

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

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

**CLAIM NO. BVIHCR 0015 OF 2021
BETWEEN:**

THE KING

and

ASHAN WESTCOTT

Defendant

Appearances:

Mr. Israel Bruce for the Accused
Ms. Tiffany Scatliffe, DPP & Ms. Lyn Dailey for the Crown

**2024: July 25
26**

RULING ON NO CASE SUBMISSION

- [1] **JOHN J:** The accused Ashan Westcott stood trial on an indictment charging murder contrary to section 48 of the Criminal code 1997 of the Laws of the Virgin Islands.
- [2] The particulars were on a date unknown between the 27th January 2016 and the 30th March 2016 at Hawks Nest on the island of Tortola, he murdered Nickera Smith (Nickera).
- [3] On the 25th June 2024, at the close of the case for the crown, counsel for the accused indicated to the Court that he wished to make a submission of a no case to answer. Both counsel was directed to provide written submissions on the issue. After carefully considering both the written and oral submissions on the 26th June 2024, I upheld the submission and directed the jury to return a verdict of not guilty. I indicated then that I would provide written reasons at a later date. This I now do.

BACKGROUND

- [4] Nickera lived with her parents Raniel and Verna Smith at Hope Hill, Tortola, Virgin Islands. She was employed at Colonial Insurance and travelled to and from work on most days by a taxi driven by one Lyman Davies. On the 27th January 2016 she went to work as usual. It was in dispute with whom she went to work, as Lyman Davies in evidence said that she travelled with him whereas the accused in an interview with the police said that he took her to work that day. He said she called him and asked him to take her to work and he obliged.
- [5] Nickera returned home as usual on the afternoon of the 27th January 2016 in a taxi driven by Lyman Davies. Her father Raniel Smith said that about 8:30 p.m., he saw her on the steps before he went into the house.
- [6] Nickera's mother in her evidence, confirmed that on the night of the 27th January 2016 she too passed Nickera on the step on her way coming downstairs. Nickera did not return home that night. The following day her mother made several calls to her mobile phone but was unsuccessful in contacting her. She also called her work place Colonial Insurance. The General Manager of Colonial Insurance Carlton O'Neal said that Nickera did not report to work on the 28th January 2016 or any day thereafter. At the request of the police a buccal swab was taken from her.
- [7] On the 28th January 2016, her mother filed a missing person report with the police. In addition, she wrote a letter to LIME (Now FLOW) the mobile phone carrier to get information on her daughter's phone. The company responded to her request. The records showed infrequent calls between Nickera and the accused.
- [8] On the 30th March 2016, police officers discovered human skeleton remains in an area off the main road and down a slope in Hawk's Nest. Close to the skeleton remains were, a blue tarpaulin, an old wheel barrow, an old metal drum and a shoelace. There was burnt garbage in the area and two spent shell casing were also found near the scene.
- [9] The skeleton remains were transported to the Dr. D Orlando Smith Hospital in Tortola. On the 7th April 2016 Dr. Benjamin Mathis a forensic pathologist performed an autopsy. He testified that the

skeleton remains of the person then Jane Doe were extensively decomposed. Body tissues had already started to break down there were no organs and only bone could be seen. Dr. Mathis said he observed a gunshot wound to the back of the skull and near the top. He removed a projectile from the skull. He further said that he could not determine the time of death because of the decomposition and the skeletonization. A sample from the femur of the remains was extracted and handed over to the police.

- [10] Rachel Oefeilien the Chief Scientific Officer from DNA Labs which is a private forensic laboratory in South Florida, received the buccal swab and the femur bone from Inspector Wendell Ballantyne. She confirmed that upon analysis she was satisfied that from the buccal swab taken from Verna Smith that she, Verna Smith, was the mother of Jane Doe. She further said that a combined maternity index of 1.8 million and a probability of maternity being 99.99% confirmed that the human remains found at Hawk's Nest were those of Nickera.
- [11] The two spent cases were examined by Maurice Cooper a firearms expert who confirmed they were 9mm luger ammunition and fired by the same firearm.
- [12] Delio Walters an Administrative Officer at BVI Health Services Authority testified that Nickera was his ex-girlfriend. He first met her in 2009. However, their relationship started in 2012 and the relationship continued for a year and some months. He testified that he knew the accused and said that they were friends from childhood. They grew up together in Purcell Estate. He further testified that on the 28th September 2016 at about 6:00 a.m., police officers arrived at his home where he lived with his mother. The Police seized two cell phones, a hard drive, jump drive and a toothbrush from his home. Following the search, he was arrested and taken to Road Town Police Station.
- [13] On the 29th January 2016 a party of Police Officers including Detective Sergeant Stanley Burton and Inspector Larocque, executed a search warrant at the home of the accused. The Police seized a silver laptop along with an iPhone 6. According to the evidence of Sergeant Burton on searching the exterior of the home he observed a blue tarpaulin used to cover motorcycles. On the following day that, is to say, 30th January 2016 he together with Inspector Larocque conducted an interview at the interview room at the Road Town Police Station. He subsequently prepared a transcript. During the

