

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

3 INDICTMENT NO: 3/11

4
5 THE QUEEN

6
7 V

8
9 STEVE MADIHO BROWN
10 &
11 LORENZO LEROY WRIGHT



12
13
14 **Appearances:** Ms. Tricia Hutchinson and Ms.
15 Jenesha Bhoorasingh for the Crown
16
17 Mr. Mohammed Khamisa Q.C.
18 instructed by Ms. Lucy Organ of
19 Samson and McGrath for the
20 Defendant
21

22 **Before:** The Hon. Mr. Justice Charles Quin

23 **Heard:** 18th -25th July 2011

24
25 **RULING ON NO CASE TO ANSWER SUBMISSION**
26
27

28 1. Leading counsel on behalf of the Defence, Mr. Mohammed Khamisa Q.C.,
29 has made a submission of no-case to answer, pursuant to s.137 of the
30 Criminal Procedure Code 2010, and the classic principles of Lord Lane in *R*
31 *v. Galbraith* 73 Cr. App. R. 124.

32 2. For the record, s.137 of the Criminal Procedure Code 2010 reads:

33 *“When the evidence of the prosecution witnesses has been*
34 *concluded the Court may before or after considering any*
35 *statement or hearing any evidence of the accused, invite first the*
36 *prosecution and thereafter (at its discretion) the Defence to*
37 *address it upon the question of whether there is sufficient*

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evidence before the Court to warrant conviction of the accused or any or more of several accused of the offence charged or any relevant offence and if either before or after hearing the address by the Defendants, it considers there is no such evidence, it shall discharge the accused concerned and enter a verdict of not guilty with respect to such accused."

3. Lord Lane in *R v. Galbraith* 73 Cr. App. R. 124 stated:

- “1. *If there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty – the Judge will stop the case.*
- 2. *The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.*
 - a. *Where the Judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.*
 - b. *Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters which are, generally speaking within the province of the jury, and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the Defendant is guilty, then the Judge should allow the matter to be tried by the jury.”*

4. The Crown has charged the Defendant in this trial, Lorenzo Leroy Wright, with manslaughter, contrary to s.180(1) of the Penal Code (2010 Revision) and the particulars of the offence are that Lorenzo Leroy Wright, with another not before the Court, namely Steve Madiho Brown, on the 1st day of October 2010, at Plaza Odessa, Bodden Town, Grand Cayman, Cayman Islands, unlawfully killed Jack Kennedy Forbes.

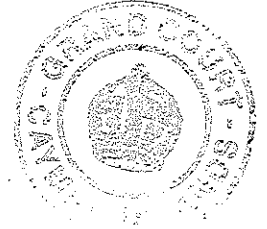
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33 with manslaughter, contrary to s.180(1) of the Penal Code (2010 Revision)
34 and the particulars of the offence are that Lorenzo Leroy Wright, with
35 another not before the Court, namely Steve Madiho Brown, on the 1st day of
36 October 2010, at Plaza Odessa, Bodden Town, Grand Cayman, Cayman
37 Islands, unlawfully killed Jack Kennedy Forbes.

1 5. Manslaughter is defined by s.180 of the Penal Code (2007 Revision).

2 S.180(1) reads:

3 “(1) *Whoever, by an unlawful act or omission, causes the*
4 *death of another person is guilty of the offence of*
5 *manslaughter.*

6 (2) *An unlawful omission is an omission amounting to*
7 *culpable negligence to discharge a duty tending to the*
8 *preservation of life or health, whether such omission is*
9 *or is not accompanied by an intention to death or bodily*
10 *harm.”*

11

12 6. The case for the prosecution relies largely on the evidence of Kevin Levy,
13 Dr. Bruce Hyma, the CCTV footage, and, the interpretation of the footage by
14 Detective Constable McDonald.

15 7. The Defence submits that there is insufficient evidence to bring a charge of
16 manslaughter against the Defendant, and that there is no case for the
17 Defendant to answer on the charge of manslaughter.

