

**IN THE COURT OF APPEAL**

**TURKS AND CAICOS ISLANDS**



**CR-AP 12/2019**

**BETWEEN**



**EVANO ROBERTS**

**APPELLANT**

**AND**

**REGINA**

**RESPONDENT**

**BEFORE:**

**Sir Elliott Mottley**

**President**

**The Hon. Mr. Justice Stollmeyer**

**Justice of Appeal**

**The Hon. Mr. Justice Adderley**

**Justice of Appeal**

**Appearances:**

**Ms. Sheena Mair for the Appellant**

**Ms. Enjaleek Dickenson for the Respondent**

**Heard: 8<sup>th</sup> September, 2020**

**Delivered: 31<sup>st</sup> December, 2020**

1. At the conclusion of the hearing of this appeal, the Court announced that the appeal had been dismissed and that the conviction had been affirmed. We indicated that we would put our reasons for so doing into writing. These are those reasons.
2. Following a trial before Mr. Justice Aziz and a jury, the appellant was convicted of inflicting grievous bodily harm on Cyril Camaro Smith on 17 November 2018. He was sentenced to a period of imprisonment of a term of 21 months.
3. On 17 November 2018, Cyril Camaro Smith Jr. was stabbed 3 times by the appellant. This incident occurred outside of his residence. As a result of the incident, Smith was taken to the Cheshire Hall Medical Centre by his friend Mr. Casmir where he was treated for his injuries. The appellant was convicted of the offence of inflicting grievous bodily harm contrary to section 11 of the Offences Against the Person Ordinance Chapter 3.08. He has appealed against his conviction.
4. The appellant alleged that “a material irregularity occurred during the course of the trial when the judge proceeded with an in-trial hearing which involved an allegation of collusion between the Director of Public Prosecution and the Police in the presence of the counsel who was prosecuting the case.”
5. These allegations of collusion between the Police and Crown Counsel arose in this manner. During the course of the trial, Felisha Knowles, who was a witness for the defence, brought

to the attention of counsel for the defendant who appeared in the trial, the contents of a conversation which she overheard while she was by the reception desk of the Court. Ms. Knowles told the judge that she heard the police officer Jolly who had given evidence for the prosecution say to another male person in the reception area “I want my praises later, I just gave her, her first win”, when he was leaving the building. After some discussion between counsel and the judge Mr. Justice Aziz, the witness Felicia Knowles was sworn and gave evidence as to what she had overheard. Jolly also gave evidence as to what took place. In explaining what had taken place, Jolly stated that he was from North Caicos and that he uses codes; what had been overheard, he said, had nothing to do with the case.

6. After an adjournment for lunch, Mr. Ashwood Forbes who appeared at the trial for the appellant withdrew any accusation of collusion against the prosecuting Crown Counsel. The following transpired between counsel and the judge:

*MR. A. FORBES: My Lord, after having an in-depth conversation with the Director of Public Prosecutions, I have decided that I would not pursue that line or go any further with the allegations against my learned friend Miss Dickenson. Of course, while we were here earlier this morning they were even suggestions by the Bench, given the road that I was travelling on, that she could be a potential witness in this case and, My Lord, I wouldn't want that to happen. So, I would not pursue that course any longer.*

*HIS LORDSHIP: Yes. And we are ready to proceed with this trial?*

*MR. A. FORBES: Yes, we are ready to proceed with the trial. That's what I was about to say --whether or not I should start with that first. I have taken instructions from my client, Mr. Roberts, and he advised me that we should proceed with the trial. So, having said that, My Lord, I am ready now to finish off with Miss Felisha Knowles.*

It is clear from what transpired between the judge and Mr. Forbes, that Mr. Forbes had taken instructions from the appellant who instructed him that he wished to proceed with the trial and did not wish to pursue the allegations of collusion.

