



**IN THE SUPREME COURT OF BERMUDA
CRIMINAL JURISDICTION
Case No. 31 of 2021**

BETWEEN:

THE KING

-and-

DAVIN KYRON THOMAS DILL

Before: The Hon. Justice Juan P. Wolffe, Puisne Judge

Appearances: Mr. Carrington Mahoney & Mr. Paul Wilson for the Prosecution
Mr. Charles Richardson & Ms. Elizabeth Christopher for the
Defendant

Date of Hearing: 17th August 2023
Date of Ruling: 21st August 2023
Date of Reasons: 25th August 2023

**RULING
(Reasons)**

Application to exclude expert evidence of gang association – Section 93(1) of the Police and Criminal Evidence Act 2006 (PACE) – The ambit and presentation of gang evidence

WOLFFE J:

1. The Defendant is currently in the midst of a trial facing two counts on the Indictment, *to wit* (i) Murder, contrary to section 287 of the Criminal Code Act 1907 (the “Criminal Code”), and (ii) Having a Bladed Article in a Public Place, contrary to section 315C of the Criminal Code.
2. As a key part of its case against the Defendant the Prosecution seek to establish that the alleged victim Mr. Joshua Rowse was murdered by the Defendant and others not before the Court as a result of a then ongoing rivalry between a gang in which Mr. Rowse was a member and another gang in which the Defendant was said to be a member. To this end, the Prosecution intend to adduce into evidence the statement of a DC 2393 Terry Thompson of the Bermuda Police Service (“BPS”) who they say is a police officer who has made a special study of the gangs concerned in this matter as well as the gang culture in Bermuda generally (his statement dated 7th May 2020 is found on pages 173 to 187 of the Court Record).
3. Mr. Charles Richardson, on behalf of the Defendant, submits that the evidence of DC Thompson should be excluded pursuant to section 93(1) of the Police and Criminal Evidence Act 2006 (“PACE”) on the grounds that DC Thompson does not possess the necessary qualifications to give “gang evidence” and nor does he lay the proper evidential and/or procedural foundation necessary for this kind of evidence to be accepted by the Court or indeed to be put before the Jury.
4. After hearing submissions from Counsel I dismissed the Defendant’s application to have the gang evidence of DC Thompson excluded and set out herein are my reasons for doing so.

The Law

5. In support of their respective positions both Mr. Richardson and Mr. Carrington Mahoney (for the Prosecution) quite rightly referred extensively to the sentinel Privy Council decision of *Myers, Brangman & Cox (Privy Council Appeal No. 0088, 0089, 0094 Of 2013) [2015] UKPC 40*. *Myers* involved three (3) cases in which the victims met their deaths by gunshot and the ultimate issue, as it is in this case, was one of identity. In the Myers and Cox cases the prosecution sought to rely on evidence that the murders were as a result of long-standing feuds between two rival gangs that were triggered by an incident which occurred not long beforehand.¹ In the Brangman matter the gang evidence was not to show the existence of a gang feud but to show loyalty between the defendant and an associate who was the victim of an assault. The common denominator between the Myers, Cox and Brangman matters was the prosecution's intention to show that the respective defendants, because of their gang affiliations, had a motive to kill their victims.² Given the broad coverage of *Myers* by both Counsel it should come as no surprise that I too will be referring to it considerably.

6. Paragraph 4 of *Myers* outlines the issues that were addressed. They were:

- “(a) whether the gang evidence was inadmissible as irrelevant and/or as impermissible proof of no more than bad character, or was admissible to prove motive;*
- (b) whether the gang evidence was admissible under the principle enunciated in R v Pettman (unreported 2 May 1985) (“explanatory evidence”);*
- (c) if gang evidence is admissible, what is its proper extent and content;*
- (d) if admissible, whether gang evidence can be given by a police officer who has made a special study of the gangs concerned, as well as of gang culture generally;*

¹ Paragraph 2 of *Myers, Brangman & Cox (Privy Council Appeal No. 0088, 0089, 0094 Of 2013) [2015] UKPC 40*.

