

COMMONWEALTH OF THE BAHAMAS

cri/vbi/24/1/2019

IN THE SUPREME COURT

Criminal Division

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

FRANKLYN EDGECOMBE aka "Chili"

Before: The Honourable Mr. Justice Franklyn K M Williams KC

Appearances: Timothy Bailey with him Tamika Roberts for the
Director of Public Prosecutions

Ms. Marianne Cadet for Edgecombe

Hearing Date: 30 June 2023

RULING

Murder trial – Outburst by defendant during trial – whether to declare mistrial and discharge jury

On the 11th December 2018 Rico Archer was killed at North Street, Fort Fincastle. The defendant is charged with the murder of Rico Archer. A jury trial commenced on 26th June 2023.

On the afternoon of Thursday 29th June 2023, the trial having resumed after the lunch adjournment and in the presence of the jury, the defendant shouted words to the effect that he was not getting and would not get, a fair trial.

The issue for the Court's determination is whether to declare a mistrial and discharge the jury.

Ernest Lockhart and Jeffrey Prosper v Regina SCCrApp.s No.16 and 18 of 2006
considered

Angelo Rahming v Regina SCCrApp. 230 of 2014 applied

Williams J

The defendant is charged with the murder of Rico Archer on the 11 December 2023. A jury trial of the matter commenced on 28th June 2023.

On the afternoon of Thursday 29 June, the trial having resumed after the lunch adjournment and in the presence of the jury, the defendant shouted "I want to say something without my lawyer. I don't think I would have a fair trial in this court. I want my case transferred from this court. I don't think I would have a fair trial in this court. I would like to have my case transferred out of this court. I don't feel I would have a fair trial. That is how I feel in my heart. I'm an innocent man. That is what I have to say. I don't want to go on with this matter no more, not in this court." In the premises, the question of whether or not I ought to declare a mistrial arose.

Previously, in the absence of the jury defendant's counsel had made two applications, one of which was immediately prior to the resumption of trial, and both of which I refused. One or both of those refusals appear to have been the

- impetus for the defendant's outburst.

It is to be noted that neither the Director of Public Prosecutions (“the DPP”) nor defence counsel have asked for the jury to be discharged or a mistrial declared, but have simply asked that the court consider the question of whether or not in the particular circumstances of this trial, the court ought to do so.

Ms. Cadet for the defendant provided the court with *Ernest Lockhart v Regina* SCCrApp No. 16 of 2006 and *Jeffrey Prosper v Regina* SCCrApp No.18 of 2006 two appeals arising out of the same case and heard together by the Court of Appeal.

In that case of murder during cross examination, the following exchange occurred between a female identifying witness and counsel for Lockhart:

“Q. So you were a little paranoid?”

A. Of course. Facing a murderer, I was a little paranoid, that’s correct because I know...”

On appeal, counsel for Lockhart argued that the learned trial judge ought to have discharged the jury, which had not been done.

The Court of Appeal in *Lockhart* made clear that on this issue of whether or not to discharge, every case depends on its own facts, what has been said and the circumstances in which it has been said:

“65. In *R v Weaver* [1967] 1 ALL ER 277, Sachs LJ stated the law applicable to circumstances such as those complained of...thus:

“... **The decision whether or not to discharge the jury is one for the discretion of the trial judge on the particular facts , and the court will not lightly interfere with the exercise of that discretion. When that has been said, it follows, as is repeated time and time again, that every case depends on its own facts. As also has been said time and time again, it thus depends on the nature of what has been admitted into evidence and circumstances in which it has been admitted and what looking at the case as a**

whole, is the correct course. It is very far from being the rule that, in every case, where something of this nature gets into evidence..., the jury must be discharged.”

(Emphasis supplied)

The appellate court will be slow to interfere unless it feels that an appellant would be justified in saying what occurred was devastating.

The court must have regard to what was actually said, whether accidentally or deliberately, ... -

see *R v Coughlan (1976) 63 Cr. App. Rep. 33* – or whether it was so prejudicial as to be not capable of being cured by any reasonable direction which the trial judge could give.

66. The difficulty does not lie in stating the well known principle but in applying it. ...”

To be certain, the utterance of the defendant here would not prejudice him.

In the circumstances, the defendant’s utterance could only be directed either to prosecution or the court.

The Court of Appeal has provided some guidance on the function of a judge in a criminal trial:

“68. It is not a function of a judge to act as advocate for an accused... . A judge’s participation in the trial is circumscribed, that is to say, he is to hold the balance between the State and the accused . He is only to ensure that the rules of the trial are observed and that the prosecution does not take advantage of the defendant. It is his duty to guarantee that the defendant receives a fair trial.”

The defendant is represented by counsel.

Ms. Roberts for the DPP provided the court with the appellate decision in *Rahming* (supra).

In *Rahming*, the appellant had, whilst cross examining a witness, erupted in a stream of expletives directed to the judge, jury and witness. There the appellant contended that the learned trial judge ought to have declared a mistrial consequent upon his outburst.

The facts of *Rahming* are apropos the circumstances here.

In the premises, I decline to declare a mistrial and to discharge the jury.

In doing so, I adopt the reasoning of Isaacs JA in dismissing *Rahming's* appeal:

“61. This ground may be given short shrift because were it to be allowed it would mean that a defendant who wishes to derail his trial because he perceives that it is not going well for him, need only make a verbal outburst and, on this argument, a judge would be required to abort the trial. This submission need only be stated to be rejected out of hand.”

In the premises, I shall give a strong direction to the jury that the defendant's outburst should play no part in their deliberations as to whether or not he has committed the offence as charged.

My great thanks to counsel for their industry in assisting the court at very short notice.


Franklyn K M Williams KC

Justice

1 July 2023