

COMMONWEALTH OF THE BAHAMAS

CRI/VBI/43/3/2015

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

LATARIO SERGIO MISSICK

Respondent

Before: The Honorable Mr. Justice Dale Fitzpatrick

Appearances: Ms. Janet Munnings, along with Miayshia Saunders for the Applicant
Mr. Glendon Rolle for The Respondent

Heard on the Papers

DECISION

FITZPATRICK J.

Introduction

[1.] The Director of Public Prosecutions (DPP) brings an application to have the statement of a now deceased witness, Johnny Guerrier, read into evidence pursuant to section 66 of the *Evidence Act* (the “Application”).

[2.] The Respondent is charged with Murder (one count) contrary to section 291 (1) (b) of the *Penal Code*, Attempted Murder (two counts) contrary to section 292 of the *Penal Code*, and Possession of a Firearm with Intent to Endanger Life (two counts) contrary to section 33 of the *Firearms Act*.

[3.] The Respondent is alleged to have, on January 3rd, 2015, walked out from behind a building with a gun in his hand, shooting about ten times at various individuals present. It is alleged that the Respondent did thereby murder Carlos Taylor and attempted to murder Johnny Guerrier and Advardo Ferguson.

[4.] Johnny Guerrier attended with Detective Sergeant 2539 Miller at the Central Detective Unit on January 5th, 2015. Mr. Guerrier then gave his statement detailing what he observed in relation to the shooting. Mr. Guerrier’s statement provides that:

- i. He knows the Respondent from the southern area of New Providence, where Mr. Guerrier had lived most of his life and where the events forming the narrative for these offences occurred;
- ii. He was in the area of Deliverance Way on January 3rd, 2015 at about 8:30 p.m., sharing time with friends;
- iii. He saw a male walk out from behind a building towards him and the others gathered. The male had a gun in his hand and fired about six (6) shots at Mr. Guerrier;
- iv. Mr. Guerrier ran off into the bushes, where he heard about three more shots;
- v. Mr. Guerrier came out from the bushes a few minutes later to learn that one of the gathered persons, whom he knew as “CJ,” was shot;
- vi. He later learned that “CJ” had died; and,
- vii. Mr. Guerrier had the opportunity to observe the shooter with the outside house lights on. Mr. Guerrier noted that the male was wearing camouflage pants and a dark coloured sweater. He looked at the shooter’s face, and they made eye contact. He noted that the shooter had the same build, height, walk, and skin as a male he knows as “Juvi”.

[5.] Mr. Guerrier positively identified the Respondent as the person responsible for the shooting, whom he knows as “Juvi”, after viewing an identification parade on January 5, 2015.

[6.] Mr. Guerrier died from a gunshot wound to his head on February 28th, 2018, as confirmed by the Certified Copy of the Death Registration provided by the DPP.

[7.] Mr. Guerrier had no criminal convictions at the date of his death, as confirmed by the Royal Bahamas Police Force Criminal Records Antecedent Form provided by the DPP.

[8.] There is no doubt that the DPP has met the threshold conditions presented in section 66 of the *Evidence Act*. Mr. Guerrier provided his statement to the police while in attendance at the Central Detective Unit on January 5th, 2015, as part of the police investigation into the shooting on January 3rd, 2015, thereby satisfying section 66(1)(a). Mr. Guerrier died from a gunshot wound on February 28th, 2015, as confirmed by the Certified Copy of the Death Registration, thereby satisfying section 66(2)(a)(i). As such, Mr. Guerrier's statement **may** be admitted. The only debate is whether his statement **should** be admitted.

[9.] Section 66(4) of the *Evidence Act* provides the Court with discretion to admit the statement of a deceased witness that meets the threshold conditions identified in section 66(1) and (2) where it would be "in the interests of justice" to do so. Essentially, this requires the Court to engage in a balancing between probative value and prejudice.

[10.] The Respondent objects to the Application on the basis that Mr. Guerrier will not be present for cross-examination, including with respect to any improper motive, third-party influence, and/or self-serving interest for giving the statement. Further, he objects, arguing that admitting the statement will leave him "portrayed as a person of violent character". Finally, the Respondent opposes the Application on the basis that there is no information produced about Mr. Guerrier, noting a lack of proof as to criminal antecedents in particular. It should be noted that this last objection was made before the DPP provided the Criminal Records Antecedent Form confirming that Mr. Guerrier had no convictions and thereby neutralizing the expressed concern.

[11.] The probative value of any evidence is found in its contribution to proving a fact in issue at trial.

[12.] The prejudicial impact of any evidence is not measured in the potential harm it may do to a party's position, including that an accused may be viewed in a negative light or found guilty based on the disputed evidence. The prejudice to be considered is the risk that the trier of facts, in particular a jury, will misuse the evidence for an improper purpose, including that the evidence will arouse bias, prejudice, sympathy, or fear, with these emotions flowing into the decision-making process.

[13.] The issue of the identification of the shooter is central in this case. Mr. Guerrier's statement presents evidence that is relevant to the identification issue.

[14.] Mr. Guerrier says that he has lived most of his life in the southern area of New Providence and, thereby, has become familiar with most of the young men in the area, including a male he referred to as "Juvi". Mr. Guerrier states that he observed a male walk out from behind a building at about 8:30 p.m. on January 3, 2015. He says that the outside house lights were on and that he looked directly into the face of the male, making eye contact. Mr. Guerrier said that he recognized the male as someone he knows as "Juvi", based on this and his observations of the male's walk, build, height, and skin. Mr. Guerrier says this male fired shots at him and that he heard further shots while fleeing. Mr. Guerrier states he emerged after the shooting ended and learned that a male he knows as "CJ" had been shot.

[15.] Mr. Guerrier's statement presents his direct and detailed observations of the individual he says was the assailant the evening of January 3rd, 2015. This statement provides strong evidence and is highly probative on the central issue in this case, namely, identification.

[16.] Mr. Guerrier gave his statement to the police two days after the shooting. That same day, he selected the Respondent from an identification parade, noting him as "Juvi, the person responsible". Mr. Guerrier's statement and the related parade identification were provided proximate to the shooting.

[17.] Mr. Guerrier's identification evidence is corroborated by two other witnesses, contrary to the submission by the Respondent otherwise.

[18.] Advardo Ferguson provided a statement on January 5, 2015, wherein he claimed to see a male he knew as "Juvi" walk out from behind a building to shoot at him and "Johnny". Mr. Ferguson also heard additional shots while fleeing and emerged after the shooting ceased to find that "CJ" had been shot. Mr. Ferguson, on the same date, identified the Respondent from a parade as "Juvi, the male who shot CJ".

[19.] Leonard Collins gave a statement on January 3rd, 2015, saying he heard multiple gunshots, causing him to look out the window of his residence, where he saw a male known to him as "Sergio". Mr. Collins went outside to see "Calderon" shot and bleeding inside Mr. Collins' car. On January 5th, 2015, Mr. Collins identified the Respondent in a parade as "Juvi, the male who shot CJ".

[20.] It is not disputed that the Respondent is placed at some disadvantage arising from the inability to cross-examine Mr. Guerrier on his statement. This is a factor to be considered that weighs against admission in the balancing of probative value and prejudice. However, it is well settled that, alone, the inability "to cross-examine a witness is not a legitimate reason for his statement to be excluded from evidence" [see: *Joel Bullard v. Director of Public Prosecutions* BS 2022 CA 166 at paragraph 28]. Again, the overall risk to assess is whether the jury will misuse the evidence thereby prejudicing the Respondent, including and in particular his right to a fair trial.

[21.] The risk of misuse of a statement can be buffered by the presence of other evidence, including from another witness, that corroborates the evidence contained in the statement under consideration. This buffer is present in this case given we have the additional, corroborating statements and expected, related testimony at trial from Mr. Ferguson and Mr. Collins. Importantly, both of these witnesses will be available to be cross-examined. In other words, the issue of identification in this case will not be determined solely on the basis of the tendered statement if admitted.

[22.] Any risk of misuse of Mr. Guerrier's statement by the jury can be further minimized by an appropriately worded instruction that could include the following:

- i. Warning the jury of the need to be cautious before convicting in reliance on the correctness of eyewitness identification;

- ii. Warning the jury about the frailties of eyewitness identification, noting in particular that an honest witness, including one who says he knows and recognized the person observed, can still be mistaken, as may more than one witness;
- iii. Warning the jury that when they are considering whether to accept none, some or all of Mr. Guerrier's statement evidence that they should take into account that he was not able to testify in person before them under oath where his evidence could be tested by cross-examination, including with respect to improper motives and influences, and also depriving them of the opportunity to observe Mr. Guerrier's demeanour; and,
- iv. Addressing the quality of Mr. Guerrier's identification evidence, including the degree of detail provided, the duration of observation, the lighting and other conditions, including that these observations were made in the context of a shooting where Mr. Guerrier was in fear for his life.

[23.] The risk of any misuse can further be minimized by the Court editing the tendered statement to remove any extraneous, prejudicial content. For example, Mr. Guerrier's statement includes a reference to a prior threat made by the Respondent "to kill CJ". There is no detail as to whether Mr. Guerrier was present for this threat or heard it from a third party, with obvious concern of hearsay and prejudice. Any statement admitted pursuant to section 66 of the *Evidence Act* must be scrutinized to ensure that only information relevant to a trial issue is read into evidence. This is an exercise that should be undertaken with the benefit of submissions from counsel.

[24.] The risk of misuse or, in other words, prejudice flowing from granting the Application will be minimized here given the expected corroborating testimony from Mr. Ferguson and Mr. Collins who can be cross-examined, along with the Court undertaking any necessary editing of the statement and providing the jury with appropriately worded instructions.

[25.] In conclusion, the probative value of Mr. Guerrier's statement with respect to the central issue of identification in this case significantly outweighs any prejudice flowing from admitting his statement to form part of the trial evidence. In other words, Mr. Guerrier's statement ought to be admitted in the interests of justice, which interests outweigh any prejudice to the Respondent in this case.

Dated this 22nd day of October, A.D. 2025

Fitzpatrick J