

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/ 0043

BETWEEN:

THE QUEEN

Claimant

AND

RICARDO ALEXANDER

Defendant

Appearances:

Mr. Andre Thomas for the Defendant

Mr. Howard Pinnock, Crown Counsel for the Claimant

2013 : February 26
March 13; 21

JUDGMENT

- [1] **PERSAD, J:** This case raises several important issues in relation to the defendant's plea of guilty and the extent to which the court has a power on its own motion to withdraw the plea of guilty and enter a plea of not guilty in cases where the evidence on depositions does not support the plea.
- [2] The defendant in this matter was charged on the 13th August 2011 with the offence of manslaughter. The particulars of the offence being that Ricardo Alexander on Saturday, 13th August 2011 did commit manslaughter by causing the death of Len Roberts by unlawful harm.

[3] This charge was laid pursuant to section 232 of the Grenada Criminal Code. Having been charged the defendant was committed to the High Court and the Director of Public Prosecutions indicted Mr. Alexander on the charge of manslaughter.

[4] Before the High Court, the defendant indicated his willingness to plead guilty to the charge of manslaughter, the **facts** having been read, mitigation was received on his behalf. The Prosecution in outlining the facts of the case provided the court with the following summary:-

The now deceased Len Roberts was 57 years old residing at River Sallee in the parish of St. Patrick's. The now convicted man who is 27 years old also hails from the same village.

On Saturday 6th August 2011, sometime in the morning, Len Roberts was walking in River Sallee with a container in his hand. The convicted man asked him for a phone call but Len Roberts told him that he had no credit.

The convicted man started to wrestle with him and tripped him causing him to fall on his back on the concrete road. Len Roberts was found seven (7) days later lying motionless on his verandah. Dr. Trevor Friday, the District Medical Officer for St. Patrick's was called and on arrival pronounced the body dead.

Dr. Nicholas Redhead performed the post mortem on the 15th August 2011 and noted the following:-

1. On external examination, multiple superficial bruises were noted to the back of the head and on the upper arms.

2. On internal examination, the vessels around the brain were filled with blood and there was haemorrhage and swelling on the medulla oblongata (brain stem).
3. The cause of death was increased intra-cranial pressure; that is, pressure inside the brain contributed to by brain stem haemorrhage.
4. This internal pressure/damage was caused by trauma to the back of the head by a blunt instrument or by the head knocking against a wall or solid object.

D/C #163 John arrested and charged Ricardo Alexander on the 16th August 2011 for manslaughter. He has been in custody since.

[5] Having heard the matters raised in mitigation by counsel for the defendant the court reserved its decision to consider the submissions. Having had an opportunity to review the evidence on depositions, the court invited counsel to assist the court on a number of matters. Firstly, the court asked counsel for the Prosecution to identify the material on the Prosecution's case that implicated the defendant in the commission of the offence.

[6] In particular, the court drew to the attention of Crown Counsel the following matters:-

1. That it appeared on the Prosecution's case that the cause of death was due to injury to the head of the deceased sustained on the 6th August 2013 that caused damage to his skull;
2. That none of the witnesses to the event on the 6th August 2011 that the Prosecution relied on to make their case testified that the

deceased hit his head when he fell; that the evidence at the highest amounted to seeing the accused and the deceased wrestling and the deceased fell on his back. Neither witness gave evidence of seeing the deceased hitting his head on the 6th August 2011.

3. It is not disputed that the deceased after he fell on the ground on his back got up and walked away. It is also not in dispute that the deceased was alive and only found dead at his home **some seven days later**. On the date in which he was found lying on the ground on his back in his veranda there is evidence coming from a relative that on the morning of his body being found he was fine and had a conversation earlier with the relative.
4. Having regard to the manner in which the body was found seven days after the incident, was the Prosecution in a position to establish that the injury to the deceased's head was not as a result of an injury sustained by the deceased when he collapsed in his verandah.

[7] Further, there was also on deposition evidence of the brother of the deceased of a conversation with his brother (the deceased) which happened some time after the incident of 6th August 2011. According to the brother of the deceased, he was told that the deceased had hit his head earlier that day.

[8] The court raised the question of the admissibility of such a statement, particularly having regard it was a classic example of an out of court statement being made by a person who was not being called as a witness and which was being tended for its truth as opposed to the fact it was said. Counsel was invited also to assist the court as to whether such a statement was admissible under any of the exceptions to the hearsay rule.