interview the accused denied taking Nickera from her home on the night of the 27th January 2016 and/ or that he was responsible for her death.

[14] Detective Sergeant Burton was cross-examined by counsel for the accused. During cross examination he said '*inter alia*,'

- I. He asked the accused questions relative to the phone records of Nickera Smith which records he said he had in his possession at the time of the interview. The accused reiterated that he gave Nickera a ride to work on 27th January 2016.

[15] Although he checked the CCTV in the area where the accused said he dropped Nickera off and the CCTV showed neither the accused nor Lyman Davies dropping her off around the time they said they dropped her off to work.

- II. His investigation revealed that it was customary for Nickera to be home early at nights and further it was customary for her to leave home at nights and go different places.
- III. He reiterated that on the night of 27th January 2016 that the accused said that he did not pick up Nickera at her home. His investigations did not lead him to any information of how Nickera may have left home on the night of the 27th January 2016 or with whom she left home.
- IV. He took a statement from Otis Martin a police officer who stated that Nickera Smith was seen on 28th January 2016.
- V. He learnt through Nickera's mother that at times Nickera would go out and return like 1, 2 and 3 in the morning.

[16] To questions about the items found on the scene Sergeant Burton responded as follows:

- I. The tarpaulin was important to this case. It could have provided forensic assistance to this matter. It was never forensically examined.
- II. The metal drum was close to the body. It was not subjected to any forensic examination.
- III. He acknowledged that he was aware that the accused imported motor bikes on behalf of third persons.
- IV. He accepted that the accused prints were taken and that he was asked to subject himself to DNA analysis and he obliged.
- V. He accepted that he could not provide any evidence to show that the prints of the accused were connected to the death of Nickera.

[17] Nickera had an account at First Bank in Tortola. Evidence revealed that Nickera applied for a loan of \$9,000.00. A manager's cheque dated the 7th January 2016 was issued to her. On 25th January 2016, \$5,000.00 was withdrawn from the account and a further \$4,000.00 was withdrawn on the 26th January 2016.

[18] Rachel Fraser was the accused girlfriend in January 2016. In her evidence she said she spent a great deal of time at the home of the accused. She was the owner of a white Suzuki Vitara. That vehicle was registered in the name of the accused and Rachel Fraser and they both drove it. On the 27th January 2016 she attended classes after work. The classes finished at 6:50 p.m. and she visited her family until about 8:00 p.m. When she got home the accused was there. They went out together to get dinner between 8:00 p.m. and 9:00 p.m. The accused left home about 9:00 p.m. that night.

[19] Detective Inspector Police Wendell Ballantyne Head of the Scenes of Crime Unit testified that on 2nd February 2016 he visited the residence of Nickera he dusted areas for finger prints and collected certain items for DNA. During the course of his investigation he processed at the Road Town police Station a white Suzuki Vitara, which belonged to the accused and Rachel Fraser. He processed the

prints from the vehicle and handed them over to Officer Washington. Officer Washington did not give evidence at the trial.

