

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CASE NO.: ANUHCR2024/1021

BETWEEN:

THE KING

-and-

RAFAEL PAREDES BRITO

Appearances:

Ms. Akilah Southwell for the Crown
Mr. Lawrence Daniel for the Defendant

2025: May 16th

DECISION

- [1] **BAKRE, J.:** This defendant was charged with the offence of wounding with intent and unlawful wounding. Upon the close of prosecution's case, the defendant decided to make an application that no case has been made out to which the defendant would be required to call evidence.

Background facts

- [2] The case of the prosecution is that the virtual complainant and the defendant are name sakes and they both work at the same establishment. The virtual complainant is a truck driver with the organization.
- [3] The virtual complainant alleged in his testimony that on the 21st of February 2021. He reported to work and went to the office to sign in and pick the key to the truck he drives at about 8.30am.

- [4] He alleged that as he exited the office, he saw the defendant walk towards him and asked if he was looking for trouble and the defendant thereafter took a heavy metal chair and attacked him with it.
- [5] The VC said the defendant swung the chair towards him and he had to protect his head by raising his arm. He said the chair hit him on the hand and he held on to it while they both struggled with it until they were separated by other workers.
- [6] He said after they were held by their co-workers, the defendant carried a can of nails and hurled it at him and it hit him on the hand.
- [7] The VC said one of his co- workers called his attention to the fact that he was bleeding in the hand but he didn't know when he got cut and thus he went to the police station to make a report and later went to the hospital.
- [8] He said it was at the hospital that he realized his left index finger is numb and he was told by the doctor that the tendon was cut and he could not feel on it. He said he also had bruises on his arm and subsequently had to go through surgery and therapy subsequently.
- [9] He got a police medical report and the doctors report was tendered in evidence.
- [10] The officers who took and witnessed the statement of the accused were also called in evidence and the statement of the defendant and the interview were tendered in evidence.
- [11] In all it was the testimony of Corporal Ian Michael that is most revealing on the issue. He was the police officer who investigated the incident. He gave testimony on how he took the statement of the defendant and also interviewed him. He also gave testimony on the investigation he conducted.
- [12] Under cross examination, the officer admitted that he saw a CCTV footage of the event and that he saw in the video that it was the complainant that attacked the defendant and that the defendant merely carried the chair to protect himself from being attacked by the virtual complainant and it was in this bid that the virtual complainant was injured.
- [13] He confirmed that from the footage, the two of them were holding the chair and that the chair was already broken.

- [14] Upon being questioned by the court why a charge was proffered against the defendant despite what was in the footage, the witness answered that it was based on the pressure from the complainant that he was instructed to charge the defendant notwithstanding his investigation.
- [15] Based on these contradictions, the defense counsel argued that, after the prosecution closed its case, there was insufficient (*prima facie*) evidence to require the defendant to put forward any additional evidence in his defense. In a criminal trial, when the evidence presented by the prosecution—if taken at face value—is not capable of establishing a reasonable prospect of conviction, the defendant may make an application that “no case has been made out.”. The application centers on the idea that the prosecution has failed to meet the evidential threshold required to justify continuing the trial, specifically regarding the elements of wounding with intent and unlawful wounding.
- [16] The elements of these two offences are as follows. That:-
1. The virtual complainant was wounded.
 2. The wounding was caused by the accused.
 3. The accused acted intentionally or maliciously while wounding the virtual complainant and without lawful justification.
- [17] All these elements must be conjunctively proved by the prosecution.

THE LAW ON NO CASE SUBMISSION

- [18] Now, the principle upon which the court will rely in determining whether it should acquit a defendant in a no case submission is found in the *locus classicus* case of **R v. Galbraith 1981 2 All ER 1060**. It states:-

“On a submission of no case to answer at the end of the prosecution case, the trial judge should stop the case and direct an acquittal if there is no evidence that the crime alleged against the accused was committed by him. However, if there is some evidence but it is of a tenuous character (e.g. because of inherent weakness or vagueness or because it is inconsistent with other evidence), it is the judge’s duty, on a submission of no case, to stop the case if he comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not convict on it; but, where the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability or on other matters which generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly

come to the conclusion that the accused is guilty, then the judge should allow the matter to be tried by the jury."

- [19] This case is a judge alone trial. The judge is the determinant of the facts and the law. The court is to consider the facts presented to determine whether a prima facie case is made out. However if this court at this stage is of the view that the prosecution in the presentation of the case has not made out a prima facie case, that is, it has not fulfilled the standard laid down in the case of **R v. Galbraith** as stated above, the court will be at liberty to acquit the accused.
- [20] At the end of the prosecution's case, this court has been called upon by the defendant counsel to consider the evidence put forward by the prosecution to determine whether it meets the criteria set out above.
- [21] A submission of no case to answer is usually upheld where: -
- a. There has been no evidence to prove an essential element in the offence alleged.
 - b. The evidence adduced by the prosecution has been discredited as a result of cross examination; or
 - c. Where the evidence is so manifestly unreliable and has become tenuous that no reasonable tribunal could safely convict on it.
- [22] It is the position of the law that a prima facie case must first be established by the prosecution before the accused may be called upon to defend the case against him.
- [23] It is not the duty of this court to determine whether it will convict or acquit on the evidence adduced at this stage but whether a prima facie case is made out, and whether a reasonable tribunal might convict on the evidence already led. At this stage, the court should avoid the expression of opinion on the evidence led or the credibility of the witnesses as it cannot yet conclude. See **Green v. R [1972] No 6**, **R v. Stiven [1971] No 9** and **R v. Olsen [1973] No 5**.

ANALYSIS

- [24] A pivotal element in this case is the testimony of Corporal Ian Michael, the police officer who investigated the incident. Initially, his evidence was expected to bolster the prosecution's narrative. However, under cross-examination he admitted having reviewed CCTV footage of the incident.
- [25] This footage, he testified, showed that it was the complainant who initiated the physical confrontation. Rather than the defendant's act being an unprovoked or intentional attack, the video suggested that the defendant had taken up the chair as a means of protecting himself. Additionally, the footage revealed that during the struggle both parties were holding onto the chair and that it was already damaged at the time of the altercation.
- [26] When queried as to why charges had been brought against the defendant despite this convincing evidence, the officer mentioned that the decision to charge was influenced by pressure from the complainant. This acknowledgment seriously undermines the prosecution's claim that the defendant acted with the intent to cause the complainant grievous harm and neither was it a malicious act.
- [27] The principle at work is that of establishing a prima facie case. This means that if all evidence is accepted as true, it must still lead a rational jury to convict. In this instance, the seemingly objective CCTV evidence and the admission by a key investigating officer call into question whether the required elements of the offence are satisfied.
- [28] The third element of the offence were clearly shown to be absent based simply on the testimony of the prosecution witness Ian Michael.
- [29] The defense is bolstered by the suggestion—even if indirectly—that the defendant's conduct was defensive rather than aggressive. The fact that the officer admitted the charge was influenced by external pressure from the complainant further weakens the prosecution's case. This raises questions not just about the sufficiency of the evidence but also about possible procedural or investigatory flaws that might have prejudiced the defendant's right to a fair hearing.
- [30] Considering the entire case at this stage, can this court actually state that the evidence has not been discredited under cross examination of the investigating officer. Also should this court not state that the evidence is so manifestly

unreliable and has become tenuous that no reasonable tribunal could safely convict on it.

- [31] It is clear that the prosecution in this instance has not proved that there was an intention to wound or cause grievous bodily harm or even an unlawful or malicious harm to the virtual complainant by the defendant.
- [32] In this instance, I see no justification for a continuation of this case as it is clear that an element of any of the offence has been proved.
- [33] As an aside, I wish to state that this action is a complete waste of judicial time and energy. I have no idea how this matter missed the filter procedure of both the police and the prosecution but I am of the view that it should not have found its way to court.
- [34] In the circumstance, the no case submission is upheld. The defendant Rafael Brito is hereby discharged and acquitted.

Tunde A. Bakre
High Court Judge



By the Court

Registrar