THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO.: ANUHCR2023/0078

BETWEEN:

THE KING

-and-

DYLAN SIMON

Appearances:
Mrs. Shannon Jones-Gittens for the Crown
Mr. Warren Cassell for the Defendant

2025: November 5th, 6th, 7th, 10th
November 25th
December 18 (Reissued)

JUDGMENT

[1] **JOHN, J.:** The accused Dylan Simon (hereinafter referred to as the accused) was charged on a six-count indictment. The charges and particulars of the offences are as follows:

FIRST COUNT

STATEMENT OF OFFENCE

Electronic Forgery, Contrary to Section 6 of the Electronic Crimes Act, 2013 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULARS OF OFFENCE

DYLAN SIMON, on the 30th day of December, 2019 in Antigua and Barbuda with intent to defraud, input computer data in the cash receipts register of the accounting system of Hadeed Motors Ltd, to wit, an entry of Antigua Commercial Bank cheque number 56323 in the amount of **EC$80,372.25** as being received from Alison Charles as payment for a Suzuki Vitara motor vehicle thereby resulting in inauthentic data.

SECOND COUNT

STATEMENT OF OFFENCE

Forgery, Contrary to Section 7 of the Forgery Act, Cap. 181 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULARS OF OFFENCE

DYLAN SIMON on the 30th day of December, 2019 and 4th January, 2020 in Antigua and Barbuda, with intent to deceive, forged an **exit/entry form** bearing the number 18334 with information relating to one Suzuki Vitara motor vehicle with registration number A58376 as though he had sold the vehicle to one Alison Charles.

THIRD COUNT

STATEMENT OF OFFENCE

Uttering, Contrary to Section (9) (1) pf the Forgery Act, Cap. 181 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULARS OF OFFNCE

DYLAN SIMON on the 3rd day of January 2020 at Old Parham Road in the Parish of Saint John in Antigua and Barbuda uttered a forged document, to wit, a **Hadeed Motors Ltd. Exit/Entry Form number 18334** dated 3rd January, 2020, purporting it to have been prepared for the completed sale of one Suzuki Vitara motor vehicle, registration number A58376.

FOURTH COUNT

STATEMENT OF OFFENCE

Larceny by a Clerk, Contrary to section 20 (1) (a) of the Larceny Act, Cap. 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULARS OF OFFENCE

DYLAN SIMON between the 30th day of December, 2019 and 4th day of January, 2020 in the parish of Saint John in Antigua and Barbuda, being employed by **Hadeed Motors Limited** stole one Suzuki Vitara motor vehicle, serial number TSMYE21S1LM759321 with registration number A58376, value at EC$80,372.25, the property of **Hadeed Motors Limited**.

FIFTH COUNT

STATEMENT OF OFFENCE

Obtaining by False Pretences, Contrary to Section (27) (a) of the Larceny Act, Cap. 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULARS OF OFFENCE

DYLAN SIMON between the 30th day of December, 2019 and 29th February 2020 in the Parish of Saint John in Antigua and Barbuda, with intent to defraud, obtained a commission in the sum of EC$600,000.00 from Hadeed Motors Limited by falsely pretending that he sold one Suzuki Vitara motor vehicle, the property of **Hadeed Motors Limited** and was therefore entitled to the said commission.

SIX COUNT

STATEMENT OF OFFENCE

Money Laundering, Contrary to Section (61) (3) (b) of the Proceeds of Crime Act, 1993 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULAR OF OFFENCE

DYLAN SIMON between the 17th day of August, 2020 and the 19th day of August, 2020 in Antigua and Barbuda disposed of one Suzuki Vitara motor vehicle, serial number **TSMYE21S1LM759321** and registration number **A58376**, which was the proceeds of crime, to wit, larceny by a servant, by selling the said vehicle to **DANI NEHME**, knowing that the said vehicle was derived from unlawful activity.

INTRODUCTION

[2] The Trial began on 4th November, 2025 and the evidence was completed on 10th November, 2025. The matter was tried by a judge alone based on the provisions of **section 4 of The ANTIGUA AND BARBUDA CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) ACT No. 8 of 2021.**

[3] The Prosecution called eleven (11) witnesses. Counsel for the Defendant then made a no case submission which was overruled. When called upon the defendant elected to make an unsworn statement from the dock and called witnesses.

[4] In summary, the prosecution alleged that the accused was with their employee for a number of years (Hadeed Motors Ltd.). On the 30th December, 2019, he put false information into the computer system to make it appear that a Suzuki Vitara was paid for by cheque. He covered that unlawful conduct by ensuring that the totals at the end of the day mirrored each other by manipulating some numbers.

[5] That information was then acted upon and the vehicle was released from the dealership. An exit/entry form prepared by the accused was presented to the security at the gate. That document was false as there was no payment for the vehicle. The accused claimed his commission on the sale of that vehicle which was

in fact not purchased resulting in the 5th count. The final count concerned him selling the stolen vehicle to another individual.

GENERAL DIRECTIONS IN LAW

[6] I know that the accused is presumed to be innocent, unless and until the prosecution has proved his guilt beyond a reasonable doubt. There is no burden on the accused to prove that he is innocent. There is no onus on the accused to prove anything at all. Thus, the accused has no obligation to prove that he is not guilty, or to explain the evidence proffered by the prosecution. It is for the prosecution alone to prove the guilt of the accused to the extent that I am sure that the accused is guilty of the offences as stated on the indictment.

[7] I have not reviewed every single detail of the evidence, but I did address my mind to the important or prominent aspects of the evidence in deciding the critical issues in the case. It was not necessary for me to decide every single point that was raised but only such matters that enabled me to determine whether the charges were proven.

[8] I was mindful that I was not to speculate about things or matters that were not covered by the evidence. I addressed my mind to the whole of the evidence that was presented at the trial and formed my own judgment about such evidence. All questions of fact at issue on this trial were for me to determine.

[9] While I took into account the speeches and the further written submissions made by counsel for the defendant and the prosecution, I was mindful that I was not bound to accept any aspect of either of them. I concentrated on the evidence I heard from the witnesses together with the exhibits tendered into evidence.

[10] If having considered all of the evidence in the case and if I had any reasonable doubt as to whether the accused was guilty; I know I must resolve such doubt in favour of the accused and find him not guilty of the offences.

[11] On the other hand, if having considered the evidence, I am satisfied that there is no reasonable doubt in my mind, and I am sure of the guilt of the accused, then it will be equally my duty in law to find him guilty as charged.

[12] I must consider the evidence as it relates to each count and satisfied myself that the Prosecution has proven the elements in relation to each count.

[13] In my fact-finding exercise, I have examined the testimony of all the witnesses. I was mindful that I was free to accept all of a witness's evidence or reject all of a witness's evidence. I may accept part of a witness's evidence and reject part of the evidence of that same witness. I may accept the evidence of one witness called by one side and reject the evidence of another witness called by the same side.

<u>CIRCUMSTANTIAL EVIDENCE</u>

[14] The prosecution case depended to some extent on circumstantial evidence. I was mindful that although circumstantial evidence may sometimes be conclusive, it must always be narrowly examined, if only because it may be fabricated to cast suspicion on another. Uppermost in my mind was the learning in **(Teper vs The Queen [1952] AC 480, where Lord Norman at page 489)** said; "***it is also necessary before drawing the inference of the accused guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference".***

[15] The guidance in the *Crown Court Compendium*, ch. 10-1was also considered, that is to say, in a case involving any circumstantial evidence relied on by the prosecution, the judge should summarize any evidence and/or arguments relied on by the defence to rebut the evidence and/or the conclusions which the prosecution seek to draw from it and direct the jury:

A) To examine each strand of it and decide which if any they accept and which if any they do not and decide what fair and reasonable conclusions can be drawn from any evidence that they accept;

B) Not to speculate or guess or make theories about matters which in their view are not proved by any evidence; and

C) To decide, having weighed up all the evidence, whether the prosecution have made them sure that the accused is guilty.

