THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CR 0029/2013

BETWEEN

THE STATE

AND

TROY SABEENY

&

ANTHONY CHOW

FOR

FORGERY & UTTERING A FORGED DOCUMENT

BEFORE THE HONOURABLE JUSTICE GILLIAN LUCKY

APPEARANCES: Mr Trevor Jones and Mrs Rebecca Trim – Wright on behalf of the State.

Mr Keith Scotland instructed by Mrs Asha Watkins – Montserin on behalf of the First Named Accused.

Ms Sophia K. Chote SC instructed by Mr Peter Carter on behalf of the Second Named Accused

RULING ON MOTION TO QUASH INDICTMENT

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INTRODUCTION

1. This is a ruling on a motion filed on behalf of each Accused to quash the indictment based on insufficiency of evidence. The history of this matter before this Court began with an application for a maximum sentence indication (MSI).

2. When the agreed facts were filed, but before any MSI was given, the Court asked the Prosecution and Defence to address whether, based on the depositions and the witnesses being relied on by the State to prove its case, there was sufficient evidence to support each of the counts on the indictment, as it related to each of the Accused. Counsel for each of the Accused then filed motions to quash the indictment.

3. At this juncture, I commend all the Counsel for the State and the Counsel for each Accused who have appeared in the matter, for their respective assistance to the Court on the various issues that arose during the course of proceedings.

4. The limited point on which the Court rules is whether the indictment for each Accused should be quashed based on the evidence as disclosed in the depositions and in light of certain matters which have transpired from the time of the committal of the Accused in August of 2008 to the filing of the indictment in June 2013.

5. The relevant 'changes in circumstance' which have been considered by the Court in this ruling are firstly, the fact that although four persons, including the two Accused, were originally charged in this matter for the offence of conspiracy to commit a fraud contrary to common law, the indictment contains two counts namely, forgery and uttering a forged document. The Court makes it clear that there is no challenge in the authority of the Director of Public Prosecutions (DPP) to indict a person for an offence different to that for which a person had been charged and/or subsequently committed to stand trial. Mention is made of this 'change in circumstance' because it features in this ruling in relation to the jurisdiction of the Court to hear the application to quash the indictment.

6. Secondly, the Court was informed that Desmond Haynes (one of the persons committed to stand trial in the matter) was not included in the indictment since there was a *nolle prosequi* filed to discontinue the case against him. The Court was further informed that Mr Haynes is deceased.

7. Thirdly, Godfrey Lamont, one of the other persons committed to stand trial in the matter, died before the filing of the indictment and so was not included by name, as one of the Accused in the matter.

COUNTS ON THE INDICTMENT

8. Troy Sabeeny (hereinafter referred to as "Accused No. 1") and Anthony Chow (hereinafter referred to as "Accused No. 2") are charged with forgery, contrary to Section 7 of the Forgery Act, Chapter 11:13. The particulars are that Accused No. 1 and No. 2 together with other persons on the 11th day of June, 2002 at Westmoorings, with intent to defraud, forged a certain document, namely a Republic Bank cheque.

9. Accused No. 1 and No. 2 are also charged with uttering a forged document contrary to Section 9 (1) of the Forgery Act, Chapter 11:13. The particulars are that Accused No. 1 and No. 2 together with other persons, on the 11th day of June, 2002, at Westmoorings, uttered a certain forged document, namely, a Republic Bank cheque knowing it to be forged and with intent to defraud.

JURISDICTION

10. **Blackstone's Criminal Practice 2019** at paragraph **D 11.109** states, inter alia –

> "Either party may move to quash either the whole indictment or a count thereof. The obvious time for doing so is before the accused is arraigned, although it would seem that the defence may make the application at any stage of the trial."

