

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR 2020/0026

BETWEEN:

THE QUEEN

and

[1]	PATRICK MATTHEWS	1 st Defendant
[2]	ARNOLD JOSEPH	2 nd Defendant

Before: Her Ladyship Justice Ann-Marie Smith

Appearances:

Mr. Anthony Armstrong and with him Mrs. Shannon Gittens, Counsels for the Crown
Dr. David Dorsett, Counsel for the 1st Defendant
Mr. Michael Archibald, Counsel for the 2nd Defendant

2021: June 30th;
July 2nd, 7th, 8th, 23rd
October 8th

DECISION

- [1] **SMITH, J.:** This recently concluded trial was tried pursuant to the **Criminal Proceedings** (Trial by Judge Alone) **Act 2021 of Antigua and Barbuda**, in this Court. The case commenced on 30th June, 2021 and concluded on 8th July, 2021 with the decision reserved for 23rd July, 2021. The Court promised to deliver a written decision on this matter and I now do so.
- [2] The two defendants entered pleas of not guilty to Practicing Medicine without a License and defendant, Patrick Mathews to one count of Recovering Fees without a Licence on the Indictment.
- [3] At the close of the Crown's case the defence made a **Submission of No Case to Answer**. This was not upheld. Both defendants were given their options and they both elected to remain silent.

A Judge Alone Trial

- [4] Sitting as a Judge alone, I am both the trier of fact and judge of the law. As such, I directed myself and kept in mind throughout my deliberation of this matter that the Crown had the burden of proof in this case and that both defendants stood before me as innocent persons. The defendants have nothing whatsoever to prove; rather, it is the Crown that has the duty to prove every element of the offences on the indictment.
- [5] I further directed myself that the Crown must prove each element of the offence by providing me with evidence of such a quality that I can feel sure of the respective elements. Ultimately, if I am sure of each element and have no reasonable doubt, then I can be certain of the guilt of the defendants, Matthews and Joseph and may convict them. If, on the other hand, the Crown fails to make me feel sure and consequently I have a reasonable doubt of any of the elements of the offence I will be obliged to acquit the defendants.

Elements of the Offences

- [6] The Crown, as I have already stated is duty bound to prove all the elements of the offences. In relation to Count 1 on the Indictment the Crown has to prove:-
- I. Patrick Matthews and Arnold Joseph carried out a surgical procedure
 - II. That Patrick Matthews and Arnold Joseph were not licensed to carry out this procedure
 - III. That Patrick Matthews and Arnold Joseph both intended to carry out this procedure
- [7] In relation to Count 2 on the Indictment the Crown has to prove that:-
- I. Patrick Matthews received fees from Peter Quinn without having a licence to practice medicine
 - II. That he intended to receive said funds, knowing that he did not possess a medical licence

Summary of the Crown's Case

- [8] The first witness called by the Crown was Jasunella Gore, a medical doctor who received training in Mexico. It was her testimony that she graduated in 2014 when she received her medical degree. She participated in two internships, one in Mexico and the other at Mount St. John Medical Center in Antigua. She indicated that she was currently a registered medical practitioner in Antigua and Barbuda. She recalled working for a year at National Stroke Association (NSA) with Mr. Patrick Matthews and she pointed him out in Court. She indicated to the Court that her duties were to consult with and treat patients; and she worked there for two years.

- [9] While there she recalled meeting and seeing Mr. and Mrs. Quinn and she had a conversation with them about their son Giovanni Quinn. She said she recalled the 8th April, 2015; she was invited to observe a circumcision on Giovanni Quinn. It was her testimony that the procedure was carried out by both of the defendants. It was also her testimony that she was only there to observe because he, Mr. Matthews was to use a device that she was not acquainted with. She said that she saw the complainant Giovanni Quinn on the bed being prepared for the procedure. She said she observed both defendants; they cleaned the child's penis and they attached a clip to the top of the penis. There was some cutting involved but she said she could not recall who actually cut, but later said that both defendants were involved in the cutting.
- [10] It was her testimony to this Court that she saw the parents and child again on 13th April, 2015. On that day the family came in and said the child had some burning on urination so she sent them for some lab tests. She said she gave the child's parent's antibiotics for a Urinary Tract Infection (UTI). The mother called again indicating he had pain and she gave her paracetamol for the child. There was no cross examination by both Counsel.
- [11] The second witness called by the Crown was Mr. Peter Quinn, father of the complainant Giovanni Quinn. He testified that his son had been complaining about discomfort in his penis. As a result of these complaints they consulted with Dr. Hadeed and she gave Mr. and Mrs. Quinn certain advice. They called Dr. Charles and spoke to his secretary. Mr. Peter Quinn testified that his son continued to complain about discomfort and his wife consulted with a friend named Mrs. Renata Weste. As a result of the conversation with Mrs. Weste, the Quinns, took their son Giovanni to National Stroke Association (herein after referred to as NSA) for a consultation on circumcision. Mr. Quinn testified that he and his wife spoke with Patrick Matthews.
- [12] It was Mr. Peter Quinn's testimony that the defendant Patrick Matthews introduced himself as Dr. Patrick Matthews. He said that he told him that he along with his wife were seeking medical services with respect to a circumcision for their son Giovanni and Matthews advised them that the center provided circumcision services and he advised them that the service was available at NSA and that he would perform the procedure. He asked where did they learn about the service and he told him that Mrs. Renata Weste had referred them. Matthews then indicated that all circumcisions carried out there were successful and he explained that the technology used was the most advanced, no requirement for stitches and that in a day or two their son would be "brand new". He demonstrated the apparatus to them and repeated that it was the most advanced technique in circumcision procedures.
- [13] On 2nd April, 2015 on the second visit to the center, Giovanni and his mother were present. The witness said he saw Matthews measure his son's penis and apply the apparatus he had previously shown to them, to gage the appropriate size of the apparatus. The witness said that he saw Matthews inspect the penis and observed that there was some difficulty in retracting the foreskin. He indicated to the witness that they (the parents) on the day of surgery were to apply warm water

which would assist in the retraction of the foreskin. He testified that a Dr. Joseph joined in the meeting and he pointed him out in Court.

