[2022] JMCA App 25

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE BROWN JA (AG)
THE HON MRS JUSTICE BROWN BECKFORD JA (AG)

SUPREME COURT CRIMINAL APPEAL NO 27/2017

APPLICATION NO COA2021APP00012

CARVEL HINES v R

Mrs Jacqueline Samuels-Brown QC for the appellant

Jeremy Taylor QC and Nicholas Edmond for the Crown

5, 6, 9 July 2021 and 29 July 2022

MCDONALD-BISHOP JA

[1] On 10 February 2017, following a trial by a judge sitting with a jury in the Circuit Court for the parish of Westmoreland, Mr Carvel Hines ('the appellant') and his co-accused, Mr Bruce Lamey, were convicted for the offences of murder and wounding with intent. On 22 March 2017, both were sentenced to life imprisonment at hard labour for the offence of murder and ordered to serve 33 years before becoming eligible for parole. For the offence of wounding with intent, they were sentenced to 18 years' imprisonment at hard labour. Both sentences were ordered to run concurrently.

[2] Dissatisfied with the outcome of his trial, the appellant sought leave to appeal against conviction and sentence. He was granted leave by a single judge of this court to appeal against sentence but was denied leave to appeal against conviction. The appellant has since renewed his application for leave to appeal against conviction and is pursuing his appeal against sentence.

[3] Subsequent to the filing of his renewed application for leave to appeal conviction, the appellant filed another application by way of notice of application for court orders, seeking an order "[t]hat the Registrar of the Supreme Court be ordered to provide the List of Jurors for the parish of Westmoreland selected by the Registrar of the Supreme Court for the respective terms in the years 2016 and 2017". It is this application that falls for determination by this court.

[4] The application relates to the following further supplemental grounds of appeal filed on 10 June 2020, which the appellant intends to pursue at the hearing of the appeal:

> "9. The selection of the jury as triers of the fact was to a probability irregular and accordingly the learned trial judge erred in proceeding with a trial presided over by the selected jurors, whereby the applicant's/appellant's trial has been rendered unlawful.
>
> 10. The verdict of guilty cannot stand as the jurors who presided over the trial and delivered the verdict were not selected in accordance with the law.
>
> 11. The learned trial judge's refusal to carry out an enquiry as to the lawful composition of the jury amounts to an error of law; whereby the applicant/appellant has been deprived this [sic] constitutional right to a 'court established by law'."

[5] Mrs Samuels-Brown QC, on behalf of the appellant, took issue with the composition of the jury engaged in the trial of the appellant because of the commonality in the surname of them all. She referred the court to three affidavits sworn to by defence counsel who appeared at the trial: two from Miss Yolanda Kiffin and one from Mr Oswest Senior-Smith. The relevant evidence derived from these affidavits are, in summary, that:

(a) Of the 21 prospective jurors who were called during the empanelling of the jury, 16 of them bore the surname "Reid".

(b) After exhausting all peremptory challenges, the jury selected consisted of persons all having the surname "Reid".

(c) There was concern that this commonality and sharing of the surname indicated a likelihood that the jurors were relatives and/or close family members sitting together, adjudging the case and that this could impact their independence and consequently the fairness of the trial.

(d) Audience was sought with the trial judge, in chambers, where the concern was brought to his attention and an application made for him to enquire of each member of the empanelled jury whether they were related and how and to what extent this could affect their deliberations.

(e) The learned trial judge indicated that he would make the necessary enquires in open court, however, this was not done.

(f) Provision of the jury lists is of relevance to the matters raised at the trial by defence counsel in chambers with the trial judge.

(g) All administrative avenues have been exhausted and so the appellant is constrained to make this application.

[6] Mrs Samuels-Brown submitted that a full investigation of the issues surrounding the composition of the requisite jury lists and compliance with the Jury Act is relevant to the appellant's concern about the connectivity and/or consanguinity among members of the jury, which could have affected the independence of each jury member. She maintained that "if it is shown, on a balance of probabilities, that the jury panel was not comprised 'according to law' and/or not 'summoned equally' or for any reason, the presiding jurors are not 'independent and [or] impartial'", then, the appellant has not been tried by an independent and/or impartial court according to law.

