

**IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION**

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Application No BZ/A/CR2024/003
BZ Criminal Appeal No 3 of 2019**

BETWEEN

WILLIAM MASON A/C DANNY MASON

APPLICANT

AND

THE KING

RESPONDENT

Before: **Mme Justice Rajnauth-Lee
Mr Justice Jamadar
Mme Justice Ononaiwu**

Date of Judgment: **13 May 2025**

On Written Submissions

Mr Peter A C Taylor and Ms Nehanda Samuel for the Applicant

Ms Cheryl-Lynn Vidal SC for the Respondent

Practice and Procedure – Extension of time – Special leave to appeal – Cogent reasons for delay – Realistic chance of success – Risk of miscarriage of justice.

SUMMARY

This is an application for an extension of time to file an application for special leave to appeal, and an application for special leave to appeal.

The case involved William Mason, also known as Danny Mason, who, along with four others, was charged with the murder of Pastor Llewellyn Lucas ('the deceased'). The relevant facts are that during a police investigation, a decapitated head, later identified as

the deceased's, was found in Mason's vehicle. Further searches revealed burnt human bones on Mason's property. The prosecution's case was built on circumstantial evidence, including CCTV footage, witness testimonies, and forensic evidence. Mason's defence was that he was being framed.

Mason and 4 co-accused were convicted of murder and sentenced to life imprisonment with a minimum term of 35 years. Mason and the co-accused appealed to the Court of Appeal. On 11 July 2024, the Court of Appeal dismissed their appeals and confirmed their sentences. The Court of Appeal found that the trial judge's decision was based on a cogent assessment of the circumstantial evidence and that there was no basis to quash the conviction.

Following the delivery of the judgment of the Court of Appeal, and on 21 August 2024, the day before he was required to file an application for special leave to appeal to the Caribbean Court of Justice ('the Court') Mason's previous attorney indicated in an interview with the media that he intended to file an application for special leave to appeal. On 23 August 2024, and before he had filed the application for special leave, the previous attorney had fallen ill and had to be hospitalised. By the time Mason became aware of this, the deadline to file the application for special leave had passed. On 7 October 2024, Mason was able to retain the services of a new attorney from Trinidad and Tobago. That attorney filed applications to the Court to extend time to apply for special leave to appeal and for special leave to appeal, accompanied by unsworn affidavits on 5 November 2024, approximately 117 days after the delivery of the Court of Appeal judgment. Thereafter, Mason's attorney was ordered to amend the applications, and to bring the amended applications and supporting affidavits in conformity with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024.

The judgment of this Court was delivered jointly by Rajnauth-Lee, Jamadar and Ononaiwu JJ. The Court considered whether there was a cogent explanation for the delay in filing the application for special leave to appeal and whether the proposed appeal had a realistic chance of success. The Court accepted the explanation for the delay, though

acknowledging that there were gaps in the explanation. Given the public statement by Mason's previous attorney that he intended to file an application for special leave, the undisputed fact of the attorney's hospitalisation, Mason's approximately eight-year incarceration, and his new attorney being located outside of Belize, the Court found the explanation for the delay to be cogent.

The Court also considered whether there was a realistic chance of success of the proposed appeal. The relevant issues included whether the conviction was based on speculation due to the circumstantial nature of the evidence; whether the trial judge erred in attaching weight to certain prosecution evidence; and whether there was procedural impropriety leading to double jeopardy. The Court noted that the first two issues stemmed from the ground of appeal argued before the Court of Appeal but acknowledged that the proposed grounds on double jeopardy were raised before this Court for the first time.

On the issues related to the circumstantial evidence and the weight placed on the evidence, the Court analysed the following issues: the quality of the CCTV footage, the forensic analysis of the charred bones, and the weight placed on the respective testimonies of three witnesses, namely Mr David Dodd, Corporal Vasquez and Ms Magdalena Teul. The Court was not satisfied that these proposed grounds had a realistic chance of success having regard to the Court's previous decisions in *August v R* and *Weekes v The State*, and the overwhelming evidence adduced by the prosecution.

On the proposed grounds concerning procedural impropriety leading to a potential double jeopardy, the Court noted its decision in *Bynoe v The State*, that the introduction of a new ground of appeal at this stage in the appellate process may amount to an abuse of process and it would only, in exceptional circumstances, permit such a new ground to be pursued. The Court bore in mind that this new issue could have been taken as far back as the committal proceedings before the Chief Magistrate in Belize City, and that there had been no explanation for the failure of defence counsel to raise same prior to the applications to this Court. The Court was satisfied that a proper explanation had been provided by the Crown, and that Mason was never placed in double jeopardy.

