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NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR DECISION

SUPREME COURT CRIMINAL APPEAL NO COA2023CR00007

APPLICATION NO COA2026APP00043

JEROME MURRAY v R

TAKE NOTICE that this matter was heard by the Hon Miss Justice Edwards JA, the Hon Miss Justice Simmons JA, and the Hon Mrs Justice Shelly-Williams JA (Ag), on 2 3 and 4 March 2026, with Leroy K Equiano appearing for the appellant, and Miss Channa Ormsby and Miss Loyata Peters for the Crown.

TAKE FURTHER NOTICE that the court's memorandum of reasons, for the orders given on 4 March 2026 in open court by the Hon Miss Justice Edwards JA, is as follows:

[1] On 14 December 2022, the appellant, Jerome Murray, was convicted of the offence of rape (committed on a five year old), in the Clarendon Circuit Court, holden at May Pen, Clarendon, following a trial before Bertram-Linton J ('the learned judge'), sitting with a jury. The learned judge, on 25 January 2023, sentenced the appellant to the statutory minimum of 15 years' imprisonment without eligibility for parole until serving 10 years.

[2] The appellant filed a Criminal Form B1, dated 6 February 2023, seeking to challenge his conviction based on two grounds having to do with a lack of evidence and the verdict being unreasonable. His application for leave to appeal was considered by a single judge of this court and leave was granted on 1 September 2023. Before this court the appellant sought to challenge his conviction and sought permission to abandon ground a. of the original grounds filed, and to argue four supplemental grounds of appeal as well as the original ground b.

[3] The supplemental grounds of appeal filed 24 February 2026 were as follows:

> "(1) [The] Learned Trial Judge erred by not acceding to the no case submission made on behalf of the Defendant [because]:
>
> a. There was no evidence of sexual penetration; and
>
> b. The evidence adduced in support of any hint of sexual penetration was vague, unreliable, unexplained and unsupported.
>
> (2) Having allowed the case to go to the jury, the Learned Trial Judge's direction was insufficient in the circumstances of the case:
>
> a. Although a corroboration warning is not mandatory, the learned trial judge in her discretion should have given a warning on the dangers of acting on the evidence of a child witness in the circumstances of the case.
>
> b. Although the Learned Trial Judge addressed the jury on inconsistencies and discrepancies, she failed to assist the jury in identifying examples of these variations in the evidence.
>
> (3) The Learned Trial Judge misquoted the evidence in her summation by informing the jury that the evidence from the doctor was in effect that the shower taken by the child might affect the bruising. That misquote deprived the Appellant of a fair trial.
>
> (4) The Learned Trial Judge failed to assist the jury after jury returned from the first [sic] and informed that a verdict was not arrived at, this was compounded by the Learned Judge giving instructions to the jury that put pressure on the jury to arrive at a majority verdict. Thus the Appellant was deprived of a fair trial."

[4] The original ground (b) was as follows:

> "b. The verdict is unreasonable having regard to the evidence."

[5] Having heard the submissions on these grounds, from counsel for the appellant and counsel for the Crown, and having examined the relevant statutory provisions and the transcript of the trial, we conclude that the appeal must be dismissed for the reasons we have set out below.

[6] Ground 1 is without merit as there was more than sufficient evidence from the complainant as to the element of penetration to go to the jury to determine whether the offence of rape had been committed. The child who was eight years old at the date of the trial, was unsworn, but was found competent to give evidence having been found to be possessed of sufficient intelligence and having demonstrated an understanding of the duty to speak the truth (see sections 31N and 31P of the Evidence Act, as amended in 2015).

[7] In giving evidence, the child said that the appellant put his private part into her private part and that her private part is her vagina and his private part is his penis. There was no ambiguity in this evidence. There was no suggestion that the child did not know or understand the difference between "in" as opposed to "on". For the offence of rape, the slightest penetration is sufficient. The child was found on her back with her shorts and underwear down by her feet and her blouse up under her breast with the appellant on top of her, with his underwear down by his knee and his penis out. Although there was no evidence that the child complained of pain, there was evidence of her distress as she was found under the appellant crying and was crying whilst being bathed by her grandmother.

