COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 130 of 2020

B E T W E E N

LORENZO PRITCHARD

Appellant

And

REGINA

Respondent

BEFORE:	**The Honourable Sir Michael Barnett, P** **The Honourable Mr. Justice Isaacs, JA** **The Honourable Mr. Justice Evans, JA**
APPEARANCES:	**Mr. Stanley Rolle, Counsel for the Appellant** **Ms. Zoe Bowleg, Counsel for the Respondent**
DATES:	**29 October 2020; 9 December 2020; 22 February 2021; 13 April 2021; 21 April 2021; 10 June 2021; 26 July 2021; 18 August 2021**

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Criminal Appeal – Appeal against conviction – Appeal against sentence – Manslaughter – Provocation - Whether the judge failed to direct the jury – Whether conviction is unsafe and unsatisfactory – Whether or not this is a case for the application of the Proviso -

Thomas Christopher Hield was shot in the head on 23 October 2016 during an altercation outside Berry's nightclub in Abaco. According to witnesses he was shot by someone sitting in a silver Honda. The driver of the silver Honda along with the appellant were charged with the murder of Hield. He was found not guilty of murder but was convicted of manslaughter and appeals his conviction and sentence on the grounds inter alia, that the learned judge erred "by failing to adequately or sufficiently direct the jury on provocation specific to the facts of the case and failed to point out to the jury what acts or things said and done might constitute provocation" and that the sentence is unduly harsh and severe. After hearing the parties the court reserved its decision.

Held: appeal dismissed; conviction and sentence affirmed.

The appellant alleges that the Judge summed up the issue of provocation to the jury wrongly. I have had regard to the Judge's summing up and I am unable to agree with the appellant's assessment of her performance.

The appellant also complains that the sentence imposed upon him is unduly severe. By imposing a sentence of twenty years as of 21 March 2019, and by taking into account the remand time of about two years and five months, the sentence imposed by the Judge was twenty-two years and five months. In considering this matter, we are guided by the principle that the Court will not interfere with a sentencing judge's discretion merely because we ourselves may have imposed a different sentence.

The sentencing remarks of the Judge disclose a heavy reliance on the "guidance" in **Larry Raymond Jones**, but I am satisfied that the sentence she imposed cannot be regarded as unduly harsh in the circumstances of this case. The sentence does not fall outside of that generous ambit within which disagreement may arise as to the appropriate sentence for manslaughter by provocation.

Andy Francis v Regina SCCrApp No. 133 of 2009 considered
Angelo Poitier v R SCCrApp. No. 95 of 2011 mentioned
Ashley Hield v Regina SCCrApp. No. 172 of 2019 considered
Caryn Moss v The Director of Public Prosecutions SCCrApp & CAIS No 230 of 2018 followed
Donnell Rolle v R [2011] 3 BHS J No 25 considered
Dustin Taylor v Regina MCCrApp & CAIS No. 63 of 2014 considered
Hilfrant Francois Joseph v The Attorney General SCCrApp. No. 88 considered
Kemp v Regina [2013] 2 BHS J. No. 22 mentioned
Larry Raymond Jones, Patrick Jervis, and Chad Goodman v R SCCrApp Nos. 12, 18 & 19 of 2007 considered
Lathario Miller v Regina SCCrApp No. 183 of 2015 followed
Leon v Regina [2018] 1 BHS J. No. 122 mentioned
R v Angelo Brennen SCCrApp. Nos. 9 and 10 of 2007 mentioned
R v Fanel Joseph Criminal No. 43/2/2012 mentioned
Rapael Neymour v The Attorney General SCCrApp No. 172 of 2010 considered
Roger Watson v Regina SCCr. App. No. 23 of 2007 considered
The Attorney General v Claude Lawson Gray SCCrApp. No. 115 of 2018 followed
The State v Sydney (2008) 74 WIR 290 considered

J U D G M E N T

Judgment by the Honourable Mr. Justice Jon Isaacs JA,

1. The appellant was convicted of manslaughter on 21 March 2019; and on 31 January 2020, Madam Justice Estelle Gray-Evans ("the Judge") sentenced him to twenty years' imprisonment. He filed a Notice of Motion on 13 February 2020 challenging his conviction and sentence on the grounds that his conviction was unsafe and unsatisfactory and his sentence was severe; and on the same date, filed a Notice of Appeal asserting that his conviction was unsafe and unsatisfactory.