Accordingly, the Court found that the proposed grounds had no realistic chance of success and that there was no risk of a serious miscarriage of justice and concluded that no genuinely disputable point of law of general public importance had been raised. The Court dismissed the applications.

Cases referred to:

Andrewin v R [2024] CCJ 24 (AJ) BZ; *August v R* [2018] 3 LRC 552; *Blackman v Gittens-Black* [2014] CCJ 17 (AJ) (BB), BB 2014 CCJ 5 (CARILAW); *Bynoe v The State* [2023] CCJ 2 (AJ) BB, (2023) 101 WIR 78; *Cadogan v R* [2006] CCJ 4 (AJ) (BB), (2006) 69 WIR 249; *Castillo v R* BZ 2024 CA 011 (CARILAW), (11 July 2024); *Doyle v R* [2011] CCJ 4 (AJ) (BB), (2011) 79 WIR 91; *Fields v The State* [2023] CCJ 13 (AJ) (BB), (2023) 104 WIR 37; *Lovell v R* [2014] CCJ 19 (AJ) (BB); *R v Castillo* (BZ SC, 3 December 2019); *R v Lucas* [1981] 2 All ER 1008; *Salazar v R* [2019] CCJ 15 (AJ) (BZ); *Somrah v A-G of Guyana* [2009] CCJ 5 (AJ) (GY), GY 2009 CCJ 5 (CARILAW); *Weekes v The State* [2024] CCJ 18 (AJ) BB.

Legislation referred to:

Belize – Indictable Procedure Act, CAP 96.

Other Sources referred to:

Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024.

JUDGMENT

Reasons for Judgment:

Rajnauth-Lee, Jamadar and Ononaiwu JJ

[1] - [42]

Disposition

[43]

RAJNAUTH-LEE, JAMADAR AND ONONAIWU JJ:

Introduction

[1] William Mason, also called Danny Mason, the applicant, along with four others, were jointly charged with the murder of Pastor Llewellyn Lucas (‘the deceased’)

on 18 July 2016. They were tried before a judge alone and on 3 December 2019, they were convicted of murder and subsequently sentenced to life imprisonment with a minimum term to be served of 35 years.

- [2] The applicant and his co-accused appealed to the Court of Appeal. The Court of Appeal dismissed their appeals and confirmed their sentences on 11 July 2024. Thereafter, the applicant's attorney indicated his intention to file an application for special leave to appeal to the Caribbean Court of Justice ('the Court'). It is apparent however, that he fell ill unexpectedly, and the applicant had to retain new counsel. The applicant therefore failed to file his notice of application for special leave in compliance with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024 ('the Rules'). On 5 November 2024, the applicant eventually filed an application to extend time for special leave to appeal the decision of the Court of Appeal.
- [3] Having reviewed the series of filings before the Court, which included amended notices of applications for an extension of time and for special leave to appeal, the supporting affidavits, affidavits in opposition, and written submissions by both parties, the Court is satisfied that the applicant ought not to be granted an extension of time for special leave to appeal.

Background and Court Proceedings

- [4] On 15 July 2016, the police were conducting an investigation concerning a robbery, when they came across a pick-up truck parked in Sancho's Bar with 'four creole men' which matched the description of the suspects of the robbery. Looking into the vehicle, the investigating officer, Corporal Vasquez, noticed a shotgun which raised suspicion. He then asked for the vehicle to be opened and was directed to the applicant who was sitting in the bar.
- [5] On being questioned, the applicant and his co-accused protested the search of the vehicle, and the applicant responded that he did not have the keys to the vehicle

and that his wife had the spare keys. After getting the keys from his wife, he was still unable to get into the vehicle. Many attempts were made to access the vehicle. Corporal Vasquez then opened the cover to the pan of the pick-up van where he found a decapitated head in a white crocus bag. This was later identified as the head of the deceased. The applicant and the four others were arrested.

- [6] Searches were carried out on the applicant's properties, his main residence and his farm / ranch. The CCTV footage from the main residence revealed that the deceased had earlier arrived at that property and had been forcibly put into the vehicle along with two other persons, Mr David Dodd and Pastor Wright. The footage was grainy, but the prosecution relied on same to show that the applicant was seen in certain frames of the video giving one of the co-accused a firearm and seemingly giving instructions to the co-accused, who were his employees. The applicant and his co-accused entered the vehicle and that was the extent that the CCTV footage seemed to capture. Burnt human bones were also found at the applicant's farm / ranch.
- [7] The prosecution called approximately 30 witnesses to establish its case. The version of events the prosecution posited was that the deceased, along with Mr Dodd and Pastor Wright, visited the applicant's main residence on 15 July 2016, and were forcibly put into the vehicle by orders of the applicant and four of his employees. They all left the premises with the three persons forcibly taken, where along the way Mr Dodd and Pastor Wright were dropped off, and the deceased was taken elsewhere and murdered by the applicant and his co-accused in a joint enterprise. The applicant, along with his co-accused, went to a bar following the murder. The head of the deceased was in the pan of the applicant's pick-up truck. The evidence adduced to prove this version of events was circumstantial and included witness testimony, CCTV footage from the applicant's residence, the forensic evidence of burnt human bones found at the applicant's farm/ranch, the blood of the deceased found on the clothes of the applicant's co-accused and text messages between the applicant and the deceased leading up to 15 July 2016, the date of the deceased's murder.

High Court Proceedings

- [8] The applicant and his co-accused were tried before Antoinette Moore J sitting without a jury. In his defence, the applicant made an unsworn statement from the dock and called Mr Timothy Reid as a witness.
- [9] The applicant's unsworn statement related a different version of the events. He stated that days before he received a text indicating that someone threatened to kill the deceased, and it was on that basis that the applicant invited the deceased to visit his home on 15 July 2016. When the deceased arrived at his property, the applicant along with some of his workers left the property. Some persons were dropped off on the way to the ranch. The applicant said that he did not see the deceased at the ranch. The applicant also indicated that he was invited to Sancho's Bar, where the decapitated head was discovered in his pick-up truck. The trial judge accepted that Pastor Lucas was at the property but rejected the remainder of the applicant's statement as it was contrary to what was seen in the CCTV footage and having regard to the prosecution's evidence.
- [10] The applicant called a witness in his defence, Mr Timothy Reid, a former security officer at the US Embassy in Belmopan. He provided evidence of an interaction he had with the applicant on 17 July 2016. On that day, he was interviewing Mr Dodd, a US citizen, who provided an account of his kidnapping to Mr Reid. The applicant had asked to speak to someone from the US Embassy and it was in that capacity that Mr Reid interacted with the applicant. The applicant stated that his true name was Rajesh Quellet and he was born in Guyana and went by other names because he feared for his life. He came to Belize around 18 months prior and was selling medical equipment. He told Mr Reid that he was being framed. The applicant then requested assurances for his safety and Mr Reid advised that he could not provide such assurances and that he, the applicant, should seek legal counsel. The trial judge noted that she did not find this evidence helpful.

[11] The trial judge stated that she had carefully considered the plausibility of the applicant being framed but found it inconceivable having regard to the evidence led by the prosecution. However, she reminded herself that even if she did not believe the applicant's unsworn statement, persons may fabricate defences and alibis for reasons other than guilt per *R v Lucas*¹. She observed that the burden of proof was on the prosecution, and she was satisfied that the applicant was part of the joint enterprise to murder the deceased.

[12] The trial judge found that the prosecution's case was proven beyond a reasonable doubt when the strands of the circumstantial evidence were woven together, and that the five accused persons were guilty of murder in a joint enterprise.

Court of Appeal

[13] The consolidated appeals were dismissed by the Court of Appeal in a unanimous judgment delivered by Hafiz-Bertram JA. The applicant's sole ground of appeal before the Court of Appeal was that his conviction was based on speculation. However, the Court of Appeal was of the view that they had not been directed to any finding of the trial judge that was based on speculation.² The Court of Appeal found that the strands of circumstantial evidence provided a cogent basis for the trial judge to have made a finding of guilt and there was no basis to quash the conviction.

Proceedings before the Caribbean Court of Justice

[14] The applicant filed separate applications for an extension of time to apply for special leave and an application for special leave to appeal the decision of the Court of Appeal, both on 5 November 2024. These applications were supported by unsworn affidavits of the applicant which were opposed by the respondent. The applicant also sought an urgent hearing of the applications. It had been

¹ [1981] 2 All ER 1008.

