



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 22 of 2023**
5
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8 **R**
9

10 **V.**
11

12 **KEREN WATSON**
13
14

15 **Appearances:** **Ms. Hema Soondarsingh, Crown Counsel, Office of the Director**
16 **of Public Prosecutions for the Prosecution**
17

18 **Ms. Amelia Fosuhene of Brady Law for the Defence**
19
20

21 **Before:** **The Hon. Justice Cheryll Richards KC**
22

23 **Submissions Heard:** **5th May 2023**
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25 **Ruling:** **16th June 2023**
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30 ***Criminal Law – Section 85A and Schedule 5 of the Criminal Procedure Code (2021 Revision).***
31 ***Application for Dismissal of Indictment.***
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RULING

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4 1. This is an application for dismissal of the Indictment against the defendant. The application
5 is made pursuant to s.85A and Schedule 5 of the *Criminal Procedure Code* (2021
6 Revision). Paragraphs 1 and 2 of the Schedule provide as follows: -
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8 “1. Where a person has had a matter transmitted to the Grand Court under
9 section 85A of this Act, that person may, on any charge or charges, at any
10 time —

11 (a) after that person is served with copies of the document containing the
12 evidence on which the charge or charges are based; and

13 (b) before that person is arraigned and whether or not an indictment has
14 been preferred against that person, apply orally or in writing to the Grand
15 Court for the charge or any of the charges, in the case to be dismissed.
16

17 2. The Judge shall dismiss a charge and accordingly quash any count relating
18 to it in any indictment preferred against the applicant, which is the subject
19 of any such application if the Judge is satisfied that the evidence against the
20 applicant would not be sufficient to put the applicant on the applicant’s
21 trial.”
22

- 23 2. Archbold paragraph 1-54¹ states that the test on an application for dismissal is the same
24 criteria which would be applied on a submission of no case to answer. The judge must
25 consider the whole of the evidence and decide whether there is evidence to go to a jury and
26 whether that evidence is sufficient for a jury to properly convict.
27

¹ 2023 Edition

1 3. The Applicant is charged with one count of Misconduct in Public Office contrary to
2 Common Law. The particulars are that Keren Watson, between 1st July 2019 and the 5th
3 July 2020, in the jurisdiction of the Cayman Islands, being a public officer namely a Police
4 Sergeant of the Royal Cayman Islands Police Service, without reasonable excuse or
5 justification, wilfully misconducted herself in office to such a degree as to amount to an
6 abuse of the public’s trust, by using her position as a police sergeant to access unauthorised
7 data of Tamekia Young.

8
9 4. The Applicant is also charged with a scheduled offence of the Unlawful Obtaining of
10 Personal Data contrary to s.54(1) of the *Data Protection Act* (2019 Revision). The
11 particulars are that Keren Watson, on the 4th April 2020, in the jurisdiction of the Cayman
12 Islands, unlawfully obtained the personal data of Tamekia Young and Oneil Smith without
13 their consent.

14
15 5. In the case of *Attorney Generals’ Reference (No. 3 of 2003)*², the English Court of Appeal
16 identified the elements of the offence of Misconduct in Public Office to be: -

- 17
18 (1.) A public officer acting as such.
19 (2.) Wilfully neglects to perform his duty and/or wilfully misconducts himself.
20 (3.) To such a degree as to amount to an abuse of the public's trust in the office
21 holder.
22 (4.) Without reasonable excuse or justification.



23
24 6. The Court said that:-
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26 *“As with other criminal charges, it will be for the judge to decide whether there is*
27 *evidence capable of establishing guilt of the offence and, if so, for the jury to decide*
28 *whether the offence is proved.”*
29

² [2004] 2 Cr. App. R. 23, Para.60



- 1 7. I have been provided with a bundle of evidence which I have reviewed. In summary the
2 prosecution alleges that the Applicant who is a sergeant of police accessed the police
3 database for personal reasons unrelated to her work duties. In particular, she accessed eight
4 of nine records which the police held on its Record Management System in relation to
5 Tamekia Young.
6
- 7 8. Both Ms. Young and the Applicant were in a relationship with the same gentleman, Oniel
8 Smith. The two women became aware of the shared relationships in October 2018 when
9 they met in person and spoke about it. Ms. Young says that after this meeting she received
10 a number of harassing phone calls from the Applicant who therein expressed knowledge of
11 information about Ms. Young which had not been communicated to the Applicant directly.
12 The Applicant also had knowledge of the contents of messages which Ms. Young had
13 exchanged with Mr. Smith.
14
- 15 9. The police records relative to Ms. Young were accessed in July, August and December 2019
16 and on the 4th July 2020 by a person using the log in details assigned to the Applicant.
17 Police rules prohibit the sharing of log in details. The work shift logs of the Applicant were
18 obtained. She was working as a police officer on the days that these records were accessed.
19 The records of Ms. Young do not relate to incidents which occurred during any tour of duty
20 of the Applicant.
21
- 22 10. The Applicant was interviewed on two occasions on the 11th December 2020 and 22nd July
23 2022. She does not deny that her log-in details were used but says that she has never
24 accessed the police database for personal reasons and that she is aware of the rules against
25 doing so. Each record was put to her, and she said that she could not recall accessing any
26 of them. She said that she was not sure of the reason for accessing them. She raises the
27 possibility that someone else could have used her log in details. In her prepared statement
28 provided during the second interview, she stated that she has been assigned on various
29 occasions to conduct an audit review and to gather outstanding information to update
30 records.



