IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 61/10

THE QUEEN

V

RAZIEL OMAR JEFFERS

Appearances:	**Mr. Andrew Radcliffe Q. C. with Mr. Trevor Ward, Deputy DPP for the Crown**
	Mr. Peter Champagnie instructed by Mr. Peter Polack for the Defendant
Before:	**The Hon. Mr. Justice Charles Quin**
Heard:	**16th – 31st January 2012**

RULING ON NO CASE TO ANSWER SUBMISSION

1. The Crown has charged the Defendant in this trial, Raziel Omar Jeffers, with six Counts namely, one Count of murder; four Counts of attempted murder; and one count of possession of an unlicensed firearm.

2. Counsel on behalf of the Defendant, Mr. Peter Champagnie, has made a submission of no case to answer pursuant to s.137 of the Criminal Procedure Code 2010, and the classic principles of Lord Lane in ***R v. Galbraith*** 73 Cr. App. R. 124.

3. For the record, s.137 of the Criminal Procedure Code 2010 reads:

> *"When the evidence of the prosecution witnesses has been concluded the Court may before or after considering any*

statement or hearing any evidence of the accused, invite first the prosecution and thereafter (at its discretion) the Defence to address it upon the question of whether there is sufficient evidence before the Court to warrant conviction of the accused or any or more of several accused of the offence charged or any relevant offence and if either before or after hearing the address by the Defendants, it considers there is no such evidence, it shall discharge the accused concerned and enter a verdict of not guilty with respect to such accused."

4. Lord Lane in ***R v. Galbraith*** 73 Cr. App. R. 124 stated:

> "*1. If there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty – the Judge will stop the case.*
>
> *2. The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.*
>
> *a. Where the Judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.*
>
> *b. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' 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 the 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.*"

5. The Defence submits that the Crown's evidence relies on five main sources:

A. The identification, by Adrian Powell, of the Defendant, as one of the two gunmen in this joint enterprise attack;

B. The Defendant's alleged confession to Megan Martinez;

C. Motive;

D. Evidence of GSR found on the Rizzla packet taken from the Defendant's pocket at his arrest;

E. Telephone evidence.

6. In summary, counsel for the Defendant submits that the visual identification evidence of Adrian Powell is poor and therefore unreliable. The Defence submits that the lighting was poor and that young Mr. Powell only had a fleeting glance at the shooter. The Defence submits that the circumstances surrounding the observation were extremely difficult for any positive visual identification to be made, and that is, at the time Mr. Powell allegedly saw the shooter he was severely injured. In addition, the Defence submits that only young Mr. Powell, of all the persons at the scene of the shooting, identified the shooter as the Defendant.

7. Defence counsel relies on ***R v. Turnbull*** [1976] 3 W.L.R. 445 and concludes that at the time of shooting it was dark, the lighting was poor, and the identification of the Defendant came from a single witness who had been seriously injured. The Defence submits that this is a classic fleeting glance case, and therefore the evidence is unreliable.

8. Further, the Defence submits that the reliability of Adrian Powell's evidence is plainly open to challenge, given the divergence between his statement to the police and his evidence before this Court.

9. In addition, the Defence submits that the evidence of Megan Martinez is inherently weak and inconsistent with her other evidence and other evidence generally. The Defence submits that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it. The Defence submits that at the very end of her cross examination Megan Martinez agreed with the suggestion by Defence Counsel that the Defendant had never confessed to anything, nor had he shown her any firearms. The Defence submits that this is a serious contradiction, and therefore the evidence of Megan Martinez is unreliable.

10. The Court has received considerable guidance from the case law from Northern Ireland where non-jury Judge Alone trials have been in existence for "scheduled terrorist offences" since the Diplock Report of 1973.

11. In the Northern Ireland Court of Appeal decision in ***Chief Constable v. Lo*** [2006] NICA 3, the then Lord Chief Justice, Lord Kerr, stated at paragraph 13:

> "*In our judgment the exercise on which a magistrate or judge sitting without a jury must embark in order to decide that the case should not be allowed to proceed involves precisely the same type of approach as that suggested by Lord Lane in the second limb of* ***Galbraith*** *but with the modification that the judge is not required to assess whether a properly directed jury could not properly convict on the evidence as it stood at the time that an application for a direction was made to him because, being in effect the jury, the judge can address that issue in terms of whether he could ever be convinced of the accused's guilt. Where there is evidence against the accused, the only basis on which a judge could stop the trial at the direction stage is where he had concluded that the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. It is confined to those exceptional cases where the judge can say, as did Lord Lowry in* ***Hassan*** *[1981] 9 NIJB that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.*"

12. Lord Kerr went on to state at paragraph 14:

> "*The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in* ***Galbraith****. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?'. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict.*"

13. In ***R v. Turnbull*** Lord Widgery stated,

> "*Where the quality of the identification is good, the jury can safely be left to assess the value of the evidence, but, where the quality is poor, the case should be withdrawn from the jury unless there is other evidence capable of supporting the identification.*"

14. From my review of Adrian Powell's identification evidence I find that the quality of it is not so poor for me to come to the conclusion that a jury, properly directed, could not properly convict on it. Indeed, I recall Adrian Powell telling the Court that he looked up at the Defendant for about two seconds and the Defendant "*looked down at me*." In a later exchange he described the duration of the identification to be about four seconds in total. Furthermore, the evidence in relation to identification is such that its strength or weakness depends on the view to be taken of the witness's reliability, and therefore this is a matter which should be allowed to go to the jury or to the tribunal of fact.

15. I also find from my review of the witnesses' testimonies that there is evidence to support the identification evidence, and therefore on that basis I am satisfied that the Defendant does have a case to answer.

16. Indeed, on the other evidence presented by the Prosecution, I find that this is not a case where the prosecution evidence, taken at its highest, is such that a jury, properly directed, could not properly convict on it. Furthermore, the evidence presented by the prosecution is such that its strength, or weakness, depends on the view to be taken of the reliability of witnesses and of other matters which are within the province of the jury or, in this case, the tribunal of fact.

17. As Lord Kerr said in ***Chief Constable v. Lo***, I should not ask myself at the close of the prosecution case "do I have a reasonable doubt"? The question I must ask myself is whether I am convinced that there are no circumstances in which the Court could properly convict the Defendant. And, indeed, as Lord Kerr stated, a Judge could only reach that conclusion where the evidence is so weak or so discredited that it could not conceivably support a guilty verdict.

18. I have reviewed the evidence presented by the Crown and I cannot and do not reach the conclusion that the evidence against Mr. Jeffers is so weak or so discredited that it could not conceivably support a guilty verdict.

19. Accordingly, I do find that the Defendant has a case to answer on all six (6) Counts, and I order that the trial proceeds.

Dated this the 31st day of January 2012

Honourable Mr. Justice Charles Quin
Judge of the Grand Court