



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

IND0031 OF 2023

THE KING

V

WILLIAM MCKEEVA BUSH

Before: The Honourable Mr. Justice Stanley John
Heard: 28 February 2024
Delivered: 11 April 2024
Appearances: Mr. Charles Miskin K.C. and Mrs. Hema Soondarsingh for the Crown
Mrs. Sally Bennet-Jenkins K.C. and Mr. Dennis Brady for the Defendant

HEADNOTE

Criminal Trial – Stay of Proceedings - Abuse of Process - Conduct of the Prosecution - Whether continuing the proceedings would amount to an abuse of process

The Defendant was before the Court on an indictment containing four counts. Counts one (1) and (3) pertained to the alleged indecent assault and common assault of [X]. Counts two (2) and four (4) pertained to the alleged indecent assault and common assault of [Y]. During the trial, the Defence applied for a stay. The Defence contended that due to the conduct of the Prosecution, there was an abuse in relation to counts two (2) and four (4); that is to say, the evidence involving the allegations relating to [Y]. The entire proceedings were stayed with reasons to follow.

Held: The prosecutorial system was being misused by person/s with their own agenda. Counts Two (2) and Four (4) should be stayed. The manner in which the Prosecution was conducted in relation to [Y] caused the Court a great deal of disquiet, and the Court invoked its inherent jurisdiction to stay the proceedings to prevent any abuse of process. The Court was wrong to stay the entire case as the submissions were premised solely on the issues that led to the preferment of the indictment against the



Defendant in respect of [Y]. The Court rescinds the Order of Stay in respect of counts one (1) and three (3).

JUDGMENT

PREAMBLE

This Judgment has been anonymised to protect the identity of the complainants pursuant to s.31 of the Criminal Procedure Code (2021 Revision).

1. On Tuesday, 27 February 2024, during the trial of the Defendant, Counsel for the Defendant made an application that the trial be stayed on the ground of abuse of process.
2. After hearing submissions on the application, I upheld the submissions and directed that the entire proceedings be stayed.
3. Upon reflection, I have concluded, as I set out in some detail in this Judgment, that I was wrong to stay the entire case and that the Order of the Court should reflect that only Counts Two (2) and Four (4) should be stayed and in consequence, there is no bar to the Crown seeking to try the Defendant on Counts One (1) and Three (3).
4. To understand the circumstances that led to the abuse application, it is necessary to dilate on the facts.
5. The Defendant was before the Court on an amended indictment containing four (4) Counts:

Count One

Statement of Offence

Indecent Assault, contrary to section 132(1) of the Penal Code (2022 Revision)

Particulars of Offence

William McKeeva Bush on the 13th day of September 2022 at the Ritz Carlton Hotel, Seven Mile Beach, Grand Cayman, indecently assaulted [X].

Count Two

Statement of Offence

Indecent Assault, contrary to section 132(1) of the Penal Code (2022 Revision)

Particulars of Offence

William McKeeva Bush on the 13th day of September 2022 at the Ritz Carlton Hotel, Seven Mile Beach, Grand Cayman, indecently assaulted [Y].

Count Three

Statement of Offence



Common Assault, contrary to section 215 of the Penal Code (2022 Revision)

Particulars of Offence

William McKeeva Bush on the 13th day of September 2022 at the Ritz Carlton Hotel, Seven Mile Beach, Grand Cayman, assaulted [X].

Count Four

Statement of Offence

Common Assault, contrary to section 215 of the Penal Code (2022 Revision)

Particulars of Offence

William McKeeva Bush on the 13th day of September 2022 at the Ritz Carlton Hotel, Seven Mile Beach, Grand Cayman, assaulted [Y].