2. On 26 July 2021, having heard the submissions of Counsel we reserved our decision. We render it now.

Background

3. On 23 October 2016, around 2:00am, there was an altercation outside a nightclub in Abaco called Berry's. It seems that the deceased, Thomas Christopher Hield ("Hield"), may have been acting as a peacemaker when he was shot by someone sitting in a silver Honda. Hield was standing outside of the vehicle at the time. The weapon used was a shotgun; and Hield received a shot to his head. There may have been as many as three shots fired.

4. Lyndisha Curry, who had spent time with the appellant earlier in the evening, identified him as being involved in an altercation with Lorenzo Davis, in whose car Ms. Curry was sitting at the time, and as having gone into the car from which the shots were fired.

5. Another witness, Britney Thervil, spoke to the altercation; and identified the appellant as one of the persons involved. Additionally, Lorenzo Davis identified the appellant as having a shotgun, and going into the car from which the shots were fired. Davis also identified Renaldo Williams ("Renaldo"), the appellant's co-accused, as the driver of the car.

6. Christon and Laron Hield, brothers of Hield, also identified the appellant and Renaldo as the occupants of the car at the time the shots were fired, and both stated that the appellant was the person who fired the shots.

7. Another witness, Alrick Laing, described the two men he said were involved as one being short and one being tall; and stated that the short one brandished a shotgun before entering the car. It is noteworthy that the appellant was noticeably shorter than Renaldo. Both men were arrested and interviewed by the police. Their records of interview were admitted without objection during the trial.

8. During his interview, Renaldo admitted being the driver of the vehicle. He claimed that the appellant fired the shots. For his part, the appellant, in the presence of his attorney, admitted being in the vehicle when the shots were fired, but claimed that he did not know who fired the shots. However, during the trial, the appellant went into the witness box and testified to the effect that he was in the car. He told of being involved in the altercation after seeing Ms. Curry, with whom he was involved, sitting in Renaldo Davis' vehicle. He admitted that he retrieved the shotgun from the vehicle and approaching Renaldo Davis, before returning to the vehicle, where he claimed that he put the gun in the center console. He said that he heard shots but did not know who fired them.

9. Dr. Caryn Sands was deemed by the Judge to be an expert in the field of pathology. She testified that, inter alia, she performed an autopsy on Hield and determined that he died from a shotgun wound in the head. Dr. Sands observed that there was evidence of a close range discharge, to wit, stippling on the eyelid and cheek of Hield and small amounts of soot on the temporal skull of the entrance wound. She opined that the barrel was within five to six feet of Hield.

10. Renaldo was acquitted on 21 March 2019; but the appellant was found not guilty of murder but guilty of manslaughter by a count of 12:0. Counsel for the appellant requested that a Probation Report be prepared to assist the Judge in arriving at an appropriate sentence.

11. The Probation Report revealed that when interviewed, the appellant indicated that, "the crowd failed to disperse so the concerned opted to retrieve the gun and discharged it in the air in an effort to defuse the crowd. He stated that he was unable to see clearly due to the poor lighting and heavily tinted car glass, therefore, he was not aware that he shot someone" (pg 552, line 25-230 of the transcript). It is noted that this is inconsistent with the testimony of the appellant given during the trial.

The Appeal

12. The appellant challenges his conviction and sentence in his papers filed on 13 February 2021. His grounds are as follows:

> "**1. That the conviction is unsafe and unsatisfactory**
>
> **2. The sentence given by the Hon. Justice is unduly severe in the circumstances.**
>
> **3. Such other ground(s) as the Court deems just and reasonable."**

The Conviction is Unsafe and Unsatisfactory

Ground 1: (a)The Learned Judge erred by failing to adequately or sufficiently direct the jury on provocation specific to the facts of the case and failed to point out to the jury what acts or things said and done might constitute provocation.