[7] Based on our understanding of the submissions made by Mrs Samuels-Brown, the Registrar of the Supreme Court ('Registrar') should be ordered to provide the list of jurors

for the parish of Westmoreland, selected by her for the respective terms for the years 2016 and 2017 because: (1) the list of jurors is a matter of public record and is meant to be accessible to members of the public; (2) the lists would be of assistance to determine whether apparent bias arose or was attendant on breach or error on the part of the Registrar; and (3) the lists are needed for the court to examine whether there was a breach of the appellant's constitutional right to a fair hearing. We have considered these points, in turn.

Accessibility of the lists of jurors to the public

[8] Mrs Samuels-Brown argued that the law contemplates that the public would have access to the jury lists. She contends that the jury lists are created with reference to documents, which are of public record and that "the process of jury selection from start to finish is not a secret one but rather one to which the public is entitled to have access, more so an accused person". In support of this submission, Queen's Counsel relied on sections 7 – 13, 15 – 18 and 51 of the Jury Act, which provide for the making up and settlement of jury lists and the impanelling and summoning of jurors.

[9] Queen's Counsel further submitted that pursuant to section 11 of the Jury Act, the Chief Officer of Police shall cause a copy of the jury list to be displayed in a conspicuous place in each court house and police station within his parish so that any objection to the jury list may be taken. Mrs Samuels-Brown acknowledged that the Jury Act does not speak to the jury list being made public after it has been settled and finalised in that process. However, she argued that there is also nothing in the Jury Act, which says that the settling of the jury list is to be done *in camera* and that barring provision by statute, the jury list does not become private but remains public.

[10] Mr Taylor QC, on behalf of the Crown, expressed concern regarding the appellant's request for disclosure of the jury list for three court terms when the jury involved in the trial of the appellant sat only during the term in which the appellant was tried. Queen's Counsel argued that there must be some evidence before the court demonstrating why the jury lists for the two years are required. He submitted that the appellant has not

placed such evidence before the court and there is nothing evidencing a departure from or breach of the provisions of the Jury Act by the Registrar.

[11] Mr Taylor also noted that the jury list is only open to the public when it is a provisional list (see section 11 of the Jury Act). After time is given and had passed for objection to be taken to that provisional list, the final list is then settled and certified as a true and proper list and transmitted to the Registrar, the Clerk of the Courts and the Chief Officer of Police for the particular parish (section 13 of the Jury Act). After that, there is no statutory requirement for the list to be displayed or made available to the public for viewing.

[12] The Crown's position has found favour with the court. The making up of the jury lists is governed by sections 7 – 15 of the Jury Act. Section 7 specifies the sources from which the names appearing on the jury list should be drawn. A special panel of Justices is to be selected by the Custos of each parish for the purpose of settling the jury list for that parish (section 8). From this special panel, a number of Justices, as the Parish Court Judge in each parish considers necessary, shall be summoned and the Parish Court Judge and the Justices attending pursuant to such summons shall in each parish constitute a Special Petty Session for the provisional settlement of the jury list (section 9). Section 10 permits the Justices to make corrections to the list at the Special Petty Session. Section 11 then provides a mechanism for objections to be taken to the jury list prior to the final settlement of the list and transmission to the Registrar for preservation by her as part of the records of the court. The section, as amended in 2015, reads:

> "11. The list, after such omissions, additions and corrections have been made, shall be allowed by the Justices present, or two of them, who shall sign the same with their allowance thereof, and deliver the same to the Chief Officer of Police; and such officer shall, on or before such date and at such time as may be prescribed, cause a copy thereof to be displayed in a conspicuous place in each Court House and Police Station within his parish, having first subjoined to every such copy a notice stating that all objections to the list will be heard by the Justices at the Court House at the head station of the

> parish on such date and such time as may be prescribed, to the end that notice may be given of persons qualified, who are omitted, or of persons inserted, who ought to be omitted from such list."

[13] It is from the finalised jury list that the Registrar "shall strike and make up such number of panels of jurors as he considers necessary for the trial of cases at the sitting of each Circuit Court". The only list of jurors which is "selected by the registrar" is the panels of jurors which are made up pursuant to section 16 of the Jury Act. This section empowers the Registrar to "strike and make up such number of panels of jurors as he considers necessary **for the trial of cases at the sitting of each Circuit Court**" (emphasis added).

[14] Therefore, in the absence of any legal basis or sufficient cause shown by the appellant for requesting the record for 2016, which is outside the relevant period at which the jury was empanelled for his trial, there is no or no acceptable reason for the court to order disclosure of the jury lists for 2016. The jury lists for those terms would be totally irrelevant to the grounds proposed to be argued on appeal.

[15] Similarly, the court has seen no basis in fact or law to accede to the application for the disclosure of the jury lists for the sitting of the Westmoreland Circuit Court in 2017, for several reasons which will now be outlined.

[16] To begin, we find counsel for the appellant's reliance on the principle of open justice for disclosure of the jury lists after the conviction of the appellant to be insupportable in law and misplaced.

[17] As can be seen, section 11 of the Jury Act provides that a copy of the jury list is to be displayed in a conspicuous place in each court house and police station within the relevant parish so that any objection to it by members of the public may be taken before it reaches the Registrar for use at the Circuit Court for that parish. This process, which permits the involvement of the public in the jury vetting and selection process, is prior to transmission of the final list to the Registrar.

[18] It is clear, beyond question, that whilst section 11 of the Jury Act provides that a copy of the jury list is to be displayed in each parish so that any objection to it may be taken, there is no provision in the Act for it to again be made public after: (a) its final settlement under section 12; (b) its transmission to the Registrar under section 13; or (c) the making up of the panels of jurors under section 16.

[19] In fact, section 15 of the Jury Act, as noted by Mr Taylor, proscribes and prohibits the Registrar and the Clerk of the Courts, upon the pain of punishment, from making any alteration, addition, or omission to the list delivered to them. The section reads:

> "15. No alteration, addition or omission shall be made by the Registrar of the Supreme Court or by the Clerk of the Courts or by any other person on the copy of the list transmitted or delivered to him pursuant to section 13, under a penalty not exceeding two hundred dollars for every such alteration, addition or omission."

[20] It, therefore, means that once the jury list is delivered to the Registrar, no representation from anyone for alteration, addition or omission can be lawfully made. There is nothing the Registrar can do, under the Jury Act or any other law, to alter or otherwise interfere with the list of jurors once settled and certified as true and proper by the Justices at the 'settlement hearing'. This shows that it could not have been Parliament's intention that the jury list should continually be for public viewing and scrutiny with a view for exceptions to be taken or objections made.

[21] Even more importantly and specifically, for present purposes, there is no statutory or any other legal requirement for the final list to be made available to the public, by the Registrar or any other person, after an offender has been convicted by jurors named on that list, as in this case.

[22] Accordingly, we cannot agree with Mrs Samuels-Brown that the finalised list of jurors or the panels of jurors made up by the Registrar is intended or required by law to be accessible to members of the public, including a convicted person, at all times, and so should be made available to the public after the trial has ended. In our view, Mr Taylor

is correct in his contention that the stage at which the public is entitled to see the jury list is before it is settled and certified for transmission to the Registrar. In other words, the public is only entitled to see what may be regarded as the 'provisional' list.

[23] The circumstances surrounding the selection of the jury for the trial of the appellant are clear from the transcript of the proceedings, which shows a random selection by the Clerk of the Courts, who called the jurors to be sworn for the trial of the appellant. The appellant was told of his right to challenge the jurors as they "come to the Bible to be sworn". He exercised that right through peremptory challenges. He posed no challenge to the array or individual juror for cause based on the jury list or for any reason at all. In the result, this argument of counsel for the appellant that the jury list, utilised for the empanelling of the jurors at the trial of the appellant, is public records to which he should access after the trial, cannot, at all, be accepted. There is no law that renders the jury list accessible to the public after trial. This ground, being relied on for the disclosure order, fails.

Likely or apparent bias of the jury and the appellant's constitutional right to a fair hearing

[24] Mrs Samuels-Brown posited that "if it is shown, on a balance of probabilities that the jury panel was not comprised 'according to law' and/or not 'summoned equally' or for any reason, the presiding jurors were not 'independent and [or] impartial'", then the appellant has not been tried by an independent and/or impartial court according to law in breach of his constitutional right to a fair trial.

[25] Queen's Counsel relied on the case of **Rojas v Berllaque (Gibraltar)** [2003] UKPC 76, in arguing that the appellant is entitled to a right to a fair trial by an impartial and independent tribunal and that this extends to the principle against bias. She submitted that there is enough on the record to show apparent or likely bias on the part of the jury and that a copy of the jury list would be of assistance to the court to determine whether the apparent bias was contributed to by any error of the Registrar.

[26] Mrs Samuels-Brown further referenced the case of **Posokhov v Russia** [2003] ECHR 117 and paras. 61 – 63 of **Tempel v the Czech Republic** [2020] ECHR 44151/12 in support of her argument that a citizen is entitled to the guarantee that the jury is established by law, is impartial, and is independent and that the methodology of the selection of the jury is relevant. She argued that a challenge to the polls is allowed if there is an error by the Registrar and that a copy of the jury list is needed to look at the process of selection. Queen's Counsel submitted that the request for disclosure of the jury list or the jury panel would inform the court as to the procedure employed by the Registrar in making up the jury panel for the Circuit Court in which the appellant was tried. This, she argued, is essential if the points and complaints raised by the appellant are to be viewed "as a whole" and not be limited to the polling of the jurors as occurred immediately before the commencement of the trial. Queen's Counsel contended that even though certain provisions such as section 48 of the Jury Act refer to the "immunity" of the Registrar in making up the panel, this court, when asked to consider the constitutionality of the making up the list, must look at the issue broadly.

[27] Finally, referencing the case of **John Brown v Her Majesty's Advocate** [2006] HCJAC 9, Queen's Counsel maintained that the protection given to a litigant to be tried by a court "established by law" means that the stipulations set out in the law must be followed and that this principle has been elevated as a constitutional right.

[28] In response for the Crown, Mr Taylor argued that the issue of apparent bias raised by the appellant is "not at all apparent". He submitted that the cases of **Rojas v Berllaque (Gibraltar)** and **John Brown v Her Majesty's Advocate** must be distinguished from the instant case because, while the facts contained in those cases demonstrate issues of apparent bias, the same cannot be said of the instant case. He relied on the case of **R v Ellis** [2011] 4 LRC 515 in contending that the appellant must provide evidence before the court to show the reason the jury list is needed. He submitted that despite the appellant asserting that the procedures for making up the jury list had not been followed, he has not provided the "evidential plinth as a pedestal" to ground

this application. Queen's Counsel argued that there is no evidence provided by the appellant that the jury was apparently biased or from which it could be inferred that they were biased. He also argued that there is no evidence of default, error, negligence or bias that has been adduced that inculpates the relevant parties in the creation of the jury list on which this court could favourably grant the order sought in this application.

[29] Mr Taylor further contended that there has been no breach of the appellant's constitutional right to a fair trial. He argued that no authority has been cited for the proposition that jurors with the same surname may "compromise the representativeness of juries to such an extent as to give rise to a real risk of an unfair trial". Queen's Counsel submitted that the appellant needed to go further and bring evidence to show that the procedure affected (i) the qualification to serve as a juror; (ii) the impartiality of the jury; (iii) the randomness of selection of the panel; and (iv) the verdict itself. He argued that the appellant has failed to provide such evidence before this court.

[30] Once again, we are more inclined to agree with the submissions of Mr Taylor over those advanced by Mrs Samuels-Brown concerning the issues of apparent bias and breach of the appellant's constitutional right to due process. In **Daryeon Blake and Vaughn Blake v R** [2017] JMCA Crim 15, one of the grounds of appeal argued on behalf of the appellants was that "[f]rom the unusual composition of the jury, five of whom carried the surnames Smith and two of whom carried the surnames Stephenson, the judge ought to have been alerted to the need to conduct an enquiry and, depending on the results of the enquiry, to take the necessary steps to ensure the fairness and impartiality of the trial (the composition of the jury)". In addressing this ground, Morrison P at paras. [90] and [91] stated:

> "[90] Where there is a suggestion that a member or members of the jury may be biased, the judge will apply the test laid down in the modern authorities, which is whether, having ascertained all the relevant circumstances that have a bearing on the suggestion of bias, those circumstances would lead a 'fair-minded and informed observer' to conclude that there was a real possibility that the juror in question was biased [**In**

> **re Medicaments and Related Classes of Goods (No 2)** [2001] 1 WLR 700, per Lord Phillips MR, at page 727, propounding the test subsequently approved by the House of Lords in **Porter v Magill Weeks v Magill** [2002] 2 AC 357].
>
> [91] Against this well-established background of principle, it seems to us that Mr Knight's submission on this issue must founder at the threshold. Simply put, there is absolutely no basis upon which the judge could have formed a 'realistic suspicion', even taking into account the coincidence (even if taken to be unusual) of the five Smiths and two Stephensons, that there might be anything amiss in the composition of the jury. Although, as we have indicated, this is ultimately a matter for the judge's discretion, it seems to us that it cannot be entirely without significance that no issue relating to the composition of the jury was taken by counsel representing the appellants at the trial. **Accordingly, given the continued absence of any material giving rise to suspicion of any kind, we consider counsel's submissions on it at this level to be no more than an invitation to the court to indulge in pure speculation**." (Emphasis added)

[31] In **R v Dennis Michael Pennington** (1985) 81 Cr App R. 217, Skinner J, similarly, stated at page 219 that:

> "It is no ground for disqualification of a juror that a juror might have personal reasons for some bias towards prosecution or defence. Even if it had been a ground for disqualification, that in itself is no ground for setting aside the verdict of a jury, provided that the juror's name was on the jury panel. **That reasoning is the stronger where there is no disqualification but merely a suspicion of bias, as is the case here**." (Emphasis added)

[32] As Mr Taylor highlighted, there is nothing presented before this court to establish the circumstances from which it could be fairly argued that the jurors who tried the appellant were apparently or likely biased on the mere basis of having the same surname. It has not gone unnoticed that in the instant case, apart from the concerns raised in the affidavit of Yolanda Kiffin sworn to on 27 September 2019 that the "commonality and sharing of the surname indicated a likelihood that they were relatives and or close family members sitting together, adjudging the case and that this could impact their

independence and consequently the fairness of the trial", there is not one iota of evidence that any of the members of the jury were related, or that the independence of any member of the jury was impacted as a result of the commonality and sharing of the surname "Reid". Furthermore, none of the jurors shared surname with the victim or any witness in the case from which suspicion could be aroused as to their impartiality. Additionally, the Jury Act has provided the grounds for exemption and disqualification of a juror, and there is nothing regarding names or relationships as a ground for disqualification.

[33] We are moved to borrow, in part, the words of Morrison P in **Daryeon Blake and Vaughn Blake v R** that, "given the absence of any material giving rise to suspicion of any kind", we consider counsel's affidavit evidence and submissions regarding the likelihood of bias "to be no more than an invitation to the court to indulge in pure speculation". We would refuse the invitation to join in that speculation regarding bias on the part of the jury.

[34] The court also finds no support in the cases of **John Brown v Her Majesty's Advocate**, **Rojas v Berllaque (Gibraltar)** and **Posokhov v Russia**, relied on by Mrs Samuels-Brown. Queen's Counsel drew support from these cases to advance the viewpoint that the disclosure of the jury list is necessary for this court at the hearing of the substantive appeal to examine whether the constitutional right of the appellant to a fair hearing was or is likely to have been breached. However, we have found these cases to be distinguishable from the instant case in ways that we will now attempt to illustrate.

[35] In **John Brown v Her Majesty's Advocate**, the appellant appealed against conviction on the ground that there was a miscarriage of justice arising from the selection and composition of the jury. There was evidence that the panel of jurors available for the trial consisted of 22 persons – seven men and 15 women. Counsel for the appellant contended that the list was unrepresentative and could lead to the balloting of a jury with a disproportionate number of women. The appeal was allowed on the basis that the size of the panel from which the jurors were to be selected was too small and thus "lacked

the appearance of fairness" and not based on the complaint that the number of women was disproportionate. The court was not detained by any concern with the randomness of the selection of the jurors. The court made it clear that:

> "[24] If the original panel of 60 was randomly selected and if the excusals and no-shows are considered to be random events, the panel that remained for the appellant's trial was in a sense, as the Crown argued, the product of random selection; and therefore the balloting of the jury produced a random result. **That is a question that might be of interest to statisticians. We prefer to stand back from the mathematics of the problem and take a commonsense view of what happened. In our opinion, this case should be decided on the straightforward basis that the balloting of a jury of 15 from a panel of only 22 lacked the appearance of fairness.** The ballot was plainly unsatisfactory and the sheriff should have recognised that. In our opinion, there was a miscarriage of justice." (Emphasis added)

[36] In the instant case, there is no evidence before this court to suggest that the stipulations set out in the law were not followed by the Registrar in striking the panel pursuant to section 16 of the Jury or that there were any issues with the panel of jurors that caused it to lack the appearance of fairness. Additionally, the empanelling of the jury to try the appellant's case at the sitting of the Circuit Court was outside the purview and direction of the Registrar. It should be noted that under section 12(2) of the Judicature (Supreme Court) Act, the Clerk of the Courts, at the Circuit Court at such sitting, shall, among other things, "call jurors". Indeed, the empanelling process at the appellant's trial can be gleaned from the transcript of the proceedings and shows the Clerk of the Courts carrying out the function as prescribed. There is nothing on the transcript to indicate that the Clerk of the Courts did anything other than randomly call the jurors from the jury list presented to her by the Registrar, and the appellant has advanced nothing to the contrary.

[37] The transcript also shows the names of other jurors who were randomly selected by the Clerk of the Courts at the sitting but who were challenged by both the prosecution

and defence. The transcript reveals that the names were apparently alphabetically listed as they ranged from the letters N to R. In fact, other jurors with the surname 'Reid' along with others who had names other than 'Reid' were called but peremptorily challenged by both the prosecution and defence. There was no challenge for cause to the array or any individual juror. There was no legal duty imposed on either the trial judge or the Clerk of the Court to make enquiries of the jurors regarding the reasons for the juror's surnames being the same and their relationship with each other. The jury, comprising persons with the same surname, was empanelled in accordance with the law in the presence of the appellant and his legal representative. In all the circumstances, it cannot seriously be contended that there was any illegality or impropriety in the jury selection process.

[38] The fact that in the case of **Daryeon Blake and Vaughn Blake v R**, a similar issue arose in another parish, when five of the seven jurors who were empanelled to try the defendants had the same surname, is indicative of a commonality in the process utilised by the Registrar in selecting the jury panels. It is reasonable to conclude that the names appeared in alphabetical order on the lists from which the selections were made. This occurrence of jurors with the same surname serving on a jury, in and of itself, does not point to inherent bias, impropriety or unfairness on the part of the Registrar or the jury, which could automatically be used to vitiate a trial. In other words, no presumption of bias arises merely from the fact that jurors share the same surname. Therefore, there is nothing in the circumstances, which would preclude the need for the appellant to provide evidence of impropriety or illegality in the composition of the jury that would have a material bearing on the safety of his conviction.

[39] In **Rojas v Berllaque (Gibraltar)**, the issue was raised on appeal as to whether the constitutional right to a fair hearing was infringed in a case where the jurors were chosen from a jury list compiled on a sex discriminatory basis. This question arose because, in practice, the juries were all-male due to the difference in treatment between men and women in the compilation of the jury list. Subject to exemptions and disqualifications, jury service was compulsory for all men between the ages of 18 and 65,

while for women in this age bracket, jury service was voluntary. The issue of gender bias, therefore, was of clear concern in this case, and there was evidence that pointed to that bias. In the instant case, there is no doubt that the appellant is entitled to a right to a fair trial by an impartial and independent tribunal and that this extends to the principle against bias. However, we agree with Mr Taylor that the issue of bias does not arise as there is no evidence provided by the appellant to suggest that any of the jurors were affected, or likely to be affected, by bias due to having the same surname.

