

EASTERN CARIBBEAN SUPREME COURT

TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO. 18 OF 2022

BETWEEN:

THE KING

and

SHAMEEK GRANT

AKEEM HOPKINSON

Appearances:

Mrs. Kellee-Gai Smith, Principal Crown Counsel with her Mr. Sherman Mc Nicolls, Senior Crown Counsel

Mrs. Valerie Gordon for the First Accused

Ms. Stacy Abel for the Second Accused

2025: February 14th and 17th

RULING ON THE NO CASE SUBMISSION

Introduction

- [1] **PERSAJ J:** Before the Court are two persons each charged with four counts on the indictment.
- [2] They are jointly charged with murder, robbery and possession of a firearm to endanger life all relating to an incident in which, the Crown alleges that on 18 April 2021 both men carried out a robbery of Ms. Marciel Pickering and in the course of that robbery shots were fired leading to the death of Ms. Catherine Pickering.

- [3] On the said indictment is a fourth count of possession of a firearm relative to 16 April 2021.
- [4] Both men have pled **not** guilty, and the Crown has presented its evidence in support of the charges on the indictment. The Crown now having closed its case, Counsel for both accused has indicated to this Court that they wished to make legal submissions. On 14 February 2025, the Court heard from defence Counsel as well as Counsel for the Crown in relation to the submission of no case.

Overview of Crown's Case

- [5] From the moment the Crown opened its case to the jury, they have taken the position that this is not a case where the Crown has direct evidence of who robbed Ms. Marciel Pickering and in the course of that robbery who caused the death of Ms. Catherine Pickering.
- [6] In other words, there are no witnesses who are able to identify the person or persons who attempted to rob and caused the death. Instead, the prosecution relies on circumstantial evidence to make out a case.
- [7] There is of course absolutely nothing wrong with the prosecution seeking to prove its case circumstantially and in support of this they have called a number of witnesses to put certain evidence before the jury.
- [8] The prosecution has relied on evidence of searches done at the home of the accused. They have also relied on multiple interviews with the two accused, they rely on call mapping technology to put before the jury movements of one of the accused and assist in determining the location of the other at material times.
- [9] Perhaps most importantly they rely on evidence extracted from the DVR found at the home of the accused, it plays an important role in assisting the jury in understanding the activities of the accused before and after the incident on 18 April 2021.
- [10] Several expert witnesses were called on behalf of the prosecution to assist the jury on matters such as ballistics, call mapping technology, DNA and other matters relating to the postmortem report.

Relationship between No Case Submissions and Circumstantial Evidence

- [11] In **Director of Public Prosecution's Reference (No 2 of 1980) (1981) 29 WIR 154** a decision of the Court of Appeal of Guyana where the question was considered, Luckhoo J.A. expressed his view in this way at page 167:

'A judge would have to decide what were the constituent (or essential) elements of an offence. If the facts adduced by the prosecution in proof of the offence fell short of proof of any of the Constituents of that offence it would be the function of the judge as a matter of law to direct the jury to acquit.'

If, on the other hand, the prosecution adduced evidence in proof of each and every essential element of the offence, thereby making out a prima facie case against an accused, it would be the function of a judge to leave those issues of fact for the jury's consideration and the function of that jury to resolve the issues of facts.

So, put in these general terms, whether there was any evidence on which a jury might convict would be a question of law for a judge to decide. Should he so decide, he must leave the matter with them as judges of the facts.

A question posed during the hearing of the reference was: what would be the position if evidence was adduced by the prosecution on each of these constituents of the offence, but that evidence was very weak, either so manifestly unreliable or so discredited as a result of cross examination that no reasonable tribunal could safely convict on it? It was not denied that in such cases a judge could properly direct a jury to return a verdict of 'Not Guilty'.