- [14] The witness told the Court that the date set for the surgery was 8th April, 2015 and the three of them arrived after having bathed his son's penis in warm water and arrived at 3:30 pm. They went to the surgical room where he was given a face mask and he entered the theatre with Giovanni. The witness testified that his wife remained outside of the theatre room and observed through a window. He testified that his son was placed on the operating table and anesthetic was applied by both Matthews and Joseph. When Giovanni was unconscious the apparatus was placed on his penis by Matthews assisted by Joseph. A clamp was placed on his son's penis by Matthews and tweezers were used to peel the foreskin over the clamp also by Matthews. The witness testified that when the foreskin was pulled over the apparatus the foreskin was cut by Joseph while Matthews held the clamp in place and provided instructions to Joseph on where to cut. During the procedure, the witness said that his son awoke and started to wrestle and had to be restrained and more anesthesia was applied by Matthews. The witness said that Matthews was standing directly over his son holding his son and trying to comfort him. The procedure lasted from 3:30 pm to 5:00 pm. He testified that there were two other persons in the room but they were not introduced to him at the time.
- [15] The witness indicated that the other persons in the room were females. A spray was applied to his son's penis by Matthews and the child was given sleeping pills also by Matthews. The witness went on to tell this Court that at home that night his son slept until 11pm when he woke up to urinate and then went back to try to sleep. Mr. Quinn stated that throughout the night his son woke up continuously and complained of pain in the penis area and discomfort when attempting to urinate. He could not urinate properly that night. The witness said that he took him back to "NSA" the very next day because of the discomfort and the apparatus that was still attached to his son's penis.
- [16] The witness told this Court that thereafter his son suffered much discomfort and could not urinate properly for two weeks. Mr. Quinn said he took him back to "NSA" for a visit on 12th April, 2015 for the apparatus to be removed and it was removed by Mr. Patrick Matthews. He said he used a clipper or a tweezer to cut it off and that he was joined by Mr. Arnold Joseph. He observed that his son's penis had the flesh exposed and a gauze dressing was placed around the circumference by Mr. Joseph. His son continued complaining about the discomfort and he observed that the head of the penis was not visible under the dressing. The dressing was around the middle of the penis but he observed the foreskin was still intact. He asked Matthews if everything is fine and if this is the way a circumcised penis is supposed to look and Matthews reassured him "yes". The witness indicated that stitching was done by Matthews.
- [17] Over the next couple of days to sorry saga continued. The witness testified that he took their son back for the dressing to be replaced. On such occasion when the dressing was removed he said he noticed the gap between the incisions had widened and to close the gap the defendant, Matthews applied more stitches to his son's penis. He noticed the child's penis got swollen and the

child complained of itching in the area. The witness told the Court that the defendant Matthews advised them to take the child to the beach. He said Matthews told him that the saltwater was therapeutic and would assist in the healing process. The witness testified that when he took the child to the beach the dressing came off and the wound started to bleed excessively and they had to rush him back to "NSA". This was four weeks later.

- [18] Eventually the sutures healed leaving a band of discoloration around the circumference of the boy's penis and the foreskin was still there. The witness said he consulted with Patrick Matthews and spoke to him on numerous occasions thereafter. He went back to "NSA" and this was his final visit. He went there to see Patrick Matthews. On the final occasion the witness said there was another doctor at the center and that was Dr. Williams, a female doctor and they had a conversation. As a result of that conversation, the doctor inspected his son's penis and prescribed medication.
- [19] Finally, the witness indicated that he took his son to Barbados in 2019 for a circumcision. He testified the procedure was done and the issue was successfully resolved. The operation in Barbados took 30 minutes and recovery took 2 days. The operation carried out by Matthew cost the witness \$2,500.00 EC with a consultation fee of either \$160.00 or \$150.00 he could not recall exactly. The witness indicated that Matthews wore a surgical mask, scrubs and medical regalia. Mr. Joseph was dressed the same way with a mask and shoe covering.

Cross Examination by Dr. Dorsett

- [20] The witness said he did have receipts for the payment made but that he did not give them to the police and he could not recall if he did give the defendant Matthews cash or a cheque. He said he could have given him cheques but he could check his records. The question was asked if the payments for services rendered were paid to NSA Ltd, and the witness said he could not recall. He said he could not recall if he gave a copy to the police. Mr. Quinn was recalled for further cross examination after the lunch break.
- [21] The witness was asked by Counsel Dorset whether he had any receipts and he brought the said receipts to Court. He had been issued a receipt from "NSA". He said he can't recall if a suit was brought against "NSA" or Patrick Matthews. The witness was shown a claim form in the name of **Peter Quinn vs. NSA Medical Centre and Patrick Matthews**. The certificate of truth was shown to him. He was asked if he knew about a certificate of incorporation. The document shown to him was the certificate of incorporation of "NSA". He agreed that it was not uncommon for a business to accept payment by credit card. The receipts bore the stamps of the NSA Medical Centre. There was no cross examination by Mr. Archibald.
- [22] Dr. Leslie Ann Walwyn was called as a Crown witness. She stated that she is a physician qualified since 1992 receiving her training at UWI Mona Campus and she was registered as a medical

practitioner in 1994 in Antigua and Barbuda. She said that in September 2016 she received a letter from the police force and at the time she was the chairman of the Medical Council of Antigua and Barbuda. As a result of the letter she said she consulted her records and discovered that the defendant Patrick Matthews was not licensed nor registered to practice medicine in Antigua and Barbuda at that time – 2015. She told the Court further stated he was never ever licensed to practice medicine in Antigua and Barbuda. It was her testimony that she had been a member of the Medical Council since 2014. She said she had known Patrick Matthews for 10 years but not as a medical doctor. She indicated that she saw him in Court and pointed him out. There was no cross examination by either Counsel.

