IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No. 1 of 2006
(Indictment No. 54/04)
C#3816/2004

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

SHELDON BROWN

Appellant

BEFORE: THE HON. MR. JUSTICE FORTE, P. (Acting)
THE HON. MR. JUSTICE MOTTLEY, J.A.
THE HON. MR. JUSTICE VOS, J.A.

Appearances: Alastair Malcolm, Q.C., instructed by Clyde Allen for the appellant. Andrew Radcliffe, Q.C. instructed by Ms. Cheryll Richards, Hon. Solicitor General, for the Crown.

Heard: 24th November 2008. Judgment given: 25th November, 2008.

Reasons released: 5th March, 2009

FORTE, P. (Acting President)

Reasons for Judgment

The appellant was convicted in the Grand Court on the 30th of January 2006 for the offence of attempted murder and sentenced to 22 years imprisonment. He now appeals his conviction. However, there is no complaint in respect of the facts in the case nor the directions given by the learned judge in his summing-up to the jury. Consequently, there is no necessity to address the facts in any detail except of course those aspects which are relevant to the

sole issue raised in this appeal. That issue is clearly stated in the sole ground of appeal which is as follows:

> "There was a material irregularity during the course of the trial proceedings in that one or more of the jurors should not have served in light of their failure to disclose, despite specific order from the learned trial judge to do so, any familiar [sic] links to police officer."

The appeal, however, proceeded, not so much in the terms of the stated ground of appeal but more so in relation to the consequence, if any, of those two jurors having served. Their relation to former police officers was discovered after the verdict, and consequently, there was no opportunity, for challenges to have been made before the commencement of, or during, the trial.

Before dealing in substance with the complaint, and as a background to the issue, a short summary of the evidence is appropriate.

The appellant is alleged to have shot Fernando Martin at the Cayman Islander Hotel, where he (Martin) was being accommodated by the Government, as part of an "informal witness protection programme". The Crown alleged that Martin responded to a knock on the door of the room in which he was accommodated and on opening the door, saw the appellant dressed as a "pizza delivery man". The appellant then shot Martin in his head.

Martin, however, survived the shots, and subsequently purported to identify the appellant as his assailant.

In pursuance of their investigations, on the same night of the shooting, the police went to the home of the appellant from where the appellant was taken into custody. They retrieved from a laundry basket in the appellant's home a T-shirt, the colour of which answered the description given by Martin. The issue in the case, was the identification of the appellant by Martin. The Crown sought to support this identification by the following evidence.

(1) Gunshot residue was found by the experts on the back of the appellant's left hand, it having been admitted by the appellant that he was left-handed.

(2) Gunshot residue also found on the T-shirt taken from the appellant's home.

(3) Gunshot residue found inside a black Mercedes Benz motor car which was associated with him (per his girlfriend).

(4) When the police arrived at the appellant's home, they found a packed suitcase there indicative of the fact, so the Crown advanced, that the appellant was preparing to travel.

(5) When the appellant was told that Martin had not died, he started to cry and then to vomit. The prosecution contended that he reacted in this way because he knew that Martin would have identified him as his assailant.

We return now to the issue in the appeal.

BACKGROUND

On the morning set for the hearing of the appellant's case the full panel of jurors, gathered in the Court room. Before empanelling the jury for the trial of the appellant, the learned Judge addressed the whole panel thus:

> "Before any person is empanelled in this case, I'm going to advise you of what I always advise potential jurors, and it is this. If you are related to, or are close friends with the defendant then you should let me know and you will be excused from the jury in this case. In addition, if you or your immediate family have ever been employed by the Royal Cayman Islands Police Department, then you should let me know. Third, if you are related to or friends with Mr. Fernando Martin or Mr. O'Niel Tulloch, then you should let me know. And fourthly, if you have had

> any connection with any previous trials concerning these four individuals: Damian Seymour, Matio Dinall, Royden Robinson or Sven Connor then I would ask you to let me know."

A jury was thereafter empanelled for the trial of the appellant. However, for reasons which need not be set down here, that jury was discharged before the trial began. The remaining 20 persons, together with six of those who were empanelled in the first jury, formed the panel from which the jury which eventually tried the appellant was struck.

The learned Judge did not repeat the address which he had earlier given to the panel of jurors.

On the 28th November 2007 (subsequent to the verdict) the Appellant swore an affidavit contending that two of the jurors, Laura Young and Debra Farrum were each related to a former police officer in the Royal Cayman Islands Police Service as the daughter of Ronald Young and the sister of Tyrone Farrum respectively.

It is on this basis that the appellant through his counsel contends before us, that the circumstances would amount to an apparent bias in these two jurors. This specifically so because an integral part of the appellant's defence was an attack on the conduct of the police as a whole, alleging in the instant

case, that he was "set up" by the police so that he would be convicted of the offence for which he was charged i.e. the shooting of Mr. Fernando Martin.

Before examining the law and the substance of the appellant's contention it should be noted that the Crown in answer to the affidavit of the appellant, filed an affidavit of Theresa Reeder, Human Resource Manager of the Royal Cayman Islands Police Service which revealed the following unchallenged evidence.

> "Paragraph 6
>
> I have reviewed the records and advise as follows:
>
> 1) The records show the employment of Tyrone Pierre Farrum, date of birth 29th October 1966 by the RCIPS, date of enlistment 11th August, 1986 as a Constable, Regulation #124 on 2 years probation. Mr. Farrum's next of kin is shown as Debbie Bernard. He submitted a letter of resignation dated 25th September 1987 with his last day in the force being 31st October 1987. He had been requested to resign in the course of an investigation into allegations that he had permitted a prisoner to escape on the 27th July 1987. On the 22nd October 1987 he sought permission to withdraw his resignation, but his request was

refused. I produce true copies of letter of employment dated 4th August 1986, letter of resignation dated 25th September 1987 and letter seeking withdrawal of resignation dated 22nd October 1987 together in a bundle now produced and shown to me marked 'TR1'."

2) The records show the employment of Ronald Young, date of birth 30th April 1949, by the RCIP's, date of enlistment 22nd January 1969 as a Constable, Regulation #10. Mr. Young's next of kin is shown as Gordon Young, father, Myrtle Young, Mother of #1 Central American Boulevard, Belize and Elaine Young nee Scott, of Cayman Brac, wife as at June 1971. His contract with the RCIP's ended on the 31st January 1976 at which time he held the rank of Corporal. I produce true copies of Minute of employment dated 22nd January 1974 and contract of employment dated 3rd August 1975 together in a bundle now produced and shown to me marked 'TR2'."

It was unchallenged evidence, by virtue of this affidavit that the police officers whom the appellant connects with the two jurors had long ago left the service of the RCIP – one 19 years and the other 30 years before the trial of the appellant on which their relatives sat as jurors.

The stated ground of appeal alleges a material irregularity because the two concerned jurors did not disclose their relationships to former police officers. The jurors omission to inform the learned judge, may be understandable given the fact that in one of the cases, it was revealed that the juror would have been 5 ½ years of age when her father left the police force 30 years before, and in the other, the juror's brother had left the force some 18 years before. It was argued nevertheless that had their connections been revealed to the learned judge both would certainly have been excused by him. In our view, we have now gone beyond that stage, and whether or not the learned judge would have excused the jurors from serving, is irrelevant to the real question to be decided i.e. whether there was in the circumstances, apparent bias in favour of the prosecution on the part of the two jurors. It would appear that Lord Phillips of Worth Matravers, CJ took the same view in the case of ***R v Khan*** (Bakish Alla) and Hanif ***R v Lewthwaite***, ***R v Kahn*** (Michael Arshad) ***R v Cross***, ***R v Hill*** [2008] EWCN Crim. 531 [2008] 2 Cr. App. R. 13 when he said at paragraph 46:

> "On behalf of both appellants reliance was placed on the fact that the juror's involvement in drug operations did not come to light until after the

appellants had been convicted. It was submitted that, had the judge been aware that the juror had been involved in drug operations, he would have been unlikely to have permitted the juror to remain on the jury. That may be so but that is not the test of apparent bias. As the European Court of Human Rights remarked in the case of ***Pullar v United Kingdom*** (1996) 22 EHRR 391 at (36) it is natural that a judge should strive to ensure that the composition of a jury is beyond any reproach whatsoever, at a time when this is possible, before or during the course of the trial."

In the instant case, the learned judge by his address to the panel of jurors was demonstrating that he was striving to ensure that the jury would be beyond reproach. The fact, however that the two jurors did not respond to his advice, cannot in itself amount to a material irregularity leading to the quashing of the conviction. It was for that reason that the argument in this appeal was concerned with the question whether their presence on the jury showed an apparent bias which would make the conviction unsafe and unsatisfactory.

BIAS

It is accepted that the principle of law in respect to the approach to be taken in these cases was that enumberated in the case of ***Porter v McGill*** [2002] 2 A.C. in which the House of Lords, after an examination of all the relevant cases, settled the test for ascertaining whether apparent bias exists in any case. The test laid down was as follows:

> "That the appropriate test in determining an issue of apparent bias was whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased ..."

In considering the issue raised in this appeal, a good point of departure can be found in the provisions of section 8 of the Judicature Law (2004 Revision) which reads:

> "8. Every person whose name appears upon the last register of voters compiled under section 18 of the Election Law (2000 Revision) and who has not attained the age of sixty years is liable to serve on juries in the Court upon the trial of all issues directed to be tried by a jury:
>
> Provided that the following persons are exempt from jury service –

Members of the Legislative assembly; judges,

magistrate, and justice of the peace;

recognized pastors and ministers of religion;

persons on the roll of advocates and offices of

courts of competence jurisdiction;

medical practitioners;

constables;

registrars of land and of births, marriages and

death and persons who by reason of poverty

are unable to attend:

And provided further that persons who have been convicted on indictment before the court who have not received a free pardon are disqualified from jury service."

The jurors complained of are therefore not persons who are disqualified from jury service, nor would the persons to whom they are related be disqualified as there is no disqualification in respect of former Police Officers.

In developing his complaint, the appellant through his counsel, referred us to several passages of the transcript which he contended demonstrated the appellant's attack on the police generally and the fact that he was alleging that

he was being framed in relation to this offence, because he was known to the police as a "villain".

Following are some of the extracts (from the transcript) upon which the appellant relied in this regard:

(1) [Page 1825]

"Q. So what made you 'paranoid' as you said, after you were acquitted of the charge that Fernando Martin brought against you? Why were you paranoid then?

A. Mr. Parnell ...

Q. Explain it to us

A. ... if somebody give him a reason to lie on me, create something for Fernando Martin to lie, I couldn't take any chances, because obviously somebody was out to get me, and my feeling about it, it wasn't a civilian.

Q. You mean the police?

A. Yes sir. Yes sir."

(2) [Page 1852]

Q. When he gave his evidence, he was asked about it and he said there came to point

when he, having entered the room, he was standing in the passage-way where you said something to the effect that you ... meaning Mason and Gordon ... want to kill me. I know that for a fact.

A. I made that comment sir.

Q. Some suggestion that there was a conspiracy by the police to do you harm?

A. Not all the police.

Q. No. How are we to understand how loud were you saying these things?

A. Well, I got more louder than I was when they arrested me. I was upset about being arrested. I just came out of prison like two weeks and I said Mr. Haines this is a set up. Today is Tuesday. Two weeks I got out of jail. This is a set up. I didn't commit this crime. I didn't leave home.

Q. So you said that to Mr. Haines?

A. I keep repeating that to them, sir.

Q. When Mason comes into the room ...

A. I just see plant. I just see set up. I see its all set up.

...

Q. You see 'plant'. You better ... I have no doubt the ladies are experienced about life in general ... but you better say what you mean by 'plant'?

A. Putting something on you that was not there before."

(3) Of the search of his house he said [page 1866]

"Q. ... but how many people actually conducted the search?

A. About three of them was searching. Mr. Mel Brown, he ... I asked him to stay beside me because I don't trust anybody. They probably shoot me and tell a lie that I hold on to their gun, so I ask him to stand beside me and keep his eyes on me. He didn't ...

Q. You wanted Sgt. Brown beside you?

A. Yes sir.

Q. Why did you want Melford Brown beside you?

A. Why was he next to me?

Q. Yes.

A. I asked him to come beside me sir.

Q. Because?

A. I didn't trust the police. They would probably lie and say I hold on to their gun and they had to shoot me or something ...

Q. Yes.

A. ... so I asked him to stay beside me because I know he is a man of integrity. That much I know."

(4) [Page 1889]

"Q. ... sampling. We heard from Mr. Mitchell that he came to you in a room with a kit that the jury have heard about many times already. He took swabs from your hands and your palms. Now, did you notice, was he wearing gloves when he took this?

