

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO. SLUCRD2024/0309

BETWEEN:

THE KING

and

JUNIOR GABRIEL

Defendant

Before:

The Hon. Mde. V. Georgis Taylor-Alexander

High Court Judge

Appearances:

Mr. Stephen Brette of Counsel for the Defendant

Mr. Linton Robinson for the Crown

The Defendant present

2026: June 17;

DECISION ON A NO CASE SUBMISSION

- [1] **TAYLOR-ALEXANDER J:** A shooting incident occurred at Marchand at Quamie's Shop on Saturday, 8th June 2024, about 11:45 a.m. This resulted in the deaths of Avitus Lynch Junior and Thaddeus Dennis. The Defendant was arrested as a suspect in both murders on Monday, 10th June 2024. He surrendered to police custody after a request from a senior ranking police officer. The Defendant was charged for the murder of Avitus Lynch Junior. On the assumption of two purported eyewitnesses to the incident. The

eyewitnesses are Alton Jn Jacques, whose statement was recorded on the 10th of June 2024 and Mervinia John, whose statement was recorded on the 11th of June 2024. To date, no one has been charged for the murder of Thaddeus Dennis. The Defendant submits that based on a submission that they had made early on in the case alledging that Alton Jn. Jacques was at work at Sandals Halcyon at the time of the shooting and could not have been present at both places that he has been subsequently dispensed with as a Crown witness. The Defendant also submits that the other eyewitness, Mervinia John will be established to have been at Dennery at the time of the incident.

- [2] At the close of the Crown's case on the 9th of April 2026 submitted that due to the tenuous, incredible, conflicting and destructive nature of the evidence of Mervinia John, that this judge is entitled to conclude on a no case submission. That the Crown's evidence taken at its highest is such that a properly directed jury could not convict on it. He therefore prays that his no case submission is upheld and that he be discharged.
- [3] Incriminating evidence implicating Junior Gabriel, the Defendant comes from Mervinia John and it is upon her evidence that the Crown's case rises and falls.

The Law on a New Case Submission

- [4] In **Woolmington v the DPP**¹ a case relied on by the defence. It is accepted that the burden of proving the Defendant's guilt lies with the prosecution and that if there is reasonable doubt created by the evidence given by either the prosecution or the Defendant. The prosecution has not made out a case and the Defendant must be acquitted.

The Test in Galbraith

- [5] In **R v Galbraith**², the court in England refined the approach to a no case submission. That approach is equally applicable under the common law to our jurisdiction. Lord Lane CJ said thus:-

“How then should the judge approach each submission of new case? If there is no evidence that the crime alleged has been committed by the Defendant, then there

¹ [1935]AC 462

² [1981] 2All ER at page 1060

is no difficulty. The judge will of course stop the case. 2 The difficulty arises where there is some evidence, but it is of 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 Crown's evidence, taken at its highest, is such that the jury, properly directed, could not properly convict on it, it is his duty on the submission being made to stop the case.
- (b) Where, however, the Crown's evidence is such that its strength or weakness depends on the view to be taken over witnesses, reliability or other matters which are, generally speaking, within the province of the jury, and where, on one possible view of the facts, there is evidence on 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."

[6] The Defendant's case is premised on the second limb, namely that there is some evidence in the case presented by the Crown, but that it is of a tenuous character, for example, because of inherent weaknesses or vagueness, or because it is inconsistent with other evidence.

[7] The Defendant relies on the dictum of Lawton LJ in **R v Mansfield**³. That in consideration of the second limb of Galbraith, a Defendant in a judge alone trial can submit to the judge as the tribunal of fact, that, some of the evidence was so conflicting as to be unreliable and to therefore rely on the evidence of that witness, (in this case the evidence of Mervinia John) would be unsafe.

[8] The test in **Galbraith** was further refined and **R v Baker** another English case where Lord Lane CJ refined the principle thus:

"Even if the judge had taken the view that the evidence could not support a conviction because of the inconsistencies. He should nevertheless have let the matter to the jury. It cannot be too clearly stated that the judge's obligations to stop the case is an obligation which is concerned primarily with those cases where the necessary minimum evidence to establish the facts of the case has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth, and to stop the case merely because he thinks the witness is lying. To do that is to usurp the function of the jury."

[9] In **Pryer**, **Silcock**, and **Christou** cases relied upon by the Crown, all of which post-date **R v Mansfield**, the courts have emphasised that **R v Shippey**, a decision applying the

³ [1978] 1 All ER 134 at 140

Mansfield approach, should be confined to its own facts. It ought not to be elevated into a general principle requiring a trial judge to halt proceedings merely because the evidence contains significant internal inconsistencies, provided there remains evidence capable of supporting the prosecution's assertions.

- [10] I am satisfied that the proper test remains that set out in **R v Galbraith**. Under the second limb of **Galbraith**, if the court concludes that the Crown's evidence, taken at its highest, is such that a properly directed jury could not convict upon it, then the judge is obliged to stop the case. These principles, firmly established under the common law of England, apply equally within this jurisdiction, and it is on that basis that I proceed to assess the Defendant's submission of "no case to answer."

The Defendant's Submission

- [11] The Defendant submits that there are major inconsistencies in the evidence given by Mervinia John at trial. He submits that in her statement given to the police immediately followed following the incident. She had given her residence as being Over the Bridge, Dennery and that she had previously resided at Marchand, submits, however, that in her evidence-in-chief in court, she indicated that at the time of the incident resulting in the shooting death of Mr. Hay, she in fact lived at Marchand. **(inconsistency 1)**
- [12] That in her witness statement to the police she indicated that at some time before the shooting incident Mr. Hay, with whom she was with, had received a call on his phone, and that on conclusion of the call, he, meaning Mr. Hay, had informed her and others that in fact, he had received a call from Marvin Gabriel; who had called him from prison and had told him not to worry as he would get the bike back for them. However, he submits when Mervinia John gave evidence in court, she said that she had heard Marvin Gabriel on the phone with Mr. Hay **as Mr. Hay**, he had placed his phone on speaker and that she knew it was Marvin Gabriel on the call because she had previously been in a relationship with Marvin Gabriel, who had in fact fathered a child with her. **(inconsistency 2)**
- [13] Thirdly, that in her witness statement to the police, Mervinia John had informed the police that Junior Gabriel aka Coconut is from Marchand and that she had known him

for over ten years. They had gone to the Vide Boutielle Secondary School together. However, in her evidence-in-chief, in court, Mervinia John, and yet another inconsistency had stated that she had gone to the Vide Boutielle Secondary School and that Junior Gabriel aka Coconut went to the George Charles Secondary School. **(inconsistency 3)**

[14] Statement of the 11th of June 2024, she had stated that she was sitting on the steps of Pension Bar with individuals when she saw the Defendant Junior Gabriel together with Cocoa Boy and I.E. walking up the Marchand Road from the Cadasse Bakery area. However, in her evidence-in-chief, she claimed that she was in fact standing on the pitched surface of the road, and upon inquiry by the court, she indicated that she was almost in the middle of the road of the pitched surface. **(inconsistency 4)**

[15] That in her statement dated the 11th of June 2024, she stated that she was standing on the steps to Quamie's Shop but contrastingly in her evidence-in-chief, she stated that she was standing on the steps to Quamie's house and not the shop. Further, in her statement of the 11th of June 2024 she claimed to have ran off after Mr. Hay was shot and while running she heard shots, that she had run into the Boulevard and returned after the shots stopped firing, however, in her evidence-in-chief, in court, she stated that she witnessed the entire incident and was watching from inside Quamie's house through an open window. **(inconsistency 5)**

[16] Further, that in her statement given to the police on the 11th of June 2024, she stated that both Coconut and I.E. had guns in their hands and was shooting in the direction of Quamie's Shop but contrastingly, in her evidence-in-chief, she stated that she did not see I.E. with any gun. **(inconsistency 6)**

[17] The Defendant submits that, owing to inconsistencies between the statement of the sole eyewitness and her evidence-in-chief, the court should regard the witness as unreliable. While acknowledging that the prosecution may argue that a witness statement does not itself constitute evidence, the Defendant contends that the court is entitled to infer that where the witness's testimony-in-chief materially diverges from her prior statement, such inconsistency amounts to recent fabrication. The Defendant emphasises that the

facts of the incident ought to have been fresher in the witness's mind at the time of making her statement.

[18] Central to the Defendant's submission is the witness's evidence that she was standing on Quamie's step, facing Upper Marchand, which would place Quamie's shop behind her. On that account, it would have been impossible for her to observe the events she claimed to see without turning around to face the shop, yet there is no evidence that she did so. Furthermore, the witness testified that she and others entered Quamie's house and continued observing through the window near the front door, from which she claimed to have seen Mr. Hay near Cadasse Bakery. The Defendant argues that such an observation was impossible, given that Quamie's house is set back into the topography and recessed between two adjacent buildings, thereby obstructing the line of sight. The Defendant further points to the presence of a utility pole as an additional obstacle. Despite these impediments, the witness asserted that from the vantage point of the house window, she had a perfect view of the men.

[19] The Defendant therefore submits that these inconsistencies and physical impossibilities fatally undermine the credibility of the witness's evidence-in-chief.

The Crown's Submission

[20] The Crown submits that there is direct identification evidence linking the Defendant to the act of firing a shot at the deceased. That evidence, they contend, comes from Melvinia Jordan, who testified that she observed Coconut, Cocoa Boy, and I.E. walking along Marchand Road before entering Quamie's shop. While standing on the steps of Quamie's house, she heard a confrontation between Mr. Hay and Coconut. According to her evidence, Coconut was inside the shop while Mr. Hay stood at the doorway. She stated that she saw Coconut remove a firearm from his pouch and discharge a single shot in the direction of Mr. Hay.

