

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

CASE NO. ANUHCR 2023/0038

BETWEEN:

THE KING

and

BERLE WALLACE JR.

Appearances:-

Ms. Rilys Adams, Counsel for the Crown

Mr. Wendel Alexander, Counsel for the Defendant

2025: January 15th, 21st, 22nd, 24th, 27th, 28th, 30th, 31st;
February 3rd, 4th, 5th

Decision on No Case Submission

The Salient Facts

- [1] **SMITH, J.:** On 1st March, 2022 on Popeshead Street in the vicinity of Pia Pocket in St. John the defendant, Berle Wallace Jr. stabbed and killed Christopher Smithers. The two were friends and drinking buddies. On the day in question they were “liming” and drinking in front of Pita Pocket. The security video taken from the restaurant showed them both consuming several cans of beer, play fighting and talking. At some point the comradery turned into an argument. The deceased punched the defendant in his face resulting in facial injuries and the defendant stabbed him in the abdomen with a knife. After the stabbing which occurred off camera, the defendant went to the St. Johns Police Station and handed himself in. He was arraigned on 13th October, 2023 and his trial commenced on 15th January, 2025 in the High Court.
- [2] At the close of the Crown’s case on Tuesday 4th February, 2025 the defendant made a submission of no case to answer. Counsel submitted that:-
- that the evidence marshalled failed to prove an essential element of the charge on the indictment of murder. He contended that “there has been no evidence to prove that the defendant intended to kill or cause grievous bodily harm”

- Counsel lawyer argued also that the prosecution evidence is so weak or inconsistent that no reasonable jury could find the defendant guilty beyond a reasonable doubt.
- The case rested on the testimony of Rodrick Richards who was the only eye witness to the argument, the punch and the subsequent stabbing.
- He gounded his submission on the second limb of Galbraith.

[3] The second limb of **R vs Galbraith** as stated by Lord Lane CJ said at page 1042b-d) (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 inconsistent 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 convict upon it, it is his duty, upon a submission being made, to stop the case”

Crown's Response

[4] The Crown replied to the submission saying that manslaughter was not an option as certain factors were not present. She indicated that the jury was entitled to look at the weapon used and that they could infer that the intention was made out due to the size of the knife and from the surrounding circumstances. She said that the very least the stabbing and the use of the knife the jury could infer that he intended to at least cause grievous bodily harm. Counsel also pointed to the evidence of Richards and submitted that there was enough evidence to cause at least grievous bodily harm. Counsel did not point the Court to the specific testimony that the Court was to examine.

Decision

- [5] The Court on 3rd February, 2025 viewed the video taken from Pita Pocket. It was apparent from the video that both men were continually drinking. There was one time when both parties were engaged in play fighting and “skylarking” as Counsel has said and another time when they were arguing with each other. The actual killing occurred off camera.
- [6] There is no doubt that the defendant killed Mr Smithers. In his statement to the police he said that he had done so and that the deceased Smithers had punched him in his face.
- [7] He also admitted to killing Smithers to Miss Dinard whom he met on the street. His words to her were *“I just stab a man”*.
- [8] We have the post mortem report from Dr. Thomas. His findings were that the injury resulted in massive loss of blood resulting in massive loss of blood. And we have evidence from the forensic

team who testified to the orange and white handled knife being embedded in the abdomen of the deceased.

Intention

- [9] Therefore, based upon the facts as set out above, the actus reus has been proved. We now move on to the mental element or the intention of the defendant at the time of the killing. How do we ascertain intention?
- [10] Intention can be garnered from words action and conduct prior to the incident, I have had the opportunity to listen to the audio recording of the Crowns case in particular the evidence of Richards the first witness. It was the testimony of Richards that he knew the defendant as “Junior” and had known him since he (Richards) had came to Antigua and he also knew the deceased. On the day in question he said that he observed the parties talking, playing and “*watching something on the phone*”. He went into his house and then he heard some noise outside. When he heard the noise he came back outside to see the parties involved in some sort of altercation. He said he went to them and tried to part them, he saw the white man thump junior in his face and then he pulled the knife and stabbed him’. I have heard nothing from Richards that goes to assist the Court or the jury in ascertaining the intention of the defendant at the time the stabbing occurred.
- [11] Miss Adams has said that the issues raised by Counsel yesterday are all in the purview of the jury but the elements of the offence must be made out at this stage, as this is not a case of circumstantial evidence. I do agree that all of the other witnesses speak to the surrounding circumstance and other fact but none of them assist in stablishing the mens rea of the defendant at the actual time of the killing.
- [12] However, I have the task of directing the jury on intention and intention at the time of the stabbing. I am of the view that this case falls squarely in the second limb of Galbraith. The second limb of Galbraith as quoted above in paragraph 3.
- [13] I have heard nothing from Richards that goes to assist the Court or the Jury in ascertaining the intention of the defendant at the time the stabbing occurred. In Taibo vs The Queen¹ a case emanating from Belize, the Privy Council found that where there were serious weaknesses in the case for the prosecution, but that they were not necessarily fatal. They also found that the case against the appellant “was thin and perhaps very thin” however this is not the issue at the case at bar. One of the essential elements to prove murder has not been established and that is the **INTENTION TO KILL OR TO CAUSE GREIEVE BODILY HARM (My Emphasis)**.

¹ (1996) 48 WIR 74

[14] In the Queen vs Berton Smith² Rawlins J as he then was stated:-

“This task requires the balancing of the roles of the judge and jury. On one hand a judge should be careful not to usurp the purview of the jury who are the judges of the facts. On the other hand the court is duty bound to safeguard accused persons from conviction on facts which are so precarious unsafe or insufficient that injustice would result”. Justice Olivetti in the BVI case said also that “the real question is to decide whether there is sufficient evidence on which a reasonable jury properly directed might convict”.

[15] Having said all of the above the submission of no case to answer succeeds and I will direct the jury to bring back a not guilty verdict on the one count of murder on the indictment.

[16] A written record of this ruling will be available after it has been formatted. Crown indicates their intention to appeal.

Ann-Marie Smith
High Court Judge

By the Court



Registrar

² BVI Criminal Case No. 18 of 2003, Judgement delivered on 17th December 2003