PROSECUTION EVIDENCE

ANDREW HADEED

[16] Andrew Hadeed, the Managing Director of Hadeed Motors, stated that Dwayna Derrick is the Financial Controller of the company. He said the accused held the position in the company responsible for Accounts receivable and was later transferred to the BMW Dealership Department. The witness stated that the accused had been with the company for about 21 years. He further said that in December 2019 he asked the internal auditor to do a forensic stock taking of the parts department and she complied. They later started an audit of the accounts that the accused handled. As a consequence of what he was told by the Internal Auditor and Financial Controller which was Dwayna Derrick, the accused was put on two weeks administrative leave. Whilst on administrative leave the accused tendered his resignation.

[17] Under cross examination the witness agreed that consideration was being given to promoting accused for a managerial position. In answer to counsel, the witness said that an audit was requested from Sandra Baptiste. He also said the accused was a good worker. The witness said that he did not recall the accused asking him for money owed to him. He knew Sharlene Maynard, she worked in the parts department. Before she was transferred to the parts department she worked in accounts. A report was generated from the audit. Financial Development Company (FDC) is an independent company that provides finance. FDC never reported to me any money stolen from them. Jason Weste is the manager for the FDC who reports to the board of which I am a member. When shown an invoice, he agreed that the selling price did not include the RRC. The accused was not paid extra for doing Ms. Maynard's work and he did not do Ms. Maynard's work. An audit was requested from Sandra Baptiste which he would have seen. It would be more difficult to recognize it today.

ANGIE BASCUS

[18] This witness said she works as an accountant at the Antigua Masonry Products. In 2019, she worked with the Hadeed Group of Companies as an accountant. She was employed with them since 2011. Her primary duties were to review the policies of the company and ensure the operations were compliant with the internal controls. During the Covid 19 lockdown, the company was able to operate and process manual transactions relating to the sales of vehicle parts. When they returned to normal operations she checked some of the manual transactions to see if they were entered into the computer system correctly. In the course of that exercise, she noticed some anomalies which led to her reviewing the transactions in greater detail. She asked the financial controller Ms. Derrick to review and provide an explanation. She said Ms. Derrick was unable to provide an explanation and she continued to review transactions. She looked at the information from the control data report and on the cash receipts. There again she found additional anomalies, an item went recorded as both a cash sale and a credit sale. The transaction related to a specific customer's account so she had to look at that customer's account. The customer was also an employee of the company namely the accused. She continued to review his accounts in detail. Some of the transactions related to cash proceeds which she tried to tie back to the daily cash reports. The total on the deposit slips was consistent with the cash report but the details were not consistent and she drew it to the director's attention. The accused was placed on administrative leave and she continued to investigate further. The results were consistent and did not match the deposit slips. Accordingly, the accused was invited to come back to explain. At that meeting, she gave him a list of the transactions and asked him for an explanation, but he remained silent. The meeting concluded and she drew it to the directors' attention.

[19] The forensic audit was commissioned and she continued her research. During her investigations, she came upon a new vehicle that was purchased but she was unable to find the payment for the vehicle. It was a Suzuki Vitara. She later contacted the police and handed over some documents relating to the Suzuki Vitara to ASP O'Garro. The documents were:

1. Deposit Slip

2. Entry/Exit Form
3. Commission form

[20] The commission form is used to pay the commission to the salesperson. A commission form along with a cheque requisition form which she recognized by her initials was tendered collectively as (Exhibit AB1). From that document, the salesperson for that Suzuki Vitara was Dylan Simon. The other document was a cheque requisition requested by the accused in the amount of EC$3,600.00.

[21] Under cross examination, she deposed that she was an internal auditor for the Hadeed Group of Companies. FDC is a part of the Hadeed Group of Companies. Her role is to conduct internal audits. It is inclusive of procedure. She was the person who asked the directors to do the audit. This witness had been shown a special audit letter to Dwayna Derrick. She recommended that the accused proceed on administrative leave and he complied. When she conducts an audit a report is generated. It is in writing. She generated a report for the special audit. She did not conduct any report in December 2019 or from January to May 2020. She ceased working with Hadeed Motors in 2023. Up until then she did not produce any reports. She is familiar with the forensic report of Sandra Baptiste. That report was conducted by an independent entity. She has seen and read that report and confirmed such when she was shown the in which she said she recognized. Similarly, she was shown the receipt of July 2020 and it was recognized by her and tendered as (Exhibit AB2**)**. She stated she is not aware that Hadeed Motors workers have used other workers' passwords as she has never used the accused password. She spoke to ASP O'Garro. Prior to that she had never seen O'Garro at Hadeed Motors. Witness shown letter written to Dwayna Derrick tendered as (Exhibit AB3**)**. She said she is familiar with Ms. Maynard as she worked at Hadeed Motors. When she joined Hadeed Motors she was not in the accounts department. She is also familiar with Alison Olivere. Witness shown copy of deposit slip. She stated she recalled seeing a cheque requisition document. It is not unusual for an employee to request his commission.

AUSTEN GITTENS

[22] He is the Chief Internal Officer at the Antigua Commercial Bank, and is responsible for auditing all the operations and conducting investigations within the group. He said that having received a request from ASP O'Garro he checked the system in search of a draft in the amount of EC$80,372.25. That draft was never issued by ACB.

[23] Under cross examination he said that he did not work for Hadeed Motors.

JASON WESTE

[24] He is the managing director at FDC a licensed financial institution regulated by the Eastern Caribbean Central Bank. He said they provide financing primarily for the Hadeed Group. His responsibility is to oversee the day to day operations as they relate to the management of the company, that is lending, collections, application for loans. He further said that the customer would bring the invoice from Hadeed with the price of the vehicle and that invoice would indicate the balance due to Hadeed Motors. The loans officer would meet with the customer and if the loan is approved a cheque request is issued payable to Hadeed Motors. On the 6th December, 2021 he was approached by ASP O'Garro regarding a specific cheque requisition. ASP O'Garro showed him cheque stubs dated December 2019 which he identified as documents produced by FDC. The cheque requisition he stated had three invoices and we cut one cheque. Mr. Weste was shown the document and identified the document as documents shown to him by ASP O'Garro.

DWAYNA DERRICK

[25] She worked in the Accounts Department at Hadeed Motors and her responsibilities included overseeing the staff, financial statements, issuing receipts for vehicle release, pricing vehicles and collecting monies from the spare parts department. Regarding the procedure for purchasing of a vehicle, she said that if someone is interested in purchasing a vehicle, that person would approach a sales representative who would prepare a pro forma invoice, if the person is paying in full the accounts department will receive the cheque and issue a receipt. If the person is requesting a loan from our finance company, a release is issued from the finance

company. A receipt is issued in the person's name and a cheque is deposited to the company's account.

[26] She further said that there is an accounts register which records the receipt number. It is a daily register and the total amount received is recorded there. The cashier inputs the information into the daily register. A computer generated receipt is issued which bears the date, receipt number, customer's name and whether by cash or cheque and the cheque number. It also bears the invoice number. She also added that an invoice is generated and there are two sections on the invoice (authorized by) and (Received by). Once payment is made, a release is issued by the accounts department. It is known as an exit/entry form and that form bears the date, customer name, type of vehicle, registration number, VIN number and colour of the vehicle. There is a section for the customer's signature and for the signature of the person who prepared the document.

