

**COMMONWEALTH OF THE BAHAMAS**

**Information No.CRI/VBI/261/11/2018**

**IN THE SUPREME COURT**

**Criminal Division**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Vs-**

**CLAYTON PATTERSON SMITH**

**& RODERICK WATSON**

**Before: The Honorable Madam Justice Jeanine Weech -Gomez**

**Appearances: Ms. Raquel Whymns, appearing with her Ms. Shaneka Carey, for  
The Prosecution**

**Mr. Murrio Ducille KC, appearing with him Mr. Brian Bastian for  
both of the Defendants**

**Date: 16<sup>th</sup> November 2022**

**RULING ON NO CASE SUBMISSION**

This trial arises out of a boating incident in Exuma on the 30<sup>th</sup> June 2018 as a result of which Clayton Patterson Smith and Roderick Watson were charged with the following offences:

The first Defendant Clayton Patterson Smith was charged with:

1. Manslaughter by Negligence- contrary to Section 293 of The Penal Code (Chapter 84)
2. Negligently Endangering a Vessel – contrary to Section 279 (1) of The Penal Code.

The second Defendant Roderick Watson was charged with:

1. Manslaughter by Negligence- Contrary to Section 293 of The Penal Code And
2. Negligently Causing Harm- Contrary to Section 281(1) of The Penal Code (4 counts)

Both Defendants pleaded not guilty to the respective charges on their arraignment and the prosecution commenced trial on 28<sup>th</sup> October 2022. At the close of the prosecution's case counsel for the Defendants made a No Case Submission.

### **The Law**

The guiding principles when the court is presented with submissions of "No case to Answer" at the close of the prosecution's case are set out **in R.v. Galbraith [1981] 1**

**W.L.R. 1039.** At page 1042 B-E Lord Lane CJ said:

How then should a judge approach a submission of No Case?

(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty. The judge will of course stop the case. (2) The difficulty arises 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. (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 its strengths or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking 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... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

On a submission of “No case to answer” the judge has only to be satisfied that a prima facie case has been made out against the defendant. The judge does not have to find at this stage that the prosecution has established the offence beyond a reasonable doubt.

Case law has provided that on a No Case Submission the task of the judge is a balancing one, not to usurp the role of the jury who are the triers of facts. Equally it is the duty of the judge to safeguard accused persons from conviction on the facts which are so precarious, unsafe or insufficient that injustice would result.

## **Evidence**

The Crown called fourteen (14) witnesses and the evidence of the witnesses that have factored in this decision is summarized as follows:

### **Stephanie Schaffer:**

Ms. Schaffer testified that she was a passenger on a boat that exploded from beneath everyone. It was her family vacation which they had been planning for a while. She stated that the tour her family took was the Four Seas/ Four Seas Adventure. At the time of the incident she was 18 years old. She chose the seat on the boat to the front right. She said on that day the captain sounded energetic and excited, but also urgent and rushed. She was quickly startled by how fast the boat started upon heading out she said the boat was going really fast, super-fast from her recollection and she felt the need to grip her seat as she was

afraid if she let go she would fall. She recalled flying in the air and hitting the water like hitting a wall. She does not have visual memories because of the impact but in those moments she recalled thinking she was dying and remember panicking to try and do something before it was too late to save herself, she tried moving in a running motion but couldn't move. The next time she got up was in a hospital room.

Ms. Schaffer relayed that she was in a coma for 1 month in Intensive Care Unit. She couldn't speak because of the tube in her trachea and she laid in the hospital terrified. Ms. Schaffer listed a series of injuries she sustained including breaking both arms in multiple locations, shattering both wrists, losing a significant amount of muscle in her left arm, broken multiple rib bones, broken sternum, pelvic bone, spine in 2 areas, lost both

legs together with other injuries and that she is now a paraplegic having had up to 45 surgeries as a result of the explosion.

### **Inspector Dwayne Lewis**

Inspector Lewis gave evidence that he is attached to the Marine Support Services arm of the Royal Bahamas Police Force. He was deemed an expert as a marine technician specialists and boat captain. He has an A Captain License and his training has also included fire prevention on boats, boat safety, navigation and chart plotting amongst others.

He stated that on June 30, 2018 he along with other officers were taken to the Barre Tarre Bridge in Exuma to the office of Four Seas Adventure. While there he viewed a vessel that had extensive fire damage on the right side or Starboard side of the vessel. There was extensive damage to the Hull. The Left side or Port Side also received damage but the color and sign of the boat

which was white and yellow could still be seen. There were two 300 horsepower Yamaha motors with sustained fire damage but were not completely destroyed. Inspector Lewis stated that the boat was some 40 ft. in length with a catamaran type hull. The right side was completely damaged with extensive damage to the Bow. Inspector Lewis further testified that he had not seen the boat prior to that day.

Upon examining the vessel to ascertain the cause, he asserted that it appeared to be an explosion/fire. Investigation results included the following:

**Stern:**

Inspector Lewis explained that the stern was the back portion of the boat where the engines are affixed and stated that there was hardly any damage to the engine and stern but from the right stern area starting from the engines it was observed that there

was a housing for the fuel filter directly above where the batteries were stored and the batteries were badly destroyed.

When asked if anything significant turned on this, he stated that the putting of flammable batteries on top of a fuel filter was not a good idea, and in this area was also a vice grip which is normally used for clamping something, tightening something that gets loose and would typically be used for a quick fix and that was not a basic maintenance tool.

He also stated that he took photos of the damage during his inspection.

### **Top Deck:**

The entire top deck, the part to step onto the vessel was completely damaged so everything in the below section of the boat could be seen.

### **Rib of Boat or Stringers:**

The fuel tank at the center of the vessel was damaged and had a hole on top.

### **Filler port:**

This is where the vessel would be fueled up and where the fuel nozzle will go into to dispense fuel.

### **Hose connecting filler port:**

The hose/filler port had a hole and the hose was completely gone. Normally there would be a 350/360 series heat / flame resistant coating these materials that were not present and the hose was not the proper size. The hose connecting the engine was still intact.

### **Bilge Pump Hose:**

The bilge pump is typically used for water and sewerage. The hose of the pump sustained damage because it was not meant for it or outfitted for this particular pump.

### **Bulk heads**

The boat did not have bulk heads which is the containment wall to prevent fuel spillage, sewerage etc. The hull was wide open and was said to create an atmosphere for an explosion.

