IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No CACR008/2014
Ind 17/12

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

Dorlisa Piercy

Appellant

BEFORE: THE RIGHT HON. SIR JOHN CHADWICK, PRESIDENT

THE HON. ELLIOTT MOTTLEY, JUSTICE OF APPEAL

THE RIGHT HON. SIR BERNARD RIX, JUSTICE OF APPEAL

Appearances: Ms. L. Organ (Samson and McGrath) for the Appellant

Ms. C. James Crown Counsel for the Director of Public Prosecutions

HEARD: 6th November 2014 Delivered: 6th November 2014

Please note this is an agreed summary of the judgment from counsel's note –approved and released: 9 December 2014

PRESIDENT

1. The appeal against conviction is allowed on grounds 4 and 5 of the Appellant's grounds of appeal for the reasons set out in the Appellant's skeleton argument. We are not going to order a re-trial for reasons that will be set out by Sir Bernard Rix.

THE RIGHT HON. SIR BERNARD RIX

2. One essential reason why the appeal against conviction succeeded is that the prosecution case on the speed the vehicle was driven at, to the effect that it was close to 100 miles per hour, failed. It failed because the witness who was asked to deal with it was rejected by the Judge as

an expert and the other prosecution witness was not asked to assess the speed and his "offer" to do so was rejected by the Judge for numerous reasons as set out at paragraph 142 of her judgment.

3. Today, on behalf of the prosecution Ms. James requests a retrial. This application is opposed by Ms. Organ on behalf of the Appellant. In essence Ms. James submits that either Mr. Redden's "offer" which was not accepted by the judge might be, without improvement, accepted by another tribunal or that it may be improved upon by the performance of calculations, the absence of which led to the Judge's rejection of the evidence. The former course would result in an extremely weak case at re-trial on the basis of the Judge's findings. In the alternative, Mr Redden's new calculations would amount to an attempt to improve the Crown's case, which was criticised by the Judicial Committee of the Privy Council in ***Everad Nicholls v Her Majesty The Queen*** Privy Council Appeal No. 14 of 2000. Lord Steyn in the last paragraph of the judgment, after quoting Lord Diplock in ***Reid v The Queen*** [1980] A.C. 343 to the effect it was an "error in principle" to give the prosecution "a second chance to make good deficiencies in its case", "It would be wrong to permit the prosecution through Dr. Bascombe-Adams or another expert to make good this deficiency . And a new prosecution without such evidence would in all probability fail either at trial or on appeal to the Court of Appeal or the Privy Council. In these circumstances the Court of Appeal ought not to be troubled with a remission". This applies in this case and it is not in the interests of justice to permit a re-trial.

PRESIDENT

4. I agree that it is not in the interests of justice to order a re-trial. Accordingly the conviction is quashed and the Appellant's acquittal is ordered.

Chadwick, P.

Mottley, J.A

Rix, J.A