7/11/07 and 9am 9-11-07 at Mount Salus District Stony Hill in which he is a suspect.

He said "Officer, mi wan tell yuh how it go. Mi up a de yard Ricky tek mi in a de Rav4". I stopped him and asked him if he had an attorney. He said "no but me still wan tell you and him tek me dung a de park, dem put me in a de white car at de back seat behind de driver beside de boy and de girl[.] One man did dey over dey other side pon de lef[.] Dem tek me down a de road pass Elephant man mother house straight down dem turn right whey one hydrant deh me nuh know de road name[.] One know seh a one dead end road whey a big white house deh[.] De one pon de lef seh 'a wha dah boy ya a poe man soh a wha' [illegible] call him fah[.] Me did a look pon him cause me nuh know him face[.] dem realise seh mi never deh pon dat so dem put mask over me face[.] de car drive out, me couldn't see de way when de car reverse out we go a one place whey

de Digicel Pole deh[.] Me nah have on de mask no more[.] me see Ricky cause me no have on de mask no more[.] me see Ricky[.] me hear Ricky seh a cut me a go cut mi a go cut you know a cut time me see Ricky wid one Ratchet knife[.] me hear when de girl seh mi have mi lickle boy fi live fa. me go si doing pon a little stone when me go down Ricky give me \$5,000.00 five thousand dollar den Ricky dem seh me can't stay[.] den me lef an go a Caymanas Track"

I informed Shane Brown that if he can't afford an attorney the state could provide one for him. He said alright officer." [EB/1503-1504]

54. DS Fearon explained in evidence that on 18 November 2007, he originally wrote the alleged admission on a piece of paper, and then on or around 28 November 2007 he transferred it to his statement [EB/904/7-9]. DS Fearon discarded the original.

Interviews of Mr Millings

55. Mr Millings was interviewed on 20 [EB/233], 24 [EB/1434] and 26 [EB/1438] November 2007. The alleged statement he gave to DS Fearon was dealt with in the third interview (questions 37 to 42 [EB/1448]). Mr Millings responded that he had nothing to say to all questions.

Interviews of Mr Ennis

56. Mr Ennis was interviewed on 21 [EB/1390] and 26 [EB/1452] November 2007. Parts of Mr Millings' alleged statement were put to Mr Ennis (questions 173-176 [EB/1458-1459]). They were denied by Mr Ennis.

DS Fearon's evidence in chief

57. On 13 June 2012, during evidence in chief, DS Fearon stated that on 18 November 2007, he was at Constant Spring Police Station when Mr Millings entered "*accompanied by*" a "*woman corpora*" whose name DS Fearon could not remember [EB/890/15-891/25]. DS Fearon stated that he identified himself as a police officer [EB/891/25] and that he cautioned Mr Millings [EB/892/15-22]. DS Fearon stated that he informed Mr Millings that "*if he wished to make*

*a statement he will have to have his attorney present*² to which Mr Millings replied:- *“mi still want tell you how it go, officer”*. DS Fearon gave evidence that he *“made notes as he spoke on a piece of paper”* [EB/893/5-10]. The Court then rose for lunch, following which Mr Tavares-Finson made his applications regarding disclosure.

58. Examination in chief of DS Fearon then recommenced [EB/902/19]. DS Fearon stated that he could not remember *“word for word”* what he had recorded and asked for *“the Court’s permission to refresh my memory from my statement”* [EB/903/12-20]. During subsequent questioning of DS Fearon, the following transpired [EB/904-905]:

- i. On 28 November 2007, when he was writing his statement, DS Fearon stated that *“I transferred the information to my statement ... Word for word as he spoke”*.
- ii. DS Fearon did not write the statement in his Notebook as *“it was some distance away so I had used the piece of paper”*.
- iii. There was a Notice to Adduce the statement dated 4 March 2010.
- iv. The Judge said that the prosecution *“is not allowed to go through the whole thing”*.
- v. DS Fearon read his note of Mr Millings’ statement into the Record: [EB/905/23-909/19]. There were various interventions along the way.
- vi. DS Fearon then told Mr Millings that *“if he need to give further statement he need to have his attorney”* and that *“if he can’t afford one, the State can provide one for him”* [EB/909/22-910/4].
- vii. DS Fearon stated that Mr Millings was not coerced, intimidated or induced to give the statement [EB/910/5-16].

². DS Fearon’s statement in fact does not state this. It provides that after Mr Millings’ allegedly starts to make his statement, DS Fearon stated *“I stopped him and asked him if he has an attorney. He said “no but me still want tell you ...”*. See above at para [53].

viii. Mr Millings was then taken to Red Hills Police Station.

Cross-examination by Mr Mitchell (for Mr Ennis)

59. On 13 June 2012, Mr Mitchell cross-examined DS Fearon from 3.35pm until 4pm when the Court adjourned cross-examination until the next day **[EB/937-947]**. The issue of Mr Millings' alleged statement of involuntary presence and attributing blame to Mr Ennis was not raised.

60. On 14 June 2012, Mr Mitchell, who was present, did not conduct any further cross-examination. Mr Tavares-Finson (for Mr Millings) stated to the Court that Mr Mitchell "*has no more questions*" **[EB/950/11-13]** and then started his cross-examination.

Cross-examination by Mr Tavares-Finson (for Mr Millings)

61. The topic of DS Fearon's witness statement starts at **[EB/964/15]**. The following occurs:

- i. DS Fearon accepted that he did not sign each page of his witness statement, although the last page was signed **[EB/968/16]**.
- ii. DS Fearon accepted that he did not date each (or any) page of witness statement **[EB/968/22-971/10]**.
- iii. DS Fearon accepted that he signed a certificate to the effect that each page of the witness statement was signed by him **[EB/970/21-971/10]**.
- iv. DS Fearon regarded the information that Mr Millings purportedly gave him as "*important*" **[EB/972/21-23; EB/978/13]**.
- v. DS Fearon accepted that his statement was written on different types of paper **[EB/974/17-22]**. In particular, pages 3 and 4, where Mr Millings' statement was recorded, were different to the other pages.
- vi. DS Fearon accepted that the ink used on pages 3 and 4 was different to that used on other pages (pages 1 and 2) and similar to pages 7 and 11 **[EB/976/18-977/20]**.

- vii. DS Fearon rejected the suggestion that Mr Millings had never made the statement [EB/978/7-9].
- viii. At the end of his cross-examination, Mr Tavares-Finson stated:- “... *I was wondering whether or not I am going to tender the statement, and ask that it be admitted as an Exhibit in this case, relating not to its content thereof, but to the format of the statement, and as it relates to the questions that the Inspector enquired of ...*”. The prosecution did not object. Mr Mitchell made no objections [EB/978/22-979/7].
- ix. The statement became **Exhibit 5** [EB/980/8].

Re-examination of DS Fearon

62. In re-examination by Ms Llewellyn KC, when asked why the statement was written in different ink, DS Fearon stated that “*Reason being the statement wasn’t written one time. There were times when you break in intervals, and there are times when I change my pen for one reason or the other.*” [EB/992/3-10]. DS Fearon agreed with the Judge’s question that his statement was written “*in stages*” [EB/992/13].

Exhibit 5 shown to jury

63. Thereafter, the Judge had the statement shown to the jury. The Judge stated: “*Mr. Foreman and members of the jury, the purpose of showing this to you, is for you to examine pages one and two, five and six, seven and eleven, in relation to the type of paper, and the type of ink which is used on these pages. And in relation to the format, that is the absence of signature and date at the bottom of each page.*” [EB/994/5-14]

Judge’s summing up

64. The Judge’s summation of DS Fearon’s evidence starts at [EB/1280/17]. DS Fearon’s evidence as to what took place on 18 November 2007 starts at [EB/1283/11]. Before reading Mr Millings’ alleged admission, the Judge said to the jury:

“Now, Mr. Foreman and members of the jury, you have to listen carefully to what was said that Mr. Millings said. You will have to make a determination firstly, did Mr. Millings actually use those words? If you find that he did, what does it mean, to you?” **[EB/1284]**

65. The Judge then read Mr Millings’ alleged statement to the jury. The Judge invited them to look at it “*bearing in mind the injuries that were supposed to have been received by these two deceased person (sic).*” **[EB/1285/21-25]**.

