

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

INDICTMENT NO: C100/2025

BETWEEN

THE KING

and

JENINE AUGUSTINE

and

JANIECE AUGUSTINE

Defendants

Before:

The Honourable Mr. Justice Nigel C. Pilgrim

Appearances:

Mr. Kirk Brown, Crown Counsel, for the Crown.

Mr. David Mckoy for the 1st Defendant.

Ms. Leslie Mendez and Mr. Leeroy Banner for the 2nd Defendant.

2026: October 5th, 6th, 7th, 8th, 9th, 13th and 14th

JUDGMENT

ARSON- SUBMISSION OF NO CASE TO ANSWER- CIRCUMSTANTIAL EVIDENCE- SUFFICIENCY

[1] **PILGRIM, J:** Jenine Augustine and Janiece Augustine, both sisters, are indicted for the offence of arson, contrary to section 132(1) read along with section 132(3) of the **Criminal Code**¹, ('the Code'). This is a trial with a jury. The allegation in summary is that on 16th July 2022 the Augustines broke into the home of Icilma Crawford and while there burnt down Ms. Crawford's home causing thirty-two thousand dollars (\$32,000.00) in damage.

[2] The case against the Augustines is entirely circumstantial as there is no eyewitness who saw them causing the fire. The circumstantial case consists of evidence, inter alia, of (i) enmity between the Augustines and the family of Ms. Crawford; (ii) the fact that Jenine Augustine was put out of Ms. Crawford's house; (iii) the Augustines' presence at the home, according to a witness, shortly before a burning smell was observed; (iv) the fact that the Augustines broke into the home; and (v) the fact that shortly before the Augustines broke in the home Jenine Augustine displayed hostility to Ms. Crawford's family.

[3] At the close of the Crown's case, learned counsels for both defendants made a submission of no case to answer. The Crown opposed that submission.

[4] The Court will first outline the legal framework for the consideration of these submissions.

The legal framework

[5] The Code defines arson in the following terms:

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

*“132.-(1) A person who **without lawful excuse destroys** or damages **any property belonging to another intending to destroy or damage** any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of a crime.*

...

(3) A crime committed under this section by destroying or damaging property by fire or by any explosive matter shall be charged as arson.” (emphasis added)

[6] In the context of this case, and the particulars of this indictment, this offence requires proof that (i) the Augustines damaged or destroyed property by fire; (ii) that property belonged to another, in this case, Ms. Crawford; (iii) the Augustines intended to damage or destroy that property; and (iv) the Augustines had no lawful excuse for the destruction or damage.

[7] The Crown’s case is entirely circumstantial. It was noted in the 36th Edition of **Archbold’s Criminal Pleading and Practice**:

“2259. It is seldom that a wilful burning by the prisoner can be made out by direct proof; the jury, in general, have to presume his guilt from circumstantial evidence.”

[8] This human reality was accepted by the Jamaican Court of Appeal in **R v Anthony Rose**².

[9] The consideration of circumstantial evidence was analyzed by the apex court, the Caribbean Court of Justice (‘CCJ’), in the Belizean case of **August et al v R**³, per Byron PCCJ and Rajnauth-Lee JCCJ for the majority:

*“[32] It is well established that it is **‘no derogation of evidence to say that it is circumstantial’**. The nature and value of circumstantial evidence have been described as follows:*

² Supreme Court Criminal Appeal No. 105 of 1997 at p 9.

³ [2018] 3 LRC 552.

*Circumstantial evidence is particularly powerful when it proves **a variety of different facts all of which point to the same conclusion ... [it] 'works by cumulatively, in geometrical progression, eliminating other possibilities'** and has been likened to a rope comprised of several cords:*

***"One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.** Thus it may be in circumstantial evidence – **there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a strong conclusion of guilt with as much certainty as human affairs can require or admit of.**"*

...

