

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION**

**2022
V.B.I. No 167/6**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

v.

**ADRIAN PAUL GIBSON
RASHAE LENORA GIBSON
JOAN VERONICA KNOWLES
JEROME MISSICK
PEACHES FARQUHARSON
ELWOOD DONALDSON**

Before: The Honourable Madam Justice Mrs. Cheryl Grant-Thompson

Appearances: Madam Director of Public Prosecutions, Ms. Cordell Frazier along with Counsel Mrs. Karine MacVean, Mr. Rasheid Edgecombe, and Ms. Cashena Thompson of the Office of the Director of Public Prosecutions for the Applicant

Mr. Damien Gomez KC and Mr. Murrio Ducille KC along with Mr. Bryan Bastian- appearing for Mr. Adrian Gibson M.P., Ms. Joan Knowles, and Mr. Jerome Missick the Respondent; Counsel Mr. Raphael Moxey- appearing for Ms. Peaches Farquharson; Counsel Mr. Ian Cargill along with Mr. Donald Saunders appearing for the Respondent Mr. Elwood Donaldson; Counsel Ms. Christina Galanos and Ms. Jacklyn Conyers- appearing the Respondent for Ms. Rashae Gibson

Date of Hearing: 4th of December, 2023

JURY JUDGMENT- Section 32A of the Juries Act, Chapter 58; Article 20(2)(g) of the Constitution of The Bahamas; Winsor v R [1866] LR 1 QB 289

GRANT-THOMPSON J

BACKGROUND

1. On the 1st of November, 2023, the jury empaneled for the trial of Mr. Adrian Gibson M.P., Ms. Rashae Lenora Gibson, Ms. Joan Veronica Knowles, Mr. Jerome Missick, Ms. Peaches Farquharson, and Mr. Elwood Donaldson. After being sworn, the selected jurors were instructed by this Honourable Court that if they required letters as proof of Jury selection for their place of employment, regarding their participation in jury duty then they should inform the Court immediately.
2. On the 29th of November, 2023, one of the selected jurors informed the Court that her manager, Ms. Stevette Moncur, the Manager of the Concierge, Cove and Reef departments at Alantis, Paradise Island, Bahamas, was mandating that she utilize her vacation days in order to continue to sit as a juror. Ms. Stevette Moncur was served with a Summons requiring her attendance before the Honourable Madam Justice Mrs. Cheryl Grant-Thompson on Monday 4th December, 2023, to fully explain the situation. The Summons provided as follows:

“TAKE NOTICE that you, Ms. Stevette Moncur, the Manager of the Concierge, Cove and Reef departments at Alantis, Paradise Island, Bahamas are hereby summoned to attend before the Honourable Madam Justice Mrs. Cheryl Grant-Thompson in Court #7 of Annex 1, East Street and Bank Lane, Nassau, The Bahamas on the 4th day of December, 2023 at 10:00 o'clock in the forenoon.

TAKE FURTHER NOTICE that you, Ms. Stevette Moncur are to provide an explanation as to why Mrs. Zelderine Roache-Pinder who is employed at the aforementioned Alantis, Bahamas, in the Cove and Reef departments as a Guest Service Agent (concierge), is being allegedly mandated to utilize

her vacation days, whilst summoned as a Juror before this Honourable Court to participate in Jury Duty (which is her civic duty).

AND TAKE FURTHER NOTICE that should you, Ms. Stevette Moncur, fail to attend at the place and time stated above, a warrant for your arrest will be issued to ensure your attendance.”

3. On the 4th day of December, 2023, Ms. Stevette Moncur duly appeared as requested along with Counsel Mr. Kenneth Lightbourne. When asked by the Learned Judge whether it was true that she had mandated the juror to take vacation leave to replace the time she was selected to sit in the trial, Ms. Moncur denied that she had directly done this, she explained the following (See Transcript dated 4th of December 2023);

“That is not the case. The juror had placed in her vacation request from last December and these were the dates that she had requested. I do think that there was some miscommunication as it relates to taking the vacation during the jury as I was informing her to take them before it expires. Our company allows us to return to work on days when you are not scheduled for jury, jury duty. At that time I informed her it would be best for her to use the jury sorry, use the vacation days as she would have been scheduled for work instead to use it as vacation.”

4. To ensure clarity the Court then asked Ms. Moncur the following (See Transcript dated 4th of December 2023):

“... It appears that you are saying that the juror had already requested and received permission to be on vacation during this period. In relation to the vacation that was already approved, is she able ... to be granted that vacation later... Without penalty?”

5. In response Ms. Moncur stated that:

“Correct. Absolutely and I do think that there was miscommunication because when she is requesting it, it is a black out period that she did sign and noting that it is a black out period. However, when I spoke to her it was just a suggestion to use one or two days per week for vacation.”

6. After Ms. Moncur concluded her statement to the Court, The Honourable Madam Justice then explained the duties of the juror to Ms. Moncur and to the public present:

“I am going to explain to you what her duties are and then you will tell me if you understand that. Her duties are that when she is summoned to attend Court her presence here in this Courtroom it is as if she is at work. She does not come here voluntarily, without more, she was summoned to appear, to attend. This juror is here as an express result of a court order and so therefore everyday that the juror is here in respect of this matter it is as if he/she is at work...”

