

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

2023 vbi/cri

Criminal Side

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION

AND

MARK MCKENZIE aka "KENZIL HIGGINS"

BEFORE: The Honourable Mr. Justice Franklyn K. M. Williams, KC

**APPEARANCES: Ms. Jacklyn Burrows and Carmen Brown for
the Director of Public Prosecutions
Ms. Miranda Adderley for Mckenzie**

HEARING DATE: 2 May 2023

RULING

WILLIAMS J

At the close of the case for the prosecution, counsel Miranda Adderley made a no case submission on behalf of the defendant.

At the outset, Ms. Adderley submitted that her case for the no case was founded upon what she termed the “irregularity” in the obtaining, and extension or continuation, of the witness anonymity order in this case.

I expressed my doubt and concern that a no case submission might be so founded. I cautioned counsel and urged her to address the court on the evidence (*Galbraith*), in particular the evidence of the prosecution of identification.

Whilst insisting that the case for the defendant on this application was grounded in the so called “irregularity of the witness anonymity order”, counsel for the defendant condescended to address the evidence on the case for the prosecution.

The authority establishing the principles to be considered on a submission of no case is well known, the principles well traversed.

I remind myself of the approach to be taken:

1. If there is no evidence to prove an essential element of the offence, there is no difficulty, the submission must obviously succeed
2. If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, the submission should be upheld
3. “where however the prosecution evidence is such that the strength or weakness depends on the view to be taken of the witness reliability, or other matters which are generally speaking within the province of the and where on one possible view of the facts there is evidence upon which a 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...”

Except for the evidence of Alpha 1, all other evidence was formal.

In sum, Alpha 1 gives evidence of being on scene some thirty feet from unfolding events. Alpha 1 saw two men, one of which held a gun to the head of the other. The man holding the gun fired it at the head of the other who fell.

Alpha 1 stated that the lighting was such that the face of the gunman could be seen.

Subsequently an identification parade was held at the Central Detective Unit, during which, Alpha 1 states that they identified male holding number one.

Superintendent Wil Hart testified that he conducted an identification parade consisting of twelve males similar in appearance, including the defendant and first having obtained his consent to partake therein.

The defendant held the number one and according to Superintendent Hart was pointed out by Alpha 1 as the person having shot the deceased.

I find, as a matter of law, that a no case submission may not be grounded on the so called "irregularity" of the witness anonymity order.

The issue of the witness Alpha 1's reliability and credibility, in particular the strength or weakness of their purported identification are matters of fact and the subject of directions to be given to the jury by myself and hence within their province.

In the premises, I do not accede to the no case submission; the defendant is called upon to answer the charge.

FKM Williams
Franklyn K M Williams KC J

6 May 2023