In so doing, I should think that he would be acting from an inherent sense of justice in the conduct of a trial so as to avoid a perverse verdict being given against an accused. Counsel for the accused said that the trial judge would be acting ex debito justitiae. I would describe such a direction not as one resulting from a decision on a point of law arising at the trial, but as one given by virtue of an overriding discretion vested in the judge in the fair administration of a jury to ensure that justice did not miscarry.'

[12] In **Anand Mohan Kisoos and Rohan Singh v The State (1994) 50 WIR 266** the Court of Appeal of Guyana held as follows:

'The fact that inconsistencies in a witness's evidence may have weakened the prosecution case against an accused is no ground for the trial judge withdrawing the

case from the jury; a case should only be so withdrawn in the extreme circumstances that the prosecution witnesses are totally discredited.'

[13] Similarly in **Taibo (Ellis) v R (1996) 48 WIR 74** the JCPC held as follows:

'On the submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed.'

[14] In the case **of R v Clarice Elliot 1952 6 JLR 173 O'Conner CJ** sitting in the Cayman Islands noted as follows:-

'The proper rule to apply to cases which depend solely on circumstantial evidence is well known and is as follows:

A jury may convict a prisoner on purely circumstantial evidence but they should be satisfied:— "not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person." (Hodge's Case (1), 2 Lew. C.C. at 228; 168 E.R. at 1137, per Anderson, B.)

Or, as it was put by Lord Hewart, C.J. in R. v. Podmore (3):

"Circumstantial evidence consists of this, that when you look at all the surrounding circumstances you find such a series of undesigned, unexpected coincidences that, as a reasonable person you find your judgment is compelled to one conclusion."

Or, as stated in Wills on Circumstantial Evidence, 7th ed., at 320 (1936), in what is called the fundamental rule:

"In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt."

Or, as Macdonald, L.C.B. enunciated the same rule in *R. v. Patch* (2):

“[T]he nature of circumstantial evidence was that the jury must be satisfied that there is no rational mode of accounting for the circumstances, other than the conclusion that the prisoner is guilty.”

- [15] The Appeal Court in **Elliot** after allowing the Appeal and deciding not to order a retrial had this to say:

“Having carefully considered and analysed the evidence, we were of the opinion not only that each item of the circumstantial evidence but the totality of it fell far short of the test for circumstantial evidence which the authorities lay down.

The evidence in the case established nothing but a very high degree of suspicion and no reasonable jury properly directed and approaching the matter with an open mind could convict upon it. It would, therefore, have been improper and unjust to send the case back for a re-trial.”

- [16] In **Director of Public Prosecutions v Varlack**, Lord Carswell referred to the passage from the judgment of King CJ in the Supreme Court of Australia, which their Lordships regarded as an accurate statement of the law. At paragraph 22, it was stated:

“I would re-state the principles, in summary form, as follows. If there is direct evidence which is capable of proving the charge, there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be. If the case depends upon circumstantial evidence, and that evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude

all hypotheses consistent with innocence, as not reasonably open on the evidence.”
[emphasis added]

Analysis of Legal Submissions of No Case

- [17] It is clear that a court at the no case stage, must carefully analyze the evidence in a circumstantial case and determine
- a. if the evidence led by the Crown is capable in law of supporting a conviction.
 - b. to do that, the court must determine if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, if yes then the case must be left to the jury.
 - c. after a careful analysis the court is of the opinion not only that each item of the circumstantial evidence but the totality of the circumstantial evidence fell far short of the test for circumstantial evidence which the authorities lay down then the Court has a duty to withdraw the case from the jury.

