



IN THE SUPREME COURT  
THE TURKS AND CAICOS ISLANDS

CR2 of 2022

REX

v

JACQUELIN CADET

**BEFORE:** The Honourable Mr. Justice Davidson Kelvin Baptiste (Ag)

**APPEARANCES:** Mr. Clement Joseph, Principal Public Prosecutor  
and Ms. Alima A. Alexis, Public Prosecutor, for the Crown.  
Mrs. Lara Maroof for the Defendant.

**HEARD:** 2<sup>nd</sup> February 2024

**DELIVERED:** 5<sup>th</sup> February 2024



### RULING

1. **Baptiste J:** The defendant (Cadet) is being tried on an information containing three counts; one count of possession of a firearm and two counts of possession of ammunition. The police gave evidence that an authority to search the defendant's home was obtained and pursuant to the execution of that authority a firearm and ammunition were found at his home. Cadet told the police how the firearm came to be there; basically, he sent for the firearm from Haiti, after someone called Ken had threatened him.
2. Learned counsel Mrs. Maroof had requested the Crown to provide details of the information provided to the police which led to the issuance of the authority to search the defendant's home for the firearm and ammunition. On 30<sup>th</sup> January 2024, during the trial, Mrs. Maroof raised the issue of non-disclosure of that information.

3. Thereafter, the court began hearing a Category 1 abuse of process application, with Mrs. Maroof contending that the Crown had breached its disclosure obligations and the non-disclosure of the information would result in the defendant not getting a fair trial. The application was subsequently withdrawn. Mrs. Maroof then sought a disclosure order from the court in respect of the information.
4. Mrs. Maroof contended that the information requested fell within the broad category of potentially relevant material in light of the fact that the defence statement denied possession or knowledge. The details as to what evidence was provided might assist the defence or undermine the prosecution's case. Mrs. Maroof submitted that the information which the Crown have failed to retain, obtain or provide, go to an issue of significance to the defence, namely persons who had knowledge of the firearm and its location and how they came to know of it. Mrs. Maroof relied on **R v H [2004] 2 AC 134** which dealt with public interest immunity and disclosure. Reliance was also placed on other cases.
5. In resisting the application for disclosure, Mr. Joseph argued that the Crown is not asserting public interest immunity and it is not a **R v H** case. Mr. Joseph relied heavily on section 108 of the Evidence Ordinance CAP 2.06 of the Turks and Caicos Islands and stated that the statute trumps the Common Law. The Crown advanced the position that the police cannot be compelled to give the information as to where the information leading to the grant of the authority to search came from, by virtue of section 108. The court does not have the jurisdiction to force the police to give the information. The question as to who gave the police information is irrelevant to the case.
6. Mrs. Maroof contended that the prosecution has applied an incorrect approach to section 108 of the Evidence Ordinance. Regardless of section 108, the Crown are still obliged to request the material from the police, and review. If the material falls within the broad category of material which should be disclosed, but the police seek to rely on section 108 and public interest immunity, an application would need to be made to the court in accordance with the procedure set out in **R v H**. The section does not permit the Crown to proceed with a prosecution where the defendant's right to a fair trial is breached. It is understood from the Crown's response that they have not made inquiries.
7. I now consider **R v H**, in which the House of Lords gave its opinion on two points of law of general importance which were certified by the Court of Criminal Appeal. Are the procedures for dealing with claims for public interest immunity made on behalf of the prosecution in criminal proceedings compliant with article 6 of the Protection of Human Rights and Fundamental Freedoms? If not, in what way are the procedures deficient and how might the deficiency be remedied?
8. At paragraph 18 in **R v H**, the Court stated that circumstances may arise in which material held by the prosecution and tending to undermine or assist the defence cannot be disclosed to the defence, fully or even at all, without the risk of serious prejudice to an important public interest. The public interest most regularly engaged is that of the effective investigation and prosecution of serious crime, which may involve resort to

informants and undercover agents, which cannot be disclosed without exposing the individual to the risk of personal injury or jeopardizing the success of future operations. In such circumstances some derogation from the golden rule of full disclosure may be justified but such derogation must always be the minimum derogation necessary to protect the public interest in question and must never imperil the overall fairness of the trial.