*[38] **A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant's guilt is proved beyond reasonable doubt.** There was therefore a serious misdirection wholly in August's favour when the trial judge directed the jury that each strand of the circumstantial evidence required its own proof of August's guilt beyond reasonable doubt. **It is not the individual strand that required proof beyond reasonable doubt, but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.**"(emphasis added)*

[10] The English case of **R v Galbraith**⁴ sets out the test in Belize for when a judge should uphold a no-case submission, as held in **Bennett v R**⁵, per Witt JCCJ for the majority:

*"[9] The power to stop the trial at the close of the prosecution case is founded in the common law. The appropriate tests are to be found in the well-known case *R v Galbraith*. In accordance with that decision, there is no difficulty **'if there is no evidence that the crime***

⁴ [1981] 2 All ER 1060.

⁵ (2019) 94 WIR 126.

alleged has been committed by the defendant ...The judge will of course stop the case.' The difficulty arises, Lord Lane CJ said, 'where there is some evidence, but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.' He then identified two scenarios: '(a) Where the judge comes to the conclusion that the [prosecution] evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the [prosecution] evidence is such that the strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking to be taken 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.'"
(emphasis added)

[11] The application of these principles in the context of a circumstantial case was examined in the British Virgin Islands Privy Council decision of DPP v Varlack⁶, per Lord Carswell:

"[21] The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt. The canonical statement of the law, as quoted above, is to be found in the judgment of Lord Lane CJ in *R v Galbraith* [1981] 2 All ER 1060 at 1062. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, is equally applicable in cases such as the present, concerned with the drawing of inferences.

[22] The principle was summarised in such a case in the judgment of King CJ in the Supreme Court of South Australia in *Questions of Law Reserved on Acquittal (No 2 of 1993)* (1993)

⁶ [2009] 4 LRC 392.

61 SASR 1 at 5 in a passage which their Lordships regard as an accurate statement of the law:

'It follows from the principles as formulated in Bilick (supra) in connection with circumstantial cases, that it is not the function of the judge in considering a submission of no case to choose between inferences which are reasonably open to the jury. He must decide upon the basis that the jury will draw such of the inferences which are reasonably open, as are most favourable to the prosecution. It is not his concern that any verdict of guilty might be set aside by the Court of Criminal Appeal as unsafe. Neither is it any part of his function to decide whether any possible hypotheses consistent with innocence are reasonably open on the evidence...He is concerned only with whether a reasonable mind could reach a conclusion of guilty beyond reasonable doubt and therefore exclude any competing hypothesis as not reasonably open on the evidence... I would re-state the principles, in summary form, as follows. If there is direct evidence which is capable of proving the charge, there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be. If the case depends upon circumstantial evidence, and that evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypotheses consistent with innocence, as not reasonably open on the evidence.'

A similar statement appears in a recent judgment of the English Court of Appeal, Criminal Division in *R v Jabber* [2006] EWCA Crim 2694 at [21] where Moses LJ said:

'The correct approach is to ask whether a reasonable jury, properly directed, would be entitled to draw an adverse inference. To draw an adverse inference from a combination of factual circumstances necessarily does involve the rejection of all realistic possibilities consistent with innocence. But that is not the same as saying

that anyone considering those circumstances would be bound to reach the same conclusion. That is not an appropriate test for a judge to apply on the submission of no case. The correct test is the conventional test of what a reasonable jury would be entitled to conclude.⁷

...

[24] ...The trial judge correctly approached the submission of no case by reference to the test whether a reasonable jury properly directed might on one view of the evidence convict. **When one applies this principle, it follows that the fact that another view, consistent with innocence, could possibly be held does not mean that the case should be withdrawn from the jury.**" (emphasis added)

[12] The Court of Appeal expressly adopted the reasoning in *Varlack* in **R v Jacinto Roches et al**⁷ where Awich JA opined:

"[84] Where the Prosecution relies on circumstantial evidence to prove a prima facie case, **the case is not defeated by the fact that an inference that is consistent with innocence is also possible from the evidence that a jury properly directed may properly draw an inference of guilt from...**" (emphasis added)

[13] The Court notes that in the Belizean Privy Council decision of **Ellis Taibo v R**⁸ the Board opined that once a jury could, though not must, find guilt without irrationality even in a case that was "very thin... the judge was not only entitled but required to let the trial proceed".

