

# Retrial ordered for Lusignan Massacre Accused - Guyana Court of Appeal

The Guyana Court of Appeal on Tuesday 8<sup>th</sup> March, 2016 ruled in favour of the State when it allowed the Appeal to be heard in the Matter of the State vs Mark Williams and James Hyles, the two accused who were freed at the end of the Lusignan Massacre High Court trial before Justice Navindra Singh which commenced on July 15, 2013 and concluded in August 2013.

Williams and Hyles were found not guilty by a 12-member jury on each of the 11 counts for the offence of Murder of eleven victims killed in the 2008 Lusignan massacre. Upon hearing the jury's verdicts on the eleven counts, the State had served Notice of Intention to appeal. Senior State Counsel Judith Gildharie-Mursalin had represented the State at the trial.

The grounds of appeal included the nondisclosure to the Court by the jury foreman Vernon Griffith that there was a client relationship between himself and Defence Counsel Attorney-at-Law Nigel Hughes, who had represented him (Griffith) during a civil court matter for a period of about six years from 2002.

In her grounds of Appeal, Madam DPP Shalimar Ali-Hack had stated that the non-disclosure of this vital information was a "material irregularity." She contended that ***"this non-disclosure was material and significant given the fact that at the commencement of the trial on July 15, 2013, before the jury was selected and empanelled, the learned trial judge specifically called out the names of all the attorneys involved in the case and told the entire panel that if they know or are associated with any of the attorneys, they ought to so indicate and would be excused."*** Both Attorney Nigel Hughes and Jury Foreman Griffith made no disclosure to Justice Singh and remained silent. Subsequently, Justice Singh imposed a life ban on Griffith from jury service.

On March 8, 2016, the Court of Appeal was comprised of Chancellor Justice Carl Singh, Madam Chief Justice Yonette Cummings-Edward and Justice B.S. Roy while the State was represented by Madam Director of Public Prosecutions, Mrs. Shalimar Ali-Hack. Defence Counsel Nigel Hughes appeared for the Appellants.

In delivering the Court of Appeal decision, Justice Cummings-Edwards noted that jury foreman Vernon Griffith had **an ethical and legal duty** to disclose his relationship with his Counsel, Attorney Nigel Hughes. The Court concluded that the non-disclosure by Griffith compromised his natural role as a juror.

The Appeal Court noted that jurors are decision makers and have a legal and ethical duty while the role of Defence Counsel cannot be overlooked and stated that Counsel have an ethical duty to the justice system. Justice must not only be done but seen to be done, the Court of Appeal observed.

Chancellor Mr. Justice Carl Singh surmised that it was a serious error of judgement on the part of Defence Counsel, Mr. Nigel Hughes when he failed to disclose knowing the jury foreman.

On another ground of Appeal, the DPP had pointed out that the Trial Judge had erred by not holding an enquiry when State Counsel Judith Mursalin had brought to his attention that a juror that shown the thumbs-up sign to the father of the number 2 accused. The Court of Appeal ruled that the trial judge ought to have held an enquiry. It said that it was the duty of the trial judge to enquire into and determine what the juror's action meant. The Court ruled that once a complaint was made it was the paramount duty of the trial judge to hold an enquiry.

Another ground of Appeal by the State was that the Trial Judge had erred when he allowed the defence to question the jurors before they were sworn in. On this point, The Court of Appeal ruled that there is no Common Law or statutory provision in Guyana for this to be done and found that indeed, Justice Singh erred when he allowed this. Under Section 47 Chapter 10:01 of the Practice and Procedure Act the questioning of jurors is permissible in England and can be allowed.

The Court of Appeal noted that the process of jury selection is based on the principle of random selection and ruled that the questioning of the jurors interfered with this random-selection principle. Chancellor Justice Singh said that this was clearly wrong, inappropriate and contrary to random selection.

In relation to the cross-examination of police witnesses by the Defence and the Exclusion of 76 photographs of the actual crime scene and the victims during the High Court trial, the Court ruled that the photographs **ought not** to have been **excluded** by the trial judge.

On the question of the voluntariness of the caution statement given by the accused, the Appeal Court found that the issue of voluntariness was not for the jury to determine whether the caution statement was made freely and voluntarily and ruled that the directions given by the Trial Judge was inadequate.

In its final decision, the Court of Appeal found some irregularities of cumulative effect that rendered the verdict unsafe and unsatisfactory. The Appeal was allowed and a retrial ordered.