

COMMONWEALTH OF THE BAHAMAS

2025/CRI/GEN/00003

IN THE SUPREME COURT

Criminal Division

BETWEEN

AKEEM WILSON

1st Applicant

AND

DONALD WRIGHT

2nd Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Mr. Justice Dale Fitzpatrick

Appearances: Mr. Kelsie Munroe for the Applicants
Ms. Erica Ingraham for The Respondent

Date of Hearing: 17th September 2025

Criminal Law – Procedural Impropriety - Right to a Fair Trial – Abuse of Process – Legitimate Expectation – Constitutional Relief – The Coroners Act, 2011 – The Criminal Procedure Code Act Chapter 91

DECISION

FITZPATRICK J.

Introduction

[1.] The Applicants, Police Inspector Akeem Wilson and Police Officer Donald Wright, seek an order from this Court to stay the Director of Public Prosecutions' (the "DPP") continued prosecution against them in the Supreme Court for one count of manslaughter arising from the fatal shooting of the virtual complainant, Mr. Deangelo Evans, on 27th May 2018.

[2.] An inquest was conducted before the Coroner's Court with a jury to review the circumstances surrounding and to determine the cause of Mr. Evans' death (the "Inquest"). The jury returned a verdict against the Applicants of homicide by manslaughter on 31st August 2023 (the "Verdict").

[3.] The Applicants primary ground noted in their Notice of Application (the "Application") is that the DPP committed an abuse of process when it filed a Voluntary Bill of Indictment (the "VBI") charging the Applicants with one count of manslaughter after the DPP advised the Commissioner of Police in writing that no charges would be pursued.

[4.] The Application also alleges that the Applicants were brought before the Coroner's Court in relation to the VBI following the conclusion of the Inquest when the then Acting Coroner, Kara Turnquest-Deveaux no longer had any authority over them.

[5.] The Respondent takes the position that the DPP committed no abuse of process in prosecuting the Applicants for manslaughter. Alternatively, the Applicants have not demonstrated any detriment flowing from the DPP's prosecution such that no stay is warranted in any event.

The procedural history

[6.] As noted, the Inquest jury returned a verdict against the Applicants of homicide by manslaughter on August 31, 2023.

[7.] The Court was provided with transcripts of the proceedings before the Coroner's Court and other materials on this Application, which establishes the following timeline of events subsequent to the Verdict:

[a.] Ms. Cordell Frazier, then acting head of the DPP, by memorandum dated April 2, 2024 to then Commissioner of Police, Clayton Fernander noted that the DPP had "reviewed the police file" and determined that the "evidence on file ...is unlikely to lead to a conviction...and in the circumstances no charges are recommended."

[b.] The Applicants were summoned to appear before the Coroners Court on 16th September 2024. Neither of the Applicants attended but their counsel was present (the same counsel who represents the Applicants in the extant criminal prosecution and on this Application). The Court directed that warrants be then issued for arrest of the Applicants with the execution suspended to September 18th at the request of their counsel;

[c.] The Applicants both attended before the Coroner's Court on September 18th with their counsel. The Court noted that they were then proceeding pursuant to section 34(a)(1) of

the *Coroners Act* whereby the Applicants were advised that they could be committed before the Supreme Court further to the Verdict. The Applicants were each granted bail in the sum of \$9,500.00 with 1-2 suretors and the matter adjourned to September 25th;

[d.] The Applicants both attended before the Coroner's Court on September 25th with their counsel. The matter was adjourned to November 15, 2024 with the reason noted being that the "VBI not ready";

[e.] The Applicants both attended before the Coroner's Court on November 15th with their counsel. On that date, the Court Marshall, Angelo Whitfield announced the "decision of the DPP is not to proceed matter is complete". The Court then ordered that both of the Applicants were "discharged from the proceedings" and their bail suretors released from any further obligations;

[f.] The DPP filed a Voluntary Bill of Indictment #323/11/2024 on December 16, 2024, which charges the Applicants with manslaughter pursuant to Section 293 of the Penal Code Chapter 84.