66. The Judge summarised Mr Mitchell’s cross-examination for Mr Ennis at **[EB/1290/2–1292/24]**. The Judge summarised Mr Tavares-Finson’s cross-examination at **[EB/1292/25–1296/8]**. The Judge then stated:

“Now, whereupon counsel tendered this statement. It was tendered for you to see and to examine, Mr. Foreman and member members of the jury, to see what you make of this. Because the suggestion which was being made was that pages 3 and. 4, which contains what Mr. Millings was alleged to have said, was inserted sometime, perhaps after the original statement was written.

You have to bear that in mind, and you also bear in mind the submission made by Mr. Finson yesterday, in relation to how he views this statement, and his assessment of Inspector Fearon.

When I heard his speech, it reminded me of a speech which I had read sometime ago when I was in school. A speech made by Mark Anthony in the play Julius Ceasar. Although he was saying, Mark Anthony, that is that these persons had murdered Julius Caesar, he kept on repeating, but these are honourable men.

Mr. Finson was saying that something went wrong here. Something was put in. But he kept saying he regarded Inspector Fearon as a man of integrity. So, you will have to look at the statement, Mr. Foreman and members of the jury, to see what you make of it. Is it something that you can rely on as words used by Mr. Millings.

Are you satisfied to the extent that you feel sure that Mr. Millings used these words to Inspector Fearon. These are matters that you have to consider, in determining the issues which are placed before you.” **[EB/1296/9 – 1297/17]**

67. The Judge returned to DS Fearon’s witness statement:

“There are Six Exhibits tendered in this case, and you are entitled to look at all of them. As a matter of fact, I would encourage you to take all of

these Exhibits with you, to look at them, because they will play an important part in this case. Particularly Exhibit 6, which contains the photographs. Exhibit 5, contains the statement of Inspector Fearon. And the other Exhibits that you will see, deals with questions and answers. Very well. And the statement of Mr. Ennis. Yes, you have the Exhibits there? (Handed to Foreman). All right, you may come down and go with the officers.” [EB/1317/3]

The Court of Appeal’s decision

68. On appeal, Mr Millings was represented by Mr Robert Fletcher, and Mr Ennis by Miss Nancy Anderson [EB/125].

69. In total, there were five grounds of appeal summarised by the Court of Appeal at [EB/126-7/3]. It is not clear whether each appellant relied on all grounds.

70. Ground (or Issue) 3 was “*The admission of evidence said to have been irregularly obtained*” [EB/142/41]. The Ground was argued by Mr Fletcher on behalf of Mr Millings. Ms Anderson made no separate submission on behalf of Mr Ennis, and it seems clear from the way that the Ground was argued by Mr Fletcher that his submissions focussed solely on asserted prejudice to Mr Millings.

71. The Ground was articulated as follows:

“The admission of irregularly obtained evidence, in several respects and the use of questions in Q and A’s to reinforce and/or add to the evidence of the accomplice/witness, introduced highly prejudicial elements into the trial which denied the applicant a fair trial.” [EB/142/41]

72. There were two strands to this Ground:

- i. First, Mr Fletcher submitted that Mr Millings’ alleged admission of presence was “*incredible*”, as was DS Fearon’s explanation for the manner in which the admission was recorded (“*the differences in paper and ink*”, and the fact it “*was not signed or dated*”: [EB/142/42]).
- ii. Second, Mr Fletcher argued that the admission into evidence of Mr Millings’ Question & Answer booklet “*improperly advanced the prosecution’s case*”: [EB/142/43].

- iii. Mr Fletcher submitted, it appears in relation to both Millings' statement and the Q&A, that "*by allowing these irregular items to be admitted there was irreversible prejudice to [Mr Millings]*" [EB/142/43]. However, this submission could relate only to the Q&A.

73. The Court of Appeal ruled that:

"[44] The statement, said to have been made by Mr Millings, was not introduced into evidence as a separate document. It formed part of Det Insp Fearon's witness statement. Det Insp Fearon testified that he originally wrote Mr Millings' statement "on a piece of paper" because he did not have his notebook at the time of taking the statement. He later transcribed the statement, he said, and incorporated it into his own witness statement. He then discarded the original paper.

