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IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

22-03-11

INDICTMENT NO: 40/2010

THE QUEEN

V

LANCELOT MING

GRAND COURT CAYMAN ISLANDS

Appearances: **For the Crown:**
Crown Counsel, Ms. Trisha Hutchinson

For the Defendant:
Ms. Lucy Organ of Samson and McGrath

Before: **The Honourable Mr. Justice Charles Quin**

Heard: **21st and 22nd March**

RULING

1. The Crown has made an application to amend the Indictment dated the 7th July 2010, from the offence of conspiracy to defeat justice, to doing an act tending and intended to pervert the course of public justice.

2. The Indictment before the Court dated the 7th July 2010 charges the Defendant with conspiracy to defeat justice contrary to s.107(1)(d) of the Penal Code, and, in the particulars of the offence the Defendant is charged with conspiring with Mark Jefferson and other persons unknown to defeat justice by concealing evidence, namely that a Toyota Celica motor vehicle with registration number 104 251 which was involved in a fatal motor accident.

3. The Crown now wishes to amend the Indictment and charge the Defendant with doing acts tending to and intended to pervert the course of public justice. The particulars allege that the Defendant did a series of acts which had a tendency to pervert the course of public justice, in that he concealed evidence in relation to a Toyota Celica registration number 104 251 which was involved in a fatal motor vehicle accident.

4. The original Indictment cited s.107(1)(d) of the Penal Code when it should have read s.107(2) of the Penal Code. The offence with which the Crown now wishes to charge the Defendant is contrary to s.107(1)(d) of the Penal Code, namely, doing acts tending and intended to pervert the course of public justice.

History

5. On the 1st April 2010 the Defendant was charged and arrested by the RCIPS with conspiracy to pervert the course of justice.

6. On the 7th April 2010 the Defendant appeared before the Summary Court of the Cayman Islands and was charged with conspiracy to pervert the course of justice, contrary to s.107(1)(d) of the Penal Code.

7. The committal papers for a Preliminary Inquiry were served on the Defendant on the 5th May 2010.

8. On the 25th June 2010 the Summary Court held a Preliminary Inquiry and the Defendant was committed to the Grand Court to await trial.

9. On the 7th July 2010 the Indictment charging the Defendant with conspiracy to defeat justice was laid and the Defendant appeared before the Grand Court. A trial date for the 21st March 2011 was set and a Plea and Directions Hearing (PDH) was set for the 14th January 2011.

10. On the 14th January 2011 the PDH took place.

11. On the 17th March 2011 the Crown notified the Defence that it wished to amend the Indictment pursuant to s.118(1) of the Criminal Procedure Code.

12. The Court notes that the Defendant has not been arraigned and the Crown made its application to amend the Indictment to charge the Defendant with doing acts tending and intended to pervert the course of public justice.

13. The Crown relies on s.118(1) of the Criminal Procedure Code which reads:

> *"Where, before a trial of an Indictment or at any stage of such trial, it appears to the Court that the Indictment is defective, the Courts will make such order for the amendment of the Indictment as the Court considers necessary to meet the circumstances unless, having regard to the merits of the case, the required amendments cannot be made without injustice. Any such amendments shall be made upon such terms as to the Court shall seem just."*

14. The Crown submits that the Indictment dated the 7th July 2010 has a defect, in that it fails to state an offence which has been disclosed by the committal papers.

15. The Crown further submits that the section of the law, namely s.107(1)(d) of the Penal Code, on which the charge is based, does not relate to the offence named in the statement of offence, but to the offence on which the Crown now seeks to proceed.

16. Crown counsel submits that the amendment which the Crown wishes to make is supported by the evidence disclosed in the committal papers, and moreover the Crown submits that s.118(1) gives the Court authority to allow the amendment if there will be no injustice occasioned to the accused.

17. The Crown submits that the accused will suffer no injustice as the amended Indictment accurately reflects the Crown's case which has been disclosed to the Defendant in the committal bundle and further, the section of law stated in the Indictment is in fact the section under which the Crown wishes to proceed.

