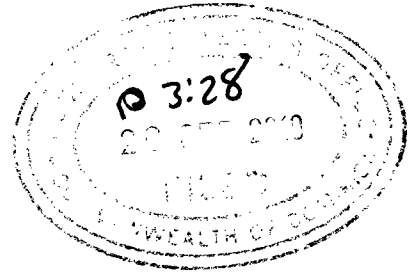


IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

[CRIMINAL]



CASE NO: DOMHCR2010/012

BETWEEN:

THE STATE

Prosecution

And

WILLIAM GREENAWAY

Defendant

Mr. Gene Pestaina Director of Public Prosecutions, for the State with Mr. Wayne Norde

Mrs. Dawn Yearwood-Stewart for the Defendant

June 24 & 25, 2010

RULING

[1] STEPHENSON-BROOKS J: On Saturday the 9th June 2007 the Accused William Greenaway, the Deceased Andrew Valmond and the witness for the prosecution Benoit Douglas were selling fish from Portsmouth to Vielle Case. They were all on board the

Defendant's blue Toyota van. The Defendant was driving, the Deceased was blowing the conch shell and the witness was selling the fish.

[2] The Deceased Andrew Valmond was drunk on that morning and was not sitting flat on the box of the van as requested by the Defendant and he was cursing and behaving badly.

[3] When the parties were through selling fish on their way back to Portsmouth they stopped in Penville to pick up two young ladies who flagged them down and requested a ride.

[4] The Defendant again repeatedly asked the Deceased to sit flat and to behave and the Deceased refused to comply, whereupon according to the witness Benoit Douglas, the Defendant got out of the cab of the van and "tumbled" the Deceased out of the van.

[5] The evidence led, showed that the Deceased was sitting on the top of the box of the van to the back and that the Defendant put his hand under the two legs of the deceased and threw him off the pick up.

[6] The Deceased fell to the road sustaining injuries from which he subsequently died.

[7] The Defendant was consequently charged with manslaughter in the death of Andrew Valmond.

[8] This is a submission by the Defendant that he has no case to answer and that the charges of manslaughter preferred against him should be dismissed.

[9] "Manslaughter is ... a most difficult offence to define because it arises in so many different ways and as the mental element if any required to establish it varies so widely any general reference to mens rea is apt to mislead." ¹

The Defendant's submissions:

[10] The main thrust of Defence Counsel Mrs. Stewart's no case

submission is that the Prosecution has failed to provide any evidence

of "*mens rea*" on the part of the accused and in the circumstances has

¹ R-v- LijGan (3) [1969] 3 All E R 415

failed to prove the elements of the crime of manslaughter as is required of the Prosecution in all criminal cases.

[11] Counsel for the Defence cited and relied extensively on the case of **R-v-Scarlett**² in support of her submissions. Counsel in essence made the following contentions:

- That the Accused is the owner of the vehicle that was being driven that day;
- That the Deceased was a licensee on the vehicle and that the evidence led by the Prosecution clearly states that that licence was revoked and that the Defendant put the Deceased off of his vehicle as he was entitled to do. That his putting the deceased off of the vehicle was not in and of itself an unlawful act.
- That the Prosecution has adduced evidence of actus reus but not of mens rea which they are required by law to do.
- That the Prosecution has not provided any evidence vis a vis the mental element of the crime, that they are relying only on the evidence of actus reus.

² [1993] 4 All E R

- That the Prosecution has to prove the unlawfulness of the Accused act, that it was a dangerous act which must be considered separately.
- That the Prosecution has failed to adduce evidence that the accused acted with the mental element necessary, that is, “that the Defendant intentionally or recklessly applied force to the person of another”. Counsel for the Defendant contends that like in the **Scarlet Case**³ where the Defendant “bundled the Deceased towards the door”, in the case at bar the Accused “tumbled the Deceased out of the van”, that evidence of this action is no basis for saying that the Defendant like the appellant in the Scarlett case was reckless nor is there implication that the force used was excessive in the circumstances. That the Prosecution has to adduce evidence of the Defendant’s intention which it has failed to do and that this is the essential element of the alleged offence.
- That in the circumstances the Prosecution has failed to produce all the elements of the crime which it has to meet.

The Prosecution’s case:

[12] The Prosecution’s case consists *inter alia* of the direct evidence of Benoit Douglas who attested to seeing the accused take his hand and tumble the Deceased off of

³ Ibid@p636

the van. He spoke to the height of the van off the ground and that when the Deceased fell he remained unmoving as far as he could see.

[13] He also spoke of the Deceased's behaviour and his drunkenness and refusal to sit flat in the van and of the Accused repeatedly asking him to sit flat. His evidence was direct evidence of what the Accused did.

