

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

B E T W E E N :

ANDRE ENNIS

- and -

PASMORE MILLINGS

Appellants

- v -

THE KING

Respondent

PRÉCIS

1. On 19 June 2012, before Hibbert J and a jury, the Appellants were convicted of the murders of Mr Taiwo McKenzie and Ms Janelle Whyte. On 17 September 2012, the Appellants were each sentenced to life imprisonment, with a pre-parole period of 50 years with respect to the murder of Ms Whyte, and of 40 years with respect to Mr McKenzie. The sentences were to run concurrently.
2. On 19 February 2021, the Court of Appeal (Brooks P, Sinclair-Haynes and Foster-Pusey JJA) dismissed the Appellants' appeals against conviction but the pre-parole periods for sentence were reduced to 40 years.
3. On 10 March 2026, the Board (Lord Lloyd-Jones, Lady Rose and Lord Richards) granted permission to appeal to the Privy Council.
4. The Grounds of appeal are threefold:
 - a. 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 ('Ground 1')?
 - b. 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 substantial miscarriage of justice ('Ground 2')?
 - c. 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 ('Ground 3')?

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STATEMENT OF FACTS AND ISSUES

STRUCTURE OF THE STATEMENT OF FACTS AND ISSUES

1. This Statement of Facts and Issues is structured as follows:
 - i. Introduction.
 - ii. Summary of the Prosecution's Case.
 - iii. The Investigation.
 - iv. Mr Cooper's Statements and Plea.
 - v. The Trial.
 - vi. Court of Appeal Proceedings.
 - vii. Proceedings before the Privy Council.
 - viii. Issues For Determination.

INTRODUCTION

2. On 10 March 2026, the Board (Lord Lloyd-Jones, Lady Rose and Lord Richards) granted the Appellants permission to appeal their convictions for murder, along with an extension of time to file the application **[EB/1674]**. The Grounds are that the Appellants' convictions amount to a substantial miscarriage of justice for the following reasons **[EB/6/3]; [EB/21-28]**:

- i. The improper failure to disclose the terms of a plea deal between the prosecution and the only prosecution witness, Mr George Cooper ('Ground 1').
 - ii. The improper and undisclosed contact between the prosecution and their only witness, Mr Cooper, while he gave evidence at trial ('Ground 2').
 - iii. The improperly admitted statement from the investigating officer, Detective Sergeant Fearon, which records an alleged admission from Mr Passmore Millings of involuntary presence at the scene, and which attributed responsibility to Mr Andre Ennis ('Ground 3').
3. The Board further directed the Appellants to file a formal application for disclosure. On 8 April 2026, the Appellants filed their disclosure application **[EB/1675- 1698]**.
4. On 15 May 2026, the Respondent provided disclosure of the documents leading up to and from the trial.
5. On 19 May 2026, the Board (Lord Lloyd-Jones, Lady Rose and Lord Richards) ordered specific disclosure relating to three broad issues **[EB/1699 – 1701]**, namely: (i) documentation from the trial record, (ii) documentation relating to Mr Cooper's alleged plea deal, and (iii) disclosure relating to the alleged contact between the prosecution and Mr Cooper during the trial.
6. On 19 June 2026, the Respondent served the following affidavits:
 - i. Ms Keri-Ann Kemble, junior Crown Counsel in the Appellants' prosecution, dated 18 June 2026 **[EB/1702]**.
 - ii. Ms Claudette Thompson, former deputy DPP (now DPP), dated 18 June 2026 **[EB/1704]**.
 - iii. Ms 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 **[EB/1707]**.

- iv. Ms Paula Llewellyn KC, former DPP who had conduct of the Appellants' prosecution, dated 19 June 2026 [EB/1732].
7. On 5 August 2026, the Respondent served the following supplemental affidavits:
- i. Ms Claudette Thompson dated 21 July 2026 [EB/1742];
 - ii. Ms Paula Llewellyn KC dated 16 July 2026 [EB/1740];
 - iii. Ms Keri-Ann Kemble dated 2 July 2026 [EB/1739].
8. On 12 August 2026, the Respondent provided disclosure of additional documents from the trial process.
9. The appeal is to be heard on 28 and 29 October 2026.

SUMMARY OF THE PROSECUTION'S CASE

10. On 6 November 2007, the Appellant Andre Ennis (also known as 'Ricardo Bryan' and 'Ricky') and George Cooper (also known as 'Troy'), were riding Mr Ennis' scooter when Taiwo McKenzie, driving a white Toyota, drove into them. Mr Cooper was injured and Mr Ennis' scooter was damaged. Mr McKenzie agreed to compensate for the damage and medical bills. Mr McKenzie took Mr Ennis and Mr Cooper to the hospital. It was thereafter discovered that the scooter was not registered for use on public roads / uninsured, and Mr McKenzie refused to pay for the costs of repairs to the scooter.
11. On 7 November 2007, Mr Ennis directed Mr Cooper to arrange to meet Mr McKenzie at a park in Havendale (on Park Avenue) regarding the medication Mr McKenzie agreed to pay for. Mr Ennis and Mr Cooper attended with, among others, Pasmore Millings (also known as 'Shane Brown' and 'T.K.'). Mr McKenzie attended with his girlfriend, Jannelle Whyte. Mr McKenzie and Ms Whyte were then forcibly driven to Mount Solus. They were tied up, gagged and killed with a knife.

THE INVESTIGATION

12. On 7 November 2007, photographs of Mr Cooper were taken while he used Ms Whyte's Scotia bank card at an ATM machine withdrawing money from her account **[EB/1005 - 1008]** (Exhibits 6a-d).
13. On 8 November 2007, DC Debbia Jennings recorded a statement from Mr Ennis. Mr Ennis stated that on 6 November 2007, he was riding his scooter with Mr Cooper. Mr McKenzie drove into the scooter causing damage and injury, which required a trip to the hospital. On 9 November 2007, Mr Ennis gave a further statement where he stated that the driver who caused the accident was not going to fix Mr Ennis' bike or pay for his medical bills **[EB/851/1]**. Both statements became Exhibit 4 and were read into the Record **[EB/838]**.
14. On the morning of 9 November 2007, Mr McKenzie and Ms Whyte's bodies were found in the Mount Salus District of St. Andrew. Their throats had been cut, and they had bled to death.
15. Between 12 and 14 November 2007, Mr Cooper was interviewed by the police and a Question and Answer booklet ('Q&A booklet') was produced **[EB/206]**. It was not read into the record. It was disclosed by the Respondent on 15 May 2026. Mr Cooper stated that he was forced by Mr Ennis and Mr Millings to arrange a meeting with Mr McKenzie; that they arranged to meet Mr McKenzie at the park on Park Avenue; that following Mr McKenzie and Ms Whyte's arrival they were forcibly taken away by Mr Ennis and Mr Millings; but, that Mr Cooper did not go with them. At trial, Mr Cooper stated that others were present during these events **[EB/409/13ff and 414/20 – 415/25]**.
16. On 18 November 2007, it is asserted that Mr Millings attended the Constant Spring police station and informed DS Fearon - the lead investigator - that he was present at the time of the murders, but implicated Mr Ennis **[EB/809ff]**. DS Fearon states that he took a note of Mr Millings' words on a piece of paper, which he then incorporated into his own statement, and subsequently threw away his original note. This part of DS Fearon's statement was read into the Record **[EB/903]**. It seems that the whole of DS Fearon's statement became Exhibit 5 **[EB/980]**.

17. On 21 November 2007, Mr Ennis was interviewed by the police and a Q&A booklet was produced. This became Exhibit 1 and was read into the record [EB/708ff]. The original Q&A booklet starts at [EB/1412]. Mr Ennis accepted he was involved in an accident on 6 November 2007. He stated he did not see Mr McKenzie or Ms Whyte after leaving hospital. On 26 November 2007, a further Q&A took place. This became Exhibit 3 and it was read into the Record [EB/755ff]. The original Q&A booklet is at [EB/1457]. Mr Millings' alleged statement of Mr Ennis' involvement was put to him, and he denied it.

18. On 24 November 2007 and 26 November 2007, Mr Millings was interviewed by the police and a Q&A booklet was produced, which was read into the Record as Exhibit 2 [EB/734ff]. Mr Millings denied involvement.

The charges

19. On 27 November 2007, Messrs Cooper, Ennis and Millings were charged with the murders of Mr McKenzie and Ms Whyte.

Bail

20. In 2009, Mr Millings was granted bail, and in 2010 Mr Ennis was granted bail. Mr Cooper remained in custody throughout [EB/554-5].

MR COOPER'S STATEMENTS AND PLEA

21. On 9 December 2010, Mr Cooper provided a statement via his lawyer Mr Lorne stating: *"I am 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].

22. On 17 December 2010, Ms Llewellyn KC, the then DPP, approved the preferment of charges of conspiracy to kidnap and conspiracy to kidnap against Mr Cooper; a *nolle prosequi* was drafted for the charges of murder and conspiracy to murder [EB/1709 at [17]] and [EB/1730].

23. On 4 January 2011, Mr Cooper gave a statement to the lead investigating officer DS Fearon to the effect that he was present at the scene but that the

Appellants were responsible for the murders **[EB/1709 at [15]]**. The statement is at **[EB/1714 and EB/253]**.

24. On 11 January 2011, the *nolle prosequi* is entered on Mr Cooper's murder and conspiracy to murder charges. Mr Cooper pleads guilty to the conspiracy to kidnap and rob charges **[EB/1709 at [17]]**. The *nolle prosequi* is at **[EB/1728]**.
25. On 25 February 2011, Mr Cooper is sentenced to 8 years for the conspiracy to kidnap and 5 years for the conspiracy to rob, to run concurrently **[EB/1709 at [20]]**.¹
26. On 25 February 2011, Ms Kathy-Anne Pyke, who had conduct of the prosecution between late 2009 and October 2011 **[EB/1707 at [3]]**, met with Mr Cooper where she *"outlined to him the importance of speaking the truth about what occurred and the importance of keeping in touch with the police in the event of any issues or concerns as regards his safety."* She has no notes of the meeting **[EB/1709 at [20]-[21]]**.
27. On 2 March 2011 (sometimes referred to in evidence as 7 March 2011), Mr Cooper gave DS Fearon a further statement **[EB/1513 at [9]]**.
28. On 13 February 2012, Ms Keri-Ann Kemble, then Acting Assistant DPP assigned to this case, accompanied Acting Deputy DPP, 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. We then asked Mr. Cooper to tell us, in his own words, the events of November 6th to 8th 2007 relevant to the murder case. We also showed Mr. Cooper a copy of the photograph showing him smiling whilst in the ATM on the 7th November 2007. To the best of my recollection Mr. Cooper was cooperative and we gave him a copy of his witness statements before we departed from the Horizon Remand Centre."* **[EB/1702 at [3]-[4]]**.

¹. In the letter of Claudette Thompson dated 12 June 2012, it states that Cooper received 4 years for the conspiracy to rob **[EB/1513 at [8]]**.

THE TRIAL

29. The Appellants' trial took place between 4 June 2012 and 19 June 2012 before Hibbert J and a jury.

Mr Cooper's evidence

30. Examination in chief took place on 6 and 7 June 2012. On 6 June 2012, Cooper gave evidence consistent with his 2011 statements [EB/378-434].

Mr Cooper retracts his evidence

31. On 7 June 2012, at the start of Mr Cooper's evidence he addressed the Judge saying: "*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 of Mr Cooper's evidence

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

33. In her affidavit dated 19 June 2026, Ms Paula Llewellyn KC states that she went to conduct a welfare check on Mr Cooper based on the change in his demeanour, but that Mr Cooper refused to speak to her [EB/1734/16].

34. Examination-in-chief of Mr Cooper then resumes. Mr Cooper states that "*I refuse to continue to mislead this honourable Court*" [EB/440/9].

35. 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 says, "*The truth is I was never on any hill, sir.*" [EB/442/8-9].

36. Mr Cooper goes on to say 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/446/14-22]

The second adjournment

37. At the request of Ms Llewellyn KC, an early adjournment for lunch is taken at 11.25am so that, in the words of the Judge, Ms Llewellyn can “*advise herself*” [EB/448/18].

38. The Court adjourned until 2pm.

39. In her affidavit dated 19 June 2026, Ms Llewellyn KC states that during the lunch adjournment she conducted another “*welfare check*” where she was informed by Mr Cooper that he feared for the safety of his family following an overnight threat. She states that she immediately informed the most senior police authority at the Supreme Court and the Superintendent in charge at Hunts Bay Police. A police team was then sent to Mr Cooper’s father’s (also described as stepfather) house where “*they ascertained that the report being made was credible*”. Ms Llewellyn KC states that she then “*made a request to the police for Mr Cooper’s stepfather and girlfriend to be taken to the Court in order for Mr Cooper to assure himself of the safety of these other family members*” [EB/1734/18 – 1735/21].

40. Ms Llewellyn KC states that Mr Cooper expressed to her that it was as a result of the firebombing overnight and the threat to his father’s safety and his consequent fear that caused him to say that he “misled” the court in the evidence that he had given the day before [EB/1736/24].

Mr Cooper retracts his retraction

41. 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*” and thereafter reverted to the account contained in his previous statements.

Cross-examination of Mr Cooper

42. In cross-examination by Mr Mitchell (for Mr Ennis):

- i. Mr Cooper answered several questions with “*I can’t recall*” and refused to look at his Q & A booklet when it is suggested to him that it contradicts his statements in 2011.
- ii. When it was put that Mr Cooper provided his 2011 statements as part of a plea bargain, Mr Cooper stated that he “*acted upon the advise (sic) of my attorney*”, Mr Michael Miguel-Lorne.
- iii. When asked about an “*exchange between yourself and the learned Director yesterday morning*”, Mr Cooper responded “*She was enquiring about my well being*”. This suggested that a meeting took place between Ms Llewellyn KC and Mr Cooper while he was giving evidence [EB/531].

