

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

3
4 INDICTMENT NO: 42/11

5
6 THE QUEEN

7
8 V

9
10 JOSEPH LLOYD SUBERAN
11 SANJAY ANDRE BURRELL
12 MARTHA LEVY
13 O'BRIAN EMMANUEL WRIGHT
14



15
16 **Appearances:**

Mr. Kenneth Ferguson for the Crown

17
18 Mr. Clyde Allen for the Defendant
19

20 **Before:**

The Hon. Mr. Justice Charles Quin

21 **Heard:**

22 11th – 12th June 2012 and 15th – 16th
October 2012
23

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

26 *Preamble*

27 *Trial in R v. Martha Levy commenced on the 11th June 2012 and continued for two days,*
28 *at the end of which an application by Defence counsel for an adjournment of the trial, in*
29 *order to gather further telephone evidence, was made and granted. The trial in R v.*
30 *Martha Levy re-commenced on the 15th October 2012.*
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1 1. At the close of the Crown’s case on Monday the 15th October, counsel on
2 behalf of the Defendant made a no case to answer submission based on the
3 classic test of *R v. Galbraith* 73 Cr. App R. 124.

4 2. In particular, Defence counsel relied on the second limb of Lord Lane’s
5 classic dicta in *R v. Galbraith* where he states:

6 *“The difficulty arises where there is some evidence but it is of tenuous*
7 *character, for example, because of inherent weakness or vagueness or*
8 *because it is inconsistent with other evidence.”*

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10 3. Counsel for the Defendant went on to rely upon 2(a) where Lord Lane stated:

11 *“Where the judge concludes that the prosecution evidence taken at its*
12 *highest is such that a jury, properly directed, could not properly convict*
13 *on it, it is his duty, on a submission being made, to stop the case.”*

14
15 4. Mr. Allen submits that one of the two principal witnesses on behalf of the
16 Crown, Jaime Morales (“Mr. Morales”), has been so discredited by the
17 evidence presented by the Crown, that the Crown’s case is inherently weak
18 because the evidence is so discredited.

19 5. In relation to the second principal witness on behalf of the Crown, Sanjay
20 Burrell (“Mr. Burrell”), who is also a co-defendant in this case, Mr. Allen
21 submits that his evidence is weak, and, more importantly, it is inconsistent
22 with other aspects of the evidence led by the Crown, and, in particular, with
23 this co-Defendant’s own evidence and his accounts to the police.

24

25

1 *ANALYSIS*

2 6. For the sake of completeness I confirm that the Defendant was charged,
3 along with three other persons, on this seven-count Indictment – with charges
4 relating to illegal activity at Money Express in George Town, Grand
5 Cayman.

6 Only three of the seven counts on the Indictment include this Defendant.

7 The other Defendants on the Indictment entered guilty pleas and the
8 Defendant maintained her innocence.

9 Counts 1, 2 and 7 specifically relate to this Defendant.

10 On Count 1, the Defendant is charged with Theft contrary to s.241 of the
11 Penal Code Law (2010 Revision). The particulars of this offence are that on
12 the 15th day of January 2011, at Money Express, Elizabethan Square, George
13 Town, Grand Cayman, the Defendant stole CI\$62,667.00 and US\$24,252.00.

14 On Count 2, the Defendant is charged with Conspiracy to Steal, contrary to
15 s.321 and s.241 of the Penal Code Law (2010 Revision). The particulars of
16 this offence are that on or before the 15th day of January 2011, in Grand
17 Cayman, the Defendant conspired to steal from Money Express, Elizabethan
18 Square, George Town, Grand Cayman.

19 On Count 7, the Defendant is charged with Perverting the course of Justice,
20 contrary to s.107(1)(d) of the Penal Code Law (2010 Revision). The
21 particulars of this offence are that on or before the 25th day of January 2011,
22 in George Town, Grand Cayman, the Defendant did an act in order to

1 prevent, pervert or defeat the course of justice, namely, threatened Jaime
2 Morales.

3 On the 15th October 2012, at the close of the Crown's case in this trial, the
4 Crown placed on record that it would not proceed against the Defendant on
5 Count 7.

6 *Evidence of the co-accused, Sanjay Burrell*

7 7. The co-accused, Mr. Burrell, told the Court that the Defendant came into the
8 office at Money Express on the day the robbery took place.

9 8. There was no other evidence presented by the Crown that the Defendant ever
10 came into the office on the 15th January 2011. In fact, a Crown witness,
11 Marixa Bush, who worked with Money Express, gave evidence to the Court
12 and said she never saw the Defendant on the day in question.

13 9. There is no evidence that the Defendant participated in the robbery at all.

14 10. There is no evidence that the Defendant even knew the robber, Joseph
15 Suberan ("Mr. Suberan"), or anything about him.

16 11. When Mr. Burrell was arrested by the police and was discussing his
17 involvement in the robbery with Sgt. Francis, he never mentioned the
18 Defendant.

19 12. When Mr. Burrell gave a full statement to the police on the 15th January
20 2011, he never mentioned the Defendant, either as a participant, or a co-
21 conspirator.

1 13. On the 20th January 2011, on being further questioned by the police, Mr.
2 Burrell said,

3 *“Martha had no part of it.”*

4 Further, Mr. Burrell told the police,

5 *“She had no idea about the robbery.”*

6 This evidence is consistent with other evidence led by the Crown.

7 14. However, when Mr. Burrell was asked in Court why had he not told the
8 police about the Defendant’s involvement from the beginning, Mr. Burrell
9 said,

10 *“I did not see the need to implicate her.”*

11 When pressed further on this question he said,

12 *“I was caught, so there was no need for her to get caught.”*

13 15. The co-Defendant, Mr. Burrell, admitted lying to the police and the reason he
14 gave for the lie was that he did it to try and exonerate himself and because he
15 was thinking about having to care for his children.

16 16. It is Mr. Burrell’s evidence that when he, Mr. Burrell, was speaking with Mr.
17 Suberan about their drug activities, Mr. Burrell said he would give the
18 Defendant \$10,000.00. This figure changed on at least two further occasions
19 throughout his evidence to the Court.

1 It is also Mr. Burrell's evidence that during these discussions regarding
2 money for the Defendant, Mr. Burrell spoke with Joseph Suberan about
3 getting a gun and other activities. There is no evidence before this Court that
4 the Defendant knew of these conversations.

5 It was not until eleven (11) days before he was due to be sentenced that the
6 co-Defendant, Mr. Burrell, implicated the Defendant, Martha Levy.

7 Mr. Burrell again admitted lying to the police and lying to Joseph Suberan.

8 17. The evidence from the co-Defendant, Mr. Burrell, is intrinsically weak, and
9 there are too many significant inconsistencies. Accordingly, I find Mr.
10 Burrell's evidence to be unreliable.

11

12 *Evidence of Jaime Morales*

13 18. I find that, based on countervailing telephone evidence, Mr. Morales has lied
14 to the Court. His insistence that the Defendant was harassing him, and that he
15 did not want anything more to do with her, is directly at odds with the expert
16 evidence provided by Ms. Joanne Woods – a Telecommunications
17 Intelligence Analyst – which clearly shows that, far from the Defendant
18 harassing Mr. Morales, it is Mr. Morales harassing the Defendant. This is
19 particularly between the 13th January 2011 and the 24th January 2011.

20 19. To be precise, on the 22nd January 2011, Mr. Morales tried to contact the
21 Defendant by telephone on 16 occasions.

1 26. For the sake of completeness, I rely, as this is a trial by Judge Alone, on the
2 dicta of Lord Lowry in *R v Hassan & Ors* [1973] NIJB where he states:

3 *“My own impression is therefore important which would not be relevant*
4 *in a trial held with a jury: if I am clear (as I am in this case) that in no*
5 *circumstances could I entertain the possibility of my being convinced*
6 *beyond reasonable doubt, or indeed to any accepted standard, by the*
7 *evidence given for the prosecution there can be no justification for*
8 *allowing the trial to continue.”*

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10 27. To put it as the Lord Chief Justice of Northern Ireland, LCJ Kerr, said at
11 paragraph 13 of *Chief Constable v Lo* (2006) NICA 3:

12 *“Where there is evidence against the accused, the only basis on which a*
13 *judge could stop the trial at the direction stage is where he had*
14 *concluded that the evidence was so discredited or so intrinsically weak*
15 *that it could not properly support a conviction”*

16
17 28. I find that the evidence adduced by the Crown in this case has been so
18 discredited – in the case of Morales – and is so intrinsically weak and
19 inconsistent in relation to the co-accused, Mr. Burrell, that there is no
20 possibility of my being convinced to the required standard by the evidence
21 before me, that the Defendant is guilty.

22 29. Accordingly, and following the classic dicta of Lord Lane in *Galbraith*, I
23 find that it is my duty, on this no case submission, to stop the case.

24 30. I therefore accede to the no case to answer application on behalf of the
25 Defendant and discharge the Defendant.

26

1 31. I conclude by stating that I was impressed by the manner in which the officer
2 in charge, PC Francis, investigated this case and prepared the file. PC
3 Francis' notes were exemplary in their detail. It is through no fault of his that
4 the evidence of the co-accused, Mr. Burrell, and of Mr. Morales, was so
5 discredited in this case. In addition, the Telecommunications Expert, Ms.
6 Joanne Woods, also impressed the Court with her careful expert evidence
7 which ultimately exposed Mr. Morales as an unreliable witness.

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11 **Dated this the 16th October 2012**

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15 **Honourable Mr. Justice Charles Quin**
16 **Judge of the Grand Court**