[27] In 2020, internal audit brought an issue to her attention. There were some anomalies and she investigated the matter. She looked at the invoice, the release, the entry/exit form, for duty free document, the daily cash report which combines spare parts cash and the accounts department cash. There were some anomalies where a cheque received from FDC for $176,000.00 to pay for three invoices. That cheque was deposited in Hadeed Motors Account but the receipt was for one vehicle from the three. There were some other monies that made up the $176,000.00 but had nothing to do with the other two invoices. There were names and receipts but no cheques was deposited. She later handed over the document to the police.

[28] The witness was shown a deposit slip for 30th December, 2019 which was (Exhibit DD2) and identified it by her signature. She was also shown the Cash receipt report and identified it by her signature. She was also shown a receipt from Hadeed Motors which she identified by her signature at the top. A cash sale receipt for a Suzuki Vitara which was tendered as (Exhibit DD3) and she identified it by her signature. A new vehicle ABST Invoice in the name of Allison Charles was tendered in evidence as (Exhibit DD4). A Hadeed Motors daily cash report was tendered as (Exhibit DD5) which she identified by her signature. A daily cash remittance voucher

for spare parts which was tendered as (Exhibit DD6) which she identified by her signature. Exit/Entry form was tendered as (Exhibit DD8) in the name of Allison Charles in which the sales person was the accused. That exit/entry form showed that the vehicle was delivered by the accused. Custom Duty fee form was exhibited as (Exhibit DD9) which she identified. She further stated that when FDC sends a cheque they give a breakdown of what it represents. The witness was shown JW1 and recognize them as documents relating to the cheque for $176,000.00.

[29] Dwayna Derrick was cross examined at length. In response to questions from Mr. Cassell, she made the following pertinent remarks and statements:

- She was aware that this matter concerned a Suzuki Vitara and was shown (Exhibit DD4) which stated "New Vehicle Invoice". The selling price was $176,545.00 but she was not sure if the RRC was included. She saw the price of the vehicle and admitted that there is no figure for RRC.
- She was shown exhibit DD9 and identified it as the document that allow HML to waive the duty
- She did not recall a request having been made to her to refund the RRC
- The Witness was shown exhibit DD4 and recognized it as the Invoice for the Suzuki Vitara and said that the invoice was generated in December 2019.
- It is not the practice to back date the receipt
- The waiver of duties is usually signed by the Prime Minister and the Comptroller of Customs.
- The warrants are received by the sales coordinator.
- She accepted that page 55 reflects the commission of the accused for a particular period. She said that she only authorizes payment of commission on sales that seem legitimate and that she would check the commission before they are paid. Further, at the time that she checked, she had no reason to believe it was not a legitimate sale.

- She said that they did not keep any physical copies and that the monthly report is sent to FDC. If a payment is not made it would be reflected in the monthly statement.
- She did not recall if anything was missing in December 2019 or January 2020
- Sharlene Maynard is an employee at (HML). She worked in the Accounts Department. She was transferred to the Spare Parts Department.
- When she was promoted her responsibilities were split amongst those in the accounts department and that included the accused
- She was not aware that the accused was promised an extra $2,000.00. I think we got an increase at some time. The accused purchased several vehicles over the years. In 2009 he did purchase a BMW. He has an account at (HML). Other employees would also purchase vehicles from HML.
- The bonded warehouse is under the control of the customs. No one can remove a vehicle without customs authorization. HML does not process the bond.
- She was not aware of the multi-million-dollar scandal with Hadeed Motors and was not aware that there had been an allegation of vehicles being repossessed by the police that belongs to (HML)
- She did not know who processed the warrant for the Suzuki Vitara. She knew Patrice Luke, an employee of (HML). He does not take warrants to be processed. All new vehicles are licensed by (HML) save and except Government vehicles. The Suzuki Vitara was also licensed by (HML). I do check off on some of the payments. (HML) contributes to the Insurance. She did not recall $3,000.00 having been paid for the insurance for the Vitara
- We have a weekly sales report which is given to the Directors every Friday. The sale of the Suzuki Vitara would have been reported. The sale is also reported to the Suzuki Company so the warranty can commence. I believe it was reported to the Suzuki company

- Each month an inventory is conducted. We manually count the number of vehicle at (HML). Yes, I would have done the inventory for December 2019 and as far as I remember nothing was missing in January 2020.
- New vehicles get a free service. (HML) would give the customer a purchase order for the free service
- I can't recall if the Suzuki Vitara got a free service. It has to be authorized by management
- I disagree that the customer leaves a blank form to be signed
- Sometimes customers bring large amount of cash. It is not recorded as a cheque payment. It is cash. I did not tell accounts it is to be recorded as cheque.
- It is not unusual for someone to bring in $50,000.00 in cash.
- I am familiar with the account of F.E Hadeed.
- Directors would purchase the cash from the company and issue a cheque.
- When US dollars are included, directors would purchase the cash and issue a cheque to the company
- Sometimes the cash is taken up at the end of the day and it must still balance.
- It would compare the receipt from the bank with the amount deposited
- Witness shown exhibit DD (2) – Deposit slip for December 2019.
- The accused was responsible for the BMW department
- The BMW office was not on the compound of (HML)
- At times, if the accused is attending to a customer and someone comes to pay they may use his login. That receipt would bear the name Dylan Simon.
- Witness was shown AB (2) – letter from Angie Bascus to the witness
- I can't recall if after the accused went on administrative leave, they continued to use his password.
- Witness was shown a receipt from (HML) and recognizes it. It was dated July 8th, 2020
- I agree that the accused never returned to (HML). The cashier for the receipt is Dyer.

- I would usually provide employment letter
- I am not aware that (HML) promised the accused any backpay
- Between the 19th -22nd June, 7 million was paid to (HML) by the Government
- As far as I am aware, I don't know if he got any pay
- I am not the HR Manager, I see my signature on the document as H.R Administrator
- Witness shown DD (11) and identifies it as the employee status form
- When the accused left someone else took over his duties

[30] Under re-examination, this witness said that she checked the report given to her by the clerk responsible for all vehicles leaving the compound and the sales person.

LENNOX SMART

[31] Mr. Smart is a security officer who in December 2019 was employed at Special Security Service and stationed at Hadeed Motors. His duties entailed checking vehicles before they left the compound, checking serial number, checking the battery and radio. He said that the sale representative would bring the vehicle at the gate and he would check the vehicle against the release paper which would have the name of the purchaser of the vehicle. After checking he would put his own name and the time and date the vehicle left the compound. The witness was shown exhibit **DD8** which he recognized as the Exit/Entry form and which he identified by his signature.

[32] Under cross examination he said he knew the accused and had dealt with him with several vehicles. He further said that sometimes the vehicles would be delivered to someone other than the owner. He also said it was not necessary for the customer to be present.

JOSETTE PAYNE

[33] This witness testified that she was a supervisor at Transport Board Motor vehicle, a position she held for the past seven years. She further said that she had been employed at the transport board for 23 years. The accused was well known to her for over 10 years and from time to time he would do transactions for Hadeed Motors.

[34] On the 14th July, 2020, he brought a change of ownership document for someone who was selling a vehicle. She checked the system to ensure that the person's name in the change of ownership form was the owner of the vehicle. She further checked the driver's license, dated it and gave it back to the accused. She said the accused told her that the person was selling the vehicle and she said a 2020 vehicle? He smiled and did not respond.

[35] On the 18th October, 2020, Mr. Dani Nehme who was the buyer of the vehicle came to complete the transaction. He signed the change of ownership form as the buyer.

[36] In February 2021, ASP O'Garro came to the office with the change of ownership document and I looked at them to verify the original. I signed and dated them. The witness was shown the change of ownership form which she identified and which was tendered as **DP1**.