11. Paragraph **D11.111,** states the three circumstances in which a motion to quash an indictment may be brought, namely-

> "(a) Where the indictment is bad on its face (e.g., for duplicity or because the particulars of a count do not disclose an offence known to law, as in Yates (1872) 12 Cox CC 233).
>
> (b) Where the indictment (or a count thereof) has been preferred otherwise than in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act 1933, s. 2. Such an indictment must be quashed because it is preferred without authority (Lombardi [1989] 1 All ER 992).
>
> (c) Where the indictment contains a count for an offence in respect of which the accused was not sent for trial and the material served under the regulations for the service of the prosecution case after he has been sent does not disclose a case to answer for that offence (Jones (1974) 59 Cr App R 120, a case decided in relation to committal documents)."

12. **Blackstone's Criminal Practice, 2000**, states -

> ***"*Save for the situation in (c), the judge on a motion to quash is *not* entitled to consider the prosecution evidence as foreshadowed in the documents (see Jones (1974) 59 Cr App R 120). Therefore, if the indictment follows the committal charges and is properly drafted on its face, it is not open to the defence to invite the judge to quash on the basis that the evidence before the justices did not in fact disclose a case to answer and the accused was wrongly committed for trial (Chairman, County of London Quarter Sessions ex parte Downes [1954] 1 QB 1). Where, however, the indictment contains a count on which the accused was not committed the normal rule has to be relaxed in respect of that count, because otherwise the accused would be put on trial for the offence without any prior opportunity of arguing that the evidence is insufficient." [Emphasis mine]**

13. Interestingly, the emboldened excerpt directly above does not appear in more recent editions of the **Blackstone's Criminal Practice**, including the 2019 edition.

14. This Court is of the view that the expanded version of the learning as stated in **Blackstone's 2000** edition, serves only to provide the reason for enabling a judge to assess the sufficiency of evidence before an accused has been arraigned and therefore before the trial has begun. It further assists in its reference to the case of **Chairman, County of London Quarter Sessions Ex Parte Downes** [1954] 1 QB1 discussed in the paragraph which follows immediately below in this ruling, about the limited circumstance in which a judge is entitled to examine the depositions before a trial to determine the sufficiency of evidence.

15. In the case of **Ex Parte Downes**, after an appeal by the prosecution, the Court of Appeal had to consider whether the court had an inherent power to quash an indictment on the ground that the evidence on deposition was insufficient to support a conviction. The House of Lords held –

> "Sessions had no power to quash the indictments because it was anticipated that the evidence would not support the charges. The only ground on which a court could examine depositions before arraignment was to see whether, if a count was included for which there had not been a committal, the depositions or examinations taken before a justice in the presence of the accused disclosed that offence."

16. In **The State v Brian Gayapersad** HCA Cr. 69/08**,** Mon Desir J considered the decision given in **Ex Parte Downes** and stated the following at paragraph 23 –

> "While one would necessarily be at pains to depart from the cogent, lucid and persuasive reasoning of the House of Lords in **Ex Parte Downes** and **Jones**, it should be noted however, that those cases were decided in 1954 and 1974 respectively, at a time when the law on this point was in a state of virtual stasis and characterized by an understandable measure of judicial conservatism. More recent authorities on the point however, have tended to demonstrate a greater degree of judicial accommodation towards applications to quash an indictment that did not fall squarely within the narrow confines outlined in the earlier authorities."

17. In **Gayapersad,** Justice Mon Desir referred to the development of local case law as it related to the quashing of indictments on the ground of insufficient evidence and as indicated in the excerpt of his ruling quoted directly above, the learned Judge widened the narrow scope given to judges to examine the evidence as foreshadowed in depositions. Thus, according to the reasoning in **Gayapersad,** even if an accused is before a court on a count that is the same as that for which he was charged or subsequently committed to stand trial - that would *not* be a bar to an application to quash the indictment on the insufficiency of evidence.

18. While I agree with the learned judge on the need for a wider scope in determining whether the evidence on depositions support the counts on the indictment in situations *not* limited to when an accused is before the court on a charge that is different to that upon which he was charged or committed to stand trial, I am of the view that there must still be some 'change in circumstance' from the time of committal to the time before arraignment, which will justify a court to examine the sufficiency of evidence for the prosecution, as contained in the depositions and any other material that has been disclosed in accordance with the **Criminal Procedure Rules 2016(CPR)**.

