

**COMMONWEALTH OF THE BAHAMAS**

**CRI/VBI/129/9/2020**

**In The Supreme Court**

**Criminal Division**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

**AND**

**ODNE TIMOTHEE**

**Respondent**

**Before:** Her Ladyship, The Honourable Madam  
Justice Guillimina Archer- Minns

**Appearances:** Mr. Moses Bain for the Applicant  
Ms. Janet Munnings for the Respondent

**Hearing Date:** 13 February 2024

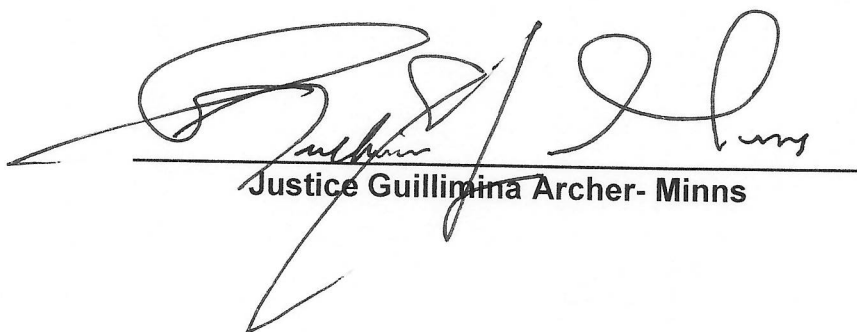
**-NO CASE SUBMISSIONS RULING-**

## Archer-Minns J

1. The defendant, Odnee Timothee is charged in Information Number 129/9/20 with one (1) count of Rape contrary to section 6(a) of the Sexual Offences Act, Chapter 99. The prosecution called sixteen witnesses and stipulated the evidence of one. It was on the evidence of these witnesses that the prosecution closed its case subsequent to which defence counsel for the named defendant made a No Case Submission to which the prosecution responded.
2. Counsel for the defendant submitted essentially relying upon the first limb of the principles enunciated in **R v Galbraith** that the prosecution's evidence taken at its highest a jury properly directed could not convict upon it. The prosecution had failed to make out a case against the defendant and as such, the defendant ought not be called upon to answer the charge.
3. The prosecution counsel also relied on **R v Galbraith** the second limb. Counsel contended that the prosecution's evidence when considered in its entirety is both sufficient and reliable and as such, a jury properly directed could convict on it. The case ought to be left with the jury.
4. Consideration was given by the Court to the submissions by counsel for the defendant and prosecution together with the evidence of the prosecution, the essential ingredients of the charge which the prosecution were required to establish by virtue of credible and cogent evidence and all relevant authorities.
5. In **State v Khan 2012 80 W.I.R and The State v Mitchell 1984 39 W.I.R**, the court stated " A trial judge ought to send the case to the jury where in his opinion, there is sufficient evidence upon which a reasonable jury properly directed might convict, on the other hand, the trial judge ought to withdraw the case if the evidence was so unsatisfactory or unsound (established through cross-examination or otherwise), that no reasonable jury could convict on it or if the evidence, even if all was believed was so weak or tenuous or insufficient, that it would not yield a lawful conviction."
6. In the circumstances of this case, the prosecution's evidence is such that it strengthens or weakness depend on the view to be taken of a witness' reliability or other matters which are generally speaking within the province of the jury. On the evidence of Keia McPhee, the named virtual complainant either alone or together with that of Krystal Mackey and Cynthia Hall if believed by the jury and upon proper directions may conclude that the defendant is guilty.
7. The court given the aforementioned is of the view that on the cumulative evidence of the prosecution all the essential ingredients of the charge have been established- a prima facie case has been made out and therefore the matter will

jury for their determination with proper directions to be given. The matter will continue in the usual manner.

Dated this 14<sup>th</sup> day of February 2024.



Justice Guillimina Archer- Minns