[g.] The Applicants were recalled to appear before the Coroner's Court on 30th January 2025. The Applicant, Akeem Wilson attended that day without counsel and was served with a Summons issued by the Deputy Registrar of the Supreme Court on December 13, 2024 with VBI attached directing the Applicant to attend before Mdm. Senior Justice Grant-Thompson on 7th February 2025. The Applicant, Donald Wright did not appear before the Coroner's Court on January 30th and the matter was adjourned to February 3rd for him to do so;

[h.] The Applicant, Donald Wright did not appear before the Coroner's Court on February 3rd and a warrant was issued for his arrest;

[i.] The Applicant, Akeem Wilson did appear before the Supreme Court on February 7th and was arraigned on the charge of manslaughter;

[j.] The Applicant, Donald Wright did appear without counsel before the Coroner's Court on February 12th and was served with a Summons issued by the Deputy Registrar of the Supreme Court on February 4, 2025 with VBI attached directing the Applicant to attend before Mr. Justice Hilton on 7th March 2025;

[k.] The Applicant, Donald Wright did appear before the Supreme Court on March 7th and was arraigned on the charge of manslaughter.

[8.] The Applicants filed their Certificate of Urgency, Originating Application and an affidavit from each of the Applicants on 5th February 2025. The Respondent filed a responding affidavit. Additionally, the Applicants and the Respondent each filed written submissions, case law and statutory references. Counsel for each of the Applicants and the Respondent offered their respective submissions during the hearing of the Application on September 17, 2025.

Analysis

Whether the Coroner possessed jurisdiction to recall the Applicants on 30th January 2025?

[9.] The Coroner discharged the Applicants on November 15, 2024. However, the Coroner recalled the Applicants to appear on January 30, 2025.

[10.] The Applicants submit that the Coroner was *functus officio* upon their discharge on November 15, 2024 and thereafter without authority over them.

[11.] The term *functus officio* is well established as defined in Halsbury's Laws 4th Edition Volume 29 at paragraph 390:

“The Justices are functi officio where they have discharged all their judicial functions in a case. Thus, in criminal proceedings they may not, save in certain circumstances, reopen the case after sentencing the accused or after committing him to the Crown Court for sentence.”

[12.] The Respondent does not meaningfully challenge the view that the Coroner had completed her judicial function in relation to the Inquest when she discharged the Applicants. Further, the Respondent noted that the Coroner has no judicial or other role respecting the commencement of criminal charges or related proceedings.

[13.] The Respondent's position was economically set out in paragraph 8 of its written submission:

“It is the Respondent institutes and undertake criminal proceedings against any person. The summonses and VBI documents were drafted and issued by the Respondent through the Coroner as this was the presentation of the VBI to the Applicants. This process is one that is always done.”

[14.] In other words, the Respondent submits that the Coroner was not acting in any judicial capacity on January 30, 2025, including with respect to the Inquest. The Coroner was simply a facilitator for the service on the Applicants of their Summons to appear before the Supreme Court further to the VBI filed by the DPP. Given that the Coroner was not revisiting or otherwise exercising any judicial function in relation to the Inquest on January 30, 2025, the Respondent submits that issue of *functus officio* was not engaged.

[15.] The record before this Court is sparse as to how the Coroner recalled the Applicants to attend before her on January 30, 2025. The Applicants both attest to being “advised” to attend but offer no further details. Mr. Wilson confirms that the only function that occurred when he attended the Coroner's Court on January 30th was service of a Summons to appear before the Supreme Court. The Applicant, Donald Wright did not attend.

[16.] It is not in dispute that the DPP possesses the power to file a VBI against any person, as it did here naming the Applicants (**Adrian Paul Gibson et al v The Director of Public Prosecutions [2023] CRI/con/00007/00008/00009**, per Cheryl Grant-Thompson J at para. 61).

[17.] The Coroner's involvement on January 30, 2025 was limited to the service on the Applicant, Akeem Wilson of a Summons directing him to appear before the Supreme Court further to the VBI filed by the DPP. The Court agrees with the Respondent that this is an administrative function that did not engage any *functus officio* prohibition.