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2 11. Police Sergeant Denise Anderson is the police record management supervisor. She states
3 that there was no request for an audit to be carried out by the Applicant and that if such a
4 request had been made it would have been in writing.

5
6 12. It is also alleged that Kevin Jennings, an employee of Digicel phone company and friend
7 of the Applicant provided phone data to the Applicant relative to messages between Ms.
8 Young and Mr. Smith. This is the subject of the scheduled offence. The prosecution accepts
9 that there is no direct evidence of this.

10
11 13. Counsel on behalf of the Applicant submits that there has been delay in the investigation
12 and that the evidence upon which the prosecution relies is insufficient. It is submitted in
13 particular that: -

- 14
15 • The statements of Ms. Young are not in proper form and do not provide
16 evidence that the Applicant accessed the police database.
- 17
18 • The witness Denise Anderson does not provide direct evidence of the
19 correctness of the information which she produces by way of a spreadsheet
20 and/or that the spread sheet which is recently produced by her is inadequate.
- 21
22 • The witnesses Matthew Bodman, Intelligence Analyst and O' Neil Smith do not
23 assist with the key issue of who accessed the police records system.
- 24
25 • The evidence of the witness Tony James of Digicel is hearsay and cannot assist
26 with proof that Keven Jennings did in fact access information relative to the
27 phones of Smith and Young and that Jennings provided same to the Applicant.
28 There is no statement from Kevin Jennings.

29
30 14. With respect to the last point, I note that Mr. James produces on page 211 of the Exhibit
31 bundle the access record relative to Mr. Jennings on the 4th April 2022. It appears to be

1 computerised information. This is real as distinct from oral or hearsay evidence which a
2 jury would be entitled to consider. Notably this is the same day that Mr. Jennings’s phone
3 is in contact with the Applicant and the Applicant is in contact with Ms. Young.
4 Additionally, Ms. Young does not know Mr. Jennings. Mr. Smith has no relationship with
5 Mr. Jennings and states that he only met him once when he went into the Digicel Company
6 store to pay a phone bill.

7
8 15. For what reason would Mr. Jennings who is not known to these persons be accessing their
9 phone messages? How was the Applicant aware of the content of messages exchanged
10 between Young and Smith over Digicel phones? A jury properly directed would be entitled
11 to consider the combination of factual circumstances and to decide whether the only
12 reasonable and inescapable inference is that access by Jennings was done at the behest of
13 the Applicant.

14
15 16. I accept the submission of the prosecution that the test with respect to circumstantial
16 evidence is that succinctly stated by Moses LJ in the case of *R. v Jabber*³: -

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18 *“The correct approach is to ask whether a reasonable jury, properly directed,*
19 *would be entitled to draw an adverse inference. To draw an adverse inference from*
20 *a combination of factual circumstances necessarily does involve the rejection of all*
21 *realistic possibilities consistent with innocence. But that is not the same as saying*
22 *that anyone considering those circumstances would be bound to reach the same*
23 *conclusion. That is not an appropriate test for a judge to apply on the submission*
24 *of no case. The correct test is the conventional test of what a reasonable jury would*
25 *be entitled to conclude.”*



³ [2006] EWCA Crim 2694



1 17. The prosecution's case in respect of the charge on the Indictment is based on a number of
2 pieces of evidence including that these records related to police reports which were closed.
3 There would have been no reason for the police to access them. The Applicant was at work
4 on each day that the records were accessed and would have had the opportunity to access
5 the records. The records were viewed, and no entries were made in them by the person who
6 accessed them. There was no audit request made of the Applicant. There is thus no
7 discernible reason for the access as part of police duties.

8
9 18. Additionally, if the evidence of Ms. Young is accepted as truthful, there are also the
10 statements made by the Applicant which indicate an awareness of Ms. Young's history, the
11 possible motive of jealousy expressed or implied and the continued harassing behaviour of
12 the Applicant towards Ms. Young over many months. These are all part of the
13 circumstances which a jury properly directed would be entitled to consider in coming to a
14 conclusion on this charge. This is the classic circumstantial evidence scenario of
15 opportunity, motive and conduct. The test at this stage is not whether a reasonable jury
16 would be bound to conclude that the charge is proven but whether they would be entitled
17 to so conclude.

18
19 19. The prosecution has also drawn to my attention the statement of Pitchford LJ in the case
20 of ***R. v. Roberts***⁴:-

21
22 *“In a circumstantial case, the judge does not have to satisfy himself that the*
23 *prosecution has excluded all reasonable possibilities consistent with innocence,*
24 *that is ultimately the judgment for the jury to make. The test is whether on the*
25 *evidence a reasonable jury properly directed could conclude that the defendant was*
26 *guilty.”*

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⁴ [2015] EWCA Crim 1113

1 20. I am satisfied applying the relevant test that there is a sufficiency of evidence to be placed
2 before a jury in proof of these charges. The application for dismissal of the charge on the
3 Indictment and the scheduled charge is refused.
4

5 **Dated this the 16th day of June 2023**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

6
7 **The Hon. Justice Cheryll Richards KC**
8 **Judge of the Grand Court**