[14] The Crown in the case at bar also relies on evidence of hostility between the Augustines and the residents of Ms. Crawford's home as evidence of motive as a circumstantial thread in the case assisting with proof of intention and identity. It may be helpful to examine these principles.

[15] The **Evidence Act**⁹ provides:

⁷ Criminal Appeal No. 23 of 2013.

⁸ (1996) 48 WIR 74 at p 83.

⁹ Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

“43. In criminal cases, after proof that the offence has been committed, evidence may be given to show that the accused person–

(a) **had or had not a motive for committing the offence;**” (emphasis added)

[16] The law on motive was considered in the Bermudan Privy Council decision of **Myers et al v R**¹⁰, per Lord Kerr:

“[43] In a case of murder or attempted murder, as in most criminal cases, **evidence of motive is relevant but not necessary**. Often the Crown may be able to prove what happened, and who did it, without knowing why. **But where there is evidence that the defendant had a motive to kill the victim, that goes to support the case that it was him, rather than someone else, and/or that he did it with murderous intent, rather than accidentally or without intent to do at least grievous bodily harm**. It may equally be relevant to rebut asserted self-defence or provocation. Admissible evidence of motive may sometimes necessarily involve showing bad behaviour by the defendant on occasions other than that charged. If that is the case, this is an example of the second sentence of Lord Herschell’s principle in *Makin*; that **the evidence relevantly proves motive may be a justification for its admission notwithstanding that it also shows bad behaviour**.

...

[45] As will become clear, the Board shares some of the concerns voiced by Auld JA in the appeals of *Myers* and *Cox* as to the dangers of gang evidence. But it does not agree with his proposition, on which those two appellants rely, that in order to be admissible motive must be harboured uniquely by the defendant. **Evidence of a shared motive can be just as relevant. In the case, for example, of a feud between neighbouring families, the motive may well be shared by several members of a family, of whom the defendant is one, but it is still relevant to show that he had a reason to do what is alleged. It does not become irrelevant simply because others had the same motive**.

[46] The fallacy in this submission made on behalf of *Myers* and *Cox* is the implication that the motive evidence must prove the case against the defendant all by itself before it can be admitted. **Even if motive may occasionally do this, much more often it is but one strand**

¹⁰ [2016] 2 LRC 383.

in a case, together with either circumstantial or eye-witness evidence. In these two cases there was both, and the shared motive supported the other evidence.

...

[49] In both these cases, it was an important strand in the rope of evidence that there had occurred a trigger event which would have created a grievance in the gang of which the defendant was a member." (emphasis added)

[17] The Privy Council decision of Phillip v DPP¹¹ is also instructive on this issue, per Lord Hughes:

"[7] It is of course correct that, absent a statutory provision such as ss 98–113 of the Criminal Justice Act 2003 in England and Wales, evidence which does no more than demonstrate that the defendant is a violent person will ordinarily be inadmissible: *Makin v A-G for New South Wales* [1894] AC 57, as explained recently by the Board in *Myers v R* [2015] UKPC 40, [2016] 2 LRC 383 at [37]–[41]. But this was not the present case. The present case is a typical example of evidence which is undoubtedly admissible. The evidence was not simply (or indeed at all) that the appellant was given to outbursts of violence or temper in general. It was that he exhibited persistent hostility towards the deceased in particular, which he expressed in violence to her. Born out of frustration his behaviour may have been, but the evidence showed that he resented her leaving him and bore her active and violent ill will. That went to support the case that it was he, rather than some stranger, who accosted her in her own yard and killed her. It was evidence of motive to harm the particular victim of the offence. Such evidence has always been admissible, certainly where the identity of the killer is the issue. It may also be admissible where the killing is admitted by the accused but the issue is the intention with which it was done, or whether it was provoked, but those circumstances are not this case.

[8] This commonplace principle was recognised as long ago as 1910 in *R v Ball* [1911] AC 47. The issue in that case was whether it was admissible to prove the physically affectionate relationship between the defendants in order to support the charge of incest on the occasions indicted. But in the course of argument Lord Atkinson offered (at 68) an observation which has been treated ever since as axiomatic and cited for generations in

¹¹ [2017] 3 LRC 692.