6. The Crown's case, as outlined by Mr. Charles Miskin K.C., in opening was that:

- "i. On the 13th September 2022, there was a reception at the Ritz Carlton Hotel, West Bay, to welcome delegates attending a conference under the umbrella of the Caribbean Tourist Organization (CTO). The CTO is the region's tourism development agency, to which many countries belong.*
- ii. The defendant, a Member of Parliament (MP), and a well-known public figure, was in attendance. As set out in the indictment, it was alleged that he indecently assaulted [X] and [Y]*
- iii. [X] was at the time working for the government and was at the reception in a working capacity. [Y], who is [redacted] was in attendance.*
- iv. The evidence of both [X] and [Y] was recorded by means of a video recorded interview (ABE) in September 2022 a few days after the alleged incidents.*
- v. The defendant may have had too much to drink. In the case of [X], a [redacted] while she was pulling away from the defendant from an uncomfortable hug, he kissed her on the shoulder and said "**Oh, see your husband there**" and as she turned around, he added "**If he sees me doing this he would not like it**" and he kissed her on the shoulder. That incident was captured on CCTV.*
- vi. Efforts were made, diplomatically, to persuade the defendant to leave the venue. This was eventually achieved over an hour later.*
- vii. Before leaving the defendant got hold of the hand of [Y] and gave her a love bite ("hickey") on her arm or wrist. That event was not captured on CCTV. She, however, did show the mark on her hand to [X] who saw what may have been a shallow teeth impression. [X] later made a little sketch of that for the police.*
- viii. A story board was prepared for the jury which contained several still images which were covered by CCTV. There was a visit to the Ritz Carlton Hotel on 28th February*

2024 by the Court, where both [X] and [Y] pointed out certain areas for the benefit of the jury.

ix. The crown called several witnesses including Detective Sergeant These who captured the images from the hotel's CCTV, Detective Inspector Morrison, [X] and [Y]. The depositions of other witnesses were read into evidence."

7. Under cross-examination by Mrs. Bennet-Jenkins K.C., [Y] said *inter alia*:

- a) "I gave a written account of the incident to [redacted] on the 14th September 2022."
- b) [Y] acknowledged a WhatsApp message dated 13 September 2022 to [redacted] in which she said the following:
 - "Mc Keeva bit me."
 - "By accident. But still."
 - "Tried to miss (kiss) my hand and bit me. He was completely drunk."
 - "I told Sam. I didn't take pictures. It's faded now but just wanted you to know."
 - "Tried to kiss my hand. Sorry. Can't type."
- c) [Y] admitted telling Detective Inspector Morrison that if she thought that there was something in the matter, she would have addressed it. She continued, "I did not think it rose to the level of a crime. I did tell him that I did not think Mr. Bush intended to do me harm."
- d) The following day, she said, "I did tell Detective Superintendent Barrow that I had no intention of making a formal report to the police." She acknowledged that she did not say in the ABE interview that she wished for a police investigation, and she only gave the ABE as she was asked to. She added, "I did say I am being ambushed by people who have an agenda. I don't recall giving any consent to anyone for anything."

8. In re-examination by Mr. Miskin, [Y] said, "When I gave the ABE, I wanted to have recorded my account of what took place. I wanted to set the record straight." She acknowledged that the word 'accident' did not appear in the ABE. She further said in answer to Mr. Miskin that she first realized there was a hickey on her hand shortly after she walked away, and she did not think that the Defendant intended to hurt her.

9. In a Case Supplemental Report, printed on 19 January 2023, Detective Superintendent Barrow wrote:

"Today as per correspondence I was briefed by D/Supt Lansdown. As a result at 4:40pm, I held a telephone conversation with [redacted- [Y]]. [Y] immediately alluded to having knowledge of the reason for being contacted. This immensely assisted with the conversation going forward based on the subject matter therein.

[Y] informed me that she has no intention of making a formal complaint to the RCIPS, had this been her intention she would have done so already on her way home after the event. [Y] stated in her opinion the Hon. Speaker of the House of Parliament was highly intoxicated to the state of incoherence so much so that most of what he said to her was not making sense. [Y] further stated that the conduct was indeed inappropriate but not to the level where it warranted a formal report being made to the police. There was no Indecent Assault according to [Y]. [Y] reiterated she was not making excuses and her main concern at the time was the potential embarrassment for the jurisdiction given the nature of the event and the state heads in attendance.

The only physical contact mentioned was a 'kissing of the hand'. [Y] also stated her intention was to provide a formal written statement to her employers, the government of the Cayman Islands at a time when she would have gathered her thoughts and made sense of the entire occurrence."