A. Gloves?

Q. The answer is yes or no?

A. Mr. Parnell, the man didn't wear no gloves. It just that the thick of lies. Everybody just lying, lying, lying, lying, lying, sir."

(6) [page 1894]

"Q. Do you actually have any knowledge of there being a set up against you, or why you do say that to the police? If you can do it shortly ...

A. Three reasons sir.

Q. Yes.

A. First, the lie with Fernando, I just know that wasn't his making. He didn't just make that up. Somebody put that to him, put that in his head.

Q. Pause

A. I'm explaining the accumulation ...

Q. Even so, we have to make a note of it ...

A. Yes, sir.

Q. First the lie ...

A. The lie that Fernando told

Q. Yes.

A. Secondly, the arrest. The shooting with Fernando took place being exactly two weeks after I came out of prison ... two weeks Tuesday. I consider that like somebody trying to point directly at Sheldon Brown. It looks too funny. It looks strange. That's the second reason.

...

Q. The third one?

A. The third reason is when this police asked me about which hand I write with. I considered that strange. I've never been swabbed in my life, but I considered that strange for you to be taking swabs from me and asking me which hand I use. So I immediately want something, it looks they are trying to set me up. Something wrong. I spoke to my attorney before I gave the interview and I explained to him all of these things. ...

Mr. Parnell, I'm not stupid. All of these things put together just give me a picture sir. It just gave me a picture."

(6) [page 1906 in Cross-Examination]

"THE DEFENDANT: I am not stupid. I've been running from the same problem for years with this police, because you know what they are trying to do is set me up. I didn't shoot Fernando, my Lord. I didn't shoot Fernando sir. I didn't shoot Fernando. I didn't shoot Fernando I'm not stupid. I try to keep a life. All I want is married, get my son back, and live my life. I didn't shoot Fernando.

...

Q. Mr. Brown, is it your case that the gunshot residue on the T-shirt got there because the police planted it?

A. Somebody put it there. It wasn't from no gunfire. I didn't wear that shirt in two to

three days. I didn't go on any crime scene.

(7) [Page 1913 – Cross-Examination]

Q. Is there any other possibility as far as you're concerned apart from the plant?

A. Well, the only thing is I could say is contaminated because what the police explained most of them were not being truthful. They said I was handcuffed in front. That's not true. They said the basket had nothing else in it. That's not true. They said it was a white VSG van. It was a Suburban. Mr. Loxley Solomon said he came to my apartment a handful of times. I would like him to bring the records and show the court for what occasion. That's not true as well. Those things are not true. I have nothing to hide Mr. Radcliffe. I didn't commit the crime. I have nothing to hide."

(8) [page 1930]

Q. Help us all, please. Who are you saying in the police ...

A. I'm not sure. I not sure. I am not liked by them. I am not like and they'll give the whole public the idea that I'm this and that, they bring me to court everyday with this escort like as if I'm so heavy and powerful that somebody can break I'm not that kind of person. But the media has built my reputation, and it has preceded me. It has preceded the truthfulness about one. I have a past. I'm not denying it. But I did not shoot Fernando. I am not stupid. I didn't shoot Fernando.

Q. So you believe you've been set up by the police, although you don't know which ... though you don't know which particular police officer.

A. I would be lying to say Mr. Radcliffe or Mr. Parnell. I don't have any proof who.

But it's obvious that something went wrong.

(9) [Page 1932]

A. (in cross-examination) I don't have any feelings against the man, sir. I don't have any feelings because in my view this shooting ... I don't know ... I don't know.

My view is that either he – whoever shot him, he know them in the sense if they had some kind of dealings or he don't know who shot him and decide to say, you know what, its Sheldon. Mr. Radcliffe, if somebody ... if a bomb dropped today in Cayman, Sheldon Brown. Somebody get shot Sheldon Brown I sick of it. ... Anything happen ... somebody going to shoot Fernando, who else they coming for? I'm not stupid sir. Who else would they be coming for? If I had knew that this crime was going to happen, I wouldn't even probably be in Cayman – I would have tried to leave here that they couldn't even think about pointing a finger.

Indeed, counsel points to the recognition of the appellant's contention by the trial judge when he directed the jury thus:

> "... he said he was being set up by the police and there was a conspiracy by the police to get him."

The nature of the appellant's defence, the appellants says, made it very critical that no-one with a connection to the police should sit on the jury.