19. I have also considered the decision of Justice Carla Brown-Antoine in **The State v Walter Borneo & Keron Hamilton a/c "Bam" CR 42 of 2008.** In this case, Brown-Antoine J considered the grave disparity between the decisions of Mon Desir J in **Gayapersad** and the English position outlined in **Ex Parte Downes.** The learned Judge asked the question, *"If we have inherited the common-law, as it were, and the common-law in England appears to be well settled, why haven't the local courts followed what appears to be well settled - the common-law?"*

20. After an extensive examination of local case law and case law from the United Kingdom, the learned trial Judge placed significant reliance on two cases which were the subject of judicial review proceedings namely, **Neill v North Antrim Magistrates' Court** (1993) 97 Cr App R 121 and **R v Bedwellty Justices Ex parte Williams** (1996) 3 WLR 361. The learned Judge opined -

> "So that the two House of Lords cases cement for me the principle that this Court has no jurisdiction to examine the depositions in this case to determine whether there is any evidence, or any sufficient evidence, to form the charges laid in the indictment. So, in those circumstances, the motion to quash is dismissed…."

21. In my view, the effect of the ruling by Justice Brown-Antoine in the **Borneo** case was to restate the position as enunciated in **Blackstone**, that is, that in a motion to quash an indictment before arraignment based on insufficiency of evidence in the depositions, the judge can only do so in the limited circumstance stated in **D11.111**, paragraph (c) of **Blackstone**.

22. The concern of this Court is that, if there is no criteria set, such as a 'change in circumstance', what will prevent an accused from requesting that the Judge before whom he appears, as a matter of routine, examines the depositions and other material relevant to the case, before embarking on the trial?

23. For this Court, an unbridled widening of the scope to quash an indictment on the ground of insufficient evidence, without more, will open a floodgate that runs the real risk of abuse and restricting a court to the limited ground as stated in paragraph (c) of **Blackstone** could also lead to grave injustice.

24. It is for this reason that this Court suggests that a bar be set, so that the examination of depositions by a judge does not automatically become a rite of passage for an accused. This Court does not provide an exhaustive list for the 'change in circumstance' that should be required, but certainly it must be some situation that would warrant the court to hear an application to quash the indictment on the ground of insufficient evidence

25. As stated earlier in this ruling, the jurisdiction of this Court to hear an application to quash the indictment on the ground of insufficient evidence as stated in paragraph **D11.111** (c) of the **Blackstone's Criminal Practice 2019** was satisfied because in this matter both Accused were indicted on counts for offences that were not the subject of the committal proceedings.

26. However, if the case had been otherwise, meaning that the Accused were committed to trial for the offences of forgery and uttering a forged document, applying the suggested 'change of circumstance' test as posited by this Court, the Accused would have met the criteria as there were several 'changes in circumstance' as already outlined in this ruling which would have warranted an examination of the sufficiency of the evidence.

27. This Court envisages a 'change in circumstance' to include documents which the defence might disclose to the prosecution in which the *actus reus* or *mens rea* of the offence can no longer be proved. Of course, in such a situation, it would be open for the prosecution to discontinue the matter and if that was not done, then the accused could move the court to quash the indictment, in which case the court would examine the depositions and the relevant material as disclosed, to determine the sufficiency of the evidence to prove the charge.

28. The simple point, is that in the same way that a court of equal jurisdiction would not vary an order of bail without first being satisfied that there has been a 'change of circumstance' (including the passage of time since the previous application), so too, in the view of this Court, there should be some different situation since committal that warrants a Judge to examine the depositions to determine the sufficiency of evidence.

29. This Court hastens to add that not every 'change in circumstance' would merit an assessment of the sufficiency of evidence in a motion to quash an indictment. The judge would first have to consider the impact, if any, of the change in circumstance itself.

30. Thus, in this case, the third 'change in circumstance' outlined in paragraph seven (7) of this ruling, that is, the death of Godfrey Lamont, would not in itself have been enough in my view to warrant an assessment of the sufficiency of evidence.

31. The first 'change in circumstance' in itself, namely, the fact that the Accused were before the Court on counts which were not the subject of committal proceedings would have triggered paragraph **D11.111(c)** of **Blackstone**.

32. In my view, the second 'change in circumstance', as stated in paragraph six (6) of this ruling, that is, the *nolle prosequi* of Desmond Haynes, would have been enough to warrant this Court to examine the sufficiency of evidence, even if, the Accused had been before the Court on the same offence that they were committed.

33. Once the Court is satisfied, as is in this case, that it has the jurisdiction to consider the application to quash the indictment, then the threshold test for sufficiency of evidence as foreshadowed in the depositions and the material disclosed in accordance with the CPR rules should be applied.

The test as I understand it is for the Court to examine the entire evidence as it appears on the depositions and do no more than to determine, if the evidence for the prosecution is taken at its highest, whether there is sufficient evidence to support the count on the indictment. The Court is not to apply the principles of credibility and reliability to the evidence but simply to examine if the evidence establishes a prima facie case.

THE CASE FOR THE PROSECUTION

34. Around 1:00 pm on 11th June, 2002 Desmond Haynes went to the Republic Bank, Westmall Branch where he presented a cheque to Ms Shedley Branche, a branch sales manager at said bank, who he knew since January of 2002. He told her that he wanted to '***see if it was good'***.

35. The cheque was payable to 'Haynes Plumbing 1990 Ltd' in the sum of $317,000.00 and drawn on an account held in the name 'Trinidad Pilots and Berthing Masters Association Ltd'. Haynes indicated that the cheque was for a job that he was supposed to do for said Trinidad Pilots and Berthing Masters Association Ltd. He stated that he needed to buy pumps and other equipment.

36. Haynes told Ms Branche that he would be able to give her $25,000.00 from the proceeds of the cheque to apply to his debts owed to the bank.

37. Ms Branche checked the account of Trinidad Pilots and Berthing Masters Association Ltd and observed that it was closed. She then called the company and a representative told her something. Ms Branche was then contacted by the Fraud Squad while Haynes was still at the bank but he left before they arrived. When officers arrived at the bank, the cheque was passed over to them.

38. On the evening of said 11th June, 2002, the police complainant in this matter, Corporal Peters visited the home of Haynes in the company of other officers. Corporal Peters identified himself and explained to Haynes that the cheque he presented earlier in the day was found to be false. He was cautioned and he replied '***I got that cheque from Godfrey Lamont as a loan'***.

39. On said 11th June 2002, Corporal Peters and other officers went to the home of Godfrey Lamont armed with a search warrant. Similarly, Lamont was told of the investigation and he was cautioned. He made no requests but said '***Troy Sabeeny tell me to collect that cheque by Anthony Chow an give it to Desmond Haynes***'.

40. On the same night officers visited the home of Troy Sabeeny and he was informed of the investigation and cautioned. He stated '***I doh know nothing bout no cheque'.***

41. On 12th June, 2002 Corporal Peters and Corporal Cupid entered an enclosed room where Anthony Chow was sitting on a chair next to a desk. They identified themselves, told him of the investigation and cautioned him. He said '***Troy Sabeeny give me that cheque and tell me we could make some money with it. He told me to give the cheque to Godfrey Lamont. When I was giving it to Godfrey, Godfrey tell me to write in Haynes Plumbing Ltd in it and I write it in***'.

42. Each of the men was asked if they wanted to reduce their statements into writing and all of them agreed to do so.

43. In his written statement Anthony Chow stated ***'I know this cheque was a false cheque but I still went along with what Troy told me to do. When Troy told me that we would make some money from this cheque I was expecting to see some money in the final outcome of everything***'.

44. Matthew Caesar, a pilot at Trinidad Pilots and Berthing Masters Association Ltd, examined the cheque which was purportedly signed by himself and one Melman Delson James. He stated that the signatures that appeared on the cheque did not belong to him or James. He never signed the cheque or authorised anyone to do so. He also stated that the account was closed in May 2002 and they never did any business with Haynes Plumbing 1990 Limited. Melman Delson James also examined the cheque and agreed that the signature was not his and he did not authorise anyone to sign on his behalf.

