

18-09-12

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

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4 INDICTMENT NO: 0057/2011

5
6 THE QUEEN

7
8 V

9
10 JESSICA ELAINE KIMBALL



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13 **Appearances:**

Ms. Jenesha Bhoorasingh Simpson on
behalf of the DPP for the Crown

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16 **Mr. Ben Tonner of Samson and McGrath**
17 **for the Defendant**
18

19 **Before:**

Justice Michael Mettyear (Actg.)

20 **Heard:**

21 17th September 2012
22

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

- 25 1. This case has an interesting history which I will set out in brief.
- 26 2. The Defendant is the mother of three children Elijah, Emma and Sonia, who were
27 aged at the relevant time, in March 2010, respectively, 4 years old, 2 years old and
28 8 months old. The children were in the care of their grandmother, Sonia Kimball, at
29 1 Snug Harbour. Also living at the address was the Defendant's brother, Aaron, and
30 a domestic help called Rowena Paulo.
- 31
- 32 3. The Defendant did not live there. The reasons for the mother's separation from her
33 children are not relevant but I should record that she has claimed that she was
34 anxious to be reunited with them as soon as was possible.
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1 4. On the 9th March 2010 at about 9 p.m. Ms. Paulo saw Aaron in close proximity to
2 Elijah. She must have thought that something suspicious was going on. When she
3 was alone with Elijah she asked him what had happened and she received an
4 answer. What Elijah said has not been adduced in evidence but it is obvious from
5 what happens later that Elijah made an allegation of a sexual assault.

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7 5. The evidence before me is that the next day Ms Paulo encouraged Elijah to repeat
8 the allegation to his mother and grandmother. A report was made to the police and
9 an investigation started.

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11 6. On the 10th March 2010, Lucille Bodden, a Social Worker of the Department of
12 Children and Family Service (DCFS), spoke to the Defendant who told her that the
13 helper had seen Aaron with Elijah's penis in his mouth.

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15 7. On the 18th March 2010 a statement was taken from the Defendant in which she
16 said what Ms. Paulo had told her and what Elijah had said. She made it perfectly
17 clear that she did not believe the allegation against her brother and gave reasons
18 why. Despite this, the Crown were apparently proposing to call her as a witness in
19 the case against Aaron.

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21 8. Elijah was interviewed on the 15th March 2010 and Aaron arrested and interviewed
22 on the 18th March.

23
24 9. On the 2nd July there was a pre-trial meeting attended by the Defendant, the police
25 and counsel then representing the Crown. The Defendant indicated that she had
26 something important to say and informed them that she had given a false report

1 before and that she had, in effect, encouraged Elijah and Ms Paulo to falsely allege
2 that the indecent event had occurred. She was interviewed, under caution, about
3 this. In that interview she repeated what she had already said and, in summary,
4 went on to say that she had done so in order to get her children back, that she was
5 sorry for what she did, that she did not want or expect the police to be involved and
6 that her brother was completely innocent.

7
8 She added that although she had never expected things to go so far, she now
9 realised that what she had done was wrong and that she expected to be sent to
10 prison for it. She was arrested and in due course charged.

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12 10. Aaron Kimball stood trial at the beginning of 2011. Obviously, the Crown did not
13 call the Defendant, but the defence did. Despite her evidence, Aaron was convicted.

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15 11. His appeal against conviction was heard at the end of 2011 and the appeal was
16 allowed. I was told, simply as a matter of information that the reason was that the
17 learned trial judge had mis-directed himself about the proper approach to evidence
18 from a child as young as Elijah. The Crown did not seek a re-trial.

19
20 12. At the start of this case Ms. Simpson, for the Crown, informed me that the Crown's
21 stance is that Aaron is guilty of the indecent assault. However, no evidence has
22 been adduced to support that and there is no proper basis upon which I could draw
23 such a conclusion.

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25 13. The precise terms of the count on the indictment are important.

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1 The statement of offence alleges attempting to pervert the course of justice. The
2 particulars of offence state:

3 "Jessica Elaine Kimball, on Friday 2nd July 2010, at the Family Support Unit,
4 Smith Road, Grand Cayman, did an act in order to pervert or defeat the course
5 of justice, namely gave a false statement to police investigators in relation to
6 the matter of *R v. Aaron Kimball* for indecent assault."

7

8 14. It is of interest to note that, in theory at least, the Crown had a number of options. It
9 may have been possible to lay a charge relating to the Defendant's conduct in
10 March 2010, or it may have been possible to have charged perjury following the
11 trial of Aaron Kimball. I am not criticising the Crown for not having pursued either
12 course as there may have been problems in doing so, but I am emphasising that, for
13 present purposes, my attention is focused on the date in the indictment.

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15 15. Mr. Tonner, who appears for the Defendant, has wisely sat through the Crown's
16 evidence without asking a single question.

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18 16. At the end of the Crown's case he has submitted that there is no case to answer.

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20 He asserts that there is no evidence that anything in the statement of the Defendant
21 on the 2nd July 2010 is false. He is right.

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23 17. I asked Ms. Simpson to point out any fact stated on the 2nd July 2010 which the
24 evidence called proves to be false and she was, understandably, unable to do so.

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1 18. The Crown may well suspect that the Defendant told lies on the 2nd July 2010 and
2 at Aaron's trial, but they cannot prove it; certainly not on the evidence called before
3 me.

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5 19. In the well known case of *R v. Galbraith* 73 Cr. App. R. 124 C.A. the court said:

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7 *"If there is no evidence that the crime alleged has been committed by the*
8 *defendant there is no difficulty - the judge will stop the case..."*
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10 That is the situation here and I allow the defence submission and direct that a
11 verdict of not guilty be entered.

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17 **Dated this the 18th September 2012**

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22 **Mr. Justice Michael Mettyear (Actg.)**
23 **Judge of the Grand Court**