7. It was submitted by counsel for the appellant that it was highly inappropriate and against the interest of justice that an in-trial hearing ought to occur when there is an allegation of collusion between a particular Crown counsel and a police officer and the in-trial hearing is being conducted by the same Crown counsel about whom the complaint was made. It was also submitted that, inasmuch as the trial was adjourned over the weekend, the officer would have been well aware that he was required to give evidence of what was overheard, and, as such would have had an opportunity for his evidence to be tainted.
8. Counsel further submitted that if the judge was to proceed with an in-trial hearing then the DPP ought to have been represented by an independent and impartial counsel, and to allow the Crown counsel to remain and have the opportunity to question PC Jolly, was against the interest of fairness to the accused and Crown counsel and was not seen to be done.

9. Counsel on behalf of the respondent submitted that no material irregularity occurred as a result of the judge holding an enquiry into allegations or claims by Felicia Knowles. In relation to the enquiry conducted, counsel submitted that the allegation was made by a defence witness and was denied. The enquiry took place in the absence of the jury, but in the presence of the defendant. He said that counsel for the defendant questioned both witnesses and no objection was raised to the enquiry taking place. Counsel for the prosecution did not take part in the enquiry, that is, did not question any of the witnesses. In addition, it was stated that counsel for the prosecution had no contact with PC Jolly during the adjournment and further that counsel for the prosecution had a right to be present and had the option of representing herself.
10. Counsel for the respondent submitted that, even if the Court was of the opinion that the enquiry amounted to an irregularity, such irregularity did not amount to a miscarriage of justice or a substantial miscarriage of justice.
11. The appellant also alleged that the judge erred in failing to bring to a conclusion the in-trial hearing and pronounced a judgment. Counsel contended that the judge ought to have brought the in-trial hearing to a conclusion or pronounce a judgment in relation to it.
12. After the luncheon adjournment, counsel informed the judge that the appellant had decided that he did not wish to pursue the allegations of collusion which had been made in respect of Crown Counsel and the police. The judge pointed out to counsel that if allegations of collusion were not pursued, counsel would be unable to refer to it in his address to the jury.

The appellant through his counsel waived his right to pursue the allegation of collusion. Having taken the decision not to pursue the allegation of collusion, it would be wrong to criticise the conduct of the judge in handling this allegation. The appellant made a decision and cannot now resile or seek to distance himself from that decision. The Court does not consider that there is any substance in this ground of appeal.

13. Complaint was also made that the original statement of Casimir was taken by the Police at the office of the Director of Public Prosecutions. Casimir stated that he was contacted by the Office of the DPP to attend at their office on 28 April 2019, along with the Police, in order to give a witness statement. He said that this was the second statement he had given. When this statement was given, PC Jolly and Crown counsel Dickenson, who was prosecuting the case were present. It was suggested to Casimir by counsel for the defendant that he was coerced into making the statement. This suggestion was denied. He was then cross examined by Crown counsel in respect to the allegation that he was coerced when she was the counsel present in the taking of the statement.
14. On cross examination, PC Jolly stated that Casimir's statement was taken at the DPP's office in the presence of prosecuting counsel. Jolly explained that this was done since he sought guidance from prosecution counsel prior to the taking of the statement.
15. Counsel for the appellant submitted that it is highly inappropriate for a first statement to be taken within the DPP's office in the presence of prosecuting Crown counsel. Counsel stated that it was accepted that if the Crown produced the statement which the witness Casimir said he gave at the hospital on the night of the incident, then it would be acceptable for the

DPP to request the witness to clarify anything within the original statement. In those circumstances, there would be the original statement to show fairness and that no irregularity occurred. In this case this was the first statement taken from the witness which was produced by the Crown.

16. It was also submitted that it is unfair, and not in the interests of justice, to have the Crown counsel, who is accused by the defence of being part of those who coerced the witness, to be the person questioning the witness who she is accused of coercing. Counsel argued that in the whole circumstances, it cannot be said that the appellant received a fair trial and that justice was, in any way, seen to have been compromised.

17. Counsel submitted that there is no direct bar as to where a witness statement can be taken. Counsel stated that there was no evidence that any of the requisite formalities were not complied with during the taking of the statement. The judge indicated, in the absence of the jury, that where the statement was taken doesn't make it wrong, if formalities are complied with.

