



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

CRIMINAL APPEAL 6/2019
IND 80/2016
SC#05304/2016

BETWEEN

ADMIRAL CLEVELAND ANDERSON

Appellant

AND

Her Majesty the Queen

Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President**
 The Hon Sir Richard Field, Justice of Appeal
 The Rt. Hon Sir Jack Beatson, Justice of Appeal

Appearances: **Ms. Prathna Bodden of Samson Law for the Appellant**
 Ms. Toyin Salako, Office of the DPP for the Respondent

Date of Hearing: **6 May 2021**

Decision Delivered: **6 May 2021**

Ruling Delivered: **11 June 2021**

REASONS FOR RULING

1. On 6 May 2021 we dismissed the Applicant's appeal against conviction. These are the reasons.
2. On 24 October 2018 the Applicant was convicted at the Grand Court of 6 offences of forgery and one of attempting to obtain property by deception. The indictment had originally contained 13 counts. At the close of its case, Ms Salako, who appeared on behalf of the prosecution, and represented the Respondent before us, elected not to proceed on a number of counts. To simplify matters for the jury, the indictment was re-drafted to reflect only those counts, which amounted to 7 in number, namely counts 3, 4, 5, 6, 7 10 and 11. The Applicant was convicted of every count on the re-drafted indictment. On 2 April 2019 he was sentenced by the trial judge, Acting Justice Carter, to 3.5 years on each count of forgery and 2.5 years on the count of obtaining property by deception, the sentences to run concurrently. The Applicant sought leave to appeal against conviction on the ground that a submission at the close of the

prosecution of no case to answer, on the basis of the second limb of *Galbraith* [1981] 1 WLR 1039, should have succeeded.

The facts

3. The Applicant's parents, Admiral Lear Anderson ("Mr Anderson") and Koreen Elethia Smith-Anderson ("Mrs Anderson"), owned a number of properties in the Cayman Islands. They had originally been bought by Mrs Anderson. On 2 February 2009 Mrs Anderson was first diagnosed as suffering from Alzheimer's dementia. Her condition worsened. On 20 July 2010 she left the Cayman Islands for the United States. She never returned. On 14 April 2012, Mr Anderson also moved to the United States and joined his wife. On 12 May 2013, Mrs Anderson was admitted to hospital. Mr Anderson was admitted to a nursing home on 22 May (as, it seems, was Mrs Anderson). Mrs Anderson died in the United States on 7 September 2014. Mr Anderson returned to the Cayman Islands on 3 September 2014, in circumstances to which we shall come. He was in the Cayman Islands when his wife died. At the time of the trial, he was 86.

4. The management of the properties in the Cayman Islands was left to the Applicant. He was to collect and remit the rent. Several family members assisted him. As well as the Applicant, they included Brandon (a grandson) and Jermain Kidd. In essence, the allegation was that the Applicant had forged the signatures of Mr and/or Mrs Anderson in order to obtain control of the family property with a view to selling it on and keeping the proceeds.

Counts 1 and 2

5. Counts 1, 2, which were withdrawn from the jury at the close of the prosecution case, alleged forgery of powers of attorney. Unlike the other counts of forgery, they concerned "Limited Powers of Attorney" signed by both parents and witnessed by an attorney in the United States. The power of attorney in Count 1 was executed on 4 February 2011, that in Count 2, on 4 February 2012. Count 1 was intended to cover the admission of Mr and Mrs Anderson into hospital and appointed a stepson (Royal Paul Rose) as attorney. The father accepted in evidence that he may have signed it. Count 2, according to Deborah Anderson, a daughter who gave evidence, related to the management of the properties in the Cayman Islands. It appointed the Applicant as attorney for that purpose and, in paragraph 9, provided him with the power to "Manage, insure, improve, repair or perform any other act with respect to any of my property located in the Cayman Islands and the United States." Ms Prathna Bodden, in well-argued submissions on behalf of the Applicant, suggested that so widely drawn was this provision that, having regard to the Applicant's case that there were family discussions to this effect, it enabled the Applicant to sell the parents' property in the Cayman Islands. However, the evidence it was

not intended to do so is clear. Although Mr Anderson did not accept that he had signed this document, Deborah Anderson said this limited power was to enable maintenance of the property in the Cayman Islands. In our judgment, the wording of paragraph 9 could not reasonably be read as providing an unlimited power to sell the property. Moreover, had the Applicant believed it did provide him with such a power, it would not have been necessary for him to obtain the further power of attorney, the subject of count 3.

Counts 3, 4, 6, 7, 10 and 11

Block OPY, Parcel 146

6. The above counts related to the Applicant's taking of an unlimited power of attorney in respect of the above parcel of land (Count 3), the swearing of an affidavit to provide an explanation as to the absence of documentation needed to transfer the land (Count 7), a further affidavit to correct the misspelling of Mrs Anderson's name in that affidavit (Count 6), the purported transfer of the land to the Applicant (Count 4), its registration by the Registrar of Lands of the Cayman Islands (Count 10) and its attempted sale by the Applicant (Count 11).

Count 3

The power of attorney

7. By this document, Mr and Mrs Anderson purported to appoint the Applicant as their attorney. They were said to have signed it as donors on 1 May 2013, "in the presence of L.M. Ebanks," otherwise described as "Louis M. Ebanks, Justice of the Peace, Cayman Islands." It purportedly appointed the Applicant "to be my [sic] attorney and generally" in respect of Block OPY, Parcel 146. The reverse of the apparent power of attorney was entitled "Certificate of Identification." Mr Ebanks there certified that Mr and Mrs Anderson "appeared before me on the 1st May 2013 and...(being known to me) acknowledged the above signature...to be theirs and that he/they had freely and voluntarily executed...[the power of attorney] and understood its contents..."

Count 7

8. The purported affidavit bore the date of 7 May 2013. By it, "K~~a~~reen [our emphasis] Anderson and Admiral Anderson, owners of...Parcel 146 do solemnly take oath that the Land Certificate for...[Parcel 146] was destroyed during Hurricane Ivan." It was ostensibly signed by "K~~a~~reen [our emphasis] Anderson and Admiral Anderson" and 'witnessed' by Mr Ebanks. Mrs Anderson's name was 'Coreen,' not 'Kareen.'

Count 6

9. The error regarding Mrs Anderson's name was 'corrected' in a further purported affidavit, also bearing the date 7 May 2013. By that document, "I, K~~a~~reen Anderson [our emphasis] do

solemnly take oath that I am the same person as Kareen Anderson [our emphasis]. My Name was registered at the Lands and Survey Department on...Parcel 146 as Kareen Anderson [our emphasis] by error.” The document recounted that Mrs Anderson was the birth mother, Mr Anderson the birth father of the Applicant. The document was signed by the Applicant and Mr Ebanks as Notary Public.

Count 4

10. By this purported transfer document, also bearing the date 1 May 2013, Mr and Mrs Anderson transferred Parcel 146 to the Applicant. The transfer was said to be “in consideration of natural Love and Affection for my [sic] son...” The document was ostensibly signed by Mr and Mrs Anderson and by the Applicant as transferee, in the presence of LM Ebanks.
11. On the reverse of the transfer document is a “Certificate of Identification,” in which Mr Ebanks makes the same assertions as were made on the reverse of the power of attorney, the subject of Count 3.

Count 10

12. This document was completed for the purpose of registering Parcel 146 as registered land in the name of the Applicant. It was received for registration on 14 May 2013 and was registered in the Applicant’s name on 21 May 2013. Again, the document was said to have been signed by Mr and Mrs Anderson as transferors, the Applicant as transferee, in the presence of Mr Ebanks.

Count 11

13. Finally, the Applicant registered the parcel of land for sale at a price of KYD2.8 million. Mr Anderson said that learning of the fact the land was for sale was the reason he returned to the Cayman Islands in September 2014.

Count 5

Block 14BG, Parcel 65

14. This was a further affidavit, in respect of a different parcel of land, purportedly signed by Mrs Anderson alone and bearing the date 7 May 2013. Her name was misspelt. It stated that, “I, Coreen Alicia Anderson, [our emphasis] owner of Block 14BG Parcel 65, do solemnly take oath that the Land Certificate for this parcel was destroyed during Hurricane Ivan.” Mrs Anderson’s correct name was Koreen Elicia Anderson. The document was ostensibly signed by Mrs Anderson in her misspelt name.

15. It is clear that on the dates recorded in the above documents, Mr and Mrs Anderson were in the United States. Mrs Anderson was ill and suffering from dementia. Although Mr Ebanks said (by way of an agreed admission), that the Applicant brought the documents to him to be signed and notarised, and said he was familiar with Mrs Anderson's signature, the documents were on any view false. As the Applicant (and Mr Ebanks) knew, there was no question of Mr and Mrs Anderson having signed them in the Cayman Islands in the presence of Mr Ebanks, or of Mr Ebanks having ascertained that Mr and Mrs Anderson understood their contents.
16. It was the Applicant's case, as recounted in interview, that he sent the documents to his brother Royal Rose, who had Mr and Mrs Anderson sign them in the United States. Once they had been returned, he submitted them to Mr Ebanks. He said that if he had sold Parcel 65, the proceeds would have been shared with his siblings in accordance with this mother's wishes. He said he had done nothing wrong. His actions reflected his parents' wishes.
17. Mr Anderson gave evidence over a period of some two days. In broad terms, he said neither he nor Mrs Anderson signed the documents, the subject of the counts of forgery. They were not in the Cayman Islands at the time. They were in hospital or a nursing home. They had not agreed to transfer their property. The reason he came to Cayman in September 2014 was because he heard of the sale of the land (the subject of count 11). He only signed one power of attorney, namely that referred to in count 1.
18. As she did before the judge in submissions at the close of the Crown's case, Ms Bodden set out what she submitted was a list of inconsistencies in Mr Anderson's evidence. It is convenient to summarise them at this stage. We make it plain that we have read the detail of the helpful schedule provided by Ms Bodden.
19. Mr Anderson was wrong when he said he only signed one power of attorney. He was wrong when he said he had not signed the power the subject of count 2. Deborah Anderson said she drafted such powers on the instructions of her father. Examples of such powers were produced by the Defence. As we understand it, they were drafted and signed in the United States. One which was produced gave power to Deborah Anderson. Another, which was a limited power, appointed the Applicant as one of those with the power. None of those produced specifically provided for a power to sell property.

20. Mr Anderson was inconsistent in his evidence regarding his signature on the witness statement he gave to the police. At one stage, he said the signature on the bottom of the statement was not his. He said too that the signature “could be mine but doesn’t look like my handwriting.”
21. Ms Bodden further submitted that there was a conflict between Mr Anderson’s evidence that Mrs Anderson had not signed the document and Mr Ebanks’ evidence that he recognised Mrs Anderson’s signature.
22. Mr Anderson, submitted Ms Bodden, was inconsistent about whether he had discussed selling the house in Cayman. He said he had never spoken to the Applicant about selling it. He also said that he had spoken to all the children about selling it. Having accepted that he could have called the Applicant about the selling the property, he finally said that “maybe I did discuss [selling it] with him, I’m not sure.”
23. Finally, Ms Bodden relied on the following general comments of Mr Anderson. In his police statement, he said that he did probably tell the police that “to the best of my knowledge I did not give [the Applicant]...any power of attorney.” He said in a pre-trial interview that “as far as he could remember he didn’t give [the Applicant]...a power of attorney.” At the end of cross-examination, he accepted he could not be 100% sure that he did not give a power of attorney.

The decision by the prosecution not to proceed in respect of Counts 8, 9, 12 and 13

24. The prosecution did not proceed on these counts at the close of their case. Counts 8 and 9 added nothing. Count 12 alleged an attempt to obtain the proceeds of sale of Parcel 65. That was not proceeded with as the land was never registered for sale. Count 13 alleged that the Applicant had not accounted for all the rent he collected on the Cayman properties. The prosecution could not prove how much the Applicant received and how much he remitted to Mr and Mrs Anderson.

The judge’s ruling at the close of the prosecution

25. Having heard the submissions, the judge adjourned overnight. Unfortunately, as will become apparent, she did not set out any analysis of the evidence, as it seems to us, she should have done, but merely dealt with it in general terms. That has not made our task any easier.
26. The judge firstly and accurately set out the second limb of *Galbraith*. She accepted that there were inconsistencies in the evidence of Mr Anderson. She said:

“...I think that the inconsistencies which are complained of go to the reliability of the witness’ evidence as a whole, and the court has to consider what is its

position when there is some evidence which appears to be unreliable at this stage of the prosecution's case. And I have done so. I have considered all the submissions. And I believe questions of reliability, just as questions of credibility, are matters for the jury.

There is other evidence which is before the court that the jury can draw inferences [sic] with regard to the defendant's intention. There is other evidence which can bolster Mr Admiral Lear Anderson's case...

So if one goes back to Galbraith, then I find that there is some evidence upon which a jury properly directed could convict. I find that the issues raised of inconsistencies, either on the evidence of Mr Anderson himself, or the main prosecution witness, or...witnesses... are matters which fall squarely within the province of the jury. It is not sufficient at this stage for me, as the trial judge considering a submission of no case at the end of the prosecution case, to find that the evidence is so unreliable that I do not think that the defendant should be called upon to answer.

So, in all the circumstances, I say that there is a case of the defendant to answer, and I will call upon him to do so.

I will say, and invite counsel for the prosecution primarily to keep a continuing evaluation of its case in the light of inconsistencies which have been brought to light at this stage, and I say that up to the point at which matters go to the jury."

