

JERSEY / JUDGMENT

The Attorney General v Benjamin Mitton

COURT

Royal Court

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Application for No Case to Answer

[2025]JRC115

Royal Court

(Samedi)

25 April 2025

Before :

A. R. Oldland, KC., Commissioner, sitting alone

The Attorney General

-v-

Benjamin Mitton

M. L. Preston, Crown Advocate.

Advocate G. F. Herold-Howes for the Defendant.

JUDGMENT

THE COMMISSIONER: 1. This is a submission of “no case to answer” in respect of all three Counts that this Defendant faces, namely:- (i) Count 1 – Larceny, (ii) Count 2 - Transferring criminal property, and (iii) Count 3 – Transferring criminal property.

Background

2. The background to this case is that the Defendant became employed in the family firm, Hunt Brothers Limited, which I will refer to as “HBL”, between 2015 and 2019, and it is alleged by the prosecution that he abused the trust placed in him both as an employee and as a member of the family, and took advantage of the trust placed in him to steal nearly £400,000 worth in cash from the business. 3. Advocate Herold-Howes submits that there is insufficient reliable evidence upon which the case can be left to the Jury to conclude in due course. His primary submission is that the state of the accounting systems at HBL were so poor that it is impossible to prove, on the evidence presented to the Jury at present, that HBL actually suffered any loss, and he argues that, if the prosecution cannot show that HBL suffered any loss, then it falls at this first hurdle because the prosecution cannot therefore show that the cash paid in by the Defendant to his bank accounts came from HBL. 4. He

further submits that the evidence of Mr James Hunt, who is the primary live witness in this case, is so flawed as to be unreliable as far as the evidence he gave about financial management is concerned. He says the Court should be careful not to conflate the cash deposits, which it is accepted were made into the Defendant's bank accounts, with appropriation from HBL. He points repeatedly to the evidence from the prosecution expert accountant, Ms Kennedy, where she is unable to say definitively that any of the cash that was paid into the Defendant's accounts came from HBL, and he relies strongly on this concession by the prosecution expert. 5. He describes the cash handling at HBL as ad hoc and unsatisfactory, and he points to the fact that the Crown had been unable to prove a single specific act of appropriation, and he argues that to leave this case to the Jury would be no more than inviting the Jury to embark upon an exercise of unacceptable speculation. He argues that the prosecution case rests not on proof but on assumption and speculation. 6. He has referred me to the case of Hill (Hill v AG [2022] JCA 029), which also refers to the Jersey case of Christmas (Lewis, Christmas, Foot and Cameron v AG [2013] (1) JLR 325), and I have considered both of these cases. 7. Advocate Preston, on behalf of the prosecution, argues that you cannot simply look at each of these strands of evidence in isolation, and that you need to look at the bigger picture, or put another way you need to look at matters in the round. He has referred me to the Jersey case of Bhojwani v AG [2011] JCA 034 which at paragraph 109 onwards deals with how a court should approach a submission of "no case to answer" where it is a case based on circumstantial evidence such as this. 8. Paragraph 112 of Bhojwani reads as follows:- "In R v Greig [2010] EWCA Crim 1183, a case where the prosecution rested on inferences of dishonesty available from the defendant's conduct, the Court of Appeal held that the trial judge was right to reject the submission of no case, it said:- "13 It appeared to us that Mr Lyons' submissions were tantamount to an assertion that the learned judge was bound to allow the submission of no case unless the prosecution had by the evidence adduced excluded all other possible inferences than those sought by the prosecution. It is not the law, of course, that the prosecution must exclude all other possible inferences: see, for example, R v Edwards [2004] EWCA Crim 2102 , at paragraph 84; R v Jabber [2006] EWCA Crim 2694 , at paragraph 21; and R v P [2007] EWCA Crim 3216, [2008] 2 Cr App R 6 , at paragraph 23, in which Thomas LJ, delivering the judgment of the court, said this:

23. ...it seems to us that the correct approach is to look at the circumstantial evidence in the round and ask the question, no doubt employing the various tests that are suggested in some of the authorities, and ask the simple question, looking at all this evidence and treating it with the appropriate care and scrutinising it properly: is there a case on which a jury properly directed could convict? We do not think that anyone is assisted by a more refined test than that" 9. I have also considered the current edition of Archbold at paragraph 19-36, and the case of Younis Masih [2015] EWCA Crim 4 77, where Lord Justice Pitchford added the following to the well known Galbraith test, he said this at paragraph 3:- "It is agreed that in a circumstantial case it is a necessary step in the analysis of the evidence and its effect to ask: Could a reasonable jury, properly directed, exclude all realistic possibilities

consistent with the defendant's innocence? Matters of assessment and weight of the evidence are for the jury and not for the judge. Since the judge is concerned with the sufficiency of evidence and not with the ultimate decision the question is not whether all juries or any particular jury or the judge would draw the inference of guilt from the evidence adduced but whether a reasonable jury could draw the inference of guilt. These propositions are derived without contention from the decisions of this court in *Galbraith* [1981] 1 WLR 1039, *Jabber* [2006] EWCA Crim 2694 (approved by the Privy Council in *Goring* [2008] UKPC 56 at paragraph 22), *Hedgcock, Dyer and Mayers* [2007] EWCA Crim 3486, *Darnley* [2012] EWCA Crim 1148 and *G and F* [2012] EWCA Crim 1756.”