² *Castillo v R* BZ 2024 CA 011 (CARILAW), (11 July 2024) at [163].

approximately 117 days between the delivery of the Court of Appeal judgment and the filing of the original application on 5 November 2024. The Rules require that an application for special leave be made within 42 days of the date of the Court of Appeal judgment.³ The applicant was therefore required to file such an application on or before 22 August 2024. The respondent filed an affidavit in opposition to this initial application on 21 November 2024 deposing that the applicant ought not to be granted leave because of the following: (i) the applicant's affidavits are unsworn, (ii) there is no cogent explanation for the delay as the applicant has not proffered a fulsome explanation for the failure of the applicant's previous attorney to file the application for special leave to appeal, (iii) the proposed grounds of appeal are not properly articulated, and (iv) the courts below did not fall into error in arriving at its conclusions.

[15] At a case management conference held on 27 November 2024, the Court ordered that the applicant amend his applications to clearly outline the proposed grounds of appeal and the errors which the applicant contends were made by the Court of Appeal, redact all irrelevant details in the applications and supporting affidavits, and have the affidavits duly sworn. The respondent endeavoured to assist the applicant's attorney in having the affidavits duly sworn. Due to the filing of the amended applications, the respondent was permitted to file a second affidavit in opposition. The parties were also ordered to file written submissions. Having regard to the timelines set by the Court, the applicant did not pursue the application for an urgent hearing.

[16] On 6 December 2024, the applicant filed amended notices of application for extension of time and for special leave. The applicant premised his application for an extension of time on the following: (i) his previous attorney made a statement to the media on 21 August 2024 that he was in the process of preparing an application for special leave to appeal to the Caribbean Court of Justice; (ii) before he filed such an application, the attorney fell ill; (iii) by the time the applicant became aware

³ Rule 10.13.

of this, the deadline to file an appeal had already passed; (iv) the applicant had difficulty seeking alternative counsel due to his impecuniosity having been incarcerated for approximately eight years; (v) on or around 7 October 2024, he was able to retain the services of an attorney from Trinidad and Tobago. Thus, the applicant argued, having regard to the overriding objective of the Rules and with a view to achieving the ends of justice, the application for an extension of time ought to be granted. It was further argued that non-compliance with the Rules was not the fault of the applicant, and the respondent would suffer no prejudice if the orders sought were granted.

- [17] The Court notes that the applicant argued one ground of appeal before the Court of Appeal, that is to say, that the conviction was based on speculation. However, there are approximately 27 proposed grounds of appeal before this Court. The grounds when considered, raise three main issues, namely, (i) that the conviction was based on circumstantial evidence which was not cogent, (ii) that the trial judge erred in placing weight on certain prosecution evidence, and (iii) that there was procedural impropriety leading to double jeopardy. It is presumed that the first two issues may be drawn from the sole ground before the Court of Appeal that the conviction was unsafe because the trial judge engaged in an exercise of speculation. The issue of procedural impropriety was raised for the first time before this Court.

Application to Extend Time to Apply for Special Leave to Appeal

- [18] The applicant must satisfy the Court that it is necessary to extend any time limit prescribed by the Rules for good and substantial reasons per r 5.4. The test for an extension of time to apply for special leave has been set out by this Court in *Lovell v R*⁴, *Somrah v Attorney General of Guyana*⁵ and *Blackman v Gittens-Black*.⁶ In summary, this Court must consider whether, i) a cogent explanation has been provided for non-compliance with the Rules, and ii) that the proposed appeal has a

⁴ [2014] CCJ 19 (AJ) (BB).

⁵ [2009] CCJ 5 (AJ) (GY), GY 2009 CCJ 5 (CARILAW).

⁶ [2014] CCJ 17 (AJ) (BB), BB 2014 CCJ 5 (CARILAW).

realistic chance of success. Above all, it must be determined that the intervention of this Court is necessary to avert a clear miscarriage of justice.⁷

Whether the Applicant has Provided a Cogent Explanation for Non-compliance with the Rules?

[19] In response to the applicant's allegations of the ill health of his previous counsel, the respondent in its first affidavit in opposition filed on 21 November 2024 deposed that on 21 August 2024, one day before the deadline for the applicant to file the application for special leave, the applicant's previous attorney gave an interview conducted outside the Magistrate's Court in Belize City subsequent to the attorney's appearance in another criminal matter where the Director of Public Prosecutions herself appeared for the Crown. In that interview, the previous attorney indicated that he intended to file an application for special leave to appeal to the Court. That other criminal matter was to resume on 23 August 2024 when it was communicated to the court that the previous attorney had fallen ill that morning and had to be hospitalised. By 26 September 2024, the previous attorney was already out of hospital and attended court. These matters are not in dispute.