### **Lack of Fire protection and Insulation**

There was also no fire wall or insulation surrounding the fuel tank itself to prevent it from shifting and provide fire protection.

There was also no insulation placed around the tank or hull.

There were the remains of wires, copper wire were the only thing left behind and this was very concerning to him because if

you install wiring you should use a fire protectant conduit and this was not present. If there was a conduit they would have used a heat protectant like PVC or Styrofoam to insulate wires and to prevent movement and shifting.

### **Batteries**

Batteries having a positive and negative connection, sitting on top of a piece of metal could cause a metal spark which could cause further problems.

### **Bilge**

Upon questioning, Inspector Lewis further explained that the bilge is the bottom portion of the boat that you don't see, it's below deck and a bilge pump and blower blow water and chemicals etc. out of the boat. There was no indication of any bilge pump on the boat.

When asked whether a vessel to take tourists excursions should have a homemade tank?

Inspector Lewis asserted that it can be used if it is tested particularly for leaks, pressure testing, safe to contain gasoline.

Inspector Lewis testified that the atmosphere was ripe for an explosion that there were three factors present and these included:

1. **Flammable Liquid:** Gasoline spilling into the bilge from hose. Which could have been because of a ruptured tank, tank not insulated properly, shifting in boat, homemade tank in this case, or fuel line could have leak as there was no form of containment like bulk heads.

2. **Air / A lot of space for vapors:** gas gives off scent; a lot of room for vapor to spread and rise, gas can go to front of

boat as it took off; liquid stay to the back and gas to front.

Wires on right side had no conduit, it had nothing and any breaks in wires could cause a problem.

**3. Ignition/ Fire/ Spark :** Any spark, static from wires, any loose connection, wires bouncing up & down could present problems.

### **Aluminum**

When asked about the aluminum the boat was made of Inspector Lewis stated that the aluminum did not appear to be of high quality nor durable. The type of aluminum used by the boats of the Defendants in his professional opinion could not have survived that heat. A better quality would have been able to withstand the explosion.

When asked to look to photo #16 at Exhibit 4 showing the top deck destroyed, Inspector Lewis testified that the deck was completely destroyed and couldn't withstand the heat or explosion because the material used was not durable.

When asked the impact of this on passengers, Inspector Lewis continued that if the material was of good quality this could have mitigated the impact to passengers.

### Vessel Structure

Inspector Lewis was then asked how he would classify the overall construction of the Vessel and he asserted that the Vessel was not constructed adhering to industry standards and best practices, particularly in the following ways:

1. **Tank:** was not properly protected; insulation and shock mitigation using Styrofoam to prevent spillage or a firewall to contain fuel leaks to that area.

2. **No insulation on wiring of boat:** boat could have used a conduit and other means to insulate; there was no burnt plastic over wiring or foam; wires were not protected; wires essentially would be bouncing up and down making the boat a perfect conductor of electricity causing sparks.
3. **Batteries location:** batteries could have been insulated in a box or some other means which could have prevented them from touching metal.
4. **Fuel Filters:** were too close to batteries literally under batteries; shouldn't have been near conductor of battery.

As the Crown continued Mr. Lewis was asked whether a boat explodes for no reason to which he stated no and that there must be elements in place to allow for explosion. He was then asked what was the source concerning this explosion and stated that it was faulty wiring.

It was then asked that if gasoline could be detected via smell what the captain should have done and Inspector Lewis stated that the electrical supply should be disabled, neutralized, or go to the source to see if the issue could be corrected. Along the same questioning, Inspector Lewis was asked if checking the vessel every day, should a gas scent be evident, Inspector Lewis testified that the gas scent is very strong so it should be noticed.

Inspector Lewis was asked to define seaworthy which he stated was making a journey from one point to another from A to B without sinking but not necessarily safe for passengers. He was then asked to classify this explosion, which he described as disastrous. He was then asked other safety questions such as whether a boat should be prancing up and down with passengers which he advised that a good seaman would adjust to run

smoothly. He was then asked if on a calm day should a boat be prancing and landing hard. He replied in the negative.

### **Boat Registration**

Inspector Lewis was then asked if he saw any registration numbers painted or affixed to the vessel and stated that there were no registration numbers painted or any sticker on the vessel. The Commercial and Recreational Water Sports Act states that the registration number should be affixed to the hull or easily seen. The registration number tells you the boat is registered that it is inspected and where it was registered.

Inspector Lewis was then asked about the registration process for boats and mentioned that he registered the boats for the Royal Bahamas Police Department and so they would look at things like the size, weight, serial number of the hull, the engines, captain's license, whether it's a recreational vessel, etc.

The architectural plans of the boat is inspected by an officer and, once pass inspection, the boat is registered and then it is inspected every other year and any change or alteration to the boat, the Port should be notified and the boat re-inspected.

### **Other Safety Measures**

Upon further questioning, Inspector Lewis testified that there was no indication of extinguishers on the boat, nor lifejackets. He was also asked if he ever met the owner of the boat and stated that he did so briefly and also identified him in the Defendant's dock. When asked if he questioned the boat owner on the plans for the vessel, he was told that there were no plans for the vessel; the plans were in his head. Inspector Lewis was then asked whether a captain's license was required for tourist excursions to which he replied most definitely and that in this instant case he stated that he never received copies of a captain's

license and that he also inquired about the license but never attained same.

On cross examination, Inspector Lewis was asked if prior to the accident whether it was necessary to produce a plan for boat registration to which he stated the Commercial Water Sports Act which was passed in 2006 made it mandatory as a requirement for registration.

Inspector Lewis was then asked how he got to the explosion site and answered that he was assisted by a private vessel and could not recall the owner of the vessel. He was questioned on whether he recalled that it was by the second defendant's vessel that he made it to the site, to which he replied that he did not know the owner of the particular vessel. He was then asked if he noticed that it had four seas on the boats but he could not recall.

Inspector Lewis was then asked what a wire gland was and stated that he was not familiar with this phrase and questioned whether there was another phrase for it and upon being shown an instrument or prop, Inspector Lewis stated that the instrument was called a coupling not a wire gland. He said the coupling was used for the GPS, radio, microphone or other electronic component through the hulls fitting.

He was then asked, if a boat is made from aluminum how would wires be routed? He stated that he would install a conduit which protects a wire from abrasions and damage. Inspector Lewis was then taken to photo number 5 Exhibit 4 which showed a lot of wires which were burnt and stated that those wires came from the stereo and that they were electrical wires. He was then shown photo number 10 and asked what was in the top left of the photo and testified that it appeared to be a side rail.

Inspector Lewis was then taken to photo number 13 where he was asked what appeared to be in the photo and stated that it was a piece of metal that looks like a partial rail.

He was then taken to photo number 27 to better explain photo 13 and stated that this was the area of the rail where the pilot or captain would hold onto so they didn't fly; it would start at the middle of the boat and move towards the end of the boat.

He was then shown photo number 28 and asked to explain what he saw and stated that it was the same partial rail. Inspector Lewis was then taken to photo number 6 and asked what the orange looking object was in the photo. He said he can't recall but it looks like a reflection, it was in suggested to him that this was a life vest to which he disagreed. He was then taken to photo number 7 where he was asked if that was the same life

vest again and replied that it was Thomas Lightbourne's reflection in the water, with his arm reflecting in the water.

Inspector Lewis was then taken to Photo number 13 and was asked if he saw the hose and replied that it was not a hose but a part of the aluminum structure of the boat floor, it was a piece of metal.

When asked about the damage done to the boat Inspector Lewis says he was able to say a lot based on what he saw, he could say that there was negligence and what should have been done and not done.

Mr. Ducille concluded by saying that everything Inspector Lewis said was all conjecture.

On re-examination Inspector Lewis was then asked what is rigging a boat and stated that this was the installing of all necessary components for the vessel to operate safely and

efficiently so things like the engines, wires, lights, radio etc; taking the hull and outfitting it with everything. He was then asked what is the hull and stated that the hull is the basic structure of what we see as a boat; the frame of the vessel; the boat we see.

### **Jury Question**

The jury then asked Inspector Lewis if he noticed any first aid kits on board and he stated that he did not. He was then asked what would be the importance of the first aid kits and testified that it could be life-saving and its purpose is to nurse minor wounds and help when conducting CPR.

### **Tiran Jackson**

Tiran Jackson's evidence was that he was on a boating excursion that resulted in an accident that left him gravely injured with

multiple injuries including the amputation of his left leg and that his wife Maleka Jackson died as a result of the accident.

He stated that he flew from Atlanta Georgia to Exuma on the 28<sup>th</sup> June 2018 with his wife. He stated that after making inquiries he booked a Swimming with the Pigs tour for him and his wife for the Saturday morning.

And that around 8:55 that morning they received instructions for the half day tour.

As he and his wife arrived on to the boat he observed a young gentleman who was the captain's first mate fueling the boat he said that the person appeared to be probably 11 to 14 and that he did not think much about it. He said that he and his wife sat in the 3<sup>rd</sup> isle on the boat as other passengers boarded.

He further stated that around 9:00 a.m. the captain addressed them and they started to take off and move and he thought it was great, it was going to be beautiful, it would be wonderful.

And that as they were moving for about 4 to 5 minutes when all of a sudden he did not even hear the explosion the next thing he remembered was waking up face down in the surface of the water having been knocked unconscious and that the flames from his right leg being burnt was what woke him up.

He said that he observed other injuries to his leg and that he could see passengers from another boat implying that he need to get off the boat.

He stated that he tried to get himself off the boat and was thereafter assisted off the boat and placed on another boat where he was in an out of consciousness.

He stated that he later tried to find his wife but was told she was thrown in another direction and was placed on another boat and thereafter taken by ambulance and that they were later taken to the clinic via a truck where they received medical attention and was thereafter air lifted to Nassau for further medical treatment.

Mr. Jackson spoke of the mental and physical struggles with losing his wife and not being able to say goodbye, the adjustment as a single parent, and the struggle his son has with the adjustment in great detail. He also conveyed that his wife from his view was thrown into the water and there were no efforts made by those responsible to rescue or save her. Mr. Jackson said there were no safety instructions given nor safety apparatus provided. In court Mr. Jackson went on to dock identify the captain who was present on the day. Upon further

questioning about the incident, Mr. Jackson testified that the explosion happened about 6- 8 minutes after they left port and the only thing said by the captain from what he remembers is “Relax and have a good time, enjoy the experience”. He paid \$220 total for himself and his wife for the excursion. He described the vessel as what seemed to be a 40 foot catamaran with 2 outboard engines, covered canopy, 2 aisles, with 5 seats which could hold about 20-25 passengers. The boat as he recalls was also white in color. Along with the captain and first mate were 10 passengers and the name of the tour was the Four Seas. He was then asked if he knew of the other passengers prior to the incident which he stated that he did not. The final question from the Crown was the amount of surgeries the witness endured to which he stated were 8 in total.

On cross examination, the Defense put it to the witness that he stated or categorized the events to being an accident to which the witness clarified that it was an incident, something that occurred. He was then asked if the explosion was totally unexpected to which the witness confirmed. In concluding he asked Mr. Jackson if he was unconscious at the time of the incident to which he said he was.

### **Paul Bender**

Mr. Bender began by relaying that the trip to Exuma was planned around seeing the swimming pigs and upon doing research Four Seas Adventures was selected. He stated that on viewing Four Seas boats at the dock they were larger and also looked very clean well put together and inviting. Since it was advertised, they felt comfortable enough to book.

Upon seeking to pay for the excursion they were advised that the boat they saw wasn't the boat that they would be using but another one and the next availability would be Saturday, June 30, 2018.

He said on their arrival for the 9am start he spoke to Defendant Watson whom he dock identified. He and his wife sat port side in the front row, as the voyage began they were just absorbing the sun, then felt the boat go into full throttle. Full throttle meaning he put the boat into fast. So when he pushed the gas up to make it go fast, the boat rose up. He said he counted three times this occurred and they were skipping the waves. As it went from wave to wave, they felt the bounce. The bounce was said to be consistent. It was literally one, then he took a picture and then two, and then he turn his head to the left to look out at the shore,

and on the third one, it felt like someone took a baseball bat and hit him in the back of the head.

The explosion he states caused him to go to the front of the boat where he was originally at the front row on the outside seat. He was port side, on the outer seat; Stacey was on the inner side towards the aisle way just adjacent to Stephanie.

After what felt like a hit by a baseball bat, he turned around and there was nobody on the boat. He then heard his friend John yell to him saying, "Paul, get off the boat. There's a fire", but Mr. Bender said he couldn't because he was bleeding. He states he was bleeding severely from the back of his head. He then took off his shirt and put it on the back of his head to stop the bleeding. He then turned back around and saw Tiran Jackson, lying in the middle of the aisle. John came to get him off the

boat. It was then when trying to get off the boat, he heard his wife yelling to look for Stephanie.