[14] That there was also the evidence of Sebastian Paul who did not see what the Defendant allegedly did but spoke to hearing the Defendant ask the Deceased to "get off his ride and get another transport."

[15] This witness also spoke of seeing the Deceased Valmond Thomas lying on the road and not moving and of taking him up off the road with the assistance of one Roy and placing him on a bench.

[16] That the Police were summoned and came; and that the ambulance was also summoned and came and took the Deceased away.

The Prosecution's submissions:

- [17] The Prosecution submitted that the test in “submissions of no case” may be upheld if there has been no evidence to prove an essential element of the alleged offence or when the evidence adduced by the Prosecution has been so discredited by the cross examination that it would be manifestly unreliable for any reasonable tribunal to safely convict on it.”
- [18] That the case which Counsel for the Defendant is relying on is not similar to the case at bar, that the intricacies of the Scarlett case do not apply. That in this case the Deceased was a licensee that he was on the van with the Accused's permission.
- [19] The learned Director of Public Prosecutions also submitted that the evidence is that the Accused told the Deceased to get off or he would “put him down”, and that he did get out of the van and put him down and that he left the man lying on the ground and drove away is sufficient evidence of “mens rea” in this matter. That in the circumstances, the Prosecution having adduced evidence that the accused “tumbled

the Deceased out of the van” and that he said prior to that that if he, the Deceased did not get out of the van he would put him down and that he got out of the jeep and tumbled him out and drove away is evidence of the mental element required and as such the no case submission should not be upheld.

[20] The Learned Director of Public Prosecutions contended that there was sufficient evidence upon which the jury properly directed could properly convict on it.

Conclusion:

[21] On a no case submission the question to be considered by the trial Judge is whether a properly directed jury could convict on the evidence given on behalf of the Prosecution at the close of its case. There is no need at this stage to find out whether the Prosecution

has established the ingredients of the offence beyond a reasonable doubt, as that is in fact the job of the Jury.

[22] The question as to whether or not the Defendant's actions was unlawful would relate to whether unnecessary excessive force was used in putting the Deceased off of the pickup on the day in question, which is the essence of the Prosecution's case, that is, that the Accused by his unlawful act of using excessive force was and that he had imparted such a momentum to the deceased that that the Deceased fell and that the Deceased's fall was a consequence of the unlawful act and his death was as a result of the fall and as such the Defendant committed the offence of manslaughter.

[23] In **Taibo-v- R⁴** it was held that ***"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."***

[24] In deciding whether or not to uphold a no case submission regard must be had to the test laid down in the locus classicus **Galbraith⁵**.

⁴ (1996) 48 WIR 74

⁵ [1981] 1 WLR 1039

Mens rea in Manslaughter cases:

[25] Mens rea in Manslaughter cases can be said to fall into two categories, one of which was described by Lord Hope of Craighead in **Attorney General's reference (no 3 of 1994)**⁶ as circumstances where "the Defendant had no intention to injure the Deceased, where the Defendants action was either:

- (i) Not unlawful but the death of the victim was the result of negligence of such a gross nature as to be categorized as criminal; and
- (ii) Both unlawful and dangerous because it was likely to cause harm to some person"

[26] In the case at bar the evidence adduced by the Prosecution was that the Accused told the Deceased "if he did not get off the van he would put him down" and that when the Deceased did not get off the van as ordered the Accused came and tumbled him down".

⁶ [1998]AC 245 (HL)

[27] I find that to be a deliberate act on the part of the Accused, and it was one which could have caused injury, his action was therefore a dangerous act and such is the character of the mens rea which he possessed when he tumbled the deceased off the van. Lord Hope went on to say in his judgment

“...although the defendant must be proved to have intended to do what he did, it is not necessary to prove that he knew that his act was unlawful or dangerous. So it must follow that it is unnecessary to prove that he knew that his act was likely to injure the person who dies as a result of it. All that need be proved is that he intentionally did what he did, that death was caused by it and that apply an objective test all sober and reasonable people would recognize the risk that some harm would result....”

Conclusion:

[28] What is clear from the authorities is that the Judge at this stage must only be satisfied that there is a prima facie case for Mr. Greenaway to answer. Applying the principles enunciated in **Galbraith** applied and in many cases in the jurisdiction and having considered the Prosecution evidence in its totality, I have concluded that the evidence led at the trial by Prosecution established the essential

ingredients of the offence charged in the indictment and the case should be left to the Jury accordingly. I will not uphold the no case submission.

Birnie Stephenson-Brooks

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Birnie Stephenson-Brooks
High Court Judge