45. Desmond Haynes, Godfrey Lamont, Troy Sabeeny and Anthony Chow were all charged with **conspiring** together to defraud Republic Bank Limited of the sum of $317,000.00 by falsely pretending that the cheque, dated 3rd June 2002, payable to Haynes Plumbing 1990 Ltd and drawn on the account of Trinidad Pilots and Berthing Masters Association Ltd, which the said Desmond Haynes then produced and delivered to the said Republic Bank Limited, was a good and valid order for the payment of the said sum of $317,000.00

46. The Prosecution and Defence agree that the only evidence that incriminates each Accused is their respective statements made to the police

THE LAW

COUNT 1 - FORGERY

47. **Section 7** of the **Forgery Act of Trinidad and Tobago, Chapter 11:13** (hereinafter referred to as "the Act") states-

> "Any person who, with intent to defraud or deceive, commits forgery of any document is liable to imprisonment for two years."

48. Forgery is defined in **Section 3(1)** of the Act as "the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die."

49. In **Section 3(2)** of the Act, a false document is defined as-

> "A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein, and in particular a document is false—
>
> (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal or otherwise, has been made therein;
>
> (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or
>
> (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it."

50. **Section 3** of the Act which deals with the definition of forgery mirrors **Section 1** of the **Forgery Act 1913** of the **United Kingdom** (hereinafter referred to as "the UK Act"). In **Smith and Hogan Criminal Law**, **4th Edition** forgery is discussed at page 629-

> "**Making a False Document in order that it may appear Genuine**
>
> ….It was always the rule at common law that forgery involved something more than a mere lie in a document.

In **Re Windsor** (1865) 6 B & S 529 D, a teller at a bank, fraudulently entered in his book, as assets of the bank, a sum which was higher than the usual assets and it was held that his was not forgery.

'Forgery' said Blackburn J,

> 'is the falsely making or altering a document to the prejudice of another by making it appear as the document of that person. Telling a lie does not become forgery because it is reduced to writing. Here this man has not made any false statement purporting to be on behalf of any other person but a statement purporting to be what it is.'

Hence the aphorism: the document must not only tell a lie, it must tell a lie about itself……"

51. **Archbold Pleading, Evidence and Practice, 36th Edition**, at page 789 states-

"The signing of a bill of exchange in the name of a non- existing firm or in the prisoner's own name to represent a fictitious firm with intent to defraud was forgery. But merely assuming and signing a fictitious name, without any intention to defraud by the use of such fictitious name, although the transaction may be fraudulent in other respects was not forgery ; **R v Martin (1879) 5 Q.B.D. 34**. So where the prisoner, Robert M., in payment for goods bought by him from the prosecutor, drew a cheque in the name of William M. in the presence of the prosecutor upon a bank at which the prisoner had no account, and gave it to the prosecutor as his own cheque drawn in his own name, the prisoner knowing at the time he drew the cheque that it would be dishonoured, and the prosecutor who well knew the prisoner and his real name, receiving the cheque in the belief that it was drawn in the prisoner's own name, it was held that the prisoner was not guilty of forgery."

COUNT 2 - UTTERING FORGED DOCUMENT

52. Uttering a forged document is defined in **Section 9** of the Act as-

> **"**(1) Any person who utters any forged document, seal or die is guilty of an offence and liable to the same punishment as if he himself had forged the document, seal or die.
>
> (2) A person utters a forged document, seal or die, who, knowing the same to be forged, and with either of the intents necessary to constitute the offence of forging the document, seal or die, uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence or puts off the forged document, seal or die.
>
> (3) It is immaterial where the document, seal or die was forged."