- [23] Constable of Police Alextine Murphy told the Court that she was attached to the St. Johns police station and testified that she met the defendant Matthews at the police station and he said he would tell her what happened. Sgt. Bowen was also present and he identified himself and told Matthews that he was carrying out an investigation into a report made by the Quinns. Officer Murphy said she observed a statement was taken from Mr. Matthews. She signed the said statement and could identify it by her signature. The Interview was exhibited and tendered as “**AM 1**”. No cross-examination by either attorneys.
- [24] Dr. Peter Charles was also called as a witness by the Crown. He had qualified at UWI, Mona and was registered to practice medicine in Antigua and Barbuda. He had been practicing for over 25 years. He said that on 25th May, 2015 he saw a Giovanni Quinn and his father. The father spoke to him. The boy was a young boy and he examined him and he made notes at the time. He asked to refresh his memory with his notes. However, he actually refreshed his memory from his statement which was made from his notes. The witness noted that he was unable to retract the foreskin of the penis of Giovanni. He said he did not observe any other features. There was no cross examination by either counsel.
- [25] Mrs. Shara Quinn the mother of the complainant was also called to testify. Her testimony corroborated that of her husband Peter Quinn in most respects. She told the Court that her son Giovanni Quinn was born 17th February, 2010. She indicated that she had a conversation with Mrs. Renata Weste her friend. As a result of the conversation with her friend she and her son and husband went to “NSA” Clinic.
- [26] At the clinic she testified that she was introduced to a Dr. Matthews and they had a conversation with him at the entrance of the clinic. She said he took them to his office and had a conversation. He said he was Dr. Matthews. She said she told him about the situation with their son Giovanni, he asked who referred them to him and she said Renata Weste. He said he remembered the case involving Renata Weste’s son. After she described the problem Giovanni was experiencing the defendant Matthews indicated he wanted them to bring the child in. He explained to them that he is a doctor who performed the circumcision on the son of Renata Weste. He also indicated that that procedure was a success. Thereafter the witness told the Court that she made an appointment for 2nd April, 2015 for him to examine her son Giovanni.

- [27] On that date her husband was present along with their son. Dr. Matthews measured their son's penis, showed them an apparatus that was used on Mrs. Weste's child. He identified the size of the apparatus that would be used in the circumcision procedure. Her husband explained to Matthews that when her son had an erection his penis would be significantly enlarged. She said that on 8th April, 2015 at 3:30 p.m. the day of the surgery her husband went inside the room and she remained outside looking through a glass window where she said she could see everything. She was introduced to Mr. Arnold Joseph by Dr. Matthews as his assistant technician.
- [28] She told the Court that there were 2 other young female doctors in the room a Dr. Gore and a Dr. Williams. She said that she could see Mr. Joseph and Dr. Matthews apply the apparatus to Giovanni's penis. She pointed out Mr. Joseph in Court. The foreskin was placed on the apparatus and the clamp was used to keep it in place by Dr. Matthews. She said she saw Mr. Joseph cut the skin of her son's penis. From where she was she estimated the operating table was about 18 feet away. During the surgery Dr. Matthews applied more anesthetic as her son woke up and was moving around. Dr. Matthews sprayed Lidocaine¹ on her son's penis after the surgery.
- [29] She testified that she viewed all of what was occurring through the window. She told the Court that Dr. Matthews discharged her son and gave them some tablets which he said would help her son to sleep. It was her testimony that Matthews indicated that their son would sleep and when he woke up he would not feel any pain. She said that he woke up and went to the bathroom near to midnight and he said he did not feel any pain. However, he went back to bed and then a short time later he got up again and was screaming and crying, on his toes walking around and was shouting "Jesus help me". He could not stand still to aim his urine and so was just peeing all over the place. She testified that her child was in excruciating pain.
- [30] They went back the following day and almost every day thereafter with their son. Every time they went Matthews would apply the Lidocaine and every time her son urinated the pain returned. A bandage was also applied on several occasions. Eventually they went to Barbados with their son about two years ago.
- [31] Dr. Resheda Williams, a medical doctor, self-employed in Unit 4 Woods Center, trained in Cuba graduated in 2006 and received a Diploma in medicine and surgery, interned in Belize licensed to practice for one year was the Crown's next witness. This witness gave her evidence via video link. She had been practicing medicine for 15 years. She was first registered to practice in 2009 in Antigua and Barbuda. In 2015 she was self-employed but shared office space at "NSA". She told the Court that said she recalled the 8th April, 2015. On that date she says she was at "NSA" and she recalled that it was a Friday and she was along with Dr. Gore and an intern named Jessica. She said she could not recall the intern's surname.

¹ This medication is used on the skin to stop itching and pain from certain skin conditions (e.g., scrapes, minor burns, Eczema, insect bites) and to treat minor discomfort and itching caused by hemorrhoids and certain other problems of the genital/anal area (e.g. anal fissures, itching around the vagina/rectum).

