

ANTIGUA AND BARBUDA

IN THE MAGISTRATE COURT

DISTRICT "A"

SAINT JOHN'S

ANUMCR2016/0477

ANUMCR2016/0478

ANUMCR2016/0479

COMMISSIONER OF POLICE

COMPLAINANT

v.

JACQUI QUINN 1<sup>st</sup> DEFENDANT

HAROLD LOVELL 2<sup>nd</sup> DEFENDANT

WILMOTH DANIEL 3<sup>rd</sup> DEFENDANT

Before Carden Conliffe Clarke  
Magistrate for District "A" (Saint John)  
28<sup>th</sup> March, 2017

**The Facts:**

1. The facts as presented to the Court are as follows:
  - i. Between the years 2006 and 2008 the Republic of Korea, through the Korean Overseas Cooperation Agency (KOICA) and brokered by Antigua and Barbuda's UN Mission, donated five (5) school buses to the Government of Antigua & Barbuda.
  - ii. Two of the buses were delivered in 2006 which were delivered to the Government under this programme one of each given to the then Minister Trevor Walker, as Minister of Public Work, for use in Barbuda and the other to Project Hope spearheaded by Dr. Errol Cort, for community development.

- iii. The other three (3) buses, and the focus of these proceeding, were received in 2008 and cleared and collected by the Transport Board and one of each bus was ultimately registered in the names of three Ministers of the then Government, namely the three Defendants.
- iv. The Defendants were each charged with three offences namely Embezzlement and Conversion by a trustee, under sections 20(2)(b) and 22 of the *Larceny Act Cap. 241*, respectively as well as the Offence of Corruption prohibited under section 3(1)(b) of the *Prevention of Corruption Act* No. 21 of 2004.
- v. The evidence put forward includes statements, correspondence and reports from officials from the Transport Board, The Ministry of Foreign Affairs, The Ministry of Finance (Director of Audit), the Customs Department and other civil service officer.

### The Law:

2. *R v Galbraith* gave the guidelines a Judge should use in his approach a no case submission. According to *Galbraith*, “(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 when there is some evidence but it is of a tenuous character, for example, because of inherent weaknesses or vagueness or 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’ reliability or other matters which are generally speaking within the jury’s province and where on one possible view of the facts there is evidence on which the jury could properly conclude that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”
3. The offences set out under the *Larceny Act Cap. 241* are as follows:
  22. *Every person who, being a trustee of any property for the use or benefit either wholly or partially of some other person, or for any public or charitable purpose, with intent to defraud, converts or appropriates the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person entitled thereto, or for any purpose other than such public or charitable purpose, or otherwise disposes of or destroys such property or any part thereof, shall be guilty of a misdemeanour, and on*

*conviction thereof liable to imprisonment with or without hard labour for any term not exceeding seven years:*

*Provided that no prosecution for any offence included in this section shall be commenced-*

*(a) by any person without the sanction of the Attorney-General;*

21. (1) *Every person who-*

*(d) having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit or the use or benefit of any other person, the property or any part thereof or any proceeds thereof,*

*shall be guilty of a misdemeanour, and on conviction thereof liable to imprisonment with or without hard labour for any term not exceeding seven years.*

20. *Every person who-*

*(2) being employed in the public service of Her Majesty or being a member of or employed in the police force –*

*(b) embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever except for the public service any chattel, money, or valuable security entrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of felony, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding seven years.*

4. The offence charged under the Prevention of Corruption Act provides that

*3(1) A person commits an offence if he –*

*(b) in the performance of his duties as a public official performs or omits to perform any of his duties in a public body for the purpose of obtaining any property, a benefit or advantage for himself or any other person;*

**Analysis:**

5. I will take the unusual step of addressing the submissions of the Prosecution in reply to the submissions made on behalf the defendants first. The significance of which is that within the said reply the prosecution basically submitted the two of charges laid were improperly so done. The charges brought under section 20 and 22 were expressly withdrawn. S. 20

because, by their own admission, the case was not made out and s. 22 because of the language of the section, which required the Defendant to be a trustee. The Court however, notes that the latter would be statute barred, in any event, because the proviso attached to the said section requires the sanction of the Attorney General. Such a sanction was not on file nor upon the request by the Court could be the same provided by the prosecution.

#### Fraudulent conversion

6. In place of section 22 the prosecution suggests that the Court use its jurisdiction given it under the *Magistrate Code of Procedure (Amendment) Act* by section 13 to substitute the same with s. 21(1)(d) of the *Larceny Act*. This section speaks to conversion. The Court therefore must consider the committal based solely on the simple conversion and corruption under section 3(1)(b) of the *Prevention of Corruption Act*.
7. The court is of the opinion that it does have the jurisdiction under the said s. 13 of the *Magistrates Code of Procedure (Amendment) Act* to consider the said s. 21(1)(d) of the *Larceny Act*. It indeed cannot be disputed that each defendant received a bus. Further there is no dispute that the Buses upon landing became the property of the Government of Antigua and Barbuda. The question that burns most intensely with regard to this offence, however, is on whose behalf did the Defendants receive these buses. Is it “*for or on account of*” the government or the community or their constituency. There must be a VC in these circumstance, however it is very difficult to identify whom that is in this circumstance.
8. Let’s take it that the evidence shows that the most likely VC is the Government itself. The evidence produced by Mr. Murdoch (hearsay submissions aside) goes a good way to show what the intension was prior to their arrival and the Government receiving the buses, but it does not go further to show what the subsequent intensions were. We therefore have to work on the assumption that the Government did not reallocate the buses legitimately to the Defendant or was not free to change its mind so as to allow it to do so.