[18.] The only remaining issue is to determine whether the Coroner had any authority to compel the Applicants to attend before the Coroner's Court on January 30, 2025 following their antecedent discharge. None has been suggested by the Respondent. The Coroner discharged the Applicants in absolute terms on November 15, 2024. Thereafter, the Coroner had no authority over the Applicants and could not compel their attendance before the Coroner's Court.

[19.] The Applicants were at liberty to not attend on January 30th without consequence. This is exactly what the Applicant, Donald Wright did. This Applicant did not appear before the Coroner's Court on January 30th and was not then served with a Summons to appear before the Supreme Court. He was, through a different means, subsequently brought before the Supreme Court to be arraigned on and otherwise called to answer the VBI. The Applicant, Akeem Wilson did attend without objection before the Coroner's Court on January 30th and was then served with a Summons. As such, both of the Applicants were properly brought before the Supreme Court further to the VBI filed by the DPP.

[20.] In summary, the Coroner had no authority to compel the attendance of the Applicants before the Coroner's Court on January 30, 2025. The Applicants were at liberty to refuse to attend before that Court on that date without consequence. The Applicant, Akeem Wilson, attended before the Coroner's Court on January 30th without legal compulsion or objection. Having so attended, Mr. Wilson was properly then served with a Summons to appear before the Supreme Court to be arraigned on and answer to the VBI filed by the DPP. The Coroner was not *functus officio* where she simply served the said Summons. The Applicant, Donald Wright did not attend before the Coroner's Court on January 30th. Subsequently, he was properly brought before the Supreme Court by other means to be arraigned on and answer to the VBI filed by the DPP.

[21.] The service of a Summons to appear before a court is an administrative function regardless of where or how it is facilitated. The process employed to bring the Applicants respectively before the Supreme Court to answer the VBI did not amount to an abuse of process or constitute any misconduct warranting relief in favour of the Applicants.

Whether the conduct of the Director of Public Prosecutions amounted to an abuse of process necessitating a stay of the ongoing criminal prosecution of the Applicants?

[22.] The Applicants' fundamental argument is that the DPP advised that no charges would be brought following the Verdict, that the Applicants were entitled to rely on that stated position and that the DPP was bound to honour that stated position.

[23.] The Respondent submits that there was no unequivocal statement from the DPP advising that no charges would be brought following the Verdict. The Respondent further submits that the communication relied upon by the Applicants was made following the review of a partial file only and that the DPP position changed following receipt and review of the Coroner's complete file.

The Respondent further submits that the Applicants have failed to demonstrate any detriment flowing from the DPP filing the VBI against them and pursuing the prosecution such that there is no entitlement to a stay.

[24.] The Court was provided with a copy of the Memorandum dated April 2, 2024 (the “Memorandum”) where the then Acting DPP, Ms. Cordell Frazier communicated to the then Commissioner of Police, Mr. Clayton Fernander that no charges would be recommended against the Applicants as set out below:

“Please be advised that we have reviewed the Police Files with respect to the captioned matters and recommend the following:

With respect to the Deceased men, Shenton Forbes and Deangelo Evans the evidence on file with respect to both matters is unlikely to lead to a conviction (as by law, the officers are able to use deadly force once justifiable, in both cases the Deceased men were alleged to be in possession of a firearm) and in the circumstances no charges are recommended.

Your files are returned herewith.”

[25.] The case of **R v Walters [2020] EWCA Crim 894** quoting Lord Phillips CJ in **R v Abu Hamza [2007] QB 659** at paragraphs 50 and 54 provides the relevant test where an Applicant alleges abuse of process based on the prosecution resiling from a representation as follows:

“The duty to prosecute offenders cannot be treated as an administrative discretion, for it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Only in rare circumstances will it be offensive to justice to give effect to this public interest...

These authorities suggest that that it is not likely to constitute an abuse of process to proceed with a prosecution unless (i) there has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (ii) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation.”

[26.] The language used by the DPP in the Memorandum is absolute and unambiguous. There is no equivocation, caveat or restriction in the DPP’s communication confirming that the Applicant’s would not be prosecuted criminally flowing from the death of Mr. Evans and the Verdict. The DPP goes so far as to explain the legal justification for the actions of the Applicants in relation to Mr. Evans’ death.