- [32] She told the Court that Patrick Matthews asked them (she and her female colleagues) to meet him in the theatre sometime in the afternoon. She said that the person she referred to as “Patrick” was the director of “NSA” at the time. She told the Court that when she and her colleagues entered the theatre she was not prepared for anything and was not dressed in medical outfits and so she stood off to the side. She said she passed a family in the hallway and walked into the theatre where she was told by Patrick Matthews, Dr. Gore and the intern that a procedure would be carried out. She walked into the theatre and she observed Matthews and his assistant whom she knows as “Joe”, carry out a procedure. She said it was not a procedure she was familiar with but she recognized it to be a circumcision. She described that she saw a ring device was placed around the child’s penis in order to circumcise the excess foreskin. **She said neither she nor her colleagues participated in the procedure** (my emphasis). She said she saw the young male child lying on the operating room table. She says she was about 3-5 feet away. She testified that she saw the child a week or so later. That was because Matthews was not available to do the follow up. She had known Joe in 2015 as a technician and many years prior to that she had known him when she worked at Holberton Hospital. She pointed out both defendants in Court.
- [33] Mrs. Renata West was called as a Crown witness. She told the Court that she was a teacher and she said she knew Mrs. Quinn. She said that she had a son who is currently 16. She knew of “NSA”. She spoke to Mrs. Quinn concerning her son. There was no cross examination from either Counsel.
- [34] Corporal of Police Erwin Christopher was called by the Crown. He said that he recalled 19th February, 2019. On that date he was on duty and he met with Sgt Browne. As a result they went to a nursing home and met the defendant Joseph and Sgt Browne identified themselves to him and told him they were continuing their investigations. They were in a room where Sgt. Browne conducted an interview with Mr. Joseph. He said that no threats, promises or inducements were made to Mr. Joseph prior to the interview. He said he signed the Question and Answer and Sgt. Browne and the defendant signed. He said if he were shown these documents again he would be able to identify same by his signature. He was shown the interview form and identified his signature, Sgt. Browne’s signature and the signature of the defendant, Mr. Joseph.
- [35] The final Crown witness was the investigating officer Sgt. Brown. It was his testimony that he put the allegations and the report made by the Quinn’s to Matthews. The defendant Matthews told the police officer that the procedure was carried out by a “competent team”. He said during the interview he stated that he was a physiotherapist and a business man. He also said “I did not out a circumcision of Giovanni Quinn. The procedure was carried out by a competent medical team comprising of 2 licenced physicians and a surgical technician with over 24 years’ experience. It was supervised by doctors William and Gore”. He also told the police that “he was present and ensured the correct size of the device was used as per protocol. Prior to the procedure, the child was seen by Dr. Gore and cleared for the procedure” I will deal with the police interview and the obvious falsehoods contained therein, later in this ruling.

The Summary of the Defence Case

- [36] As the trier of fact, I have the duty to accurately and faithfully consider the defence, as I did the prosecution. At the close of the Crown's case and after the Submission of No Case To Answer was rejected I told the defendant, Mr. Joseph that he had three options available to him, the rights to which he was entitled—to remain silent, to make an unsworn statement, or to give sworn evidence. I further explained that I would not hold it against him should he opt to be silent since it was his right and the burden is on the Crown to prove his guilt. He had nothing to prove to the Court. Additionally, I explained that should he elect to provide an unsworn testimony, that no questions would be asked of him and I would consider whatever he said giving it what weight I thought it was due. Finally, I said if he exercised his right to give sworn testimony, his lawyer, the prosecutor for the Crown and I would be able to question him.
- [37] As trier of fact, I told him I would treat his evidence as that of everyone else who testified in the trial, accepting what I believe and rejecting what I disbelieved. I also reminded him that he could call witnesses if he wished to do so.
- [38] The defendant Arnold Joseph opted to exercise his right to silence. I then repeated this to the defendant Patrick Matthews and he also opted to exercise his right to silence. He too was reminded that he could call witnesses if he wished to do so. As I have already said both defendants opted to remain silent and no adverse inference can be drawn from this exercise of their Constitutional Right.
- [39] The crux of the defence case was that both defendants were not practicing medicine. Mr. Archibald's defence as I understood it was that his client as a surgical technician and he was quite competent to carry out the circumcision based upon his many years of experience as a surgical technician.
- [40] Counsel also posited that no questions were put to the medical practitioner to ascertain what encompassed the "practice of medicine". Counsel said the section is not a catch all. He asked the Court to consider Section b of the legislation. Counsel said that all elements of the offence had not been proved and that the circumcision was not actually a surgery. Mr. Arnold Joseph did not hold himself out to be a doctor; he was only a surgical technician. Counsel said the Crown had failed to itemize which aspect of the law had been contravened. He posed the following questions to the Court. Was the circumcision a surgery? Was the defendant Joseph entitled to consider that he was a general practitioner? What was the scope of a surgical technician? Counsel positioned that his client worked as a surgical technician and the Crown had not proven that he was not competent to carry out this procedure. He said he was directed in the performance of the circumcision. The Court considered this submission by Counsel Archibald and could find no merit whatsoever in it.
- [41] The Court found the dictionary meaning of the word "surgery" to be "the branch of medical practice that treats injuries, diseases, and deformities by the physical removal, repair, or readjustment of organs and tissues, often involving cutting into the body. Further a surgery is a medical or dental specialty that uses professions in this field such as surgeons, physicians, dentists, veterinarians and general practitioners". The list does not include surgical technicians or physiotherapists.

