

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. BVIHCR 2017/0016

BETWEEN:

THE QUEEN

and

**REY RODRIGUEZ
ANAND LETTSOME**

Appearances: Mr. O'Neil Simpson, Senior Crown Counsel, for the Crown
Mr. Stephen Daniels for the Defendants

2020: January 24
February 17

RULING – MOTION TO QUASH INDICTMENT

- [1] **WARD, J:** This is the court's ruling on the defendants' motion to quash the indictment on the grounds of insufficiency of evidence. The issue is whether this court has the jurisdiction on such a motion to examine the depositions to determine whether the evidence is sufficient to establish the charges on the indictment.
- [2] Learned Counsel for the Defendants, Mr. Stephen Daniels, submitted that a Court has the power to quash an Indictment or, alternatively, counts in an indictment due to insufficiency of evidence, notwithstanding the provisions of the Indictments Act Cap.32. For this proposition, counsel relied extensively on **The State v Brian Gayapersad**¹ a first instance judgment from the Trinidad and Tobago High Court which was followed by Persaud, J in **The Queen v Pamphill Prevost et al**². The learned trial judge in the **Gayapersad** case, after reviewing a number of authorities held that a

¹ No. 69/2008

² BVIHCR No. 9 of 2016

court had such jurisdiction. He examined the depositions and quashed the indictment for insufficiency of evidence. In particular, learned counsel for the defendants relies on the following passages in **Gayapersad** in support of its contention:

"35. After a full review of the relevant authorities, it is clear that not only does this Court have the power to quash indictments for insufficiency of evidence in appropriate cases, but also that this power had now become a well established and frequently utilized device in the wider machinery of discretionary powers available to the Court, both to preserve and protect the integrity of it's (Sic) processes. I regrettably and respectfully therefore, do not share skepticism of Lord Hill (Sic) in Neill, when he expressed an unwillingness to go further than to doubt whether, in a case where it is obvious that the committal materials disclose no offence, (I would also add cases where the committal was based on insufficient or inadmissible evidence), this court is powerless to protect the defendant from the stress, labour and expense (not to speak of the possible loss of liberty) entailed in having to wait until the end of the prosecution's case at the trial before the obvious conclusion is drawn. I think the cautious tone in which His Lordship's dicta was couched, was merely a reflection of the prevailing skepticism at the time regarding the potential for Courts to be, as he put it, "submerged by a flood of worthless applications from defendants anxious to postpone the evil day." What Lord Hill (Sic) appears to have been saying in that case was that, where the Court is confronted with a situation where it is patently obvious that the committal materials either disclose no offence, or that the indictment which followed it was based on insufficient and inadmissible evidence, it would be a nonsense for this court to consider itself impotent to address and indeed, redress the grave wrong that is likely to befall the Accused. In my view, not only does this Court undoubtedly have such a power, but it should, where appropriate, be robustly and decisively exercised.

36. In so acting this Court would not, and indeed, should not, be seen as doing or affording an Accused person any favours, since it would merely be a manifestation of the Court exercising its overall supervisory jurisdiction to prevent an abuse of its process and to ensure that the Accused is afforded the fair trial to which he is undoubtedly entitled. Neither, I suggest, should this Court be seen as chiding or hamstringing the prosecuting entity in the performance of it's (Sic) duties, since the result of a successful application to quash an indictment that was produced as a consequence of insufficient, inadmissible or no evidence- is merely that the Accused may not be tried on that particular indictment or the count in respect of which the application succeeds. He is not thereby acquitted and as such further proceedings may be brought against him for the same offence. It should be noted however, that the quashing of the indictment or relevant count thereof, has the effect of exhausting the committal proceedings on which it was founded, and as such, in order to have the Accused tried again for the same offence, the prosecution will either have to start the process all over, by instituting fresh committal proceedings against him or apply for a voluntary bill of indictment- both matters which the Director of Public Prosecution may well wish to give due consideration in any given case.

37. Additionally, it seems perfectly logical and consistent indeed with common sense that, in cases of this nature, as well as other cases where the Court is endowed with a particular jurisdiction, there must of necessity, also be such other powers as are necessary to enable it to act effectively within such jurisdiction. These are not merely implied powers but rather are powers which are inherent in the Court's plenitude of jurisdiction. In the instant case, I

am respectfully of the view that the power which this Court inherently possesses to examine the evidence for the State as foreshadowed in the depositions exists not only to suppress any abuses of this Court's process but also to safeguard an accused person from oppression or prejudice.