[27.] In particular, there is no statement in the Memorandum advising that the DPP’s decision not to prosecute the Applicants is a preliminary one based upon the review of the Police Files only and subject to change upon review of the Coroner’s full file, as the Respondent argues before this Court.

[28.] The unequivocal representation by the DPP that no charges would be brought against the Applicants directs the Court to a finding of an abuse of process subject to determining whether the Applicants relied upon that representation to their detriment.

[29.] The Court here makes two presumptions. The first is that the Applicants would have been informed of the DPP's decision through the Commissioner of Police. The second, related presumption is that the Applicants would have relied upon the DPP's decision not to prosecute once communicated to them. They would have understood that they were not facing any criminal charge against them arising from the death of Mr. Evans and moved forward with their lives and careers accordingly.

[30.] However, there is no evidence or even any suggestion before this Court that the Applicants suffered some detriment having relied upon the DPP's representation that no prosecution would be initiated. The Applicants presented no evidence of their having suffered any detriment whatsoever related to the DPP's change in position, including any prejudice to the Applicants' right to a fair trial or ability to mount a full defence in answer to the manslaughter charge now brought against them. As such, the Applicants have failed to satisfy the test set forth in **R v Walters** with the result that no abuse of process can be found here.

[31.] As noted above in **R v Walters**, a prosecution may be permitted to proceed even where there is detrimental reliance on the DPP's representation of no prosecution where new information subsequently comes to light. The Respondent argued that the initial decision not to prosecute was made based on a partial, police file only and that the DPP position changed following receipt and review of the Coroner's Inquest file. The Court need not consider this element of the test provided in **R v Walters** given the Applicants have not established any detrimental reliance. However, the Court will review this argument for completeness and given this position was advanced by the Respondent.

[32.] The Memorandum notes that the DPP "reviewed the Police Files" to make her decision. Those Police Files are noted as returned with presentation of the Memorandum to the Commissioner of Police.

[33.] The unchallenged evidence filed by the Respondent was that the DPP received "the file from the coroner's office regarding the inquest of Deangelo Evans" on September 25, 2024 and that the file was then assigned for review and charge recommendation. The DPP filed the VBI on December 16, 2024 charging the Applicants with manslaughter. The Court accepts the Respondent's submission that the DPP's change in position was based upon the subsequent receipt and review of further relevant information contained in the Coroner's file.

[34.] The Court does have the discretion to stay a prosecution even where the DPP's conduct does not threaten trial fairness or otherwise interfere with an accused being able to make full answer and defence. To do so, the Court must be persuaded that the subject conduct is so flagrant that to allow the prosecution to proceed would be risking the integrity of the justice system. For example, evidence of improper motivation or other bad faith could meet this very high threshold.

[35.] Described in language most favourable to the Applicants, the DPP here made a preliminary decision not to prosecute based on limited information then available and communicated that preliminary position by Memorandum that could have and should have been more carefully worded. The DPP subsequently decided to prosecute based on receipt of further, fulsome information. The conduct of the DPP here does not approach the severity of misconduct required for the Court to exercise its discretion to stay a prosecution. Allowing the prosecution to continue in these circumstances and for the serious charges here to be determined on the merits does not risk but rather reinforces the integrity of the administration of justice.

[36.] In summary, the DPP did unequivocally represent that the Applicants would not be prosecuted in relation to their involvement in the death of Mr. Evans. The DPP did subsequently file a VBI charging the Applicants with manslaughter contrary to its prior representation. However, the Applicant's failed to prove that they detrimentally relied upon DPP's representation that no prosecution would be initiated, including any prejudice to the Applicant's right to a fair trial or to their ability to fully defend themselves against the charge now brought. The conduct of the DPP herein does not rise to a level that violates the community conscience such that it would be risking the integrity of the justice system to proceed. As such, the Applicants have failed to establish an abuse of process by the DPP in filing the VBI and prosecuting the Applicants.

Conclusion

[37.] It is hereby ordered that the Applicants' Originating Application, filed on 5th February 2025 is dismissed.

Dated this 9th of October , A.D. 2025

Fitzpatrick J