
**Trinity Term**
[2023] UKPC 28
**Privy Council Appeal No 0016 of 2021**

# JUDGMENT

# Caryn Moss (Appellant) *v* The King (Respondent) (Bahamas)

# From the Court of Appeal of the Commonwealth of The Bahamas

before

**Lord Lloyd-Jones**
**Lord Leggatt**
**Lord Stephens**
**Lady Rose**
**Lord Richards**

**JUDGMENT GIVEN ON**
**25 July 2023**

**Heard on 10 May 2023**

*Appellant*
Paul Bowen KC
Murrio D Ducille
Allan Cerim
Odette Chalaby
(Instructed by Simons Muirhead & Burton LLP)

*Respondent*
Rowan Pennington-Benton
Adam Riley
(Instructed by Charles Russell Speechlys LLP (London))

**LORD STEPHENS:**

## 1. Introduction

1. The appellant, Caryn Moss, was tried and convicted on a charge of conspiracy with others to murder O'Neil Marshall ("the deceased") contrary to section 89(1) and section 291(1)(b) of the Penal Code, Chapter 84, as amended by the Penal Code (Amendment) Act 2011 ("the Code"). Bethel J, the trial judge, imposed a sentence of 20 years' imprisonment less one year spent on remand. The appellant appealed against her conviction and sentence to the Court of Appeal of the Commonwealth of The Bahamas and the Director of Public Prosecutions cross-appealed against the sentence as wrong in principle and unduly lenient.

2. The principal issues on the appeal against conviction were: (a) whether the trial judge had misdirected the jury that duress was not a defence to the offence of conspiracy to murder and (b) whether on the facts the defence of duress ought to have been, but was not, left by the trial judge to the jury. The Court of Appeal in a judgment delivered by Evans JA, with which Crane-Scott and Jones JJA agreed, (SCCrApp & CAIS No. 230 of 2018) dismissed the appeal against conviction finding (a) that the trial judge was not wrong to direct the jury that the defence of duress was not open to the appellant on a charge of conspiracy to murder where the murder was actually committed; and (b) that the defence of duress did not arise on the facts of this case. The Court of Appeal also dismissed the appellant's appeal against sentence.

3. In relation to the cross-appeal by the Director of Public Prosecutions (SCCrApp & CAIS No. 238 of 2018), the Court of Appeal held that the trial judge had erred in principle by failing to adhere to the sentencing guideline of 30 to 60 years' imprisonment in circumstances where the trial judge had found there to be no extenuating circumstances. The sentence of 20 years' imprisonment was found to be unduly lenient and was set aside. The Court of Appeal imposed a sentence of 35 years' imprisonment to take effect from the date of conviction, less the time spent on remand.

4. The appellant now appeals to the Board against both conviction and sentence.

5. In relation to the appeal against conviction, the appellant maintains that duress is a defence to the offence of conspiracy to murder and on the facts that the defence ought to have been left to the jury. However, at the start of the hearing the Board indicated that it would assume, without deciding, that duress was a defence to

conspiracy to murder and invited submissions on the question whether – assuming, without deciding, that duress is a defence to conspiracy to murder - the defence ought on the facts to have been left to the jury. If the answer to that question is "no", then the Board considers that the question whether duress can in law be a defence to conspiracy to murder should be determined in a case in which it arises on the particular facts.

6. In relation to the appeal against sentence, the appellant's principal submission is that, even if duress did not afford her a defence, the Court of Appeal failed to take into account the mitigating factor that the appellant had been subjected to coercion.

**2. Factual background**

7. The prosecution case against the appellant was based on her statement to the police made after caution ("the statement") together with her answers during police interview. The appellant did not give evidence at her trial and therefore the following factual background is largely taken from the statement and from her answers. The Board sets out the statement in full in the appendix to this judgment.

8. The deceased, sometimes referred to as "Yardy" or "OJ", was murdered at some time between Saturday 30 April 2016 and Sunday 1 May 2016. At the time of his death, he was in a witness protection programme as he was due to give evidence for the prosecution in a forthcoming trial in which "a notorious leader of a gang" was charged with murder. The appellant admitted in her police interview that she knew that the deceased was a witness in a murder case as she had been told this by him.

9. There was a plot to murder the deceased because he was to give evidence for the prosecution. In her police interview, the appellant admitted that she was aware of the plot. She also admitted that she knew the deceased. No doubt this was the reason why those plotting to murder the deceased approached the appellant to induce her to set him up to be killed. In the statement, the appellant recounted how she had been approached from around December 2015 by three persons, whose approaches were based on the appellant's association with the deceased.

10. The first approach was by Ramon Sweeting, known as "Razor". In the statement the appellant described the approach by Razor as follows:

> "The first person approach me was 'Razor'. He asked me, 'Boss lady, do you want to live large? Why don't you show

> me where your boy stay at.' I then asked who, and he said 'Yardy'. He said I can make $200,000 if I let him know where he lives. I told him I would think about it."

The appellant recounted in the statement that after that approach she let the deceased "know what was happening" and that both she and the deceased took the precaution of removing from social media all pictures which showed them together.

11. The second approach was by "Carlton". In the statement, the appellant described the approach by Carlton as follows:

> "Later on another guy name Carlton approach me. He then asked me what I was dealing with, if I'm ready to snitch out your boy out (sic) yet then everything would be safe on my end. I told him I would think about it."

The appellant does not say in the statement whether she let the deceased know of this approach.

12. The third approach was by Jamaric Green, known as "Big Meech". In the statement the appellant described the initial approach by Big Meech as follows:

> "The last person approach me about it was a guy name 'Big Meech'. He asked me if I'm ready to deal with 'Yardy' yet and he also told me I can make $200,000. I told him I would think about it. He told me that he understands that I knew where 'Yardy' is and everything would be okay on my end once I work with him. I then told him I would see. We exchanged phone contacts. I no longer thought about it …."

The appellant recounted in the statement that after that approach she "let 'Yardy' know again that they were still looking for him". She also stated that she "wrote down the licence plate [of Big Meech's car] and sent it to [her] sister in case anything was to happen to [the appellant]".

13. The appellant recounted in the statement that, after the initial approach by Big Meech, she "stopped answering Big Meech calls". However, she also recounted that she and Big Meech started texting but that "he didn't mention Yardy anymore".

Rather, Big Meech "mention us throwing a party" which she never followed up on as she "figured he just wanted to kill [her]".