The grounds of appeal

27. Ms Bodden, as we have indicated, essentially repeated the submission she made to the judge. She relied on the inconsistencies we have set out above. She submitted in short, that the judge could not reasonably have left this case to the jury. In the light of Mr Anderson's inconsistencies and uncertainties, it was too inherently weak or vague for any sensible person to rely on. In support of her submission, Ms Bodden relied upon the much cited decision of *Shippey* Crim. L. R. 1988, Nov, 767-8.
28. Ms Bodden made two further criticisms of the judge's ruling. They related to the final observations the judge made.
29. Firstly, it was said that the comment effectively reversed the burden of proof. It suggested the judge expected the Applicant to give evidence when there was no requirement for him to do so. Secondly, Ms Bodden submitted the judge's remarks about a continuing evaluation of the case

suggested she had doubts or concerns about the case, hence her requiring the Crown to keep the matter under review.

Our decision

30. Whether or not to withdraw a case on the basis of the second limb of *Galbraith* is essentially a matter for exercise of the discretion of the trial judge. It is only if the judge reaches a decision which no judge could reasonably have arrived at that this court will interfere. As to the reliance upon *Shippey* we wish to make it plain (as did Hallett LJ, when giving the judgment of the Court of Appeal of England and Wales in *Christou* [2012] 2012WL 608733), *Shippey* is no more than an example of how a trial judge approached an assessment in the case before him. It is a case, in other words, on its facts. It is not any kind of authority in interpreting *Galbraith*. *Shippey* merely speaks for itself.
31. While it is clear that from time to time, Mr Anderson became confused, and there were some inconsistencies in his evidence, this was in our view a strong case at the close of the prosecution. There was powerful evidence that neither he nor Mrs Anderson signed the documents which formed the basis of the convictions in respect of the counts of forgery. The judge was entitled to conclude:
- (1) As the Applicant knew, the documents on their face effectively asserted that on the dates set out, their content and effect having been explained to them, Mr and Mrs Anderson signed them in the Cayman Islands. The Applicant knew that was not so.
 - (2) Had she signed them, it is unlikely Mrs Anderson would have misspelt her name, let alone more than once.
 - (3) Given that they were residing in the United States, were Mr and Mrs Anderson genuinely to have provided the Applicant with a power of attorney, it would have been sworn in the United States. That is what happened in respect of the documents originally the subject of counts 1 and 2. It is what happened when the Applicant was provided with a power in respect of maintaining the properties.
 - (4) Deborah Anderson, who had been involved in drafting powers of attorney for her father, knew nothing of any power of attorney relating to the sale of property in the Cayman Islands or of any proposed sale by the Applicant of such property or, as was claimed by the Applicant, that she, among other siblings, was to receive part of the proceeds.

(5) Having obtained the false and misleading documentation, the Applicant made use of it to place property on the market for sale for a substantial sum of money. The proceeds of sale would have been paid to him.

32. We did not attach any weight to the suggested inconsistency between Mr Ebanks' evidence, as set out in the admissions, to the effect that he recognised Mrs Anderson's signature, and Mr Anderson's evidence that that she had not signed the documents. If Mr Ebanks did recognise Mrs Anderson's signature, it is difficult to understand how he missed the fact that on two documents, ostensibly signed by her, her name was misspelt and, furthermore, that it was not consistently signed as between different documents.
33. In short, we had no doubt the judge was right to leave the case to the jury.
34. Finally, we did not accept Ms Bodden's submission that the judge was reversing the burden of proof in the comment she made, or that the comment suggested the judge expected the Applicant to give evidence. The judge was in substance saying no more than there was, on the basis of the second limb of *Galbraith*, a case for the defendant to answer. She was not obliging the Applicant to give evidence. Neither did we accept the submission that her remarks about a continuing evaluation of the case suggested she had doubts or concerns. The judge was merely doing what any diligent judge may do, namely requiring the Crown to keep the matter continually under review. She did not know whether the Applicant would give evidence. No doubt, she was conscious that, as a case unfolded, matters may change.
35. In the result therefore, we dismissed this appeal. We make it plain that in the circumstances, we do not grant leave to appeal.

The grant of bail pending appeal

36. Some three days after the Applicant was convicted, Acting Justice Wood granted the Applicant bail pending appeal. He did so because he said he was concerned about the comments made by Acting Justice Carter during her ruling at the close of the prosecution. The circumstances in which it is appropriate to grant bail pending appeal must be wholly exceptional. The present was not such a case. Bail should not have been granted. If there are good reasons for an appeal to be expedited, an application to that effect can always be made to the court. In this case, as far as we are aware, there was no enquiry about expedition by Acting Justice Wood, and no application for expedition on behalf of the Applicant.

The conduct of Mr Louis Ebanks

37. We indicated to Crown Counsel that Mr Ebanks' conduct as revealed in this case should be referred to the Attorney-General for consideration of further action. On the face of it, his actions were not consistent with those of a Justice of the Peace or a Notary Public of the Cayman Islands.