13. This ground may be given short shrift because the jury acquitted the appellant of murder. They convicted him of manslaughter which suggests that they were satisfied that the appellant was responsible for the death of Hield but that he did not have the requisite intention to kill at the time. Had the appellant submitted that the Judge was wrong to have left manslaughter for the consideration of the jury because the issue of manslaughter did not arise on the evidence led in the case; and by inviting the jury to consider manslaughter as an alternative verdict, robbed the appellant of the opportunity for a complete acquittal, then he may have had a cause for complaint. But that is not the gist of his complaint.

14. The appellant alleges that the Judge summed up the issue of provocation to the jury wrongly. I have had regard to the Judge's summing up [at pages 463 through 465 of the transcript] and I am unable to agree with the appellant's assessment of her performance.

15. The respondent submitted that on the evidence adduced in the case, the Judge rightly left the issue of provocation for the jury's consideration. The posit that even if the court found merit in this aspect of the appeal, the Court should apply the proviso to section 13(1) of the Court of Appeal Act. That section provides:

> "**13. (1) After the coming into operation of this section, the court on any such appeal against conviction shall allow the appeal if the court thinks that the verdict should be set aside on the grounds that —**
> **(a) under all the circumstances of the case it is unsafe or unsatisfactory;**
> **(b) it is unreasonable or cannot be supported having regard to the evidence;**
> **(c) there was a wrong decision or misdirection on any question of law or fact;**
> **(d) in the course of the trial, there was a material illegality or irregularity substantially affecting the merits of the case; or**
> **(e) the appellant did not receive a fair trial, and in any other case shall dismiss the appeal:**
>
> **Provided that the court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the court considers that no miscarriage of justice has actually occurred."**

16. In **Lathario Miller v Regina** SCCrApp No. 183 of 2015 Madam Justice of Appeal Crane-Scott stated, inter alia, at paragraph 105:

> "**The guiding principles for the application of the proviso are explained in Stafford v. The State (1998) 53 WIR 417 on appeal from Trinidad and Tobago. After considering a similarly worded proviso to s. 13(1),**

Lord Hope of Craighead, delivering the advice of the Board said at pages 422-423:

"9. The test which must be applied to the application of the proviso is whether, if the jury had been properly directed, they would inevitably have come to the same conclusion upon a review of all the evidence; see Woolmington v. Director of Public Prosecutions [1935] AC 462 at page 482, per Lord Sankey LC. In Stirland v. director of Public Prosecutions [1944] AC 315 at page 321 Lord Simon said that the provision assumed "a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict". As he explained later on the same page, where the verdict is criticized on the ground that the jury were permitted to consider inadmissible evidence, the question is whether no reasonable jury, after a proper summing-up, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken on the ground of its inadmissibility. Where the verdict is criticized on the ground of a misdirection, such as that in the present case, and no question has been raised about the admission of inadmissible evidence, the application of the proviso will depend upon an examination of the whole of the facts which were before the jury in the evidence."

17. Had I been satisfied that the Judge had somehow fallen into error during the summing up of the case to the jury on the issue of manslaughter, I would have applied the proviso in any event as I am satisfied that no miscarriage of justice has actually occurred.

18. Nevertheless, there is no merit in this ground of appeal.

Ground 2. The sentence given by the Hon. Justice is unduly severe in the circumstances.

19. At the sentencing stage of the trial, the Crown argued strenuously for the Judge to follow the sentencing guideline in **Larry Raymond Jones v R** SCCrApp Nos. 12, 18 & 19 of 2007; and referred to three other cases: **Andy Francis v Regina** SCCrApp No. 133 of 2009, **Rapael Neymour v The Attorney General** SCCrApp No. 172 of 2010 and **Roger Watson v Regina** SCCr. App. No. 23 of 2007 to buttress their position. When sentencing the appellant, the Judge said, inter alia, at pages 564-5 of the transcript:

"I also agree with Lord Lane, Chief Justice, in the English case of Taylor where he said that sentencing in these circumstances is an almost impossible task. But, as judge, I must be mindful of the necessity to ensure that the Defendant not only expiates his offence by the imposition of a term of imprisonment but also, although the jury, by their verdict of not guilty of murder but guilty of manslaughter, was not persuaded that the killing of

Thomas Christopher Hield was intentional, to my mind, the punishment of the Convict must also be a lesson to other people that they should keep their tempers and not allow themselves to be provoked or to act recklessly in the circumstances that existed at the time of the killing.