[45] He was closely cross-examined on these matters and explained that he would have used different pens when writing his statement (a total of 12 pages), and he would have used paper from his bag as they came to hand.

[46] The trial judge reminded the jury of this evidence and of Det Insp Fearon's explanation. He gave the jury proper directions on treating with this evidence. He said, in part, at page 983:

"Now, Mr. Foreman and members of the jury, you have to listen carefully to what was said that Mr. Millings said. You will have to make a determination firstly, did Mr. Millings actually use those words? If you find that he did, what does it mean, to you?"

[47] It was for the jury to assess Det Insp Fearon's credibility in that context." [EB/143]

74. In relation to the Q&A, the Court of Appeal concluded that its admission did not cause prejudice: [EB/143/48-145/51].

The law on statements contrary to interest

75. It is trite that a statement contrary to interest, often referred to as an admission or – depending on the content, a confession - is in principle admissible at common law against the person who made it.

The Judges' Rules

76. As Lord Carswell stated in *Peart v The Queen* [2006] 1 WLR 970 at [AB/Tab 7/EB 1852/1], “the Judges’ Rules retain considerable importance” in Jamaica. The issue in that case was the admissibility of statements made by the defendant following the decision to charge, in breach of rule III(b).

77. Lord Carswell stated at [AB/Tab 7/EB 1861/21] that the Judges’ Rules were designed to ensure that statements are only admissible if they are “voluntary” – i.e. “that they have not been obtained by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression”. Where a statement is not voluntary, it will automatically be excluded.

78. Additionally, Lord Carswell stated at [AB/Tab 7/EB 1861/23] that the judge has a discretion to exclude a statement “where an admission has been voluntarily made but it would be unfair to admit it”. He continued:

“24. From the foregoing discussion it is possible to distil four brief propositions.

(i) The Judges' Rules are administrative directions, not rules of law, but possess considerable importance as embodying the standard of fairness which ought to be observed.

(ii) The judicial power is not limited or circumscribed by the Judges' Rules. A court may allow a prisoner's statement to be admitted notwithstanding a breach of the Judges' Rules; conversely, the court may refuse to admit it even if the terms of the Judges' Rules have been followed.

(iii) [omitted as it relates to rule III(b)].

(iv) **The criterion for admission of a statement is fairness.** The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary.” (Emphasis added). [AB/Tab 7/EB 1862]

79. The provisions of the Judges’ Rules material to the Appellants’ appeal are contained at Annex A.

Submissions

The reasons Mr Millings' alleged admission ought never to have been admitted

80. The manner in which DS Fearon recorded and retained Mr Millings' alleged admission was wholly compromised and ought never to have gone before the jury.
81. While breaches of the Judges' Rules are not determinative of admissibility, it is important to summarise them as they represent a wholesale failure to comply with safeguards that have been established for over 70 years, such safeguards are designed to ensure the voluntariness and reliability of alleged admissions.
82. First, DS Fearon states that he discarded the "*piece of paper*" recording the original alleged admission of Mr Millings. To throw away the original recording of such an "*important*" piece of evidence is as extraordinary as it is unacceptable.
83. Understandably, a duty to retain the original statement recording an admission is not expressly contemplated by the Judges Rules. But the rules are implicitly premised on the basis that the original statement is retained. This is illustrated by, e.g., the requirement for the author to sign the statement, and/or for any officers present to sign the statement, and/or for the suspect to sign the statement etc.
84. In circumstances where Mr Millings denies making the admission, the fact that the original recording has been discarded calls into doubt the reliability of the fact of the admission generally, and the content of the admission specifically.
85. Second, the manner in which DS Fearon recorded the alleged admission demonstrated a lamentable failure to comply with the Judges' Rules. In particular:
- i. DS Fearon failed to ask Mr Millings to **read over** the statement, invite him to make any corrections, alterations or additions, in breach of rule IV(e).

