

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

**SAINT LUCIA
CASE NO. SLUCHRD2013/1094**

BETWEEN

THE QUEEN

VS.

ANN MARIE BENOIT

Appearances

*Mr. Daarsreen Greene for the Defendant
Mrs. T. Calderon, Crown Counsel for the Prosecution*

2016: April 12, May 17

Criminal Law – Sufficiency Hearing – Aiding and Abetting Charge – Consideration of prima facie evidence to ground actus reus and mens rea - Admissibility of evidence – Documentary evidence – Auditors' report – Section 55(4) of St. Lucia's Evidence Act, Cap 4.15 - Whether auditor's report prepared admissible at Sufficiency Hearing – legitimate inferences to be drawn from witness statements - Whether sufficient evidence to ground a committal

An audit conducted as a result of allegations of misappropriation of State funds at a State Agency is an 'investigation' within the meaning of section 55(4) of the Evidence Act, Cap 4.15 of the 2008 Revised Edition of the Laws of St. Lucia. A report which records the findings of such an audit is caught by section 55(4) and accordingly inadmissible at a sufficiency hearing into a criminal charge.

Section 55(4) of the Evidence Act, Cap. 4.15 of the 2008 Revised Laws of St. Lucia explained.

At a sufficiency hearing pursuant to the Criminal Procedure Rules Cap. 3.01 of the 2008 Revised Laws of St. Lucia, the court is to consider whether there is a prima facie case of an offence. The test is whether the prosecution evidence taken at its highest is such that a jury properly directed could properly convict of that offence. Where there is no direct evidence providing prima facie evidence of the essential elements of the offence at a sufficiency hearing, the court is duty bound

to consider whether there are legitimate inferences which can be drawn from the evidence to ground a committal.

Applied: Rule 9.3 of the Criminal Procedure Rules Cap. 3:01 of the 2008 Revised Laws of St. Lucia; Galbraith [1981] 1 WLR 1039

Considered: National Coal Board v Gamble [1959] 1 QB 11; Johnson v Youden [1950] 1 KB 544; Neill v North Antrim Magistrates' Court ex parte Boyce (1984) 79 Cr App R 132; R v Ricketts and another - [2011] All ER (D) 125 (Apr); R v Watt (James) & ors [2011] EWCA Crim 1325).

DECISION

- [1] **RAMDHANI J. (Ag.)** On the 12th April 2016, after considering an application made by Mr. Greene for the defendant, I gave an oral ruling dismissing the charge against the defendant and discharging her. At the time I promised to reduce my decision into writing. This fulfills that promise.
- [2] The defendant was charged and brought before the court for sufficiency hearing for the offence of aiding and abetting another to obtain property by deception contrary to section 62(1) of the Criminal Code Cap. 3:01 of the 2008 Revised Laws of St. Lucia.
- [3] At the sufficiency hearing counsel for the defendant asked the court to deem as inadmissible into evidence, an auditors' report which had forms part of the committal bundle. Counsel further submitted that if the court agreed that this document is inadmissible, it ought to be struck from the record. He submitted that in those circumstances there was no other evidence capable of sustaining the charge and that accordingly the charge should be dismissed.
- [4] After hearing from the Crown and considering the matter, the Court has agreed with counsel on both points and rule that the charge should be dismissed for the following reasons.

The Evidence Presented at the Sufficiency Hearing

- [5] The defendant at all material times was an employee of the Bordelais Correctional Facility. The allegation is that between December 2011 and December 2012, the defendant assisted another prison employee, one Mr. Cuthbert who is now deceased, to obtain property by deception. According to the police statement made by one Francois Henry which is contained in the committal bundle, he was contacted by the deceased to supply vegetable seedlings to the prison on a regular basis. He would sell the seedlings and produce an invoice for the Prison. He would be called by the deceased when the cheques in payment were ready. The deceased convinced him to accept cheques for greater amounts than which he was entitled to and to pay to him, the deceased, the difference.
- [6] In his police statement this witness introduces the defendant to the crime when he said that: "Every time I collected a cheque and cashed it, I would hand over the money to Cuthbert. I only handed over money to Ann Marie on one occasion in a sealed envelope." Later on this witness states: "Anne Marie and Cuthbert would pay me an additional hundred dollars together with what was owed to me. After a while I got uncomfortable with what was happening and brought it to their attention. After that I stopped receiving orders from them for seedlings and cheques to cash."
- [7] The connection this evidence makes to the defendant is found in the highlighted portion above, namely that he handed over the 'excess money' on one occasion to the defendant in a sealed envelope to be passed on to the deceased. He provides no details on how the 'additional hundred dollars' was paid.
- [8] Nothing in this statement gives any details as to the scope of the defendant's duties at the Prisons.
- [9] The other material bit of evidence relied on by the Crown at the Committal stage was the auditors' report dated 22nd March 2013 prepared by two persons who are described as a

