

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

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

CASE NO: ANUHCR2021/0006

BETWEEN:

THE KING

and

KASROY SIMON

Appearances:

Ms. Rilys Adams, Counsel for the Crown

Mr. Andrew O’Kola, Counsel for the Defendant

2024: July 25th

Ruling in No Case to Answer Submission

- [1] **SMITH, J.:** The Crown closed its case on 18th July, 2024 after calling several witnesses. The statement of Milton Meade was read into evidence and the Jury was sent away to return on 25th July, 2024.
- [2] Mr. O’Kola’s submission commenced with the limbs of the well-known authority contained in the case **R v Galbraith** [1981] 2 All ER 1060, for the case against the Applicant to be dismissed as he has no case to answer, having assessed the evidence before the Court at the close of the Crown’s case.
- [3] The submission does not state which limbs and so the Court will assume both limbs are being evoked. Counsel in his submission set out the weaknesses in the Crown’s case and for completeness I will repeat them here:-
- a. Absence of Direct Evidence:
- i. No eyewitness has placed the Applicant at the scene.

- ii. There is no CCTV or photographic evidence of the Applicant at or near the scene.
 - iii. There is no cell site or telephone evidence connecting the Applicant to the location of the crime.
 - iv. There are no fingerprints or forensic evidence linking the Applicant to the crime scene.
 - v. There is no DNA evidence, other than a single blood stain on a shower curtain, which alone cannot support a conviction.
- b. Reliance on Circumstantial Evidence:
 - i. The prosecution's evidence is purely (a single strand) circumstantial and does not meet the threshold required for a reasonable jury to convict.
 - ii. As illustrated in *R v Galbraith*, if the evidence is so tenuous that no reasonable jury, properly directed, could convict, the judge should stop the case.
- c. Autopsy Report:
 - i. The autopsy report, which indicates strangulation, does not provide conclusive evidence against the Applicant.
 - ii. The pathologist's admission that the hyoid bone can break post-mortem further weakens the prosecution's case.
- d. Alleged Cut on Applicant's Face:
 - i. The alleged cut on the Applicant's face has not been connected to the crime.
 - ii. There is no evidence to suggest that it is related to the death of the deceased.
- e. Absence of Motive, Planning, and Direct Evidence:
 - i. The absence of motive, planning, and direct evidence further undermines the prosecution's case, making it insufficient to meet the legal standard required for a conviction.
- f. No Actus Reus or Mens Rea Established:

- g. The prosecution has failed to establish the actus reus (guilty act) and mens rea (guilty mind) necessary for the offence of murder. The evidence does not demonstrate that the Applicant committed any act leading to the death of the deceased, nor does it show any intent to kill or cause grievous bodily harm.

- [4] Miss. Adams has submitted that the evidence marshalled by the Crown is mostly circumstantial but that it is enough to rise to a prima facie case. An offence can be proved against an accused by reliance on direct evidence or circumstantial evidence. Circumstantial evidence is “evidence of relevant facts, i.e. facts from which the existence or non-existence of facts in issue may be inferred”. It works ‘cumulatively, in geometrical progression, eliminating other possibilities’ (DPP v Kilbourne [1973] AC 729 per Lord Simon at p. 758 as cited in Blackstone’s Criminal Practice 2024 ed at F1.22).
- [5] It was Ms. Adams’ contention that in the instant case, the Crown does not seek to rely on direct evidence but rather on circumstantial evidence.
- [6] Ms. Adams submitted that the Jury will be entitled to draw inferences from certain facts and when considered cumulatively they support a conclusion of guilt. These are as follows:-
 - a. The accused’s blood was found present in the house on the shower curtain in the bathroom.
 - b. Patricia Kenyon gave evidence that there was no blood on the shower curtain in the bathroom when she left for work on the morning of the 7th of February, 2019.
 - c. A motorcar of the description and bearing the registration number of a motorcar rented to the accused being seen at the Midway Gas Station which is close in proximity to Freeman’s village.
 - d. The accused, in his interview, stating that the last time he was present at the home of the deceased was in December 2018, which the Crown posits is a lie.
 - e. The accused, in his interview, stating that his and friendship with the deceased ceased because her mother discovered that they were in a sexual relationship and so he broke off the relationship whereas Patricia Kenyon gave evidence that the deceased was angry with the accused because he posted nude photos of her, and she was the one who asked him to leave.
 - f. The accused, in his interview, stated that he was sleeping in his vehicle at the beach from about 9:50 AM until after 2:00 PM which the Crown also posits is a lie.
- [7] Ms. Adams submitted that all of these strands when taken together rise to a prima facie case. And that the Jury would be entitled to draw certain inferences from the evidence.

Ruling

- [8] The Court has to now consider whether the Crown has put forward enough evidence to show that a

Jury if properly directed can convict. The approach to be adopted when considering a submission of no case to answer in circumstances where the case for the prosecution depends wholly or in some critical respect on circumstantial evidence has been considered in a number of cases in recent years of which the latest is **R v G and F** [2012] EWCA Crim 1756.