Of course, rehabilitation is to ensure that the offender is provided with facilities or services aimed at improving his behavior. The probation officer reports that Mr. Pritchard has expressed remorse for his involvement in the late Mr. Hield's death. To my mind, that is a good sign and the first step towards rehabilitation, accepting responsibility for one's action.

However, manslaughter is a serious offence and is reflected in the penalty it carries. In this case, the life of a young man, 25 years, has been snuffed out too soon by another young man, 20 years old at the time, facing a maximum sentence of life imprisonment.

As previously noted, however, the Court of Appeal has suggested a range of 18 to 35 years as an appropriate sentence for manslaughter. I am mindful that in exercising its discretion as to where within that range would be an appropriate sentence for a convict, the Court is obliged to consider any aggravating as well as the mitigating factors that may have a bearing on the length or severity of sentence imposed.

In that regard, I note and accept the aggravating and mitigating factors pointed out by the learned counsel for the learned counsel for the defence.

So having taken all of the facts and circumstances of this case into consideration, including the aggravating and mitigating factors noted, the law and authorities as cited, the favorable probation report and the comments of those interviewed therefore. Lorenzo Pritchard, a jury having found you guilty of the offence of manslaughter, and this Court having, on 21st March, 2019, convicted you of the same, I hereby sentence you to 20 years imprisonment from the date of your conviction, that is, 21st March, 2019. The time that you spent on remand from 26th October, 2016, has been taken into consideration in computing the sentence of 20 years."

20. By imposing a sentence of twenty years as of 21 March 2019 and by taking into account the remand time of about two years and five months, the sentence imposed by the Judge was twenty-two years and five months.

21. The appellant complains that the sentence imposed upon him is unduly severe. In considering this matter, we are guided by the principle that the Court will not interfere with a sentencing judge's discretion merely because we ourselves may have imposed a different sentence. In **Caryn Moss v The Director of Public Prosecutions** SCCrApp & CAIS No 230 of 2018, the Court differently constituted, said at paragraph 86:

> **"86. The law gives a convict who has been sentenced the right to appeal his sentence and now also affords the Crown the ability to do the same. In approaching matters of this nature we are always mindful of the principle that an appellate court should be slow to interfere with the exercise of trial judge's discretion and should not interfere unless some error in principle has been disclosed. This principle is as old as the guidance given by Lord Hewart, LC in the case of Gumbs (1927) 19 Cr. App. R. 94 where he stated as follows:**
>
> > **"Two principles from time to time have been mentioned in this Court, and in some cases they may have to be considered together. One is that this Court never interferes with the discretion of the Court below merely on the ground that this Court might have passed somewhat different sentence: for this Court to revise sentence there must be some error in principle."**"

See also **Angelo Poitier v R** SCCrApp. No. 95 of 2011, **Kemp v Regina** [2013] 2 BHS J. No. 22, **R v Angelo Brennen** SCCrApp. Nos. 9 and 10 of 2007, **Leon v Regina** [2018] 1 BHS J. No. 122 and **Ashley Hield v Regina** SCCrApp. No. 172 of 2019.

22. Counsel for the appellant submitted that the Judge committed an error in principle when she had regard to **Larry Raymond Jones, Patrick Jervis, and Chad Goodman v R** SCCrApp Nos. 12, 18 & 19 of 2007**,** as providing the range of sentences for cases where persons had been charged with murder but the jury had found them guilty of manslaughter by reason of provocation. Counsel referred us to the cases of **The Attorney General v Claude Lawson Gray** SCCrApp. No. 115 of 2018 and **Dustin Taylor v Regina** MCCrApp & CAIS No. 63 of 2014**.**

23. Counsel for the respondent submitted that the starting point for a consideration of sentence in a manslaughter case is the decision of the Court, differently constituted, in **Larry Raymond Jones** (Supra) where the court, at paragraph 15, noted that guidelines had been set by the court in manslaughter case, and that sentences in the range of 18 to 35 years had been upheld by the

court, bearing in mind the mitigating factors. It is therefore submitted that the bottom of the range is a sentence of 18 years, which would only be appropriate in a case where the convict showed remorse, and pleaded guilty, thereby accepting responsibility.