[21] The Crown further submits that the identification of the Defendant was under circumstances which made the quality of the identification good. Firstly, it was recognition evidence as the perpetrator was someone known to Mervinia John. Secondly, the quality of her identification was good because she had first observed the

Defendant walking up the Marchand Road. It was not a fleeting glance, and thirdly, the identification was made on a sunny Saturday morning, and there were no issues with lighting.

[22] During cross examination, Mervinia John accepted that she had said in her witness statement that she stood on the steps facing Upper Marchand Road. She also accepted that Quamie's Shop would have been to her back whilst facing Upper Marchand Road. The Crown submits that this evidence does not make her identification of the Defendant as the shooter poor or unreliable as she never indicated in her statement that she was facing Upper Marchand Road for the entire duration of the incident. In fact, subsequent to saying in her witness statement that she was facing Upper Marchand Road she then went on to speak of observation she made of what was happening inside of Quamie's Shop and it is therefore plausible that Mervinia John would not have stayed facing Upper Marchand Road for the entire duration.

[23] Further, the Crown submits that the fact that the window of Quamie's house stands back from the Cadasse Bakery building does not mean that it was impossible for her to observe the deceased walking down Marchand Road up to the point between the bakery and the supermarket.

[24] The Crown submits that, when looked at in a vacuum, Mervinia John's evidence identifying the Defendant as a shooter cannot be said to be inherently weak or unreliable.

Inconsistencies Between the Witness Statement and the Viva Voce Evidence of Mervinia John

[25] A statement taken from a witness by the police in the course of a criminal investigation functions primarily as an investigative record rather than as evidence in its own right. It preserves the witness's account at the earliest stage, when the events are presumed to be freshest in memory, and provides the police with a basis for pursuing leads, identifying suspects, and corroborating other information. At trial, however, the statement itself is not evidence; the witness's oral testimony is.

- [26] It is acknowledged that the statement plays a crucial role in disclosure. It may be used to refresh the witness's memory or to test credibility if inconsistencies arise between the statement and oral testimony. In such circumstances, the court must assess whether discrepancies amount to recent fabrication or simply minor differences. Where inconsistencies are adduced in court and used to test credibility, the court must determine whether they are minor variations attributable to memory lapse, stress, or the natural imperfections of human recollection, or whether they are material contradictions that undermine the reliability of the testimony.
- [27] The authority of *Galbraith* establishes that minor inconsistencies will not usually prevent a case from going to the jury; they are matters for the tribunal of fact—in this case, the judge—to weigh in deciding how much weight to give the evidence. However, where inconsistencies are so fundamental that the Crown's case, taken at its highest, could not sustain a conviction, then under the second limb of *Galbraith* the judge is obliged to stop the case. In practice, courts are reluctant to withdraw a case solely because of inconsistencies unless they render the evidence inherently unreliable or impossible to reconcile with the physical facts.
- [28] I treat inconsistencies (1) and (3)—relating to the witness's residence at the time of the event and where she attended school—as minor inconsistencies for the time being. The identification of the Defendant as present at the events is not in dispute. The Defendant's assertion that another prospective witness places her elsewhere has not yet arisen in the evidence, other than through Counsel's submissions, and cannot form a basis for assessing credibility at this stage.
- [29] As to inconsistency (2), a hearsay statement contained in a witness statement is inadmissible in any event and cannot be used to demonstrate inconsistency with viva voce evidence. The witness's testimony on this issue was clear; she did not tell the police that Mr. Hay's phone was on speaker. In court, she explained that she heard the speaker and identified the caller who was on the line. This is not an inconsistency but rather a development of her evidence.
- [30] Inconsistencies (4) and (5) may properly be raised in closing submissions to challenge the overall credibility of the witness, but they do not provide a basis at this stage to stop

the case. I agree with the Crown's submission that on material particulars the witness provided direct identification of the Defendant as the shooter at the scene.

Weaknesses in Mervinia John's Viva Voce Evidence

- [31] Further, the weaknesses identified in the viva voce evidence, such as her vantage point when Mr. Hay was near Cadasse Bakery and what she was able to see, are not matters for determination at this stage of the proceedings. They may be considered later in the court's overall assessment of the strength of the Crown's case, and the credibility of the witness.
- [32] The challenge to the credibility of the witness is, at this stage, premature given the limited scope of a no case submission and the evidence so far led.

Disposition

- [33] Based on the evidence, I have not found that the inconsistencies render the testimony inherently unreliable or impossible to reconcile with the physical facts. Accordingly, I find no basis to uphold the no case submission,
- [34] This matter is adjourned to the 1st of July, 2026 to determine the election of the Defendant and take the witnesses for the Defendant if any.
- [35] In that regard, summonses are to issue for Samantha John and of Dennerly Jn. Naie Lesmond of Trou Rouge, Castries to attend before this court on the 1st of July 2026 at 9:00 a.m. and to give evidence on oath.

Justice V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT

REGISTRAR