[37] Under cross examination she agreed that it was a change of ownership from Allison Charles to Dani Nehme. She further said that she checked the system and the owner was in fact Alison Charles. She accepted that only the registered owner can sell the vehicle to another person. She further agreed that if a person bought a vehicle in January, he can sell it in February provided that there was no lien or mortgage. She further agreed that if FDC or the Government had any interest in the vehicle it would be noted on the form.

<u>DANI NEHME</u>

[38] This witness testified that he owned a business of selling cars and he owned the company for the past ten years. He indicated he had known the accused for about 5 years.

[39] On the 17th August, 2020, the accused told him that his cousin bought a Suzuki Vitara in December 2019 around Christmas when the Government took off the ABST and she got a good deal. The accused told him that she was off island at the time and was not returning soon and wanted to sell the vehicle. He further said that they negotiated a price of $55,000.00 and he told the accused that he did not have that amount of money in cash. The accused asked how much was for the 2014 Tucson

that I had in my yard and I told him $32,000.00. He said that he would take it and he came back the following morning and we did the invoice. I gave him $23,000.00 in cash. We went together at the Transport Board and we did the legal change of ownership for both vehicles.

[40] On the 24th September, 2020, the accused called me and asked if I still had the 2020 Suzuki Vitara, I told him yes, and he said he has a friend who works at the bank and was interested in a vehicle like that. He came to my place in the Tucson and left with the Suzuki Vitara. In the evening he returned without the Suzuki Vitara, I never got it back. The accused subsequently returned the Tucson to me and $14,000.00 in cash.

[41] Under cross examination, he said his company buys and sells car. He was in the business of flipping vehicles. The accused told him that he had a friend at the bank who wanted to see the Suzuki Vitara. The accused told him that the vehicle was at the lawyer's office not CID. I later learned that the vehicle was with the police. When I went to Mr. O'Garro he told me that the vehicle was not mine and I would not be getting it and to bring in the spare key which I did,

ALVIN LANGLAIS

[42] Mr. Alvin Langlais, testified that he is now on retirement. He testified that he is a fingerprint expert and possesses the diploma in scientific crime detection. Additionally he completed a correspondence course in fingerprint, photography and crime scene investigation. He also has a doctorate degree in fingerprint and crime detection. He testified in courts in Antigua and other islands in the region. He has checked for fingerprint at crime scenes and looked at documents to ascertain whether they were forged. Following a conversation with ASP Ogarro, he was presented with several documents, after examining them he prepared a statement for the Police. (**The witness was deemed an expert by the Court**)

[43] He was given a blank page that contained 10 samples of the signature of Alison Charles. He was shown the Hadeed Motor Exit/Entry form which purported to bear the signature Alison Charles. The witness confirmed that the signature on that document was a forgery. He was further shown a document with a copy of the driver

license and a signature purporting to be Alison Charles which he said was a forgery. The signatures (received by) were inconsistent with that of any of the samples given.

[44] Under cross examination he was shown the Exit/ Entry form. The witness said that he could not say who signed above received by. He admitted that he did not know Alison Charles and he last did a refresher course in 2017.

DIANA SANDERSON- POTTER

[45] This witness testified that she worked at Hadeed Motors Ltd. Between 2019 and 2020 as a Sale Marketing Representative. She assumed responsibility for BMW and Customer bookings. As a Sale Representative she assisted customers when they were looking to get a vehicle and collected all the necessary documents for the sale and release of the vehicle. At the end of each month the sale department will submit a commission sheet.

[46] Under cross examination, this witness admitted that there was a time when the RRC tax was separated and detailed. Subsequently the RRC was included in the cost of the vehicle. She said that the sale of vehicles went through the sale coordinator and without proper paper work a new vehicle cannot be released from the bond. A sales representative could not access the bond. She agreed that Hadeed Motors Ltd, paid the license and insurance for the first year for a new vehicle. The witness was shown exhibit **DD4** and identified it as an invoice for the sale of a Suzuki Vitara. That price on the invoice she said was inclusive of the RRC. When shown exhibit **DD9** she identified it as the customs warrant and it showed that the RRC was waived 100%.

[47] She agreed that notwithstanding the RRC had been waived it was still included in the invoice. She further agreed that most times customers were not aware that the RRC had been waived. She agreed that the accused could sign an invoice in the absence of Dwayna Derrick. She further agreed that the accused could sign insurance vouchers for customers. In answer to counsel she agreed that the Exit/Entry form must be at the gate for the vehicle to leave the compound and the sales representative can sign an Exit/Entry form and deliver it to a customer. She further

said that all vehicles sold by a sale representative are documented and go to accounts department for payment of the commission.

[48] Under re-examination the witness said that the invoice for the Suzuki Vitara was prepared by the accused. She further said if she was signing for receiving the vehicle she would have signed her own name above *received by*.

ASP CORDELL O'GARRO

[49] This witness, ASP Cordell O'Garro Assistant Superintendent of Police (ASP) is in charge of All Saint's and Liberta Police Station. In 2020 he was attached to the CID. He testified that on the 23rd of September, 2020 Dwayna Derrick came to the CID Office and made a report. As a consequence, he interviewed several persons and recorded statements from them. He also collected several documents including handwriting samples and specimens from the accused and Alison Charles which he took to Mr. Alvin Langlais and made a request from him.

[50] On the 9th March, 2021, he saw the accused at the CID Office. At the time he was in company of his Attorney Mr. Sherfield Bowen. In the presence and hearing of Corporal Clarke, he identified himself to the accused and told him of the report of Larceny. He cautioned him and he remained silent. He further told him that he was going to put some questions to him relative to the offence. He asked him several questions to which he gave no answer.

[51] Mr. Cassell objected to the interview going into evidence. After hearing submissions, the Court overruled the objection as there was no basis for such objection. The Interview form was tendered as CO1. That vehicle he said was still in procession of the police.

[52] This witness was cross examined and in answer to counsel said that the investigation was a thorough one. He admitted to charging the accused for stealing an X trail and the matter was heard and determined in the High Court. He admitted knowing the accused from Hadeed Motors. A suggestion was put to him that he had an excellent relationship with the Hadeed's which the officer denied. He also denied that he was a beneficiary of free servicing of his vehicle. The witness was shown a Caribbean

Premium Motors Ltd invoice for vehicle C30303, that invoice was dated February 2023. The witness said his vehicle was bought in 2020. Whilst he admitted that the document showed no charge on the invoice, he said he could not ever recall not paying for having his vehicle serviced. It was suggested to him that he did private investigation for Hadeed Motors and he denied that suggestion.

[53] It was further suggested to him that he asked the accused to sign a non-disclosure document, the witness denied telling the accused that he would return the vehicle to him if he signed the non-disclosure document. He admitted to having charged the accused for several matters in the past. He further denied having anything personal against the accused.

THE NO CASE SUBMISSION

[54] At the close of the case for the crown, counsel for the accused submitted that the crown had not made out a prima facie case. In support of his submission he relied on the second limb of the case of ***Galbraith [1981] 2 ALL ER 1060***, the leading authority on the test a trial judge should apply to determine whether there is a case to answer. In the course of his judgment in that case, Lord Lane CJ said… ***If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The Judge will of course stop the case.*** *(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistence with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury…*

[55] The court was satisfied that the Prosecution had made out a prima facie case against the Defendant and accordingly overruled the submission.

CASE FOR THE DEFENCE

DYLAN SIMON

[56] The Defendant, Mr. Simon, is 46 years old and lives in All Saint's. It is his evidence that he is currently unemployed since resignation from HML. Back in 2019 until July 2020, he was employed at HML for 20 years. He was the BMW sales executive and sales assistant. On the 30th December, 2019 $80, 372. 25 was sent to the accounts department and the department processed the payment and issued a receipt in the name of Alison Charles. The invoice was prepared and signed by him.