- [42] Defence Counsel for Patrick Matthews repeated his arguments put forth in his No Case Submission. Dr. Dorsett said that the wording of the statute was vague. It was his contention that the particulars of the offence pointed to one particular date and time and therefore could not fall into the word “practicing”. As I have indicated previously, this argument was put forward in his No Case Submission. I disagreed with it then as I disagree with it now. The Court is of the view that the wording is clear and unambiguous and that the intent of Parliament was to guard against scenarios such as this case at bar.
- [43] Three authorities were supplied by the defendant Matthews’ Counsel for the Court’s consideration. The defendant’s Counsel also pointed the Court to **Brooker vs. Police**², a case from the New Zealand Supreme Court. The facts of the case bore no relevance to the case at bar with the singular point being found in paragraph 38. The rest of the case is a discussion on the meaning of public order and the disorderly conduct provisions of the **New Zealand 1981 Act**. In that case the defendant protested in front of the home of a police constable with a placard. The relevant statute was section 4 (1) (a) of the **Summary Offences Act 1981** which dealt with offensive behaviour or language. Section 4 stated (1) every person is liable to fine not exceeding \$1,000 who (a) in or within view of any public place behaves in an offensive or disorderly manner. The defendant also appealed saying that his conduct was protected under section 13 of the **New Zealand Bill of Rights Act 1990**. The defence has pointed me to paragraph 38 specifically and I have reproduced it in its entirety. *“A narrowed interpretation of ‘disorderly behaviour’ anchored in disruption of public order is also more consistent with the fundamental principle that criminal law must be predictable. That was a consideration which influenced the Supreme court of Canada in concluding in **R vs. Lohnes** 1992 1 SCR 167 that a public ‘disturbance’ was an overt disturbance of the use of public space, rather than the creation of emotional upset in those present. McLachlin J for the Court, took the view that the interpretation was driven by the principle of legality ‘which affirms the entitlement of every person to know in advance whether their conduct is illegal’. Imprecision in the criminal law which leaves it to judges to identify what is deserving of penalty is inconsistent with the rule of law for reasons also identified by the permanent court of international justice in **Certain Danzong Legislative Decrees with the Constitution of the free city of Danzong** (advisory opinion, 4 December 1935) at 53 (referred to by Lewin in an article on the **1981 Act: ‘Spirit of Reform’** (1986) 16 VUWLR 55; see generally Ashworth *Principles of Criminal Law* (5th edn.2006) p405):*
- [44] *‘(A) man may find himself placed on trial and punished for an act which the law did not enable him to know was an offence, because its criminality depends entirely upon the appreciation of the situation by Public Prosecutor and by the judge.’*
- [45] Similarly the Court was directed to the authority of **McEwan vs Attorney General of Guyana**³. In that case the appellants who were cross dressers were charged for loitering and wearing female attire in a public place for “an improper purpose”. One of the appellants Fraser was also charged with damaging a minibus and with larceny of a cell phone belonging to a mini bus driver. There were many issues for determination before the Caribbean Court of Justice, however the only issue which is relevant to this case was (iii) whether section 153 (1)(xlvii) offended the rule of law given its vagueness with the use of the term ‘improper purpose’, ‘male attire’ and ‘female attire’. In a very detailed and interesting analysis of the historical context of the bar against cross dressing

² (2007) NZSC 30

³ (2018) CCJ 30 (AJ)

Justice Adrian Saunders highlighted the discriminatory roots of this section of the law and its relationship to the savings law clause⁴. At paragraph 80 of the ruling Justice Saunders had this to say *“A penal statute must meet certain minimum objectives if it is to pass muster as a valid law. It must provide fair notice to citizens of the prohibited conduct⁵. It must not be vaguely worded. It must define the criminal offence with sufficient clarity that ordinary people can understand what conduct is prohibited⁶. It should be stated in ways that allow law enforcement officials to use subjective moral or value judgments as the basis for its enforcement⁷. A law should not encourage arbitrary and discriminatory enforcement”*. The Court is of the view that this case and the case at bar are to be distinguished and that the **Medical Practitioners Act** Section 12 does not fail these tests unlike the arbitrary law under consideration in the **McEwan** case.

- [46] Turning to the second count of the indictment, this count only concerns Patrick Matthews. The evidence was that the payment was made to “NSA” by Mr. Quinn. As set out in the Ruling on The No Case Submission in a case from this jurisdiction in which Dr. Dorsett appeared, my brother judge Brian Cottle had this to say in 2013 “I have no hesitation in lifting the corporate veil and considering DRB Ltd and Gilbert Gomes as one and the same person for the purposes of this case”. The name of that case is **Violet Francis and Pauline Gomes vs. AG and The Commissioner of Police**⁸. In the case at bar, these are criminal proceedings and in my view the veil must be lifted. The money was paid by the Quinn’s to “NSA”. It wasn’t rejected; it was accepted by defendant, Matthews. I find no merit in this submission made by the defendant.
- [47] The final case the Defence Counsel for Mr Matthews urged the Court to consider was R vs. Nova Scotia Pharmaceutical Society⁹. That case surrounded the issue of vagueness of a statute and men’s rea. The appellants made a motion for an order to quash the indictment on the basis that the various sections violated sections of the Canadian Charter of Rights and Freedoms and were therefor invalid. On September 5th 1990 Roscoe J. of the Nova Scotia Supreme Court, Trial Division, allowed the motion and quashed the indictment and the respondents appealed. The Court dismissed the appeal on the mens rea point but held *“In summary I find s32 (1) of the Act and its companion interpretive provision s. 32(1.1) do not violate sc.7 of the Charter on grounds of vagueness. The Court went on to observe that laws that are framed in general terms may be better suited to the achievement of their objectives, in as much as in fields governed by public policy circumstances may vary widely in time from one case to another.....the substance of these enactments remains intelligible. One must be wary of using the doctrine of vagueness to prevent or impede State action in furtherance of valid social objectives by requiring the law to achieve a degree of precision to which the subject matter does not lend itself. A delicate balance must be maintained between societal interests and individual rights. A measure of generality also*

⁴By shielding pre-independence laws from judicial scrutiny, savings clauses pose severe challenges both for courts and for constitutionalism.

⁵ See Canadian Pacific Ltd vs. R (AG intervening) (1996) 1LRC 78

⁶Kolander vs. Lawson (1983) 461 US 352 at 357

⁷ Ibid.