Akeem Hopkinson

- [18] Ms. Abel on behalf of Hopkinson makes a submission of no case on Counts 1 to 3.
- [19] In relation to count three, that is possession of the firearm with the intent to endanger life, Ms. Abel submits that on the prosecution's evidence date there is an absence of evidence to support that Mr. Hopkinson had any intention to endanger life.
- [20] Similarly, in relation to the counts involving robbery and murder, Ms. Abel takes the position that there is no evidence that her client Mr. Hopkinson carried out the robbery or committed the act of murder on the night of 18 April 2021. According to Counsel there is no basis to leave this case to the jury.
- [21] The Crown in responding to these submissions in relation to Hopkinson invites this court to take into account the following matters:

- a. That on 18 April 2021, Ms. Maricel Pickering went to the family's gas station to collect the proceeds of the day's takings, upon returning home is confronted by a person, who she does not see, and who demanded her money. She runs out of the vehicle throws the bag containing the monies, and runs to the side of the house, to get away from gunshots.
- b. She remains hidden until she hears a scooter start and leave, at which point she emerges, and discovers her mother lying in a pool of blood at the entrance to their home.
- c. The police arrive and seek exhibits including several rounds in the yard of a 7.62, calibre.
- d. The post-mortem report reveals that the deceased died as a result of gunshot wounds.
- e. The police carry out the investigations and on 20 April 2021, the police carry out a search at the home of Hopkinson and Grant where the police seize a DVR recorder from Grant's room.
- f. The police also having searched the premises find in Hopkinson's room a magazine containing four rounds of ammunition all of the 7.62 calibre.
- g. From the DVR footage which is later extracted the following pieces of evidence are put before the jury:
 - i. That on 16 April 2021, Hopkinson brings into the premises/apartment a long dark coloured bag, from which he pulls out an item resembling a firearm, he shows it to four other persons in the apartment.
 - ii. On 18 April 2021, the day of the robbery and murder Hopkinson is seen on the CCTV footage, coming out of his room sometime after 6:30 p.m. with the dark-coloured bag, and leaving the premises on a scooter.
 - iii. Sometime later that evening Hopkinson returns to the apartment, on the scooter, with the dark-coloured bag, and is seen on the footage bringing into the apartment, bags and putting it on the table. He is seen interacting with Grant, disposing of some of the material he came in with, and having a conversation with Grant, the contents of which we are unable to discern.

- iv. A reasonable inference to be drawn is that the items in the white bag put on the table contained money
- h. Interviews are held by the police with Hopkinson in which the following material is extracted:
 - i. Hopkinson denies possessing a gun or having access to a gun.
 - ii. Hopkinson denies knowing anything about the robbery and murder.
 - iii. When Hopkinson is shown the CCTV footage from inside the apartment he changes his account as follows
 - a. He accepts in the interview that the item he had on 16 April 2021 was in fact a firearm, he indicated that the magazine found in his room, was something he had found on Cane Garden Bay Beach.
 - b. He accepts that he did take the gun on 18 April 2021 to carry it for a person by the name of Chico, and that he met Chico at the bridge near Beef Island where he exchanged items of clothing and handed over the gun to Chico. In the interview he says he met Chico somewhere on the Ridge Road where he was instructed to give the content of the white Bag to Grant.
 - c. He also told the police that Grant was the one who instructed him to give the gun to Chico.
- i. Detective Inspector Wharton put before the jury a schedule depicting the location of Hopkinson at various points in time that evening, based on several calls on the mobile phone signal that would have been picked up by cell towers based on where the calls were made and received. From this evidence the Crown is relying on the fact that Hopkinson on 18 April 2021 was in the area of Paraquita Bay, the alleged crime scene in and around the time of the incident taking place.
- j. The Crown also relies on expert evidence from the armorer and ballistics expert to establish that the firearm pulled out of the bag on 16 April 2021, was a type of AK-47 rifle which used

7.62 calibre bullets. Similar to the bullets found on the crime scene on the night of 18 April 2021.

- k. These are just some of the matters that the Crown, relies upon in presenting its case against Mr. Hopkinson.
- l. On the material placed before the jury on the Crown's case, there is in my view sufficient material for the jury to be asked to adjudicate upon. Simply put if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, and a reasonable mind could reach a conclusion of guilt beyond reasonable doubt, then the case must be left to the jury.
- m. I therefore rule that there is sufficient material on the Crown's case for the jury to consider and upon proper directions to determine whether Mr. Hopkinson is innocent or guilty of the various counts.

