

THE EASTERN CARIBBEAN SUPREME COURT

TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CRIMINAL CASE NO: 1 OF 2021

BETWEEN:

THE KING

and

ST. ELMORE GARRAWAY

Appearances: Mr. Kristian Johnson, Counsel for the Crown
Mr. Israel Bruce, Counsel for the Defendant

2022: October 21st

RULING ON NO CASE SUBMISSION

[1] **JOHN J.:** The defendant, St. Elmore Garraway, is before the Court on an indictment charging him as follows:

Statement of Offence:

Perverting the course of justice contrary to Section 93 (a) of the Criminal Code, 1987 (as amended) of the Laws of the Virgin Islands.

[2] **Particulars of Offence:**

St. Elmore Garraway on the 12th day of July 2020 at Georges North Side, on the Island of Tortola in the Territory of the Virgin Islands with the intent to obstruct and pervert the course of public justice did an act which had the tendency to obstruct and pervert the course of justice in that he assisted Nyron Erickson who had a provisional arrest warrant issued by the United States of

America against him and he assisted Nyron Erickson to evade apprehension by members of the Royal Virgin Islands Police Force.

- [3] On the 12th day of July 2020, police received information that a wanted man, a fugitive from justice, one Nyron Erickson, was at a residence in Georges North Side. During the hours of 4:30 to 7:00 p.m., officers from a special unit carried out surveillance operations in the area from a building approximately five hundred meters from the residence. The unchallenged evidence of DC Ron Augustine, a member of the Special Intelligence Unit, was that with the aid of police approved binoculars, he saw the wanted man, Nyron Erickson, in the residence on at least two occasions that evening.
- [4] About 8:00 p.m. that evening, a police party carried out an exercise under the supervision of Sgt. Richard Francis at the residence of St. Elmore Garraway where the Nyron Erickson was allegedly earlier seen. The police party consisted of several officers including WP George, PC O'Neal Moore, and DC Ron Augustin.
- [5] On approaching the residence, evidence disclosed that a man was seen standing outside using a mobile phone. Notwithstanding an order from the police, **"stop, armed police,"** the man later identified as Davison Williams, ran into the house and locked the door thereby preventing the police access to the residence. The door was subsequently breached by the police and they gained access. Prior to the door being breached, Sgt. Francis had looked through a transparent glass which formed part of the door and amongst the persons he saw in the residence was Nyron Erickson.
- [6] Some of the officers surrounded the building. Sgt. Francis entered the residence and saw the defendant coming from an upper floor. He placed the defendant on a chair and told him that he had a warrant to search his premises for arms and ammunition. The police officers, accompanied by the defendant, searched the premises and nothing mentioned in the warrant was found.
- [7] Whilst at the back of the building WP George saw three men run out of the building and hide in the bushes. They were subsequently pursued, arrested and taken into custody. The defendant was subsequently arrested and taken to the Road Town Police Station where he was initially charged

with harboring a fugitive, an offence is not known to the laws of the Territory of the British Virgin Islands. He was subsequently charged on the indictment in paragraph 2 (supra).

- [8] Four officers gave evidence for the Crown. They were all extensively cross-examined by Counsel for the defendant, Mr. Israel Bruce. Each one was asked whether he saw the defendant do anything to prevent or obstruct the police effecting an arrest of Nyron Erickson. Each officer responded in the negative. The officers were also asked whether the defendant assisted Nyron Erickson in any way to evade apprehension by members of the Royal Virgin Islands Police Force. Again, each officer answered in the negative.

No case submission

- [9] The thrust of the submission by counsel for the defendant was that there was no evidence led by the Crown to establish that the defendant, St. Elmore Garraway, did anything to prevent the police from effecting the arrest of Nyron Erickson, nor did Garraway assist Nyron Erickson in evading apprehension by the police. Counsel referred to the celebrated case of **R v Galbraith [1981] WLR 1039**. He also referred to several other cases including **The Queen v Vreones [1891] 1 Q.B. 360**; **DPP v Varlack [2008] All ER (D) 71**; **R v Clarke [2003] EWCA Crim 391**; and **CPS v F [2011] EWCA Crim 1844**.
- [10] Mr. Kristian Johnson counsel for the Crown submitted that there was a case for the defendant to answer and the Court ought not to accede to the no case submission. He further submitted that the defendant's failure to inform the police that Nyron Erickson was at his residence, was sufficient for him to be called upon to answer the charge. He referred to several authorities including: **DPP v SK [2016] EWHC 837 (Admin)**; **Forbes v R [2021] JMCA Crim 10**; **R v Beaudry [2007] 1 SCR 190**; **R v Randy Kirkham [1999] 1 WWR 605**; **R v Vreones [1891] QB 360**.

Legal Position

- [11] The leading authority on the test a trial judge should apply in determining whether there is a case is **R v. Galbraith [1981] 2 All England Reports 1160**. As Lord Lane remarked in that case, the first limb of the test does not cause any conceptual problems. If there is no evidence that the crime alleged has been committed by the accused person it is the duty of the trial judge to discharge the

accused. The same would be the position if there has been no evidence to prove an essential element in the alleged offence.

[12] The second limb of the test is not so straightforward, he said. The Court is empowered by the second limb of the Galbraith test to consider whether the Prosecution's evidence is so inherently weak or vague for any reasonable and sensible person to rely on it.

[13] In **Blackstone's D16.58**, the proper approach to a submission of no case to answer is set out as follows:

"The Proper Approach to a Submission of No Case to Answer: The following propositions are advanced as representing the position that has now been reached on determining submissions of no case to answer:

- a. If there is no evidence to prove an essential element of the offence, a submission must obviously succeed.*
- b. If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury.*
- c. If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from its being of a type which the accumulated experience of the courts has shown to be of doubtful value (especially in identification evidence cases, which are considered in D16.60).*
- d. The question of whether a witness is lying is nearly always one for the jury, but there may be exceptional cases (such as **Shippey [1988] Crim LR 767**) where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that the witness is untruthful, and that it would not be proper for the case to proceed on that evidence alone.*

[14] If the submission of counsel for the defendant is to succeed, it can only do with reliance on the first limb of Galbraith, that is to say that there is no evidence that the offence has been committed by the defendant.

[15] That however, is not the end of the matter, there is another question for determination. Do the particulars of the offence as set out in the indictment, encompass the omission of an accused person to do an act, or must it be proven that the accused did some specific act resulting in the perversion of the course of justice. Put another way, does section 93 (a) of the Criminal Code

extend to the concealing of information as to the whereabouts of a wanted person. I am of opinion that the legislature intended the latter.

[16] Under the Rubric '**General Form of an Indictment**', Blackstone's D11.23, the learned author states that the basic requirements as to the layout of an indictment are as follows:

- a. **Each offence alleged should be set out in a separate paragraph or count. If there is more than one count, they should be numbered.**
- b. **Each count should be divided into a statement of offence and particulars of offence.**
- c. **The statement of offence describes the offence shortly in ordinary language, and, if the offence is statutory, should specify by section and subsection the provision contravened.**
- d. **The particulars of offence should give 'such particulars as may be necessary for giving reasonable information as to the nature of the charge'. This is supplemented by rule 14.2(1)(b) which states that there should be included 'such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.'**

Analysis of the authorities:

[17] Counsel for the Crown referred to the case of **The Queen v Vreones** in which counsel for the defendant argued that the first count of the indictment stated no criminal offence and furthermore that there was no act stated which was sufficiently proximate to the offence to make what the defendant did, criminal. He concluded by stating that the evidence given at the trial was not sufficient to support the first count of the indictment.

[18] However, C.J. Lord Coleridge disagreed with counsel's statement and inferred,
"If the act itself of the defendant was completed, I cannot doubt that to manufacture false evidence for the purpose of misleading a judicial tribunal which might come into existence. Here, in point of fact, no tribunal was misled, because the piece of evidence was not used; but I am of opinion that that fact makes no difference; it is none the less a misdemeanor although the evidence was not used. All that the defendant could do to commit the offence he did."

- [19] This case was also instructive in establishing the essential ingredients of the offence to “pervert the course of justice”. These ingredients were identified as **“the doing of some act which has a tendency and is intended to pervert the administration of justice.”**
- [20] The case of James Forbes v R [2021] JMCA Crim 10 goes further in describing the ingredients needed to establish perversion of the course of justice. Paragraph 71 explains;
“Although the term attempt is used, the offence is itself a substantive offence that can be attempted and not an ‘attempt’ to commit a substantive offence. While there is no closed list of acts that fall within the definition of that offence, a course of justice must be in existence and a defendant acts or embarks upon a course of conduct, which has the tendency to and is intended to obstruct, divert or disrupt the course of justice.”
- [21] The case of **Vreones** whilst instructive, is not comparable with the circumstances of this case at hand. The dicta set by C.J. Lord Coleridge does not apply as the acts or actions of the defendant Garraway did not complete the offence for which he was charged. In fact, the defendant’s actions as agreed upon by the officers who were questioned, did nothing to “obstruct or pervert the course of justice” nor did he “assist Mr. Erickson to evade apprehension by members of the Police Force”. The actions done by the defendant on the 12th July 2020, does not qualify for the offence with which he was charged. Furthermore, the actions by the defendant does not amount to an act which had the tendency and is intended to pervert the administration of justice.
- [22] Counsel for the defendant brought the Court’s attention to paragraph 36 of the judgment of CPS v F [2011] EWCA Crim 1844 where the Chief Lord Justice of England and Wales said,
“The authority of Galbraith with its emphasis on the responsibilities of the jury as the fact-finding body responsible for deciding the verdict is undiminished. In accordance with the second limb of Galbraith, there will continue to be cases where the state of the evidence called by the prosecution and taken as a whole is so unsatisfactory, contradictory or so transparently unreliable that no jury properly directed could convict. In cases like these, it is the judge’s duty to direct the jury that there is no case to answer and to return a ‘not guilty’ verdict”
- [23] Counsel for the defendant submitted that Mr. Garraway’s case was a perfect example of evidence called by the prosecution that was so **“unsatisfactory, contradictory and transparently unreliable that no jury properly directed could convict”** and as such the judge was very much within his legal duty to direct the jury that there was no case to answer and would not be usurping the role or duty of the jury by coming to such a decision.

- [24] Counsel for the Crown however was of the opinion that this particular case should continue in order for the jury to hear the arguments and make a decision. Counsel for the Crown submitted that the defendant did indeed commit an act with intent to obstruct and pervert the course of public justice in that he assisted Mr. Erickson to evade apprehension by failing to report his whereabouts to the authorities immediately. However, this is not made clear in the particulars for the offence with which the defendant was charged. The act of 'concealing information about Mr. Erickson's whereabouts' was not laid out in the particulars of the offence and as such the defendant was not informed properly that this was the case he had to answer.
- [25] Part D of the Rubric '**General Form of an Indictment**', in Blackstone's D11.23 comes into effect here;
- "The particulars of offence should give 'such particulars as may be necessary for giving reasonable information as to the nature of the charge'. This is supplemented by rule 14.2(1)(b) which states that there should be included 'such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.'"*
- [26] This new information inferred by Crown Counsel were not part of the original particulars of the offence and as such it was neither clear nor definite as to what the prosecutor was alleging against the defendant. It would be unreasonable and unfair to the defendant to alter or change the particulars at this stage of the matter.
- [27] In light of the foregoing, I am of the opinion that the Crown has not discharged its duty and accordingly the Court would not call on the accused.

Stanley John
High Court Judge (Ag.)

By the Court

Registrar