- [9] The matter was adjourned for the parties to consider the issues raised and on the return date counsel for the Prosecution indicated to the court that he was in agreement with the matters raised by the court, in terms of the nexus between the evidence on depositions and the evidence necessary to establish prima facie guilt of the accused. Specifically on the issue of the hearsay evidence, Crown Counsel accepted that such evidence is not admissible by virtue of any of the exceptions under the hearsay rule.
- [10] This having been accepted, the question for the court's determination was how should the court approach the guilty plea presently before it. There was no doubt that the plea was entered into voluntarily. However, it was entered into on the basis that the evidence of the conversation between the brother of the deceased and the deceased was admissible.
- [11] It was generally accepted by all the parties that the appropriate course to be adopted would be to withdraw the plea of guilty and to enter a plea of not guilty and allow the Prosecution an opportunity to assess its future approach to the case. The issue of course was whether the court was at liberty to withdraw the plea of guilty in the particular circumstances of this case.

The Law relating to Guilty Pleas

- [12] A useful summary of the principles relating to a plea of guilty is to be found at paragraph D12.65 et seq of **Blackstone Criminal Practice and Procedure 2011**. The following principles can be extracted:-

1. Generally a plea of guilty can only be entertained if it is made by the accused personally. If counsel purports to plead guilty on behalf of an accused, the purported plea has no validity and the proceedings constitute a mistrial.
2. As to the effect of Plea of Guilty once the accused pleads guilty, the Prosecution are released from their obligation to prove the case. There is no need to empanel a jury, and the accused stands

convicted simply by virtue of the word that has come from his own mouth. The only evidence the prosecution then need call in the ordinary case is that of the accused's antecedents and criminal record (see D19.45 to D19.51).

3. Where an accused wishes to change his plea from not guilty to guilty (see D12.87), this causes little difficulty. Where, however, he seeks to change his plea from guilty to not guilty (see D12.88) more difficult considerations arise, not least because such a change represents an assertion that an accused has realised that he did not commit the offence after all. The considerations in this category also include issues as to whether a plea was ambiguous (see D12.93) or involuntary (see D12.94).
4. The judge may allow the accused to change his plea from not guilty to guilty at any stage prior to the jury returning their verdict. The procedure is that the defence ask for the indictment to be put again and the accused then pleads guilty. If the change of plea comes after the accused has been put in the charge of a jury, the jury should be directed to return a formal verdict of guilty.
5. This was emphasised in Heyes [1951] 1 KB 29, where the accused changed his plea in the jury's presence but they were not asked to return a verdict, and the judge proceeded forthwith to sentence. On appeal, Lord Goddard CJ said:

Once the jury had heard the appellant say that he wished to withdraw his plea and admit his guilt, the proper proceeding was for the court to ask them to return a verdict. It appears that counsel did suggest to the learned recorder that this was the proper course; but the recorder thought that it did not matter. It does matter because, once a prisoner is in charge of a jury, he can only be either convicted or discharged by the verdict of the jury.

6. A judge has a discretion to allow the accused to withdraw a plea of guilty at any stage before sentence is passed. This was confirmed in Plummer [1902] 2 KB 339, where the major question for the court was whether P's conviction on a guilty plea in relation to a conspiracy charge could be sustained in view of the acquittal of his five alleged co-conspirators. P was not sentenced until after the acquittal of the

others, and, prior to sentence, asked to withdraw his plea. Wright J said (at p. 347):

Another point is raised in this case, namely, whether the court had power to allow the appellant to withdraw his plea of guilty. There cannot be any doubt that the court had such power at any time before, though not after, judgment [i.e. sentence] and, as we infer that but for the erroneous opinion that there was no such power the withdrawal would have been allowed, this might of itself be a ground for a venire de novo.

7. Similarly, Bruce J held that the first-instance court clearly had a discretion to allow the change of plea; that, if it had exercised its discretion against the appellant, the appellate court might have had no power to interfere; but, in fact, the discretion was never exercised one way or the other and that had deprived the appellant of a chance of an acquittal, with the consequence that the conviction could not stand (at p. 349).
8. The existence of the discretion was indirectly confirmed by the House of Lords in **S v Recorder of Manchester [1971] AC 481**, when it held that, in the context of change of plea, there is no conviction until sentence has been passed, and therefore magistrates (like the Crown Court) can allow a change to not guilty provided they have not yet passed sentence.
9. Finally, in **Dodd (1981) 74 Cr App R 50**, the Court of Appeal unhesitatingly accepted the three following propositions from counsel for D, namely that: (a) the court has a discretion to allow a defendant to change a plea of guilty to one of not guilty at any time before sentence; (b) the discretion exists even where the plea of not guilty is unequivocal; and (c) the discretion must be exercised judicially (see p. 57).
10. The authorities make clear that the discretion now under consideration should be sparingly exercised in favour of the accused. Thus, in **Mc Nally [1954] 1 WLR 933**, where the accused had indicated even in the magistrates' court an intention to plead guilty, could not possibly have misunderstood the nature of a straightforward charge and had unequivocally admitted guilt when the indictment was put to him, the Court of Criminal Appeal approved the trial judge's decision to refuse a change of plea. The same approach was more recently adopted in **Revitt v DPP [2006] 1 WLR 3172**.

11. Even if the accused was unrepresented when he pleaded but instructs solicitors during an adjournment prior to sentencing and is advised by them that he has a defence, the court is not obliged to accede to a change of plea **South Tameside Magistrates' Court, ex parte Rowland [1983] 3 All ER 689.**
12. In Ex parte Rowland, in considering such an application for a change of plea, the magistrates, 'rightly, balanced the instructions which the applicant had given to her solicitor after [the original plea] against the prospect that she was changing her story because of the possibility that she might be sentenced to a custodial sentence' (per Glidewell J at p. 692J). Furthermore, the magistrates 'were perfectly entitled to come to the conclusion to which they did come' (i.e. that fear of a custodial sentence was the real motivation for the change of plea), and thus were justified in exercising their discretion against R.
13. Glidewell J approved the advice given to the magistrates by their clerk that, 'to allow a change of plea was a matter for [the magistrates'] absolute discretion and that once an unequivocal plea had been entered the discretionary power should be exercised judicially, very sparingly and only in clear cases' (at p.692A). However, the implication is that, had the magistrates thought the plea to have been entered under a misapprehension of law as to the nature of the offence, then their only proper course would have been to allow the application. Although Ex parte Rowland was a case concerning change of plea in the magistrates' court, there is no reason why the same principles should not apply in the Crown Court.
14. If the accused was represented when he entered his plea of guilty, there would seem to be no absolute bar to his applying to withdraw the plea, but it will obviously be very difficult to convince the court that the plea was entered by a genuine mistake. This was demonstrated in **Drew [1985] 1WLR 914, where Lord Lane CJ said (at p. 923C):**

'... only rarely would it be appropriate for the trial judge to exercise his undoubted discretion in favour of an accused person wishing to change an unequivocal plea of guilty to one of not guilty. Particularly this is so in cases where, as here, the accused has throughout been advised by experienced counsel.'
15. Provided the court at first instance recognised that it had a discretion to allow a change of plea and applied the correct principles in

determining the application, the Court of Appeal will not interfere with the trial judge's exercise of discretion — see Dodd (1981) 74 Cr App R 50 (see D12.88), Cantor [1991] Crim LR 481, Anjum [2004] EWCA Crim 977 and Towers [2004] EWCA Crim 1128.

16. It is the duty of counsel to advise his client on the strength of the evidence and the advantages of a guilty plea as regards sentencing (see, e.g., Herbert (1991) 94 Cr App R 233 and Cain [1976] QB 496). Such advice may, if necessary, be given in forceful terms (Peace [1976] Crim LR 119). Where an accused is so advised and thereafter pleads guilty reluctantly, his plea is not ipso facto to be treated as involuntary (ibid.). It will be involuntary only if the advice was so very forceful as to take away his free choice. Thus, in Inns (1974) 60 Cr App R 231, defence counsel, as he was then professionally required to do, relayed to the accused the judge's warning in chambers that, in the event of conviction on a not guilty plea, the accused would definitely be given a sentence of detention whereas if he pleaded guilty a more lenient course might be possible. This rendered the eventual guilty plea a nullity.