Shameek Grant - Submissions on Firearm Counts

- [22] The case against Mr. Grant on the face of it appears to be very different than the one against Mr. Hopkinson.
- a. The Crown at counts three and four of the indictment allege that Mr. Grant was in possession of a firearm, both on 16 April 2021 (Count 4) and in possession of a firearm with the intention to endanger life on 18 April 2021(Count 3).
 - b. On the Crown's case, when the firearm is brought into the house in the dark colored bag on 16 April 2021, Grant is not present from the evidence in the kitchen area where Hopkinson pulls out what he later describes as the firearm to show it to the other persons in the apartment.
 - c. On 18 April 2021, the footage from the CCTV cameras within the apartment shows Hopkinson coming out of his room descending the stairs with a black bag and leaving the apartment on the scooter. There is again no interaction with Grant before he leaves the apartment, there is nothing to suggest evidentially that Grant is even aware that Hopkinson has a firearm in the apartment between the 16 and 18 of April 2021.

d. Mrs. Gordon deploys two arguments in support of her submission of no case in relation to counts three and four of the indictment.

(i) Firstly, she argues that in order to prove the charges at counts three and four, the crown is obligated to establish that the person charged was in possession of the firearm.

(ii) Secondly, she argues that the Crown must prove that the item was a lethal barrelled weapon to constitute a firearm under the Act.

[23] As regards Mrs. Gordon's first argument there appears to be some merit. This court takes the view that from the evidence adduced by the Crown there is no evidence whatsoever that Mr. Grant was ever in possession of the firearm either on 16 or 18 April 2021.

[24] The crown argues that under the firearms legislation possession can be imputed to any occupier of the premises. However, it is this Court's view that the use of the deeming clause under the firearms act does not and cannot apply in the circumstances of this case since on 16 and 18 April 2021 where there is evidence either through the CCTV footage or through the interview process relied upon and played to the jury, that at all material times Hopkinson is in actual possession of the firearm.

[25] On 16 April 2021, Hopkinson can be seen coming into the apartment with the dark-coloured bag, from which he pulls out something resembling a firearm and shows it to his friends present in the kitchen. Later, when he is interviewed by the police he admits that the items seen in the footage on 16 April 2021 is a firearm.

[26] On 18 April 2021, Hopkinson is seen leaving the apartment with the dark-coloured bag on the scooter. In an interview with the police on 28 April 2024 he says he left with the gun and went to give it to a person named Chico.

[27] It must be pointed out that in that same interview he says "Grant told him to give the gun to Chico".

[28] The problem with this is such a statement in the interview is plainly inadmissible under the principle of **R v Gunwardene 1951 2 KB 6000**, which establishes that the evidence of one

accused is inadmissible against another accused unless that person making the statement went into the box and gives evidence to that effect. Accordingly, this court is not entitled or able to rely on that piece of evidence to affix possession in Mr. Grant.

- [29] The use of the deeming provision in the firearms act, really applies in circumstances where a prohibited item is found in premises or in a vehicle and it is unclear where there are multiple persons present in the premises or the vehicle who the prohibited item belongs to.
- [30] The Crown's case both on 16 and 18 April 2021 is that the firearm is in **actual possession** of Hopkinson who is seen bringing it into the apartment on 16 April 2021, taking it out of the bag on the table showing it to other persons and later carrying it up to his room, on 18 April 2021 he is seen bringing it down from his room and exiting the building on the scooter.
- [31] In those circumstances where there is actual possession of the gun in someone there is simply no basis for relying on the deeming provision in the Act.