38. The question which arises however, in the light of this, is to what extent, and to what lengths, does this inherent discretion and power of the court go? The answer must to my mind be, as stated by Lord Cooke of Thornton, which is that this discretion to quash committal proceedings should only be exercised where there has been a really substantial error in either the committal proceedings or the preferment of the indictment itself, leading to manifest injustice because it has substantial adverse consequences for the Accused."

- [3] On behalf of the Crown, learned Senior Crown Counsel, Mr. O'Neil Simpson, placed reliance principally on **R. v. Chairman, County of London Quarter Sessions. Ex. P. Downes**³ to advance the proposition that a court does not have the jurisdiction to examine the depositions where the indictment is regular on its face. He submitted that this position is consistent with Section 4(2) of the Indictments Act: Cap 32: of the Revised Edition of the Laws of the Virgin Islands 1991 which provides:

"Notwithstanding any rule of law or practice, an indictment shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Act."

- [4] After the oral hearing was concluded, the Court subsequently drew the parties' attention to the Trinidad & Tobago High Court case of **The State v Troy Sabeeny and Anthony Chow**⁴ in which Lucky, J discussed the **Gayapersad** ruling and referred to the judgment of Browne-Antoine, J in **The State v Walter Borneo & Keron Hamilton a/c "Bam"**⁵ in which Justice Browne-Antoine subjected the ruling in **Gayapersad** to rigorous scrutiny before declining to follow its reasoning. The Court invited and received supplemental submissions from the parties in light of these cases.

Law and analysis

- [5] Although the **Gayapersad** case is in no way binding on this court, out of deference for the heavy reliance placed on it by the defendants, I consider it right that I should subject it to close analysis. I propose to adopt the approach taken by Browne-Antoine, J in **Borneo's** case which was to

³ [1954] 1 Q.B. 1

⁴ HCA

⁵ Cr. No.42 of 2008 (Transcript)

examine the authorities cited by the Judge in **Gayapersad** in order to assess whether they rationally led to the conclusion reached therein.

[6] The approach taken by the learned judge in **Gayapersad's** case was first to cite the conventional understanding of a court's power to quash an indictment as expressed at paragraph D11.96 from **Blackstone 2009**, namely:

- (a) Where the indictment is bad on its face (e.g. for duplicity or because the particulars of a count do not disclose an offence known to law;
- (b) Where the indictment, or a count thereof, has been preferred otherwise than in accordance with the relevant statutory provisions;
- (c) Where the indictment contains a count for an offence in respect of which the accused was not committed for trial and the committal documents do not disclose a case to answer for that offence.

[7] The learned judge cited **R v John McKinsie Jones⁶** and **R v Chairman, County of London Quarter Sessions, Ex Parte Downes⁷** as further authority for the respective propositions that:

"Upon a motion to quash a count made before arraignment, the judge gives his ruling upon the form and matter on the face of the indictment. Only in one circumstance can the judge look beyond the indictment to the depositions or statements. That is when the motion to quash is on the ground that the offence is not disclosed by the depositions or statements, and there has been no committal for trial of that offence." (**Jones**) And that:

"Sessions had no power to quash the indictment because it was anticipated that the evidence would not support the charges. The only ground on which a court could examine depositions before arraignment was to see whether, if a count was included for which there had not been a committal, the depositions or examinations taken before a justice in the presence of the accused disclosed that offence." (**Ex p Downes**)

[8] Thereafter, the learned judge went on to review the evolving practice in Trinidad and Tobago by reference to a number of first instance judgments of the Trinidad & Tobago High Court where the courts examined the depositions on a motion to quash the indictment. Taking first the case of **The State v Desmond Shaw⁸**, it is evident from the summary of the case provided at paragraph 24 of the **Gayapersad** case that the circumstances on **Shaw** fell squarely within the third category of case identified in **Blackstone's** where a judge could examine the depositions. In **Shaw**, the