14. In April 2016, the deceased was detained in prison. In the statement, the appellant recounted how she learnt that the deceased was in prison. She stated that she went to Harvey's Bar to check on the deceased and "a guy by the name of Braiden told her that he 'was locked up'". She recounted that this sounded weird to her so she went to Cable Beach Police Station to make sure he was locked up.

15. After the deceased was released from prison, the appellant recounted in the statement how the deceased "went by Braiden those and simply just told him to take his time on the road".

16. In the statement the appellant then recounts how, on what the Board understands to have been about the Wednesday or Thursday before the deceased was murdered, "she went by Harvey's [Bar] to get something to smoke" but went instead to Braiden's yard. She stated that in Braiden's yard she saw Big Meech and Braiden sitting down talking and that she went over to them. She stated that Big Meech and Braiden were discussing ways "to line up" the deceased and that Big Meech said "this would be the perfect time to light him up". The appellant recounted that Big Meech explained that as the deceased "just got released out of jail" "that would be the alibi people saying they saw [the deceased] out because he was suppose to be in Jamaica". The appellant also recounted in the statement that Braiden then said "Yeah, man, that's perfect". After hearing this conversation between Big Meech and Braiden, the appellant stated that she walked away. The appellant does not recount in the statement that she let the deceased know of this conversation between Big Meech and Braiden in which they were planning to kill him.

17. The appellant recounted in the statement that the next contact between her and Big Meech occurred on a Saturday morning, which the Board understands to be the morning of Saturday 30 April 2016. She stated:

> "Saturday morning 'Big Meech' called me and told me he needed to see me asap. So I directed him by my house where I felt safe. I never let him in the yard and he stayed outside by my gate."

Whilst Big Meech was outside her gate, the appellant received a call from her mother who asked the appellant to go to the airport to pick up office keys. Big Meech then drove the appellant to the airport. The appellant recounts in the statement that:

> "As we were driving he then threatened me saying that I'm already in it, I already know what's going on and this is what I am going to have to do. Everyone is going to get in problems so they don't go down by themselves. He said that I know too much information and I won't set them up to go down."

The appellant provides no further information in the statement as to what occurred during this car journey.

18. The statement continues with the appellant recounting that:

> "[Big Meech] then later devised a plan telling me that they were going to get a car and drop it off to me. I would pick up 'Yardy' at 10:30 p.m. When I get him I would drop him and the car at the end of Yorkshire Street and he would send some guys to deal with the situation. I must call him when I get [the deceased]."

In the statement, the appellant recounts that her response to this plan was "I told him okay". There is no information in the statement as to how this plan was communicated to the appellant. Accordingly, there is no evidence as to whether it was communicated by phone or whether there was a further meeting between the appellant and Big Meech. However, it is apparent that there was an appreciable period of time between this conversation occurring and the implementation of the plan at 10.30 pm on Saturday 30 April 2016. It is also apparent from the appellant's answers in police interview that she knew that if she dropped the deceased at the end of Yorkshire Street, he would be killed.

19. In the statement, the appellant recounts that when 10:30 pm came she "had second thoughts about it". She stated that she "figured [she] was going to die anyway that's why it took [her] about 20/25 minutes to get out to [the deceased] when in reality he was only 3 minutes away from [her]".

20. In the statement the appellant then recounts what occurred as follows:

> "I finally went in the silver car 'Big Meech' and the other guy left. I got [the deceased] from Braiden, drove through Yorkshire Street and told him I was going to get something to smoke. I pull the car by the end of the corner by the dead end, got out of the car and ran by my godmother's house. My godfather then answered the door. I asked to use the phone and before I got on the phone I heard about 7 to 8 gunshots. My godfather, Reggie Moncur, asked 'Are those gunshots?' I told him I doubt it. I dialed (sic) a formation of numbers and pretended I was speaking. When I thought they had left I went back outside and ran home."

21. In her interview with the police, the appellant also admitted that she picked up the deceased on Saturday 30 April 2016 across from Harvey's Bar and that she was "well aware" that once she took the deceased "through Yorkshire Street he was going to be killed". Furthermore, on 4 May 2016 the appellant showed the police the location from which she had picked up the deceased and also pointed out to the police where Big Meech and others were waiting as she drove past them on the way to Yorkshire Street.

22. The evidence at trial established that Yorkshire Street is a no through road and that the appellant parked the car at the far end of the street close against the wall of Glenwood Condominium with the deceased in the front passenger seat, on the same side as the wall. Furthermore, the child locks were deployed, and the car handles had been removed. Accordingly, the deceased had no hope of escape from the car.

23. The following morning, Sunday 1 May 2016, the partially burnt body of the deceased (riddled with multiple gunshot injuries in the head and body) was found in the parking lot of the abandoned City Market, Market Street, inside the car in which the appellant had picked up the deceased.

24. In the statement, the appellant recounts that Big Meech contacted her on Monday 2 May 2016 asking if he could see her. The appellant stated that she replied that she was busy but that when she was free, she would "contact him so we can meet up so he gives me something". There was no explanation in the statement as to whether the something was, for instance, the promised $200,000.

25. The appellant also recounted in the statement that Big Meech threatened her that if she tried to "snitch on them" "he would bring the car through [her] corner so everything would lead back to [her]".

26. The appellant was arrested, cautioned and interviewed. A Bill of Indictment was preferred charging the appellant with conspiracy to commit murder, contrary to sections 89(1) and 291(1)(b) of the Code. The particulars of the offence were stated to be "That, Caryn Moss, Saturday 30th April 2016 and on Sunday, 1st May, 2016 at Nassau, New Providence, being concerned with others conspired to murder O'Neil Marshall".

27. Three other individuals, Ramon Sweeting (aka "Razor"), Jamaric Green (aka "Big Meech"), and Ian Porter were arrested and charged in connection with the deceased's murder. The charges against these three persons were subsequently withdrawn.

**3. The appellant's trial in the Supreme Court**

28. The trial commenced on 25 June 2018 before Bethel J sitting with a jury. The appellant pleaded not guilty.

29. At trial the prosecution introduced in evidence the statement, the video of her giving the statement, and her answers at interview. The prosecution also called 33 witnesses. The appellant elected not to give evidence and the defence called no witnesses.

30. The appellant's case at trial, based on the statement, was that there was no agreement between her and the co-conspirators as there was a "constant manifestation of an unwillingness on the part of [appellant] to be involved in any plot to murder". Accordingly, as she was reticent and did not want to be involved there was no agreement and therefore no conspiracy.

31. After closing speeches and before charging the jury, Bethel J raised with counsel for the appellant the possibility of duress as a defence to the charge of conspiracy to murder. Bethel J indicated her understanding to be that the defence of duress was not legally available to that charge, but she asked whether duress was a live issue in the trial which was being relied on by the appellant and, if so, invited submissions on whether it was a defence in law. Mr Ducille, on behalf of the appellant, replied that:

> "[when] I spoke of duress I was not speaking of it as a defence. I spoke of it as a whole question of this agreement."

He continued by stating:

> "what I'm dealing with is on the ingredients of conspiracy. That's what I'm dealing with. To show that there was no preelection to joining any agreement to murder anyone. Our previous position. So that's the extent of it."

In short, the appellant's case at trial was that there was no agreement and accordingly no conspiracy. Furthermore, on enquiry Bethel J had been informed by the appellant's counsel that the appellant was not relying on the defence of duress. Indeed, this approach to the evidence was also part of the approach followed on behalf of the appellant in the Court of Appeal. It was submitted in the Court of Appeal that the appellant could not be said to have agreed as there was "constant reluctance" on her part and that she "did not want to participate in the murder". Accordingly, it was submitted that there could be "no conspiracy when one wants to do a thing and the other does not want to do it". In conclusion, it is clear that at trial the appellant's counsel was not relying on the defence of duress.

32. Another issue at trial was whether the appellant could be convicted of conspiracy in circumstances where her alleged co-conspirators had been arrested and charged but the charges against them had been withdrawn. It was submitted on behalf of the appellant that as a matter of Bahamian law she could not be convicted as a sole conspirator in those circumstances. The trial judge and the Court of Appeal rejected that submission. The appellant initially advanced this legal submission as a first ground of appeal to the Board but withdrew that ground of appeal.

33. Bethel J in her summing-up directed the jury that duress is not a defence to the offence of conspiracy to murder. Accordingly, that defence was not left to the jury.

34. On 18 July 2018, the jury unanimously found the appellant guilty of conspiracy to murder. The trial was adjourned for sentence, whilst a probation report was obtained. The probation report was received on 30 August 2018 and Bethel J sentenced the appellant on 27 November 2018.

**4. The appeal against conviction**

35. As set out at the beginning of this judgment, the Board is concerned with the appellant's appeals against both conviction and sentence. In this part of its judgment the Board deals with the appeal against conviction.

*(a) Legal principles in relation to the offence of conspiracy to murder*

36. The offence of murder in the Bahamas is codified by section 290(1) of the Code which provides that:

> "Whoever intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse, as in this Title hereafter mentioned."

Accordingly, the mens rea for murder in The Bahamas is an intention to cause death.

37. The offence of conspiracy to commit an offence (including murder) is provided for by section 89(1) of the Code which provides that:

> "If two or more persons agree or act together with a common purpose in committing or abetting an offence whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that offence as the case may be."

Accordingly, for there to be a conspiracy there must either (a) be an agreement between two or more persons with a common purpose in committing or abetting an offence, or (b) two or more persons must act together with a common purpose in committing or abetting an offence.

38. The liability of persons who abet a criminal offence (including murder) is provided for by section 86(1) and (2) of the Code which state:

> "(1) Whoever directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of an offence by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that offence, and of abetting the other person in respect of that offence.

> (2) Whoever abets a crime or offence shall, if the same is actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime or offence."

*(b) Legal principles in relation to the defence of duress in The Bahamas*

39. In accordance with section 2 of the Declaratory Act, Chapter 4 of the Laws of The Bahamas, the common law of England as to the defence of duress applies in The Bahamas.

40. Under the common law of England, duress is now properly to be regarded as a defence which, if established, excuses what would otherwise be criminal. It is a defence which, if raised and not disproved, exonerates the defendant altogether. However, there are important limitations to the defence. In *R v Hasan* [2005] UKHL 22; [2005] 2 AC 467, para 21 Lord Bingham identified the most important limitations to the defence of duress as being:

> "(1) Duress does not afford a defence to charges of murder (*R v Howe* [1987] AC 417), attempted murder (*R v Gotts* [1992] 2 AC 412) and, perhaps, some forms of treason: *Smith & Hogan, Criminal Law*, 10th ed (2002), p 254. The Law Commission has in the past (e g in Criminal Law: Report on Defences of General Application (1977) (Law Com No 83; HC 556), paras 2.44-2.46) recommended that the defence should be available as a defence to all offences, including murder, and the logic of this argument is irresistible. But their recommendation has not been adopted, no doubt because it is felt that in the case of the gravest crimes no threat to the defendant, however extreme, should excuse commission of the crime. It is noteworthy that under some other criminal codes the defence is not available to a much wider range of offences: see, for example, section 20(1) of the Tasmanian Criminal Code 1924 (14 Geo V No 69), section 40(2) of the Criminal Code Act of the Northern Territory of Australia, section 31(4) of the Criminal Code Act Compilation Act 1913 of Western Australia, section 17 of the Canadian Criminal Code and section 24 of the Crimes Act 1961 of New Zealand.
>
> (2) To found a plea of duress the threat relied on must be to cause death or serious injury. In *Alexander MacGrowther's*

*Case* (1746) Fost 13, 14, Lee CJ held: 'The only force that doth excuse, is a force upon the person, and present fear of death ...' But the Criminal Law Commissioners in their Seventh Report of 1843 (article 6, p 31) understood the defence to apply where there was a just and well-grounded fear of death or grievous bodily harm, and it is now accepted that threats of death or serious injury will suffice: *Director of Public Prosecutions for Northern Ireland v Lynch* [1975] AC 653, 679 and *R v Abdul-Hussain* [1999] Crim LR 570 .

(3) The threat must be directed against the defendant or his immediate family or someone close to him: *Smith & Hogan*, *Criminal Law*, 10th ed, p 258. In the light of recent Court of Appeal decisions such as *R v Conway* [1989] QB 290 and *R v Wright* [2000] Crim LR 510 , the current (April 2003) specimen direction (no 49) of the Judicial Studies Board suggests that the threat must be directed, if not to the defendant or a member of his immediate family, to a person for whose safety the defendant would reasonably regard himself as responsible. The correctness of such a direction was not, and on the facts could not be, in issue on this appeal, but it appears to me, if strictly applied, to be consistent with the rationale of the duress exception.

(4) The relevant tests pertaining to duress have been largely stated objectively, with reference to the reasonableness of the defendant's perceptions and conduct and not, as is usual in many other areas of the criminal law, with primary reference to his subjective perceptions. It is necessary to return to this aspect, but in passing one may note the general observation of Lord Morris of Borth-y-Gest in *Director of Public Prosecutions for Northern Ireland v Lynch* [1975] AC 653, 670:

> 'it is proper that any rational system of law should take fully into account the standards of honest and reasonable men. By those standards it is fair that actions and reactions may be tested.'

> (5) The defence of duress is available only where the criminal conduct which it is sought to excuse has been directly caused by the threats which are relied upon.
>
> (6) The defendant may excuse his criminal conduct on grounds of duress only if, placed as he was, there was no evasive action he could reasonably have been expected to take. It is necessary to return to this aspect also, but this is an important limitation of the duress defence and in recent years it has, as I shall suggest, been unduly weakened.
>
> (7) The defendant may not rely on duress to which he has voluntarily laid himself open. ….”

41. Lord Bingham returned to the sixth point that the “defendant may excuse his criminal conduct on grounds of duress only if, placed as he was, there was no evasive action he could reasonably have been expected to take” (“the sixth limitation”). He explained that this limitation had lost some of its intended force and that the Court of Appeal’s decision in *R v Hudson* [1971] 2 QB 202, in particular, had “the unfortunate effect of weakening the requirement that execution of a threat must be reasonably believed to be imminent and immediate if it is to support a plea of duress”.

42. It is instructive to consider the facts in *R v Hudson* which led to the decision in the Court of Appeal that was described in *R v Hasan* as being “indulgent”. The appellants were two teenage girls who had committed perjury at an earlier trial by failing to identify the defendant. When prosecuted for perjury they set up a plea of duress, on the basis that they had been warned by a group, including a man with a reputation for violence, that if they identified the defendant in court the group would get the girls and cut them up. They resolved to tell lies and were strengthened in their resolve when they arrived at court and saw the author of the threat in the public gallery. The trial judge ruled that the threats were not sufficiently present and immediate to support the defence of duress, but the trial judge was held by the Court of Appeal to have erred, since although the threats could not be executed in the courtroom, they could be carried out in the streets of Salford that same night. It was argued for the Crown that the appellants should have neutralised the threat by seeking police protection, but this argument was criticised as failing to distinguish between cases in which the police would be able to provide effective protection and those when they would not.

43. In relation to those facts, Lord Bingham stated that he could not, "consistently with principle, accept that a witness testifying in the Crown Court at Manchester has no opportunity to avoid complying with a threat incapable of execution then or there". Lord Bingham then continued in relation to the sixth limitation by concluding, at para 28, that:

> "It should however be made clear to juries that if the retribution threatened against the defendant or his family or a person for whom he reasonably feels responsible *is not such as he reasonably expects to follow immediately or almost immediately on his failure to comply with the threat*, *there may be little if any room for doubt that he could have taken evasive action, whether by going to the police or in some other way, to avoid committing the crime with which he is charged*" (Emphasis added).

44. The Board observes that the sixth limitation has both subjective and objective elements. The defendant's subjective expectation of immediate or almost immediate retribution must be both genuine and objectively reasonable. The defendant's subjective belief that there was no evasive action available to be taken must be both genuine and objectively reasonable.

*(c) Duty on the trial judge to place before the jury all the possible conclusions which may be open to them on the evidence*

45. It is the duty of the judge to look for any possible defence to a charge arising from the evidence and to refer to such defence in her summing up, even though the defence has not been relied on or has even been expressly disclaimed by defending counsel; see *R v Winston Anthony Williams* (1994) 99 Cr App R 163; *R v Augustine Achuzia Kachikwu* (1968) 52 Cr App R 538. The existence of that duty and the limitation on its extent were considered by the Board in *Von Starck v The Queen* [2000] 1 WLR 1270. In relation to the existence of the duty the Board stated, at p 1275-E, that it was the responsibility of the judge:

> "to place before the jury all the possible conclusions which may be open to them on the evidence which has been presented in the trial whether or not they have all been canvassed by either of the parties in their submissions."

However, the duty did not extend to placing before the jury "a possibility which can be seen beyond reasonable doubt to be without substance". Accordingly, the duty does not extend to putting before the jury a conclusion based on evidence which "is wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it".

46. If duress is a legally valid defence to the offence of conspiracy to murder, then Bethel J had a duty to place before the jury that possible defence unless it could be seen beyond reasonable doubt to be without substance, in the sense that it was based on evidence which was "wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it". This is so, even though, as previously described, the defence was disavowed by the appellant's counsel at trial.

*(d) The Court of Appeal's judgment in relation to the appeal against conviction*

47. The Board now summarises those parts of the Court of Appeal's judgment relevant to the appeal against conviction.

*(e) The Court of Appeal's judgment as to whether in The Bahamas duress is a defence to the offence of conspiracy to murder*

48. The Court of Appeal referred to the obiter comments of Lord Lane in the Court of Appeal in *R v Gotts* [1991] 1 QB 660 rejecting the submission that if the defence of duress was to be excluded in cases of attempted murder, then by the same logic it would have to be excluded in cases of conspiracy and other inchoate offences. In *R v Gotts* Lord Lane stated, at p 668B-C:

> "We note the suggestion that if attempt is excluded the same should apply to conspiracy and other kindred offences. We consider there is a legitimate distinction to be drawn. Conspiracy, incitement and so on are, generally speaking, a stage further away from the completed offence than is the attempt. Wherever the line is drawn it would be possible to suggest anomalies."

49. The Court of Appeal also referred to the decision of McCombe J sitting in the Crown Court at Newcastle in *R v Ness & Awan* [2011] Crim LR 645, in which he held that the defence of duress was available to two men accused of conspiracy to murder.

50. The Court of Appeal concluded, at para 37, that there was no binding authority under the common law of England. It stated:

> "There has, however, been no direct appellate decision on this point emanating from the United Kingdom from which we draw our Common Law principles. Against this background and with no binding authority directly on point, it is left to us to provide guidance as to how trial judges should deal with this issue."

In arriving at that guidance, the Court of Appeal recognised that there were "arguments to be made either way".

51. The Court of Appeal then analysed the legislation in The Bahamas applicable to sentences imposed for conspiracy to murder where the offence is actually committed. The Court of Appeal concluded that the legislature, to adapt the words of Lord Lane, did not consider that conspiracy to murder was a stage further away from an attempt to murder given that a person who is guilty of conspiracy to murder, where the offence of murder is actually committed, is to be punished in the same way as the person who commits the murder; see section 90(1) of the Code and para 71 below. However, if the murder is not actually committed then the offender is punishable for a felony and liable to imprisonment for seven years; see sections 90(1), 86(3) and 116(1) and (2) of the Code. Accordingly, the Court of Appeal concluded at para 52 that:

> "… as a matter of policy we must give effect to the intention of Parliament that attempted murder, … and conspiracy to commit murder where the murder is actually committed be treated the same as murder. If follows that in the circumstances of this case and the particular charge laid against the Appellant, the defence of duress was not open to her. It follows that the judge was not wrong to so direct the jury."

52. Accordingly, based on the Bahamian legislation as to sentencing, the Court of Appeal dismissed this ground of appeal affirming the appellant's conviction.

53. The Board records that on the hearing of this appeal it was submitted on behalf of the appellant that the Bahamian legislature has not legislated to disapply the common law defence of duress in relation to the offence of conspiracy to murder.

Rather, the provisions of the Code relied on by the Court of Appeal are all relevant to the sentencing of, as opposed to the defences to, the offences of murder, attempted murder and conspiracy to murder. The appellant submits that it does not follow necessarily from the fact that the Bahamian Parliament intended the offences to be sentenced in the same way that Parliament must have intended to abrogate the defence of duress, if as a matter of the common law of England it applies to the offence of conspiracy to murder. The Board should not be taken as agreeing or disagreeing with these submissions, but if they are correct, then the anterior question remains, namely "what is the common law of England as to the defence of duress in relation to the offence of conspiracy to murder?". In relation to that anterior question the Board considers that arguments can be made either way and that the answer should be determined in a case in which duress arises on the facts.

54. Accordingly, the Board should not be taken as either agreeing or disagreeing with the Court of Appeal as to whether duress can in law be a defence to the offence of conspiracy to murder. It is possible to resolve this appeal without resolving the question of whether or not duress can in law be a defence to the offence of conspiracy to murder for the reasons which the Board sets out in the following paragraphs.

*(f) The Court of Appeal's judgment as to whether there was evidence in this case which warranted the defence of duress being left to the jury*

55. In case the Court of Appeal was wrong about whether duress was a defence to conspiracy to murder, it considered whether the defence arose on the facts. The Court of Appeal referred to the second and fourth limitations on the defence of duress identified in *R v Hasan*, which are that (a) the threat must be to cause death or serious injury and (b) the defendant's perception as to the efficacy of the threat must not only be genuine but also objectively reasonable; see para 21 of *R v Hasan* quoted at para 40 above. The Court of Appeal held, at paras 55-56, that:

> "At no point during the evidence was it revealed that anyone made a threat to the appellant to cause serious injury or death."

Rather the Court of Appeal recorded, at para 57, a submission on behalf of the appellant that she was experiencing a "subjective fear" of death given that she had stated that Big Meech just wanted to kill her (see para 13 above) and that she was going to die anyway (see para 19 above). The Court of Appeal held, at para 62, that a subjective fear was not a sufficient basis for the defence of duress. Accordingly, the Court of Appeal held that the defence of duress did not arise on the facts of the case.

*(g) The Board's opinion in relation to the appeal against conviction*

56. The Court of Appeal held that the defence of duress did not arise on the facts of this case. The Board agrees with that conclusion but for reasons different from those relied on by the Court of Appeal. Accordingly, even if the defence of duress is available in principle in relation to the offence of conspiracy to murder, Bethel J was correct in not leaving that defence to the jury.

57. The Court of Appeal's decision that the defence of duress did not arise on the facts was based on consideration of the second and fourth limitations on the defence; (see para 21 of *R v Hasan* quoted at para 40 above). In relation to the second limitation, the Board agrees with the Court of Appeal that there was no evidence of an express threat of death or serious injury. However, there was evidence of threats and in considering whether those threats were of death or serious injury and whether the appellant genuinely and reasonably perceived there to be such a threat, context is important. The context here involved "a notorious gang leader" facing trial on a charge of murder; the deceased requiring protection from the gang; three individuals, Razor, Carlton and Big Meech who approached the appellant with a view to her setting up the deceased; a discussion in front of the appellant between Big Meech and Braiden as to lighting up the deceased with a potential implication that the same fate could await her; the involvement of persons in a conspiracy who were prepared to, and in the event did, kill and the brutal shooting of the deceased to protect a notorious gang leader. The references in the statement to threats and to her perception of those threats are to be seen in that gangland context.

58. In that context the Board considers that the possible conclusions that (a) there was a threat to the appellant of death or serious injury and (b) the appellant's belief in the efficacy of the threat was genuine and objectively reasonable, could not be seen beyond reasonable doubt to be without substance in the sense of being based on evidence which was "wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it". Accordingly, there was sufficient evidence to go to the jury in relation to second and fourth limitations on the defence of duress. In arriving at that conclusion, the Board takes into account several aspects of the statement.

59. First, after the approach by Razor both the appellant and the deceased removed all photographs of them together from their social media. Accordingly, this was evidence to be considered by the jury that the appellant was fearful of being approached again if it was general knowledge that she knew the deceased.

60. Second, during the approach by Carlton the appellant recounts being asked if she was ready to snitch out the deceased and being told that if she did "then everything would be safe on [her] end". In a gangland context the Board considers that the possibility that this was a threat to the appellant of death or serious injury could not be seen beyond reasonable doubt to be without substance in the sense that it was based on evidence which was "wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it".

61. Third, a similar expression was used by Big Meech. The appellant recounted that on the first occasion they met "he told [her] that he understands that [she] knew where 'Yardy' is" and that Big Meech then said "everything would be OK on my end once I work with him". Again, in a gangland context the Board considers that the possibility that this was a threat to the appellant of death or serious injury could not be seen beyond reasonable doubt to be without substance in the sense that it was based on evidence which was "wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it".

62. Fourth, the appellant stated that her reaction to the first approach by Big Meech was to take the precaution of writing down the licence plate number and sending it to her sister in case anything was to happen to her. It would be for the jury to determine whether by sending the information to her sister the appellant was anticipating that the thing that would happen to her was of a nature that would prevent her taking action herself, such as her death.

63. Fifth, the appellant expressly stated that she figured that Big Meech just wanted to kill her; see para 13 above. In a gangland context the Board considers that the possibility that the appellant's perception was both genuine and objectively reasonable could not be seen beyond reasonable doubt to be without substance in the sense that it was based on evidence which was "wholly incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it".

64. Sixth, the appellant stated that on the morning of Saturday 30 April 2016 (see para 17 above) Big Meech called her and said he wanted to see her. She recounted how she directed him to her house "where [she] felt safe" and that she never let him in the yard. Again, it could not be seen beyond reasonable doubt that the appellant's perception, given the gangland context, that she was unsafe because of a threat to her life or a threat of serious injury was not genuine or objectively reasonable.

65. Seventh, the appellant states that on the way to the airport Big Meech threatened her. She stated:

> "As we were driving he then threatened me, saying that I'm already in it, I already know what's going on and this is what I'm going to have to do. Everyone is going to get in problems so they don't go down by themselves. He said that I know too much information and I won't set them up to go down."

Again, it would be for the jury to determine, given the gangland context, whether this was a threat of death or serious injury.

66. Eighth, the appellant recounted that she had second thoughts but figured that she was going to die anyway; see para 19 above. Again, applying the test in *Von Starck*, it would be for the jury to determine, given the gangland context, whether appellant's perception that she was unsafe because of a threat to her life or a threat of serious injury was genuine and reasonable.

67. For these reasons, the Board considers that there was sufficient evidence to go to the jury in relation to the second and fourth limitations on the defence of duress.

68. However, the Board, in considering the sixth limitation on the defence of duress, arrives at the same conclusion as the Court of Appeal, that the defence was not available to the appellant on the facts of this case. In the statement the appellant did not assert that there was no reasonable evasive action which she could have taken, and she did not state that the threatened retribution would follow immediately or almost immediately on her failure to comply. Accordingly, at the conclusion of the trial there was simply no evidence on which a jury acting rationally could decide that the appellant reasonably expected the retribution to follow immediately or almost immediately so that there was no evasive action which she could reasonably have been expected to take. Indeed, the converse was clear on the evidence. There was an appreciable period of time between the last conversation between the appellant and Big Meech and her picking up the deceased from Braiden's yard at 10.30 pm on Saturday 30 April 2016. The appellant could have taken evasive action during that time, either by way of going to the police or simply by not going through with the plan to pick up the deceased and drive him to the spot.

69. The Board concludes that the appeal against conviction should be rejected as the defence of duress was not available to the appellant on the facts.

**5. The appeal against sentence**

70. In this part of its judgment the Board turns to the appellant's appeal against sentence. The Board will begin by setting out the applicable legal principles before turning to the judgments of the lower courts and finally setting out its conclusions.

*(a) Sentencing for the offence of conspiracy to murder*

71. The punishment for conspiracy is provided for by section 90(1) of the Code and depends upon whether the substantive offence is completed. Section 90(1) provides that:

> "If two or more persons are guilty of conspiracy for the commission or abetment of any offence, each of them shall, in case the offence is committed, be punished as for that offence according to the provisions of this Code, or shall, in case the offence is not committed, be punished as if he had abetted the offence."

As the substantive offence of murder was completed in this case the appellant fell to be sentenced for the offence of murder in accordance with the guidance given by the Court of Appeal and in accordance with section 291(1)(b) of the Code.

72. In *Attorney-General v Raymond Larry Jones* SCCrApp Nos 12,18,19 2007 the Court of Appeal gave guidance as to the appropriate sentence for murder. The Court of Appeal stated, at para 17, that:

> "In our judgment, where, for one reason or another, a sentencing judge is called upon to sentence a person convicted of a depraved/heinous crime of murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy, *then the range of sentence should be from 30 years to 60 years*, bearing in mind whether the convicted person is considered to be a danger to the public or not, the likelihood of the convict being reformed as well as his mental condition. Such a range of sentences would maintain the proportionality of the sentences for murder

> when compared with sentences for manslaughter."
> (Emphasis added).

73. The Court of Appeal in *Attorney-General v Kevin Smith* SCCrApp No.261 of 2012, having set out paragraph 17 of the judgment in *Attorney-General v Raymond Larry Jones*, proceeded to provide the following guidance at para 20:

> "While this passage is generally cited for the range of sentences mentioned, namely, thirty to sixty years, recourse to this range is conditioned by the phrase 'depraved/heinous crime of murder'. Also to be taken into consideration by the sentencing judge are such factors as:
>
> i) whether or not the convict continues to be a danger to the public;
>
> ii) the likelihood of rehabilitation; and
>
> iii) the convict's mental condition."

74. In *Attorney-General v Kevin Smith* the Court of Appeal continued by providing further guidance in relation to sentencing for murder, at para 21, as follows:

> "Offsetting the severity of the sentence and acting as a counterbalance would be the presence of a partial excuse or other relevant factor which may call for a great degree of mercy. Circumstances may exist then to enable a sentencing judge to go below the range suggested by the President. However, the presence of exceptional circumstances and/or factors must be disclosed on the record by the sentencing judge so as to justify the reduced sentence. Thus, if the sentencing judge was to stray below the recommended range, the decision for doing so must be demonstrably explicable."

75. The Penal Code (Amendment) Act 2011 enacted by the Parliament of The Bahamas on 11 March 2011 repealed section 291 of the Code and replaced that section with a new section 291, which in so far as relevant stipulates appropriate

sentences for murder. In relation to specific categories of murder which fall within section 290(2)(a) to (f) of the Code then, pursuant to section 291(1)(a), the offender will be sentenced to death or to imprisonment for life. One of those specific categories includes "the murder of any person for any reason attributable to … the status of that person as a witness … in any criminal proceedings"; see section 290(2)(b)(i) of the Code. However, it was not submitted before the Supreme Court, the Court of Appeal, or the Board that the murder of the deceased fell into this category to attract a sentence of death or life imprisonment. Moreover, the indictment preferred against the appellant alleged an offence of conspiracy to murder which fell within section 291(1)(b) of the Code under which the offender shall either be sentenced to imprisonment for life or "shall be sentenced to such other term given the circumstances of the offence or the offender as the court considers appropriate being within the range of thirty to sixty years' imprisonment". The Court of Appeal in this case, as did the Court of Appeal in *Attorney-General v Kevin Smith*, proceeded on the basis that the range of thirty to sixty years' imprisonment in section 291(1)(b) codified the Court of Appeal's guideline range of 30 to 60 years' imprisonment contained in *Attorney-General v Raymond Larry Jones*. On that basis, the range in section 291(1)(b) of the Code remains as a guideline so that where there are extenuating circumstances, a sentencing judge could go below the range of thirty to sixty years provided the decision for doing so was demonstrably explicable.