[57] On the 21st December, 2019, the invoice was prepared and sent to the account department. The payment was processed and a receipt issued by the department. The sales coordinator prepared the duty free warrant for the car.

[58] The warrant was taken to Alison Charles for her to sign and her driver's license to be attached to the duty free warrant. The warrant was taken back to the sale coordinator and Alison checked off the payments.

[59] A voucher was prepared by HML to insure the vehicle. HML sent the insurance to transport board and the vehicle was license and registered in the name of Alison Charles. When the documents were returned to HML and the vehicle went through the insurance process an exit/entry form was written up and Mr. Simon signed above 'received by. The security checked the vehicle and Mr. Simon delivered the vehicle.

[60] At the end of every month we issue our commission sheet to Dwayna Derrick. Dwayna Derrick then checked off all the sales listed, verified the payments for each vehicle sold and then authorized the payment for what she has checked off and verified. She would then give me back all the commission sheets for each salespersons to issue the cheques to each salespersons. So, all of those cheques requisitions would say requested by Dylan Simon. So, every cheque issued would show requested by me, just to clarify that part.

[61] It is the same thing with the actual receipts, every receipt issued by Hadeed Motors from about 2007 to August/July 2020, the cashier is listed as Dylan Simon. So, if I am on vacation, out on a test drive with a client, on sick leave, Dwayna Derrick uses my login credentials to issue all receipts when I am out. Further proof of this: when I was sent home on admin leave on 1st July, 2020, I sent $5,000 cash to pay on my BMW at Hadeed Motors, and the receipt is in Dylan Simon's name, and if you look, you see the cashier says Dylan Simon. So the receipt was issued on 8th July while I was on leave. So that's proof that it appears that I was the cashier while I was on admin leave as Dwayna Derrick testified.

[62] On 17th January, 2020, after she did her checks and balances, the duty-free warrant in the name of Alison Charles came back to the office. When it came back, I was with the sales coordinator at the time. Ambassador Patrice Luke had just come with about 200 duty free warrants that were just signed, and I happened to see the one for Alison Charles and noticed and saw that the RRC was waived 100%. I proceeded to Dwayna Derrick and asked her for a refund to let her know that the RRC was waived, but we know that it was included in the selling price for the same vehicle. I was sent to go to Francis Hadeed to authorize the refund of the RRC. He gave me the run-around for the next few weeks on that issue. He eventually said that when the company would have received a large payment from the government which was $7million he would settle my outstanding back pay along with those refunds. At that time, the company had owed me back pay from January 2011 to 2020 at $2,000.00 per month.

[63] Around May of 2020, the said vehicle was due its first free inspection/service. A purchase order was issued from Hadeed Motors and sent to CPM for that service. An invoice was issued from CPM to Hadeed Motors for further verification from Dwayna Derrick. All of this time, there was no issue about stealing cars or none of that nonsense.

[64] On 19th June 2020, Hadeed Motors received 7 million dollars from the Government of Antigua and Barbuda, and those were for the sales of vehicles to the Government. Those cheques were handed over to me to prepare and send to CIBC. On the 22nd

June, 2020, I was issued a cheque of $15,000.00 from Hadeed Motors and we were to settle the balance when Francis came back. Francis Hadeed had travelled to come back for 2 or 3 days, he came back around the 29th June, 2020. Myself and Mr. Hadeed had a meeting for us to settle all my outstanding monies, this was the 30th of June, 2020. He has promised that when he received that money from the government, he would settle with me.

[65] On 30th June, 2020, he changed his mind and did not want to settle with me. We had a major falling out for all of my outstanding monies. On 1st July, 2020, when I was coming back from lunch I was called into a meeting with Dwayna Derrick, I was shown a letter from Angie Bascus issued to Dwayna Derrick. I was asked to leave immediately on administrative leave. Myself and Dwayna Derrick was absolutely in shock and I explained to her that I was arguing with Francis Derrick the day before for my money, and that is why I believe the letter was sent.

[66] While on admin leave I sent $5,000.00 and I think on the 13th or 14th I was called into a meeting with myself, Angie Bascus and Dwayna Derrick. During the meeting Angie Bascus was showing myself and Dwayna Derrick some transactions and was asking for some explanations. Myself and Dwayna Derrick looked at each other in surprise because Angie Bascus does not work at Hadeed Motors and never has. I never answered any of her questions, and before I left the meeting, Dwayna Derrick warned me be to be careful because they are up to something.

[67] That same night I received a phone call from Ambassador Patrice Luke; I was basically informed not to come back to Hadeed Motors so I then issued my resignation letter. I received other phone calls demanding that I signed a NDA, to which my reply was, "pay me all the money you own me and I will sign." I was again threatened that if I did not sign, they were going to send ASP O'Garro to me to take away all my vehicles. I refused unless they paid me my money still.

[68] From around August 2020, just a few weeks after I resigned, I started to receive phone calls from ASP O'Garro. At that point, I was pretty scared and felt threatened for my life, and I started to put things in place to protect my life. I started to receive

threats from ASP O'Garro that he was going to lock up myself, Alison Charles and Shennette Allen.

[69] Eventually the Suzuki Vitara was sold to Dani Nehme, and after ASP O'Garro called me and said that if I did not bring him that vehicle at CID that he was going to lock up all of us again; that was his threat. So, I called Dani Nehme to find out if he had already sold the vehicle and he said "no." I went by Dani Nehmi and gave him the keys because I told him I was going to show the car to somebody. I took the car to CID Office at the time on Newgate Street so that ASP O'Garro could inspect it. He then took the keys from me and said he is not giving me back the car. I was there arguing with ASP O'Garro for hours but he did not budge.

[70] He then authorized two police officers to take me back to where my vehicle was and I explained what happened to Dani Nehme.

[71] Dani Nehme then took his documents to ASP O'Garro and went to ask back for his vehicle. He was not successful, so we cancelled the sale and I gave him back the Tucson and some cash. O'Garro then took that Vitara and white Nissan X-trail to CPM for holding. I received a phone call once again from Ambassador Patrice Luke, to come and sign the NDA and if I did, they would give me back the cars. He explained that's why the cars were taken to CPM and not the Police Headquarters or Motor Pool. They were giving me time to think it over and at that time, December, October and November charges were filed by O'Garro. Eventually I refused to sign unless they paid me, and then O'Garro arrested and charged myself and Alison Charles in March of 2021 for the same vehicle. Sometime in October 2020, I was threatened that they (if I did not sign) were going to get a new auditing firm to come in, do an audit and say I stole money and vehicles.

[72] Prior to 2020, another firm Pannell, Foster audited Hadeed Motors Limited (HML) for the last 20 years. The reason why they wanted me to sign a NDA is because they did not want me to expose the RRC and the overpricing of cars that were being sold to the government.

[73] They wanted me to keep quiet about that. That is why I was threatened. I was making $12,000.00 a month from Hadeed Motors that was my salary. As a matter

of fact, I got a job letter from Dwayna Derrick in July 2020 which confirmed this. I would sometimes fix up cars and make $70,000.00 a month. Just in August 2019 I sold my vehicle for $70,000.00. I would also get money from Ambassador Patrice Luke, and he would sometimes pay me $30,000.00 in cash. I never stole any vehicles from Hadeed Motors or anyone else. I am innocent of all these charges, and this is just a witch-hunt. I never forged anyone's signature.