18. Counsel for the prosecution submitted that the appellant was in any way prejudiced and did receive a fair trial. Further, the circumstances relating to the taking of the statement do not amount to material irregularity, which amounted to a miscarriage of justice. There is no evidence that the circumstances of the taking of the witness statement and the absence of the 1<sup>st</sup> witness statement (according to Casmir) so undermined the evidence that no conviction could possibly be based upon it.

19. It is submitted that the only independent eyewitness for the prosecution, Casmir, stated in evidence that on the night of the incident he had given a witness statement to a Police Officer at the hospital. Casmir further stated that he saw the officer turn the page of his notebook about 3 times and that he, Casmir, signed the statement. The DPP could not give a time to the court when the officer's notes from that night would be located so that the trial was adjourned.

20. The Crown thereafter adduced evidence from PC Barrett that he spoke with Casmir at the hospital, however, he took notes but did not take a statement and did not have the witness sign the notes. The Court considers that there was no merit in this complaint.

21. It is not for this Court to determine whether Casmir had been coerced by the police or counsel for the DPP's office. However, this case highlights the need for transparency between those who investigate crimes, the police and those who are called upon to prosecute crimes - the office of the Director of Police Prosecutions. Once the investigators have produced evidence, that evidence should be submitted to the Office of the Director, who has the sole jurisdiction to determine whether any or what charge or charges should be brought against the accused. Cases may arise when advice is required from the Director on the evidence which has already been collected or recorded.

22. The concept of counsel playing an integral role in the taking or recording of the initial statement by witnesses while not unlawful or illegal is not something that should be encouraged. If counsel is allowed or permitted to take or play an active role in the recording



of first statements, it would be easy to expect allegations to be made which could compromise the role of counsel and may require counsel to give evidence to clear any allegations which may be made against him or her.

23. The role of prosecuting counsel is to be found in Blackstone's Criminal Practice, 2021 at para 16.3 where it is stated:

*“Ministers of Justice In Puddick (1865) 4 F & F 497, Crompton J said (at p. 499) that prosecution counsel 'are to regard themselves as ministers of justice, and not to struggle for a conviction' (see also per Avory J in Banks [\[1916\] 2 KB 621](#) at p. 623). Some of the implications this has on the **prosecutor's** role are identified in the introductory paragraphs of the Farquharson report:*

*There is no doubt that the obligations of prosecution counsel are different from those of counsel instructed for the defence in a criminal case or of counsel instructed in civil matters. His duties are wider both to the court and to the public at large. Furthermore, having regard to his duty to present the case for the prosecution fairly to the jury, he has a greater independence of those instructing him than that enjoyed by other counsel. It is well known to every practitioner that counsel for the prosecution must conduct his case moderately, albeit firmly. He must not strive unfairly to obtain a conviction; he must not press his case beyond the limits which the evidence permits; he must not invite the jury to convict on evidence which in his own judgement no longer sustains the charge laid in the indictment. If the evidence of a witness is undermined or severely blemished in the course of cross-examination, prosecution counsel must not present him to the jury as worthy of a credibility he no longer enjoys.... Great responsibility is placed upon prosecution counsel and although his description as a 'minister of justice' may sound pompous to modern ears it accurately describes the way in which he should discharge his function.*

*In Gonez [\[1999\] All ER \(D\) 674](#), the Court of Appeal endorsed the description of prosecuting counsel as a minister of justice, stating that it was incumbent on counsel not to be betrayed by personal feelings, not to excite emotions or to inflame*

*the minds of the jury, and not to make comments which could reasonably be construed as racist and bigoted. Counsel was to be clinical and dispassionate.”*

24. Counsel in the chambers of the Director of Public Prosecutions should at all times be aware of this advice.

**Dated this 31<sup>st</sup> December, 2020**

**Sir Elliott Mottley P**

**I agree**

**Humphrey Stollmeyer JA**



**I also agree**

**Adderley JA**