[20] This Court fairly recently ruled on an application for an extension of time in *Andrewin v R*.⁸ In that case, Mr Andrewin averred that his attorney did not inform him of the decision of the Court of Appeal. He was only informed after being served with same from a prison official and then had difficulty getting in touch with his attorney, and had financial restraints in retaining a new counsel. Eventually, he was able to have his High Court attorney agree to represent him pro-bono before the Court. In that case, the Court found that there was a cogent explanation for the delay and emphasised that each case turns on its own facts. Ultimately, the Court formed the view that the appeal had no realistic chance of success.

⁷ *Cadogan v R* [2006] CCJ 4 (AJ) (BB), (2006) 69 WIR 249 at [2].

⁸ [2024] CCJ 24 (AJ) BZ.

- [21] To repeat the sentiments of Anderson J in *Andrewin*⁹, delay on the part of an attorney handling the matter is detrimental to the administration of justice, and it is necessary to ensure professional standards of the legal fraternity are met so as to not cause undue prejudice to convicted persons in the justice system. Therefore, when alleging that the applicant is not at fault for the delay and that the fault for that delay falls on an attorney, especially an attorney that is not before this Court to answer those allegations, there is a burden on the applicant to show, on affidavit evidence, the interactions between the applicant and his attorney to allow delay to be excused for something that was naturally beyond his control.
- [22] This Court notes that in this case, there are several gaps in the explanation rendered in relation to the delay, including the discussions between the applicant and his previous attorney, any instructions given, when and how he became aware of the attorney's hospitalisation, what were the specific issues he encountered in obtaining another attorney before finally retaining one, outside of the jurisdiction, on or around 7 October 2024.
- [23] Notwithstanding, the Court accepts the explanation rendered by the applicant based on the fact that his previous attorney made a public statement that he intended to file an application for leave to appeal before this Court and that it is not disputed that the attorney was hospitalised soon after making this statement. Additionally, the Court is alert to the circumstances of the applicant who had at that time been incarcerated for the past eight years. Although there was almost a month between the applicant's retention of his present attorney and the filing of the application, the Court bears in mind that the applicant would have had to give instructions to his attorney who resides in Trinidad and Tobago. In all the circumstances, this Court finds that there is a cogent explanation in this case for non-compliance with the Rules.

⁹ *ibid* at [15].

Whether there is a Realistic Chance of Success?

- [24] The examination of the second limb of the test for an extension of time, the realistic chance of success, overlaps with the examination of the test for special leave to appeal, namely, whether (i) there is a realistic possibility that a (potentially) serious miscarriage of justice may have occurred, and/or (ii) a point of law of general public importance is raised (that is genuinely disputable) and the court is persuaded that if it is not determined, a questionable precedent might remain on the record.¹⁰
- [25] As previously highlighted, the applicant's grounds of appeal are premised on the complaint that the trial judge, and consequently the Court of Appeal, arrived at its decision based on speculation. This argument is premised on the applicant's criticism of the circumstantial evidence and the weight given by the trial judge to certain evidence led by the prosecution. As a separate issue, this Court will address the proposed new ground of appeal in relation to double jeopardy.

Circumstantial Evidence and Weight

- [26] In examining the cogency of the circumstantial evidence against the applicant, Hafiz-Bertram JA outlined the following evidence relied on by the trial judge:¹¹
- (i) The telecommunication messages that demonstrated the growing animosity between Mason and Pastor Lucas shortly before his death. This is in direct contradiction with what he had stated in his statement from the dock that he was good friends with Pastor Lucas and had no issues with him. The messages also showed that on 15 July 2016, Pastor Lucas had gone to Mason's residence at his request.
 - (ii) Mason admitted in his statement from the dock that he met with Pastor Lucas on 15 July 2016 at his Intelco Hill house about 1.30 pm and they spoke about money. The CCTV video recordings tendered by the prosecution and admitted into evidence by the trial judge showed they met upstairs. Mason was later seen on the CCTV video recordings giving what

¹⁰ *Andrewin* (n 8) at [17]. See also: *Cadogan* (n 7); *Doyle v R* [2011] CCJ 4 (AJ) (BB), (2011) 79 WIR 91; *Fields v The State* [2023] CCJ 13 (AJ) (BB), (2023) 104 WIR 37.

¹¹ *Castillo* (n 2) at [168].

appeared to be instructions to his co-accused who afterwards led Pastor Lucas downstairs of the premises.

- (iii) The CCTV video recordings clearly showed Mason's involvement in the taking of Pastor Lucas from his premises at Intelco Hill, the last time he was seen alive. Mason's physical stature, gait and face are unmistakeable at different frames of the CCTV video recordings. He was clearly seen handing a firearm to Terrence. Later Mason was seen pacing up and down by his pickup truck observing the other Appellants loading the three men, including Pastor Lucas in the pan of the pickup truck. His distinct body structure, hair and gait made him obvious on the CCTV video recordings even when the slides were grainy.
- (iv) As shown by the CCTV video recordings on 15 July 2016, Mason was wearing the same clothing at his residence during the day as he was wearing when he was eventually arrested at Sancho's Bar and photographed at the Belmopan Police Station.
- (v) Mason admitted in his statement from the dock that he had driven to the Farm from his residence. The CCTV video recordings showed that his pickup truck was driven off his Intelco Residence at about 2.00 pm. Mr. Dodd gave evidence that a person with an accent spoke to him on the farm and it can be inferred that it is Mason who was very agitated when he spoke about Pastor Lucas.
- (vi) That night on 15 July 2016, Pastor Lucas' severed head was found in the pan of Mason's pickup truck which was parked at Sancho's Bar. It had been fastened with tying wire. A nozzle and a roll of duct tape were also found in the pan of the pickup truck. Pastor Lucas' mouth, nose and eyes had been covered with tape.
- (vii) Later that night on Mason's Farm a pit was still smouldering when police officers went there and human bones were found in it. On the farm as shown by the evidence of the Prosecution, were the pig pen, the storeroom where bags and buckets like the ones in which Pastor Lucas' head was found.
- (viii) Mason's conduct at Sancho's Bar showed that he did not want his pickup truck searched. All five appellants barricaded the vehicle and most especially Mason. He had driven the pickup truck to Sancho's Bar and was in possession of the keys. He resisted when Sgt Vasquez attempted to search the pickup truck and claimed that he did not have the keys and that his wife had dropped him there. He messaged his wife to encourage her to give the

same false narrative to support his version. He later produced wrong “spare keys” which he had collected from his wife. The police search later unearthed the pickup truck keys in the grass at Sancho’s Bar.

- (ix) That same night at Sancho’s Bar, about 8.30 pm, Mason contacted Pastor Smith by telephone to ask him to stop the police from searching his vehicle. It was after this call Sgt Vasquez was able to open the pan of the pickup truck and found Pastor Lucas’s severed head in the pan of the pickup truck in a bucket. When confronted with Pastor Lucas’ head Mason said, “*I don’t know who that is.*”

[27] As noted earlier, in several of his proposed grounds the applicant argued that the case against him was based solely on circumstantial evidence which led to the trial judge engaging in speculation. The Court of Appeal disagreed that the case against the applicant was based on speculation. The Court of Appeal was satisfied that the case was built on circumstantial evidence proven beyond a reasonable doubt by the prosecution.

[28] In *August v R*¹² which was cited by the Court of Appeal and the trial judge, this Court (Byron P and Rajnauth-Lee J) noting the importance of not considering circumstantial evidence piecemeal, expressed the view at [38]:

A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant’s guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant’s guilt is proved beyond reasonable doubt. There was therefore a serious misdirection wholly in August’s favour when the trial judge directed the jury that each strand of the circumstantial evidence required its own proof of August’s guilt beyond reasonable doubt. It is not the individual strand that required proof beyond reasonable doubt, but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence. Accordingly, the circumstantial evidence, as a whole, adduced by the prosecution pointed sufficiently to August’s guilt to entitle the jury to convict him.

¹² [2018] CCJ 7 (AJ) (BZ), [2018] 3 LRC 552.

- [29] In *Weekes v The State*¹³ this Court affirmed the reasoning in *August* that the cogency of the inference of guilt need not be based on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence when woven together.¹⁴
- [30] The applicant submits that the trial judge placed greater weight on the evidence of certain witnesses and lesser weight on others. However, the Court observes that the applicant's written submissions failed to specify how the trial judge or the Court of Appeal erred. The Court is satisfied that the trial judge carefully reviewed the evidence in detail and evaluated the strengths and weaknesses of same. For example, even where the Court of Appeal noted that the trial judge did not specifically state in her judgment that she addressed her mind to the weight that will be given to the statement of a deceased witness, the Court of Appeal relying on this Court's judgment in *Salazar v R*¹⁵ was of the view that the trial judge must have addressed her mind to that issue, and did not see any prejudice to the applicant (and his co-accused).¹⁶ The Court will nevertheless examine five issues raised by the applicant.
- [31] First, the applicant raises a particular concern with the quality of the CCTV footage used and the identification of the applicant. Again, this is but one strand in the sea of evidence. Despite the quality of the CCTV footage, the trial judge explained that it was sufficient to identify the persons in the video. At [25], the trial judge stated:

I find the images on the recordings as sufficiently clear in certain frames as to be identifiable. In carefully reviewing the recordings, I have stopped the video at points and closely studied the pertinent frames. In particular, I was keenly interested in the frames in which the three individuals, including the deceased, are placed in the back of the pickup truck. These frames are especially grainy and unclear however each of the accused are identifiable in other frames, helping to establish the identity of the images that are unclear. In my opinion, this portion of the video recording displays the joint conduct and coordination of the five accused in relation to the deceased

¹³ [2024] CCJ 18 (AJ) BB.

¹⁴ *ibid* at [44].

¹⁵ [2019] CCJ 15 (AJ) (BZ).

¹⁶ *Castillo* (n 2) at [90]-[91].

before his death. Also, I note that a portion of the video recording shows, clearly in my view, the deceased upstairs walking behind the fourth accused and in front of the second accused who is holding a machete in one hand and a blue and white bandana in the other hand. I have given significant weight to these recordings and find they add to the circumstantial evidence against the five accused.

[32] The Court of Appeal was satisfied with the trial judge's analysis of the CCTV footage and noted at [104]:

In our view, the omission of the trial judge on the need for caution in the written judgment was not prejudicial to the appellants. Paragraphs 22, 23, 24 25 and 108 showed that she exercised great care and was cautious when she meticulously analysed all the frames put into evidence, stopping them and replaying them at her own pace to identify each appellant and the role played by them. She did not rely solely on the grainy and unclear frame to make a finding as to identification in relation to who was doing what. The grainy CCTV video recording by itself would not have satisfied the trial judge.

[33] The applicant also contended that the trial judge failed to caution herself when attaching weight to the CCTV footage. In relation to this, the Court of Appeal noted that the court's time would have been saved if the trial judge had expressed the need for caution in her written judgment. Nevertheless, the Court of Appeal was of the view that the trial judge was indeed cautious as shown by her careful analysis of all the CCTV video recordings. The Court of Appeal expressed the view that this omission did not cause any prejudice or unfairness to the applicant.¹⁷ This conclusion is further supported by *Salazar v R*¹⁸ that a trial judge need not direct or remind themselves on every legal principle. As long as it is clear that the essential issues of the case have been correctly addressed with no room for serious doubts, the judgment will stand.¹⁹ The applicant has failed to demonstrate any error in law which would cause this Court to interfere with the findings of the trial judge and the Court of Appeal as they relate to the CCTV footage.

¹⁷ *Castillo* (n 2) at [109]-[110].

¹⁸ *Salazar* (n 15).

¹⁹ *ibid* at [29].

[34] Second, the proposed grounds raise a complaint regarding the forensic analysis of the charred human bones and linking the bones to the deceased. This issue was however considered by the trial judge. The evidence of the forensic expert was that he was unable to gather further scientific evidence from the bones apart from identifying that they were human bones.²⁰ In addition, the trial judge had the benefit of visiting the ranch where the bones were found and understood that the ranch had tight security. She found that the bones along with the human head found in the vehicle, when woven together, were two strong strands of evidence. Furthermore, there was evidence that the blood found on the clothes of the other accused matched that of Pastor Lucas.

[35] Third, the applicant proposes to argue, if granted leave to appeal, that undue weight was placed on the testimony of Mr Dodd, having regard to the fact that the prosecution failed to call Pastor Wright as a witness (the second person abducted and then released) to corroborate Mr Dodd's evidence. The applicant also complained of (i) the failure by Mr Dodd to file a police report of the abduction, (ii) the finding by the trial judge that the person who spoke 'in a cultured way' was the applicant, (iii) the failure of Mr Dodd to provide specific physical characteristics of his abductors, and (iv) the failure of Mr Dodd to put forward a reason why he and Mr Wright were abducted. The trial judge carefully reviewed Mr Dodd's testimony and found him to be a credible and careful witness whose evidence remained unchallenged.²¹ We are satisfied that the trial judge dealt adequately with the evidence of Mr Dodd. In any event, the applicant failed to expand on these complaints in his written submissions.

[36] Fourth, in the proposed grounds, the applicant complains that the trial judge attached no weight to the applicant's statement that he misplaced his keys and instead favoured the account of the investigating officer, Corporal Vasquez. At [105] of the trial judge's judgment, the trial judge provides sound reasons for rejecting the applicant's account. In relation to the trial judge giving parts of the

²⁰ *R v Castillo* (BZ SC, 3 December 2019) at [35].