⁶ (1974) 59 Cr. App. R 120

⁷ [1954] 1 Q.B. 1

⁸ HCA No.134 of 1996

accused had been committed for trial on a charge of indecent assault but the DPP had filed an indictment against him for rape. The motion to quash the indictment was premised on the grounds that the offence for which the accused had been indicted was not disclosed on the deposition. In determining that he could examine the depositions, the learned trial judge, John, J, made it plain that he was basing his jurisdiction to examine the depositions on the third limb. He stated:

“In this case the Magistrate committed the accused on a charge of indecent assault but when the time came to indict the Director of Public Prosecutions as he was entitled to do (so long as it was disclosed in the depositions) indicted him for an offence other than that for which he had been committed to stand trial. It follows therefore that in this case the Court is entitled to look at the depositions.”

[9] **Shaw’s** case is plainly distinguishable and does not advance the proposition contended for by the defendants.

[10] While I have not seen the judgment in **The State v Sooparee and Khan**⁹ the court in **Borneo** did review this case and distinguished it on the basis that it involved a defective committal. I have reviewed the case of **The State v Francis John**¹⁰. It seems that the judge there proceeded on the assumption that the court had the jurisdiction to examine the depositions without reviewing or citing any authorities. It did not discuss or even mention the learning from **Blackstone**, or the cases of **Jones** and **Ex parte Downes**. While I have not been able to access the judgments in **Wright**, **Hannibal & Mitchell v The State**¹¹ and **The State v Seenath Jaboolal**¹² on the Trinidad & Tobago Judiciary’s website, I note that the court in **Borneo** reviewed each of them and stated that none of them cited any authority on the point. I have no reason to doubt this statement. Respectfully, therefore, these Trinidad & Tobago High Court cases offer no assistance whatsoever on the issue currently under consideration as it is impossible to discern the route by which they arrived at their determination to examine the depositions.

[11] The learned judge in **Gayapersad** next considered two House of Lords cases: **Neill v North Antrim Magistrates’ Court**¹³, and **R v Bedwelty JJ, ex p Williams**¹⁴. He cited dicta in both cases which he felt supported the view that on a motion to quash an indictment on grounds of

⁹ HCA No. 231 of 1997

¹⁰ HCA No. 54 of 2001

¹¹ HCA No. 33 of 2003

¹² HCA No. 96 of 1996

¹³ [1992] 1 W.L.R. 1220 HL

¹⁴ [1996] 3 WLR 361 HL

insufficiency of evidence a trial judge could examine the depositions. The learned judge purported to glean from these cases that the test to be applied in determining whether to exercise this discretion was whether there had been a really substantial error in the committal proceedings, or the preferment of the indictment itself leading to a manifest injustice because it had substantial adverse consequences for the accused. Respectfully, as will be discussed presently, Lord Mustill propounded this test only in respect of cases where the ground for judicial review is that the committal is based on inadmissible evidence. Lord Cooke made this plain in **Ex Parte Williams**. (See p.237) Both cases merit closer consideration.

[12] **Neill's Case** was an appeal from Judicial Review Proceedings. The certified question before the House was whether it is open to a Divisional Court of the Queen's Bench Division by order of certiorari to quash a committal of an accused for trial under article 37(2) of the Magistrate's Courts (Northern Ireland) Order 1981 where the evidence which the magistrates' court found sufficient to put the accused upon trial by jury was inadmissible. The basis for the court's decision to quash was expressly stated to be that in the special circumstances of that case the admission of inadmissible evidence was an irregularity that had substantial adverse consequences for the applicant and called for the Court's intervention by way of certiorari. On the facts of that case, since the magistrate's decision to commit the appellant had been influenced by evidence which was inadmissible and not tested by cross examination in accordance with art 34(2) of the 1981 order, its admission constituted a material procedural irregularity as a result of which the appellant had suffered real prejudice which had substantial adverse consequences for him. In those circumstances the committal was quashed.

[13] The question whether certiorari would lie if the grounds for judicial review were simply insufficiency of evidence was answered by Lord Mustill in the following way:

"It is doubtful whether, in a case where it is obvious that the committal materials disclose no offence, the court is powerless to protect the defendant from the stress, labour and expense (not to speak of possible loss of liberty) entailed by having to wait until the end of the prosecution's case at the trial before the obvious conclusion is drawn."

[14] This guarded answer meant that the question was left open by the House of Lord's in **Neill** as Lord Cooke acknowledged in **R. v. Bedwellty JJ** when he stated:

"On analysis Lord Mustill's speech in Neill's case will be found to differentiate two classes of case: first, the reception by examining justices of important evidence which influences the committal but is in truth inadmissible; secondly, a simple insufficiency of evidence to

justify the committal. The speech leaves open the law as to the second class of case.”(p.226).

- [15] However doubtful Lord Mustill considered the position to be where the question arose in judicial review proceedings, he was unambiguous about the position in England regarding quashing an indictment on grounds of insufficiency of evidence when he stated:

“...The power to quash an indictment is not currently exercised on the grounds of insufficiency of evidence.”

- [16] I turn now to examine **R. v. Bedwellty JJ. Ex p. Williams [1997] A.C. 225**. This was also an appeal from the decision of the Divisional Court of the Queen's Bench Division dismissing the applicant's motion for an order of certiorari to quash the decision of the Bedwellty Justices to commit the applicant to stand trial at the assizes on a charge of conspiracy to pervert the court of justice.

- [17] The certified question for their Lordships' consideration was whether it was open to the Divisional Court of the Queen's Bench Division by order of certiorari to quash a committal for trial under section 6(1) of the Magistrate's Court Act 1980 where there was (a) misperception of inadmissible hearsay evidence by the magistrates and (b) no other evidence capable of being deemed sufficient to put the accused on trial by jury. If so, on what principles should the discretion to order certiorari be exercised.

- [18] Having acknowledged that **Neill** had left open the question whether certiorari was available to quash a committal on grounds of insufficiency of evidence Lorde Cook ventured this opinion:

“My Lords, in my respectful opinion, it would be both illogical and unsatisfactory to hold that the law of judicial review should distinguish in principle between a committal based solely on inadmissible evidence and a committal based solely on evidence not reasonably capable of supporting it. In each case there is in truth no evidence to support the committal and the committal is, therefore open to quashing on judicial review.”(p.237)

- [19] The learned trial judge in **Gayapersad's** case fastened upon this dicta and treated it as equally applicable on a motion to quash an indictment for insufficiency of evidence. His conclusion on this issue appears at paragraph 34 where he states:

“Although the instant application concerns not the quashing of the committal proceedings before the Magistrate's Court but rather the question of whether the indictment on which the Accused is charged before the High Court should be allowed to stand, I am of the view

that the principles enunciated by Lord Cooke of Thornton in *exp p Williams* are equally applicable to the proceedings before this court where there is an application to quash an indictment on the same basis."

- [20] To my mind, however, it is very important to have the full context of what Lord Cooke said and to consider the guidance offered by him about the way such the discretion should be exercised in practice on a judicial review application. Lord Cooke adverted to the distinction between the two classes of case and counselled:

"Nonetheless, there is a practical distinction. If justices have been of the opinion on admissible evidence that there is sufficient to put the accused on trial, I suggest that normally on a judicial review application, a court will be rightly slow to interfere at that stage. The question will more appropriately be dealt with on a no-case submission at the close of the prosecution's evidence, when the worth of that evidence can be better assessed by a judge who has heard it or even on a pretrial application grounded on abuse of process. In practice, successful judicial review proceedings are likely to be rare in both classes of case and especially rare in the second."

- [21] I understand Lord Cooke to be saying that where committal magistrates, acting on admissible evidence, commit the accused for trial and a judicial review challenge is brought on grounds of insufficiency of evidence, it would be especially rare for the court to exercise its discretion to quash the committal; the remedy lies in a no-case submission at the close of the prosecution's evidence or a pre-trial application based on abuse of process. Interestingly, the current edition of **Blackstone's**, in discussing the limits of abuse of process applications in criminal cases cites **Ex Parte Downes** and adds to the circumstances listed therein, cases where it would amount to an abuse of process to continue the prosecution. As to what constitutes abuse of process, the learning at paragraph D3.67 is instructive:

"In *Beckford* [1996] 1 Cr App R 94, Neill LJ said (at p. 100) that the 'constitutional principle which underlies the jurisdiction to stay proceedings is that the courts have the power and the duty to protect the law by protecting its own purposes and functions'. His lordship quoted the words of Lord Devlin in *Connelly v DPP* [1964] AC 1254 at p. 1354, that the courts have 'an inescapable duty to secure fair treatment for those who come or are brought before them'. In *Maxwell* [2010] UKSC 48, [2011] 1 WLR 1837 (at [13]), cited in *Warren v A-G for Jersey* [2011] UKPC 10, [2012] 1 AC 22 (at [22]), Lord Dyson summarised the two categories of case in which the court has the power to stay proceedings for abuse of process:

It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay

the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42 (at 74G)), or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in *Latif* [1996] 1 WLR 104 (at 112F)).

[22] Clearly, then the scope for arguing abuse of process is closely circumscribed.

[23] In all the circumstances, much like the learned Brown-Antoine, J in **Borneo's** case I am unable to align myself with the conclusions reached in the **Gayapersad** case having regard to my interpretation of the authorities cited therein. I am unable to rely on the few first instance judgments cited in **Gayapersads'** case to conclude, as did the judge there, that "*...this power had now become a well established and frequently utilized device in the wider machinery of discretionary powers available to the Court, both to preserve and protect the integrity of its processes.*"

[24] What then is the current state of the law as to the circumstances when a motion to quash an indictment may properly be brought and, more particularly, whether, when such a motion is brought on grounds of insufficiency of evidence, a court is entitled to examine the depositions to determine the issue.

[25] The starting point is **Ex.p. Downes** where Lord Goddard, in delivering the judgment said:

"I know of no power in the court to quash an indictment because it is anticipated that the evidence will not support the charge. The only ground on which the court can examine the depositions before arraignment is to see whether, if a count is included for which there has been no committal, the depositions or examinations taken before a justice in the presence of the accused disclosed that offence. Accordingly, the course taken by sessions in this case was not warranted by law; it amounts to saying that the court has satisfied itself, not on evidence given before the court but on depositions taken elsewhere that the accused has a defence". (at p.6)

[26] **Ex p. Downes** was applied in **R. v. Inner London Quarter Sessions, Ex parte Metropolitan Police Commissioner**¹⁵. In that case, the defendant had been committed for trial. On arraignment his counsel orally entered a plea of demurrer on the grounds that the depositions were insufficient in law to support it. The prosecution submitted that the plea should be in writing and

¹⁵ [1970] 2 Q.B. 80

that in considering the plea the depositions could not be examined. The deputy chairman rejected both submissions and, having examined the depositions, upheld the demurrer and quashed the indictment. On appeal, the court was required to consider whether the deputy chairman could examine the depositions on a demurrer. The court held:

"The question now before the court has already been fully considered and determined by this court in *Reg v London (County) Quarter Sessions, Ex parte Downes* [1954] 1 Q.B.1. In that case, before arraignment, counsel for the defendants moved to quash the indictment on the ground that the evidence for the prosecution as disclosed by the depositions was insufficient to justify a conviction on any count. The chairman quashed the indictments on that ground. It was held that a court was not entitled to quash an indictment on that ground, mandamus will lie directing the court to try the indictment."

[27] The court accordingly held that the deputy chairman should not have decided the demurrer by examining the depositions, but should have tried the case, unless the prosecution offered no evidence.

[28] See also **Regina v McDonnell**¹⁶ where the court also followed **Ex p Downes** and declined to examine depositions to see whether they supported particular charges. Nield, J stated:

"I take the view that I am not permitted to look at these depositions and say: "Well, I do not think they are going to support these counts." This could not conceivably be the time at which to express any view, and I regard myself as unable and not entitled to do that which I am asked to do..."

[29] The current position is summed up in the 2020 edition of **Blackstone's Criminal Practice** at paragraph D11. 110:

"Circumstances in which to Bring a Motion

A motion to quash may be brought in any of three circumstances: (a) where the indictment is bad on its face (e.g. for duplicity or because the particulars of a count do not disclose an offence known to law, as in *Yates* (1872) 12 Cox CC 233). (b) Where the indictment (or a count thereof) has been preferred otherwise than in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act 1933, s. 2. Such an indictment must be quashed because it is preferred without authority (*Lombardi* [1989] 1 All ER 992). (c) Where the indictment contains a count for an offence in respect of which the accused was not sent for trial and the material served under the regulations for the service of the prosecution case after he has been sent does not disclose a case to answer for that offence (*Jones* (1974) 59 Cr App R 120, a case decided in relation to committal documents)."