DEFENSE WITNESSES

FIRST WITNESS

[74] The first witness was Mr. Jamie Richards, his evidence was given via zoom. He deposed that in 2020 he lived in Antigua and was employed with Caribbean Premier Motor (CPM) that company came under the Hadeed Group of Companies, he was the service advisor, his role was to book service for vehicles and to be the communication person between customers and the service center. He would check to ascertain why the vehicle is there, he would also verify what part if any had been used. He said he was familiar with computer generated receipts and each invoice will carry a number and all the particulars. The witness was shown an invoice exhibit **CO (3)** which he recognized by its logo, under the column payment there is a code ISP- Internal Service Policy that means the service is covered by the dealership, management authorizes and signs off on it, only the general manager, service manager can authorize this type of service, NC means No Charge, if there is a charge it is inserted.

[75] I know the accused, he worked at HML and we interacted on a regular basis. I know he had a few vehicles which I would see when he brought vehicles to CPM. I recall him bringing a Suzuki Vitara for first servicing, the last time I saw it, it was at CPM in the customer collection parking area, it was in the name of Alison Charles, it was not brought in for servicing. It was September 2020 when I saw it, when I left it was still there. Once a customer has completed servicing, he is given an invoice. The history of this service is electronically stored, we cannot change it in the system. A copy of a previous invoice can always be printed again. Witness shown service

invoice for the first service for the Suzuki Vitara for Alison Charles. The invoice was tendered as Exhibit **JR (1)**.

[76] Under cross examination, the witness confessed that he knew of a few vehicles the accused had including the Suzuki Vitara. He stated that it was silver and that it was the same vehicle that was in Alison Charles name. He said that he was not the only person who dealt with vehicles for first servicing. The ISP would have been done for several vehicles.

<u>SECOND WITNESS</u>

<u>GEMEAL JOYCE</u>

[77] The second witness was Mr. Gemeal Joyce, he said that he was a compliance officer and was part of a team that conducted a forensic audit. The audit ended in 2020, and to his knowledge a report was generated. He could not say what happened to the report and he said he did not see the final report and could not confirm its contents. He recalled doing the work at Hadeed Motors and that included checking the daily cash register. However, he could not recall the details and he could not recall if monies were missing.

[78] This witness was not cross examined.

<u>THIRD WITNESS</u>

<u>SANDRA BAPTISTE</u>

[79] Ms. Baptiste deposed she is an accountant and consultant. She conducts business under the company (Platinum Accounting Consulting and Coaching Services INC.). She conducted forensic audit for Hadeed Motors in 2020. It was an audit to look for fraud in the particular department. It took about a year. It ended in September 2021. Ms. Baptiste said that she produced it. The witness was showed a copy of the audit report which she recognized as the forensic report she produced. She said that 99.5 % of the cash report bore the name of the accused. The witness was directed to page 89 of the report which was an image from the computer of the accused. It showed the accused had authorization to override credits. He had managerial access. She continued and said she had to check daily cash register and daily deposit made by the company to the bank. When asked whether the sale of vehicle

included the RRC she responded that was not part of the scope. She further said that the report was printed and a copy sent to HML along with the appendices.

[80] Under cross examination she said that she was an accountant since 1992 and has a BA in accounting and financial management which she obtained in 1992. She said that she was also a chartered director in the ACCA and would have done a few hundred audits. During the cross examination, an application was made by the Prosecution to have this witness be deemed as an expert and the said application was granted. The court was satisfied that having regard to the qualifications and experience she would be deemed as an expert. Ms. Baptiste proceeded to go in detail as to her audits which she stated took about 1 year.

[81] She was directed to page 12 of her report which she stated "*during the performance of this forensic audit, we uncovered significant and pervasive deficiencies within the Accounting department of the Company and significant evidence of fraud that has been perpetuated by Mr. Dylan Simon over a number of years"; she continued; "the fraud occurred in various check manipulation and new and used vehicle theft. She was directed to page 13 of the report paragraph 3 and 4 which read as follows "Some customer cheques (or part of a cheque) received by the Accounts Department are not credited to the customer's account but to Mr. Dylan Simon account. These can be both FDC cheques and external customer* cheques*. There are many instances where cheques numbers are used arbitrarily. For example, an FDC cheque number will* ***be used on another customer's payment or used in two separate months or in some instances, one customer's cheque is used on two or more customer's accounts "(*****emphasis is mine).**

[82] Ms. Baptiste was then directed to page 14 paragraph 2 of the report which states *"We have noted that very few totals, as per the Cash Receipts Register ("CRR") for the Accounts Department, agrees with the deposit book. It is worth noting, however that this is not the case for the spare parts department CRR, which upon extensive testing, was verified to be accurate. The fraud perpetrated on the company is therefore concentrated within the accounts department".*

[83] On the topic of customer Accounts Manipulation she stated that she could not determine if customer accounts are accurate due to the fact that customer's names are used to 'top up' variances with invalid and inaccurate cheques. Customers' statements also seem to be inaccurate and could not be relied upon. She said the fraud was perpetrated in the accounts department as compared to the spare parts department. She further said that new and used vehicles were removed from the company premised without proper payment and authorization. "Those vehicle was stolen by the accused from his employer".

[84] It is her evidence that the significant and pervasive deficiencies within the Accounting Department, and the significant evidence of fraud was perpetrated over the period under review. The illegal activity went undetected for years due to failures in the checks and balances imposed but also in the Head of the Accounting Department either ignoring the red flags or turning a blind eye towards them and failing to mitigate the many on-going issues. We have determined that Mr. Dylan Simon was the main perpetrator of the fraudulent activity during the period under review. Mr. Simon had carte – blanche access too many aspects of the accounting software, almost all of the accounting department's cash, customer receipts and depository activities as well as some the company's vehicle sales and processes. Mr. Dylan Simon received customer payments, entered payments into the computer system, prepared the manual remittance forms that indicated how much money was to be deposited each day, prepared the deposit books and also made deposit to the bank.

[85] She continued that during the period January 2020 to March 2020 the internal controls at HML where loose. The accused was the main perpetrator of the fraudulent activities during the period under review. The witness identified on pages 38, 39 and 40 of the report "specific examples of Cheque Manipulation". The court has reviewed and considered those examples as set out therein. She was further directed to page 76 of the report under the caption "Differences between Cash Receipts Register CRR and Daily Remittance Report DRR" she stated that "*we compared each month and found that January, February, May, June and December of 2019, are the months with the significant variances.*" She was further directed to page 86 of the report under the caption "staff vacation days" paragraph 4 states "*the*

only period of time that Mr. Simon was not involved in the preparation of, or the authorization of, the remittances forms and the deposit book was when he was on vacation" she continued this report highlighted several instances of fraud by the accused

RE-EXAMINATION OF SANDRA BAPTISTE

[86] My findings were based on being given access to the computer. She was directed to page 18 paragraph 6 "*Improper access to data was a serious issue that may have allowed junior staff to access and override credits at any time and without authorization and view, enter and amend sensitive financial information. This cannot be allowed to continue. Password accessibility and shared passwords defeat the point of having a password. Password policies should be updated and made known to employees"*

Recalled by Defence Counsel Dwayna Derrick and Angie Bascus

DWAYNA DERRICK

[87] Witness shown **SB1**- the audit report and directed to page 87 paragraph 1 which stated " Mr. Dylan Simon's computer was examined and we observed that on January 7, 2021, fifty (50) credit overrides were requested for authorization." Ms. Derrick made the following remarks:

- I did say he left HML on the 1st July 2020
- I did say he never returned to HML

[88] Witness directed to page 89 of the report which dealt with Credit override requested:

- I accept that he could not have made these request.
- It would seem that someone else used his login credentials.

ANGIE BASCUS

[89] She was direct to page 87 of the report and said:

- I did not give the accused access to the forensic audit.
- I do not know if he had the ability to access it remotely.