43. In cross-examination by Mr Tavares-Finson (for Mr Millings):

- i. Mr Cooper stated that he did not commit any offences, and that he was at all times “*forced*” by the Appellants. When asked why he had pleaded guilty to robbery and kidnap, he stated:- “*Because I was instructed to do so by my attorney*”.
- ii. On resumption of cross-examination on 11 June 2012, Mr Cooper stated that he was not interviewed by anyone from the DPP’s office before providing his 2011 statements.
- iii. Mr Cooper stated that he did not ask to see DS Fearon, and he was not aware that DS Fearon was to attend prison. He was not told that he was going to see DS Fearon but that he was nonetheless not surprised to see DS Fearon.
- iv. In March 2011, he spoke with “*two ladies*” who informed him that he was to be called upon to give evidence in this matter.
- v. He did not speak with DPP officials during either adjournment on 7 June 2007 about his evidence.

Defence disclosure applications

44. Following this evidence, Mr Tavares-Finson sought a direction from the Judge that the DPP “*provide full disclosure in relation to all matters relevant to a decision to first of all, on the part of the witness Mr. George Cooper, to give a statement to the police and to become a witness in this matter. And full disclosure in relation to all matters leading up to that decision. The basis on which the decision was made, any discussion with the potential witness, and the attorney for the potential witness*” [EB/608].
45. The prosecution said that there was “*no difficulty*” in providing this “*As far as it exists, because a lot of it resides in discussions, with, discussions with him and his attorney*” [EB/612/8]. The Judge stated that it seemed to him that Mr Cooper was giving evidence on the basis that “*he pleaded guilty to some offence*”, and that he saw no difficulty in the DPP providing the basis on which there was a plea bargain. When Ms Llewellyn KC stated that she could give the “*sequence*” as to how Mr Cooper came to give evidence, the Judge stated that disclosure was required “*Which tells how in relation to his decision to or what caused him to be giving evidence in the first place.*” [EB/614/6].
46. 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].
47. On 13 June 2012, disclosure was revisited by Mr Tavares-Finson who stated 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, 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/899].

48. 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

49. The letter, authored by Claudette Thompson, the then Ag Deputy DPP, dated 12 June 2012, summarised the chronology in relation to Mr Cooper entering his pleas and providing statements (see above at paras 21 – 28) [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 further stated:

“We would add in the spirit of transparency that as a part of preparation for the trial of the matter which was to commence on the 13th day of February 2012 Counsel who had been specifically assigned to conduct the prosecution Mrs. Kamar Henry-Anderson, Acting Deputy Director of Public Prosecutions and Miss Keri-Ann Kemble Acting Assistant Director of Public Prosecutions, visited Mr. George Cooper at the Horizon Remand Centre. 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.”

Photographs from the ATM

50. On 14 June 2012, Mr Cooper was recalled where a series of four photographs were shown to him, which became Exhibits 6a-d. Mr Cooper accepted these showed him taking money out from a cash machine using Ms Whyte's bank card. Mr Cooper asserted that the left arm and partial face of a second person captured in the images was Mr Ennis [EB/1010/9-11].

DS Fearon's evidence at trial relating to Mr Cooper's 2011 statements

51. DS Fearon stated in evidence that on an unspecified date he was contacted by Mr Cooper's lawyer, Mr Lorne, and informed that Mr Cooper had "*opted to be a witness*". DS Fearon and Detective Corporal Brown had a meeting with officials from the DPP's office (he could not remember who) where he received oral "*guidance*" [EB/954-5]. On 4 January 2011, DS Fearon attended Horizon Remand Center where Mr Cooper gave a statement to the effect that he was present at the scene but that the Appellants were responsible for the murders. DS Fearon was present in court when Mr Cooper pleaded guilty. In relation to the statement dated 2 March 2011, he was directed to take it by officials of the DPP.

DS Fearon's evidence re. Mr Millings' statement on 18 November 2007

52. DS Fearon stated that on 18 November 2007, Mr Millings presented himself at Constant Spring Police Station in the company of a woman corporal [EB/890]. DS Fearon stated that he cautioned Mr Millings. DS Fearon stated that if Mr Millings wanted to make a statement, he should await his lawyer. However, Mr Millings stated that he was involuntarily present at the time in question, and that Mr Ennis was at fault. DS Fearon states that he took notes of this on a piece of paper, which he later transferred to his witness statement, the original notes he then threw away. DS Fearon accepted that his witness statement was not signed and dated on each page, although it was signed on the last page. He also agreed that the type of paper used setting out Mr Millings' words are different from the other pages, and that the ink differs throughout the statement [EB/973ff]. The statement was admitted into evidence as Exhibit 5.