[8] Although the medical evidence was that the child's hymen was not intact and there was no bruising, bleeding or swelling to the vaginal area, the child's grandmother did see, what she described as "a little water", on the child's underwear. The doctor gave various reasons as to what could cause a hymen to be broken, including but not limited to sexual assault, riding a bicycle, gymnastics and so on. The doctor was asked whether there would have been additional findings on examination if the hymen had recently been broken. The doctor's response was that it depended on many factors, such as the type of incident, the child's age and size, and the type of force involved. When asked specifically what type of observation would be expected on examination

of a five-year-old who was penetrated by an adult male, the doctor's response was that the findings would vary: in one instance, the hymen might be intact and there is nothing else; in another instance the hymen might be broken with bruising or bleeding in the area. In other instances, the doctor said, the hymen might be broken with no sign of injuries.

[9] To the question as to what conclusion the doctor was able to draw from the child's medical records, the response was that no concrete conclusion could be drawn. The jury was entitled to accept that there was penetration even of a slight degree, bearing in mind the evidence that the grandmother entered the room at the point she did, and to accept that this was one case where there was no bruising, bleeding or swelling caused by the degree of penetration.

[10] There was no miscarriage of justice on this ground.

[11] Ground 2 is without merit, for although the learned judge was under no duty to give a corroboration warning (see section 31Q of the Evidence Act as amended), she did give a discretionary warning (see section 26 of the Sexual Offences Act and **Joel Henry v R** [2018] JMCA Crim 32). There is no precise formula as to the words that must be told to the jury and what was said by the learned judge at pages 153 to 155, and page 165 of the transcript, were adequate and clear warnings to the jury as to the need to approach the complainant's evidence with caution. The learned judge's direction also included a reminder of the inherent dangers of acting upon uncorroborated testimony.

[12] As regards the complaint that the judge merely gave the usual directions on inconsistencies and discrepancies but failed to point out to the jury any example of an inconsistency or discrepancy, it was not sustainable. Counsel was unable to point out any inconsistency or discrepancy in the evidence, except for that involving the question of whether the child's brother had entered the living room along with the grandmother when the appellant was caught in the act. The child said he had but the grandmother said he was not there. Later in the evidence the child said her brother was not there. This was not a discrepancy that went to the root of the prosecution's case, rendering the verdict unsafe.

[13] Ground 3 is without merit. The learned judge did initially misquote the doctor's evidence in her recount of the evidence to the jury, but on being alerted by the prosecution as to the error, the learned judge corrected the error and recounted the correct evidence to the jury.

[14] Ground 4 is also without merit, for although the learned judge was under a misapprehension as to the length of time that was required for the jury to be out before a majority verdict could be taken, her directions to them, before sending them back for further deliberations did not amount to pressure as submitted by counsel for the appellant. The real question is whether what was said at pages 178 to 181 of the transcript, viewed in the context in which it was said, created a real risk of coercion or placed improper pressure on the jury so that it interfered with their ability to freely deliberate on the case. We are of the view that it did not.

[15] Furthermore, the learned judge's treatment of the jury was consistent with the relevant statutory provisions, case law, and part 25 of the Supreme Court of Judicature of Jamaica Criminal Bench Book. See also the cases of **Junior Edwards and Vassel Davis** v R [2012] JMCA Crim 50, **Jerome Dixon v R** [2022] JMCA Crim 2, **Dwayne Green v R** [2016] JMCA Crim 35 and **Jermaine Minott v R** [2025] JMCA Crim 1. No injustice was caused by the learned judge's failure to enquire whether the jury required assistance at that point, and the omission caused no material irregularity to result in a miscarriage of justice.

[16] In the light of the evidence accepted by the jury and the judge's summation viewed as a whole, the original ground of appeal b, that the verdict is unreasonable having regard to the evidence, is not sustainable (see **R v Joseph Lao** (unreported) (Jamaica) Court of Appeal, Supreme Court Criminal Appeal No 50/1973, judgment delivered 16 November 1973, at pages 4 to 5).

[17] Therefore, there being no serious miscarriage of justice demonstrated, the conviction must stand and the court, therefore, makes the following orders:

1. The appeal is dismissed.

2. The conviction and sentence are affirmed.

3. The sentence is to be reckoned as having commenced on the date on which it was imposed, that is, 25 January 2023.