²¹ *R v Castillo* (n 20) at [13].

applicant's unsworn statement no weight, the Court of Appeal was satisfied that the trial judge reminded herself that the burden remained on the prosecution to make her feel sure of the applicant's guilt.²²

[37] Fifth, the applicant complains that the Court of Appeal failed to attach weight to the evidence of Magdalena Teul, an employee of the applicant. In her evidence, Ms Teul did not mention witnessing any altercation or friction between the deceased and the applicant. This argument accounts for little as, evidently, Ms Teul simply did not see the altercation and was not present at the time of the abduction.

[38] The Court's analysis of the circumstantial evidence and weight attached thereto leads to the conclusion that the applicant has failed to show a realistic chance of success of the proposed grounds of appeal. In the face of the overwhelming evidence that was adduced by the prosecution and in the absence of any clearly outlined errors of law raised by the applicant, his argument of speculation has not been made out.

[39] We note that this was a judge alone trial, and the trial judge and the Court of Appeal concurred on several material findings of fact and inferences. In a judge alone criminal trial, where the judge is the sole arbiter of fact, and where a proper review by a Court of Appeal results in concurrent findings of fact, this Court may consider that a material consideration for the purpose of granting special leave. However, as the issue was not argued before this Court and as such an analysis is not necessary to determine this application, no opinion is proffered on it at this time.

Double Jeopardy Grounds

[40] The procedural issue raised by the applicant is based on an allegation that the applicant was formally discharged by a magistrate in Belmopan following his arrest on or around 18 July 2016. The applicant alleged that, despite this discharge, he was taken before the Chief Magistrate in Belize City where he was asked to enter a

²² *Castillo* (n 2) at [64].

plea, in the absence of his attorney, and that he was thereafter remanded to the Belize City Central Prison. Therefore, it was submitted, the applicant was convicted on an offence for which he had been previously discharged, and therefore that he had been subjected to double jeopardy. The respondent's second affidavit in opposition provided an explanation for the applicant's appearance before a magistrate in Belmopan and thereafter before the Chief Magistrate in Belize City. The respondent also clarified that no plea would have been taken before the Chief Magistrate as charges for murder are tried in the High Court.

[41] The respondent, in its second affidavit in opposition filed on 23 December 2024, explained that although the applicant and his co-accused were to appear before a magistrate in Belmopan, it was noted that the fact sheet was not properly worded in support of the charge laid. On a preliminary objection by defence counsel, the magistrate did not proceed with the matter and the charge was not read. The applicant was then taken back into custody on a kidnapping charge. The documents in relation to the murder charge were corrected and the applicant was taken to the Belize City Magistrate's Court the next day, on 19 July 2016, as the information and complaint alleged that the murder had taken place within the Belize City Judicial District. The information was then read to the applicant and his co-accused by the Chief Magistrate. Accordingly, the respondent deposed that the magistrate in Belmopan did not preside over the proceedings in order to come to any decision on the merits of the case. Therefore, the applicant was never in jeopardy. Subsequently, the preliminary inquiry took place on 21 February 2017 as a paper committal pursuant to s 33 of the Indictable Procedure Act²³. The respondent posits that there was no submission on behalf of the accused men by their attorneys that there was insufficient evidence.

[42] The Court is mindful of its decision in *Bynoe v The State*²⁴, that the introduction of a new ground of appeal at this stage in the appellate process may amount to an abuse of process and it would only, in exceptional circumstances, permit such a

²³ Cap 96.

²⁴ [2023] CCJ 2 (AJ) BB, (2023) 101 WIR 78.

new ground to be pursued.²⁵ The Court bears in mind that this new proposed ground could have been taken as far back as the committal proceedings before the Chief Magistrate in Belize City, and there has been no explanation for the failure of defence counsel to raise same prior to the applications to this Court. The Court is satisfied that a proper explanation has been provided by the respondent, and that the applicant was never placed in double jeopardy.

Disposition

[43] Considering the above circumstances, the Court is satisfied that the applicant, though having a cogent explanation for the delay in filing his application for leave to appeal, has no realistic chance of success with respect to any of the proposed grounds of appeal. There is no risk of serious miscarriage of justice demonstrated to warrant this Court to grant leave to appeal. We are also satisfied that no genuinely disputable point of law of general public importance has been raised. Accordingly, the application for an extension of time for special leave to appeal is dismissed. Consequently, the application for special leave is rendered otiose and is therefore dismissed.

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

²⁵ *ibid* at [4].