DS Fearon's other evidence

53. DS Fearon also gave evidence that on 16 November 2007, he collected three vehicles [EB/886].

54. The first was a blue Toyota Rav4, which he collected from 25 Fairfax Drive, Havendale, which is the property of Tameka Ennis, (Mr Ennis' sister). DS Fearon took it to Constant Spring police station.

55. The second was a blue Ford 150 pickup truck (reg. 6687 DL), and the third a blue F150 pickup truck (reg. 4627EL), which he collected from 50 Island Close, Havendale, the property of Hortense McClarty. Again, the vehicles were taken to the Constant Spring police station for the purpose of forensic testing [EB/889].

56. On 4 July 2008, DS Fearon attended the Riversdale police station and observed a white Toyota at the compound [EB/926]. To his knowledge, it was not forensically tested.

57. No forensic evidence was adduced by the prosecution relating to these vehicles.

The Appellants' evidence at trial

58. On 18 June 2012, Mr Ennis gave a statement from the dock: *"I was not involved in the accident. I did not go to Mount Salus I don't know anything about what took place at Mount Salus and I did not go to any ATM machine."* [EB/1104].

59. Mr Millings gave an unsworn statement from the dock: *"I was not involved in any accident nor did I pick up any bike. The first time I saw Cooper was in Half-Way-Tree Court when I first got charged, I did not go in any car with anyone and I did not kill anyone at all, never."* [EB/1133]

Conviction and sentence

60. On 19 June 2012, the Appellants were convicted of the murders of Mr McKenzie and Ms Whyte [EB/1321].

61. On 17 September 2012, they were each sentenced to life imprisonment, with a pre-parole period of 50 years with respect to the murder of Ms Whyte, and of 40 years with respect to Mr McKenzie. The sentences were to run concurrently [EB/1356-1362].

COURT OF APPEAL PROCEEDINGS

62. On 19 February 2021, the Court of Appeal (Brooks P, Sinclair-Haynes and Foster-Pusey JJA) dismissed the Appellants' appeals against conviction but the pre-parole periods for sentence were reduced to 40 years **[EB/125]**.

63. The application for leave to appeal against conviction and sentence raised the following six grounds:

- i. The adequacy of the trial judge's summation in respect of accomplice evidence.
- ii. The trial judge's directions in respect of circumstantial evidence.
- iii. The admission of evidence said to have been irregularly obtained.
- iv. The delay in the hearing of the trial and of the appeal.
- v. The trial judge's summation on the issue of mere presence.
- vi. The sentences imposed.

64. Of relevance to the current appeal are grounds (i) and (iii).

65. In relation to (i), the Appellants submitted that the trial judge failed adequately to warn the jury about the dangers inherent in relying on the uncorroborated evidence of an accomplice. In particular, the trial judge failed to remind the jury that (a) Mr Cooper during examination in chief retracted his previous evidence about being at Mount Salus, which retraction he later retracted following various adjournments, and (b) Mr Cooper's refusal during cross-examination to look at statements he had previously given which the defence stated showed that his testimony was inconsistent **[EB/131/19]**. The Court of Appeal held that the trial judge had fulfilled his duty to the jury and that in the end the jury believed Mr Cooper, which was their province **[EB/138/30]**.

66. In relation to (iii), the Appellants submitted that the Q&A booklets read into evidence as well as the statement from DS Fearon which purported to record Mr Millings' admission as to presence and Mr Ennis' involvement were highly

prejudicial: [EB/142/41]. The Court of Appeal found that the reading of the Q&A booklet(s) did not cause prejudice: [EB/144/50]. The Court of Appeal did not deal with the reading of DS Fearon's statement and Mr Millings' asserted admission.

67. On 27 September 2021, the Court of Appeal refused an application for permission to appeal to the Privy Council.

PROCEEDINGS BEFORE THE PRIVY COUNCIL

Instruction of Simons Muirhead and Burton

68. In January 2022, Simons Muirhead and Burton ('SMB') accepted instructions on behalf of the Appellants. The witness statement of Ms Bethany Jackson details what took place thereafter [EB/1629-1632]. A detailed chronology was appended to the witness statement [EB/1634-1637]. In short summary, there were repeated requests for the disclosure of documentation arising from the investigation and trial. These requests were made to Charles Russell Speechlys, the DPP's office, and the defence attorneys.

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

69. On 12 June 2025, Ms Paula Llewellyn KC, the then DPP and leading prosecution counsel in the Appellants' case, 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]**

The application for permission

70. On 1 September 2025, the Appellants submitted an application for leave to appeal in which they sought inter alia that the Board direct disclosure. As detailed above at paras 4 – 8, the Respondents have served certain documentation and affidavits in response to both the Appellants’ application, and the Board’s order for disclosure.

ISSUES FOR DETERMINATION

71. The issues for the Board to determine are:

- i. 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 (‘Ground 1’)?
- ii. 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 substantial miscarriage of justice (‘Ground 2’)?
- iii. Whether DS Fearon’s evidence recording Mr Millings’ alleged oral statement was properly admitted at trial and, if not, whether its admission amounted to a substantial miscarriage of justice (‘Ground 3’)?
- iv. If the Appellants’ appeals are allowed, whether a retrial should be ordered?

25 August 2026

BENJAMIN NEWTON K.C.

GRAEME L. HALL

Doughty Street Chambers, London

Counsel for the Appellant

Appearing pro bono

TOM POOLE K.C.

3 Hare Court, London

Counsel for the Respondent

CHRONOLOGY

DATE	EVENT	SOURCE
06.11.07	Andre Ennis and George Cooper were riding a motorcycle when it collided with a car driven by Taiwo McKenzie.	EB/127
07.11.07	Alleged date of the murder of Mr McKenzie and Ms Whyte.	EB/128-9
07.11.07	Mr Cooper made a withdrawal of \$15,000 using Ms Whyte's bank account at an ATM. Photographs were taken, four of which were adduced as evidence and became Exhibits 6a-d .	
08.11.07	Mr Cooper made a further withdrawal of \$9,000 using Ms Whyte's bank account at an ATM.	
08.11.07	DC Jennings took a statement from Mr Ennis.	EB/1475
09.11.07	DC Jennings took second statement from Mr Ennis. The statements dated 08.11.07 and 09.11.07 became Exhibit 4 .	EB/1486
09.11.07	Mr McKenzie and Ms Whyte's bodies are found.	
12-14.11.07	Mr Cooper questioned by police. Q&A booklet produced.	EB/206
16.11.07	At 5.30am, DS Fearon attended 25 Fairfax Drive and collected a blue Toyota Rav4 from Tameka Ennis. DS Fearon's statement records the registration as 3038 EV. At 9am, DS Fearon attended 50 Island Close [NB. the original statement states "50 Highland Close"] and collected a blue Ford 150 Pick Up Reg 6687 DL from Hortense McClarty. DS Fearon's statement records the vehicle colour as black. At 1 to 2pm, DS Fearon collected a blue F150 Pick UP truck Reg EL 4627 from Half-Way-Tree Police Station. DS Fearon's statement provides the vehicle colour as black. The vehicles were taken to Constant Spring Police Station for forensic testing.	EB/886/16 – 889/4 EB/1502
16.11.07	DS Fearon collects blue Toyota Rav4 from 25 Fairfax Drive, Havendale, property of Tameka Ennis, (Mr Ennis' sister) and took it to Constant Spring police station.	EB/886
16.11.07	DS Fearon collects a blue Ford 150 pickup truck (reg. 6687 DL), and a blue F150 pickup truck (reg. 4627EL) from 50 Island Close, Havendale, the property of Hortense McClarty, (Mr Millings' grandmother). The vehicles were taken to the Constant Spring police station for the purpose of "forensic".	EB/889
18.11.07	Mr Millings taken to Constant Spring Police Station. DS Fearon records Mr Millings' alleged statement admitting presence on a piece of paper.	EB/890
18.11.07	DS Fearon asserts that Mr Millings gave a statement implicating Mr Ennis [EB/890] . It was read into the Record [EB/905] and became Exhibit 5 [EB/1500] .	EB/903

20.11.07	Mr Millings' first interview by DS Fearon and Constable Carlington Simms.	EB/236
21.11.07	Mr Ennis' first interview by DS Fearon and Constable Brown. Q&A booklet produced which is read into the Record [EB/708] and became Exhibit 1 [EB/1412] .	EB/1412
24.11.07	Mr Millings' second interview by DS Fearon and DC Brown.	EB/1443
26.11.07	Mr Ennis' second interview by Detective Constable Brown. Further Q&A booklet. This became Exhibit 3 .	EB/1457
26.11.07	Mr Millings' third interviewed by DS Fearon and DC Brown. Q&A booklet produced for 24 and 26 November 2007 interviews. Read into the record and became Exhibit 2 .	EB/1447
27.11.07	Messrs Cooper, Ennis and Millings charged with 2 counts of murder.	
28.11.07	On or around this date, DS Fearon writes the statement which became Exhibit 5 . DS Fearon discards the piece of paper recording the original alleged admission	EB/904
04.07.08	DS Fearon attended the Riversdale police station and observed a white Toyota Sprinter vehicle at the compound. To his knowledge it was not forensically tested.	EB/926
2009	Mr Millings granted bail.	EB/555
2010	Mr Ennis granted bail.	EB/555
09.12.10	Mr Cooper gives statement via lawyer Mr Lorne that he is willing to speak the truth about the killing of Mr McKenzie and Ms Whyte and to give evidence for the prosecution. Mr Cooper states that he is desirous of getting protection as his life may be in danger.	EB/239
16.12.10	Mr Cooper's indictment for offences of conspiracy to kidnap and rob.	EB/1709 at [18] EB/1730
17.12.10	DPP approved the preferment of charges of conspiracy to kidnap and conspiracy to kidnap against Mr Cooper; a <i>nolle prosequi</i> was drafted for the charges of murder and conspiracy to murder.	EB/1709 at [17]
04.01.11	Mr Cooper gave a statement to the lead investigating officer, DS Fearon, to the effect that he was present at the scene but that the Appellants were responsible for the murders.	EB/253 EB/1714
11.01.11	The <i>nolle prosequi</i> is entered on Mr Cooper's murder and conspiracy to murder charges. Mr Cooper pleads guilty to the conspiracy to kidnap and rob charges.	EB/1709 at [17]
25.02.11	Mr Cooper is sentenced to 8 years for the conspiracy to kidnap and 5 years for the conspiracy to rob, to run concurrently ¹ .	EB/1709 at [19]

¹. In the letter of Claudette Thompson dated 12 June 2012, it states that Mr Cooper received 4 years for the conspiracy to rob **[EB/1513 at [8]]**.

25.02.11	Ms Kathy-Anne Pyke, prosecutor with conduct between late 2009 and October 2011, meets with Mr Cooper. No notes were made of the meeting.	EB/1709 at [20]-[21]
xx.02.11	Ms Pyke requests a further statement from Mr Cooper.	EB/1709 at [21]
02.03.11	Mr Cooper gave a further statement.	EB/288
13.02.12	Ms Keri-Ann Kemble, then Acting Assistant DPP assigned to this case, accompanied Acting Deputy DPP, Mrs Kamar Henry-Anderson, in a visit to Mr Cooper at Horizon Remand Centre. No notes were made of the meeting.	EB/1702 at [3]
04.06.12	Trial before Hibbert J and jury.	
06.06.12	Mr Cooper starts his evidence in chief.	
07.06.12	Mr Cooper continues to give evidence in chief. Mr Cooper states that he misled the Court yesterday. DPP (Ms Paula Llewellyn KC) asks for a 20 minute adjournment. Judge grants adjournment between 10.25am and 11.02am.	EB/437-8
07.06.12	In her affidavit dated 19 June 2026, Ms Llewellyn KC states that she attempted to conduct a <i>"welfare check"</i> on Mr Cooper based on the change in his demeanour. Mr Cooper refuses to speak to Ms Llewellyn KC.	EB/1734 at [16]
07.06.12	Mr Cooper's examination in chief resumes. Mr Cooper states, inter alia, <i>"I refuse to continue to mislead this honourable Court"</i> ... <i>"The truth is I was never on any hill, sir."</i>	EB/440 - 442
07.06.12	Ms Llewellyn KC asks for an adjournment. The Judge adjourns between 11.25am and 2pm so that, in the words of the Judge, the DPP could <i>"advise herself"</i> .	EB/451
07.06.12	In her affidavit dated 19 June 2026, Ms Llewellyn KC states that she conducted another <i>"welfare check"</i> on Mr Cooper and reports that she is told by Mr Cooper that overnight there had been a threat to the safety of his family who still lived in Seaview Gardens. Ms Llewellyn KC states that she reported this to the police who then attended Seaview Gardens. The police spoke to the father (also referred to as the step-father) on the phone as he was not at the property. The (step)father is reported to have said that he had left the property the previous night <i>"after the firebombing attack"</i> . The police are reported as saying that the house <i>"had received some damage"</i> . Ms Llewellyn KC has the police bring Mr Cooper's stepfather and girlfriend to court so that Mr Cooper can assure himself of their safety.	EB/1734 at [18] to EB/1735 at [21]
07.06.12	2.18pm: Mr Cooper resumes evidence in chief and retracts his retractions. He states that when he had said that he had misled the Court this was because <i>"I was in fear"</i> .	EB/455
07.06.12	Cross-examination of Mr Cooper by Mr Mitchell (for Mr Ennis).	EB/472
08.06.12	Cross-examination of Mr Cooper by Mr Mitchell continues.	EB/501

