

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE

3 INDICTMENT NO: 74/11

4  
5 THE QUEEN

6  
7 V

8  
9 DEVON WRIGHT

10  
11 KRISTIE MCFIELD



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13  
14 **Appearances:**

Ms. Trisha Hutchinson, Senior Crown  
Counsel for the Crown

15  
16  
17 Mr. John Furniss for Devon Wright

18  
19 Mr. Nick Hoffman of Priestleys for  
20 Kristie McField

21  
22 **Before:**

The Hon. Mr. Justice Charles Quin

23 **Heard:**

24 24<sup>th</sup> -27<sup>th</sup> April 2012

25 **RULING ON NO CASE TO ANSWER SUBMISSION**  
26

- 27 1. At the close of the Crown case, counsel on behalf of both Defendants made  
28 no case to answer submissions.

29 *SUBMISSIONS RELATED TO DEVON WRIGHT*

- 30 2. I will deal with submissions as they relate to this Defendant first, as he is first  
31 on the Indictment.

- 32 3. The Crown's evidence against Devon Wright is as follows:

- 1 a. There is no dispute that the ACER laptop was stolen from Hugh  
2 Maxwell's Apartment #1A 14 Summit Crescent, in Prospect, between 9  
3 p.m. on the 26<sup>th</sup> May 2011 and 4:15 a.m. on the 27<sup>th</sup> May 2011.
- 4 b. There is no dispute that the TOSHIBA laptop was stolen from Marlon  
5 Birch's home at Apartment #8, 61 Summit Crescent, in Prospect,  
6 sometime between 12:15 a.m. and 5:50 a.m. on the 27<sup>th</sup> May 2011.
- 7 c. Sometime in the early hours of the 27<sup>th</sup> May 2011 Devon Wright arrives  
8 at 43 Hickory Drive, in Prospect, the home of his uncle, Dougmore  
9 Wright, and asks to sleep there because he says he cannot get into his  
10 father's house next door.
- 11 d. Devon Wright arrived at Dougmore Wright's house with a cloth bag and  
12 he showed Dougmore Wright the two laptops, which were in the cloth  
13 bag – that is, the TOSHIBA, owned by Marlon Birch, and the ACER,  
14 owned by Hugh Maxwell.
- 15 e. Devon Wright shows the contents of the cloth bag, which are the laptops,  
16 to Dougmore Wright, and says they are not stolen and they are “*not hot.*”
- 17 f. Devon Wright goes to sleep in the kitchen or in an open area which  
18 includes the kitchen.
- 19 g. At approximately 6 a.m. the police arrive at 43 Hickory Drive, Prospect,  
20 where Devon Wright, Dougmore Wright and Kristie McField are, and,  
21 based on what Kristie McField tells the police, it is at that time, Devon  
22 Wright tells Kristie McField to hide the cloth bag.

- 1 h. Kristie McField hides the cloth bag under the kitchen sink.
- 2 i. As soon as the door is opened and the police enter, Devon Wright is first
- 3 seen and identified by all the police officers whilst inside the house, but
- 4 he rushes past everyone and flees the scene and is nowhere to be found.
- 5 j. If the laptops were not stolen, why would Devon Wright flee the scene in
- 6 such a hurry?

7 4. These are all matters which are generally within the province of the jury or

8 the tribunal of fact and there is, on one possible view of these facts, evidence

9 on which a jury or tribunal of fact could properly come to the conclusion that

10 the Devon Wright is guilty of Counts 1 and 2.

11 5. As Lord Lowry said in *R v Hassan & Ors* [1973] NIJB (which is cited in

12 *Chief Constable v. Lo* [2006] NICA 3)

13 *“My own impression is therefore important which would not be relevant*

14 *in a trial held with a jury: if I am clear (as I am in this case) that in no*

15 *circumstances could I entertain the possibility of my being convinced*

16 *beyond reasonable doubt, or indeed to any accepted standard, by the*

17 *evidence given for the prosecution there can be no justification for*

18 *allowing the trial to continue.”*

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20 I cannot say that, having regard to all the evidence presented by the Crown in

21 this case.

22 6. To put it as Lord Kerr said at paragraph 13 of *Lo*:

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24 *“Where there is evidence against the accused, the only basis on which a*

25 *judge could stop the trial at the direction stage is where he had*

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*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, that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.”*

Lord Kerr went on to state at paragraph 14:

*“The proper approach of a judge or a 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 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.”*

7. I cannot find, on all the evidence presented by the Crown, that the evidence is so weak or so discredited that it could not conceivably support a guilty verdict. Accordingly, I order that the trial against Devon Wright is to continue.

**SUBMISSIONS RELATED TO KRISTIE MCFIELD**

- 8. The Crown’s evidence against Kristie McField is as follows:
  - a. Ms. McField, at the time, lived at 43 Hickory Drive, Prospect, with Dougmore Wright and two other persons.
  - b. Ms. McField is in the bedroom when Devon Wright is in the kitchen of that dwelling showing Dougmore Wright the two stolen laptops which were in the cloth bag – that is, the TOSHIBA, owned by Marlon Birch,

1 and the ACER, owned by Hugh Maxwell, who both lived at Summit  
2 Crescent locations, close to 43 Hickory Drive, in Prospect.