18 8. Initially Kevin Levy told the Court that Lorenzo Wright threw a stone at the
19 victim, Jack Forbes, causing him to fall, whereupon Steve Brown and
20 Lorenzo Wright proceeded to assault the victim. Mr. Levy gives evidence
21 that there was a fight between Steve Brown and Jack Forbes and then the
22 Defendant, Lorenzo Wright, also kicked the deceased, Jack Forbes, in his
23 side.

24 9. The victim, Jack Forbes, was seen pulling out a knife and stabbing Steve
25 Brown, and then there is evidence to support that, whilst Jack Forbes was
26 running away, Lorenzo Wright threw a stone or a rock, which hit Jack Forbes
27 on the back of the neck and caused him to fall.

1 10. Kevin Levy's evidence was that Steve Brown and the Defendant Lorenzo
2 Wright continued to assault Jack Forbes, and that, whilst Steve Brown was
3 stomping Jack Forbes in the head, Lorenzo Wright was kicking Jack Forbes
4 in his side. Kevin Levy said Lorenzo Wright was doing a "*shoe shop and*
5 *kicking him to pieces.*"

6 11. The CCTV footage demonstrated, without any doubt that after Jack Forbes
7 fell from the impact of the stone on the back of the head, the Defendant took
8 no part in the further assaults. In fact, the CCTV shows clearly that Steve
9 Brown stomps Jack Forbes at least five times in the first round of kicking and
10 then later stomps him 14 or 15 times very heavily on the head against the
11 tarmac in a second round of kicking. There is no CCTV evidence that the
12 Defendant kicked the deceased or caused him any other injury.

13 12. In addition the Forensic Pathologist, Dr. Hyma, gave clear evidence and
14 confirmed that in his view the victim died from the stomping motion on the
15 head and from damage to the brain.

16 13. From the CCTV it was seen that the witness, Kevin Levy arrived at around 6
17 p.m. and therefore could only have seen a part of the fight. In response to this
18 CCTV footage Kevin Levy changed his evidence and said in cross
19 examination that he actually made *two* trips to the Plaza – one by foot, and
20 then the next when he returned to bring his car. There was a significant
21 disagreement between Defence counsel and Kevin Levy as to whether he was
22 lying or whether he was mistaken.

- 1 14. The Defence submits that Kevin Levy was lying, and that his evidence
2 cannot be relied upon. The Defence submits that the CCTV footage
3 demonstrates that he has been neither truthful nor accurate.
- 4 15. It has been accepted by both parties that on the 15th April 2011 Steve Brown
5 pleaded guilty to manslaughter by way of provocation under s.181 of the
6 Penal Code. It is agreed between the parties and accepted by the Crown that
7 Steve Brown lost self control, to which the Defence says, that even if there
8 had been a plan between Steve Brown and the Defendant Lorenzo Wright,
9 (which is denied) that plan was abandoned or departed from completely by
10 the loss of Steve Brown's self control.
- 11 16. Despite Kevin Levy's evidence in chief the Defence submits that Steve
12 Brown had inflicted an extremely serious assault on the deceased, with two
13 sustained periods of stomping on the top of the deceased's head on the
14 tarmac, which led to the death of the deceased.
- 15 17. The Defence submits that the Defendant took no part in the attack on the
16 deceased after the throwing of the stone, or in the stomping attack on the
17 deceased's head which, according to expert evidence, was the cause of his
18 death.
- 19 18. It is accepted by the Crown that, after a close review of the evidence, Steve
20 Brown clearly lost all self control and inflicted sustained assaults on the
21 deceased. This is something which the Defence submits the Defendant,
22 Lorenzo Wright, could have had no control of, and further, the Defence
23 submits that the Defendant Lorenzo Wright took no part in these assaults.

1 *Conclusion*

2 19. The Crown has only charged the Defendant, Lorenzo Wright, with
3 manslaughter, that on the 1st October 2010, with Steve Brown, unlawfully
4 killed Jack Kennedy Forbes. The Crown has not charged the Defendant with
5 either assault or aiding and abetting. Additionally, the Crown has not made
6 any submissions on any lesser charges nor has the Defence been called upon
7 to consider or address the Defendant’s possible culpability to assault or to
8 aiding and abetting.