10. So, it is quite clear from the authorities that I need to look carefully at the evidence that has been adduced by the Crown and consider it in the round and decide whether or not that evidence, taken in the round together, could result in a reasonable jury drawing the inference of guilt.
11. To do that I need to look at the different strands of evidence that have been led by the prosecution in this case:- (i) First of all there is the evidence of James Hunt, who gave evidence that significant funds had been misappropriated from HBL during the Defendant's period of employment. The defence argue that this evidence is unreliable because it was based on accounting systems that were so poor to such an extent that this evidence cannot be relied upon. That, quintessentially, in my view, is a matter for the Jury to assess. The evidence given by Mr Hunt was that funds had been misappropriated from HBL; whilst conceding some inadequacies in the accounting systems, he did not accept that they were so poor as to be fundamentally unreliable. The Jury will no doubt have in mind, when they come to consider their verdicts in due course, all the points that the defence would wish to advance in respect of the accounting systems at HBL. (ii) Secondly, the Crown refers to the expert evidence, and that the expert says that one route by which the funds could have gone missing was by misappropriation, she is unable to say definitively it was misappropriation, but it is clear that Ms Kennedy's remit was relatively narrow. She was primarily looking at the Defendant's bank accounts and other financial records and deciding what she could or could not conclude from them. What she was not doing, which is the exercise I have to do and ultimately the Jury in this case will have to do, is to look at the bigger picture and the evidence as a whole. (iii) The prosecution points to the evidence of the profitability of HBL which, for want of a better phrase, plummeted during the Defendant's employment, but before and after his employment was sound if not good. They also point to the fact that the Defendant had not paid any significant sums in cash into his bank accounts immediately before his employment or after his employment which they say is significant when juxtaposed with the vast sums of cash that were paid into his account during the period of his employment. (iv) They also point to evidence of the Defendant's dishonesty towards his banks, this is particularly relevant to Counts 2 and 3 but also to Count 1. When opening bank accounts with HSBC and Lloyds the prosecution say there is clear evidence that the Defendant lied about his circumstances and his income in particular and where his income was derived from.

- (v) They also say that no explanation has been advanced as to how the very large sums of cash had been generated, and when you juxtapose this, they say, with the admitted fact in the admissions that the Defendant did not have a registered or operating business during the material time.
12. So I have to consider all of those strands and decide whether, either, any of them have been undermined so fatally that they should be ignored at this stage resulting in a situation where it would be unsafe to leave the case to the Jury, or, if I were to conclude that all the strands of evidence remained intact and undamaged, then are they, when taken together, capable of amounting to evidence upon which a reasonable jury could convict the Defendant.
13. The conclusion that I have reached is that none of the strands referred to by the prosecution have been undermined to such an extent that they should be completely ignored. It will be for the Jury to assess the evidence of Mr Hunt and the other witnesses, including the evidence of the expert, together with the other uncontested agreed evidence and to decide when looking at the evidence as a whole whether or not the Defendant has committed the offences which are alleged against him.
14. So it follows that having looked carefully at the various strands of the circumstantial evidence advanced by the prosecution in this case, and also bearing in mind the careful direction that I would need to give to the Jury as to how they treat circumstantial evidence when I come to give them my legal directions, I am firmly of the view that there is sufficient evidence upon which a reasonable jury could properly draw the inference of guilt in respect of all three of the Counts, and I remind myself finally of the test advanced by Lord Justice Pitchford, could a reasonable jury properly directed exclude all realistic possibilities consistent with the Defendant's innocence, and the conclusion that I have reached is yes, a reasonable jury could do that, and consequently this case will proceed and we will move to the next stage and I reject the submissions of no case to answer. *Authorities Hill v AG* [2022] JCA 029. *Lewis, Christmas, Foot and Cameron v AG* [2013] (1) JLR 325 *Bhojwani v AG* [2011] JCA 034. *Archbold Criminal Pleading, Evidence and Practice* Younis Masih

[2015] EWCA Crim 4 77. *Galbraith* [1981] 1 WLR 1039

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