3 c. Ms. McField gets up when the police arrive at approximately 6 a.m.

4 d. Before anyone inside their dwelling responds to the police, Devon  
5 Wright instructs Ms. McField to hide the bag.

6 e. AC Pennicooke sees Ms. McField through a front window of the  
7 dwelling endeavouring to conceal the bag from the officers' sight, and  
8 then he sees her hide the bag under the kitchen sink.

9 f. Ms McField is heard to refer to AC Pennicooke and say, "*The big old fat  
10 one is looking inside.*"

11 g. When the police are inside, PS Madourie hears Ms. McField say to  
12 Dougmore Wright "*Are you going to let me go to jail for something  
13 which Devon asked me to do?*"

14 h. AC Pennicooke's evidence is that Ms. McField says, "*Are you going to  
15 make me go to jail for this when it was Devon who gave me the bag to  
16 hide?*"

17 i. Dougmore Wright's evidence is that Kristie McField says, "*You are  
18 going to let me go to jail for something that Devon did?*"

19 9. There is no evidence that Kristie McField ever tried to leave the premises.  
20 Indeed, the Crown witness, Dougmore Wright, said Ms. McField never tried  
21 to get away and she never needed to "*because she had nothing to hide.*"

1           10.     PS Madourie’s evidence is that she, PS Madourie, takes the bag from under  
2                     the kitchen sink and asks who is the owner of the bag and neither Kristie  
3                     McField nor Dougmore Wright respond.

4           11.     Counsel on behalf of Kristie McField submits:

5                     a.    The cloth bag was not transparent and the contents of the bag could not  
6                     be seen in the bag;

7                     b.    There is no evidence that Kristie McField was told that the contents were  
8                     stolen goods.

9                     c.    There is no evidence that Kristie McField had any knowledge of the  
10                    burglaries committed at apartment 1A, 14 Summit Crescent, and, at  
11                    apartment 8, 61 Summit Crescent, in Prospect

12                    d.    The evidence is that Kristie McField was in the bedroom when Devon  
13                    Wright showed Dougmore Wright the two stolen laptops.

14                    e.    There is no evidence that Kristie McField knew of Devon Wright’s  
15                    previous convictions for burglary.

16                    f.    The evidence is that Kristie McField hid the bag under the sink as a  
17                    result of Devon’s instructions. She may have suspected that there was  
18                    something in the bag that Devon did not want the police to find, but she  
19                    did not and could not know whether it was illegal drugs, firearms or what  
20                    the contents were. Kristie McField may have had grounds for suspicion,  
21                    but there was no evidence that she knew or believed that they were stolen  
22                    goods.

1 12. I refer to the 12<sup>th</sup> Edition of **Archbold** at page 2119, paragraph 21-310,

2 *“It must be proved by the prosecution that the defendant, at the material*  
3 *time, knew or believed the goods to be stolen. This is proved either*  
4 *directly by the evidence of the principle offender or circumstantially.”*

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6 The learned editors of **Archbold** go on to state:

7 *“It is not sufficient to prove that the goods were “handled” in*  
8 *circumstances which would have put a reasonable man on inquiry. A*  
9 *summing up is defective if in effect it leaves the jury with the impression*  
10 *that suspicious circumstances, irrespective of whether the accused*  
11 *himself appreciated they were suspicious, imposed a duty as a matter of*  
12 *law to act and enquire, and that a failure to do so, was to be treated as*  
13 *knowledge or belief: **R v. Grainge**, 59 Cr. App R. 3 CA.”*

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15 The learned editors go on to quote from the Judgment of Lord Lane, the then  
16 LCJ, in **R v. Moys**, 79 Cr. App. R. 72, CA:

17 *“The question is a subjective one, and it must be proved that the*  
18 *defendant knew, or believed the goods to be stolen. Suspicion that they*  
19 *were stolen, even coupled with the fact that he shut his eyes to the*  
20 *circumstances, is not enough, although those matters may be taken into*  
21 *account by a jury when deciding whether or not the necessary knowledge*  
22 *or belief existed.”*

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24 13. Accordingly, having reviewed the case for the prosecution, I find that there is  
25 no evidence that Kristie McField knew or believed that the contents of the  
26 cloth bag handed to her by Devon Wright were stolen goods. Consequently,  
27 there is one essential element missing in relation to Counts 3 and 4 of the  
28 Indictment.

1        14.        Accordingly, I find that on the evidence before me, as a result of this missing  
2                    essential element, the case against Ms. McField is so intrinsically weak that it  
3                    could not properly support a conviction.

4        15.        Accordingly, I accede to Mr. Hoffman's submission and find that Kristie  
5                    McField has no case to answer.

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8        **Dated this the 27<sup>th</sup> April 2012**

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13        **Honourable Mr. Justice Charles Quin**  
14        **Judge of the Grand Court**