[90] Witness shown exhibit **AB3** and said:

- The letter does not say that I requested the accused password
- It is not possible for someone else to use to the accused credentials
- I am being truthful

[91] Case for the defense closed

<u>FINAL SPEECHES AND FURTHER WRITTEN SUBMISSIONS</u>

<u>CROWN'S CLOSING SPEECH</u>

[92] The Crown's submissions encompassed the following:

- The prosecution's theory is that the accused stole the vehicle, forged and uttered documents obtained by false pretenses and disposed of the proceeds of crime.
- The thrust of the defence of the accused was that he worked with HML for 20 years and they owed him money and when he requested payment after being promised for several years they came up with the audit. He said he was placed on Administrative Leave and asked to sign a non-disclosure agreement. He said the vehicles were placed at CPM from the time he took them. He also said they threatened him by telling him that they will do an audit to say that he stole monies and vehicles. He denied stealing the Suzuki Vitara.
- The accused told the court that the vehicle was paid for in cash. However, that suggestion was not made to Angie Bascus or Dwayna Derrick.
- The evidence of Dwayna Derrick was to the effect that if any payments are made in cash (despite the amount), they are recorded as cash. Under cross examination, she agreed that large sums of cash may be bought by the Finance Company and a cheque issued. However, the transaction is still recorded as cash but the cheque submitted will be deposited with the deposits for that day. The cheque would be a FCIB cheque. No such cheque was deposited – the FCIB cheques deposited that day were in the following amounts based on DD2:
    a. $1200.00
    b. $115.00
    c. $3001.16

d. $412.23

e. $17,949.80

f. $5,217. 63

g. $48,322.25

h. $176,189.50

- The Forensic audit did not uncover any sign of such payment.
- At the first opportunity the accused had to disclose that the vehicle was paid for in cash, he failed to do so, that was July 2020. In his unsworn statement he said that Angie Bascus did not work for HML but in her sworn testimony she said she worked for the HML Group of Companies.
- It is the Crown's case that the vehicle was not paid for in cash. There was no evidence to show that any money for the vehicle went to the Accounts Department. The statement that the car was paid for in cash warrants the court directing its mind to a **"Lucas Direction."**
- The Accused failed to tell the court of his relationship, if any, with Alison Charles which begs the question how and why he was parading with a vehicle purporting to be owned by Alison Charles.
- If he did pay for the vehicle, he gave no details. His said payment was processed by the Accounts Department but he failed to say "by whom". He said Alison Charles never attended at HML yet her signature appears on the Exit/Entry form. Although he denied forging her signature the evidence of Dr. Alvin Langlais supports a forgery. Also the evidence of Dwayna Derrick.
- It must be remembered that when shown the Exit/ Entry form Ms. Derrick did not recognize the signature above "Received By". Dr. Langlais' testimony was that the signature did not bear the characteristics of Alison Charles' signature.
- Why did the accused go in search of the RRC for the Suzuki Vitara alone? He is alleging that the whole case is a result of Mr. Hadeed's refusal to pay him money due and owing to him. That allegation, Mrs. Gittens submitted must be juxtaposed against the evidence of Angie Bascus and Dwayna Derrick.

- The accused eventually sold the Vitara. How did he come about selling the vehicle? His statement about signing the non-discloser to protect the company from overpricing vehicles and not refunding RRC is ludicrous and ought not to be believed.
- The accused said he got a call that if he did not sign the non- disclosure the company would take away al his vehicles including the Suzuki Vitara. It is to be noted that it was never suggested to ASP O'Garro that he was calling and threatening the accused if he did not sign the non- disclosure.
- **DD1** is evidence of a cheque payment to Alison Charles.
- **DD2** is a deposit slip but no cheque for $80,372.25. The total amount deposited that day was $10, 836.73.
- DN2 vehicle sales invoice to Dani Nehme which shows two buyers Alison Charles and Dylan Simon.
- The evidence of Mr. Austin Gittens was that no cheque for $80,372.25 existed.
- How do we know that it was the accused who committed the offence? Look at who benefitted and who was instrumental in doing everything with the Suzuki Vitara allegedly owned by Alison Charles.

MR. WARREN CASSELL

[93] The Defendant's submissions encompassed the following:

- Mr. Cassell reminded the court of the general principle that **"**he who asserts must prove" and proof must be beyond reasonable doubt and the presumption of innocence remains until a verdict is delivered. The crown must prove each and every element of each offence and the court must be sure that accused committed each count on the indictment.
- The evidence does not meet the required standard of proof and if there is any doubt in the court's mind, such doubt must be resolved in favour of the accused.
- The accused defence was that he was promised backpay and it was not given to him and his request for the RRC for Alison Charles was also denied.
- The Company parted ways with him and started the audit.

- ASP O' Garro seized the vehicle in September 2020 and arrested him in September 2020. O'Garro told the accused to sign the non–disclosure and he would return the vehicle to him.
- The evidence of Jamie Richards was that the Suzuki Vitara was on the compound of CPM. If the court accepts that evidence, the court can draw the conclusion that the case was "trumped up".
- There is no evidence that the accused imputed the data in the cash receipt register and accordingly count 1 must fail.
- As regard to count 4, there was no evidence that the vehicle was stolen. The evidence of Mr. Weste supports the defence. He confirmed that no money was missing in December 2019 or January 2020.
- Dwayna Derrick testified that no vehicle can be removed from the bond without payment and the stock count for December 2019 and January 2020 showed no vehicle was missing. She oversaw the sale of the Suzuki and no monies were missing on the 30th December 2019.
- The proceeds of sale of the Vitara whether by cash, or cheque, were deposited.
- **DD2** supports the sale and deposit of money for the Suzuki Vitara.
- **DD1, DD2 & DD3** support that monies were deposited by Mr. Oliviere.
- We accept the suggestion that the signature on the exit/entry form was not Alison Charles.
- There is no evidence of forgery. The accused did not forge the signature of Alison Charles. Alison Charles never testified in the trial. It is possible that the name could have been printed on the exit/entry form.
- The prosecution has not proved that the forgery, if committed by the accused, was done "with intent to deceive and it cannot be inferred from the circumstances.
- If count 2 fails, then count 3 must automatically fail. There is no sufficient evidence to sustain the other counts namely counts 4, 5 & 6.
- The accused had a good salary and in addition bought and sold vehicles.
- The accused should be found not guilty.

ASSESSMENT OF EVIDENCE

[94] I now consider the evidence in relation to each count reminding myself that in order to find a verdict of guilty, the prosecution must satisfied me that it has proven each of the elements required to support each count.

COUNT 1

Electronic Forgery contrary to section 6 of the Electronic Crimes Act, 2013.

[95] I must be satisfied that the prosecution has made me feel sure the accused inputted the data in the cash receipt register. My findings are such:

a) The accused has been the common denominator in all the transactions relating to the Suzuki Vitara. Was a cheque for EC$80,372.25 deposited by the accused as payment for or on behalf of Allison Charles for the Suzuki Vitara? The following is evidence that there was no real payment for the Suzuki Vitara.

i. DDI – Cash Receipt Register dated 30th December, 2019. Payment of EC$80,372.25 for Allison Charles by ACB cheque 56323.

ii. DD2 – deposit slip for 30th December, 2019. Two ACB cheques were deposited in the amount of EC$552.33 and EC$3,916.09. No cheque was deposited in the sum of EC$80,372.25.

iii. Evidence of Austen Gittens, the Chief Internal Auditor at ACB who said he checked the system and ACB never issued a cheque/draft in the amount of EC$80,372.25.

iv. The cash deposited that day was EC$10,836.78 (DD2). That is inconsistent with the statement of the accused that the vehicle was paid for in cash.

v. Dwayna Derrick's evidence which has not been challenged is that any payment whether cash or cheque is recorded as cash. When she was cross examined, she agreed that even though large sums of cash may be brought in by FDC and a cheque issued such a transaction would still be recorded as cash and no cheque was ever deposited for EC$80,372.25

vi. Based on the exhibit DD2 the FCIB cheques deposited that day were as follows: EC$1,200.00; EC$115.00; EC$3,001.16; EC$412.63; EC$17,949.80; EC$5,217.63; EC$48,322.45 and

EC$176,189.50. There was a forensic audit and that did not unearth any such payment.

vii. The evidence showed that an FCIB cheque with the amount of EC$179,189.50 bearing the number 33135 was deposited.