9 20. Both counsel referred to the oft-cited case of *R v. Shippey* 1988 Crim.LR.
10 767 where Turner J. held that the requirement to take the prosecution
11 evidence at its highest did not mean “*picking out all the plums and leaving*
12 *the duff behind.*” As the learned editors of Archbold 2011 (Criminal
13 Pleading, Evidence and Practice) at paragraph 4-295 state *Shippey* is a
14 decision based on its own facts and lays down no new principle of law.

15 21. I have to ask myself the question: Could a reasonable jury, properly directed,
16 be sure of the Defendant’s guilt on the charge which he faces. With the
17 helpful assistance of Crown counsel I refer to the Judgment of Hooper L.J. in
18 the English Court of Appeal case of *Regina v. Pryer, Sparkes, Walker*
19 [2004] EWCA Crim. 1163 where he states at paragraph 29:

20 “*Although the test is a very simple one, it is often difficult to*
21 *answer the question. Help may sometimes be found in the case of*
22 *Shippey in resolving that question, provided it is remembered*
23 *that Shippey is no more than another case on the facts.*
24 *Galbraith gives significant assistance to judges when being*
25 *asked to resolve that question when the reliability of witnesses is*
26 *in issue.*”

1 22. In this case it is clear from the CCTV evidence that the Defendant took no
2 part in the stomping of the deceased outside Dunkin' Donuts. It is not clear
3 what part he may have played at an earlier stage, save that there is evidence
4 that he threw a stone which struck the deceased and caused him to fall.

5 23. Whether Kevin Levy was mistaken or lying, it would have to be said that
6 some of his early evidence in chief could not have been accurate, and further,
7 as a result of the changes in his evidence, there are, in my view, some
8 consequential inherent weaknesses and inconsistencies in his evidence before
9 the Court. In my view, Kevin Levy's evidence can properly be described as
10 being tenuous.

11 24. I find that the Crown has failed to establish a joint enterprise to unlawfully
12 kill Jack Forbes. Aside from the throwing of the stone there is no direct
13 evidence that the Defendant, Lorenzo Wright, took any part in the stomping
14 of the deceased. In fact, the evidence of the CCTV is that the Defendant
15 picked up two items beside the deceased's body and then withdrew from the
16 scene and took no part in the stomping which on Dr. Hyma's evidence is
17 very probably the cause of the death of the deceased.

18 25. The case against Lorenzo Wright is very similar to the English Court of
19 Appeal decision of *R v. McKechnie* 1992 Crim.L.R. 194 which held that
20 where the killer acted under provocation received in the course of carrying
21 out the joint enterprise, this ruled out any liability of the other parties to it.

22 26. Accordingly, I accept the Defendant's submission that Steve Brown is the
23 principal of the commission of the offence, and, by accepting Steve Brown's
24 guilty plea to manslaughter by way of provocation, there can be no

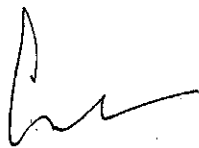
1 suggestion that Steve Brown's sustained assaults on the deceased were pre-
2 planned with the Defendant, Lorenzo Wright. In addition, although the
3 Defendant was present when Steve Brown inflicted the two severe periods of
4 stomping on the deceased, there is no evidence that he took any part.
5 Importantly, there is no evidence that the Defendant either foresaw or
6 contemplated that Steve Brown would have embarked on what can only be
7 described a most horrific, sustained attack on the deceased.

8 27. From the CCTV it is seen where after the stone was thrown the Defendant
9 picked up two items, which were probably the knife and the stone, and
10 removed them from the scene of the attack. Dr. Hyma's evidence is that the
11 deceased died as a result of the stomping.

12 28. For the aforesaid reasons I cannot find that the Defendant, Lorenzo Wright,
13 was part of a joint enterprise to unlawfully kill the deceased, Jack Forbes. I
14 accept the Defence's primary submission that there is no case for Lorenzo
15 Wright to answer on the charge of manslaughter.

16 29. Accordingly, I hold that there is insufficient evidence to let the case go to the
17 jury, and as such I take the case away from the jury and find the Defendant
18 not guilty.

19 **Dated this the 25th day of July 2011**

20 

21 **Honourable Mr. Justice Charles Quin**
22 **Judge of the Grand Court**

