



In The Supreme Court of Bermuda
CRIMINAL JURISDICTION
2024: No. 34

BETWEEN:

THE KING

-v-

ASHAUN HASSELL

Defendant

RULING

Date of Arguments: 20th June 2024
Date of Decision: 5th September 2025
Date of Reasons: 9th September 2025¹

Appearances: **Khadija Beddeau and Taneka King, Counsel for the Prosecution**
Nicole Smith, Counsel of the Defendant

RULING of Richards J

Introduction

1. In this case I have been asked by the Defendant to recuse myself from hearing his trial on charges of (i) Wounding with Intent; and (ii) Having a Bladed Article in a Public Place. The application has been resisted by the Crown.

¹ This ruling was issued to the parties on this date, but not published until after the criminal proceedings concluded on 1st December 2025, when a *nolle prosequi* was entered by the DPP and the Defendant was accordingly discharged.

2. In his Affidavit, filed in support of this application, Mr Hassell asserts that he is “*aggrieved*” by the prospect of me hearing his trial because I am “*cognizant of his previous convictions*”. He further asserts therein that “*with his prior knowledge of the occasions I have been before the court and prior knowledge of the disposition of those matters; albeit in the Magistrates Court, I am doubtful that Justice Richards may be capable of presiding over my case with the requisite objectivity and impartiality.*” I am content to take Mr Hassell at his word; he may very well have such doubts. However, that is not a proper basis upon which to recuse myself.

The Law

3. As the local Court of Appeal clearly stated in *Wallington*², it is:

“...undoubtedly the case that the test for recusal is the one set out in Porter v Magill [2001] UKHL 67, namely “whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.””
4. As Lord Hope of Craighead said in *Helow v Home Secretary*³:

“The fair-minded and informed observer is the sort of person who always reserves judgement on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious... Her approach must not be confused with that of the person who has brought the complaint. The real possibility test ensures that there is a measure of detachment.”
5. Thus it is not Mr Hassell’s view of my objectivity that is dispositive and nor is the standard one that hinges on the existence (or not) of a doubt. That said, it is right to acknowledge that it is not my subjective view of my impartiality that is dispositive either, but my view of the fair-minded and informed observer’s view.

² [2022] CA (Bda) Crim 3

³ [2008] UKHL 62

6. Lord Hope (in *Helow*) continued:

“Then there is the attribute that the observer is informed. It makes the point that, before she takes a balanced approach to any information she is given she will take the trouble to inform herself on all matters that are relevant.”

The Factual Background

7. The parties have, between them, established that, during my time as a prosecutor, I dealt with three Informations against Mr Hassell: 22CR00398, 22TR01987 and 24CR00140. None of those proceeded to trial. On two of them (the first and second) he pleaded guilty to offences and on the third no evidence was offered against him. Informations 22CR00398 and 24CR00140 both contained allegations of offences contrary to section 315C of the Criminal Code (which is the offence charged in Count 2 on this indictment).

8. Early in her oral submissions, Ms Smith made clear that the application did not rely significantly on Information 22TR01987. That apparently concerned charges of (i) Impaired Driving; and (ii) Refusing to Provide a Breath Specimen. As is standard, Mr Hassell pleaded guilty to the latter and the former was not proceeded on. Ms Smith focused her submissions on the other matters.

9. My memory of those other matters was not very clear and so (as I indicated I might during the course of the hearing) I have consulted CourtSmart to confirm some of the details. Mr Hassell pleaded guilty to the single charge on Information 22CR00398 on 7th June 2024. I did not appear for the Crown on that occasion, but I was clearly present in the courtroom (I had conduct of another matter listed that day) and seem to have been guiding the assigned prosecutor (then a pupil) to some extent. The sentencing was adjourned until 15th July 2024, when a judgment was expected on another of Mr Hassell’s matters, in which he had been charged with offences contrary to sections 125A and 306 of the Criminal Code. Also on 7th June 2024, no evidence was offered on Information 22CR00140 (by my colleague), which was accordingly dismissed. That Information contained two charges, one contrary

to section 342 of the Criminal Code and the other contrary to section 315C. With some effort and by reference to my email history, I have been able to recall that I had previously advised the police in relation to that Information. Another former colleague had approved a total of six charges against Mr Hassell and an officer of the Court Liaison Unit (who was to swear the Information) had sought a review because he found them confusing. I initially concluded that only two of the six charges could be proceeded on (most of the others were out-of-time and one did not allege an offence known to law). However, it subsequently became apparent that there was not sufficient evidence to proceed on those charges either, hence no evidence being offered on 7th June 2024.

10. The judgment which had been expected on 15th July 2024 was actually handed down on 25th July 2024. Mr Hassell was acquitted on the charges contrary to sections 306 and 125A of the Code. I did not prosecute that trial, but I was again present in court for another matter when the Magistrate issued his decision. Mr Hassell still fell to be sentenced on Information 22CR00398. It does not appear as though I was expecting to deal with that matter, but having asked for some time to review the file and ascertained that he had been in custody since 5th June 2023, I submitted that he should be sentenced to time served and that is the sentence he received. Out of an abundance of caution, I have checked whether I was the prosecutor who sought his custodial remand on 5th June 2023 and I was not.