[96] Jason Weste, the managing director of Finance and Development Ltd gave evidence that the company would finance payments to Hadeed Motors for vehicle, parts or other related matters. He stated that sometimes the cheques would cover multiple transactions/invoices. He testified that cheque number 35135 was issued by them for three invoices to make three payments. He presented the cheque stub, cheque requisition for that cheque and an internal debit voucher which showed that the payment was debited to Hadeed Motors Ltd (those three documents collectively are **JW1**). The cheque was to be divided as follows:

i. Karim Tonge - $101,942.25
ii. Agle Cochrance - $13,500.00
iii. Naasira Mohammend - $60,742.25

[97] The evidence of Dwayna Derrick is that when FDC sends a cheque, it is accompanied by a breakdown and that is how the clerk will know the amounts to enter into the system. For cheque number 35135, the three payments should have been reflected as per the breakdown attached. Exhibit **DD1** shows:

a) Only one of the payments as stipulated by the breakdown by F&CD was reflected in the register – payment of $13,500 by cheque number 35135
b) There was another payment registered as being related to that cheque and it was $12,317.25.
c) The total of those two payments is EC$25,817.25. That leaves a balance of $150, 372.25 to be applied to any other transactions that the offender desired.
d) The register contained four payments by cheque where the cheques was not deposited:
   1) Vernon John - $5000 (ACB #523)

2) Ian Walwyn - $25,000 (FCIB #897)
3) Alison Charles - $80,372.25 (ACB #56323)
4) Kevin Daley - $40,000 (CUB #1489)

[98] Those four transactions where no such cheques were deposited have the exact total of EC$150,372.25. This was further explained by the defense witness Ms. Sandra Baptiste who confirmed that the same finding is in her report at page 39.
(e)All the other transactions on the accounts register by cheque and cash were accounted for in the deposit slip.

[99] I have examined the evidence carefully and narrowly to see if any other person may have benefited from this transaction. Everything points in the direction of the accused. I can find no other co-existing circumstances that would weaken the inference that it must have been the accused who inputted the data in each register of the accounting system of Hadeed Motors Ltd, namely the ACB cheque number 58323 in the amount of EC$80,372,25 as being received from Alison Charles.

[100] This offence requires proof of an "intention of defraud". Counsel for the defence submitted that this ingredient had not been proven. If having imputed the false data and the cheque for $80,372.25 never existed and the accused:

(a) He prepared the invoice for the Suzuki Vitara.
(b) The evidence of Dr. Langlais that the signature bore no consistence to that of Alison Charles
(c) The evidence of Dani Nehme that the Accused is the one who approached him with the vehicle to sell
(d) Josette Payne's that it was the accused who brought the change of ownership form on 14th July 2020 with the owner's information filled out and she verified the information on the system and returned the form to him. That is evidence from which it can be clearly inferred that he intended to dispose of the vehicle.

[101] What a person intends requires going into the mind of that person. Intention may be interred from a particular set of circumstances. In the instant case the accused was the only one who stood to benefit; that together with all the counts surrounding the purchase and sale of the Suzuki Vitara leaves it open to the court to draw the inference that the accused did intend to deceive and I so find.

COUNT 2

Forgery, contrary to Section 6 of the Forgery Act, Cap 181

[102] This required the prosecution proving to the court's satisfaction that the accused forged the exit entry form. Since the vehicle was not paid for, the exit entry form is a forgery because it's a false document. A false instrument is one which purports to be something which it is not (Re Windsor (1865) 10 Cox CC 118 and Warmford (1994) Crim L.R. 753. The Exit/Entry form purported to be a document showing that a vehicle was paid for and had a customer's signature. The document therefore was a forgery as it did not have the customer signature and it was not paid for. Accordingly, the accused is guilty of the offence.

COUNT 3

Uttering, Contrary to Section (9) (1) of the Forgery Act, Cap.181

[103] Having regard to my findings in relation to count 2 and the evidence adduced, I am satisfied that count 3 has been proven to my satisfaction.

COUNT 4

Larceny by a Clerk contrary to Section 20 (1) (a) of the Larceny Act, Cap 241.

[104] The undisputed evidence is that the accused was employed with Hadeed Motor Limited (HML). Accordingly, he falls into the category as a 'clerk'. The taking and carrying away of the vehicle under the guise that it had been sold is evidence of larceny and I so find.

<u>COUNT 5</u>

Obtaining by false Pretenses contrary to Section 27 (a) of the Larceny Act, Cap 241.

[105] Having regard to my findings in relation to counts 1, 2, 3, 4 the accused stole the vehicle which he did not pay for. It follows therefore that he was not entitled to the commission. The evidence which I have accepted, is that he received a commission of $600.00 EC by falsely pretending that he sold the Suzuki Vitara. Accordingly, I find the offence proven.

[106] The defence submitted that Dwayna Derrick's evidence was to the effect that she checked it off as being bona fide against the report submitted by the accused. That however, did not entitle the accused to the commission as what he presented to Dwayna Derrick was false.

<u>COUNT 6</u>

Money Laundering, Contrary to Section 61 (3) (6) of the Proceeds of Crime Act, 1999.

[107] It was for the prosecution to satisfy me to the extent that I felt sure that the accused used the proceeds of a crime namely the stolen Suzuki Vitara for his personal benefit. The prosecution have sought to establish that by the evidence of the sale of the vehicle to Dani Nehme by the accused, he, well knowing that the vehicle was derived from unlawful activity. Dani Nehme's evidence is that it was the accused who sold him the vehicle. The defence contended that the accused could not have sold the vehicle because he was not the owner as evidenced by the Vehicle Registration Certificate. Having found earlier that the Suzuki Vitara did not belong to Alison Charles that argument must therefore fail. The accused sold a stolen Suzuki Vitara to Dani Nehme and in returned he received a Tucson and a sum of money.

[108] Accordingly the ingredient to satisfy count 6 have been satisfied and I find the accused guilty.

[109] I am compelled to regurgitate that the statement of the accused from the dock was merely an attempt to conceal his wrongdoing. It was a tissue of lies to the extent that I considered and applied the direction from the case of **RV Lucas (1981) Q.B 720**. I agree that the mere fact that an accused has lied is not in itself evidence of guilt. However, in the instant case I have treated with the lies as evidence supporting his guilt as I was satisfied that:

- The lies were deliberate
- They related to material issues to the case
- They were told after the offences were committed and;
- I was satisfied that the lies were told to conceal guilt

[110] Before leaving this matter I would be failing in my duty as a judicial officer if I did not comment on the fact that the internal controls at HML leaves a lot to be desired whilst HML is a private company, it has business dealings with the government and has major business interest in the island. As a consequence of the several anomalies in their system, the door was left wide open for the accused to perpetrate these frauds. The fraudulent acts of the accused can best be described as a well-orchestrated criminal enterprise which could not have been carried out with the assistance of some unidentified person or persons.

[111] The accused Dylan Simon is hereby guilty on all Counts. Those being, counts **1, 2, 3, 4, 5 & 6.**

Stanley John
High Court Judge

By the Court

Registrar