² Paragraph 2 of *Myers*.

- (e) *if gang evidence is admissible, to what extent (if any) may the witness rely on information gathered from, or researched by, others;*
- (f) *if such evidence is prima facie admissible, what ought to be the approach to the application to it of section 93 of the Police and Criminal Evidence Act 2006 (prosecution evidence which ought not to be admitted because its effect on the trial would be unfair); and*
- (g) *if such evidence is admissible, what ought to be the practice relating to the advance notice, form and presentation of it.”*

7. In this regard, the guiding principles which can be extracted from Myers are as follows:

- (i) The starting point is that the evidence is not admissible unless it is relevant. It is relevant if, but only if, it contributes something to the resolution of one or more of the issues in the case.³ Put another way, the ambit of gang evidence will depend on what legitimate role it may have in helping the Jury to resolve one or more issues in the case.
- (ii) Not all relevant evidence is admissible if its admission will be unfair to the defendant in the sense that its prejudicial effect exceeds its probative value⁴ (i.e. section 93(1) of PACE).
- (iii) Evidence which shows that a defendant has a propensity to offend or behave badly may well be very relevant but it is normally to be excluded on the grounds of fairness, unless there is some reason to admit it beyond mere propensity.
- (iv) Gang evidence will almost always involve implications of bad behavior but if the evidence relevantly proves motive there may be justification for its admission (reference was made to Makin v Attorney General for New South Wales [1894] AC 57)⁵.

³ Paragraph 37 of Myers.

⁴ Paragraph 38 of Myers.

⁵ Paragraph 43 of Myers.

- (v) Evidence that there exists a feud between gangs is relevant to identity as it could show that (a) a defendant had a motive to kill the victim; and (b) the defendant was a member of a group which was likely to have felt aggrieved and would have reacted by targeting the victim on the grounds of his membership of the opposing association.⁶
 - (vi) Evidence of a shared motive of a small group of people can be just as relevant and admissible as a motive “uniquely harboured by the defendant”.⁷
 - (vii) It is an important strand in the rope of evidence that there had occurred “*a trigger event which would have created a grievance in the gang of which the defendant was a member*” and it is for the Prosecution to prove the trigger event.⁸
 - (viii) Where gang evidence is adduced, careful attention to the rule against hearsay is likely to be necessary.⁹
8. In respect of the ability of a police officer to give gang evidence, and to Mr. Richardson’s point, Lord Hughes in *Myers* stated that in principle there can be no objection to gang evidence being given by a police officer providing that the ordinary threshold requirements for expertise are established, and, providing that the ordinary rules of giving expert evidence are observed. In particular, the police officer must have made a sufficient study, whether by formal training or through practical experience, to assemble what can be properly regarded as a balanced body of specialized knowledge which would not be available to the tribunal of fact.¹⁰ Further, that experts give evidence of observable facts and such evidence may legitimately be informed by the accumulated body of knowledge collected by others as well as by the expert’s own personal experience.¹¹

⁶ Paragraph 44 of *Myers*.

⁷ Paragraph 45 of *Myers*.

⁸ Paragraph 49 of *Myers*.

⁹ Paragraph 49 of *Myers*.

¹⁰ Paragraph 57 of *Myers*.

¹¹ Paragraph 65 of *Myers*.