10. Detective Inspector Morrison gave evidence; he was cross-examined by Ms Bennet-Jenkins, *inter alia*, he said:

- a) No formal complaint had been made by [Y], but there was an interview recorded with her, in which he noticed that she did not give her consent for an investigation.
- b) He was aware that [Y] said as early as September 2022, she was not mindful to make a formal police report and did not want to be part of the investigation. That information, he said, was recorded in his notes.
- c) When instructions came from the Director of Public Prosecutions (DPP) to prefer charges against the Defendant in relation to the indecent assault upon [Y], he realized for the first time that [Y] was part of the investigation.
- d) He spoke to [Y] on 23 March 2023 when the Defendant was charged and provided her with an update. He told her of the charges preferred against the Defendant, and that bail had been granted to him.
- e) [Y] was surprised that charges were preferred, which involved her.
- f) DI Morrison accepted that on 17 October 2023, he spoke to [Y], who told him she needed some time to think about it and she would get back to him.
- g) On 18 November, he received an email from her in which she said... *"I have given the matter great deal of thought... I am not interested in pursuing this matter."*

11. Following the evidence of Detective Inspector Morrison, Mrs Bennet-Jenkins applied for disclosure of certain documents. The application was resisted by the Crown and the matter was adjourned for the parties to formulate their submissions.
12. The following day, the Defence applied for the proceedings to be stayed on the grounds of abuse of process. Mrs Bennet-Jenkins asked that her written submissions be placed on the Court's record to be supplemented by her oral arguments.
13. I reproduce her skeleton arguments *seriatim*:

- a. At 6:21pm this evening (27th February 2024), the defence were supplied with notes from an officer of the DPP's department as to her contact with [Y].*
- b. These date back to July 2023 – 5 months after charges were authorized by the DPP.*
- c. On 17th July 2023 Ms. Toyin Salako – who at this stage had conduct of the prosecution of the case- was specifically copied into email from [Y] provided by Ms. McNiven the witness care officer.*
- d. In this email, [Y] makes clear that she does not support the prosecution and that she only gave the information as a record.*
- e. This was, on any view plainly relevant to the basis upon which the DPP had decided to prefer charges against Mr. Bush and was plainly disclosable material.*
- f. On the 10th August, Ms. Salako closed a disclosure response by stating – “there is nothing further to disclose”.*
- g. In her position as Assistant Deputy Director of Public Prosecutions, it beggars' belief that Ms. Salako did not discuss the issue with the DPP and consider how the prosecution could proceed with the case in the face of an individual who made it clear that they did not support the prosecution.*
- h. We require all file notes, telephone conversations and emails between Ms. Salako and the DPP or the Deputy DPP to be disclosed. This was a matter that attracted national attention – it is inconceivable that there was no consideration of how the prosecution were to prove the case in the face of an individual who was unsupportive of the prosecution.*
- i. An explanation is requested of how the ADPP asserted “there is no further material to disclose” in light of this material specifically drawn to her attention about a month before she made the assertion in writing.*
- j. It is submitted that, if there was any question – which we submit there was not on any proper construction of the development of this matter – of the status of the material provided by [Y], this email is the nail in the coffin for the prosecution submission that [Y] gave some tacit consent to the prosecution by the recording of the DPP.*

- k. Ms. Salako should immediately have drawn this to the attention of the DPP as it may have affected his duty of ongoing review as to the basis on which he was asked to consider the account given.
- l. We have sent a further disclosure request to the prosecution in light of this material requesting the prosecution supply all emails/notes/telephone records/scheduled meetings within the official diary for Ms. Salako where she was informing the DPP, or discussing the impact of the position of [Y] and her stated position that she did not support the prosecution – which we note is in direct contradiction of the account given by DI Morrison (not recorded) that she said she would ‘leave it to the lawyers’ which as was noted in court, was a departure from his recorded notes.
- m. We further require an explanation as to why this material was neither scheduled nor disclosed until provided by the witness care officer today.”

14. After hearing submissions from both sides, I acceded to the application and made an Order for disclosure.
15. The following day, I heard the application to stay the proceedings on the grounds of abuse of process. Following upon the submissions from both Counsel and after careful consideration of the same, I stayed the proceedings on the grounds of abuse of process.
16. In her application for the stay of proceedings, Mrs. Sally Bennet-Jenkins submitted that there was an abuse in relation to counts two (2) and four (4); that is to say, the evidence involving the allegations relating to [Y].

