

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 Dates: 27 June 2023; 29 June 2023

Murder – Deceased identifying witness – Visit to locus in quo – Exercise of judge’s discretion

The defendant is on trial for the murder of Rico Archer, the trial having commenced 27 June 2023.

On that date, and on at least one other occasion subsequent counsel for the defendant made application to visit the locus in quo “...because the jury has to test to make the determination, whether or not his visible identification (deceased witness) is consistent or possible.”

The defence wishes to test the length and possibility of the witness’ identifying observations, namely to show that matters as alleged by the witness could not possibly be true or at the very least, the witness be mistaken.

Held: application to visit locus in quo denied.

R v Warwar (1969) 15 WIR 298 applied

Douglas Pratt v R SC CrApp No. 192 of 2014 applied

R v Taylor [2017] 2 BHS J No. 160 considered

Williams J

1. The incident occurred (approximately 7:30 pm) in December 2018, some four and a half years ago. Defence counsel proposes that the locus be attended in the day. The identifying witness is deceased. Thus the impracticability of a locus visit arises immediately.
2. The cross examination by Ms. Cadet for the defendant of police witnesses and of the pathologist Dr. Caryn Sands targeted the credibility of the deceased identifying witness’ observations, and, sought to underline the application to visit the locus.

Cross examination of Inspector Trevor Mckinney

3.

“Q. Can we go to photograph number 6, please

Good afternoon, officer –good morning officer Mckinney.

A. Good morning.

Q. Now this picket fence, the body was found between the picket fence and the vehicle, right

A. Yes.

Q. Can you take me to the photograph number one, please.

Now, can you point out the picket fence for me please where the body was found?

A. This right here

Q. So that would be after the red car?

A. Yes, ma’am.

Q. Now, on what street is this, can you tell me?

A. Information I got was north street.

Q. Is that the east section or is it that the west section?

A. I wouldn’t be able to say.

...

Q. Go to photo number three for me please.

Okay, can you point out where the picket fence is from there?

A. Not in this photograph

Q. You can’t?

A. No.

Q. Now, this street where this house is where the car is, can you tell me what’s the name of that street?

A. The information that’s exhibit at the time was that its north street.

Q. The side corner, do you know the name of the side corner?

A. No, ma'am

Q. Either way?

A. No, ma'am

Q. Now, can you tell me --are you able to tell me the distance from where this photo is taken, the estimate?

A. No, ma'am.

Q. You can't?

A. No.

Q. Are you able to say from where this photo is taken that it is close or say close to where?

A. I could only assume, ma'am.

Q. You wouldn't be able to say.

Are you able to indicate from this photo where the Haitian food store is from this photo?

A. I don't know where the Haitian food store is, ma'am."

Cross examination of Sergeant Raphael Miller

4.

"Q. No, and if you look back at the statement of Valentino Williams, he indicated that he saw when the person dropped?

A. That is his statement.

Q. And he saw the defendant point the gun to the ground, and fire three times?

A. That is his statement.

Q. Okay. Now, in his statement, right, he indicated that he ran to the

corner just east of the Francis home staying hard to the southern side of the road. Can you indicate that from what he is saying?
Can you indicate that for us?

...

Ms. Cadet: My Lord, just before but my question wasn't about the Francis home. I am speaking about can he tell where the witness was, That was my question. My Lord, this witness said that he visited the Scene, and so he is familiar, my Lord.

The Court: Ms. Cadet, I've asked him to answer your question.

Q. You recall what my question was, Mr. Miller?

A. Yes ma'am,

Q. Go ahead?

A. As I indicated I visited the scene, but as to speak to where the witness was and to what area he was pointing to, I can't speak to That."

The Law

5. In the Jamaican case of *R v Warwar* (1969) 15 WIR 298, Waddington P writing for the court, stated the principles upon which the court acts in deciding whether or not to grant an application to visit the *locus*

"...i.e. the object of a view or visit to the *locus in quo* should be for the purpose of enabling the jury to understand the questions being raised, to follow the evidence and to apply the evidence, and was not a substitution for such evidence. ...

An application of this nature is essentially one which is within the discretion of the trial judge, to be exercised according to the facts of

each case,”

and

Allen P in *Douglas Pratt v R* SCCrApp No.192 of 2014:

“ In our view, whether an application to visit a locus in quo is granted is entirely in the discretion of the trial judge.”

6. I am not persuaded, **in the particular circumstances** of **this** case that a visit to the *locus*, attended by questions posed to the police witnesses would accomplish anything other than to invite speculation (amply illustrated by the answers given in cross examination) by those officers, and by the jurors.
7. In the premises and in the exercise of my discretion, the application is refused.


Franklyn K M Williams, KC

Justice

13 July 2023