

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2019/0038

BETWEEN: THE QUEEN

V

ANGELICA DANIEL

Appearances:-

Mr. Curtis Cornelius Crown Counsel for the Director of Public Prosecutions

Mr. Pete-Semaj McKnight for the Defendant

2020: February 12th,

Ruling On No Case to Answer Submission

- [1] The Indictment in this matter was filed on 23rd July 2019 with the incident occurring on 1st May 2017. The Indictment carries two counts. The first count is causing grievous bodily harm with intent and the second count is inflicting grievous bodily harm.
- [2] The trial of the defendant commenced on 10th of February 2020 with the Crown calling a total of four witnesses. The Crown closed its case at 1145 am on 11th February 2020.
- [3] Defence Counsel Mr. McKnight made a No Case Submission in the absence of the Jury and this ruling relates to said submission.

The Background

- [4] The allegation against the defendant Angelica Daniel is that on 1st May 2017, she attacked the complainant Jessica O'Bryan with a stick causing and intending her grievous bodily harm. The

complainant attended at the St Johns police station and a medical facility where she received treatment.

- [5] There was a history between the parties as the defendant was dating the ex-boyfriend of the complainant and had attended at the complainant's home earlier that day and threw a stone inside her bedroom.
- [6] Her boyfriend was present at the home of the complainant at the time. The defendant's case revealed from the cross examination of the Crown witnesses was one of self defence and that the complainant had kicked the defendant during the earlier incident at her (the complainant's) home.

The Evidence

- [7] As stated above, the main evidence came from the complainant Jessica O'Brian. It was her testimony that on the 1st May 2017 the defendant attended at her home and threw a stone into her bedroom. It was her testimony that she "used her feet to remove" the defendant from her room. She denied under cross examination to kicking the defendant out of her apartment.
- [8] Later that day at about 6pm she testified to being under the big Oak tree in town with some friends when she was alerted to the approach of the defendant and her cousin Latisha.
- [9] It was her testimony that the defendant had a stick in her hand and so armed herself with a stick also. She testified that: - *"a man called me and while I turned my back Angelica hit me on my arm causing it to go dead. A fight ensued with the defendant, her cousin and me. She kicked me in my side and said keep from my man now. I went to the station and made a report and they gave me a doctor paper and I went to the hospital and they send me to take an X-ray. I had a fractured humor bone and dislocated shoulder"*. She indicated that the doctors "put it (her shoulder) back in place".
- [10] The defendant and her cousin left the complainant on the side of the road after the attack.
- [11] Delroy Francis was called as a witness and it was his testimony that he saw the defendant and her cousin attack the complainant. He said *"I saw Anjelica rush up on Jessica and hit her with a stick and they started to fight"*. He testified that he heard Angelica say *"you kick me down by the house"*.
- [12] This witness however was not in a position to say where exactly the complainant received the blow with the stick, nor was he able to say anything about the force used bearing in mind that the charges the defendant faced involved causing and inflicting grievous bodily harm. This aspect of the case will be examined further on in this decision.

The Law

- [13] The test for determining whether a No Case Submission should be upheld is laid down in the case of **R v. Galbraith**¹. It was determined in that case that:-

*“If there is no evidence that the crime alleged has been committed by the defendant...
The judge will of course stop the case.”*

Failure on the part of the Crown to lead any evidence that the defendant committed the offence will create an obligation on the Judge to bring an end to the proceedings. It is however, on the second limb of the test in Galbraith that the issue becomes far more complicated. The Court in that case determined that the challenge 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.”** (my emphasis).

In that case Lord Lane determined that:-

“(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 the strength or weakness depends on the view to be taken of the witness’s reliability, or other matters which are generally speaking to be taken 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.”

The Submission

- [14] The submission made by Counsel McKnight was grounded in the second limb of **Galbraith** subsequently highlighting the weaknesses in the Crown’s case.
- [16] He commenced with the testimony of the complainant Ms O’Brian. Counsel pointed out that it was her testimony that she saw the defendant with a stick in her hand and she armed herself also with a stick. It was her evidence that she was struck with a stick by the defendant causing her hand (arm) to go dead. She indicated that after the fight she was in pain. Her testimony was that *“I held her and Angelica held my hair and we fell to the ground, her cousin Letisha punched me in my face and Angelica also punched me in my face”*. It was put to her under cross-examination that she was the one who struck the first blow against the defendant and this was roundly denied.
- [17] Counsel also pointed out several inconsistencies in the testimony of the Crown’s witnesses namely Mr. Delroy Francis. As mentioned above in paragraph 11, this witness failed to pinpoint exactly where the complainant had been hit. His testimony was ***“I saw Angelica rush up on Jessica and hit her with a stick and they started to fight. I heard Angelica say “you kick me down by the***

¹ 1981 2 AER 1060

house". The defendant and Jessica fell to the ground and Angelica's cousin came and punched Jessica to her face and after that they went away and left her on the road". There was no mention of him seeing the defendant hit the complainant on her arm or shoulder.