'Field Audit Team' on the report. A handwritten letter is attached to the report and which had been relied on in the report. That handwritten letter is purported to have been written by Mr. Francois Henry. That letter which is dated the 24th January 2013 states:

"I was first approached by the accountant of the institution to procure vegetable seedlings for the institution and monies were paid to me for such.

Then I was approach by Mr. Benoit to receive cheques in my name for other farm input, which I did not supply, which I cashed and handed over to the accountant and Ms. Benoit after the cheques are cashed.

This happened for more than once. I then brought it to their attention that I am not comfortable with that and since I have made mention of this I have not received any request.

After the monies handed to them I would receive a hundred dollars."

- [10] In the report, this letter is referred to and forms the basis of a statement made by the 'auditors' (sic) that: "...it can be concluded that the notion that Ms. Benoit was unaware of the [criminal] arrangement is not an accurate statement of fact."
- [11] Additionally, it is in this report information is provided that Ms. Benoit is the 'Industries Manager' and was 'integrally involved in procurement and receipt of goods and services'.
- [12] This report was provided to the court as part of the committal bundle. It was noted that the report was handed over to the investigating officer and that the original was kept by the auditors.

The Issues

- [13] The first question for me is whether this auditors' report is admissible at the sufficiency hearing stage. The second question which arises is whether there is sufficient evidence to ground a committal.

The Court's Consideration

- [14] The judge at a sufficiency hearing must consider whether the prosecution has presented *prima facie* evidence that an indictable offence has been committed. (Rule 9.3 of the **Criminal Procedure Rules** Cap 3.01 2008 Revised Laws of St. Lucia; see also **Practice Direction (Submission of No Case)** [1962] 1 WLR 227. The test is whether the prosecution's evidence taken at its highest is such that a jury properly directed could properly convict. See **Galbraith** [1981] 1 WLR 1039; **Blackstone's Criminal Practice** 2001 edn. Paragraph D 7.13
- [15] In this case the defendant has been charged with aiding and abetting another to obtain property by deception. The prosecution must therefore at this stage present *prima facie* evidence that the defendant has done some act which amounts to aiding and abetting the offence and has done these acts with the requisite *mens rea*. The prosecution must present *prima facie* evidence to prove an intention to aid coupled with knowledge of the circumstances (See **National Coal Board v Gamble** [1959] 1 QB 11). The *prima facie* evidence must show that the defendant knew of the essential elements of the offence (See Lord Goddard CJ in **Johnson v Youden** [1950] 1 KB 544 at 546). There is no requirement to prove that the defendant's motive or purpose must be that the principal offence should be committed (See **National Coal Board v Gamble** [1959] 1 QB 11).
- [16] The several bits of evidence which have been relied on by the prosecution have been set out above. The defendant, through her attorney argues that the prosecution can only rely on admissible evidence to ground a committal. I agree (See **Neill v North Antrim Magistrates' Court ex parte Boyce** (1984) 79 Cr App R 132). With this in mind I turn to examine the auditor's report which has been presented to the court as documentary evidence.
- [17] The Criminal Procedure Rules Cap 3.01 does not make specific provisions for the admissibility of documentary evidence and such evidence continues to be governed by the

Evidence Act, Cap 4.15. The Evidence Act provides for a number of gateway provisions with regards the admissibility of documentary evidence in criminal proceedings.