9. Additionally, and importantly, the Board in *Myers* stated that the duty of a police officer to give gang evidence involved “at least” the following:

- “(a) *He must set out his qualifications to give expert evidence, by training and experience.*
- “(b) *He must state not only his conclusions but also how he has arrived at them; if they are based on his own observations or contacts with particular persons, he must say so; if they are based on information provided by other officers he must show how it is collected and exchanged and, if recorded, how; if they are based on informers, he must at least acknowledge that such is one source, although of course he need not name them.*
- “(d) *In relation to primary conclusions in relation to the defendant or other key persons, he must go beyond a mere general statement that he has sources of kinds A, B and C, but must say whence the particular information he is advancing has come; an example would be observations of a defendant in the company of others known to be members of a gang.*”¹²

10. In furtherance of this, paragraph 69 of *Myers* goes on to say:

“If a witness statement tendered for a trial does not meet these standards, the judge can be asked to direct that it be expanded in whatever particulars he judges necessary. Such an application should not be left until the beginning of the trial but should be made well beforehand. If directions given are not complied with, that will be relevant both to whether the witness has established a proper basis for giving expert evidence and to whether his evidence ought to be excluded under section 93.”

11. With this reasoning, the Board went on to decide that the gang evidence of culture, feud, and the defendants’ memberships in gangs (in *Myers* and *Cox*) were admissible to show motive and that the police officer in those matters, a Sergeant Rollin, was qualified to give it.

¹² Paragraph 68 of *Myers*. It should be noted that the decision does not contain a sub-paragraph 68(c) and this appears to be a typographical error.

12. Following *Myers*, and considering the submissions of both Mr. Richardson and Mr. Mahoney as to whether I should admit the purported gang evidence of DC Thompson, I must therefore determine whether:

- (a) DC Thompson is qualified to give expert evidence on gangs in Bermuda;
- (b) DC Thompson has sufficiently shown how he arrived at his conclusions; and whether,
- (c) DC Thompson has stated from whence his information has come.

13. I should therefore now turn to the evidence which DC Thompson seeks to adduce.

The Gang Evidence of DC Thompson

14. DC Thompson's statement speaks to the following:

- (a) That he has 20 years' experience in law enforcement in Bermuda and Barbados including stints in armed response vehicles, a road policing unit, and a gang unit. By the time of his statement in May 2020 he would have been in the gang unit for about a year (from 2019).
- (b) In the gang unit he focused on the evolution of organized groups which he referred to as "gangs" and he committed himself to the study and learning of gang culture in Bermuda. He also had familiarized himself with how gangs identify themselves, gang structure, codes of conduct, and the way in which gang members identify themselves.
- (c) In reaching his conclusions he used: the police computer system which tracks persons that come in contact with the police; mugshots of those arrested including those who had tattoos; cell phone data of arrested suspects; social media sites and apps depicting pictures and videos of gang members; stop & searches of areas which included gangs; and, information gleaned from general

patrols in areas that attract anti-social behavior and that may be considered a gang area.

- (d) Consideration as to whether a person participates in or actively promotes unlawful gang activity and this involved data as to whether a person uses a name, symbol, or representation that identified or is associated with an unlawful gang¹³.
 - (e) Looking for factors to identify gang members or associates of gangs such as tattoos which show gang names or acronyms; jewelry indicating gang names; or individuals using their hands or fingers to “throw up” or to form different shapes or signs that will identify themselves to specific gangs.
 - (f) Gang members “putting in work” which is when members will carry out tasks set by the higher ranked members of the gang. These task may involve retaliation against anyone that has “disrespected” the gang.
15. In respect of Mr. Rowse, DC Thompson stated that he reviewed:
- (i) Photographs of Mr. Rowse throwing up his fingers in the shape of a “J” and a “V” which is representative of the “Jones Village Crew” or “JVC” which is located in a Warwick Parish neighborhood. In these photographs, Mr. Rowse is pictured with a Corey Bean and a Tahj Robinson whose names also feature in the factual landscape of this case (they both were with Mr. Rowse at the time of his death), as well as others who are associated with the JVC.
 - (ii) Photographs of graffiti in the Jones Village environs and jewelry showing the initials “JVC”.

¹³ On page 176 of the Court Record DC Thompson provides a definition of an “unlawful gang”.

