

BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

Claim No. BVIHCV2009/0162

BETWEEN

THE QUEEN

Applicant

-AND-

RICKY TERRENCE POWELL

Respondent

Appearances:

Mr. Terrence F. Williams, Director of Public Prosecutions with Mrs. Candace Raphael-DeJonge, Senior Crown Counsel and Ms. Christilyn Benjamin, Crown Counsel for the Applicant

The Respondent in person

Mrs. Marie-Lou Creque for Oran Jones

2009: May 14

2009: August 10

Criminal Law – application to High Court judge to prefer voluntary bill of indictment against respondent to be tried jointly with other co-defendants – jurisdiction of court to hear application – West Indies Associated States Supreme Court (Virgin Islands) Act, cap. 80, ss. 6, 7 and 10 – Administration of Justice (Miscellaneous Provisions) Act, 1933 – when consent may be granted – interests of justice - should respondent be joined for his case to be heard simultaneously with co-defendants who have already been committed to stand trial- preliminary inquiry against respondent commenced but not completed – unrepresented respondent

JUDGMENT

- [1] **HARIPRASHAD-CHARLES J:** On 14th May 2009, the court permitted the Director of Public Prosecutions (“the DPP”) to prefer a voluntary bill of indictment against the Respondent,

Ricky Terrence Powell for the offences of aggravated burglary,¹ robbery ² and wounding with intent,³ to be tried jointly with Oran Jones and Craig Stoddard who have already been committed to stand trial for similar offences. As the decision is unprecedented, the court considers it useful to reduce its reasons to writing.

The facts

- [2] In broad daylight on the morning of 15th August 2007, three masked men armed with firearms entered the National Bank of the Virgin Islands ('the Bank') and robbed tellers of the sum of USD\$56,415.00. During the robbery two customers were wounded. Later that same day, a green Suzuki Jeep, bearing resemblance to the one seen at the scene of the robbery was discovered in the Sea Cows Bay area along with two young men who were later identified as Jones and Stoddard. On 18th August 2007, they were both formally arrested and charged with robbery.
- [3] Also, on 15th August 2007, Forensic Officers processed the crime scene and lifted latent palm impressions from the top left corner of the customer counter at the Bank. These prints were later compared with inked impressions of Powell's fingerprints and several similarities of ridge characteristics were found. On 28th August 2007, the police obtained an arrest warrant for Powell who, it is alleged, fled the Territory shortly after the robbery thereby avoiding the committal proceedings with Jones and Stoddard. On 5th December 2008, Powell was extradited from the United States by US Marshalls by which time the committal proceedings with Jones and Stoddard were completed.
- [4] On 9th December 2008, Powell made his first appearance at the Magistrate Court. Since then, there had been two adjournments of the preliminary inquiry in order to facilitate Powell's legal representation. On 25th March 2009, he informed the court that he would be proceeding with the matter unrepresented. The preliminary inquiry was then adjourned to 6th May 2009. On that day, six prosecution witnesses attended to have their depositions taken. However, only two of those witnesses were deposed as it appears that the Magistrate had

¹ Contrary to section 212(1) of the Criminal Code 1997 of the Laws of the Virgin Islands

² Contrary to section 210(2) of the Criminal Code 1997 of the Laws of the Virgin Islands

³ Contrary to section 163 of the Criminal Code 1997 of the Laws of the Virgin Islands

slated another matter for that day which took precedence over the preliminary inquiry. This led to a further adjournment to 30th June 2009. In the meanwhile, the trial against Jones and Stoddard was fixed for 8th June 2009 at the Criminal Assizes.

- [5] Against this unfortunate background, on 14th May 2009, the DPP applied to the High Court for an order that a voluntary bill of indictment be preferred against Powell charging him jointly with Jones and Stoddard for the offences of aggravated burglary, robbery and two counts of wounding with intent. He advanced the following five grounds: (1) It is in the interest of justice that Jones and Stoddard, both of whom have already been committed for trial, be tried jointly with Powell; (2) a joint trial will be unavoidably delayed should Powell's case go through committal proceedings; (3) Powell having absented himself from the jurisdiction avoided the committal proceedings with Jones and Stoddard and was not arrested until those proceedings were completed having been extradited; (4) since Powell's extradition, his failure to retain counsel has contributed to the delay in starting the committal proceedings and (5) there has been no previous application for a voluntary bill of indictment in relation to this matter.