Archbold Criminal Pleading, Evidence and Practice (see currently the 2017 edition at 13–31):

*‘Surely in an ordinary prosecution for murder **you can prove previous acts or words of the accused to show that he entertained feelings of enmity towards the deceased, and this is evidence not merely of the malicious mind with which he killed the deceased, but of the fact that he killed him. You can give in evidence the enmity of the accused towards the deceased to prove that the accused took the deceased’s life. Evidence of motive necessarily goes to prove the fact of the homicide by the accused, as well as his “malice aforethought,” in as much as it is more probable that men are killed by those that have some motive for killing them than by those who have not.***

...

[10] ... **There is nothing unfair about proving that the accused has an animus against the particular victim whom he is charged with injuring.**” (emphasis added)

[18] This matter involves two defendants and in that regard the principles of joint enterprise should be considered.

[19] The Code provides, where relevant, as follows:

*“11(3) **If an event is caused by the acts of several persons acting either jointly or independently, each of those persons who has intentionally or negligently contributed to cause the event shall, subject to sub-section (4), and to the provisions of Title IV with respect to abetment, be deemed to have caused the event...**” (emphasis added)*

[20] The Court of Appeal, in both the cases of **Eli Avila Lopez et al v R**¹² and **Sabanito Cal v R**¹³, accepted the law on joint enterprise as adumbrated in the Privy Council decision of **R v Jogee et al**¹⁴. In Jogee Lords Hughes and Toulson opined:

¹² Criminal Appeal Nos. 22 and 23 of 2018 para 38 et al.

¹³ Criminal Appeal No. 23 of 2023 at para 44.

¹⁴ (2016) 87 WIR 439.

*“[1] In the language of the criminal law a person who assists or encourages another to commit a crime is known as an accessory or secondary party. The actual perpetrator is known as a principal, even if his role may be subordinate to that of others. **It is a fundamental principle of the criminal law that the accessory is guilty of the same offence as the principal.** The reason is not difficult to see. **He shares the physical act because even if it was not his hand which struck the blow, ransacked the house, smuggled the drugs or forged the cheque, he has encouraged or assisted those physical acts.** Similarly he shares the culpability precisely because he encouraged or assisted the offence. No one doubts that if the principal and the accessory are together engaged on, for example, an armed robbery of a bank, the accessory who keeps guard outside is as guilty of the robbery as the principal who enters with a shotgun and extracts the money from the staff by threat of violence. Nor does anyone doubt that the same principle can apply where, as sometimes happens, the accessory is nowhere near the scene of the crime. The accessory who funded the bank robbery or provided the gun for the purpose is as guilty as those who are at the scene. **Sometimes it may be impossible for the prosecution to prove whether a defendant was a principal or an accessory, but that does not matter so long as it can prove that he participated in the crime either as one or as the other. These basic principles are long established and uncontroversial.**”*
(emphasis added)

The evidence

[21] The prosecution evidence, taken at its highest, is as follows. Gregory Tillett, the father of Jenine’s child, said that he had secured the house before leaving it on 14th July 2022 and that it was in good condition. Gregory is Icilma Crawford’s son. He described the strained relationship between himself and Jenine. In her uncontested interview Jenine accepts that she used to live with Gregory and that he put her out of the house that is the subject of the indictment, 2 days before the house burnt down. Jenine said that that act made her a “lee bit” angry and heartbroken. She accepted that she had problems with Gregory’s family. Janiece, in her uncontested interview, also described Gregory as abusive to her sister and stated that she disliked him. She also said that she had problems with Gregory’s family. Both denied burning down the house in the interviews.

[22] Cidella Tillett said that, on the evening of 16th July 2022, she saw Jenine and Janiece pass her yard and go to the Crawford house. Before Jenine went to the house she said to Cidella, *"Watch pan dehn bunch ah dead fi hungry mada fucka da back ya. Act like dehn di do good da back ya and dehn di dead fi hungry. Bunch a bitches."* She said Jenine forced open a window, asked Janiece to help her get inside, and entered. Cidella said Janiece then went inside with the children. She heard objects being moved or thrown about and later saw the group leave, with Jenine carrying two plastic bags. Cidella also recounted hostile words spoken by Jenine while inside the Crawford house, *"Choke bitch yu should a dead"*. She did not see either defendant ignite anything.

[23] Cidella said that shortly after the Augustines left she smelled something burning, later saw smoke and then saw the house on fire. The timing of these events is disputed by the evidence. Gregory placed his arrival at the burning house at about 8:30 to 8:45 p.m. Cidella's evidence places the defendants at the house earlier, around 6 p.m., but does not give a precise time for when she first noticed smoke. There is her evidence that she had cooked over a fire heart and left it unattended, and the circumstances she described about the ground and breeze.

[24] Jenine Augustine stated in her interview that the Crawford house was locked when she went and she gained entry through a window. Janiece said in her interview as well that the Crawford house was locked and that she assisted Jenine to go through a window.

[25] Fire investigator Newton Lennan testified that he classified the fire as incendiary and placed its area of origin in the living area. He explained that he formed the view as to the origin of the flame because of a clean burn seen in that area and that he saw a sofa in that area. In cross-examination he accepted that he could not identify an ignition source; that he did not exclude every possibility of an accidental cause; and that the cause could have been undetermined. His observations and the basis for his conclusion were challenged, including the delay before his inspection, the absence of scene photographs in his reports, the absence of measurements or testing, and his assumptions about the house layout. He nevertheless maintained his opinion that the fire was incendiary.

The submissions

[26] Learned counsel for Jenine Augustine submits that there is no case for the defendant to answer. Counsel relies on the principles in *Galbraith* saying that the evidence is so weak and tenuous that no reasonable jury could convict. The submission is based on the proposition that Mr. Lennan could not determine that the fire was intentionally set in his expert opinion.

[27] Learned counsel for Janiece Augustine adopts the submission that the expert evidence does not establish an intentional fire, the wide discrepancies in the time of the fire between Gregory and Cidella make the evidence manifestly unreliable and there was a potential alternative cause of the fire, namely a fire heart. Counsel submits that all of the circumstantial threads, even considered cumulatively, do not exclude the possibility that the fire was accidentally set or an innocent explanation generally.

[28] The Crown submits that when all the circumstantial threads are pulled together there is a case upon which the jury can rationally convict.

Analysis

Jenine Augustine

[29] The circumstantial threads upon which the Crown's case is built, taking the Crown's evidence at its highest and drawing the inferences most favourable to them as noted in *Varlack*, are as follows:

- i. A reasonable jury can find that there is evidence of motive to commit the offence in the form of general enmity between Jenine and Gregory who resided at the Crawford house.
- ii. A reasonable jury can find that there is evidence of motive to commit the offence in the form of a specific triggering event, namely, the eviction of Jenine from the Crawford house by Gregory.
- iii. A reasonable jury can find that the cursing of Cidella Tillett before entering the house speaks to Jenine's continuing animus to the Crawford/Tillett family which may make it more probable, along with the other evidence, that she intentionally set fire to the Crawford house.

iv. A reasonable jury can find that the act of breaking into the locked Crawford house demonstrates a hostile intention to the Tilletts/Crawford which, considered with the other evidence, may make it more probable that she intentionally set fire to the house. This is also connected to the hostile animus that a reasonable jury may find by Jenine telling Cidella she should choke and die whilst in the house. This may make it more probable, with this animus, that she intentionally set fire to the house.

v. A reasonable jury can find that the fact that Cidella smelt burning shortly after the Augustines left and the fire followed after makes it more likely that, along with all the other evidence, the fire was caused by something Jenine did and that she intentionally set fire to the house.

vi. A reasonable jury can find that, along with the other evidence, Jenine Augustine intentionally set fire to the house as the Crawford house was left in good condition on the 14th and there were no difficulties on that day and the 15th and it is only after she visited on the 16th that the house burnt down.

[30] In the Court's view combining these threads together a reasonable jury can find that (i) Jenine Augustine burnt down the Crawford house; (ii) did so intentionally; and (iii) had no lawful excuse for doing so, as there is no evidence of one.

[31] The fact that Mr. Lennan could not definitively opine that this was an arson is a question of fact for the jury. There is no requirement that arson be scientifically proved. There is a requirement under the Code that the fire be intentionally set. That evidence can be provided by evidence of motive as *Myers* and *Phillip* quite clearly demonstrate. *Myers* expressly holds that motive can be used as evidence to negate accident. Also, Mr. Lennan's evidence must be put in context. A reasonable jury could find that on a global view of his evidence that because the damage from the fire was so severe he could not definitively say whether the fire was intentionally set or not. This does not mean the fire was not intentionally set but that the available data could not allow him to draw a definitive conclusion.

[32] The discrepancy between Cidella and Gregory is also a question of fact for the jury and not a ground for withdrawing the case from them. The Court firstly accepts the learning in the Guyanese Court of Appeal decision of **Anand Mohan Kissoon et al v The State**¹⁵ that the fact that inconsistencies in a witness's evidence may have weakened the prosecution case against an accused is no ground for the trial judge withdrawing the case from the jury and that a case should only be so withdrawn in the extreme

¹⁵ (1994) 50 WIR 266.

circumstances that the prosecution witnesses are totally discredited. There are no inconsistencies in this case that has, in the Court's view, totally discredited the material evidence to establish proof of the indictment. The Court is assisted in the evaluation of discrepancies, namely when two witnesses on the same side conflict, by the Guyanese Court of Appeal decision of **Abdulla et al v The State**¹⁶. In that case there were material conflicts between two prosecution witnesses that the jury have the option of believing, one, the other or neither but that the remedy is careful directions and not a wholesale withdrawal of the case, per Crane JA¹⁷:

"We are of the view, however, that in the light of the defences of alibi and mistaken identity, the situation called for a more thorough direction in view of Rajdai's insistence that she was not asleep in bed, and Dorsett's volte face under re-examination. In our view, the jury ought to have been told that if they believed Dorsett was speaking the truth under cross-examination when his own recollection and his written record made at the time were in accord, then they could not at the same time believe Rajdai that she was not asleep in bed, in which case her credibility would be thereby seriously shaken and the circumstances of her identification altered. If, on the other hand, for some unknown reason, they were to disbelieve what Dorsett said in re-examination, which was against his statement on oath under cross-examination, and his own record, then his evidence could not aid in any way in the advancement of the credit-worthiness of Rajdai's testimony. In these circumstances, it seemed obligatory for the judge to have reminded the jury of what he had said before as to where the onus of proof rested; that since Rajdai's was the only evidence on the crucial point of identification, they ought not to convict the accused in view of the uncertainties already alluded to in her evidence unless they felt sure of their guilt, and that if they had any reasonable doubt about that matter the accused were entitled to the benefit of it. We are decidedly of the opinion that was the kind of direction to which the accused were entitled in view of the contradictory state of the evidence of prosecution witnesses Rajdai Budhram and PC Dorsett."

[33]A similar direction can be given to the jury in this case, appropriately modified.

¹⁶ (1971) 17 WIR 266.

¹⁷ P 269.

[34]The issue of the possibility of the fire heart cause does not, in the Court's view, require withdrawal of the case either. Both *Varlack* and *Roches* make the point that where there is on one view a scenario where a reasonable jury could convict on the evidence the fact that there are possibilities consistent with innocence, in this case accidental fire, does not permit the judge to stop the case. The Court is not properly to choose between reasonable inferences open to the jury. Once on one view a reasonable jury can convict the Court must let the case go to the jury. The case of **Nondo v DPP**¹⁸ cited by counsel for Janiece seems out of step with the later reasoning in *Varlack* and the facts are different in that she was actually seen in the house shortly before the fire would have started, distinguishing it from the appellant in that case.

[35]The case against Jenine is not founded only on motive. On the prosecution evidence, she was seen going to the house, forcing a window, entering, and leaving shortly before the fire was observed. Cidella attributes hostile words to her. The jury could treat her presence and conduct at the house, the timing of the fire, the evidence of motive and Lennan's opinion as mutually supporting circumstances. It could infer that the fire was deliberately caused during the episode in which Jenine was present at the house.