16. DC Thompson stated that based on his law enforcement experience and also his interactions and observations patrolling gang locations that he formed the opinion that Mr. Rowse was associated with the JVC.
17. In respect of the Defendant, DC Thompson reviewed photographs and YouTube videos of the Defendant in the company of others who are throwing up “C” signs which he said is used to represent the gang known as the “Cedar Hill Crew” (“CHC”), or, who are wearing apparel which bears the letter “C” which is also representative of the CHC. A couple of those photos show the Defendant with a Seth Burt or a Bryce Daniels whose names have already featured in the evidence in this case and who are seen in photos throwing up a gun sign or symbol.
18. DC Thompson said that it was based on this as well as his law enforcement experience and also interactions and observations patrolling gang locations that he concluded that the Defendant was associated with the CHC.
19. DC Thompson added that the JVC and the CHC have no allegiance or alliance and to this he pointed to a number of incidents which occurred in the surrounding areas of Jones Village (the area associated with the JVC) and Cedar Hill (the area associated with the CHC). Such as: on 3rd February 2020 when a firearm was discharged at the residence of Mr. Burt (a purported associate of the Defendant), and later on the same day a shooting at the residence of Mr. Rowse. The Prosecution also point to (i) an incident at Mr. Rowse’s residence on the 29th May 2020 when Mr. Daniels and others attended and violently threatened to do serious harm to Mr. Rowse (it is an issue in dispute as to whether a third person who was present at the incident was the Defendant), and (ii) the alleged killing of Mr. Rowse two weeks later on the 14th June 2020 (which of course is the central act of this trial).
20. DC Thompson’s opinion is that these incidents show a back and forth demonstration of violence between the JVC and the CHC.

Decision

21. There was no dispute that police officers can be accepted as expert witnesses in respect of gang culture and the participation of an individual in a gang. Much of Mr. Richardson's concern was based on what he submitted to be a grave deficiency in the evidence of DC Thompson. Specifically, that (i) unlike Sergeant Rollin in *Myers*, that DC Thompson, because of his lack of experience and training, should not be regarded as a police officer who had made a special study of the gangs concerned or gang culture generally; (ii) that DC Thompson has not sufficiently shown how he arrived at his conclusions that the Defendant, Mr. Rowse or others were members of gangs; and, (iii) there is no evidence to suggest that the incidents referred to by DC Thompson were in any way connected or constituted "trigger events" as part of a feud between JVC and CHC, and even if there is any evidence it is based on pure hearsay.

22. I shall therefore address each of these concerns.

DC Thompson's Qualifications and Credentials

23. Mr. Richardson brought my attention to the evidence that DC Thompson, by the time he gave his statement in May 2020, had only been a member of the gang unit for approximately one (1) year i.e. from 2019, and, that the extent of his training in gangs was a one (1) week training course in November 2019 and eight (8) week course in June/August 2019. As for DC Thompson's other policing experience Mr. Richardson characterized it as amounting to little as it did not encapsulate experience specific to gangs. Mr. Richardson added that DC Thompson's experience and training in gangs in Bermuda was far less than that of Sergeant Rollins (which made him competent to give the gang evidence in *Myers*).

24. I disagree entirely with Mr. Richardson and I find that DC Thompson's qualifications meet the requirements necessary to make him competent to give evidence as to gangs in Bermuda. Mr. Richardson seemed to have focused his argument on the fact that by the time he gave his statement that DC Thompson had not been assigned to the gang unit for

long and that his formal training on gangs was limited to a two (2) month course. However, DC Thompson's 20 year experience as a police officer should not be diminished and nor should his access to the police computer system which tracks persons who have come in contact with the police. It is obvious to me that DC Thompson was not a "spring chicken" and his experience in the armed response vehicles and the road policing unit would have certainly augmented his training and his work in the gang unit.

