

COMMONWEALTH OF THE BAHAMAS

CRI/VBI/296/11/2022

IN THE SUPREME COURT

Criminal Side

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION

AND

ANDREW NEWRY, JR

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

APPEARANCES: Mr. Kenny Thompson and Mr. Bradford Mckenzie

for the Director of Public Prosecutions

Ms. Danielle Kemp for Andrew Newry Jr

HEARING DATE: 16 June 2023

RULING

WILLIAMS J

At the close of the case for the prosecution, counsel Ms. Kemp made a no case submission on behalf of the defendant, Andrew Newry, Jr.

The defendant is charged with the attempted murder of Brandon Adelphin.

The prosecution has presented cctv/video evidence depicting the act of the defendant, that is stabbing, thereby causing harm to Adelphin and which they say constitutes the attempted murder thereof.

Also, the prosecution has presented evidence of the police interview of the defendant (record of interview) which records the alleged acknowledgement of the defendant of his causing harm to Brandon Adelphin; the defendant in that record states that he did so in self defence.

Ms. Kemp submits that the defendant has no case to answer because

“...the Defendant did not inflict harm to the virtual complainant without legal justification.”

and thus:

“...the Crown has failed to prove each and every element that joins this offence.”

On the other hand, the prosecution points to the evidence presented on its case and summarized above, as having established a prima facie case against the defendant.

The authority (*Galbraith*) 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 jury 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...”
4. I find that there is evidence of the causing harm to Brandon Adelphin, an essential element of the offence of attempted murder (*Galbraith*). The defendant’s case, so far evidenced by cross examination is lawful justification, that is, self defence. I find that “...on one possible view of the facts, there is evidence upon which a jury properly instructed could come to the conclusion that the defendant is guilty,...” (*Galbraith*)
5. In the premises, I do not accede to the no case submission; the defendant is called upon to answer the charge.


Franklyn K M Williams KC J

28 June 2023