- [18] The relevant provision is section 55 of the Evidence Act Cap 4.15. Subsection 3 of this section provides that as a general rule 'where oral evidence in respect of a matter would be admissible in proceedings, a statement made in a document that was created or received by a person in the usual or ordinary course of business is admissible as evidence of the truth of its contents in proceedings, upon production of the document.'
- [19] There is no doubt that the use of the word 'business' in section 55(3) would include any activity carried on by government of St. Lucia (Section section 2 of the Evidence Act). On its face the reports claims to have been prepared by the 'Office of the Director of Audit'. I am prepared to find that this report was created in the course of government 'business'.
- [20] That being said, it is appropriate that I consider the auditor's report against section 55(4) of the evidence which provides for exceptions to the admissibility of documents under section 55(3). This subsection provides that nothing in section 55 'renders admissible in evidence in any legal proceedings such part of any record as is proved to be a record made in the course of an investigation or inquiry'.
- [21] To my mind the purpose of this section is to ensure that the fact finding nature of a criminal trial is not compromised by other civil bodies which might be involved in investigations or inquiries but may fail to apply the safeguards of a criminal trial especially those rules relating to the reception of sworn testimony and unreliable hearsay evidence.
- [22] I note in passing that in other jurisdictions there are express statutory provisions which may operate to allow certain types of audit reports into evidence. Usually these provisions require that a number of pre-conditions are proved including in my view, the fact that the report was done in the ordinary course of the business and not as a result of an investigation into allegations which are to be later become the subject of the criminal trial.

- [23] The St. Lucia's legislation has clearly sought to ensure that such evidence which is to be led at criminal trials remains credible and reliable. The legislators appeared to have been keen to ensure that hearsay evidence not be allowed except subject to certain statutory safeguards. I turn to this report.
- [24] By its very nature an audit report constitutes an investigation or an inquiry. The report itself states that the Director of Audit 'conducted a review of the Bordealis Correctional Facility primarily to ascertain the compliance and functionality of the revenue collections (Court Fines) and generation through sales of the Commissary/Tuck Shop.' This report goes on to states that it made 'findings' and that it was 'forwarding details of [those] findings for possible further criminal investigations into the matter, with a view for possible litigation and restitution of the loss'.
- [25] This report falls to be considered against section 55(4). In my view, every piece of information contained in the report was obtained as part of the inquiry. I therefore find that this report is inadmissible and it is struck out from these proceedings.
- [26] That being the case I now turn to consider sufficient evidence remains against the defendant. I note in this process that there is an absence of any evidence as to what was the extent of the defendant's role at the Prisons. (The scope of her duties was contained in the auditor's report. This also fell away with the report.)
- [27] Without the auditor's report, all that the prosecution has left are several statements made by Mr. Henry. One of these is a statement from Mr. Henry that he handed the defendant a sealed envelope which contained the ill gotten money for the deceased.
- [28] Mr. Henry also stated in his witness statement that he was uncomfortable and that he brought 'it' to their attention. He goes on to say that after that he 'stopped receiving orders from them for seedlings and cheques to cash'.

- [29] These bits of evidence do not provide direct prima facie evidence of the essential elements of the offence. My task therefore is to ensure that there are legitimate inferences to be drawn which are capable of grounding the evidential basis of the prosecution's case (See **R v Ricketts and another** - [2011] All ER (D) 125 (Apr); **R v Watt (James) & ors** [2011] EWCA Crim 1325). If there were no such legitimate inferences grounding a prima facie case, I could not in good conscience send this matter on to trial.
- [30] I cannot see how simply collecting a sealed envelope on one occasion is aiding with knowledge of the circumstances of the offence. I similarly cannot see how any legitimate inference can be drawn as to the defendant's knowledge on that bare conversation with Mr. Henry that he was 'uncomfortable'.
- [31] In my view, the statements made by Mr. Henry, devoid of other detail (underscored by the rejection of the auditor's report) fail to provide those circumstantial strands to connect the defendant to the crime. This evidence falls short of any prima facie evidence to show that the defendant knew that an offence was being committed or that she aided and abetted that offence. One would have to make assumptions as to what detail was involved in that conversation between this witness and the defendant. Far from being legitimate inferences, this would amount to impermissible speculation; it is surely not what is meant by taking the prosecution's case at its highest.
- [32] This leads me to the conclusion that there is no sufficient evidence to maintain this charge.
- [33] In these circumstances for all the reasons given above, the charge is dismissed and the defendant is discharged.



Darshan Ramdhani
High Court Judge (Ag.)