25. Further, Mr. Richardson's complaint that DC Thompson did not state whether he maintained liaisons or communications with the agencies where he took various courses (such as the FBI Advanced Gang Investigation Division and the Gang Specialist Academy) is unsustainable. I fail to see how DC Thompson's discontinuance of any relationships with those agencies, if indeed there was a discontinuance, is a basis upon which I could say that he is unqualified to give his evidence. Setting a criteria that DC Thompson should have maintained those relationships would be tantamount to requiring any expert, whatever the discipline, to keep up contact with the institutions from which they received their academic or vocational training. Surely the Board in Myers did not contemplate this.
26. Given this, I find that DC Thompson has made a sufficient study through formal training and practical experience which has enabled him to acquire specialized knowledge of gang culture in Bermuda generally and of the JVC and CHC gangs specifically. Further, there was nothing placed before me that would suggest that DC Thompson will not abide by his obligation as an expert to provide material which is balanced and to disclose any material which may assist the defence.
27. I therefore find that DC Thompson has shown that he has the necessary expertise and qualification to give the gang evidence which the Prosecution intends for him to adduce.

Whether DC Thompson has sufficiently shown how he arrived at his conclusions

28. Mr. Richardson's complaint was that DC Thompson does not provide any information or insufficient information definitively saying: that he frequently patrolled the western areas

of the Island i.e. the Jones Village and Cedar Hill areas; whether any calls that he answered as part of the Armed Response Vehicle units put him in contact with the JVC and CHC; how the firearm and gang violence assisted him in reaching his specific conclusions in this matter; what or who are the “nominals” referred to in his statement and how they factor into his opinion; what opinion was he instructed to give; what information he referred to from the police computer system such as details of arrest, photographs, cell phone data, social media posts, stops and searches; in what areas were his general patrols; why are the JVC and CHC considered gangs; why persons other than the Defendant and Mr. Rowse are considered to be gang members; how does the graffiti relate to gang association; why is Mr. Rowse associated with a gang; and, whose social media account was accessed.

29. To reinforce his position Mr. Richardson carried out a comparative analysis of what DC Thompson did in this case and what Sergeant Rollins did in *Myers*. In doing so he advanced the argument that because DC Thompson evidence did not rise to the level of Sergeant Rollins’ then it should not be accepted. However, when one actually compares DC Thompson’s evidence with that of Sergeant Rollins one would find that for the most part DC Thompson did what Sergeant Rollins did and in many respects even went further.
30. In paragraph 8 of *Myers*, Lord Hughes recounted the form of Sergeant Rollins evidence as follows:

“Firstly, he described the two relevant gang groupings, namely Middletown/Parkside on the one hand and 42nd/MOB on the other and explained their territories. Secondly, he gave evidence of the violent feud between them, referring to acts of violence and murder in general and to the murder by shooting of one of the 42nd named Kenwandee Robinson in particular. Thirdly, of a number of named people, including the defendant, he gave evidence that he considered them members of one or other of these gang groupings, stating inter alia the allegiances set out in para 6 above. He described the defendant as a high-level member of Middletown. And fourthly, he produced three photographs which showed assembled groups of Middletown/Parkside members, including the defendant, identified them by name in most cases, and described as the gang sign the “M” symbol which the defendant could be seen making with his hand in two of the photographs, and which another member was also making.”

31. Lord Hughes also commented:

“However, when identifying named persons as members of one or other gang, Mr Rollin’s witness statement simply said that he “considered” X to be a member of the relevant gang. He did not set out the basis for his belief, beyond saying that he was very familiar with the streets. He did not, in his witness statement, give information of particular, or even unparticularised, sightings of the individual concerned in significant places or in significant company, although in oral evidence he did say, in relation to the defendant, that he was habitually to be found with other members in or near the house of Neika Daily, which was the common meeting point of the Middletown gang, whilst the photographs were further evidence of this association.”

32. With this, the Board concluded that Sergeant Rollins was competent to give the gang evidence in Myers.

33. In this matter, DC Thompson provides information as to:

- (a) Descriptions of the two relevant gangs, the JVC and the CHC;
- (b) A feud between the JVC and the CHC (particularly the incidents which took place on the 3rd February 2020 and the 29th May 2020);
- (c) Mr. Rowse and his associates being members of the JVC and the Defendant and his associates being members of the CHC;
- (d) Photographs of Mr. Rowse and the Defendant, and their associates, throwing up gang symbols (found on pages 177 to 185 of the Court Record).
- (e) Topographical maps of the Jones Village and Cedar Hill areas (found respectively on pages 181 and 186 of the Court Record)

34. DC Thompson stated that he extracted this information from his own experience interacting and observing whilst patrolling gang locations. Additionally, he obtained information from the police computer system which tracks persons that come in contact with the police; mugshots of those arrested including those who had tattoos; cell phone data of arrested suspects; social media sites and apps depicting pictures and videos of gang members; stop

& searches of areas which included gangs; and, information gleaned from general patrols in areas that attract anti-social behavior and that may be considered a gang area.

35. As I said earlier, the form of DC Thompson's evidence is no different from that of Sergeant Rollins, but it even goes further in stating specific evidence of Mr. Rowse and the Defendant in significant gang associated places and with significant gang associated people. The fact that DC Thompson does not pedantically detail instances when he was in contact with the JVC, or who the "nominals" are, or what exact information he gleaned from the police computer system, or whose social media accounts were accessed, does not distract from the sufficiency of his evidence as to the respective gang affiliations of the Defendant and Mr. Rowse. In other words, what he said should not be relegated to being mere general assertions of the separate gang associations of the Defendant and Mr. Rowse. In fact his evidence contains such specificity that I am satisfied of there being a nexus between the Defendant, Mr. Rowse, and their associates to the gang culture in Bermuda. Indeed, unlike Sergeant Rollins in *Myers*, DC Thompson actually sets out the basis for his opinion that the Defendant was a member of the CHC and that Mr. Rowse was a member of the JVC through the use of a mixture of his own personal knowledge gathered through patrols and from information gathered by others and inputted into the police computer system.
36. I therefore find that DC Thompson has sufficiently set out the sources from which he reached his conclusions as to the JVC and CHC and the respective involvement of Mr. Rowse and the Defendant in them (as well as their pictured associates). Moreover, I see no reason to require DC Thompson to expand any further on any of the particulars which he has already provided as the information which he has provided does not inhibit the Defendant's ability to properly and fully test his evidence.

Whether incidents referred to by DC Thompson were connected or constituted “trigger events” as part of a feud between JVC and CHC

37. Mr. Richardson’s hurled criticism at the Prosecution’s assertion that the two shooting incidents on the 3rd February 2020, the incident at the Rowse residence on the 29th May 2020, and the death of Mr. Rowse on the 14th June 2020 illustrated a feud between the JVC and the CHC. I disagree. The persons/victims involved in those matters and the proximity of time make for a very strong inference being drawn that they were indicative of a “tit-for-tat” between the JVC and the CHC. In particular: the shooting at the Defendant’s associate Mr. Burt’s residence and then a shooting at Mr. Rowse’s residence five (5) hours later; then approximately two months later the incident at the Rowse residence in which associates of the Defendant threatened Mr. Rowse’s family (whether the Defendant was present at this incident is an issue in dispute); and then two (2) weeks later the killing of Mr. Rowse (which of course it is the Prosecution’s case that the Defendant did the killing).
38. Mr. Richardson is somewhat correct that DC Thompson did not give direct details that the incidents on the 3rd February 2020 were gang related however the inference can be easily arrived at especially when coupled with the incident at the Rowse residence on the 29th May 2020 and the death of Mr. Rowse on the 14th June 2020. A killing in which the assailants used a motorcar which was closely linked with the Defendant and which was used by the Defendant the day before the killing and at the same place of the killing (the South Shore Rubis Gas Station). It is therefore obvious to me that all of the incidents are beyond mere coincidence and definitely speak to a feud between the JVC and the CHC.
39. Further, either one of the events on the 3rd February 2020 could be seen as the trigger event which precipitated the death of Mr. Rowse on the 14th June 2020, and in my view, the incident at the Rowse residence on the 29th May 2020 could be seen as a “precursor event” carried out by the CHC prior to what occurred on the 14th June 2020 when Mr. Rowse was killed.

40. It should be noted that Lord Justice Fulford in the authority of *Rajae Heslop, Saharded Hassan, and Irwin Constable v. Regina [2022] EXCA Crim 897* commented that *Myers* did not impose an obligation on the prosecution in a gang case to establish a trigger event as a precondition for the admission of gang related evidence.¹⁴ In fact, in the Brangman matter in *Myers* the prosecution did not use reprisal in the course of a gang feud as necessary part of its case. But of course, in the case-at-bar the Prosecution, as a pivotal part of its case against the Defendant, is seeking to rely on evidence that there was a trigger event which led to the killing of Mr. Rowse. Therefore, they must prove such trigger event.
41. In this regard, I find that the evidence of the events on the 3rd February 2020 and the 29th May 2020 sufficiently demonstrates a feud between the JVC and the CHC, and using the words of Lord Hughes in *Myers* that the two gangs were “in the habit of wreaking serious violence or death upon each other”.
42. Therefore, if the evidence of a feud between the JVC and CHC is accepted by the jurors it will assist them in resolving two primary issues in this case, that being (i) the identity of the Defendant as the person who caused the death of Mr. Rowse, and (ii) whether the Defendant, as a member of the CHC, had a motive to kill Mr. Rowse who was a member of the JVC.

Conclusion

43. In consideration of the above I find that the probative value of the gang evidence intended to be adduced by the Prosecution outweighs any prejudicial effect which it may have on the Accused. I therefore confirm my earlier Ruling to dismiss the Defendant’s application pursuant to section 93(1) of PACE to have the gang evidence of DC Thompson excluded.
44. In closing I am compelled to address a constant refrain by Mr. Richardson that applications to exclude gang evidence should be heard during the relevant trial and just before the Prosecution intends to lead such evidence. His apparent reasoning is that trials are an

¹⁴ Paragraph 44 of *Rajae Heslop, Saharded Hassan, and Irwin Constable v. Regina [2022] EXCA Crim 897*.

organic process and therefore it is prudent to wait to see how the evidence unfolds before applying to exclude gang evidence. Given that Mr. Mahoney did not offer up any retort to what Mr. Richardson said I sense that he may agree with Mr. Richardson.

45. Without sounding too blunt, henceforth Mr. Richardson should disabuse himself of such a notion (and maybe Mr. Mahoney as well). This matter has been before this Court since September 2021 and over the years it has had numerous case management hearings. Yet, it is only now during the trial process in August 2023 (almost two years later) that the issue of the exclusion of the gang evidence is being resolved. This issue could have, and definitely should have, been dealt with well before the commencement of this trial in order to avoid any unnecessary delays in the hearing of the evidential portions of the trial. If this point requires any further forceful elucidation we only need turn to the words of Lord Hughes in *Myers* who unequivocally stated that: *“Such an application should not be left until the beginning of the trial but should be made well beforehand”*.¹⁵
46. It is vitally important that Counsel who come before the criminal courts, both Prosecution and Defence, adhere to the spirit and intent of the Disclosure and Criminal Reform Act 2015 and bring to the attention of the Court (and each other) all legal issues likely to be raised during a trial. Doing so well before the commencement of the trial will allow a trial to proceed unimpeded by time-consuming delays. Long gone are the days when Counsel should keep their cards tightly close to their chests. Of course, Counsel are entitled to take various strategic decisions when advancing their respective cases but such decisions should not be inconsistent with the proper administration of justice (which should be the overwhelming consideration of any Court and Counsel who come before it).

¹⁵ Paragraph 69 of *Myers*.

47. I trust that in progressing this case further, and any other criminal trial for that matter, that all Counsel will keep this at the forefront of their minds.

Dated the 25th day of August, 2023



The Hon. Mr. Justice Juan P. Wolffe
Puisne Judge of the Supreme Court of Bermuda