Jurisdiction to hear application

- [6] The laws of the Virgin Islands do not deal with voluntary bills of indictment and there is no comparable legislative enactment to section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 [UK] which permits the preferment of a bill of indictment (commonly called a voluntary bill of indictment) by the direction or with the consent of a judge of the High Court.⁴
- [7] However, by virtue of the West Indies Associated States Supreme Court (Virgin Islands) Act, Cap. 80, I am of the opinion that this court is empowered to entertain such an application.⁵

⁴ See Blackstone's Criminal Practice 2009, Para. IV.35.1

⁵ See sections 6, 7 and 10. See also section 48 of the Criminal Procedure Act, Cap. 18 of the Revised Laws 1991 and the case of *Eversley Thompson v The Queen* (1998) A.C. 811 where it was held that ss. 76 and 78 of PACE (which deal with matters concerning the admissibility of admissions and confessions) was received into the Laws of Saint Vincent and the Grenadines by a general reception clause in section 3 of the Evidence Act, Saint Vincent and the Grenadines.

Voluntary bill of indictment

- [8] Applications for the preferment of a voluntary bill of indictment may be made by the direction or with the consent of a judge of the High Court.⁶ It is an alternative to committal proceedings or the holding of a preliminary examination.
- [9] Para IV.35.3 of Blackstone's Criminal Practice 2009 refers to the preferment of a voluntary bill as "an exceptional procedure" stating that "*consent should only be granted where good reason to depart from the normal procedure is clearly shown and only where the interests of justice, rather than considerations of administrative convenience, require it.*"
- [10] Applications for such consent are governed by the Indictments (Procedure) Rules 1971⁷ where safeguards are in place to prove compliance. In the present case, section 48 (d) of the Indictments (Procedure) Rules is applicable.⁸
- [11] Neither the Administration of Justice (Miscellaneous Provisions) Act 1933 nor the 1971 Rules expressly require a prosecuting authority applying for consent to the preferment of a voluntary bill to give notice of the application to the prospective defendant or to serve on him a copy of documents delivered to the judge or to afford him any opportunity to make submissions to the judge, whether in writing or orally. However, the prosecuting authorities for England and Wales have issued guidance on the procedures to be adopted and a prospective defendant is given notice of the application, is served with a copy of all documents delivered to the judge and is entitled to make submissions in writing to the judge.
- [12] In the present case, the preliminary inquiry against Powell has already commenced at the Magistrate Court. Two of the eight prosecution witnesses have already given their evidence. The preliminary inquiry has been adjourned to 30th June 2009 which means that it may or may not be completed on 30th June 2009. Shortly put, it may be completed after the date set

⁶ The Administration of Justice (Miscellaneous Provisions) Act 1933 - Blackstone's Criminal Practice 2009.

⁷ SI 1971/2084.

⁸ Applications for such consent ... must be accompanied by a summary of the evidence or other document which (i) identifies the counts in the proposed indictment on which he has been committed for trial (or which are substantially the same as charges on which he has been so committed), and (ii) in relation to each other count in the proposed indictment, identifies the pages in the accompanying statements and exhibits where the essential evidence said to support that count is to be found.

for the trial of Jones and Stoddard at the Criminal Assizes. The DPP lamented that more than two years have elapsed since the incident occurred and the other defendants have already been committed to stand for similar offences.

- [13] In **Brooks v DPP**⁹ it was held that "*where an application was made for a voluntary bill when there had been no committal proceedings it should be borne in mind that such proceedings are an important element for the protection of the accused, while regard must also be had to the interests of the Crown acting on behalf of the community.*"

Joint trials

- [14] It is common practice that persons who have been separately committed for trial for offences which can lawfully be charged in counts in the same indictment may be joined with other defendants: see **R v Groom**.¹⁰ Only in very exceptional circumstances should separate trials be ordered where two or more persons are charged with the same offence: see **Mohammed Ilias Moghal**.¹¹

- [15] In **R v Robert William Lake**,¹² the Court explored the practice favouring joint trials. Widgey CJ had this to say:¹³

"It has been accepted for a very long time in English practice that there are powerful public reasons why joint offences should be tried jointly. The importance is not merely the saving of time and money. It also affects the desirability that the same verdict and the same treatment shall be returned against all those concerned in the same offence. If joint offences were widely to be tried as separate offences, all sorts of inconsistencies might arise. Accordingly it is accepted practice, from which we certainly should not depart in this Court today, that a joint offence can properly be tried jointly, even though this will involve inadmissible evidence being given before the jury and the possible prejudice which may result from that...."

⁹ (1994) 1 A.C. 568

¹⁰ [1977] QB 6. C.A.

¹¹ (1977) 65 Cr. App. R. 56.

¹² (1977) 64 Cr. App. R. 172

¹³ 64 Cr. App.R. 172 at 175, CA.

[16] In *R v Hayter*,¹⁴ Lord Steyn restated and modified the practice favouring joint trials as was stated by Widgery CJ in *R v Lake* [supra]. At para 6 of the judgment, he said:

"The practice favouring joint criminal trials is clear. It has been accepted for a long time in English practice that, subject to a judge's discretion to order separate trials in the interests of justice, there are powerful public reasons why joint offences should be tried jointly (see *R v Lake* (1976) 64 Cr. App. R. 172 at 175, per Widgery CJ). While considerations of the avoidance of delay, costs and convenience, can be cited in favour of joint trials that is not the prime basis of the practice. Instead it is founded principally on the perception that a just outcome is more likely to be established in a joint trial than in separate trials...Subject to a judge's discretion to order otherwise, joint trials of those involved in a joint criminal case are in the public interest and are the norm. This practice hardly requires citation of authority but in recent times the practice has been affirmed by the Privy Council in *Lobban v R* [1995] 2 All ER 602 at 608-609 and by the House of Lords in *R v Randall* [2003] UKHL 69...."

[17] In the present case, Powell, Jones and Stoddard are all charged with the same offences. The prosecution case is that these three men were part of a joint enterprise to rob the Bank. The case against Powell rests primarily on fingerprint evidence and a confession. The preliminary inquiry against Jones and Stoddard is completed and they have been committed to stand trial at the Assizes on 8th June 2009. Powell, having absented himself from the Territory and since his extradition, having failed to retain counsel in a prompt manner or at all, has contributed to the delay in the completion of the preliminary inquiry in time for 8th June 2009. This delay can be considered good reason to depart from the normal procedure and allow for the preferment of a voluntary bill of indictment. As the evidence against Powell stands, it seems that the prosecution have established a strong prima face case against him. In my view, in the interests of justice and in order to avoid further delay, Powell should be tried together with Jones and Stoddard for the same offences.

Discontinuance of preliminary inquiry

[18] The Administration of Justice Act 1933 [UK] provides that the preferring of a voluntary bill of indictment by the direction or with the consent of a High Court judge is an alternative to committal proceedings or the holding of a preliminary examination. The DPP submitted that if

¹⁴ [2005] 2 All E.R. 209.

the court rules in his favour, the Crown will discontinue the preliminary inquiry at the Magistrate Court.

[19] The case of **R v Rothfield**¹⁵ is an interesting example of the need for the provision made in the Administration of Justice Act 1933 (UK) and how it works. In that case, the preliminary examination was aborted after the evidence of some 30 witnesses had been taken because the presiding magistrate fell ill and was unable to complete it. The High Court judge granted leave on the basis of the depositions that had been taken and proofs of what was to come. After referring to the Vexatious Indictments Act 1859 and to **R v Bray**,¹⁶ the Court of Criminal Appeal indicated that the judge's discretion in granting leave to prefer a voluntary bill of indictment where there had been no committal was not open to review, provided that he had jurisdiction.

[20] In the present case, this application is being made after two witnesses have deposed at the preliminary inquiry. The Magistrate is unable to hear the other witnesses until 30th June 2009. It seems to me that since there has been no committal, the Crown is at liberty to abort the preliminary inquiry.

Unrepresented Respondent

[21] The court was concerned that Powell did not have the benefit of counsel who could make submissions on his behalf. However, the DPP informed me that Powell was given adequate notice that such an application would be made; he had been served with all the documents which are before the court and that he should be permitted to make oral submissions. Powell, who appeared to be fairly clever, was given an opportunity to make submissions. I believe that he understood well what was taking place and succinctly said that "*the matter is going to start in the Magistrate Court and will end up in the High Court so there is nothing he can do.*" I interpret his statement to mean that he has no objection to the court granting the order sought by the DPP.

¹⁵ (1937) All ER 320, 26 Cr App Rep 103, CCA.

¹⁶ (1862) 9 Cox cc2215.

Conclusion

[22] For these reasons, which owe much to the admirable argument of the learned DPP, I make the order that a voluntary bill of indictment be preferred against Ricky Terrence Powell charging him jointly with Oran Jones and Craig Stoddard for the offences of aggravated burglary, robbery and 2 counts of wounding with intent.

Indra Hariprashad-Charles
High Court Judge