- ii. DS Fearon failed to ask Mr Millings to **sign a certificate** at the end of the alleged admission containing the statement that Mr Millings had read the above statement, that he could amend it, that *“the statement is true”* and it is *“made of my own free will”*, in breach of rule IV(e). It is noteworthy that Mr Millings signed the record of his question and answer interviews with the statement *“I was told I could alter or correct any of the answers given. The answers are free I have given them of my own free will”*. NB. DS Fearon does not certify that Mr Millings refused to read the statement or otherwise endorse it, per rule IV(f). So, it can be safely assumed that there was no such refusal.
 - iii. DS Fearon does not ask Constable Pryce, who was said to be present, to countersign the statement, in breach of Appendix B, rule 2.
 - iv. DS Fearon failed to write down Mr Millings’ statement in his notebook even though he knew where the notebook was: *“it was some distance away so I had used the piece of paper”*. This breached Appendix B, rule 1(a).
86. Third, DS Fearon failed to inform Mr Millings of his right to consult a lawyer before making the statement, in breach of Appendix B, rule 7(b):
- i. DS Fearon’s statement reads: *“He said “Officer, me wan tell yuh how it go. Mi up a de yard. Ricky tek me in a de Rav4”. **I stopped him and asked him if he has an attorney.** He said “no but mi still wan tell you and him tek mi dung a de park, dem put me in a de white car at de back seat behind de driver beside de boy and de girl[.]” [EB/1503]* Evidently, asking part-way through whether a suspect has an attorney is *not* informing the suspect of his *right to consult* an attorney *before* he provides a statement.
 - ii. DS Fearon’s statement records at the end that *“I informed Shane Brown [i.e. Mr Millings] that if he can’t afford an attorney the state could provide one for him. He said alright officer” [EB/1504]*. To the extent that this constituted informing Mr Millings of his right to consult a lawyer (which is dubious and not accepted), this underlines that Mr Millings was not

informed of the right to legal consultation until *after* the statement was recorded.

87. Fourth, DS Fearon did not ask Mr Millings whether he wished to write his statement himself as required by rule IV(a)³.

- i. Mr Millings was not required to write out the important warning or caution contained in rule IV(a) of his right to remain silent and that whatever he says may be given in evidence.
- ii. Mr Millings was not required to write out that the statement was made of his own free will (and the associated cautions / warning) continued in rule IV(c).

The failure to challenge the admissibility of Mr Millings' alleged statement was a fundamental flaw

88. First, as DS Fearon accepted twice during cross-examination, Mr Millings' alleged admission was "*important*" evidence for the prosecution. But, given the wholly compromised way in which this "*important*" evidence was recorded and retained, it ought never have gone before the jury.

89. Counsel for both Appellants regrettably failed to challenge its admissibility. In such circumstances, the Privy Council stated in ***Boodram v The State*** [2002] 1 Cr App R 12 per Lord Steyn:

"Their Lordships have throughout kept two considerations firmly in mind. First, an appellate tribunal must approach complaints about counsel's incompetence, and its effect, with a healthy scepticism. On the other hand, where it has been demonstrated that **counsel's failures were of a fundamental nature** the Court must proceed with great care before it concludes that, on the hypothesis that the failures did not occur, the verdict of the jury would inevitably have been the same." (Emphasis added). **[AB/Tab 5/EB 1831/38]**

³. DS Fearon's statement suggests that Mr Millings can read (see DS Fearon asking Mr Millings to read over the Q&A interview on 20 November 2011 (p.5 of statement) and Mr Millings signing the same; DS Fearon asking Mr Millings on 24 November 2007 during interview to read and sign and date a caution, as well as the written answers from the interview; DS Fearon asking Mr Millings to read over the words of the caution, to sign and date it).

90. In *R v Clinton* [1993] 1 WLR 1181, the Court of Appeal of England & Wales (Steyn LJ, Garland and Roush JJ) stated:

“[W]here counsel had made decisions in good faith after proper consideration of the competing arguments, and, where appropriate, after due discussion with his client, such decisions could not possibly be said to render a subsequent verdict unsafe or unsatisfactory. Particularly does this apply to the decision as to whether or not to call the defendant. Conversely and, we stress, exceptionally, **where it is shown that the decision was taken either in defiance of or without proper instructions, or when all the promptings of reason and good sense pointed the other way**, it may be open to an appellate court to set aside the verdict by reason of the terms of section 2(1)(a) of the [Criminal Appeal] Act [1968]. It is probably less helpful to approach the problem via the somewhat semantic exercise of trying to assess the qualitative value of counsel's alleged ineptitude, but rather to seek to **assess its effect on the trial and the verdict according to the terms of the subsection.**” (Emphasis added). [AB/Tab 14/EB 1941]

91. It is submitted that the failure of counsel for both Appellants to challenge the admissibility of Mr Millings' purported admission was “*fundamental*” and defied “*all the promptings of reason and good sense*”:

- i. For Mr Millings, his position was that he had never made the statement. The only way to challenge that would be to seek a *voir dire*. This is especially given the wholly compromised way in which the alleged recording of Mr Millings' alleged admission was recorded and retained. It appears that no such ruling was sought – there is nothing in the record, and in a letter dated 28 August 2026, Mr Tavares-Finson KC stated that he has no recollection or record of objecting to the statement's admissibility [EB/1762].
- ii. For Mr Ennis, the admission of Mr Millings' statement was overwhelmingly prejudicial *viz.* its probative value. It is beyond obvious that counsel ought to have argued that it should be excluded. At the very least, counsel for Mr Ennis ought to have sought a direction to the jury that Mr Millings' alleged admission could not be relied on as evidence against Mr Ennis. It appears that this was not done. The Appellants wrote

to Mr Mitchell about this point on 28 August 2026 [EB/1763 - 1765]. A reply has not yet been received.

The admission of DS Fearon’s entire statement as an Exhibit that subsequently went to the jury was precipitate and wrong

92. DS Fearon’s statement became Exhibit 5 at the request of Mr Tavares-Finson on behalf of Mr Millings. It is clear from the transcript that this was a precipitate decision. After finishing his cross-examination, and after Ms Llewellyn KC had been invited by the Judge to go next, Mr Tavares-Finson said: “*Sorry, oh, I am so sorry. Miss Llewellyn, I am sorry. I was wondering whether or not I am going to tender the statement, and ask that it be admitted as an Exhibit in this case, relating not to its content thereof, but to the format of the statement, and as it relates to the questions that the Inspector enquired of ...*”. The prosecution did not object. Mr Mitchell made no objections [EB/978/22 – 979/7].

93. Mr Tavares-Finson KC, in his letter dated 28 August 2026, has stated that he has “*no record or recollection as to why I asked for DS Fearon’s statement to be admitted as Exhibit 5*” [EB/1762]. The Appellants wrote to Mr Mitchell about this point on 28 August 2026 [EB/1763 - 1765]. A reply has not yet been received.

94. In England and Wales, section 122 of the Criminal Justice Act 2003 provides that where a statement in a document is admitted into evidence, “*the exhibit must not accompany the jury when they retire to consider their verdict unless (a) the court thinks it appropriate, or (b) all the parties agree that it should accompany the jury*”. [AB/Tab 3/EB 1804] The rationale underpinning this protection was articulated by the Court of Appeal of England and Wales in **R v Hulme** [2007] 1 Cr App R 26 (Richards LJ):

“24. The reason why we think that the matter should have been dealt with in that way rather than **by giving them a copy of the document itself is the undoubted risk that the jury would place disproportionate weight on the contents of the document**, as compared with the oral evidence, for the reason that they had the document there in front of them. That is why it is generally inappropriate for the jury to take with them written material of an analogous nature such as a transcript of evidence given by way of a video recording of an

interview with a witness. The judge does not appear to have taken that factor into account in her balancing exercise. ..." (Emphasis added).
[AB/Tab 16/EB 1981]

95. In the Appellants' case, the Judge gave no, or no adequate, consideration to the prejudice that would be caused by allowing the jury to take Exhibit 5 with them to their deliberations. In fact, asked by Ms Llewellyn KC whether it was the Judge's "*methodology*" not to show exhibits to the jury, the Judge stated that, once read, "*the jurors will have them [the documents] during deliberations*"
[EB/922/13-24].

96. Undoubtedly, the document would have caused prejudice to the Appellants as the jury would have had in front of them an alleged admission by Mr Millings, which in turn implicated Mr Ennis. The fact it was there, in black and white, before the jury, would have elevated the weight which the jury gave it to very significantly and adversely to the Appellants.