⁸Violet Francis and Pauline Gomes vs AG and The Commissioner of Police

⁹ (1992) 2 R.C.S.

sometimes allows for greater respect for fundamental rights since circumstances that would justify the invalidation of a more precise enactment may be accommodated through the application of a more general one". While the Court found the discussion in this case interesting it did not find it relevant as the Court has determined that the Antiguan legislation was neither vague nor unclear.

The Law

- [48] Section 12 of the **Medical Practitioners Act 2009** says: Registration and licensing a person shall not, unless the person is registered under this **Act** and holds a valid license issued under this **Act**, in Antigua and Barbuda, (a) practice medicine as a general practitioner; (b) practice medicine as a consultant or specialist in any area of medicine; (c) recover fees for practicing medicine; (d) use the title Medical Doctor or the customary title abbreviation against his or her name; or (e) sign a certificate that, by law, is required to be signed by a medical doctor;

Analysis

Joint Enterprise

- [49] Both defendants acted together in relation to the botched surgery of Giovanni Quinn. In the learned directors opening address he said that both Matthews and Joseph were jointly and severally liable for the first count on the indictment. **Jogee vs. The Queen**¹⁰ showed the restated principles governing parasitic accessory liability to be:-

- The requisite conduct element is that defendant number 2 has encouraged or assisted the commission of the original offence by defendant 1.
- With regard to the conduct element, the act of assistance or encouragement may be infinitely varied. Both association and presence are likely to be relevant evidence on the question whether assistance or encouragement was provided but neither is necessarily proof: it depends on the facts. This was set out in the case of **R vs. Coney**¹¹
- Once encouragement of assistance is proved to have been given, the prosecution does not have to go far as to prove that it had a positive effect on defendant's 1's conduct or on the outcome as held in **R vs. Calhaem**¹²
- The requisite mental element is intention to assist or encourage the commission of the crime as held in **National Coal Board vs. Gamble**¹³
- If the crime requires a particular intent, defendant 2 must intend to assist or encourage defendant 1 to act with such intent

¹⁰ (2016) UKSC 8. The Supreme Court delivered its ruling jointly with the Judicial Committee of the Privy Council, which was considering an appeal from Jamaica, *Ruddock v The Queen* UKPC 7.

¹¹ 1882) 8 QBD 534, 540, 558

¹² (1985) QB 808

¹³ (1959) 1QB 11

- With regards to the mental element, the intention to assist or encourage will often be specific to a particular offence. In other cases it may not be. It is enough that the offence committed by defendant 1 is within the range of possible offences which defendant 2 intentional assisted or encouraged him to commit, such as selling weapons to defendant1 but not caring how they are then used. **Director of Public Prosecutions for Northern Ireland vs. Maxwell**¹⁴.
- If a person is a party to a violent attack on another, without intent to assist in the causing of death or really serious harm but defendant 1 escalates the violence which results in death, defendant2 will not be guilty of murder but guilty of manslaughter
- Where the offence charged does not require mens rea, the only mens rea required of the secondary party is that he intended to encourage or assist the perpetrator to do the prohibited act, with knowledge of any facts and circumstances necessary for it to be a prohibited act see **National Coal Board vs. Gamble**¹⁵
- Liability as an accessory does not necessarily depend on there being some form of agreement between the defendants but in the case at bar there was an agreement between the parties. Peter Quinn and Shara Quinn both testified to seeing and hearing both defendants carrying out the circumcision both working in tandem with each other. This was corroborated by Dr. Gore and Dr. Williams who both testified that they saw both defendants manipulate the apparatus over the child's penis and clip on to the tip. This is the unchallenged evidence.

Good Character Direction

- [50] Both defendants are of good character and unknown to the Court. The Court therefore has to direct itself in the following terms. As is well known, the good character direction contains two limbs: the credibility direction, that a person of good character is more likely to be truthful than one of bad character; and the propensity direction, that a person of good character is less likely to commit a crime, especially one of the nature with which he/she is charged, than a person of bad character. The Caribbean Court of Justice delved into this in Court of Appeal decisions from Belize namely **Gregory August and Alwin Gabb vs. R**¹⁶.
- [51] Justice Wit had this to say in that case:-“As far as the “good character” defense is concerned, it is unnecessary for me to deal with it as I have already on substantive and genuine grounds concluded that the conviction of August is unsafe. More fundamentally, however, I am of the view that this defense is quite artificial and, frankly speaking, grossly overrated. To start with, it is a misnomer. The fact that a defendant has a clean criminal record does not say much, if anything at all, about his “character” (although this might be different with a “bad” criminal record). Surely, a

¹⁴ [1978] 1 WLR 1350

¹⁵ 1959 1QB 11

¹⁶ CCJ Appeal Nos. BZCV2015/001 and BZCR2015/002

clean criminal record alone does not mean that the defendant is credible. At best, it might be a minor indication in combination with more relevant and weighty factors. But that is as far as it goes. A clean record may be a somewhat stronger indication that the defendant does not seem to have a propensity to commit crimes or certain crimes but, depending on other more important aspects of the case, it could just mean that he was smart enough to stay out the hands of the police. I would assume that it is only in a very rare and very close case, that the defendant's clean record would make any impact on the final decision of guilt or innocence". I adopt this learning wholeheartedly and warn myself accordingly.