Analysis & Decision

11. I have in the past agreed to recuse myself from trying Defendants whom I have quite recently prosecuted at trial; whom I have cross-examined, whose credibility I have impugned and/or whose conviction I have sought before a jury or Magistrate. In those circumstances, it appeared to me that the fair-minded and informed observer would indeed conclude that there was a real possibility of me being biased.
12. I do not think that my more limited history of professional dealings with Mr Hassell would lead the fair-minded and informed observer to the same conclusion. In my judgment the weakness of this application becomes apparent when one dwells for a moment on Mr Hassell's assertion that he is "*aggrieved*" by my appointment to preside over his trial

because of [my] knowledge of his previous convictions. Trial judges, particularly in this Court, often do possess such knowledge. A Defendant's criminal record may quite properly be placed before us for a number of reasons (i.e. in the course of a bail application). That knowledge cannot disqualify us from presiding over a trial. It would not even disqualify a Magistrate, who sits as a trier of fact. As Ms Beddeau has pointed out, it is very well-established that professional judges are more than capable of putting such matters out of their minds as required.

13. I am fortified in my view by consideration of what Lord Bingham said in *Locabail (UK) Ltd v Bayfield Properties Ltd*⁴:

“Nor, at any rate ordinarily, could an objection [to a judge] be soundly based on... previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him.”

14. In argument Ms Smith accepted (rightly, in my respectful view) that these words aptly describe the situation here, but contended that the particular circumstances of this case call for a different result. That submission appeared to rest on the “*intimate*” knowledge I would have of Mr Hassell's previous convictions by virtue of our past interactions. Ms Smith argued that various applications may arise during the course of the trial in which I could be prejudiced by that knowledge. When pressed, however, she did not offer a hypothetical that persuaded me to her view. Either his previous record will be relevant to an application (in which case I would have to be told about it anyway) or it will not be relevant, in which case I would be bound to put it out of my mind. The only scenario I can think of in which this could be an issue would be one in which a court had to consider whether (and how) to give a partial or tailored good character direction about a defendant whom it was being invited to treat as being of effective good character. There I can see that knowledge of an abandoned prosecution of the defendant (especially one in which the judge was involved) could give rise to a real possibility of bias. However, given his record (and as Ms Smith was bound properly to accept), Mr Hassell would not conceivably be entitled to such a direction.

⁴ [2000] QB 45

15. Although Counsel did not refer me to them, I have also considered the *Guidelines for Judicial Conduct* issued by Ground CJ on 21st July 2006 (“**the Guidelines**”).
16. At para. 78(ii) it is stated therein that:
“It is a good rule of thumb for a Judge to consider disqualification in cases where a witness of disputed facts is someone known to the Judge and about whom he or she has opinions. Former clients may well be people about whom the Judge has formed a view in the past.”
17. I am satisfied that I have no meaningful opinion of Mr Hassell one way or the other. There are certainly persons whom I have prosecuted about whom I did, as a result, form opinions that would cause me to disqualify myself, but Mr Hassell is not one of them. Such persons are generally those whom I prosecuted during longer or more contentious proceedings or those who behaved towards me (or at least in my presence) in a manner that caused me to form such an opinion of them. Mr Hassell has never done anything like that to my knowledge. He made a few entirely routine appearances in the Magistrates’ Court when I happened to be the prosecutor. Those occasions naturally stick in his mind more than they would mine. For several years I attended the Magistrates’ Court on an almost daily basis and I must have prosecuted literally hundreds of hearings similar to those summarised above.
18. I have expressed myself in subjective terms in the immediately preceding paragraph because that is how the Guidelines invite me to consider the matter. More importantly, perhaps, I conclude that the fair-minded and informed observer would conclude that my involvement in a small number of his uncontentious and routine appearances in the Magistrates’ Court is not a basis upon which to conclude that there is a real possibility of me being biased against Mr Hassell.⁵

⁵ I note that on none of the occasions summarised herein did I even adopt a position which could reasonably be characterised as adverse to Mr Hassell’s interests.

19. In argument Ms Smith referred to the practice of the Magistrate who presided over at least some of the appearances which I prosecuted of recusing himself from dealing substantively with past clients. It will be noted that the Guidelines speak to this issue (the last sentence of the extract quoted above). They do not absolutely require a judge to disqualify himself, but point out that former clients are likely to be persons about whom a judge will have formed a view. As triers of fact in criminal proceedings, Magistrates have to assess witnesses in a way that I do not. I would respectfully add that a person's former lawyer may still know things about them that remain subject to legal professional privilege. That privilege is the former client's and not the Magistrate's. For all these reasons, it seems to me that the comparison which is invited does not assist.

Conclusion

20. I refuse the application to recuse myself. That does not necessarily mean that I will hear Mr Hassell's trial, but in my judgment there is no impediment to my doing so.

Dated this 9th day of September 2025


THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE