

Laventille. The deceased lived on the second floor and the appellant lived on the third floor.

3. About 6:00a.m. on the 25th December, 2000 the deceased and the appellant were engaged in a scuffle outside the deceased's apartment. Later that morning the deceased contacted his brother, Horace Ash who lived at Barataria. Horace came to the deceased's apartment and they had a discussion. Horace then removed from that apartment four bags and a refrigerator belonging to the appellant and placed them outside the appellant's apartment as the appellant was not at home.

4. Around 1:45p.m. that day it is alleged that the appellant placed his face on the door and entered the deceased's apartment. Shortly afterwards, footsteps were heard coming from the apartment. The deceased had been seen alive and his death followed almost immediately.

5. The appellant was arrested on the 15th January, 2001 by Sergeant Moore at Bon Accord, Tobago. Sergeant Moore met the appellant and asked for his name. The appellant gave his name as 'Kurt Riley'. Sergeant Moore told him the description of the person wanted by the Morvant police in connection with the murder. The appellant denied being involved in any murder.

6. Sergeant Moore arrested him and took him into custody. Later that day, Sergeant Moore, accompanied by the appellant, returned to the premises at Barataria. Sergeant Moore took possession of a bag which contained clothing belonging to the appellant. Sergeant Moore confronted the appellant with the clothing and he then admitted that he was Kevon Nurse. He told Sergeant Moore that on Christmas morning he was involved in a fight with his uncle who struck him with a piece of wood and he (the appellant) fell and hit his face. He also said that he had a laceration in his face and burst his mouth and he sought and failed to obtain medical attention at the Port of Spain General Hospital and the Mount Hope Medical Centre and was treated at the Arima hospital.

12. The following day, in the presence of Sergeant Hilaire, Sergeant Abraham again told the appellant about the information he had and cautioned him. The appellant replied, ***“Mr. Abraham, on Monday 25th December 2000 I went by Lester Ash apartment me and he had a fight, he cuff me in meh mouth and beat meh on meh shoulder. I went by Port of Spain General Hospital, I went Mount Hope and I went by Arima where I was treated. But I ent know bout Lester’s death.”*** Sergeant Abraham told him of hisbout Lesi7 went M

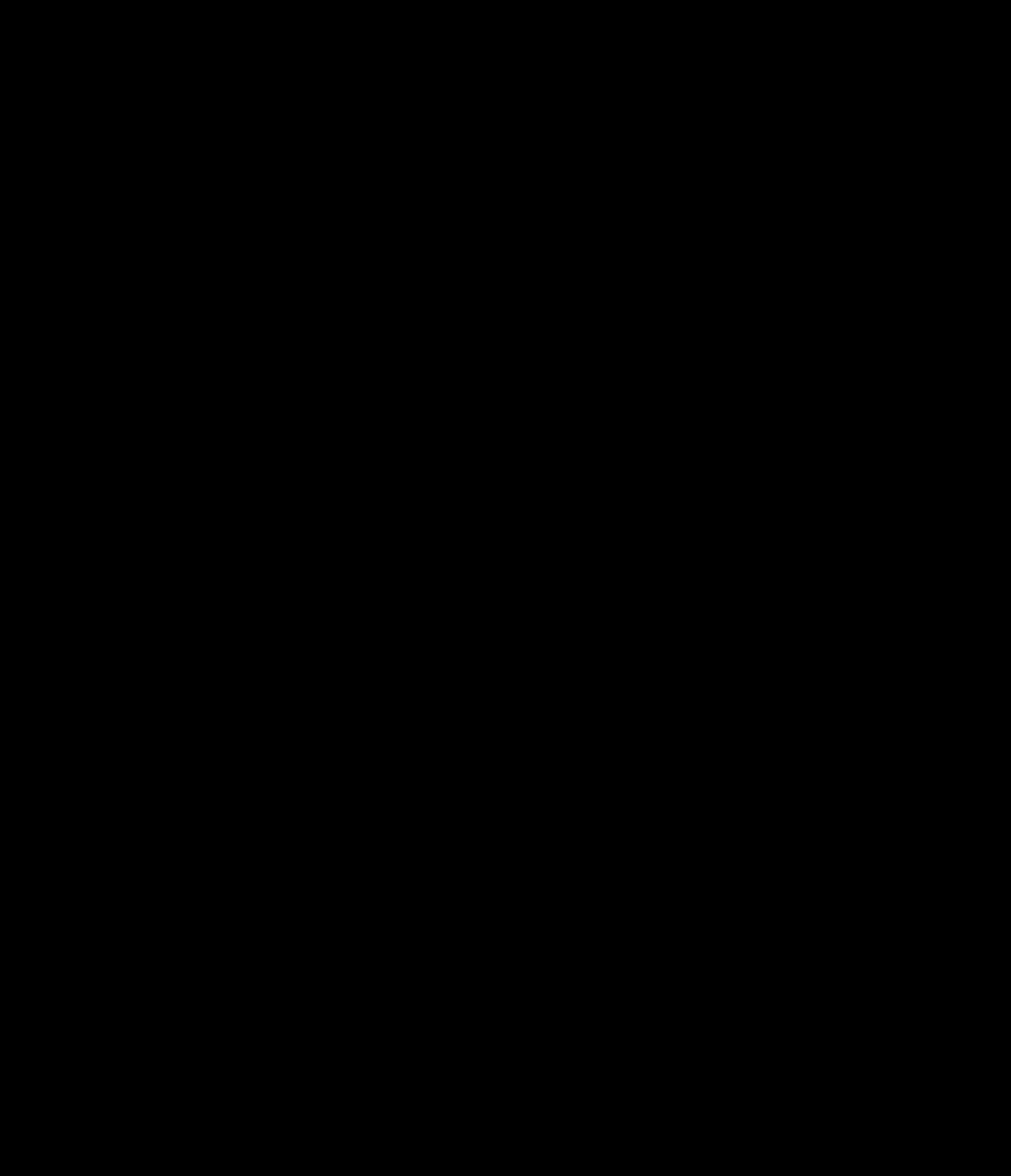
16. The appellant further claimed that he knew Aneka Shoc