9. If meant for the Ministry of Education when the buses were given to the Government by their Korean counterparts does that obligate the Government to use the buses solely for that purpose. If we take it that the owners were originally the Government when the buses arrived and that they were then passed to the Defendants by whatever means how do we ascertain the purpose for which they were given to or received by the Defendant. The evidence along those lines is scant at best.
10. The evidence is also scant on what the buses were actually used for and how their use benefited the Defendants. The use of authorities such as *Welham v DPP [1961]* are correct in determining the crux of the section, as to whether the Defendant “*fraudulently converts to his own use*” the buses. The authorities spoke to dishonestly prejudicing or to risk prejudicing another's right. According to *Oakley* and *Lancaster* dealing with the goods in a manner inconsistent with the rights of the owner amounts to a conversion. The question is, were their action contrary to the wishes, desires or rights of the owner, i.e. the Government. After all the evidence is that it was the transport board that received the buses and then passed on both ownership and possession to the Defendants. So who was prejudiced?
11. What we have here is a series of events revealing the absolute absence of adherence to protocol, the lack of the checks and balances to be used when dealing with Government property and an ignorance or ignoring of the norms and requirements when dealing with Government agencies. The adverse scenario to this paints does not paint a rosier picture. We either have complete incompetence as concerns the processing of imports and government to government donations and the record keeping therefor or we have emissaries at the United Nations gathering personal donations from U.N. member governments, which are apparently meant to go directly or indirectly into the hands of politicians as their legally owned chattel. Chattel which was not stated as a part of their assets which is required under the *Integrity in Public Life Act*. However unseemly this state of affairs may appear, the question remains, does this rise to the level of criminality.
12. These charges of conversion require no less criminal intent than the charges they were asked to replace. The Prosecution asks the Court to infer fraudulent intent from what they

themselves term as “*bits of circumstantial evidence*”. However the Prosecution then goes on to state a number of “*ifs*”, such as if it was discussed in Cabinet or if there were some secret intentions of the Defendants. The evidence of Mr. Murdoch is the most compelling evidence provided by the prosecution in the considering of the intention of the Defendants. He shows that what was done clearly flows contrary, to that which he explained was the norm. However, was all this information communicated to the Defendants? What knowledge did they have? This question remains open. According to their interviews they believed the buses to be given to them for specific purposes, which in their minds they fulfilled. I do not accept the Defendants claims that they were of the opinion that they were operating as trustees. The prosecution is right in the face of that claim to call for a trust document to be presented. However, even if their beliefs prove incorrect, bad advice or even bad judgment cannot amount to an intent to defraud, and no jury would correctly be so instructed.

13. Further the prosecution used the case of *United States v Jewell* which held that an accused cannot simply close their eyes to the truth in an effort to escape culpability. This though possibly an apt description of the current events herein, can be distinguished from the mens rea required in these charges. The burden with reference to “custody, care and control” in narcotics matters is a far different one than that which is required for a matter involving fraudulent conversion, where the “intent to defraud” must in the context of committal proceedings be held to a higher burden. The problem faced by the prosecution in this circumstance is that evidence of intention is lacking and the Court is left to go beyond mere inference and speculate.

#### Corruption

14. According to the prosecutions submissions, in relation to the charge of corruption they must prove the defendant did the following:
- *“was in the performance of his duties as a public official in a public body*
  - *Performed or omitted to perform his duties*

- *Such performance or omission (was) for the purpose of obtaining property, benefit, or advantage for himself.*

15. The Prosecution argued in their submissions that as ministers they were public officials. The duty they performed had in their own words "*to do with taking possession*" of the buses and the performance or omission which went beyond the said duty was the placing the buses in their names legally, the benefit being considered the legal ownership itself, since as argued "*only the legal owner can sell or otherwise dispose of the buses*".
16. This charge seems diametrically opposed to the other charge, however. Whereas the other charge examined, held out the breach to be the taking possession of the buses. This charge seems to assume that the taking possession of the bus was a part of the duties of the Defendants as Ministers of Government and lawful. The offence is placing the said buses into their own names thus reaping the benefit of ownership, as opposed to turning a blind eye, which seems to be the focus of the submissions in relation to the other charge.
17. This argument however would mean that the prosecution would have to show that they had done something which caused the buses to be placed in their names and further that taking the said bus was a part of the duty they were obligated to perform as ministers of government. Although the buses do have a monetary value it must be shown that the buses were obtained specifically for the benefit of the defendant for which little to no evidence was produced. This would require the Court to again go a step beyond a mere inference and ask the Court to speculate.
18. Further for who or on whose behalf was this duty performed or specifically not performed. The offence here is more akin to bribery or operating with government as under undue influence or conflict. Where the previous charge is lacking in mens rea this one lacks the requisite Actus reus. Also to commit on this basis would be to completely ignore the previous interpretation of the evidence led by the prosecution and examine the information provided in an entirely different light, which in itself would require the court to fill in the factual gaps with supposition.

**Conclusion:**

19. In view of the paragraphs above and in accordance with the *Galbraith* principles this court is firmly of the belief "*that the prosecution evidence, taken at its highest is such that a jury properly directed could not properly convict on it*".
20. The elements of the offences are not present and the evidence presented calls for too much speculation. Things may have been handled badly and in contravention the normal course of business within the civil service but the same does not (to answer a question posed earlier) reach to the level of criminality. There Defendants have no case to answer.



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Mag. C. Conliffe Clarke  
Distract "A"