97. Moreover, there were other parts of the statement which contained purely speculative and otherwise inadmissible evidence. Notably, DS Fearon's statement that the Rav 4 and two F150 Pick Up trucks were taken as they were suspected as being involved with the double murders was a matter that was never proved.

The Judge's directions on Mr Millings' alleged admission were inadequate

98. To the extent that Mr Millings' alleged statement was properly admitted, it is submitted that the Judge's directions to the jury were inadequate given the obvious risk that the jury would place disproportionate weight on its content. In particular:

- i. The Judge failed to articulate any of the reasons undermining the reliability of DS Fearon's statement, including (but not limited to): (a) the failure to advise Mr Millings of his right to legal advice at an appropriate time and in a proper form; (b) the failure to retain the original "*piece of paper*" allegedly recording the admission; (c) the failure to invite Mr Millings to read over the alleged admission, to confirm its content is true, is made of his own free will, and to sign it; (d) the failure to invite

Constable Pryce to sign the statement; (e) the failure to get Mr Millings to write the admission himself with the cautions and warnings contained in the Judges' Rules.

- ii. The Judge failed to provide any warning about the status of the alleged admission on Mr Ennis. This is dealt with next.

The Judge failed to direct the jury on whether and how Mr Millings' alleged admission was evidence against Mr Ennis

99. In **R v Hayter** [2005] 2 All ER 209 WKR 605, Lord Steyn stated the trite principle that:

"A voluntary out of court confession or admission against interest made by a defendant is an exception to the hearsay rule and is admissible against him. That was so under the common law. ... In a joint trial the prosecution may not rely on what the maker of a confession said against a co-accused. This is a general rule of law. It is buttressed by a rule of practice requiring a trial judge to direct the jury to ignore a confession made by an accused in considering the case against a co-defendant."
[AB/Tab 15/EB 1946/7]

100. The majority went on to hold that where in a joint trial, defendant A makes an admission against interest and the jury is satisfied that defendant A is guilty, the jury is then entitled to consider the findings they made against defendant A, including the findings they made in relation to the admission against interest, when considering the case against defendant B. In **Persad v The State** [2007] 1 WLR 2379, the Privy Council confirmed that the "*modification*" articulated in **Hayter** applies not just to England and Wales but also to other jurisdictions (there, Trinidad and Tobago): see Lord Brown at [AB/Tab 8/EB 1870/24].

101. In this case, the Judge made no direction whatsoever as to how the jury was to treat Mr Millings' alleged admission as against Mr Ennis. The Judge simply informed the jury that DS Fearon's statement was admitted to demonstrate the differences in page type and ink used, and then stated "*So, you will have to look at the statement, Mr. Foreman and members of the jury, to see what you make of it. Is it something that you can rely on as words used by Mr. Millings. Are you satisfied to the extent that you feel sure that Mr. Millings*

used these words to Inspector Fearon. These are matters that you have to consider, in determining the issues which are placed before you.” [EB/1297/8-17]

102. The failure to direct the jury at all as to how to treat Mr Millings’ evidence as against Mr Ennis was a fundamental flaw which renders Mr Ennis’ conviction a miscarriage of justice.

Conclusion on the admission of Mr Millings’ alleged admission

103. For these reasons, the Board is invited to conclude that the admission of Mr Millings’ statement was improper and/or that the Judge’s directions dealing with it were inadequate such that the Appellants’ convictions are unsafe.

ISSUE 4: THE PROVISO

The law

104. Section 14(1) of the Judicature (Appellate Jurisdiction) Act provides that:

“The court on any . . . appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the Appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.” **[AB/Tab 1/EB 1776]**

105. A summary of the principles that govern the application of the proviso is set out in ***Stafford v The State (Note)*** [1999] 1 WLR 2026 per Lord Hope:

“The test which must be applied to the application of the proviso is whether, if the jury had been properly directed, they would inevitably

have come to the same conclusion upon a review of all the evidence: see *Woolmington v Director of Public Prosecutions* [1935] AC 462, 482-483, per Viscount Sankey LC In *Stirland v Director of Public Prosecutions* [1944] A.C 315, 321 Viscount Simon L.C said that the provision assumed: '*a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict.*' As he explained later on the same page, where the verdict is criticised on the ground that the jury were permitted to consider inadmissible evidence, the question is whether no reasonable jury, after a proper summing up, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken on the ground of its inadmissibility. Where the verdict is criticised on the ground of a misdirection such as that in the present case, and no question has been raised about the admission of inadmissible evidence, the application of the proviso will depend upon an examination of the whole of the facts which were before the jury in the evidence." **[AB/Tab 11/EB 1906]**

Submissions

106. The Appellants make the following submissions.
107. First, the prosecution's conduct complained of under Ground 2 is so serious that it has deprived the Appellants of their right to due process and a fair trial. As **Randall** and **Bernard** make clear, where established, the convictions must be quashed: the nature of the evidence against the Appellants is irrelevant.
108. Second, the improper admission and/or the failure properly to direct on Mr Millings' alleged admission cannot be regarded as anything other than a serious error. Had this not gone before the jury, it cannot be said that the jury would inevitably have convicted.
109. Third, the case against the Appellants was in no sense overwhelming:
- i. The prosecution's only evidence came from Mr Cooper. The ATM photographs of him smiling whilst withdrawing money from the deceased's bank account on the day of the murder and the next day represented damning evidence against him.

- ii. Mr Cooper's evidence was therefore self-serving; he had every motive to pin the blame on the Appellants – indeed he received a significant benefit in the form of a deal whereby he was not prosecuted for murder, and he received a sentence of only 5 years. The Appellants do not know the extent to which Mr Cooper's proposed evidence against the Appellants was found to mitigate the serious crimes he faced of conspiracies to kidnap and rob the deceased.
- iii. It is noteworthy that Mr Cooper only decided to give evidence against the Appellants on 9 December 2010. This is after both Mr Ennis and Mr Millings had been granted bail in 2009 and 2010, respectively.
- iv. There was no independent evidence linking the Appellants to the crime. In particular:
 - a. There was no forensic testing of the scene linking the Appellants to the murder. Mr Cooper's evidence was that the deceased were tied up by the Appellants with clothes from Mr McKenzie's car before they were murdered **[EB/418/15]**. No testing appears to have been conducted, such as DNA testing, to see whether the Appellants' DNA was found on the deceased.
 - b. The police secured a number of vehicles said to be involved in the alleged offending and sent them for forensic testing. DS Fearon's statement details three vehicles that were sent for forensic testing: a blue Toyota Rav 4 Station Wagon, Reg 3038 EV; a Black F150 Ford Pick Up, Reg 4627 EL; and a black Ford F150 Pick Up, Reg 6687 DL. No results were ever given.
 - c. In evidence, DS Fearon also stated that on 4 July 2008, he attended the Riversdale police station and observed a white Toyota at the compound **[EB/926]**. This was presumably a reference to Mr McKenzie's car in which Mr Cooper said the Appellants abducted the deceased **[EB/414]** and in the trunk of which Mr Cooper said the Appellants put the murder knife, as well as clothes the Appellants used to wipe off the blood from

their hands and the knife [EB/431/11-17]. Again, there was no evidence linking the Appellants to Mr McKenzie's car.

110. This is clearly not a case in which the jury would inevitably have convicted.

CONCLUSION

111. For these reasons, the Board is invited to allow the appeal and quash the Appellants' convictions.

9th September 2026

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Annex A: The material provisions of the Judges' Rules in the Appellants' case

1. Rule II provides that where an officer has reasonable grounds for suspecting that a person has committed an offence, he must caution him before any questions are put. Rule II continues that:

“When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.”

2. Rule IV continues:

IV. All written statements made after caution shall be taken in the following manner:

(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

"I, , wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

" I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

" I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

(f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

3. *Appendix B: Administrative Directions on the Interrogation and the Taking of Statements* provides materially that:

1. Procedure generally

(a). When possible statements of persons under caution should be written on the forms provided for the purpose. _ Police officers'

notebooks should be used for taking statements only when no forms are available. ...

2. Record of interrogation

Rule II and rule III(c) demand that a record should be kept of the following matters: — ...

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present. ...

7. Facilities for defence

(a) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so. ...

(b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.”