20. At the hearing of this appeal Ms. Chote was initially appointed by the Legal Aid

evidence. Counsel submitted that the prejudice could only be overcome if the judge had given an immediate direction in extremely emphatic terms to the jury that the statements were irrelevant and should be ignored. Such a direction would have served to neutralise the effect of the statement.

22. In *Shabir Ali v The State*, an appeal from the Court of Appeal of Trinidad and Tobago, the appellant appealed to the Privy Council against his conviction for murder. At his trial, an eye-witness told the court that the appellant had deliberately killed the victim, his nineteen-month-old daughter. The only other eye-witness, the appellant's

upon the evidence which you have heard". This of course included the entirety of the superintendent's evidence. Thus the wife's inadmissible evidence had in effect been



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was no danger that the jury would attach undue weight to the evidence and regard it as probative of the crime of which the accused was charged. The judge reminded the jury that the evidence of the witness Aneka Shockness was the central tenet of the State's case.

32. On the issue whether a stronger direction was required to be given to the jury, Counsel submitted that if this were done at the trial it would have served to emphasise the statement by Sergeant Abraham. She submitted that the trial judge, in giving a discreet direction, minimised the significance of the statement by Abraham and directed the jury's minds to the issue of his credibility.

33. Under cross- examination in answer to a question from counsel for the appellant, Sergeant Abraham said:

whether or not that explanation satisfies you, and at the end of the day does it affect his credibility, his believability in your estimation.”

35. In addressing the evidence of Aneka Shockness, the trial judge said:
“The next witness was Aneka Shockness. And while other aspects of the evidence may assist you in finding the facts, the State’s case stands or falls on the evidence of Aneka Shockness. If the evidence of Aneka Shockness is taken out of the State’s case, then the state has no case against the accused. So that really this is the witness that is of crucial importance in your determination that the state has the burden of the day

well have been influenced in accepting the evidence of Ms. Shockness. In these circumstances we find merit in the submissions of Counsel for the appellant and allow this ground of appeal.

Ground 2

The learned trial judge's directions on the identification evidence were inadequate and erroneous.

39. Counsel for the appellant submitted that the trial judge in giving the Turnbull direction omitted to direct the jury's minds to the possibility of the diminished accuracy of AnekaMs. Shockn' recognition evidence, because she ~~was~~ engaged in conversation with her friends at the time. Counsel opined that the trial judge did not fully expose the jury to the weahocknes and dangers of that evidence, in relation to the issue of the identification.

40. Counsel further contended that the trial judge's direction that the evidence was an inconsistent statement which could only be used for the limited purpose of aknessing the witockn' credibility was erroneous since the witockn, when testifying at the trial, had accepted as true the previous statement she made at the Magistraten' court. The trial judge, Counsel submitted, should have specifically directed the jury on the i0.0943 accuracy as distinct from the issue of veracity or credibility of AnekaMs. Shockn.

41. In her skeleton arguments, Counsel for the State submitted that because AnekaMs. Shockn was engaged in conversation at the time she saw the accused, that did not necessarily undermine the accuracy of her identification and was not a weahockn in her identification of the appella

of the identification evidence, that Aneka Shockness only had a fleeting glance of the accused.

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46. In *Beckford v R*,¹⁰ the principle was reiterated. It was held that where the

circumstance where the failure to give a Turnbull direction would not be fatal to a conviction.

50. In *Shand v R*,¹³ the issue of identification and the failure of the trial judge to

54. Although the sole line of defence was fabrication, the trial judge left both

potential to be a specific weakness in the identification evidence. The jury having heard the evidence would have assessed whether the conversation was such as to materially affect Aneka's identification of the appellant.

60. In *Jairam and Persad v The State*¹⁷, Hamel-Smith J.A. in delivering the judgment of the Court said:

“A trial judge is not required to define certain identification evidence as ‘weaknesses’ in the identification evidence. He will generally deal with any evidence that does not support or lessens in any way the identification made by the witness and draw it to the jury’s attention. But to highlight it as a ‘weakness’ is not a requirement.”

61. In our view the trial judge's failure to direct the jury that the conversation was a specific weakness could not reasonably be said to have made the summation unbalanced nor could it be a flaw in her directions. Accordingly, we find there was no unfairness to the appellant and this ground of appeal fails.

Ground 3

The learned trial judge erred as matter of law in not giving the jury a Lucas direction in respect of the prosecution's evidence that the appellant had given a false name and address to the police when arrested and moreso after having expressly left it open to the jury to find as a possibility that the Appellant's lies were relevant to the issue of whether he had committed the offence or not. The absence of guidance that lies could only be used to support guilt if they found no innocent explanation for the lie amounted to a material c Tc rularty

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iii. *where, the judge envisages that there is a real danger that the jury would think the lie was probative of guilt.*

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was telling the truth in an interview. The jury in such a case should be given a Lucas direction to avoid inferring the guilt of the accused based on his lie.

68. On the issue of lies the trial judge, in her summation said:

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the possibility that they may have returned the verdict of guilty by some process not open to them.

74. The remaining question to be deterp