- [18] Another issue which in the Court's view sullied the investigation into this matter was the fact that the witness Delroy Francis was privy to the defendant's statement prior to making his. This was issue was never explored or clarified by Crown Counsel under re-examination. It was also pointed out that no photographs of the injuries were taken by the police.
- [18] Much was made of the fact that the complainant was out and about one month after the attack. A photograph of the complainant was shown to the Jury showing the complainant at a 'LOL' fete with a drink in her hand minus the arm sling. The Court placed very little importance on this fact.
- [19] The Prosecution countered the submissions of Defence Counsel relying on 2 (b) of the **Galbraith** case.
- [20] Mr. Cornelius pointed out that the complainant had testified to being hit and to receiving serious injuries and also to the fact that Mr. Francis was present and observed the attack. However Mr. Francis could not corroborate the seriousness of the complainant's injuries and there was no X-ray report from the hospital even though the complainant said an X-ray was taken and that she was forced to wear a sling.
- [21] She also said that she had to be "put to sleep" for the medical team to put her shoulder back in place, however there was nothing offered to substantiate this testimony. The complainant also said she was in pain after the incident and was on pain killers; and again no prescription was tendered into evidence.

Conclusion

- [22] The question for determination therefore, is whether or not the evidence presented by the prosecution, taken at its highest, is such that the Jury in this particular case could not properly convict on it.
- [23] Throughout the trial, the troublesome issue in the Court's view has been the lack of medical evidence to substantiate the very serious injuries that the Crown says the complainant sustained. The Crown knew at the commencement of the case that the doctor who examined the complainant was no longer serving within the Jurisdiction of Antigua and Barbuda. However, they decided to proceed with the trial even though they had this knowledge. The Court is unaware of any efforts made to locate the doctor or to take the evidence via video link.
- [24] Where the seriousness of an injury is questionable or unsubstantiated by medical evidence it is the view of this Court that a trial judge may withdraw a charge of grievous bodily harm from the jury². On the other hand expert opinion evidence may only be received on a subject calling for expertise,

² B58, Blackstone's Criminal Practice, 2014, page 256

which a lay person such as a juror could not be expected to possess to a degree sufficient to understand the evidence given in the case unaided. So in this case without a medical report or testimony from the doctor who examined the complainant could the jury be expected to find the injuries proved just on the 'say so' of the complainant? This Court is of the view that it could not.

- [27] The complainant testified to having a fractured humerus bone and a dislocated shoulder; however this is not sufficient to sustain and prove the charge against the defendant. This is not an allegation of assault or common assault. To prove this charge medical evidence of some sort is imperative.
- [25] The Court is forced to wonder why in these circumstances the Crown did not consider a lesser charge and engage Defence Counsel in a conversation on that basis. It is clear from Crown Counsel's submission that they hoped to prove their case on the testimony of the complainant alone, as Mr. Francis could not assist in substantiating the crucial fact of the complainant being grievously harmed.
- [26] This issue was explored in the Belize Court of Appeal case **Enrique Montejo vs The Queen**³ where the complainant was involved in a motor vehicle accident and was hospitalized for 12 days and which I would respectfully distinguish from the case at bar. The complainant in the present case was not hospitalized although her evidence was that she had to be put to sleep in order for her shoulder to be put back into place. In the Belizean case the definition of "harm" in the Belizean Criminal code made it easier to establish that the complainant had indeed suffered bodily harm without the benefit of a medical report.
- [27] The Submission of No Case to Answer on both Counts must therefore succeed for the reasons set out in the above paragraphs. The Jury will be directed to formally enter Not Guilty verdicts on both Counts. This is the ruling of the Court.

Justice Ann-Marie Smith
Criminal Judge

By the Court

Registrar

³ Criminal Appeal No 4 of 2011