53. **Section 9** of the Act mirrors **Section 6** of the UK Act. In **Smith and Hogan Criminal Law**, **4th Edition**, at page 641, various forms of 'uttering' were discussed as follows-

> "In the case of a forged bill for instance, the offence of uttering would be complete as soon as D tendered the bill, and on facts like those in **Hodgson (1856) Dears & B 3,** D would utter the forged diploma simply by hanging it on the wall of his sitting room exhibiting to his friends. Merely to possess a forgery is not to utter it. To utter (offer, publish, deliver, tender or put off) a forged document seems to require a transaction whereby D in some way communicated the document to another. But it is also enough that D "uses" the document and in **Harris (1996) 1 Q B 184** it was held that the mere sending of a photostat copy of an allegedly forged receipt constituted a use of the forged receipt. This interpretation of "uses" leaves little or no room for any meaning to be given to any of the verbs following "uses" which is not covered by "uses" itself.

But in any case the verbs overlap in meaning to a considerable extent an it would be impossible to give any of the verbs meaning which is not substantially conveyed by the other verbs.

In **Harris** the court left open the question whether the mere taking of a Photostat copy of a forged document itself was a use of the forged document. If this were to be held a use it would involve giving "uses" a meaning quite out of line with the remaining verbs in the sense that the remaining verbs all connote the notion of communication, or attempted communication, to another".

54. **Archbold Pleading, Evidence and Practice, 36th Edition** states-

"Where on an indictment under which contained the words "utter or publish," it appeared that the prisoner merely showed a forged instrument to a person, though with intent to raise a false idea of his substance, and afterwards left the instrument under cover, in the custody of that person, as he pretended, for safe custody, it was held not to be an uttering or publishing within these words: Shukard, R & R 200. But such conduct might now be held to amount to using the document with intent to deceive, and so to constitute the offence of uttering as defined by section 6 (2) of the Forgery Act 1913".

ANALYSIS

55. The Court having stated the law as it relates to the offences on the indictment proceeded to examine the evidence on which the Prosecution relies to establish a prima facie case on each count. The Court reiterates that it did not assess the quality of the evidence in terms of its credibility, truthfulness or reliability (which are clearly matters for a tribunal of fact) but rather whether there was any evidence or sufficient evidence, to satisfy each of the elements of the offences stated on the indictment.

ACCUSED 1 - TROY SABEENY

COUNT 1 - FORGERY

56. The *actus reus* of forgery under the Act is the making of a false document in order that it may be used as genuine. Based on the evidence, the document, namely the cheque, was false in terms of the authorising signatures that appeared on the cheque.

57. The issue is however, whether Accused No. 1 did any act that satisfies the *actus reus* of the offence of forgery.

58. The *mens rea* of forgery (in this case) is the intent to defraud. The intent to defraud as required by the relevant section of the Act is stated in **Archbold Pleading, Evidence and Practice 36th Edition,** at paragraph 2184-

> "…this definition was explained in the decision of the House of Lords in **Welham v DPP** [1961] AC 103, where it was laid down that section 4(1) of the Forgery Act 1913, only restates the requirement of the common law forgery. The "intent to defraud" referred to in this subsection and other places in the Act, is an intent to practise fraud on someone, it being sufficient if anyone may be prejudiced by the fraud….."

59. As already stated, the Prosecution relies on the statement of Accused No. 1 in order to prove the case against him. The Court has heard Counsel for both sides on the issue of whether the content of the statement, taken at its highest, contains any evidence that can be used to satisfy the elements of the offence of forgery as indicated above. The Court has read the statement several times and on no occasion has the Court found any evidence that shows that Accused No. 1 made a false document so that it could be used a genuine.

60. When the cheque was shown to Accused No. 1, there was a date, an amount both in words and writing and two signatures.

Accused No. 1 affixed nothing on the cheque. Further, there is no evidence in the statement that suggests that Accused No. 1 intended to defraud. The prosecution relied on the words in the statement ***"I told Anthony that I did not want to get involved in this cheque business because I have more to lose"*** and ***" I told him that I did not want to get involved in whatever he and Anthony arrange. And I said I have too much to lose so please leave me out of it*****."**

61. I do not find those words, taken individually or as part of the entire statement, to indicate any intention to defraud but rather a clear indication by Accused No. 1 that he wanted to distance himself from any arrangement with respect to the cheque. In any event, as the Court stated earlier, the *actus reus* of forgery has not been met and even if the *mens rea* has been satisfied, the offence cannot be proved based on the evidence.