08.06.12	Cross-examination of Mr Cooper by Mr Tavares-Finson (for Mr Millings).	EB/534
11.06.12	Cross-examination of Mr Cooper by Mr Tavares-Finson continues.	EB/584
11.06.12	Mr Tavares-Finson seeks disclosure of all matters pertaining to Mr Cooper giving evidence for the prosecution, and whether Ms Llewellyn KC had spoken with Mr Cooper during the adjournments on 07.06.12.	EB/608
12.06.12	Ms Claudette Thompson, Ag Deputy DPP, provides a letter in response to Mr Tavares-Finson's request. This includes information that Ms Keri-Ann Kemble visited Mr Cooper in prison on 13.02.12.	EB/1512
13.06.12	Mr Tavares-Finson states that he is putting the Court on notice that he would be requesting a statement from Ms Kemble as to the details of her meeting with Mr Cooper and the fact that she may be a witness in the case either for the defence or for the Court. The Judge states that if Mr Tavares-Finson wishes to get such a statement he should ask the DPP. Mr Tavares-Finson states that he is going to do that this evening. Mr Tavares-Finson was asked about this in a letter dated 27 March 2025. In his letter dated 31 March 2025, Mr Tavares-Finson KC that <i>"outside the transcript we have no further recollection as to what transpired in the matter of Ms. Claudette Thompson's letter."</i>	EB/901 EB/1671 EB/1672
13.06.12	DS Fearon reads Mr Millings' alleged admission into the Record.	EB/905/23 – EB/909/19
13.06.12	Mr Mitchell (for Mr Ennis) cross-examined DS Fearon from 3.35pm to 4pm.	EB/937 - 947
14.06.12	Mr Tavares-Finson (for Mr Millings) cross-examined DS Fearon. DS' Fearon's statement from on around 28.11.07 is admitted into evidence as Exhibit 5.	EB/950 EB/980
20.06.12	Jurors provided with Exhibits 1 to 6 to take with them into deliberations.	EB/1317
	Appellants are convicted of the murders of Mr McKenzie and Ms Whyte.	EB/1321
17.09.12	Appellants are sentenced to life imprisonment, with a pre-parole period of 50 years with respect to the murder of Ms Whyte, and of 40 years with respect to the murder of Mr McKenzie. Sentences to run concurrently.	EB/1356
19.02.21	Court of Appeal (Brooks P, Sinclair-Haynes and Foster-Pusey JJA) dismissed the Appellants' appeals against conviction but reduced the pre-parole periods for sentence to 40 years.	EB/125
27.09.21	Court of Appeal refused an application for permission to appeal to the Privy Council.	
xx.01.22	Simons Muirhead and Burton accepted instructions to represent the Appellants pro bono.	EB/1629

	There followed various attempts to obtain disclosure and information which can be found in Ms Jackson's chronology.	EB/1634
12.06.25	Ms Llewellyn KC, the then DPP, gives an interview on Nationwide90FM wherein she stated Mr Cooper has stopped his evidence " <i>mid-stream</i> "; she " <i>use[d] my experience to bring him back to engagement and the rest is history</i> "; that she " <i>summoned</i> " Mr Cooper's girlfriend " <i>to assist me to persuade him to continue to give the evidence</i> "; that years after when Mr Cooper came out of prison they invited her to their wedding and she went; and, that she " <i>almost</i> " became godmother to their child.	EB/1639 – 1640
01.09.25	Application for permission to appeal submitted to the Privy Council.	EB/3
10.03.26	The Board (Lord Lloyd-Jones, Lady Rose and Lord Richards) grant permission on the following terms: "1)Extension of time for filing application for permission to appeal is GRANTED. 2) Permission to appeal is GRANTED on all grounds. 3) Permission to the Appellants to rely on the documents in the Supplemental Bundle. 4) The Appellants are to lodge and serve on the Respondent a formal application for disclosure supported by an affidavit."	EB/1674
08.04.26	Appellants submit application for disclosure.	EB/1675
15.05.26	Respondent provides some documentation from the trial process.	
19.05.26	The Board (Lord Lloyd-Jones, Lady Rose and Lord Richards) orders specific disclosure.	EB/1699
19.06.26	Respondent serves the following affidavits: i. Ms Keri-Ann Kemble, junior Crown Counsel in the Appellants' prosecution, dated 18 June 2026 [EB/1702] . ii. Ms Claudette Thompson, former deputy DPP (now DPP), dated 18 June 2026 [EB/1704] . iii. Ms 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 [EB/1707] . iv. Ms Paula Llewellyn KC, former DPP, who had conduct of the Appellants' prosecution, dated 19 June 2026 [EB/1732] .	
05.08.26	Respondent serves the following supplemental affidavits: i. Ms Claudette Thompson dated 21 July 2026 [EB/1742] ii. Ms Paula Llewellyn KC dated 16 July 2026 [EB/1740] iii. Ms Keri-Ann Kemble dated 2 July 2026 [EB/1739]	
28-29.10.26	Appeal hearing before the Board.	