Easter Term
[2023] UKPC 15
Privy Council Appeal No 0105 of 2021

JUDGMENT

Rodriguez Jean Pierre (Appellant) *v* The King (Respondent) (Bahamas)

From the Court of Appeal of the Commonwealth of the Bahamas

before

Lord Lloyd-Jones
Lord Sales
Lord Hamblen
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
11 May 2023

Heard on 14 February 2023

Appellant
Desiree AA Artesi
Natasha Jackson
Marianne Cadet
(Instructed by Sheridans (London))

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

LORD LLOYD-JONES AND LORD HAMBLEN:

Introduction

1. This appeal concerns the correct approach under Bahamian law to the grant of an extension of time for the bringing of an appeal in criminal proceedings. An extension of time is required in any case in which the appeal is not brought within 21 days of conviction.

2. The appellant contends that the correct approach is that set out in the Court of Appeal decision in *Alexander Williams v The Queen* (SCCrApp No 155 of 2016) ("*Williams"*) and that this requires an extension of time to be given notwithstanding the period of delay or the reasons for it, if the prospects of success of the intended appeal are good.

3. It is submitted that in refusing the appellant an extension of time in the present case the Court of Appeal erred in failing to follow this approach and/or in failing to give proper consideration to the merits of the appeal.

The factual background

4. On 24 March 2012 in Abaco, The Bahamas, Wendell Miller (popularly known as "Schemer") was killed as a result of a stab wound to his neck. The appellant was arrested and charged with murder the same day. It was the prosecution evidence that the appellant admitted stabbing Wendell Miller both to the arresting officer, Sergeant Cash, and in a statement made under caution to the investigating officer, Travon Gibson. The making of the latter statement was supported in evidence by another police officer and by the interpreter. The appellant was also said to have taken a police officer to a bushy area in the vicinity of his residence where the knife was found. During his evidence at trial the appellant said that he had not stabbed the deceased, he had not told the police that he had stabbed him and he did not have a knife. He also relied on self-defence and the trial judge, Hartman Longley J, further directed the jury to consider the partial defence of provocation.

5. On 26 February 2013 the appellant was convicted of the murder of Wendell Miller. On 3 May 2013 he was sentenced to 35 years' imprisonment.

6. On 30 May 2019 the appellant filed an appeal against conviction and sentence after obtaining assistance from the Office of the Public Defender. He also sought an extension of the 21 day time limit for the bringing of an appeal.

7. The only explanation advanced for the delay was a statement made by the appellant in his supporting affidavit that it was due to circumstances beyond his control as he "did not have counsel, nor the means to obtain one".

8. After various adjournments the application was heard by the Court of Appeal (Sir Michael Barnett P, Jones and Evans JJA) on 3 and 8 September 2020 in a hearing which took over 5 hours. On 24 September 2020 the Court of Appeal gave judgment refusing the appellant an extension of time.

9. On 6 January 2021 the Court of Appeal granted the appellant conditional leave to appeal to the Judicial Committee of the Privy Council against the decision to refuse an extension of time on the ground that the judgment of the Court of Appeal is potentially inconsistent with the earlier decision of the Court of Appeal in *Williams.* Final leave to appeal was granted on 31 May 2021.

The legislation

10. Section 17 of the Court of Appeal Act (Ch 52) provides:

> "17. Time for appealing.
>
> (1) Where a person convicted desires to appeal to the court or to obtain the leave of the court to appeal under the provisions of this Part of this Act, he shall give notice of appeal or of his application for leave to appeal in such manner as may be prescribed by rules of court within twenty-one days of the conviction.
>
> (2) The time within which notice of appeal or of application for leave to appeal may be given, may be extended at any time by the court.
>
> (3) For the purposes of this section the date of conviction shall, where the Supreme Court has adjourned the trial of

an information after conviction, be deemed to be the date on which such court has sentenced or otherwise dealt with the appellant."

11. The Court of Appeal Rules 2005 provide:

"9. Extension of Time

(1) The court may, on such terms as it thinks just, by order -

(a) extend the time prescribed by these Rules for the doing of anything to which these Rules apply;

(b) extend the period specified in any judgment, order or direction of the court, or of the court below, for the doing of anything to which the judgment, order or direction relates; or

(c) direct a departure from these Rules in any other way where this is required in the interests of justice.

(2) The power of the court, under the provisions of paragraph (1), to extend any period so prescribed or specified, is exercisable notwithstanding the expiration of the period so prescribed or specified."

The decision of the Court of Appeal

12. The leading judgment in the Court of Appeal was given by Sir Michael Barnett P with whose judgment the other Justices agreed.

13. In relation to the reasons for the delay the court set out the appellant's one sentence explanation in his affidavit and held as follows at para 6:

"It is to be noted that in his affidavit explaining the delay, he gives no evidence as to when he first formed an intention to appeal. No evidence as to what steps he took

> during the six years to obtain counsel. No explanation as to why he did not write to the Court indicating that he wished to appeal his conviction and ask the Court's assistance in obtaining counsel. It is to be noted that in the trial below he was represented by counsel, appointed by the court, pursuant to a Crown Brief. He did not have the means to pay back in 2013 but was able to obtain the court's assistance in representation. On the evidence, it was not until six years after his conviction did he manifest any intention to appeal his conviction."

14. As to the proper approach to the grant of an extension of time the court cited from *Williams* and placed particular emphasis on a passage (at para 15) in which the Court of Appeal had stated that inexorably, notwithstanding the length of the delay, and the absence of good or sufficient reasons for the delay, if the prospects of success of the intended appeal were good, the court would nevertheless grant an extension of time and hear the appeal, provided that there was no prejudice to the other side (see para 24 below).

15. The court observed as follows:

> "8. In that case this Court appears to be of the view that notwithstanding a lengthy delay and the absence of good and sufficient reasons for that delay if the prospects of a successful appeal on its merits 'are good' then 'inexorably' the court would extend the period of time.
>
> 9. Notwithstanding the language used in *Alexander Williams*, it appears to me that that case must be considered in the context of the explanation for the delay.
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> 10. I do not think the court intended that no matter how long the delay in appealing and notwithstanding the absence of any reasonable excuse, a Court will grant an extension of time if the prospects of success on its merits are good. That would be inconsistent with the purpose of the time limit imposed by Parliament."

16. The court then cited various authorities concerning extensions of time, namely *R v Lesser* (1940) 27 Cr App R 69 and *R v King* [2000] Crim LR 835; [2000] 2 Cr

App R 391 (Court of Appeal of England and Wales); *Sahadath Ali v R* (1969) 15 WIR 399 (Court of Appeal of Trinidad and Tobago) and *Liburd v The Queen* HCRAP 2008/003 (Court of Appeal of The Eastern Caribbean on appeal from Anguilla).

17. At para 16 the court stated as follows:

> "In *Liburd* Barrow JA acknowledged that it did not follow that because an applicant has given no reason for a delay an application for an extension of time must be automatically dismissed. Even though there has been inordinate and inexcusable delay the court may still grant an extension of time 'where for example significant injustice would result if the proposed appeal were not heard'."

18. The court then turned to consider the grounds of appeal which it had earlier set out in the judgment. It observed that the grounds involve no important questions of law or of jurisdiction. It noted that submissions had been heard on the prospects of appeal. It briefly addressed and dismissed grounds 1 and 4 and then addressed in some detail ground 9 which it described as "the only issue raised by this appeal that had any prospect [of] success". Ground 9 concerned the judge's directions in relation to the issue of intent but the Court concluded that the complaint was not arguably made out. The Court did not specifically address grounds 3 and 5 to 8.

19. The Court then set out its conclusions at paras 26 and 27 as follows:

> "26. Where the delay in applying for an extension of time is in excess of six years and no good or sufficient reason is given for that delay, unless the appeal involves a question of jurisdiction or is of high constitutional importance, or there exists exceptional circumstances like perhaps a subsequent decision of the Court after the conviction modifying the interpretation of the law then in my judgment an application for an extension of time must be dismissed even if the appeal is not wholly specious. Unless it can be demonstrated that 'significant injustice' would occur unless the extension is granted then the Court should dismiss the application. It is not sufficient that an appeal may have some prospect of success where the intended appellant simply sat on his right to appeal for more than six years. As I said the evidence does not show that the

> applicant took any steps whatsoever to exercise his statutory right of appeal for more than six years.
>
> 27. If the reasons given by the applicant in this case for a delay of over six years were accepted by this Court then any inmate in prison could wait for an inordinately long period of time before giving any indication of an intention to appeal and have his appeal heard on its merits. In my judgment this would undermine the statutory time limit in section 17 of the Court of Appeal Act and the necessity for certainty and closure. A person has lost his right of appeal after 21 days. To obtain the indulgence of the Court to hear an appeal after the time imposed by statute it is necessary that the delay should be of a much shorter duration and good and sufficient reasons given for it."

20. On this appeal Ms Desiree Artesi on behalf of the appellant submits that the correct approach to the grant of an extension of time to appeal in a criminal matter under Bahamian law is that established by the Court of Appeal in *Williams*. She submits that this requires an extension of time to be granted if the underlying prospects of the appeal are good, notwithstanding the period of delay or the reasons for it. She submits that the Court of Appeal in the present proceedings refused the appellant an extension of time without properly considering the merits of the appeal, on the basis that he had not sufficiently evidenced a good reason for the delay. In doing so, she submits, the Court of Appeal misinterpreted and failed properly to apply the *Williams* test. She further submits that the approach of the Court of Appeal in the present case was wrong in law.

Did the Court of Appeal err in its approach to the grant of an extension of time?

21. Under section 17 of the Court of Appeal Act a convicted person who desires to appeal to the Court of Appeal or obtain leave to appeal is required to give notice of the appeal or application in such manner as may be prescribed by rules of court within 21 days of the conviction. Where the trial has been adjourned after conviction, the date of conviction is deemed to be the date on which the Supreme Court sentenced or otherwise dealt with the appellant. The time within which notice of appeal or of application for leave to appeal may be given may be extended at any time by the court. Similarly, under rule 9 of the Court of Appeal Rules 2005 the Court of Appeal may, on such terms as it thinks just, extend the time prescribed by the Rules for the doing of anything to which the Rules apply.

22. On its face, therefore, the legislation confers a wide and general discretion on the Court of Appeal to extend time to appeal against conviction. So far as the exercise of the discretion is concerned, no specific criteria are identified in the legislation. It has been left to the Court of Appeal to develop a principled approach in order that the discretion may be exercised consistently and fairly.

23. The leading Bahamian authority on the subject, prior to the current proceedings, was the decision of the Court of Appeal in *Williams*. In that case the appellant was convicted on 4 April 1993 of murder, armed robbery and the possession of a firearm while committing a specified offence. He was sentenced to death for murder, 20 years' imprisonment for the armed robbery and 4 years' imprisonment for the firearm offence. Following the decision of the Privy Council in *Bowe and Davis v R* [2006] UKPC 10; [2006] 1 WLR 1623, on 3 February 2011 he was re-sentenced to life imprisonment in respect of the murder. On 14 July 2014 he was given an appeal form by a prison officer which he completed. That form was on the file of the Court of Appeal but it was not entered in the records as a filed document. He applied to the Court of Appeal by summons filed on 26 May 2017 for an extension of time within which to appeal against the life sentence imposed on him on 3 February 2011. In its judgment of 14 December 2017 the Court of Appeal (Dame Anita Allen P, Crane-Scott and Jones JJA) refused an extension of time within which to appeal.

24. Delivering the judgment of the Court, the President stated:

> "The power to grant an extension of time within which to appeal to the Court of Appeal is given by rule 9 of the Court of Appeal Rules 2005. It is settled that in exercising its discretion to extend time, the Court considers four factors: the length of the delay; the reasons for the delay; the prospect of success of the intended appeal; and the prejudice, if any to the respondent." (at para 11)

She considered that the delay was inordinate in the circumstances of the case and would be difficult to explain. The applicant had offered as a reason for that delay the fact that he had given the completed appeal form to his lawyer within the 21 day time limit for appealing but his lawyer had failed to lodge the appeal. He also asserted that despite his writing to the Court of Appeal in 2012 and 2013 he had received no reply and it was only in 2014 that he was able to get the form to the Court. The President noted that there was no record of the filing in the Court of any such form on his behalf in 2012 or 2013. As for the 2014 form, there was nothing on the document which indicated receipt by the Court of Appeal, nor did the Court have

any internal record of its filing. In her view, therefore, his explanation for the inordinate delay was neither good nor sufficient. She continued, in a passage referred to by Sir Michael Barnett P in the present proceedings:

> "Inexorably, notwithstanding the length of the delay, and the absence of good or sufficient reasons for the delay, if the prospects of success of the intended appeal are good, then this Court would nevertheless grant an extension of time and hear the appeal, provided there is no prejudice to the other side." (at para 15)

25. It appears that this passage has been taken as a touchstone indicating the correct approach to an extension of time to appeal to the Court of Appeal in a criminal matter. The four factors which are identified are clearly important. As a result of the delay in making the application, an applicant will have lost the right to appeal he would have enjoyed had the application been made in time. He is, therefore, seeking the indulgence of the Court to be permitted to make an application out of time.

(1) The length of the delay and any explanation or excuse will obviously be relevant. The longer the delay the more difficult it will be to justify an extension of time. Similarly, in the absence of a sound explanation for the delay, the more difficult it will be to justify an extension of time.

(2) The prospects of success will be of great importance and it will be necessary to examine the merits of the underlying grounds before a decision is made as to whether to grant an extension of time. In the Board's view, in a case of inordinate and inexcusable delay such as *Williams* the requirement of good prospects of success on the intended appeal as opposed to mere arguability will normally be justified.

(3) Furthermore, the formulation in *Williams* correctly takes account of possible prejudice to the prosecution. If an extension of time is granted and the appeal is successful, it may result in a retrial. It may well be appropriate to consider at the stage of an application to extend time to appeal whether, given the passage of time, a retrial would be possible.

26. The Board considers, however, that the formulation provided in *Williams* may be unduly inflexible in two respects. First, while the existence of good prospects of success on the merits of an appeal is a matter of great importance, it should not

necessarily follow that once good prospects of success have been shown an extension of time must always be granted. Good prospects of success will not invariably be a trump card. If it was the intention of the Court of Appeal in *Williams* to lay down a rule that if the underlying prospects of the appeal are good an extension of time must invariably be granted, regardless of the period of delay or the reasons for it, which was the submission made by Miss Artesi before us, that must be rejected as unduly rigid. Secondly, the fact that some prejudice may be caused to the prosecution if an extension of time to appeal is granted should not necessarily defeat the application in all circumstances. Ultimately, the critical question will be whether it is in the interests of justice that the time limit should be extended and the court's approach must therefore be flexible.

27. Furthermore, it should not be thought that the four criteria identified in *Williams* are the only relevant criteria when considering an extension of time. It will be necessary to consider the overall justice of the case. In the Board's view, further relevant considerations will normally include the gravity of the offence and the severity of the sentence imposed. Considerations of legal certainty will also be highly relevant. There is an important public interest in the finality of legal proceedings, the efficient use of judicial resources, good administration and the interests of other litigants (*Liburd v The Queen* (Court of Appeal of the Eastern Caribbean) per Barrow JA at para 4; *R v Thorsby* [2015] 1 WLR 2901 per Pitchford LJ at para 13). It will also be necessary to take account of the interests of victims of crime and their families, and of witnesses.

28. Subject to these observations and qualifications, the formulation in *Williams* provides a sensible and principled approach to the issue of extending time to appeal in criminal cases. The evaluation of the competing considerations is necessarily a balancing exercise. As Lord Hope explained in *Hamilton v The Queen* [2012] UKPC 31; [2012] 1 WLR 2875, a case concerning a delay in applying for permission to appeal to the Judicial Committee of the Privy Council:

> "As a general rule, the longer the delay, the more convincing and weighty the explanation will need to be. The question will always be whether, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended.
>
> The circumstances that contribute to the problem of delay in the case of criminal appeals that come before the Board from the Caribbean are exceptional, for all the reasons that have been outlined above. But the question for the Board is

> no different. In these cases, too, the overriding consideration will be whether it is in the interests of justice that the time limit should be extended. Weight will always be given to the merits of the appeal and to the severity of the sentence. The stronger the case appears to be that the appellant may have suffered a serious miscarriage of justice, the less likely it will be that the application will be rejected on the ground that it is out of time. …" (at paras 16, 17)

29. Turning to the present case, the Board agrees with the observation of Sir Michael Barnett P (at para 10) that the Court of Appeal in *Williams* cannot have intended that no matter how long the delay in appealing and notwithstanding the absence of any reasonable excuse, a court will grant an extension of time if the prospects of success on its merits are good. The Board also notes that in the present case the President reminded himself (at paras 16 and 26) that even where there had been inordinate and inexcusable delay the court may still grant an extension of time where, for example, significant injustice would result if the proposed appeal were not heard. Nevertheless, there is some force in the criticism that the approach described by the President at paras 26 and 27 of his judgment, quoted above, was insufficiently flexible. Thus he sought to identify categories of case in which an extension of time may be granted despite a delay in excess of six years:

> "Where the delay in applying for an extension of time is in excess of six years and no good or sufficient reason is given for that delay, unless the appeal involves a question of jurisdiction or is of high constitutional importance, or there exists exceptional circumstances like perhaps a subsequent decision of the Court after the conviction modifying the interpretation of the law then in my judgment an application for an extension of time must be dismissed even if the appeal is not wholly specious."

These may be examples of cases in which it would be appropriate to grant an extension notwithstanding such a delay, but in so far as the President was suggesting that extensions of time are limited to such cases, in the Board's view, that would be wrong as it is unduly restrictive of the court's discretion. The President then went on to conclude (at para 27):

> "To obtain the indulgence of the Court to hear an appeal after the time imposed by statute it is necessary that the

> delay should be of a much shorter duration [than in this case] and good and sufficient reasons given for it."

As it stands, this statement is incorrect and also inconsistent with statements elsewhere in the judgment to the effect that, despite inordinate and inexcusable delay, an extension of time should be granted if a refusal would result in significant injustice. As a result, the Board accepts the submission of Ms Artesi that the approach of the Court of Appeal to an extension of time in the present case was unduly restrictive.

30. Finally in this regard, the Board's attention was drawn to the recent decision of the Court of Appeal (Isaacs, Crane-Scott and Evans JJA) in a civil appeal, *Flowers Development Co Ltd v The Bahamas Telecommunications Co Ltd* (SCCivApp No 14 of 2022), 29 November 2022. In his judgment Evans JA, with whom the other members of the Court agreed, considered the approaches of the Court of Appeal to applications for an extension of time in *Williams* and in the present case. Evans JA made the following observations (at paras 13-15) with which the Board respectfully agrees. First it could never be right or proper to deny an appeal that may expose an injustice, which may have the effect of producing an altogether wrong decision and to allow it to stand merely due to the time that has elapsed since it was made and where the other party suffers no disadvantage. Secondly, despite the apparently differing views in these two cases as to which of the four factors is more persuasive, it is important to recognise that each application will turn on its own facts and circumstances and, more importantly, that the discretion conferred by rule 9 to extend time is unfettered and extremely wide. Thirdly, rule 9(1)(c) gives the Court of Appeal the power to direct a departure from the Rules where this is required in the interests of justice.

Did the Court of Appeal err in failing properly to consider grounds 3 and 5 to 8 of the grounds of appeal?

31. The appellant contends that the Court of Appeal's failure specifically to address these grounds in their judgment shows that they failed to engage with their substance in any meaningful way. Further, even if they did so engage, it is submitted that no reasons were given for the Court of Appeal's rejection of the grounds and reasons were required for the appellant to know why his grounds were considered to have no prospects of success and so as to be able to consider any basis for appeal.

32. This was an application for an extension of time; it was not the hearing of an appeal. In such cases, in rejecting the requested extension, there is no necessity for

the court to address each and every ground of appeal, provided it is clear that it has given consideration to all of them.

33. In the present case it is clear that the Court of Appeal did give consideration to all the grounds raised. In para 5 of the judgment each ground of appeal was set out. In para 21 it was stated that submissions were heard on the prospects of success of the grounds. Grounds 1 and 4 were briefly addressed and ground 9 was then addressed in detail. In para 22 the court observed that ground 9 was the only ground "that had any prospect [of] success", thereby making it clear that the other grounds had been considered, but it had been concluded that they did not raise "any prospect of success". The consideration of all the grounds of appeal is confirmed by the transcript of the hearing which shows all grounds being addressed in argument and their critical evaluation by the court.

34. It has not therefore been shown that the Court of Appeal failed properly to consider ground 3 and grounds 5 to 8. In any event, the Board would endorse the Court of Appeal's rejection of those grounds.

35. Ground 3 was that the judge erred in failing to direct that the prosecution witness, Jean Martial, may have had a motive to lie. Jean Martial gave evidence that he had seen the appellant and the deceased arguing and had heard the deceased calling the appellant a "sissy". He said that he told them to stop it and that as he walked away he heard a sound like someone getting hit. He turned round and saw the appellant pulling a knife out of the deceased's neck. Before the Court of Appeal it was submitted that Jean Martial may have had a motive to lie because (it was asserted) he had been in police custody around the same time and there was mention in the evidence that he and the appellant did not get along. None of these points were, however, pursued at trial and the witness was not cross-examined about them. A proper factual foundation for such a case on motive was therefore never laid. For example, the suggestion that he had been in police custody was based on a single reference in examination in chief that, for the purpose of an inspection parade, the police inspector "got nine of us from a cell". The possible implications of this were not, however, pursued any further. As Sir Michael Barnett P stated during the Court of Appeal hearing: "…why would a judge put to the jury that Mr Martial had a motive to lie? What would be the factual basis upon which the judge would have put that suggestion to the jury?". This cogent question was never satisfactorily answered. There was no such factual basis.

36. Ground 6 was that the judge erred in failing to give a *Lucas* direction in relation to the appellant's evidence that he did not stab the deceased. A *Lucas* direction may be necessary where a defendant is alleged to have lied and there is a

risk that the jury will impermissibly reason that the telling of lies equals guilt. It is neither required nor appropriate where the alleged lie goes to the central issue in the case – see generally *Archbold on Criminal Pleading, Evidence and Practice* (2023 edition) at para 4-461. On the defendant's evidence, whether he stabbed the deceased was a central issue in the case.

37. Ground 7 was that the verdict was unsafe and unsatisfactory having regard to the circumstances of the case. The main points made were that (i) the case was based on circumstantial evidence as there was no witness to the killing; (ii) the judge did not direct the jury with respect to the deceased's bad character; (iii) prejudicial evidence was admitted about the appellant's character; and (iv) the judge failed to direct the jury to consider, in relation to the defence of provocation, that the deceased's dog had bitten the appellant. As to (i), this is correct but there was a witness, Jean Martial, to what happened immediately before and after the killing which, if accepted, was powerful supporting evidence for the prosecution case. As to (ii), the fact of the deceased's past arrests were known to the jury, none of them had involved the appellant, and bad character would be most relevant to the giving of evidence, which the deceased obviously did not do. As to (iii), the judge in directing the jury gave both limbs of the good character direction. (A further complaint that the judge had failed to give the propensity limb of the good character direction, which comprised Ground 5 before the Court of Appeal, therefore lacked any foundation.) As to (iv), the incident involving the dog, which was mentioned by the judge in his summary of the evidence, had happened the day before and could not explain a loss of control at the time of the killing. Further, it is apparent from the transcript of the Court of Appeal hearing that all four of these matters were considered by the court during the course of the hearing.

38. Ground 8 was that the sentence of 35 years (in effect 36 years as the judge took into account when imposing the 35 year sentence the fact the appellant had spent a year on remand) was unduly harsh. The sentencing range for murder in The Bahamas is 30 to 60 years. A sentence of 35 years was well within the trial judge's sentencing discretion.

39. In oral submissions before the Board, the main point made by Ms Artesi on behalf of the appellant was that the appellant did not have a good command of English, that his cross-examination had been conducted in English and that language difficulties had led to him being understood as saying that he had not stabbed the deceased when what he actually meant was that he did not intend to kill the deceased. His denial of stabbing the deceased had then undermined his principal case of self-defence which had in effect been "lost in translation".

40. There was an interpreter present when the appellant gave evidence at trial. Even though evidence was not always given through the interpreter, the interpreter's services were available should that have been considered necessary at any stage by the appellant, his counsel or the judge. The judge clearly had regard to the issue of the appellant's command of English and raised it with the jury as a matter for their consideration in his summing up. The transcript of the appellant's evidence displays a reasonable command of English and the judge commented that he spoke English well without assistance. As to his defence being "lost in translation", the appellant did expressly deny stabbing the deceased during his evidence and he also denied telling the police that he had done so. On a number of occasions he also denied having a knife, which is an implied denial of the stabbing. That was a factual case which the judge therefore had to put to the jury. It is correct that this did not fit easily with the defence of self-defence or the partial defence of provocation but the judge carefully crafted his summing up so as to encompass those defences.

41. Ms Artesi further submitted that the judge should have left the partial defence of manslaughter to the jury. Under section 299(2) of the Penal Code this arises where the defendant is deprived of "the power of self-control" by reason of being in "terror of immediate death or grievous harm" and causes excessive harm in self-defence. This possibility does not appear to have been raised at trial, nor clearly in the grounds of appeal to the Court of Appeal. In any event, in rejecting the partial defence of provocation the jury must have been sure that there was no requisite loss of control.

42. Finally, the Board has considered ground 9, which was the only ground of appeal which the Court of Appeal considered might have a prospect of success. This concerns the directions given in relation to intention to kill. In The Bahamas a charge of murder requires proof of an intent to kill. Section 12 of the Penal Code sets out various circumstances in which such an intent may be inferred, including in section 12(3):

> "If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event, until it is shown that he believed that the act would probably not cause or contribute to cause the event."

43. The judge explained to the jury that murder required intentionally causing the death of another. The judge emphasised: “you must be sure that when the penetrating stab wound to the neck… was inflicted, the person who inflicted it intended to kill Schemer”. The judge then set out the terms of section 12(3) of the Penal Code and stated that a person “must be taken to have intended the natural and probable consequences of his act unless it is shown that he did not believe that it would cause or contribute to cause the event”. He then expressly stated that there is no burden on the defendant to prove anything. He therefore specifically raised the question of what the appellant’s belief was at the same time as emphasising that he bore no burden of proof. These were adequate directions.

44. As applied to the facts of the case, the expert evidence showed the cause of death to be a 3.5-inch stab wound to the neck and bleeding from the chest. The wound severed the jugular vein, a major blood vessel. If the jury concluded that it was the appellant who had stabbed the deceased, it was clearly open to them to infer that the act of so doing was such as would probably cause or stood great risk of causing death and that the appellant, had he used reasonable caution and observation, would have realised this.

45. In the Board’s view, in a case such as the present there was no requirement for the judge to refer to section 12(3) of the Penal Code when directing the jury as to intention. To do so was an unnecessary elaboration. (See *James Miller v The King* [2023] UKPC 10.) However, the direction given was not a misdirection.

46. In all the circumstances the Board is therefore satisfied that the Court of Appeal was correct to reject the prospects of success of this ground of appeal and the grounds of appeal generally.

Conclusion

47. For these reasons, the Board considers that the grounds of appeal which the appellant sought to advance before the Court of Appeal did not have a good prospect of success. Indeed, they were not arguable. Accordingly, although the Court of Appeal adopted an unduly restrictive approach with regard to the application for an extension of time, its assessment of the prospects of success of the proposed appeal was clearly correct. In these circumstances, had the Court of Appeal directed itself correctly, it would inevitably have refused the application.

48. The Board will, therefore, humbly advise His Majesty that this appeal should be dismissed.