7. Madam Justice then asked the sitting Counsel in the trial of Mr. Adrian Gibson M.P., Ms. Rashae Lenora Gibson, Ms. Joan Veronica Knowles, Mr. Jerome Missick, Ms. Peaches Farquharson, and Mr. Elwood Donaldson if they had any additional questions for Ms. Moncur. Defence Counsel Mr. Murrio Ducille, KC, Mr. Rapheal Moxey, Mr. Ian Cargil, Mr. Donald Saunders, and Ms. Christina Galanos all stated that they had nothing further to ask Ms. Moncur.

8. However, when asked Defence Counsel Mr. Damien Gomez, KC, was asked he stated that:

“My lady, only to say that you politely put it as request. It really is in the nature of an order so that there should be no mistaken belief that an employer can interfere in the processes of criminal trials. In fact, The

Juries Act empowers the Court to do certain things where jurors are prevented from performing their civic duty and attending at Court for that purpose, save for that and given the explanation, I have nothing further.”

These cases explained sentiments with which this Court agrees.

9. Madam Director of Public Prosecutions Ms. Cordel Frazier then submitted to the Court that **Section 32A of the Juries Act, Chapter 58** was relevant. This provision provides that:

“32A (1) Any employee who is not sworn to serve as a juror remains liable to return to his place of employment until his further attendance is required

(2) Without prejudice to subsection (1), an employer shall not adversely affect the remuneration of an employee by reason only that he has been summoned pursuant to section 10.

(3) An employer shall not dismiss or threaten to dismiss an employee referred to in subsection (2).

(4) Any employer who contravenes subsection (3) shall be liable to a fine not exceeding two thousand dollars.”

10. After receiving input from both Defence Counsel Mr. Damien Gomez, KC, and Madam Director of Public Prosecutions Ms. Cordell Frazier, this Court gave a stern warning to Ms. Stevette Moncur. The Learned Judge warned Ms. Moncur that pursuant to powers vested into this Court by Section 32A (4) of the Juries Act, this Court could have, if the precondition was met, her personally fined in an amount not exceeding Two Thousand Dollars (\$2,000). However, the Court verily believed that a stern warning and a “word to the wise” would be sufficient, in order for Ms. Moncur to cease and desist making “suggestions” to the juror which the juror found threatening. The juror expressed that if he/she did not use their vacation in order to sit as a juror she would lose her vacation leave and was

liable to be dismissed. Ms. Moncur was informed that the juror in question should not be penalized in any shape or form for performing her duties in accordance with the Law and as a result of Court Order.

11. However, before Ms. Moncur was allowed to step down from the stand the Court ensured that she understood that even to gently suggest, as she sought to do, that the juror should take their vacation leave, can make the juror feel or potentially has the ability to make them feel that they will be severally penalized in their employment. If she understood that the juror has been ordered to attend before the Supreme Court of The Bahamas, and has no choice about their attendance here, then jurors cannot be influenced, threatened, made to feel victimized, or subject to dismissal for the performance of the lawful duties before the Court. To do so could result in proceedings for Contempt of Court.
12. Trial by Jury is one of the cornerstones of judicial administration. **Article 20(2)(g)** of the Constitution of the Commonwealth of The Bahamas guarantees to a person charged on information in the Supreme Court a trial by jury. The importance of a trial by jury has been recognized from the beginning of this noble legal profession. In the case of **Winsor v R [1866] LR 1 QB 289** Lord Cockburn CJ stated that “*one of the principles that lie at the foundation of [English] law is ‘the maxim that judges shall decide questions of law and the juries questions of fact (page 303)’*”. Jurors are said to be the light that shows where justice lives. They are an integral component in the Criminal Justice System. In this case they will be responsible for determining the guilt or innocence of these Defendants. They cannot be intimidated. They must be free to make impartial decisions.
13. In its advisement to the general public, this Court stated that a Juror should never be made to feel intimidated, targeted or vulnerable relative to the performance of their lawful civic duties. Intimidation of a member of a jury is a criminal contempt

whether it is done inside the Court or outside the Court. Once it pertains and is directly related to their functions as a juror.

CONCLUSION

14. Jury duty is a civil obligation that must be taken seriously. No employer should seek to force a sitting juror, who is an employee to take vacation days or any other form of leave whilst they are sitting as a juror in a Criminal trial. A fair and impartial Jury is crucial to the rule of law and the proper function of the legal system that governs the jurisdiction of The Bahamas and many nations alike. Jurors provide an opportunity for citizens to participate in the process of governing.

15. A trial by jury is the cornerstone of legal systems around the world. Jurors are essential in ensuring justice and fairness are accurately carried out in all Criminal cases. In addition to this trial by jury is also important because it promotes community participation and representation in the legal process. The Jury system embraces an assortment of ideals and opinions by organizing a broad group of individuals to serve as jurors. This diversity protects against prejudice and ensures that decision-making represents the collective judgment of the community rather than depending simply on the opinions of legal experts. Trial by jury also safeguards against the potential abuses of power by the government and helps maintain public trust within the legal arena. The presence of a jury acts as a check on an alleged arbitrary or unfair decisions. So long as jury trials exist, this is their strength which should not be fettered or tarnished.

16. This Court makes it crystal clear that:

- a. The juror in question must not be penalized, dismissed or threatened with dismissal for performing her civic duties;
- b. The juror's vacation days must be returned back to her;

17. I promised to give my reasons in writing this I now do.

DATED this 22nd day of January A.D., 2023

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson