

THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRI/VBI/107/4/2024

Criminal Division

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

RAYMOND FORBES

Before: The Honourable Ms. Renae McKay

Appearances: Mrs. Erica Ingraham and Mr. Calnan Kelly for the Prosecution
Ms. Tai Pinder and Mrs. Lilynique Murphy-Grant for the Defence

Hearing Dates: 1st May, 2026

DECISION

Criminal Law – Vehicular Manslaughter – Section 44A(1) Road Traffic Act (Amendment) (No.32) Act, 2020 – Section 4 Evidence Act, Chapter 65 – Section 178 Evidence Act – Admissibility of evidence – Article 20(1) Constitution - body camera footage – whether prejudicial effect outweighs probative value

McKay, J.

INTRODUCTION

1. On 23rd April 2026, the Court commenced the trial of the Defendant, Raymond Forbes, who stands charged with the offence of vehicular manslaughter contrary to section 44A(1) of the Road Traffic (Amendment) (No. 32) Act, 2020.
2. On 26th April 2026, the Prosecution informed the Court of its intention to call an additional witness in support of its case and filed a Notice of Additional Evidence with respect to Officer 3354 Cunningham the Officer who downloaded footage of the body camera

recorded by the device worn by PC4232 Smith on the 30th January 2024. The Defence objected to the admission of that footage.

ISSUE

3. This ruling concerns the issue of whether the body camera footage downloaded by Officer Cunningham ought to be admitted into evidence in these proceedings.

SUBMISSIONS

4. Ms. Pinder Counsel for the Defence submitted that the body camera footage on which the Prosecution seeks to rely should be excluded because it is highly graphic and likely to unfairly prejudice the jury against the Defendant, with any probative value being outweighed by its prejudicial effect. It showed the deceased on the ground, ambulance treatment, and speculative commentary from police officers who were not present at the accident.
5. The Defence also argued that Mr. McIntosh's death is not disputed, and as such, the video does not address a real issue. Instead, should it be tendered there is the risk that the triers of fact may be emotionally inflamed. Counsel placed reliance on the common law and section 178(1) of the Evidence Act submitting that the court has the power to exclude evidence where its prejudicial effect outweighs its evidential value.
6. Counsel submitted that any legitimate evidential purpose can be met by less prejudicial evidence, including the pathologist's report and witness evidence. Concluding, she opined that the real issue is whether the Defendant was driving dangerously. To her mind, the body camera footage of the aftermath would serve only to distract the jury from that issue and as such undermine the fairness of the trial.
7. In response Mrs. Ingraham submitted that the body camera footage should be admissible firstly as an exception to the hearsay rule, and in this regard she relied on the provisions of section 39 of the Evidence Act which relate to the *res gestae* doctrine. Counsel put before the Court the authorities of **Ratten v R [1971] 3 All ER 801**, **Garvin Pratt v R SCCrApp. No. 41 of 2016**, **Martin Edward v DPP [2016] EWHC 3414 (Admin)**, and **R v Andrews [1987] 1 All ER 513**, for its consideration.
8. The Prosecutor advanced that the body camera footage explained the relevant facts in issue and would assist the jury in getting a fuller appreciation of what happened at the scene of the accident. Counsel further submitted that PC Smith was a witness to the events and that the Defendant was present and engaged by the officers at the material time, and so the events captured were spontaneous. In conclusion, Counsel contended that the footage is more probative than prejudicial in value.
9. Counsel for the Defence, in reply to Prosecution, reiterated that the video footage lacked any proper basis for admission into evidence, as it did not pertain to the facts in issue, and further contended that hearsay did not arise for consideration in these proceedings.

LAW AND ANALYSIS

10. In criminal proceedings, and in the interests of justice, the Court may admit evidence of facts forming part of the same transaction, or relating to its cause, effect, surrounding circumstances, opportunity, time, place, motive, preparation, identity, or any inference arising from a fact in issue, as provided by **section 4 of the Evidence Act, Chapter 65**.
11. For completeness, section 2 of the said Act defines fact in issue as “any fact as to which in the course of any proceeding it becomes material for the court to enquire, in order to ascertain the respective rights and liabilities of the parties or for any purpose incidental thereto.”
12. The principal consideration for the Court is whether the probative value of the evidence sought to be tendered outweighs any prejudicial effect. The Court must conduct a balancing exercise to ensure that any evidence admitted ensures that the accused’s right to a fair hearing under **Article 20(1) of the Constitution** is not infringed.
13. The decision in **R v Vasyli 2015/CRI/VBI/112/5** is instructive on the exclusion of unfairly prejudicial evidence. There, the Prosecution sought to adduce email and voice messages involving the accused, the deceased, and a third party in support of an alleged motive. In addressing the prejudicial effect of that material, particularly in circumstances where motive was not an element of the offence of murder, Isaacs J (as he then was) observed at paragraph 28 that:

“The proposed evidence, in my judgment, is more prejudicial than probative, and I am unable to fathom any direction to the jury that would obviate the confusion this evidence would create when the element of intent is explained to them.”
14. I have had regard to a decision of mine in the matter of **Nadisha Beckford a.k.a. Shaneda Beckford a.k.a. “Star” v DPP SCCrApp.No.150 of 2022** which was upheld by the Court of Appeal. Therein I permitted a recording to be admitted into evidence, having been satisfied that it contained a private conversation in which the Applicant made statements amounting to a confession of a killing. The evidence was plainly relevant and probative, and bore directly on the facts in issue in relation to the charge of murder. In those circumstances, I was satisfied that the admission of the proposed recording did not infringe the Applicant’s right to a fair hearing.
15. I have also had regard to the decision of Allen SJ (as she then was) in **R v Pleasant Bridgewater and Tarino Lightbourne [2009] 2 BHS**, and by the principle stated in **R v Sang [1980] AC 402**.

Decision

16. In criminal proceedings, the Court must ensure that evidence relied on by the Prosecution is admitted only if it is relevant, probative, and fair to the accused. Even if evidence is

relevant, it should be excluded if its prejudicial effect is likely to undermine the fairness of the trial or to impede the proper determination of the facts in issue by the jury.

17. Having considered the oral and written submissions of learned Counsel for the Prosecution and the Defence, and having reviewed the body camera footage recorded by PC Smith in light of the applicable legal principles, I have considered the authorities advanced by the Prosecution's counsel with respect to the *res gestae* doctrine and I am not persuaded by them.
18. The footage does not depict the accident itself. It captures events after the impact. It does not record the circumstances of the accident as they unfolded, nor does it provide any spontaneous or contemporaneous account of the accident from a participant or observer at the time it occurred.
19. Amongst a plethora of other matter the then injured deceased is seen on in the body camera footage. The footage captured after the point does not explain or form part of the facts in issue in these proceedings. PC Smith's body camera recording after the accident cannot shed light on how the accident occurred on Sir Milo Butler Highway, nor would it, assist the jury in the determination of the facts in issue.
20. I am satisfied that the footage is inadmissible under section 178 of the Evidence Act. I am satisfied that admitting the body camera footage would not assist in resolving the central facts in issue in these proceedings. There is also a real risk that the recording, by depicting the distressing aftermath of the accident, may evoke sympathy, emotion, or prejudice disproportionate to its evidential value.
21. Accordingly, I shall not permit the body camera footage to be entered as evidence in these proceedings.

Dated the 4th day of May, 2026

**Renaë McKay
The Honourable Madam Justice**