9. Rule 45 of the Criminal Procedure Rules 2021 of the Turks and Caicos Islands addresses the issue of disclosure. Rule 1 provides that directions given by the court pursuant to rule 44 should include –
  - (a) fixing a date by which the prosecution must disclose to the accused all the evidence they intend to rely upon at trial;
  - (b) fixing a date by which the prosecution must disclose all other material in its possession including material that they do not intend to use at trial which materially weakens the prosecution case or assists the accused; and
  - (c) fixing a date by which the prosecution must confirm if any material in their possession which they do not intend to use at trial, which materially weakens its case or assists the accused, has been served on the accused.
  
10. Subrule 2 states that the prosecution shall disclose material under subrule 1 (b) unless the magistrate or judge orders that such material should not be disclosed in the public interest. Subrule 3 provides that any application for an order under subrule (2) may be made with or without notice to the accused depending on the sensitivity of the material concerned. An accused person or his attorney may make an application to the court to permit the accused and his attorney to inspect and copy relevant prosecution material if not made available under subrule 1 (b).
  
11. In **R v H** it was stated at paragraph 35 that:

“If material does not weaken the prosecution’s case or strengthen that of the defendant, there is no requirement to disclose it. For this purpose, the parties’ respective cases should not be restrictively analysed. But they must be carefully analysed to ascertain the specific facts the prosecution seek to establish and the specific grounds on which the charges are restricted.”
  
12. As indicated earlier, Mr. Joseph relied heavily on section 108 of the Evidence Ordinance in resisting the application. Section 108 of the Evidence Ordinance provides that:

“No magistrate, Justice of the Peace, or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say where he got any information as to the commission of any offence against the public revenue or the excise law.”
  
13. It is important to bear in mind that what is being sought by the defendant is information leading to the grant of the authority to search his home for firearm and ammunition.

This is in circumstances where, (i) on the prosecution case, the firearm and ammunition were found at his home and he explained that he sent for it in Haiti after he was threatened by one Ken; and (ii) the defence statement denies possession and knowledge.

14. Section 108 of the Evidence Ordinance provides in language which does not admit of ambiguity, that no police officer shall be compelled to say whence he got any information as to the commission of any offence. That being the case, section 108 provides a statutory bar to the order sought. The effect of the order requested would be to compel the police to do what the section says they cannot be compelled to do. In the circumstances, and for the reasons given, the order sought is refused.
15. In passing, I note the observation of Fulford LJ in **R v PR [2019] EWCA Crim 1225**, at paragraph 65 that there is no rule of law that if material has become unavailable, that of itself means that the trial is unfair, because for example a relevant line of enquiry can no longer be explored with the benefit of the missing document or records. It follows that:

“ ... there is no presumption that extraneous material must be available to enable the defendant to test the reliability of the oral testimony of any one of the prosecution’s witnesses. In some instances, this opportunity exists; in others it does not.”

I am not saying here that material is available or unavailable.

16. In **R v Davies [2013] EWCA Crim 1592**, Treacy LJ stated at paragraph 15, in the context of missing evidence or witnesses:

“In considering the question of prejudice to the defence, it seems to us that it is necessary to distinguish between mere speculation about what missing documents or witnesses might show, and missing evidence which represents a significant and demonstrable chance of amounting to decisive or strongly supportive evidence emerging on a specific issue in the case. The court will need to consider what evidence directly relevant to the appellant’s case has been lost by reason of the passage of time. The court will then need to go on to consider the importance of the missing evidence in the context of the case as a whole and the issue before the jury. Having considered those matters, the court will have to identify what prejudice, if any, has been caused to the appellant by the delay and whether judicial directions would be sufficient to compensate for such prejudice as may have been caused or whether in truth a fair trial could not properly be afforded to a defendant.”

17. It appears to me that in context, the issue in the present case for the jury is whether they are sure that the defendant had possession of the firearm and ammunition. Whether they are sure of the reliability and credibility of the evidence that the police found the firearm and ammunition at the home of the defendant, as well as the response the police said he gave. The case does not depend on establishing the identity of any informant or the information leading to the obtaining of the authority to search. In the premises, I do

not see any prejudice or unfairness arising. In any event, as already indicated, section 108 provides a statutory bar.

**The Hon. Mr. Justice Davidson Kelvin Baptiste**  
**Judge (Ag) of The Supreme Court.**