[36]There are substantial competing considerations. Cidella did not see Jenine ignite anything. The gap between the defendants' presence and Gregory's observation of the house fully engulfed is material. Cidella's fire heart evidence and Lennan's concessions provide an accidental explanation. The jury may find that these matters prevent the Crown from proving guilt beyond reasonable doubt. But they do not make the prosecution inference of guilt legally unavailable. Assessing the force of that inference against the alternative explanation is the jury's task.

Disposition

[37]The Court dismisses the no-case submission of Jenine Augustine and will call upon her to answer the charge.

Janiece Augustine

¹⁸ (1968) ZR 83.

[38] The circumstantial threads upon which the Crown's case is built, taking the Crown's evidence at its highest and drawing the inferences most favourable to them as noted in *Varlack*, are as follows:

- i. A reasonable jury can find that there is evidence of motive to commit the offence in the form of general enmity between Janiece and Gregory who resided at the Crawford house.
- ii. A reasonable jury can find that the act of assisting Jenine to break into the locked Crawford house demonstrates a hostile intention to the Tillets/Crawford which, considered with the other evidence, may make it more probable that she intentionally set fire to the house, or assisted Jenine in doing so.
- iii. A reasonable jury can find that the fact that Cidella smelt burning shortly after the Augustines left and the fire followed after makes it more likely that, along with all the other evidence, the fire was caused by something Jenine did with Janiece's assistance, or something Janiece did on her own and that she intentionally set fire, or assisted in setting fire to the Crawford house.
- iv. A reasonable jury can find that, along with the other evidence, Janiece Augustine intentionally set fire to the house or assisted Jenine in intentionally setting the fire as the Crawford house was left in good condition on the 14th and there were no difficulties on that day and the 15th and it is only after she visited on the 16th that the house burnt down.

[39] In the Court's view combining these threads together a reasonable jury can find that (i) Janiece Augustine burnt down the Crawford house or assisted Jenine in doing so; (ii) did so intentionally; and (iii) had no lawful excuse for doing so.

[40] The Court notes from *Jogee* that, "Sometimes it may be impossible for the prosecution to prove whether a defendant was a principal or an accessory, but that does not matter so long as it can prove that he participated in the crime either as one or as the other". Thus the Crown, in this circumstantial case, does not have to prove whether Janiece was the principal or the accessory but just that there is an evidential basis upon which a reasonable jury could infer that she intentionally participated in setting the fire. Taking the Crown's evidence at its highest Janiece was not a mere bystander on the facts but a willing participant in the break in of the Crawford house.

[41] The case against Janiece is more dependent on inference. The Crown evidence places her at the house with Jenine, says she assisted Jenine to enter, and says she went inside before leaving with the group.

There is also evidence of her difficult relationship with Gregory and her association with Jenine. This evidence is capable of supporting an inference that Janiece was not an innocent bystander but knowingly assisted in a joint plan that included setting the fire.

[42] That is not the only inference open. Her conduct may have been limited to accompanying Jenine or assisting entry and removal of property. The evidence does not attribute to her any act of ignition or any words about burning the house. The jury must be satisfied, on all the evidence, that she intentionally participated in the arson alleged, not merely in some other conduct at the house. Nevertheless, the alleged assistance with entry, her presence inside, the group's departure and the subsequent fire, considered with the other circumstances, are capable of supporting that conclusion. The case against her should therefore also be left to the jury.

[43] The prosecution case has weaknesses, particularly as to the source and timing of the fire, the possibility of accidental ignition, and the individual role of Janiece Augustine. Those weaknesses are substantial and must be fairly placed before the jury. As the Court is instructed by *Taibo* even if the case is very thin, if a reasonable jury could convict it should be left to them. These weaknesses do not, on the evidence as it stands, reduce the prosecution case to mere presence or speculation. The evidence, taken at its highest and considered cumulatively, is capable of supporting a finding of intentional arson by Jenine and of knowing participation in that offence by Janiece, or the latter's involvement as principal.

Disposition

[44] The Court will dismiss the submission of no case to answer by Janiece Augustine and call upon her to answer the charge.

Nigel C. Pilgrim
High Court Judge
Criminal Division
Central District
Dated 14th October 2026