[40] The appellant in **Posokhov v Russia** argued that the lay judges, Ms Streblyanskaya and Ms Khovyakova, had been acting as lay judges before the appellant's trial, for at least 88 days, instead of the maximum 14 days per year, contrary to section 9 of the Federal Law on the Lay Judges of the Federal Courts of General Jurisdiction. Moreover, their names had not been drawn by lot, in breach of section 5 of the Act. In addition, it was claimed that Ms Streblyanskaya's statutory term of office had expired before the day of the appellant's trial. As a clear distinction from the instant case, the appellant in **Posokhov v Russia** was able to point to and provide evidence of the alleged breaches of the applicable law. The appellant has not pointed to any breach by the Registrar in the striking and making up of the panels of jurors. The request for a copy of the list appears to be more in hope of trying to find some sort of breach. This court cannot facilitate a fishing expedition on which the appellant obviously intends to embark for advancing his appeal.

Error of the Registrar in striking the panel

[41] Finally, we also cannot agree with Mrs Samuels-Brown's submissions that a challenge is allowed from an error concerning the preparation of the jury lists, or in the making of the jury panels. Section 48 of the Jury Act clearly prohibits this. This section states that:

> "48. No challenge to the array shall be allowed, nor shall the array be quashed, **nor shall any judgment after verdict upon any indictment or information for any felony or misdemeanour be stayed or reversed by reason of the**

> **neglect or default of any officer to do or perform any of the foregoing acts or requirements in relation to the preparation of the jury lists,** or in the making of the jury panels aforesaid." (Emphasis added)

[42] In **R v Barry Bliss** (1987) 84 Cr App R 1, the English Court of Appeal considered section 18(1) of their Juries Act, 1974, a provision similar to section 48 of our Jury Act. By section 18(1) of the Juries Act, 1974, "[n]o judgment after verdict in any trial by jury in any court shall be stayed or reversed by reason… (b) that a juror was not qualified in accordance with section 1 of this Act…". The appellant, in that case, appealed against conviction on the ground that one of the jurors might have been hostile to him because of the grudge he bore his son and that the juror might have revealed to other members of the jury his (the appellant's) previous convictions. As accurately reflected in the headnote of the judgment, the Court of Appeal held that:

> "…pursuant to section 18(1)(b) of the Juries Act 1974 the verdict of a jury should not be stayed or reversed by reason only of a disqualified juror being party to it. **For any deficiency in a member of a jury to afford grounds for quashing a conviction it had to constitute either a material irregularity in the course of the trial or render the verdict unsafe and unsatisfactory. The principle to be applied was that there must be either evidence pointing directly to the fact, or evidence from which it might properly be inferred, that the defendant might have been prejudiced or that he might not have received a fair trial**…" (Emphasis added)

[43] As already indicated throughout this judgment, the appellant has not provided this court with any evidence that the Registrar erred in law in her preparation of the list or selection of the panels of jurors for the sitting of the court where the appellant was convicted. The appellant has established no breach of the Jury Act or any other law on the part of the Registrar emanating from the fact that the jurors who were empanelled to try the appellant's case had the same surname. Even more importantly, there is also no evidence pointing, directly or inferentially to the fact that the appellant might have

been prejudiced or might not have received a fair trial because the jurors had the surname 'Reid'.

[44] In contemplating this issue, we have found rather persuasive the approach taken in **R v Ellis** [2011] 4 LRC 515, by the Court of Appeal of New Zealand in dealing with a situation where no evidence was provided in support of an allegation that there had been a departure from the law dealing with the selection of jurors. In that case, the appellant contended, among other things, that he did not receive a fair trial because he was tried in the High Court by a jury, which was said to be unrepresentative of the population and not of his peers. Randerson J, in delivering the judgment of the court, stated that:

> "[15] The first ground of appeal can be disposed of in short order… There is no suggestion that there has been any departure from the Juries Act or relevant rules in the selection of the jury for the appellant's trial, nor that there is any ambiguity in the legislation. Secondly, it is not suggested that the jurors chosen for the appellant's trial were, as a matter of fact, anything other than objective and impartial.
>
> [16] In these circumstances, it must be accepted that the appellant's trial, as regards the composition of the jury, has been conducted in accordance with law as prescribed by Parliament. It follows that we have no option but to dismiss this ground of appeal."