*(b) Bethel J's sentencing judgment*

76. Bethel J identified the following mitigating factors, namely (a) the appellant had no previous convictions; (b) the appellant had committed no infractions whilst in prison; and (c) she had been employed for the majority of her adult life and every one of her employers spoke highly of her.

77. Bethel J identified the following aggravating factors, namely (a) the appellant had lured a man who trusted her as a friend to his death; (b) the deceased was slaughtered with no hope of escape from a car whose exits were sealed by the child locks being deployed and its handles being removed; (c) though the appellant stated she was sorry that the deceased had lost his life, she was unrepentant as she maintained the claim that she did not commit the offence.

78. Bethel J stated that she did not consider the appellant a danger to society.

79. In passing sentence, Bethel J referred to the Court of Appeal's sentencing guideline in relation to murder in *Attorney-General v Raymond Larry Jones* of 30 to 60 years' imprisonment unless there are extenuating circumstances which take an

individual case out of that range. Bethel J then posed the question "What are the extenuating circumstances that the court could consider?" to which she replied "There are none". However, Bethel J still considered that 30 years' imprisonment would be excessive given the appellant's family background, her employment record, and her clear criminal record. Bethel J ruled that to pass a sentence of greater than 30 years' imprisonment would not be rehabilitative. She imposed a sentence of 20 years' imprisonment, less one year spent on remand.

*(c) The Court of Appeal's judgment in relation to sentence*

80. In relation to the appellant's appeal against sentence, the Court of Appeal recorded, at para 73, the appellant's submissions as being, amongst others, that:

> "most importantly she only performed these acts because she was threatened."

81. In relation to the cross-appeal the Court of Appeal held, at para 87, that it was "an error in principle for a trial judge to acknowledge guidelines that had been set by this court then proceed without adhering to them". The Court of Appeal continued by stating at paras 87 and 88 that:

> "87. …. Unfortunately, that is what has occurred in this case. This court in setting the guideline of sentence of 30 to 60 years for Murder and related offences such as conspiracy to commit murder where the offence of murder has resulted has always acknowledged that it is only a guideline and not the law. This court in the case of *Attorney-General v Kevin Smith* … made it clear that where there are extenuating circumstances a sentencing judge could go below the established range. The circumstances which justify that change however must be documented.
>
> 88. The learned judge in this case acknowledged the relevance of the *Jones'* guidelines and the need for extenuating circumstances. She also on a review of the evidence found that there were no extenuating circumstances. However, she incredibly nonetheless found that she could and ought to still go below the range established by the guidelines. …."

82. The Court of Appeal then considered whether there were extenuating circumstances and held, at para 90, that there were none that "warranted a departure from the range in the **Jones'** guidelines" (as emphasised in the original). Turning to the facts, the Court of Appeal stated that they were striking and summarised them, at para 90, as follows:

> "The trial judge referred to the fact that [the appellant] '**lured a trusted friend and an innocent man to a slaughter**'. It was the ultimate act of betrayal. However, in addition to this there was the fact that [the appellant] was aware that the deceased was a witness in the protection of the state in order to facilitate his testimony before the Court. She also knew that the purpose for wanting him killed was to prevent him providing that testimony. It was necessary for the trial judge to send a strong message that the execution of witnesses would not be tolerated." (Emphasis in the original).

Based on those facts, the Court of Appeal held that the sentence was not only wrong in principle as departing from the *Jones* guidelines but also was unduly lenient.

83. Accordingly, the Court of Appeal dismissed the appellant's appeal against sentence, allowed the cross-appeal and proceeded to re-sentence the appellant. The Board sets out in full the re-sentencing exercise carried out by Evans JA, at para 93:

> "I have taken into consideration that although [the appellant] played an active role in the crime she was not the shooter. *The fact that she is a young person who was previously employed and seemed to have good references with no prior known infractions are also mitigating factors*. However, the crime for which she has been convicted is a serious one and her sentence must reflect that fact and must also contain an element of deterrence. Society's displeasure of acts of this nature is reflected in the lengthy maximum sentence imposed by Parliament. It therefore follows that the Court ought to recognise the offence of conspiracy to commit murder as a serious offence especially where the murder, which was the subject of the conspiracy, has taken place and the penalty should reflect the seriousness of the offence. In these circumstances I am of the view that the sentence of 35 years would be appropriate in this case." (Emphasis added).

*(d) Coercion as a mitigating factor*

84. In *R v Hasan*, at para 22, Lord Bingham stated:

> "If it appears at trial that a defendant acted in response to a degree of coercion but in circumstances where the strict requirements of duress were not satisfied, it is always open to the judge to adjust his sentence to reflect his assessment of the defendant's true culpability."

Accordingly, a factor potentially reducing an offender's true culpability is whether the offender was subject to "a degree of coercion". In assessing whether the offender was subject to a degree of coercion, the strict requirements of the limitations on the defence of duress are not required to be satisfied. For instance, genuine albeit subjective beliefs might in an exceptional case merit a degree of mitigation. Furthermore, if some of the strict requirements of duress have been satisfied then it also follows that those requirements which have been satisfied may reduce the offender's true culpability.

*(e) The Board's opinion in relation to the appeal against sentence*

85. Absent extenuating circumstances, the sentencing range of 30-60 years' imprisonment for murder applies.

86. Bethel J found that there were no extenuating circumstances. However, in arriving at that conclusion Bethel J did not have regard to the principle that if "it appears at trial that a defendant acted in response to a degree of coercion but in circumstances where the strict requirements of duress were not satisfied, it is always open to the judge to adjust [her] sentence to reflect [her] assessment of the defendant's true culpability"; see *R v Hasan* at para 22. The Board acknowledges that Bethel J stated in general terms that in "considering … an appropriate sentence for any offence, the court takes into consideration" amongst other matters "the nature of the offence, [and] the circumstances under which it was committed". However, there was no specific consideration given by Bethel J to the particular feature that the appellant may have acted in response to a degree of coercion, but in circumstances where the strict requirements of duress were not satisfied.

87. The Court of Appeal, at para 32, quoted paras 17-22 of *R v Hasan*, which included the passage in which Lord Bingham stated that it is always open to a judge to

adjust his sentence if a defendant acted in response to a degree of coercion in circumstances where the strict requirements of duress were not satisfied. The Court of Appeal returned to this aspect of sentencing, at para 58, by stating:

> "The defence must be based on threats to kill or do serious bodily harm. If the threats are less terrible they should be matters of mitigation only."

However, in re-sentencing the appellant, the Court of Appeal, at para 93 (see para 83 above), did not refer to a degree of coercion as a mitigating factor. The explanation as to why the Court of Appeal did not do so is that it had decided that there was no "threat to the Appellant to cause serious injury or death" and that the appellant's perception of there being such a threat was not objectively reasonable. However, the Board considers, for the reasons set out above, that there was evidence that the appellant had been subjected to a death threat which she genuinely and objectively reasonably believed. Although this is not enough to establish a potential defence of duress, under the sixth limitation (imminence of threat/evasive action), it ought to have been considered either as an extenuating circumstance potentially justifying a sentence outside the range of 30-60 years' imprisonment or as an additional mitigating factor to be taken into account in determining where this case fell within that range.

88. The Board considers that either as an extenuating circumstance or as additional mitigation, consideration ought to have been given to whether the appellant acted in response to a degree of coercion in circumstances where the strict requirements of duress were not satisfied. Accordingly, the Board considers that the sentence of 35 years' imprisonment should be quashed. The Board was invited to re-sentence the appellant but the court which is best placed to judge the appropriate sentence for this serious offence, and which is well aware of sentencing practice in its own jurisdiction, is the Court of Appeal of the Commonwealth of The Bahamas. Accordingly, re-sentencing the appellant should be remitted to that court.

## 6. Conclusion

89. The Board will humbly advise His Majesty that (a) the appeal against conviction should be dismissed; (b) that the sentence imposed by the Court of Appeal should be quashed; and (c) the case should be remitted to the Court of Appeal to re-sentence the appellant.

## Appendix

### The appellant's police statement

"I, Caryn Moss, 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, but what I say may be given in evidence.

It started from about December 2015. The first person approach me was 'Razor'. He asked me, 'Boss lady, do you want to live large? Why don't you show me where your boy stay at.' I then asked who, and he said 'Yardy'. He said I can make $200,000 if I let him know where he lives. I told him l would think about it. I later let. O'Neil know what was happening. He and I both removed all of our pictures we had on social media together. Later on another guy name Carlton approach me. He then asked me what. I was dealing with, if 'I'm ready to snitch out your boy out yet then everything would be safe on my end. I told him I would think about it.

The last person approach me about it was a guy name 'Big Meech'. He asked me if I'm ready to deal with 'Yardy' yet and he also told; me I can make $200,000. I told him I would think about it. He told me that he understands that I knew where 'Yardy' is and everything would be okay on my end once I work with him. I then told him I would see. We exchanged phone contacts. I no longer thought about it and I let 'Yardy' know again that they were still looking for him.

After I let him know that I wrote down the licence plate and sent It to my sister in case anything was to happen to me. I stopped answering 'Big Meech' calls. We started texting and he didn't mention 'Yardy' anymore. He mention us throwing a party. I never followed up on him. I figured he just wanted to kill me.

The following week in April O'Neil got locked up. I went by Harvey's to check on O'Neil before I knew he was locked up. A guy by the name of Braiden told me he was locked up. It sounded weird to me so I went to Cable Beach Police Station to make sure he was locked up. When O'Neil got out he went by Braiden those and simply just told him to take his time on the road.

About Wednesday or Thursday I went by Harvey's to get something to smoke. It was too open so l went. in Braiden's yard. There I saw 'Big Meech'. He and Braiden was sitting down talking. I went over to hail them. They were discussing on ways to line up OJ, aka 'Yardy'. 'Big Meech' was saying this would be the perfect time to light him up. He just got released out of jail so that would be the alibi people saying they saw O'Neil out because he was suppose to be in Jamaica. Braiden then say 'Yeah, man, that's perfect.' That's all I heard. I walked away.

Saturday morning ‘Big Meech’ called me and told me he needed to see me asap. So I directed him by my house where I felt safe. I never let him in the yard and he stayed outside by my gate. My mother called me to come to the airport to pick up her office keys. I told her I didn't have a ride so ‘Big Meech’ offered to take me. As we were driving he then threatened me saying that I'm already in it, I already know what's going on and this is what I am going to have to do. Everyone is going to get in problems so they don’t go down by themselves. He said that I know too much information and I won't set them up to go down.

He then later devised a plan telling me that they were going to get a car and drop it off to me. I would pick up ‘Yardy’ at 10:30 p.m. When I get, him I would drop him and the car at the end of Yorkshire Street and he would send some guys to deal with the situation. I must call him when I get. O’Neil. I told him okay.

When 10:30 came I had second thoughts about it, but I figured I was going to die anyway that's why it took me about 20/25 minutes to get out to O’Neil when in reality he was only 3 minutes away from me.

I finally went in the silver car ‘Big Meech’ and the other guy left. I got O’Neil from Braiden, drove through Yorkshire Street and told him I was going to get something to smoke. I pull the car by the end of the corner by the dead end, got out of the car and ran by my godmother’s house. My godfather then answered the door. I asked to use the phone and before I got on the phone I heard about 7 to 8 gunshots. My godfather, Reggie Moncur, asked 'Are those gunshots?' I told him I doubt. it. I dialed a formation of numbers and pretended I was speaking.

When I thought they had left. I went back outside and ran home. That's it.

'Big Meech' didn't contact me on Sunday. He did contacted me on Monday asking me if he can see me. I told him no I was busy. When I'm free I will contact him so we can meet up so he gives me something. That's it.”

I, Caryn Moss, have read the above statement. l have been told that I can alter, add, or correct anything I wish. The above statement is true. I have made it of my own free will." Signed Caryn Moss, 3rd of 17 May, 2016.
“I further state that ‘Big Meech’ said that he would bring the car through my corner so everything would lead back to me if I tried to snitch on them.”

I Caryn Moss, have read the above statement. I have been told that I can alter, add, or correct anything l wish. The above statement is true. I have made it of my own free will." Caryn Moss signed, along with the other officers present.