24. Sawyer, P, in **Larry Raymond Jones** (Supra), stated as follows at paragraph 15:

> "**15. On the other hand, it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter. Sentences passed or upheld by this court during that period range from 18 years to 35 years imprisonment, bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (e.g., by pleading guilty at the earliest opportunity) to name some of the usual considerations to be taken into account by the sentencing judge."**

25. The respondent places great reliance on Sawyer, P's decision in **Larry Raymond Jones** (Supra) when suggesting that that case provides a guideline for judges when sentencing a convict for manslaughter. However, doubt was thrown on that statement by a subsequent majority decision of this Court, differently constituted: Barnett, P Moree, CJ and Crane-Scott, JA. Moree, CJ dissenting on that discrete issue. In **Claude Lawson Gray** (Supra) Barnett, P stated at paragraphs 21 through 23:

> **"21. Although in paragraph 15 the Court said "it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter", I have not seen any judgment of this Court prior to the decision in that case which sets or purports to set guidelines for sentences for manslaughter. None were cited in that paragraph or in that judgment. There is nothing in that paragraph or in that judgment which indicates how the guidelines should be applied by a sentencing judge. For example, should a homicide arising out of a domestic dispute or drug abuse be treated in the same manner as a homicide arising out of a criminal act such as robbery where in the former cases there was no intention to kill? Should a conviction for manslaughter by way of provocation have a minimum of 18 years unless there are exceptional circumstances? Should a manslaughter conviction arising out of the use of a gun or knife be treated in the same way as a homicide caused by an otherwise non lethal weapon?**

22. No such guidance as one may expect from a court setting authoritative sentencing guidelines to be followed by lower courts or even itself is to be found in that paragraph or in the judgment.

23. In my judgment, it is unlikely that the Court was intending by that paragraph to impose a range which was intending to bind judges. It is also unlikely that the Court was laying down as guidance to sentencing judges a minimum sentence of 18 years for the offence of manslaughter, save in exceptional circumstances. If the Court was seeking to establish an authoritative guideline for manslaughter it is unlikely that the Court would have limited itself to a review of only the immediate seven years prior to the judgment; nor in my judgment would it have ignored sentences passed by trial judges which have not been appealed to this Court."

26. The president then made reference to a number of cases where the Court had not interfered with sentences that fell well below the purported guideline range of sentences. Crane-Scott, JA associated herself with the view of the President and provided observations in support of his opinion. At paragraphs 185 to 187 Crane-Scott, JA said as follows:

"185. Understood in this way, it is very doubtful whether paragraph 15 of Larry Raymond Jones was ever intended to establish a comprehensive sentencing "guideline" for manslaughter offences. Indeed, the Court was adverting to the "guidelines" which had already been set in the preceding 7 years. I completely agree with Sir Michael who, at paragraph 21 (above) observed that there is no judgment of the Court prior to Larry Raymond Jones which purports to set guidelines for manslaughter. In my view, it is very likely that what the Court referred to as "guidelines" was a limited range of manslaughter sentences passed or upheld by this Court in appeals in the preceeding (sic) 7 year period.

186. Moreover, the accuracy as a "guideline" of the 18 to 35 year range is questionable inasmuch as no mention is made of sentences passed or upheld in the preceeding (sic) 7 years which fell well below the lower end of that range. See for example Christine Johnson Alcock v R Criminal Appeal No. 30 of 2001 and Tenelle Gullivan v R No. 5 of 2005 discussed in Sir