[45] There is not a scintilla of evidence that could generate even a whiff of suspicion that the jurors were related in any way and, worse yet, would have acted improperly to the prejudice of the appellant. Therefore, in the absence of evidence, we are unable to find that the appellant's trial, as regards the composition of the jury, was not conducted in accordance with the provisions of the Jury Act. As Randerson J observed in **R v Ellis,** which we would adopt wholeheartedly, "it is not suggested that the jurors chosen for the appellant's trial, were, **as a matter of fact**, **anything other than objective and impartial**. In these circumstances, it must be accepted that the appellant's trial, as regards the composition of the jury, had been conducted in accordance with the law as prescribed by Parliament" (emphasis added). Accordingly, there is no utility in making an

order for the Registrar to produce the jury lists for 2016 and 2017 for the appellant's counsel to examine possible or likely breaches of the Jury Act.

[46] Indeed, we consider it necessary to register our concern with this application for an order for disclosure of the jury list for another reason other than that it is insupportable in fact and law. We have observed that the appellant's counsel have not said what use will be made of the jury lists, if obtained, and how they would go about satisfying themselves that nothing improper resulted from the fact that the jurors had the same surname. It seems to us that for the appellant to be sufficiently satisfied, the jurors would have to be found and interrogated, since it would not be necessarily apparent on the face of the jury list itself, whether they are related or connected in any way and whether they would have known of such relationship, if any.

[47] We feel compelled to say that citizens who appear in court to perform their civic duties as right-minded members of society ought not to be led to believe that after they have served as jurors, there could be some subsequent investigations into who they are; their addresses; occupation; and relationship with others, including their fellow jurors, and other personal matters. It cannot be permitted for jurors, who have already discharged their functions in court as they were selected to do, without any challenge whatsoever (which is permitted by law), to be searched for, found and interrogated merely for the purposes of the Crown or a convicted offender, seeking to ascertain whether anything untoward may have occurred during the trial. This court has a duty to follow the law, ensure the integrity and security of the jury system and to protect the public interest in the proper administration of justice. Therefore, to give into the appellant's request for disclosure of the jury lists in this case and under the circumstances in which it is being made, would be a dangerous precedent, which we are not minded to establish.

[48] We also see no useful purpose to be served by permitting the appellant to obtain an affidavit from the Registrar explaining her preparation of the requested jury lists, particularly, in the light of the provisions of section 48 of the Jury Act. Although, there is

no proven error on the part of the Registrar, this section, in any event, would render the conviction of the appellant unaffected by any error, default or neglect on her part. This is because there is no evidence of any material irregularity in the preparation of the jury lists and the selection and/or composition of the jury at the trial. Neither is there any evidence that the requested jury lists, or any of them, would have prejudiced the appellant, thereby rendering the jury's verdict unsatisfactory and the conviction unsafe.

[49] In our view, therefore, neither the jury list nor evidence pertaining to its preparation will serve any useful purpose on the appeal. Mrs Samuels-Brown's intimation that section 48 of the Jury Act could be challenged for unconstitutionality is for another day in proceedings before another and more appropriate forum. It suffices to simply say that this argument cannot avail the appellant in this application.

[50] In conclusion, we find no proven breach of the Jury Act by the Registrar in the preparation of the jury list used at the appellant's trial. Further, there is no evidence placed before this court pointing, directly or inferentially, to any illegality, impropriety or aberrance in the jury selection process and the composition of the jury at the appellant's trial, that would justify disclosure of the jury lists for 2016 and/or 2017. We find the application for disclosure entirely without merit.

[51] For all the reasons discussed above, we find no legal and factual basis for this court to grant the order sought by the appellant. Accordingly, the application for the Registrar to be ordered to disclose the jury list for the Westmoreland Circuit Court for 2016 and 2017 is refused.