THE DEFENCE SUBMISSIONS

- [20] Mr. Israel Bruce Counsel for the accused predicated his submissions on the case of **R v Galbraith (1981) 1 WRL 1039** which is the seminal test piece on submissions of no case to answer. He submitted that the Crown's case against the accused was entirely circumstantial, in the form of financial records analysis, telephone record analysis, and DNA and Forensic analysis.
- [21] Counsel summarized the Crown's case as asking the court to convict Westcott on the basis that he had a friendly relationship with Nickera, that he had come upon hard financial times and due to his friendship with Nickera he was aware that she had just taken out a loan and that she intended to purchase a vehicle with that money, She solicited his help in purchasing that vehicle and that on the night of the 27th January 2016, he went to pick her up and later murdered her and took the money that she had on her, that being USD\$9,000.00. According to counsel the Crown further suggests that after he murdered Nickera he disposed of her body at Hawks Nest and burnt her body leaving it there to rot.
- [22] Counsel submitted that the Crown failed to present any evidence that could point to the accused being responsible for the death of Nickera Smith. He referred to the evidence of Dr. Mathis who he said gave no evidence as to the cause of Nickera's death. He further submitted that Dr. Mathis failed to indicate whether the gun shot injury to her head was pre mortem or post mortem. Accordingly, the cause of death remained unknown and the jury was being invited to speculate on an essential ingredient in the definition of murder.
- [23] Counsel submitted that the Crown led evidence from a number of witnesses who were inconsequential in assisting the Crown in being able to prove its case against the accused. That neither Nickera's mother nor father could say where she went or with whom she left home, on the night of 27th January 2016, though they both say she left home by about 8:30 p.m. Miss Fraser, the ex-girlfriend of the accused gave evidence that he was at home between 8:00 p.m. and 9:00 p.m. on the 27th January 2016, which made it impossible and destructive to the Crown's case that he was

the person with whom she left home on the night of the 27th January 2016. Sergeant Burton also explained that he had no evidence as to with whom Nickera left home on the night of 27th January 2016, and that his investigation provided no information as to how she went from her home, who she was with nor where she went.

- [24] That the Crown presented no evidence that on the night in question that Nickera had \$9,000 cash on her person. Further, based on the evidence of Mr. Farara, that when Westcott was in financial problems previously he borrowed it from a friend.
- [25] Notwithstanding that the prints of the accused was taken and DNA swabs provided, there was nothing to connect him the death of Nickera. Officer Burton admitted that there was no fingerprint evidence, no DNA evidence, no footprint or shoe print evidence and that the materials found in close proximity to the partly decomposed body were not subjected to forensic analysis. The evidence of Inspector Ballantyne who forensically examined Rachel Fraser's vehicle, registered in Westcott's name, failed to connect the accused in any way to Nickera's death.
- [26] Burton, sought to link the fact that Westcott had a blue tarpaulin at home covering his motorcycles and that a blue tarpaulin was found proximate to Nickera's partly decomposed body that it connects Westcott. Counsel invited the court to reject that conclusion on the basis that the commercial producers of tarpaulins did not make a single copy and that thousands of possible owners reside in the BVI.
- [27] Further that Officer Burton under cross examination admitted that he engaged one Mr. Otis Martin who is an active member of the Royal Virgin Island Police Force and that he provided a statement, and that Martin gave information to the investigations that Nickera Smith was in fact seen by him on the 28th January 2016 at One Mart supermarket and how he recalled seeing her in an acid wash long jeans pants. The crown did not challenge this evidence given by Officer Burton.

THE CROWN'S SUBMISSIONS

- [28] The Crown submitted that as its case was based on circumstantial evidence and, the second limb of **R v Galbraith (1981) 1 WRL 1039** should be applied. The Defendant would have to demonstrate that the evidence is so tenuous that taken at its highest the prosecution's evidence when considered, a properly directed jury could not convict. The Crown relied on **DPP v Selena Varlack [2008] UKPC 56**, and **August et al v R [2018] 3 LRC 552** submitting that they have made it clear that there is no direct evidence which shows that the accused murdered Nickera, however the case as led assessed as a whole demonstrates that he was responsible for her disappearance and murder.
- [29] The Crown relied on the evidence of Nickera's father and mother that she left their home at about 8:30 p.m. on 27th January 2016 and that they did not know with whom she left that night. The Crown highlighted that her father said that he had never seen her in a rental vehicle.
- [30] The Crown pointed out that while Dr. Mathis gave evidence that he could not determine a time of death due to the decomposition of the body found, he was able to conclude that she was killed by a gunshot wound to the back of the head and that in his experience such wounds would result in instant death.
- [31] That DC Burton gave evidence that when the accused premises were searched, he observed a blue tarpaulin similar to the one that was found over the body of the deceased.
- [32] Witnesses for the Crown gave evidence that Westcott was previously in debt to Tropical Shipping, which was paid in 2015. That Kadeem Farara had previously lent Westcott money within the range of US\$3,000 to \$4,000, and that he was never repaid; this was in 2015. That on 1st February 2016, Westcott made a payment of 1,400 sterling pounds at PJ Motorcycles Engineers via PayPal. The Crown submitted that the accused who had previously been in debt appeared to have gained finances the day after Nickera was last seen, relying on evidence of payments made in Westcott's online shopping purchase activity.
- [33] Sean Adams from the Social Security Board gave evidence which demonstrated that the accused only had registered earnings of \$1,329.38 in December 2015 and \$662.50 in January 2016. Another