62. The Court does not find that there is sufficient evidence against Accused No. 1 with respect to the offence of forgery.

COUNT 2-UTTERING A FORGED DOCUMENT

63. The *actus reus* of the offence involves offering or communicating a forged document to another for the purposes of a transaction. The *mens rea* of the offence as stated on the indictment is knowledge that the document was false **AND** an intention to defraud.

64. Based on the evidence of Ms Shedley Branche, the branch sales manager of Republic Bank, when Desmond Haynes gave her the cheque and spoke with her, he said that he wanted to **'see if it was good."**

65. This Court is of the view that these words show that Haynes, who uttered the document to Branche, did not have the requisite *mens rea* to defraud, because by his very words, he was asking for verification of the authenticity of the cheque. Therefore, even if he suspected that the cheque was false, that is insufficient, as there must also be the intention to defraud in order for the *mens rea* of the offence to be satisfied.

66. As an aside, this Court was not surprised to learn that there was a discontinuance of the case against Haynes.

67. The Prosecution submitted that the uttering of the forged document (as well as the forgery) was a joint enterprise. However, for the principle of joint enterprise to be applicable, there must be a completion of the substantive offence.

68. Even where there is reliance (as there is by the Prosecution in this case) on the **Jogee and Ruddock [2016] UKSC 8** principle of liability of secondary parties, that does not change the requirement for the substantive offence to be completed.

69. In this case, the Court finds that the substantive offence of uttering a forged document was not committed and so no party involved in the joint enterprise can be liable for the offence.

70. In the circumstances, I find that there is insufficient evidence against Accused No. 1 for this offence.

71. The motion to quash the indictment on behalf of Accused No. 1 on both counts of the indictment is granted.

ACCUSED 2 – ANTHONY CHOW

COUNT 2 – UTTERING A FORGED DOCUMENT

72. The finding of the Court on this count as it relates to Accused No 1 applies equally to its finding in relation to Accused No 2. The count on the indictment is therefore quashed.

COUNT 1 - FORGERY

73. The law as it relates to this count is already stated herein.

74. The Court has examined carefully the statement of Accused No. 2 in order to determine whether there is sufficient evidence to support the offence of forgery.

75. The *actus reus* of the offence of forgery under **the Act** is the making of a false document in order that it may be used as genuine. The *mens rea* of forgery (in this case) is the intent to defraud.

76. In his statement, Accused No. 2 indicated that when he got the cheque from Accused No 1, the date, the amount in words and figures and two signatures appeared on the cheque. The cheque did not have the name of the payee.

77. Accused No. 2 then stated, inter alia,-

> **"… I know this cheque was a false cheque but I still went along with what Troy told me to do. When Troy told me that we would make some money from the cheque, I was expecting to get some money in the final outcome of everything.**
>
> **…Godfrey handed the cheque back to me and told me to write in "Haynes Plumbing 1990 Ltd as the payee. I write in Haynes Plumbing 1990 Ltd in this cheque."**

…Although I knew that the cheque was false ah went along with it because Troy is my friend. Given when I ask Troy who he get the cheque from he tell meh not to worry bout that, because it was under law/low."

78. Based on the above extracts, the Court finds that Accused No. 2 knew that the cheque was false and still proceeded to enter information. This conduct of Accused No. 2 satisfies the *actus reus* of the offence which makes his addition to the false document a forgery on his part.

79. The *mens rea* of the offence is the intent to defraud and this can be inferred from the actions of the Accused, which include his placing the name of a payee on a cheque which he knew was a false document that would be used in a transaction for which he would obtain money.

80. It is sufficient to prove generally an intention to defraud without proving intent to defraud a particular person. It is not necessary to prove that any person was actually defrauded by the forgery.

81. The Court therefore does not grant the application to quash the count of forgery. Accused No 2 therefore has to answer the count of forgery as it appears on the indictment

Dated March 13, 2019

Justice Gillian Lucky