- [9] In that case Aikens LJ giving the judgment of the Court summarized the principles as follows: First, that in all cases where a judge is asked to consider a submission of no case to answer he should apply the classic or traditional test set out by Lane LCJ in **Galbraith**. Second, that where a key issue in a submission of no case is whether there is sufficient evidence on which a reasonable jury could properly draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the exercise of deciding that there is a case to answer involves the rejection of all realistic possibilities consistent with innocence. Third, the question is whether a reasonable jury could, not whether all reasonable juries would, on one possible view of the evidence properly draw that adverse inference. If a judge concludes that a reasonable jury could do so putting the prosecution case at its highest, the case must continue. If not, it must be withdrawn from the jury.
- [10] Regrettably this Court finds that it has not. The evidence is circumstantial and very little physical evidence links the defendant to the scene or indeed to the offence. The one piece of direct forensic evidence is the one spot of blood on the green part of the shower curtain. The evidence must be substantial and capable of supporting a conviction. This supports the argument that the evidence against Simon, being one strand, when taken at the highest, and added to the other circumstantial evidence and not meeting the substantial evidence threshold, is insufficient to proceed to a Jury. In the present case, the lack of direct evidence linking Simon to the crime and the reliance on weak circumstantial evidence suggest that the case should not proceed to the Jury.
- [11] The Court determines that the lack of forensic evidence tying Simon to the commission of the offence cannot be ignored. In looking at the definition of circumstantial evidence one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence— there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion: but the whole taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of. In some cases there is direct evidence that a defendant is guilty, for example evidence from an eyewitness who saw the defendant committing the crime, or a confession from the defendant that he committed it. In this case it is not so.
- [12] In other cases however, including this one, there may be one piece of direct evidence and the prosecution rely on (what is sometimes referred to as) circumstantial evidence. That means different strands of evidence which do not directly prove that the defendant is guilty but which do, say the Prosecution, leave no doubt that the defendant is guilty when they are drawn together.

- [13] Out of all the forensic evidence collected nothing links the defendant to the murder of the deceased. There were samples upon samples taken to Jamaica, clippings from under her fingernails, blood samples etc., but nothing to link Kasroy Simon to the scene save and except the blood on the shower curtain.
- [14] The many missteps taken by the police in this matter are indeed regrettable and they could have done better. The crime scene was treated in a cavalier manner which was not cordoned off. This is important as the mother of the deceased was given the “ok” to return to her home once the body had been removed, although she said understandably, she did not sleep there that night. Even if at the time, the police were operating under the belief that the deceased committed suicide, should not the scene be treated with proper care?
- [15] I am forced to agree with Mr. O’Kola when he states that “Taking the Crown’s case at the highest and excluding the possible (sic) of mixed DNA on the evidence, given that the shower curtain has two parts and on one side is alleged profile of the deceased and on the other side profile of the Kasroy Simon, the presence of his blood on one part of a shower curtain does not, by itself, establish his presence at the crime scene at the relevant time or his involvement in the alleged murder”
- [16] The bloody watch found at the scene was never put to the applicant, Kasroy Simon, there was a statement from a child who heard certain things, the child was never called. The Jury would be expected to make the quantum leap that the scratch seen on the applicant’s face was caused by the deceased and that they had been in an altercation. The lies told in the interview would have to be supported by other evidence for the Jury to act upon them.
- [17] The case of **R v Hedgcock, Dyer and Mayers** [2007] EWCA Crim 3486, in which the three defendants were accused of conspiracy to rape a girl under the age of 16 and conspiracy to murder a girl under 16 is instructive. The prosecution case in relation to Hedgcock and Dyer was based on internet conversations between the defendants in internet “chat rooms”, in the course of which Hedgcock sent to Dyer pictures of his goddaughter and sister, aged 15 and 14 respectively (although introduced over the internet as being younger). This Court held that there was clearly evidence on which a jury could reasonably conclude that there was an agreement to rape a girl under the age of 16. The key question for this Court was whether the judge should have accepted a submission of no case to answer, on the basis that there was insufficient evidence from which a jury, properly directed, could reasonably infer that the defendants had the “executory intent” at the time the agreement was concluded. 31. Laws LJ gave the judgment of the Court. At paragraph 19 he said that there had been argument as to “the correct approach to be taken by a Jury in a criminal case to an invitation by the Crown to draw an inference adverse to a defendant from primary facts”.
- [18] He referred to a statement of Lord Diplock in **Kwan Ping Bong v R** [1979] AC 609 at 615G and

statements of Moses LJ in **R v Jabber** [2006] EWCA Crim 2694 at [20]-[21]. Laws LJ said that he did not think that there was much difference in the result of both statements. He then said (at [20]) that:-

“...Elementarily the jury must apply the criminal standard of proof to the exercise of drawing inferences as [they must] to every other facet of the fact-finding process”. Laws LJ continued, at [21]:

“The question was whether a reasonable jury properly directed, not least as to the standard of proof, could draw the inference proposed and thus (as it was put in **Jabber**) reject all realistic possibilities consistent with innocence. That approach seems to us to be entirely consistent with Lord Diplock’s remarks. If at the close of the Crown’s case the trial judge concludes that a reasonable jury could not reject all realistic explanations that would be consistent with innocence, then it would be his duty to stop the case. What is the position here? I have reviewed the authorities and have found them useful in coming to my decision.

[19] I would like to thank both Attorneys for their diligent research and well written submissions in this matter. I have reviewed the other authorities and have found them useful in coming to my decision.

[20] Having said all of the above, the Court rules that the no case to answer submission succeeds and I will instruct the Jury accordingly.

Ann-Marie Smith
High Court Judge



By the Court

Registrar