witness Sinta Moses gave evidence that Westcott was not making any substantial income around that time.

- [34] Westcott had 'received' an email with the subject line "Now in stock WWIIP.08 Lugar Replica", which was a firearm of the same branding as the spent shells found. There was also a series of conversation between Nickera's ex-boyfriend Walters about a number of firearms, their makeup, use and modification and the types and number of ammunition used by them.
- [35] In January 2016 Nickera acquired a loan of US\$9,000 and withdrew \$5,000 on the 25th January and \$4,000 on the 26th January 2016. Neither the cash nor Nickera's cellphone were ever recovered.
- [36] Rachel Fraser gave evidence that Westcott was at home when she arrived on 27th January 2016. She left to purchase food, was not long and returned home before 9:00 p.m. Sometime after 9:00pm Westcott told her he was going to wash the vehicle at the car wash and left. She went to bed at about 11:00 p.m., and Westcott had not yet returned home. When she woke up at about 7:00 a.m. on 28th January 2016, Westcott was lying next to her. Fraser was not cross examined.
- [37] Westcott's accounts given to the police were conflicting. His first account given to the police said he went to collect food with his girlfriend around 8:00 p.m., and that he stayed at home that night. Further that in his first caution interview he started by denying any interaction with Nickera on 27th January 2016. His level of interaction on that day increased each time his previous statements and call records were put by officers. Westcott admitted that at 8:23 p.m. and 8:25 p.m., Nickera called his phone, but he could not recall what they talked about. He said that he recalled seeing Nickera at the car wash between 9:00 p.m. and 10:00 p.m. on 27th January 2016, that she was at the car wash for about 30 minutes, but he only noticed her when he was leaving the car wash. He said he saw her in a rental vehicle, but other witnesses gave evidence that they never saw Nickera with a rental.
- [38] Delio Walters, gave evidence of a WhatsApp conversation in which Westcott said *"well 2moro I sure them man goin come to you"* [sic *"Lol she up thread fall by u hiding man"*] [sic] *"U is last man she deal with in a relationship, when them come to yuh better tell them wa u know"* [sic]. The Crown submitted that the message shows that Westcott was trying to shift attention from himself.

[39] In about March 2016 Westcott 'fled' the territory and in February 2020 he was arrested at the Terrence B Lettsome International Airport.

[40] The Crown submitted that Westcott was not in a sound financial position. He was previously in debt. He was interested in starting a business. He knew the deceased who was the former girlfriend of Delio Walters. He knew the type of person she was. He was previously in a sexual relationship with Nickera. Nickera took out a loan for \$9,000 in January 2016. On 27th January 2016 Nickera was last seen by her parents at about 8:30 p.m. On the 28th January 2016 Westcott began to spend money. All calls from the accused to Nickera stopped after the 27th January 2016. That Westcott lied and cheated and his actions have brought him to court to answer to the murder of Nickera.

THE LAW

No Case Submissions: The Test

[41] In **R v Miller [2023] NICA 81** Keegan LCJ helpfully summarized the principles to be applied in determining a no case submission. At [20] and [21]:

[20] The leading authority on the test a trial judge should apply in determining whether there is no case to answer is *R v Galbraith* [1981] 2 All ER 1060. This authority has been applied in the jurisdiction of Northern Ireland consistently and was discussed in the case of *R v Grimes* [2017] NICA 19.

[21] The *Galbraith* decision contains the classic articulation by Lord Lane CJ of the two limbs to an application of this nature as follows:

"How then should the judge approach a submission of no case?

