

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2023/CRI/bal/00251/2023

B E T W E E N

KYVAUGHN STRACHAN

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Mr. Justice Franklyn K M Williams, KC**

Appearances: **Walton Bain for Applicant**

Tamika Roberts with her Jacklyn Burrows for the Respondent

Hearing Date: **18 July 2024**

RULING

WILLIAMS, J

[1.] The Applicant, one of several defendants, is charged with **POSSESSION OF AN UNLICENCED FIREARM, POSSESSION OF AMMUNITION** and being an **ACCESSORY AFTER THE FACT**. He here makes a no case submission.

[2.] Here I remind myself of the approach to be taken as laid out by *Lane CJ* in **R v Galbraith** [1981] 2 ALL ER 1060:

(1)...If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not convict upon it, it is his duty, upon a submission being made, to stop the case

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of the witness reliability, or other matters which are generally speaking within the province of the jury and where upon one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

It follows...the second of the two schools of thought is to be preferred. There will of course, as always in this branch of law, be borderline cases. They can safely be left to the discretion of the judge.

[3.] Mr. Bain, on behalf of the defendant submits that this case falls under (1), (2) and (2)(a). He submits that the purported identification of his client by the witness Kendy Ferguson is wholly unreliable and that there is no evidence of possession of the black Glock 9mm pistol S/N BBBP596 and ammunition by him. Ms. Roberts submits that the case falls under (2)(b) and that there is evidence of both, sufficient to establish a prima facie case.

[4.] The evidence of the uncontroverted statements of the defendant contained in his police interview yield, in my view, knowledge, care, custody and control of the firearm and the magazine of which were found 8 unfired 9mm cartridges by him.

“Yeah I did pass it to my boy and I ain’t know what they do from what they ain’t do because we leave the gun with smokey”

and

“Yea that’s the same gun I give to him what I get from Chewy when he try passes it that Chewy own.”

[5.] The evidence of Sergeant Patrice Rolle, Firearms Licencing Officer is that a search of the records yielded that no registration of the serial number BBBP596, necessarily predicate to the lawful possession of that firearm, was found.

[6.] The evidence of Corporal Antionette Fox, Armorer, is that the firearm was in good functioning order, and capable of ejecting a cartridge.

[7.] The defendant corroborates, by his uncontroverted statements made in interview, his attempts to. himself avoid, and to assist Shantino Armbrister and Shavan Arthur to avoid, the due process of the law. Those interview statements corroborate the unshaken identification evidence of Kendy Ferguson in this regard. Put simply, the defendant places himself on the scene in circumstances which clearly show his participation as principal and accessory

“When we did run out of gas in his black car.”

and

“ I ain’t never commit no armed robbery I only know about the firing piece.”

[8.] The issue of the purported identification evidence of Kendy Ferguson, its reliability, strength or weakness and her credibility generally, are matters for the jury and the subject of directions by myself to be given thereto.

[9.] In the premises, the prosecution having made out a *prima facie* case on each of the offences as alleged, I do not accede to the no case submission; the defendant is called upon to answer each charge.

Dated the 29th day of July 2024


Franklyn K M Williams, KC

Justice