The Law

17. Taking this chronologically, the issue of Abuse of Process was considered in the Australian case of ***Jago v District Court (New South Wales)***¹, where two (2) questions were raised for consideration. The first question was whether the common law of Australia recognized the right to a speedy trial, separate from and additional to the right to a fair trial. The second question was whether the appellant’s right had been prejudiced by virtue of undue delay amounting to an abuse of process. Mason CJ, in addressing the question of Permanent Stay, said ‘inter alia’ to justify a permanent stay of criminal proceedings, there must be a fundamental defect which goes to the root of the trial “*of such a nature that nothing that a trial judge can do in the conduct of the trial can relieve against the unfair consequences.*”
18. In the same case, Deane J said at paragraph three (3): “*that once a court is seised of criminal proceedings, it had control of them. In the absence of applicable express statutory provision, that*

¹ (1989) 168 CLR 23

*control includes the power – either inherent or implied – to ensure that the court’s process is not abused by the proceedings being made an unfair instrument of oppression.”*² The learned Judge went on to say that the central prescript of our criminal law is that no person shall be convicted of a crime otherwise than after a fair trial according to law. A conviction cannot stand if irregularity or prejudicial occurrence has permeated or affected proceedings to an extent that the overall trial has been rendered unfair or has lost its character as a trial according to law. He further said that the grant of a stay does not mean that the judge is stepping into the arena or assuming what is properly to be seen as a function of the executive government. It involves no more than the discharge of responsibility and the duty of the Court to see that the process of the law is not abused in proceedings before it.

19. In *Hui Chi-Ming v R*³, the Privy Council described an abuse of process as “*something so unfair and wrong that the court should not allow the prosecutor to proceed with what is in all other respects a regular proceeding.*”

20. In *R v Johannsen & Chambers*⁴, a case from the Supreme Court of Queensland being an appeal against the refusal of a trial judge to grant a permanent stay of proceedings upon an indictment charging the appellant with murder. Thomas J, in delivering his reasons, had this to say:

“The question of whether criminal proceedings should be stayed on the ground of abuse of process is answered by balancing a variety of factors which include the requirement of fairness to an accused, the legitimate interest of the public in the disposition of charges of serious offences and in the conviction of those guilty of crime, and the need to maintain public confidence in the administration of justice.”

21. In *Randall (Barry) v R*⁵, a decision of the Privy Council from the Cayman Islands. Lord Bingham, in delivering the judgment of the Board, made the following observations at paragraph ten (10):

“[10] ... The adversarial format of the criminal trial is indeed directed to ensuring a fair opportunity for the prosecution to establish guilt and a fair opportunity for the defendant to advance his defence. To safeguard the fairness of the trial a number of rules have been developed to ensure that the proceedings, however closely contested and however highly charged, are conducted in a manner which is orderly and fair. These rules are well understood and are not in any way controversial. But it is pertinent to state some of them.

² (see *Connelly v DPP* (1964) AC 1254, at p 1347; *Reg. v Humphreys* (1977) AC 1, at pp45-46)

³ [1992] 1 AC 34

⁴ [1996] QCA 111

⁵ [2002] UKPC 19

(a) *The duty of prosecuting counsel is not to obtain a conviction at all costs but to act as a minister of justice; R v Puddick (1865) 4 F & F 497 at 499, and R v Banks [1916] 2 KB 621 at 623. The prosecutor's role was very clearly described by Rand J in the Supreme Court of Canada in Boucher v R (1954) 110 Can CC 263 at 270:*

‘It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.’”

22. In **R v Maxwell**⁶ a UK Supreme Court decision, Sir John Dyson SCJ stated at paragraph thirteen (13):

“It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will ‘offend the court’s sense of justice and propriety’ (per Lord Lowry in R v Horseferry Road Magistrates’ Court, Ex p Bennett [1994] 1 AC 42, 74G) or will ‘undermine public confidence in the criminal justice system and bring it into disrepute’ (per Lord Steyn in R v Latif [1996] 1 WLR 104, 112F).”

23. These issues were further discussed in **Warren et al. v AG of the Bailiwick of Jersey**⁷, a Privy Council appeal against the refusal of a stay. In that case, Lord Dyson, as he had become, referred to *Maxwell (supra)* and also to the dissenting Judgment of Lord Brown in *Latif* when that Judge

⁶ [2010] UKSC 48

⁷ [2011] UKPC 10

referred to Professor A L-T Choo's academic work, at p 132⁸, where he summarised the approach of the Courts in England and Wales to the second category of the case:

"The courts would appear to have left the matter at a general level requiring a determination to be made in particular cases of whether the continuation of the proceedings would compromise the moral integrity of the criminal justice system to an unacceptable degree. Implicitly at least, this determination involves performing a balancing test that takes into account such factors as the seriousness of any violation of the defendant's (or even a third party's) rights; whether the police have acted in bad faith or maliciously, or with an improper motive; whether the misconduct was committed in circumstances of urgency, emergency or necessity; the availability or otherwise of a direct sanction against the person(s) responsible for the misconduct; and the seriousness of the offence with which the defendant is charged."

Analysis

24. As set out in *Maxwell (supra)*, it is well established that the Court has a power to stay the proceedings in two categories of cases, namely, (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the Court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. As I said in ex tempore Ruling on 28 February 2024, the decision to stay the proceedings was based solely on the disclosure information provided to the Defence during the course of the trial and the written and oral submissions of both Counsel.
25. The Court has an inherent duty to protect the integrity of the criminal justice system⁹. In the instant case, [Y] had, as early as September 2022, indicated that she was not interested in a prosecution and did not think that the matter rose to the level of a crime. In November 2023, in an email to DI Morrison, she said:

"I have given the matter a great deal of thought...I am not interested in pursuing this matter."

26. On the second day of the trial, [Y] forwarded an email to DI Morrison in which she stated:

"Hello Sir, As requested, this is the letter that I sent to my superiors who requested I write down what I recalled happening as best as possible at the time. This was for internal purposes and not something I expected to be used in court. I simply wanted them to be aware of the issue and advise on how situations like this should be addressed as well as how personnel should respond."

⁸ Abuse of Process and Judicial Stays of Criminal Proceedings, 2nd ed (2008)

⁹ see (R v Crawley [2014] EWCA Crim 1028)

27. In an email to Superintendent Barrow from Samuel Rose on 10 February 2023, he wrote as follows:

“Dear Superintendent Barrow, after much contemplation and consultation with my family, I wish to inform you that I will not be providing a statement on the matter. Above all else, I have been concerned about confidentiality in this matter. I have been approached by three separate individuals who are not RCIPS officers about providing a statement on this matter which only confirms my apprehensions/concerns. As you are aware, I was not at the Ritz Carlton on the evening in question. I fail to see how the strength of this case rests on anything I say when I was not present. I trust this clarifies my position on this matter.”

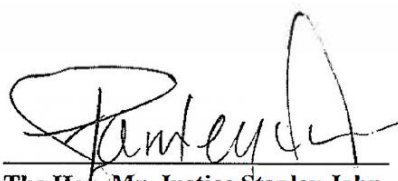
28. In light of the foregoing, I formed the view that the prosecutorial system was being misused by person/s with their own agenda. It is imperative that public confidence in the administration of justice must always be maintained, and the Court must never be seen to be abdicating that duty.

29. The manner in which the Prosecution was conducted in relation to [Y] caused me a great deal of disquiet, and I invoked my inherent jurisdiction to prevent any abuse of process.

30. In granting a general stay, however, it is clear that I fell into error.

31. The submissions made by Mrs. Sally Bennet-Jenkins KC were premised solely on the issues that led to the preferment of the indictment against the Defendant in respect of [Y]. No submissions were made in respect of [X], and nor could they have been.

32. The error is regretted, and the Court is satisfied that Counts One (1) and Three (3) ought not to have been stayed and should be tried if the Prosecution choose to proceed. I, therefore, rescind the Order of Stay in respect of those Counts.



The Hon. Mr. Justice Stanley John
Judge of the Grand Court (Acting)