¹⁶ [1966] 1 Q.B. 233

- [30] The rational for relaxing the rule against going behind the deposition as it relates to the situation in (c) above is explained in earlier editions of **Blackstone's**:

"Where, however, the indictment contains a count on which the accused was not committed the normal rule has to be relaxed in respect of that count, because otherwise the accused would be put on trial for the offence without any prior opportunity of arguing that the evidence is insufficient".

- [31] **Archbold's Criminal, Pleading, Evidence and Practice 2015 edn**, under the rubric "Limited Discretionary Power To Prevent Prosecution Proceeding," states the position at paragraph 4-74:

"Once an indictment is before the court the accused must be arraigned and tried unless (a) motion to quash it is held defective in substance or form; (b) matter in bar is pleaded and the plea is tried or confirmed in favour of the accused; (c) a *nolle prosequi* is entered by the Attorney-General which cannot be done before the indictment is found; or (d) the indictment discloses an offence which a particular court has no jurisdiction to try, *per* Lord Goddard C.J. in *v Chairman of London County Sessions, ex.p. Downes* [1954] 1Q.B.1...

- i. Where a prosecution is properly brought, a judge has no power to prevent the prosecution from presenting their evidence on the basis that he considers it unlikely there will be a conviction: *Att-Gen's Reference (No.2 of 2000)* [2001] Cr.App.R. 36, CA..."

- [32] **Halsbury's Laws of England** states the position at paragraph 359:

"A motion to quash an indictment because of a defect which cannot be amended may be made at any time before verdict, but the proper time to make the motion is before the plea is entered. When the indictment is for treason the court will not entertain a motion to quash an indictment before the plea is entered, but the motion may be made at the close of the case for the prosecution; or the court may leave the defendant to his remedy by demurrer or motion in arrest of judgment. There is no power to quash an indictment merely because it is expected that the evidence will not support the charge."

- [33] **Ex parte Downes** is cited as authority for the proposition contained in the last sentence of the extract from **Halsbury's**.

- [34] In my view, the current statement of the applicable principle emanating from these highly regarded academic sources accords with the learning in the cases of **Ex parte Downes**, **Jones**, **McDonnell**, and **Ex p Metropolitan Police Commissioner**. Nothing said by Lord Mustill in **Neill** or by Lord Cooke in **Ex parte Williams** can be taken to have eroded these settled principles. Indeed in none of these passages in the academic sources dealing with the circumstances in which a motion to quash an indictment may be brought is there any mention of, or footnote reference to, **Neill** or **Ex parte Williams**. This is hardly surprising given that these cases were not concerned with the issue engaging the case at bar. On the other hand, this was the central issue in **Ex p. Downes** and

formed the ratio of the case. The same is true of **Ex Parte Metropolitan Police Commissioner and McDonnell**.

Conclusion

- [35] In the case at bar, learned counsel for the defendants has made it plain he is not taking issue with the form or content of the indictment. In light of this, and contrary to the Crown's submissions, I do not see that section 4(2) of the Indictments Act is engaged at all. Further, it is not contended that the indictment is bad on its face (e.g. for duplicity or because the particulars of a count do not disclose an offence known to law; nor is it contended that the indictment, or the count therein, has been preferred otherwise than in accordance with the relevant statutory provisions; nor is it said that the indictment contains a count for an offence in respect of which the Defendants were not committed for trial and the committal documents do not disclose a case to answer for that offence.
- [36] The defendants seek to have the indictment quashed solely on the basis of insufficiency of evidence. In order to determine this, the court would have to examine the depositions. In light of my analysis of the authorities discussed above and based on my understanding of the current state of the law, this is not a course upon which I may properly embark at this stage. Throughout the years the facility of a no case submission has proved an effective safeguard for protecting defendants from the risk of injustice and miscarriages of justice. It remains an available option to the defendants in this case should they see fit to make such a submission at the close of the prosecution's case. They are not prejudiced by having to wait till then because the matter is trial ready and had been previously fixed for trial. Additionally, the defendants are on bail.
- [37] For the all of the reasons outlined above, I decline the invitation to examine the depositions and dismiss the motion to quash the indictment.

Trevor M. Ward, QC
High Court Judge

By the Court


Registrar