The Facts As the Court Found Them

- [52] The Crown witnesses who were present on 8th April, 2015 clearly put both defendants at the scene. Firstly Dr. Gore said she had known Patrick Matthews for some time but she never knew him as a medical practitioner.
- [53] Dr. Leslie Ann Walwyn testified that according to her records the defendant, Patrick Matthews was never registered to practice medicine in Antigua and Barbuda.
- [54] Dr. Resheda Williams also said *"she walked into the theatre and she observed Mr. Matthews and his assistant whom she knows as Joe, carry out a procedure. It was not a procedure she was familiar with but is a circumcision"*. She described that she saw a ring device was placed around the child's penis in order to circumcise the excess foreskin. She was adamant that neither she nor her colleagues participated in the procedure. She said she saw the young child on the operating room table and that she was about 3-5 feet away. She saw the child a week or so later. That was because Matthews was not available to do the follow up treatment. Further we have the testimony of Dr. Gore who corroborated the testimony of Dr. Williams. None of these witnesses were cross examined by either Counsel and so their evidence remains on the record unchallenged.
- [55] Mr. Peter Quinn the father of the complainant said he saw Matthews use an instrument to cut his son's penis. Instructions were given to Mr. Joseph to cut the child's penis also. The Court finds this evidence corroborates that of the two doctors and is also unchallenged. The Court finds Matthews liable principal when he gave the instruction to Joseph. Peter Quinn said he saw Mathews and Joseph place the clamp on his son's penis, both acting individually and collectively. The cuts were made by both defendants.
- [56] Further, Mrs. Shara Quinn said in her examination in chief I was introduced to Mr. Arnold Joseph by Dr. Mathews as his assistant technician". She said also "I saw Mr. Joseph but the skin of my son's penis. From where I was the operating table was about 18 feet away. During the surgery Dr. Matthews applied more anesthetic as my son woke up and was moving around Dr. Matthew sprayed Lidocaine on my son's penis after the surgery"

[57] These were the uncontroverted and unchallenged facts as the Court found them. The witnesses testified to what they observed on 8th April, 2015 and I believe what they said they saw on that day.

Lies

[58] The defendant, Matthews in his police interview said “it (the procedure) was carried out by two doctors Gore and Williams”. The Court rejects this statement and prefers the testimony of the parents Mr. and Mrs. Quinn, Dr. Gore and Dr. Williams. Both doctors indicated that they took no part in this procedure. In fact Dr. Williams said she was unfamiliar with the procedure. In examining the evidence of the two doctors, it is clear that this assertion was a falsehood, concocted to remove himself (Matthews) from the procedure. The evidence does not bear out Matthews' story and the evidence of the two female doctors is clear and unchallenged. They both testified that the procedure was carried out by Matthews with him giving instructions to Joseph on what to do and where to cut.

[59] The Court has given itself a **Lucas Direction** and has reminded itself that a defendant's lie whether made before the trial or in the course of evidence or both may be probative of guilt. A lie is only capable of supporting other evidence against Matthews if the trier of fact is sure that 1) it is shown by other evidence in the case to be a deliberate lie, 2) It relates to a significant issue 3) It was not told for a reason advanced by or on behalf of the defendant or for some other reason arising from evidence which does not point to the defendant's guilt

[60] I have directed myself that if I am sure that the above mentioned criteria are satisfied, and can the defendants lie be used as some support for the Crown's case but that the lie itself cannot prove guilt.

[61] The lie told by Matthews was *“that I did not carry out a circumcision on Giovanni Quinn. The procedure was carried out by a competent medical team comprising of 2 licenced physicians and a surgical technician with over 24 years' experience. It was supervised by doctors William and Gore”*.

[62] The Court again, rejects this piece of evidence and recognizes it as a blatant attempt to sully the character of the two female doctors who were present, by implicating them when he (Matthews) knew full well that they were mere observers. This is also corroborated by the testimony of Mr. and Mrs. Quinn.

[63] The Court warns itself that the statement made by Mr. Joseph cannot be used to prove Patrick Matthews' guilt however it does implicate him in this surgery.

The Unchallenged Evidence

[64] The evidence of the majority of the Crown's witnesses is unchallenged as neither Dr. Dorsett nor Mr. Archibald sought to cross examine them. The only witnesses that were cross examined were

the police witness and Mr. Quinn in relation to the payment that was made. Both witnesses stood up under the cross examination of Counsel Dorsett neither wavering from their evidence in chief.

Post Offence Acts

- [65] The post offence acts which the Court recognized attach to the defendant Matthews. The evidence of the witnesses Mr. and Mrs. Quinn points to the fact that this defendant began to 'dodge' them after their numerous visits to the clinic. What weight is the Court to place on this conduct? In the Court's view it points to the guilt of the defendant, Matthews and the Court must decide what weight is to be placed on the post offence acts.

Demeanour

- [66] Lord Bingham described demeanor as the sum of a witness's 'conduct, manner, bearing, behavior, delivery, inflexion'. In short, 'anything which characterizes his mode of giving evidence but does not appear in a transcript of what he actually said'. So demeanour is about the language of the body rather than words – emotion about lying that is translated into visible or audible signs. Although Lord Bingham and some other distinguished judges have cautioned against too great a dependence on demeanour in reaching assessments of credibility, most judicial decision-makers accept that it is an important element in the finding of facts and, of course, part of the point of having witnesses giving evidence orally.
- [67] In this case the Court observed the demeanour of the Crown witnesses. The Crown witnesses have come across as honest and forthright and I have had no difficulty in believing their testimonies.

Verdict

- [68] In looking at the evidence in the case at bar, the Court is guided in the learning of Lowry J in the Northern Island case of **R vs. Thompson** where he said at page 74 of the case "...it is the duty of the judge when giving judgment in a trial under the 1973 Act that ...he has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is as in a trial to instruct laymen as to every fact and to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision for others. His task is to reach conclusions and give reasons to support his view and preferably to notice ant difficult or unusual points of law in order that if there is an appeal, it may be seen how his view of the law informed his approach to the facts".
- [69] I have considered the defence put forward by both Counsel on behalf of their clients. The Court is not of the view that the legislation is vague. In my view it is perfectly clear and the intention of Parliament was clearly to prevent persons such as the two defendants from behaving in the manner which they did. This was the mischief that the legislation has sought to prevent. Arnold Joseph was neither a surgeon nor a general practitioner...that is clear. He was a surgical technician. As I have said before in paragraph 35 of this ruling the legislation is crystal clear.