17. The Code of Conduct of the Bar, Written Standards for the Conduct of Professional Work, para. 12.3, confirms that defence counsel should explain to the accused the advantages and disadvantages of a guilty plea. It goes on to say that he must make it clear that the client has complete freedom of choice and that the responsibility for the plea is the accused's. It is common practice, endorsed by para. 12.5.1, to tell an accused that he should plead guilty only if he is guilty (see Lord Parker CJ's observation in Turner [1970] 2 QB 321 at p. 326F that:

Counsel of course will emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence charged'). However, it may be felt that, on occasions, realistic advice about the strength of the prosecution case and the sentencing discount for a guilty plea will effectively force an accused into a guilty plea however punctilious defence counsel may be in saying that he should plead guilty only if he is guilty.

18. Where an accused persists in pleading guilty notwithstanding telling counsel that he is in fact innocent, counsel may continue to act for him but must say nothing in mitigation that is inconsistent with the guilty plea (paras. 12.5.2 and 12.5.3). Counsel may thus be forced to confine his mitigation to the circumstances and background of the offender and any matters minimizing the gravity of the offence which are apparent on the face of the prosecution statements; since his only

instructions about the offence itself are that the accused is not guilty of it, counsel cannot explain (as he might otherwise do) the immediate temptations etc. that led to its commission.

- [13] It is clear from these extracted principles that this court has the jurisdiction at this stage of the proceedings to change the plea, it not becoming functus by passing sentence.
- [14] It is also clear that any discretion to change a plea has to be done judicially and based on the particular circumstances of each case. Although the editors of Blackstone did not identify any case where a court vacated the plea on the basis of insufficiency of evidence to support the plea, it must follow that a court has jurisdiction to allow a change of plea where the evidence adduced on deposition does not support the elements of the offense.
- [15] It is also clear to this court that the plea was entered under a misapprehension by the defence of the admissible evidence on the Prosecution's case.

Can the Court allow the withdrawal of a plea where insufficiency of Evidence?

- [16] The ability of the High Court to quash an indictment on the basis of common law principles is well established in circumstances where there is insufficient evidence to sustain the offence alleged in the indictment.
- [17] Two recent authorities out of Trinidad and Tobago support this proposition. See in this regard the cases of **Brian Guyapersad** HCA Cr 69/08 and **Micayeel Mohammed v The State** H.C. Cr. No S049/08¹.
- [18] It would seem to follow that if the High Court has a jurisdiction to quash an indictment for insufficiency of evidence it must be that the court would be entitled

¹ Both cases can be found on www.ttlawcourts.org

to exercise a jurisdiction to allow an accused person to change a plea from guilty to not guilty in circumstances where prima facie the evidence on depositions does not appear to support the elements of the offence.

[19] Of assistance is a case from the Court of Appeal in Trinidad and Tobago in **Small & Boodoo v The State** Cr App 93/94 of 96. In this case the applicants Ricky Small and Patricia Boodoo were indicted for the murder of Samuel Karmody that occurred on the 2nd September 1994.

[20] When the indictment was read to them, they pleaded guilty to manslaughter. The State accepted the pleas and the pleas were formally accepted and entered by the court. **Each person** accepted responsibility for the commission of the offence.

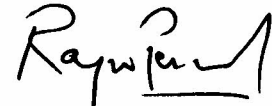
[21] At page 6 of the unreported judgment, Justice of Appeal Ibrahim noted as follows:-

It is because of what we have already said that we would order in the case of Patricia Boodoo that the plea of guilty be removed from the record and the conviction and sentence accordingly would be quashed.

In this case, because **all** the evidence in the case had been placed before the trial judge and we ourselves have looked at the statements given by this particular applicant and they do not disclose, (and Mr. Pantor quite frankly concedes that) they do not disclose criminality in her in the commission of the offence apart , however, from the oral statement which he valiantly tried to persuade us to accept, but which later he had to concede on the basis that it was equivocal , it was not a factor to be taken in the equation.

The Court then quashed the conviction against the Applicant, Boodoo.

[23] Having regard to the matters outlined above, this court finds that the plea was entered under a misapprehension of the admissibility of evidence and the court will allow the Defendant to withdraw his plea of guilty to the charge of manslaughter and substitute a plea of not guilty so that the Prosecution can consider all its available evidence and determine how they choose to proceed with the matter.

A handwritten signature in black ink, appearing to read 'Rajiv Persad', with a stylized flourish at the end.

Rajiv Persad
High Court Judge