He relied on the case of ***Regina v Abdroikov*** [2007] 1 WLR 2679, an appeal to the House of Lords which was heard together with other appeals all except one dealing with "apparent bias" of serving police officers (who are not disqualified from jury service under the English Statute) sitting on juries.

In the ***Abdroikov*** case a police officer was a member of the jury. This was not disclosed until the jury was in retirement considering their verdicts. The juror sent a note to the judge revealing that he was a serving police officer. He was concerned that if required to report for duty at the Notting Hill Carnival on the following Bank Holiday Monday, when the court was not sitting, he might meet one or more police officers who had been called to give evidence at the trial. With the acquiescence of defending counsel, who had not previously known of the foreman's occupation, the juror was directed not to report for duty on the Monday.

In the second case, the appellant Richard John Green, was stopped by police officers on the 18th March 2004. He was searched by one of the officers, Sergeant Burgess, and in the course of the search the sergeant put his hand into the appellant's pocket and pricked his finger on a used syringe. The appellant was charged with offences of assault occasioning actual bodily harm and having a bladed or pointed article. He pleaded not guilty and was tried before Judge Statman and a jury in the Crown Court at Woolwich. There was a dispute in the evidence between him and the police sergeant concerning the manner in which he was searched and what he and the sergeant respectively said. The appellant was convicted and sentenced. Some time after the trial, by chance, the appellant's solicitor discovered that a police officer, Police Constable Mason, had been a member of the trial jury, a fact not known to the appellant at the time. Police Constable Mason was at the time posted to Eltham Police Station, within an operational command unit which committed its work to the Crown Court at Woolwich. Police Constable Mason and Sergeant Burgess were both serving in the same borough at the time of the incident and had once served in the same police station at the same time, but the two officers were not known to one another.

The third appellant Kenneth Joseph Williamson, was charged with two very serious offences of rape of which he was convicted on 3 February 2005 after a trial before Judge Hale and a jury in the Crown Court at Wanington. The

jury included among its members Mr. McKay-Smith. Before the trial began he wrote to the Court to say he had been summoned to serve as a member of the jury at Wanington. He recorded that he worked for the Crown Prosecution Service and had done so since its inception in 1986. He had previously worked for the Greater Manchester Council as a prosecuting solicitor, having been in private practice for five years before that. He was a higher court advocate and had practiced as such in many local courts including that at Wanington on behalf of the Crown, although he had not conducted a trial in the Crown Court. His current job was to advise the police on changing out of hours. He said that as a matter of policy the Crown Prosecution Service had asked those summoned to ensure that the judge had all the necessary information to hand in order to exercise discretion as to the feasibility of an individual Crown Prosecution Service employee serving. This letter, was passed to defending counsel, who sought to challenge Mr. McKay-Smith, contending that the court should not only do what is right but should be seen to have done what is right. He complained of potential bias and ruled on the appellant's fair trial right under Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The judge replied that he had to operate within the law passed by Parliament and he could see no objection to this juror sitting in the light of the current legislation.

Mr. McKay-Smith duly sat, and became the foreman of the jury.

As noted earlier, all three appeals were heard together in the House of Lords where the appeal of ***Abdroikov*** was dismissed and those of Green and Williamson (by majority) were allowed.

Of significant note, is that in all three cases, the challenged jurors were all persons who were permitted by Statute to sit as jurors in England and Wales. Of importance also, is the fact that in two of the cases the challenged jurors were police officers while in the other, he was a prosecutor. The dicta in the appeals all recognized that the law having allowed persons occupying the positions of the jurors, it was not sufficient to disqualify them merely on the basis of their occupation. To do so would require an examination of the particular circumstance of each case to determine whether a fair-minded person well informed of the circumstances of the case would come to the conclusion that there was a real possibility of bias.

The integrity of the trial process depends on the impartiality and independence of those who sit in judgment over others. As Lord Bingham of Cornhill said of the rules governing the disqualification of jurors in delivering his speech in the ***Abdriokov*** case (supra):

> "Most of these notes reflect a familiar truth, that if its metal be flawed a bell will not ring true. It is of the utmost importance that juries should ring true, and be generally recognized to do so."

If not, then a person charged and tried by a jury that is so flawed, would be deprived of his inherent right to be tried by an impartial and independent tribunal, or at the least would appear in the circumstances to have been deprived of that right. This would of course be in keeping with the "ex tempore judgment" in ***R v Sussex Justices, Ex p McCarthy*** [1924] 1 KB 256, 259 where Lord Hewart, CJ enunciated one of the best known principles of English Law:

> "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

Since then, that test has been examined in many cases not the least of which is ***R v Gough*** [1993] AC 646 in which Lord Goff of Chieveley referred to "the simple fact that bias is such an insidious thing that, even though a person may in good faith be acting impartially, his mind may unconsciously be affected by bias." In the end, the case of ***Porter v McGill*** (supra) settled the test which was earlier referred and which will form the gravamen of the reasoning in this appeal.

Worthy of note also is the case of ***Pullar v United Kingdom*** [1996] 22 EHRR 391, in which the following dicta was cited with approval by Lord Bingham in the ***Abdriokov*** appeal:

> "... knowledge of a person did not necessarily lead to prejudice in his favour, and that it had to be decided whether the familiarity in question was of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal."

How then, should these principles be applied to the facts in the instant appeal?

The appellant based his submissions on two fundamental issues –

(1) The relationship of the two jurors to former police officers.

(2) The effect that that relationship would have had on the particular jurors given the fact that an integral and important aspect of the defence was its allegation of dishonesty in the police force as a whole, and the investigating officers in particular with the exception of officer Sgt. Mel Brown. The dishonesty was manifested in the police 'setting him up' in respect of the shooting."

These two propositions are not exclusive of each other in that mere relationship to a police officer would not in itself be a disqualification to serve as a juror. To begin with, the Legislation does not disqualify such a person from

serving. The case of the appellant becomes more difficult given the fact that the police officers to whom these jurors are related have left the CIPS some 18 and 30 years prior to the trial of the case. In addition, the Legislation does not disqualify former police officers from serving. The appellant cannot therefore depend on the first limb without showing that, because of the issues joined with the police, a person who was related to a police officer, who left the CIPS 18 or 30 years ago would be so influenced by that relationship that there was a real possibility that he/she would be biased against the appellant.

The cases cited in argument dealt with jurors who were themselves police officers or in one case a prosecutor. In spite of that it was the specific circumstances of each case that determined the outcome. It is certainly right to say that a fair minded person might conclude there to be a real possibility that Police officers from the same police area working together were biased in favour of their colleague when the issue to be resolved depended on the credibility of the appellant as opposed to a police officer who is a witness for the prosecution. This case however does not present that difficultly. The jurors have no relationship with any serving police officer nor are they disqualified by virtue of the Legislation. In order to succeed therefore the appellant has to show that, given the nature of the defence, and the jurors relationship with the former police officers, there would be an apparent bias.

Before arriving at a decision on that issue, we should note the following –

(1) Despite all the allegations of a frame by the police cited from the passages in the transcript (supra) there was no evidence to support the allegation which rested solely on the belief of the appellant.

(2) There was an allegation by the appellant that contrary to what the police testified they wore no gloves when they took the swab from his hand, and that his hands were handcuffed in front of him. His account, he maintained, left it open for transmission of the gun shot residue to have come into his hand from the police.

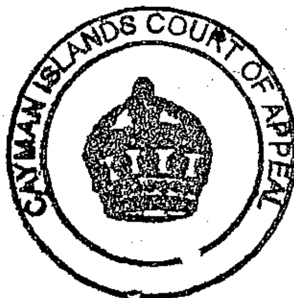
To these factors, the test in ***Porter v McGill*** (supra) must be applied. Would a fair-minded person who has knowledge of all the circumstances, in particular of the fact that two of the jurors were related to former police officers of yesteryear, and the nature of the defence, come to the conclusion that there was a real possibility of bias. We conclude that the answer must be no. Certainly, in one case, the former police officer was asked to resign after investigation into his conduct. He did so, but later applied to withdraw his resignation, and this was refused. It would seem that any bias in respect of the juror who is related to him, if one were to speculate, could be said to be against the police force.

In our view, the relationships upon which the appellant based his contention of apparent bias, were not sufficiently current to lead a fair-minded person to conclude that given the nature of the defence there would be a real possibility of bias.

For these reasons, we dismissed the appeal and affirmed the conviction and sentence.

FORTE, P. (Acting)

MOTTLEY, J.A.



VOS, J.A.