[70] From the combined evidence which I accept as true, I am certain that on that on the totality of the evidence before me that the Crown in relation to both defendants and on the first count on the indictment has discharged its burden. The two defendants carried out a botched circumcision on Giovanni Quinn. When both defendants carried out this surgery none of them were clothed with a medical licence from the medical council of Antigua and Barbuda. The Crown has satisfied me and I am sure that defendant Matthews held himself out to be a physician. When the parents addressed him as Dr. Matthews he did not correct them or explain that he was the holder of a PHD in Physiotherapy and not a surgeon and therefore not qualified to carry out circumcisions. He collected the fee and carried out the procedure unlawfully.

[71] I find Patrick Matthews and Arnold Joseph guilty on the first count on the Indictment and I find Patrick Matthews guilty on the second count on the Indictment.

Part V Offences and Penalties

[72] Practicing or pretending to practice medicine unless registered and licensed (1) Subject to subsection (2), person who contravenes section 12 commits an offence and is liable on summary conviction to a fine of \$10,000.00 or to imprisonment for two years or to both, or on indictment to a fine of \$25,000.00 or to imprisonment for three years or to both.

Probation Report and Mitigation

[73] The probation officer who prepared the report for Arnold Joseph indicated that the report reflected accurately what Joseph had said to her especially in relation to his expressions of remorse for the part he played in the botched circumcision. She indicated that the contents of the report page 2, paragraph 3 were an accurate representation of what was told to her by Joseph.

Sentencing

[74] In the absence of sentencing guidelines for offences of this nature, the Court will draw on the learning of the cases of **R vs. Sargent and Desmond Baptiste vs. the Queen**¹⁷. In arriving at an appropriate sentence to be imposed the Court will consider the appropriateness in keeping with the penalty under the law. The following facts will be taken into account-

1. The principles of sentencing being deterrence, prevention, retribution and rehabilitation;
2. The nature of the offences which are not prevalent;
3. Manner of execution of the offence;

¹⁶ Saint Vincent and The Grenadines Appeal No. 8 of 2003.

4. The maximum penalty under the law;
5. The ages of both with Mathews being 56 and Joseph being 54; and
6. The fact that both are not known to the Court and are first time offenders.

- [75] This brings into focus the principles of sentencing and in particular the principles of rehabilitation and retribution. The aims of these principles to rehabilitate the offender so that he may reform his ways to become a contributing member of society and for society to feel that the offence has been adequately punished.
- [76] I will begin with Arnold Joseph. All the persons interviewed related a similar narrative about Arnold Joseph: - they all say that he is kind, giving of his time and helpful. Even Mr. Peter Quinn spoke of the remorse of Mr. Arnold Joseph speaking to the fact that he had reached out to the family on numerous occasions and offered his heartfelt remorse. In his address to the Court Peter Quinn indicated that he had fully forgiven Mr. Joseph whom he calls "Joe" and Mrs. Shara Quinn shared similar sentiments to the author of the report. This will obviously count in his favour and will indicate him as being a good candidate for rehabilitation.
- [77] For Arnold Joseph the sentence is that he will pay compensation to the complainant in the sum of \$1,000 to be paid no later than the last working day in February 2022 in default 6 months in prison. He is to return to Court with his receipts to show that he has paid and/or to request further time within which to make the payment. He has already spent 2 months in prison awaiting the completion of the Pre-sentence report and so the Court does not feel justified in imposing any further incarceration.
- [78] In relation to the defendant Patrick Matthews his offending also requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused to the young boy. In assessing seriousness, this should include the culpability of the offender. We read in the probation report prepared by Mrs. Pharaoh that this incident continues to affect the complainant resulting in feelings of embarrassment and shame. The young complainant has become anxious and overly concerned about his genitals which for a young boy entering puberty must be extremely traumatic.
- [79] The parents have disclosed that the complainant has developed a phobia of needles and doctors. The father indicated on the stand and under oath, that he and his wife would seek and continue counseling for their son and the Court encourages them to do so in order to mitigate against any long term effects of the botched procedure. The Probation Officer also noted that the incident caused the parents discomfort and stress exacerbated by the continuous 'back and forth' with Patrick Matthews and "NSA".
- [80] The report relating to this defendant is in the view of this Court problematic. He has persisted in his shifting of blame to the two female doctors who were present in the room thereby continuing to sully their professional reputation. I do not propose to go over the evidence marshaled during the trial but the evidence was clear from the parents of the child and the doctors present that they

played no role in this surgery. Upon a perusal of the principles of sentencing the main principles in my view in relation to Patrick Matthews would be retribution and deterrence. The offence is rare in Antigua and Barbuda, however a message must be sent to others who feel that it worth taking a chance to act outside of their professional expertise for a fee. It is not.

- [81] Rehabilitation is a factor which in my view is lost on Patrick Matthews as he insists in pursuing as set out above, what I would call “the blame game”. Shifting the blame to the two female doctors and to Arnold Joseph does not bode well in applying the principle of rehabilitation.
- [82] Having said that Patrick Matthews has spent two months in custody awaiting the preparation of the Pre-sentence report. Further, as pointed out by his Counsel he has a number of health challenges and is of previous good character. Taking these factors into account the Court does not feel justified in imposing a further term of imprisonment.
- [83] To reflect the role he played in this matter, Matthews will pay compensation to the complainant in the sum of \$2,000 to be paid no later than the last working day in February 2022, in default 6 months in prison.

Ann-Marie Smith
High Court Judge

By the Court

Registrar