The Defence Case

18. The Defence submits that there is no defect in the Indictment and further, there will be injustice if the application for the amendment is granted.

19. In summary the Defence first submits that the accused has to meet a new Indictment. Secondly, the Defence submits that the conspiracy charge should have been put under s.107(2) of the Penal Code, which would attract a penalty of five (5) years, whereas the offence of doing an act tending and intended to pervert the course of justice contrary to s.107(1)(d) of the Penal Code can attract a maximum sentence of seven (7) years. The defence submits that conspiracy is the gravamen of the offence, and if the amendment is allowed, it will create an entirely different offence.

20. I am grateful to both counsel for providing the relevant authorities.

21. Crown counsel relies on the case of ***R v. Popele and Others*** 1951 1 K.B. 53 where the Court indicated that the defect did not only exist where the

Indictment charged an offence which in law did not exist. Humphries J. stated:

> *"In our opinion any alteration in matters of description and probably in many other respects may be made in order to meet the evidence so long as the amendment causes no injustice to the accused person."*

22. Crown counsel submits that it is perfectly permissible to allow an Indictment, in circumstances where the offence charged, i.e. conspiracy, is not borne out on the papers or the section, and as such is not the proper charge.

23. The Crown submits that the amendment would not result in an injustice to the accused, as the papers which make up the committal bundle have always disclosed evidence to support the amendment the Crown now wishes to make.

24. I draw considerable assistance from the decision of Lord Justice Parker in the English Court of Appeal decision of ***R v. Hall*** 1968 2 Q.B. 788 where Lord Parker C.J. stated at page 792 paragraph E:

> *"It may be only a matter of words, but this court is quite satisfied that really the second question, granted that there is power to amend, is whether the amendment asked for and granted was supported by evidence given at the committal proceedings."*

25. It would appear to this Court that the amendment which the Crown is seeking is supported by evidence given at the committal proceedings, and furthermore, it is difficult to see how the Defendant is prejudiced by allowing the amendment.

26. The Court must always bear in mind that it ensures that the Defendant's right to a fair trial is not prejudiced in any way.

27. The Defendant has had the committal papers for some time and understood that the core allegation was that he concealed evidence in relation to the motor vehicle, which is alleged to have been involved in the fatal accident.

28. From the papers I have read and from all the submissions it is difficult to see how the Defendant cannot be sure of a fair trial.

29. I also note that under s.107(3) of the Criminal Procedure Code (2010 Revision) reads:

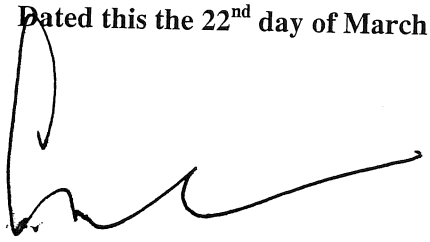
> *"In any such Indictment the Attorney General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to, or in substitution for the offence upon which the accused person has been committed for trial."*

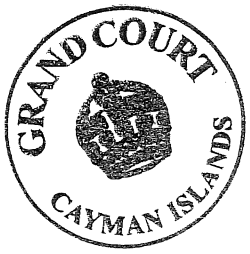
30. Having reviewed the committal papers and heard the submissions of both counsel, it is my decision that this application for amendment should be granted. The offence is disclosed in the committal papers which have been with the Defendant and his counsel for some time, and further, the amendment can be made without causing any injustice.

31. The amendment is really substituting "*Doing acts tending and intending to pervert the course of public justice*" for "*Conspiracy to defeat justice*" pursuant to s.107(3) of the Criminal Procedure Code.

32. However, having allowed the amendment, I am prepared to grant counsel for the Defence an adjournment, should she need more time to prepare the defence.

Dated this the 22nd day of March 2011





Honourable Mr. Justice Charles Quin
Judge of the Grand Court