(i) 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.

(ii) 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 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 ... There will, of course, as always, in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

No Case Submissions in cases involving Circumstantial Evidence

[42] The Judicial College (UK), in **The Crown Court Compendium, Part 1: Jury and Trial Management Summing Up (June 2023)**, the learned authors provide helpful guidance on how to approach a no case submission in a case involving circumstantial evidence. At Section 10-1 they state:

1. Most criminal prosecutions rely on some circumstantial evidence. Others depend entirely or almost entirely on circumstantial evidence and it is in this category that most controversy is generated and specific directions will be required.
2. A circumstantial case is one which depends for its cogency on the unlikelihood of coincidence: circumstantial evidence “works by cumulatively, in geometrical progression, eliminating other possibilities” (**DPP v Kilbourne**¹ per Lord Simon). The prosecution seeks to prove separate events and circumstances which can be explained rationally only by the guilt of the defendant. Those circumstances can include opportunity, proximity to the critical events, communications between participants, scientific evidence and motive. The subsequent conduct of the defendant may also furnish evidence of guilt, for example evidence of flight, fabrication or suppression of evidence, telling lies or unexplained possession of recently stolen property.
3. At the conclusion of the prosecution case the question for the judge is whether, looked at critically and in the round, the jury could safely convict.² The question for the jury is whether the facts as they find them to be drive them to the conclusion, so that they are sure, that the defendant is guilty.³ **Bassett**⁴ is an example of the Court of Appeal concluding that the judge

¹ [1973] AC 729 at p.758.

² P(M) [2007] EWCA Crim 3216.

³ *McGreevy v DPP* [1973] 1 WLR 276.

⁴ [2020] EWCA Crim 1376.

should have allowed a submission in a case which depended upon circumstantial evidence. The judgment sets out the correct test to apply.

4. Evidence, not probative in its own right, might legitimately be used when aggregated with other circumstantial evidence, so as to lend support for the case being advanced: see **Olive**.⁵

...

6. Pitchford LJ in **Masih**⁶ suggested that the correct question is "Could a reasonable jury, properly directed, exclude all realistic possibilities consistent with the defendant's innocence?" For another helpful distillation of the correct approach when addressing a submission of no case to answer in a circumstantial evidence case see **Lowther**.⁷ In **Cooper**⁸ the court commented on this approach and stated that there is no precise formulation that needs to be adopted in order to address this process of analysis.

7. It has been held that circumstantial evidence must always be:

"narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. ...It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference": **Teper**.⁹

[43] In **R v Bassett [2020] EWCA Crim 1376** Mrs Justice McGowan DBE said at [17] to [19]:

17. A criminal case very often depends on a jury, safely, being able to draw logical inferences from a series of established facts. The ultimate question for the judge is, "*could a reasonable jury, properly directed, conclude so that it is sure that the defendant is guilty?*" In order to draw such an inference the jury must be able to "*exclude all realistic possibilities consistent with the defendant's innocence*", per Pitchford LJ in **R v Masih [2015] EWCA Crim 477 at [3]**.

⁵ [2022] EWCA Crim 1141.

⁶ [2015] EWCA Crim 477.

⁷ [2019] EWCA Crim 1499.

⁸ [2022] EWCA Crim 166.

⁹ [1952] UKPC 15 at p.3 per Lord Normand.

18. The test was formulated by Lord Normand in **Teper v R [1952] AC 480 at 489**: “*It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.*”

19. Lord Simon expressed the test in a way which modern juries may find more accessible: “*Circumstantial evidence is evidence of facts from which, taken with all the other evidence, a reasonable inference is a fact directly in issue. It works by cumulatively, in geometrical progression, eliminating other possibilities.*” in **DPP v Kilbourne [1973] AC 729 at 758**.

[44] In **R v Reynolds and others [2023] NICC 18** Smyth J stated at [9] to [11] that:

[9] The prosecution case should be taken at its height at this stage. Blackstone (2023 ed.) at D16.64, explains that on the proper application of the test in *Galbraith* the prosecution is not required to show that the jury could not reasonably reach any alternative inference contended for. The question is whether it is properly open to the jury to reach the inferences contended for by the prosecution.

[10] In *Goddard* [2012] EWCA Crim 1756 at para [36], the court stated that the question was whether a jury not all reasonable juries could, on one possible view of the evidence, be entitled to reach that adverse inference. (See also *R (Boota) v Gwent M.Ct* (2012) EWHC 3550 (Admin).

[11] Those principles have recently been reviewed and approved in *R v Michael Grimes* [2017] NICA 19.

[45] In **R v Grimes [2017] NICA 19** Gillen LJ stated at [51]:

[51] Mr O'Donoghue properly cited G, F and R [2012] EWCA Crim 1756 where Aiken LJ outlined the approach to be taken at the direction stage in cases where essentially the matter is one of circumstantial evidence:

"We think that the legal position can be summarised as follows:

- (i) In all cases where a judge is asked to consider a submission of no case to answer, the judge should apply the classic or traditional test set out by Lord Lane CJ in Galbraith.
- (ii) Where a key issue in a submission of no case to answer is whether there is sufficient evidence on which a reasonable jury could be entitled to 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 does involve the rejection of all realistic possibilities consistent with innocence.
- (iii) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the evidence".

ANALYSIS

[46] In my view, in all the circumstances and having regard to the combination of factual circumstances I could not conclude that a reasonable jury could be entitled to reach the adverse inference put forward by the crown (even if properly directed) on the evidence, putting the prosecution case at its highest.

[47] My conclusion was based on the following:

- i. At the close of the prosecution's case there was no forensic evidence connecting the accused to Nickera's death. As earlier indicated the accused finger prints were taken and it did not connect him in anyway with the death of Nickera. Further Nickera's fingerprints were not found in Rachel Fraser's vehicle, registered in Westcott's name.

- ii. Notwithstanding that, items that could have assisted the jury namely, the blue tarpaulin, the drum, wheelbarrow and shoelace that were found in close proximity to the decomposed body, they were never forensically examined. The prosecution through Inspector Burton made a failed attempt to link the blue tarpaulin found at the home of the accused and the tarpaulin found close to Nickera's body. Without more, and in the absence of forensic evidence, possessing a similar blue tarpaulin is not indicative of guilt.
- iii. There was no evidence that the accused picked up Nickera at her home on the night of 27th January 2016. Save for Westcott's statement about him seeing Nickera at the car wash and her leaving after 30 minutes there is no evidence of interaction. Further the Crown did not challenge the evidence given by Mr. Burton that he engaged one Mr. Otis Martin an active member of the Royal Virgin Island Police force and that he provided a statement giving information to the investigations that Nickera Smith was in fact seen by him on the 28th January 2016 at One Mart supermarket and how he recalled seeing her in an acid wash long jeans pants.
- iv. There was no evidence that Nickera left home with \$9,000 on the night of 27th January 2016.
- v. The evidence of David Moore the Crime Analysis that he analyzed the phone data and made a report that there was communication between the accused and Nickera Smith on the 26th January 2016 and the last communication being 20:25:43 on the 27th January 2016. In my opinion this could not assist the jury as there was evidence of earlier communication between the accused and Nickera.
- vi. Kadeem Farara gave evidence that the accused was in the business of ordering bikes and parts from the United Kingdom. Mr. Farara stated that he purchased a bike from the accused for about \$10,000 (inclusive of duty charges). He indicated that he received the bike for which he had paid the accused. Mr. Farara also stated that the accused told him he had a problem with tropical shipping and he needed help. Mr. Farara loaned the accused money within the range of US \$3,000 - \$4,000.

He further said that he was never repaid and the arrangement was that he would receive another bike and not have to pay customs duties on same. The Court held a view that the evidence of Kadeem Farara could not be a link in the case where the crown's case was based on circumstantial evidence.

- vii. The Crown relied on the evidence of Matthew Harries Jones a Cyber-Security consultant in 2017 he said he was a Computer Forensic Analysis. He examined the apple laptop and a mobile device. He identified five emails which according to him may have been relevant. He found an email to the accused from sales@pyramidair.com, with the subject line "Now in stock WWIIP .08 Lugar Replica." However, there was no email from Ashan to the said email account.

DISPOSITION

[48] In all the circumstances, I upheld the submission and directed the jury to return a verdict of not guilty.

**Justice Stanley John
High Court Judge (Ag.)**

By the Court

Deputy Registrar (Ag.)