> **Michael's draft, where upheld" in manslaughter appeals decided within the preceding 7 years.**
>
> **187. Again, apart from identifying the 18 to sentences of 15 and 6 years respectively were "passed or 35 year range, the so-called "guideline" judgment in Larry Raymond Jones provides no guidance whatsoever in relation to where along the suggested sentencing continuum certain categories of manslaughter offences might lie. Curiously, manslaughter by negligence which carries a statutory maximum of 5 years is obviously outside the "guideline". What is more, the so-called "guideline" makes no attempt to differentiate between for example, unintentional homicides, manslaughter by diminished responsibility or by provocation; or the special provisions of section 299 of the Penal Code, Ch. 84 governing the categories of intentional homicides which have been reduced to manslaughter which one might expect to see at the upper end of a properly constructed "guideline". Having regard to these deficiencies, if guidelines were indeed set in the preceeding (sic) 7 years, it is hard to avoid the conclusion that they were not as comprehensive as they should have been and that the 18 to 35 year range is somewhat selectively drawn."**

27. At paragraph 75 in **Ashley Hield** (Supra), I had said, inter alia:

> **"75. There is no gainsaying that Larry Raymond Jones has been a "guide" to the courts - both Supreme Court and this Court - when sentencing in manslaughter cases since 2008. It can no longer be accorded such a status since the decision in Gray."**

28. The brief facts in **Hield** were that the appellant had been charged with the murder of an elderly man but the jury acquitted him of murder and convicted him of manslaughter. The trial judge sentenced the appellant to thirty years' imprisonment notwithstanding that he was sentencing "a twenty-one-year-old man who had no previous convictions, who having lost his self-control, killed a man". On appeal, the Court found that the trial judge's "ritualistic reliance" on **Larry Raymond Jones** (Supra) " and his failure to duly observe and sentence in accordance with the verdict of the jury, given the circumstances of the case, strayed beyond the ambit of sentences appropriate for this offence and for this offender; and as a consequence, this Court ought to interfere with it.".

29. Thus, it would appear that the Judge's reliance on **Larry Raymond Jones** is an error in her sentencing approach; but has she gone totally wrong with the sentence she did in fact impose

is the question we must answer. As Cummings, JA said in the Guyanese case of **The State v Sydney** (2008) 74 WIR 290:

> **"This court has to ask itself what is a proper sentence in all the circumstances of the case. The consideration here must be whether the sentence passed is manifestly excessive or wrong in principle."**

30. Barnett, P in **Claude Lawson Gray** provided a survey of sentences in manslaughter cases that demonstrated a range of sentences that fell below the baseline of eighteen years mentioned in **Larry Raymond Jones**. The cases ranged from ten years probation in **R v Fanel Joseph** Criminal No. 43/2/2012 where the defendant had pleaded guilty to manslaughter to fifteen years' imprisonment in **Donnell Rolle v R** [2011] 3 BHS J No 25 where the defendant had been charged with the murder of his wife but convicted of manslaughter by the jury.

31. In **Hilfrant Francois Joseph v The Attorney General** SCCrApp. No. 88 the appellant was sentenced to twenty-five years' imprisonment less the five years and three months he had spent on remand. He had been convicted of murder and sentenced to thirty-five years in his trial; but on appeal the Court, differently constituted, substituted a conviction of manslaughter for the stabbing death of his girlfriend.

32. The Court, differently constituted, by a majority, in **Andy Francis v Regina** SCCrApp No. 133 of 2009, substituted a conviction for manslaughter where the appellant had been convicted of murder and sentenced to twenty-five years; but did not interfere with the sentence as they found "the same to be within the mid range of the sentencing scale for manslaughter and appropriate in all the circumstances".

33. My reference to **Francis** does not disregard the disagreement by Barnett, P expressed in **Ashley Hield** (Supra) that that case "should be treated as peculiar to its own facts and not a precedent for a sentence on manslaughter".

Conclusion

34. The sentencing remarks of the Judge disclose a heavy reliance on the "guidance" in **Larry Raymond Jones** (Supra), but I am satisfied that the sentence she imposed cannot be regarded as unduly harsh in the circumstances of this case. The sentence does not fall outside of that generous ambit within which disagreement may arise as to the appropriate sentence for manslaughter by provocation.

Disposition

35. There is no merit in the grounds of appeal advanced by the appellant. In the premises, the appeal stands dismissed. The conviction and sentence are affirmed.

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The Honourable Mr. Justice Isaacs, JA

36. I agree.

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The Honourable Sir Michael Barnett, P

37. I also agree.

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The Honourable Mr. Justice Evans, JA