Shameek Grant - Submissions on Robbery and Murder

- [32] Mrs. Gordon on behalf of her client, argues that on the Crown's own evidence the CCTV footage relied upon to support the prosecution's case shows that her client Mr. Grant is at home on Zion Hill when Hopkinson leaves on the scooter with the dark coloured bag on 18 April 2021.
- [33] The footage played to the jury clearly shows her client in bed on the phone for much of the time and also shows that when accused Hopkinson returns to Zion Hill, Grant is still in the house. She posits that clearly the CCTV footage shows that Grant did not commit or participate in actual robbery and murder.
- [34] While this argument may on the face of it appear attractive, it is beyond dispute that an individual may be held liable for a criminal offence if he or she aids, abets, procures or the counsels in the commission of the offence. In other words to attract criminal liability a person does not necessarily have to be present at the crime or activity, participate in the offence if it can be shown that he was part of the planning or provided assistance and encouragement in the commission of the offence.

[35] It is therefore necessary for the court to carry out an analysis of the evidence attributed to Grant's role in the commission of the offence and determine what evidence exists on the Crown's case that would support an inference that he was part of a plan to rob and murder on 18 April 2021.

[36] The evidence against Grant may be summarized as follows:-

- (i) Grant and Hopkinson live in the same apartment.
- (ii) Grant and Richardson are cousins. Richardson works at the Big Brothers gas station.
- (iii) In April 2021, Grant is behind on his rent for the apartment and is behind on his payments for his car rental.
- (iv) On the 18 April 2021, Grant is seen having a conversation with Hopkinson in the apartment in the kitchen after the alleged incidents, in which Hopkinson is seen making gesticulations that appear to suggest that what is being discussed includes reference to a gun being used.
- (v) Grant is seen taking something off the table which he goes up to his room and appears to be counting.
- (vii) The next day Grant pays off his outstanding rent and makes a payment on his car rental, at the interview with the police, when asked about his whereabouts on the afternoon Grant gives an account which may be interpreted as a lie by the jury since the CCTV footage shows that he was in the apartment between 6 PM and 8 PM on 18 April 2021.
- (viii) That in the month of April Grant and his child mother have a bank account at Republic Bank in which the balance is under five dollars.
- (ix) Between the time that Hopkinson leaves the apartment on 18 April 2021 and returns, there is evidence that Grant places about five calls to Hopkinson, witness leading this evidence is unable to say whether the calls connected or for how long the persons spoke for on the phone.

- (x) At the interviews with the police Hopkinson says he was told by Grant to give the gun to Chico and he is instructed by Chico to carry the white bags and gun to Grant.

[37] As mentioned above:

- a. This court has to determine whether the evidence led by the Crown is capable in law of supporting a conviction. To do that, the court must determine if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could reach a conclusion of guilt beyond reasonable doubt, if yes then the case must be left to the jury
- b. If after a careful analysis the court is of the opinion not only that each item of the circumstantial evidence but the totality of the circumstantial evidence fell far short of the test for circumstantial evidence which the authorities lay down then the Court has a duty to withdraw the case from the jury.

[38] This court is mindful that the statements of Hopkinson are not admissible against Grant and the jury will have to be directed that those statements made in the interview by Hopkinson cannot form part of their deliberations.

[39] This court is also mindful that it is required in law to direct the jury against speculation and the importance of their confining their deliberations to the evidence before the court.

[40] In terms of ascertaining whether there is any evidence on the Crown's case to support that Grant was part of a plan to rob and or murder, the other matters are not in my view capable of supporting any inference that Grant aided, abetted, procured or counselled in relation to the commission of the offence.

[41] The evidence in this case established nothing but a very high degree of suspicion and no reasonable jury properly directed and approaching the matter with an open mind could convict upon it. It would, therefore, be improper and unjust to send the case against Grant to the jury.

[42] I will therefore direct the jury to bring in a not guilty verdict for Grant on all counts and uphold the submissions for Mrs. Gordon and in relation to Hopkinson I find there is sufficient evidence to leave for the jury's consideration

Rajiv Persad SC
Judge (Ag)



By the Court

Registrar