A larger boat then came up on the side of them and collected other passengers and provided assistance and they were driven to the Exuma Hospital which seemed to be closed on their arrival but eventually they saw them. Mr. Bender testified that at the tarmac, he saw Clayton Smith, the boat captain and also identified him in Court; he also spoke to Chester Cooper, but couldn't recall what he said. He further stated that they put Stacey, Mr. Watson, himself and Brooke on the plane headed to Nassau.

They were transported to Princess Margaret Hospital and he was put into an emergency room and stayed there for several hours. He said he received stitches in the back of his head and was

examined. He complained of a back injury and they said they were going to give him a CAT scan to look at his back.

During the early part of the morning, as they arrived to the hospital, Mr. Bender states that he was asked to give his wedding ring. He had Stacey's cell phone and was asked to give them her cell phone, and Stacey's wedding ring. Mr. Bender states that he never received the CAT scan. Mr. Bender continued that he met with the U.S. Embassy, Minister of Tourism, DEA agent for the U.S. and called their insurance company to let them know they were in a tragic accident.

Mr. Bender further states that he was examined, again, and registered his complaints but never got an x-ray. Over the next five months, it was hospitals, the first three weeks it was taking care of Stacey. It was being with Stephanie, finding a place in

Fort Lauderdale to stay, get clothes, and stuff to take care of themselves.

Mr. Bender continued that he is on his third job. This explosion has been devastating to him, physically, emotionally and financially.

When asked what he observed before getting on board the vessel on the 30<sup>th</sup> of June, 2018 he recalls, sitting, watching and noting not seeing the boat there as yet and then there was a boat that was tailored in. He watched two young boys fill the tanks of the boat. He believed they were about eight and ten. They were said to be filling the boat from a stationary tank into the tanks of the boat. He recalls the youngest boy also being on the boat with them and remained next to the captain.

Mr. Bender stated that he was curious as to why the boat wasn't there before when we looked at the other boats. He wondered

why it wasn't docked there. In further describing the boat he said it was similar to the larger boat and that the boat that they were actually in was a punting boat. There were two punts on each side. There was yellow paint on the back. He believed it was white on the front of the boat. He stated that the boat looked clean when they got on and that it also looked new.

### **Cross Examination**

On cross examination Mr. Bender was asked if he was given the itinerary for the day and stated that they were told there would be 3 stops but he didn't know where the stops would be. He confirmed that he was told that life vests were in the front of the boat but relays that they were never given instructions on how to operate or utilize same.

The Defense then asked whether there was a necessity to put on a life vest when the captain was speaking to everyone at the start

of the trip, at the point of no emergency to which Mr. Bender relayed before you leave, you are instructed on how to use a safety piece of equipment. We were told that safety vests were at the front of the boat but never saw them. The Defense then questioned Mr. Bender as to whether he asked the captain to show him how to utilize the life vest and Mr. Bender replied that he shouldn't have to and as the captain of the boat, it's his job to give proper instructions. After the boat exploded, I didn't see him come up and say, "Here's the lifejackets. Here, put them on. This is how you do it."

Mr. Bender was then asked when the boat started, whether he started to take photographs when the boat was going and agreed that he did and was then asked if he heard the explosion while taking photographs and testified that he did not hear an explosion whilst taking photographs. He further stated that while

he was looking to the left on the sea shore he felt something hit him on the back of the head.

Mr. Bender was then asked if he gave a statement to police and stated that he did when they came to Boston and confirmed that he signed the statement as being true and correct. He was then asked if he recalled in his statement, "I then started taking pictures and then all of a sudden I was thrown to the front of the boat" and agreed that he said that.

### **Re- Examination**

On re-examination, Mr. Bender was reminded that it was suggested to him, or asked of him, that when they left the dock, it wasn't the appropriate time for the captain to tell him about the life vest, to which Mr. Bender replied that the captain told us we were trolling out, going very slowly before we started. He was then asked if he thought the proper time to give safety

instructions was after the boat exploded, to which he replied in the negative.

### **Jury Questions**

Mr. Bender was asked by the Jury if he recalled any details from the paperwork Four Seas Adventure provided before the tour started at 9:00 a.m. and recalled that the only thing that they had was the brochure and the document that they signed, but he did not receive or recalled receiving anything else.

### **Stacey Bender**

Mrs. Bender began her testimony by stating that in planning for their trip to Exuma, they looked on The Bahamas Ministry of Tourism website and saw Four Seas Adventures (“hereinafter Four Seas”) listed as one of the tour guides, and that the swimming Pigs tour in Exuma was supposed to be the highlight of their trip. At the place they stayed there were also

brochures for Four Seas. They went around the island to scout out different tours and on the 2nd stop they made it to Four Seas adventure and booked them.

They were scheduled for the 9am tour on June 30<sup>th</sup> 2018.

They got there early. It was a sunny, calm beautiful day.

Upon entering the boat, Mrs. Bender and her husband sat in the front seat to the left, looking forward, and then Stephanie her daughter and her husband's stepdaughter, sat on the right. They were then given the itinerary of the day, where they would stop for the day and were told that there were snacks and basically just, you know, relax and have a good time.

Mrs. Bender continued by stating that they started out, but it felt like within a minute or less, they started to go really fast and that wasn't what she expected and she was really scared right away because it felt like the boat was going up, like high, and fast, and

coming down hard, and she thought this doesn't feel right, and she hope she didn't get thrown from the boat because she was in the front and she is really small and that she just had this fear that she wasn't secured.

It felt like that happened like three times. It goes up down, up down, boom. Then the next feeling I have is just that she was pulled out and backward just really quickly about and around the boat and she thought she was going to get thrown from this boat.

She said that she could see the light of the sun. So I could get up, and by the time she came up out of the water, I was just making these noises; moaning noises. Upon looking around, she saw Maleka, and she realized there were two of us near each other, and then we both were looking and saw the boat and the smoke, but Maleka was in distress. She was clearly struggling, and she knew she had to get over to her, but she felt like she was

moving through quicksand trying to get over to her it was an effort, but she was able to.

Mrs. Bender gave extensive evidence on the aftermath of the explosion and its effects on herself and her daughter Stephanie Schaffer. She said it was a long ride to the hospital and she kept hoping they would pass an ambulance, but they did not, and upon arrival at the hospital or clinic in Exuma the doors were locked and we were banging and yelling to come in.

The next thing I remember is being inside next to the gurney that Stephanie was placed on and then arriving in Nassau. She said she was placed in the emergency room at Princess Margaret Hospital (PMH) and began x-rays and had a chest tube placed in her. They had to do that right there on my gurney because my lungs were collapsed and needed to be drained.

Mrs. Bender further stated that they were at PMH until they could get another airlift to Fort Lauderdale, Florida. And again, Stephanie went first, and I went on another airlift that evening. In Florida, she was given information that Stefanie had about 50 percent chance of survival and needed to be placed in a medically induced coma and on more than one occasion had to tell Stephanie that her legs were amputated. Mrs. Bender went on with providing details of being a patient for almost two weeks and gave a description of the numerous injuries she sustained.

Upon further questioning Mrs. Bender confirmed that her husband paid for the excursion and relayed that there were approximately ten (10) passengers on board. She was asked if she ever met the owner of the boat to which she replied in the

negative but she did not identify the captain of the boat as Defendant Watson.

When asked about the description of the boat, Mrs. Bender relayed that it was white and approximately seven rows of seats.

### **Cross Examination**

On cross examination Mrs. Bender was asked if the captain came on the boat, whether he introduced himself and if he was positioned to the back of boat to which she confirmed. She was asked to confirm whether an itinerary was given which she agreed and that they were also told where snacks were and that life vests were at the front of the boat.

When asked if she heard an explosion she recalled that when they would go up in the air and come down there would be a boom, and she believe there were three booms. She believed it was the sound coming down. It would make a noise every time

we would hit the water, and on the last one, I remember going out of the boat. She also agreed that the water was calm on this day.

### **Re-Examination**

On re-examination Ms. Bender was asked to confirm whether the water was calm to which she agreed, she was then asked what made the boat hit the water so hard to which she testified that that's what she couldn't make sense of at the time. She couldn't understand why they were going at that rate of speed. It didn't make any sense to her. She didn't expect to be going so fast.

Mrs. Bender was then asked what was the cause of the boom for clarity and stated that it was due to an explosion. She further agreed that the water was calm, but the boat was going fast.

## **Jury Questions**

The jury then asked Mrs. Bender whether she was wearing a life vest to which she replied in the negative. She was then asked where the captain was after the explosion and she stated that she had no idea.

She was asked to detail all of her injuries which she did. Mrs. Bender was also asked if she beckoned to the captain when she felt the discomfort but replied that, “it was so quick, it was probably only a minute and it felt like it was hard to even stay in the seat, let alone try to say anything”.

Mrs. Bender was also asked if at any point in their journey were they instructed on the life vest and replied that they were not.

## **D/Sgt.3312 Renaldo Roxbury**

Inspector Renaldo Roxbury was called as a witness and testified that on June 30th, 2018, while on duty at the Central Detective

Unit, his involvement in the matter included initiating investigations into a boating accident on the island of Exuma. He travelled to Baraterre, Exuma and from the dock he stood about two hundred yards away, and noticed out in the water a badly burnt boat which was of an aluminum hull. He along with a team of officers and locals, went out into the water to get a closer look at that boat. They recovered items which were believed to be owned by the passengers of the boat. He also came to understand that there were injuries and a fatality which was confirmed by the Exuma Medical Center.

He then stated that he traveled to the Port Department to determine if the boat had any license or registration and it was determined that it did not. He confirmed that the boat had no license, inspection or any registration. He said he then went to J.S. Johnson Insurance Company to find out if the boat was

insured and it was determined that it was not. As a result of these findings he then invited Defendant Clayton Smith to the Exuma Police Station, cautioned him, placed a series of questions to him in the presence of his attorney and recorded them on an official record of interview form.

### **Investigations in relation to Defendant Roderick Watson**

Inspector Roxbury was asked if he made any investigation in relation to Roderick Watson and testified that he discovered that he was the boat captain at the time of the explosion and confirmed that upon investigating that he didn't have any license at that time to operate any vessel in Exuma.

Officer Roxbury stated that he conducted a record of interview with Mr. Clayton Smith pertaining to the boating explosion, including asking him if he was the owner of that vessel and the business which he confirmed but chose not to comment on Mr.

Watson driving the boat knowing that he didn't have a license nor allowing his eight year old son to be the first-mate of that boat knowing that he supposed to be 18. He was then asked about a boating explosion but had no comments to the question.

Officer Roxbury then went on to dock identify Defendant Smith and was thereafter cross examined.

On cross examination, the Defense questioned Officer Roxbury on whether he visited the Port Authority Department to which he confirmed. He was then asked if he made inquiries on whether Mr. Smith's boat was ready for inspection and he replied that he did make inquiries and it was revealed that it had no registration. He said the information provided to him by Mr. Smith was that the boat had no numbers, it had nothing, and he built it and then put it in the water.

He was then asked if he knew the system as it relates to boat registration and stated that his role was to investigate but based on the information that he received from the Port Department, there was no registration, no paper up to that date, nothing in connection with that particular boat.

It was then put to Officer Roxbury that Mr. Smith paid for the inspection of his boat and he got a receipt from the Port Department in Exuma dated the 27<sup>th</sup> of February, 2018. Officer Roxbury said this could not be so because Defendant Smith had the opportunity when asked about it to mention the receipt, bring that receipt, produce any documents and he did not. He stated that he could not produce them because there were none.

He was then asked if he examined the credentials of Mr. Watson and stated that he didn't have any. There were no credentials. He

was also questioned as to whether he knew how long Mr. Watson had been captaining boats? To which he couldn't say.

Upon further questioning, he testified that he was in Exuma for a week and that if the Defendants had documents on hand, if they knew that this incident could have gotten them in trouble they would have produced those things forthwith. All of a sudden these things are showing up now.

The Defense then asked if Defendant Watson was charged with operating a boat without a license to which the witness stated that he was not the one in control of rendering charges that fell under the purview of ASP Evans.

The witness was then re-examined by the Crown.

In re-examination the witness reiterated that nothing was brought to him by the Defendants, there was no registration for

the boat and that he was the initial investigating officer, but the final investigating officer was ASP Evans.

On further re-examination Officer Roxbury was again asked if during his week stay in Exuma he inquired of Mr. Watson and Mr. Smith as to their credentials and replied that he spoke to them both repeatedly, multiple times and even sat down in Mr. Smith's yard and had a couple drinks with him but he was not provided with anything.

### **Jury's Question**

The jury then asked Officer Roxbury, "Is it your role as an officer to make sure a government office has their paper work up to date?" to which Officer Roxbury replied that it is not a part of his role. The second question put to him was whether, "If the boat is not registered according to the Port Authority, whether there is a need for further investigation?" He responded that it

would not be needed from his side but maybe the Port's side. The final question to Officer Roxbury was which ID was used by him to determine the age of the minor and the Officer stated that he didn't get an ID. He got information from the father that the child was eight (8) years old. Further that everyone who was on the boat, information was documented.

### **Cadrington Coleby**

Mr. Coleby an Engineer by profession was deemed an expert in Marine Engineering and Shipping Operations.

At the outset Mr. Coleby was asked what Shipping Management was and stated that is the management of all that is involved in the movement of goods and people, from one port to the next port, and the general upkeep of the vessel thereof.

Mr. Coleby stated that he performed a service for Defendant Clayton Patterson, in February, 2017. The nature of this service

was a marine survey for his aluminum boat, for insurance purposes and further that there are two aspects that insurance is interested in finding out. The first aspect is the value of the boat; whether there are any defects that would devalue the boat of that age, and what is the risk involved with them placing insurance.

### **Survey Inspection**

He testified that there was a distinction between a survey and an inspection. A survey meant an opinion, generally, it's between two parties, lay parties, and is basically an opinion without guarantee and an inspection is used for statutory matters, meaning that you are representing the State. It is a very rigorous examination of the vessel, and generally, it means with guarantee.

In this instant case, in February 2017 he was not representing any state, it was an opinion given to the client, who says that he

was going to use it for insurance purposes. Mr. Coleby was then asked if after the survey was performed whether he could guarantee what would happen in relation to that survey to which he stated that he could not. Mr. Coleby was then asked what a quick analysis is and relayed that it was a non-exhaustive review which meant that for insurance purposes, he examined the vessel, to the extent necessary, for him to develop an opinion in his conclusion, whereas with a statutory survey there are a list of legal requirements that must be met. That was not his purpose in this matter.

Mr. Coleby was then asked whether for insurance purposes meant for valuation of the boat and he agreed, it also included, the value of the boat in its current state. Mr. Coleby was then asked what kind of vessel he inspected and replied that it was an aluminum hull vessel, using marine grade aluminum. He was

also asked what the condition of hull and machinery survey was and stated that it's when you examine the hull and the machinery, on the boat, to ascertain their state. The examination can vary in degree, depending on its purpose. If you are doing statutory inspection, you have to break out the rule books.

For confirmation, Mr. Coleby was asked whether he did not perform a statutory inspection and replied that he was not representing the Government of The Bahamas and so he could not speak to whether or not a statutory inspection was performed but it was inferred that when a boat is registered, before a certificate of registration is given to that boat owner, the boat would have been inspected by the state.

### **Boat Registration**

As questioning continued Mr. Coleby was asked whether in his survey he saw a registration number on the boat to which he

replied that he did not. He said that he was also not given any registration documentation as part of the survey nor was he given a certificate of registration and he also requested same but it was not given to him as it is a part of his checklist when doing boat inspections, for the documentation for example the various certificates; certificate of registration, master certificate, those sorts of items would be required but none were provided. Mr. Coleby also stated that the boat was not furnished well either.

When asked what a marine certificate was, he relayed that the master certificate is the licensed operator at the wheel house.

When asked if this meant the captain Mr. Coleby stated that there is no place, no position called, captain, in merchant marine. That is a military term. A master mariner is a commercial person, in charge of the operation of the vessel. He

is called the master and commander. He is in total control and in charge of the operation of the boat.

### **Fuel Capacity**

Mr. Coleby was then asked if he was given any details in relation to fuel and referred to the portion of his report that stated that the fuel capacity was unknown and this means that you don't know how much fuel is going to be on board; knowing for example that he was going to be using Yamaha outboard engines, Yamaha engines use gasoline. He also confirmed that there was no fuel gauge.

Mr. Coleby was then asked if the tank should have a fuel gauge and stated that was not necessary. He further stated that you can have a sounding stick, for instance, but it doesn't have to have a gauge.

## **Maintenance Logs & Safety Measures**

Upon further questioning he confirmed that there was no engine maintenance log book provided. He was then asked if there were any schematics in relation to the electrical wiring of the boat and stated that he was not provided with same upon requesting them from client. When asked if he observed any fire extinguishers on board, Mr. Coleby testified that fixed and portable fire extinguishers were to be installed. They were not there at the time of the survey. He was asked if there were any safety apparatus, or life rings or anything when he surveyed the vessel and stated that none were on board. He relayed that the owner detailed that the life jackets were stored at home but none were on board and he did not inspect his home for life jackets.

Mr. Coleby was then asked whether an 8-year-old boy should be pumping gas for a boat and relayed that generally on ships, the

bunkering of fuel, which we call pumping gas, is generally under the supervision of a licensed officer.

### **Boat Explosion**

Mr. Coleby was then asked if a boat would explode for no reason to which he replied that it would not and was thereafter asked if there would need to be a defect in the boat, for the boat to explode, some type of defect and he said yes. When asked if you would be able to smell a gas spill, he said yes as gas is a very noxious fluid. Mr. Coleby was then asked, if an inspection is performed before every voyage, and there is a gas spill, if it would be detected, and confirmed that it would.

### **Guard Rails**

Mr. Coleby was then asked whether he observed any guard rails or hand rails on the vessel during his survey and he stated that there were none, but that there were rails on the main deck that

you can hold on for moving about on the boat; embarking and disembarking, that sort of thing.

Mr. Coleby was then asked whether a boat used for tourist purposes, should have guard rails and hand rails present and stated that for that type boat, it was not necessary, because the cockpit sole was much lower than the main deck. So, more or less, the space between the cockpit sole, which is what we are standing on and the main deck, acted like a rail. It was to Mr. Coleby not a major issue of safety.

### **Boat Welding**

Mr. Coleby was then asked his conclusion on the welding of the boat and stated that these included the metal plates being welded on both sides, top and bottom, and in the seam. There would be a weld on the top, and a weld on the bottom, that cause the two plates to fuse together and become one. The top of the plates, or

the part of the plate that forms the internal structure of the boat, was well welded. On the outside plate, they were marginally acceptable based on Mr. Coleby's observations. When asked to clarify he stated that the boat would be water tight, from the amount of weld, but the question that came to mind was, over a time of operation; will the weld crack? So, he wrote that in the report, to be continuously monitored, but at the time, it looked fine. But the owner had to continue to monitor the outside weld, and make repairs if and when necessary.

### **Cross Examination**

On cross examination Mr. Coleby was asked whether the boat he surveyed could be considered seaworthy for the tourist excursions, they were said to be used for and he agreed that they could be. He was then asked to confirm that his survey was only for insurance purposes which he agreed. He was then asked if

the boat was ready to go on the sea. Mr. Coleby testified that it could safely remain afloat.

Mr. Coleby was then asked to look at exhibit 4, photo #8 and was asked whether the boat pictured was the one he inspected and replied that he wasn't sure. He was then asked to look to photo 9 and stated that it looked similar. He was then asked to confirm that the boat had two, new Yamaha engines and confirmed that his report reflected 2 Yamaha engines not that they were new. He did however confirm that the boat was clean, the navigational console equipment was good, the bilge pump, the fuel pump, and the piping were good, and that the two bilge pumps were new. The VHF was also said to be good; along with the electrical circuitry and battery on the date of inspection.

The cathodic protection was confirmed to be good and when questioned on what this meant, Mr. Coleby stated that the

cathodic inspection is an inspection of the sacrificial metal, like a zinc bar, attached to under side of the hull. Rather than the aluminum rusting away, or degrading because of electrolysis, this piece of zinc metal will erode away, and if something is bolted onto the hull, or the hull and the outboard engine, when that erodes away, you just unscrew that or un-weld it, and put on a new piece. In this instance, it's a sacrificial piece of metal, to stop the general wastage of the aluminum hull itself. When asked about the interior inspection of the hull and the framing, Mr. Coleby stated that it was in good condition.

Mr. Coleby was then asked if he knew or was accustomed with Mr. Smith and confirmed that he did from his operation in Exuma, the Four Seas Adventures, only in a professional manner and that he has surveyed several of his boats. He was then asked if he ever heard of any complaint about his boats and

relayed that this was the first one. He was then asked to look at photo number 3 again and asked to describe the sea on that day and stated that it looked like a beautiful, calm day. Mr. Coleby was then asked whether whenever a boat takes off, if it takes off like a plane; where the front is raised and answered in the negative.

Mr. Coleby was then further asked if when the boat goes gently in the water, when it takes off, whether it goes into a plane and he stated that when it get to a particular speed, it planes. He confirmed that there is a difference between when it starts and when it speeds up and as soon as it speeds up, for this type of boat, the bow raises and the stern is submerged.

Mr. Coleby confirmed that this is his first time coming across a boat exploding. The Defense then asked Mr. Coleby if he knew

anything about boat building and he stated that he had a working knowledge, but that he was not a naval architect.

He confirmed that he was familiar with the aluminum which is used to construct such boats and also confirmed being familiar with 5086 aluminum and when asked if this is usually used to construct such boats, Mr. Coleby relayed that as a marine engineer involved in construction, we would confirm that the builder is using the material as specified by the designer, but he was not involved in the design of the boat; and therefore, he had no blue print to read, to determine the material being used.

The Defense continued its questioning by asking Mr. Coleby whether he was familiar with where the boat was docked, the Four Seas' dock and confirmed he was familiar with that area. He was then asked about the channel that leads to the open water, where boats would travel through and relayed that he was

familiar with the dock; embarkation and debarkation at the dock, but not the open seas.

### **Re- Examination**

Mr. Coleby confirmed that his inspection was a cursory review of the vessel and did not go in depth. Mr. Coleby was then asked about the piping and circuitry of the boat and stated that the view of the piping was as much as he could see, by stepping down into the transom, in the back of the boat, and having a look forward. The circuitry, the battery, is housed in the transom area. The transom he states is actually the back plate. Adjacent to the transom, where the battery was stored, he could see the circuitry for that. There was circuitry under the steering console, that was easily accessible; you open the door, and that was that, that was all the circuitry.

He confirmed that he did not do an in depth survey of the circuitry, just a visual inspection, as far as he could see. He was then asked whether other issues with the circuitry, if his survey went into this and he relayed that this was not the purpose of his survey and he really couldn't say if there were issues with the circuitry. This was confirmed at page 3, paragraph 3, of his report where he states the report is limited. He was then asked to confirm what seaworthy meant and stated that generally, it means, it can safely remain afloat. He was also asked if this had anything to do with circuitry of a vessel and he stated that it generally does not.

Mr. Coleby was then asked with respect to the boat being deemed seaworthy and able to remain afloat, if there were other defects on the vessel, whether his survey would not have captured that, based on the nature of his survey and he agreed.

And in relation to his observation on the bilge pump, Mr. Coleby was asked to confirm that that would have been his observation in 2017; February, 2017, and not June, 2018 and he confirmed that his report is based only on the inspection of February, 2017. He also could not say whether the boat ever actually got insured.

#### **Further Question by Defense**

Mr. Coleby was then asked by the Defense to look to photo # 13 and was asked what the two things were between the engines and he stated that these were hand rails.

#### **Further Question By Crown**

The Crown then asked where these hand rails were located and Mr. Coleby stated that they were on the stern, attached to the transom. He was further asked if these hand rails would be of any assistance to passengers actually seated on the boat and he

stated they would not. He was then asked if outside of these two hand rails, if he observed any hand rails on the inside of the boat, where passengers would be seated and stated that in his survey report, he does not have them reported as being present at the time.

### **Jurors Questions**

The jury asked Mr. Coleby being (sic) that the water was calm, whether that type of boat required speed to move along the sea and he stated that for any boat to move along the sea, they require some degree of speed.

Jurors then asked Mr. Colbey who would generally complain to him and in his capacity, did he generally get complaints, and if so, who from? Mr. Coleby stated that the only complaint he would get, or query, would be from the client to whom he wrote

the report for (sic) or to the second party to whom the survey is intended for (sic) that would be in this case, the insurance company. So, it would be the client asking the question about the report, or when he is presenting it to the insurance company, they may have a query.

### **Crown Further Question**

The Crown followed the jurors' questions with asking Mr. Coleby, whether or not, based on the weather, the boat required speed; which he stated yes and also questioned whether for the boat to move along the water, it would require it to be prancing into the air and then slamming back down into the water, to which he replied in the negative.

## **Defense Further Question**

Mr. Coleby's questioning concluded with the Defense asking what Mr. Coleby understood by the boat prancing and replied that this meant it was a rapid movement in a vertical direction.

## **Discussion and Analysis**

There are certain elements of these offences that the Prosecution must establish before an accused ought to be called upon to answer.

Mr. Ducille submits that the Prosecution has not tendered one scintilla of evidence with respect to any of the charges against Clayton Patterson Smith ('CPS') or Roderick Watson ('RW').

Ms. Whymns submitted that s281 (1) Penal Code speaks to negligently causing harm and stressed that the very fact that the

boat caused such mayhem and damage it fell into the category of dangerous thing.

Ms. Whymns further submits that the Prosecution has adduced more than sufficient evidence and that the case with respect to both Clayton Patterson Smith and Roderick Watson should be left to the jury.

For clarity I propose to deal with the arguments made for Clayton Patterson Smith ('CPS') first.

Mr. Ducille submits that first and foremost, as it relates to the charge of manslaughter by negligence Mr. Smith was not on or around the Island of Exuma at the time of the incident and that based on Criminal Law this is not one of the exceptions where vicarious liability will apply. He further contends that even if Smith was present he could not in the circumstances be culpable on the Count of Manslaughter by Negligence.

As to the Count of Negligently endangering a vessel contrary to Section 279 (1) he submits that the count is inelegantly drafted and in its present form the particulars as drafted are duplicitous and there is no evidence adduced by the Prosecution that Clayton Patterson Smith knowingly did work as the safety of the vessel or persons on board was likely to be endangered.

With respect to Roderick Watson Mr. Ducille submits that as it relates to counts 2 through 5- Negligently causing harm for the purpose of Section 281 (1) dangerous thing does not mean a boat or a vessel. He contends that the Prosecution is trying to manufacture charges against Roderick Watson and that had Roderick Watson foreseen that the boat was going to blow-up he would not have been on the boat.

He submits as it relates to the Count 1 Roderick Watson ought not to be called upon to answer to that charge as the circumstances out of which it arose is clearly not one of the situations under Section 293 of the Penal Code which contemplated death as a result of negligence.

During the course of the Prosecution's case several salient facts went unchallenged by the Defence namely

- a. That Maleka Jackson died,
- b. That Tiran Jackson, Stephanie Schaffer, Stacey Bender and Paul Bender suffered albeit serious harm
- c. That all of the above individuals at the time of the incident were paying passengers,
- d. That at the time of the incident the boat was being piloted by the 2<sup>nd</sup> Defendant Roderick Watson and owned by Clayton Patterson Smith.

Whilst reviewing the evidence I am mindful of the fact that the jurors are the judges of the facts and that a jury may draw reasonable inferences from the evidence presented during the course of a trial. And that it is not the role of a judge to determine what weight ought to be attached to any of the evidence tendered, that falls solely at the door of the jury.

Indeed the jury may accept evidence from one witness and reject evidence from another witness or accept some of the evidence given by a particular witness and reject the remainder of evidence from that witness. It is not the duty of the judge to determine whether the witnesses for the prosecution are being truthful, whether their evidence is reliable or not, nor what weight ought to be attached to their evidence. These matters ought properly to be left to the jury.

## **The Offences Charged**

### **Count1**

Manslaughter by Negligence is defined in section 293 of the Penal Code. “Whoever commits manslaughter by Negligence shall be liable...”

### **Section 13 (1) Penal Code state:**

“A person causes an event negligently if, without intending to cause the event he causes it by voluntary act, done without such skill and precaution as are reasonably necessary under the circumstances, or as he is in the particular case bound by law to have and use, for preventing the event from being caused.”

### **Counts 2-5**

In relation to negligently causing harm, Section 281 (1) Penal Code provides:- “ Whoever, (1) being solely or partly in charge

of any steam engine machinery, spring-gun, man trap or dangerous thing or matter of any kind negligently causes harm to any person or negligently endangers the life of any person shall be liable.....”

Harm is defined in Section 23 of the Penal Code as “any bodily hurt, disease or disorder, whether permanent or temporary.”

### **Count 6**

Negligently endangering a vessel contrary to Section 279 (1) of the Penal Code:-

“Whoever in constructing or repairing any vessel, or any fitting or machinery for a vessel, knowingly uses such material, or so does any work, or so conceals any defect, as that the safety of the vessel, or of any person on board the vessel, is likely to be endangered shall be liable.....”

Having regard to the arguments submitted I will deal with Count 6 first.

The first Defendant Clayton Patterson Smith is charged solely on this count. In order to prove this offence the Prosecution must adduce sufficient evidence to prove the ingredients of the offence.

Not only that “Clayton Patterson Smith” constructed or repaired the vessel but that he knowingly used material or did work and or concealed any defects as to the safety of the vessel or of any person on board is likely to be endangered.

There was no evidence adduced by the Prosecution that Clayton Patterson Smith had knowledge that any material or work done on the vessel was likely to endanger persons on board.

Equally there was no evidence tendered by any of the witnesses that Clayton Patterson Smith concealed any defects as to the safety of the vessel or any persons on board. In fact whilst there was evidence adduced that he built the boat no evidence was adduced that he rigged or wired it.

As to Count1 Clayton Patterson Smith is jointly charge with Roderick Watson on the charge of Manslaughter by Negligence.

Whilst there was evidence tendered by the Prosecution with respect to a number of breaches as regards Clayton Patterson Smith namely that the vessel was not registered, that it was not insured, that the boat was not built, rigged or wired to conform with standard practice. The evidence produced falls far below establishing a prima facie case. As regards Roderick Watson there was no evidence adduced that would establish a prima facie case. Whilst I accept that it is unchallenged evidence that

Roderick Watson did not have a captain's license there is no other evidence save for the suggestion that because (a) a vice grip was found in the vessel and the same was not in the opinion of Inspector Lewis a normal maintenance tool one would find in a vessel he must have known there was an issue and (b) because the explosion was said to have been caused by a fuel leak he ought to have smelt the scent of fuel (gasoline).

There is absolutely no evidence by any of the witnesses on the vessel on the day in question that there was the scent of fuel.

As to Counts 2 through 5 the defendant Roderick Watson has been solely charged with negligently causing harm. Again having regard to the evidence the Prosecution has not produced evidence to establish a prima facie case.

The Prosecution submitted that both Defendants owed a duty of care to the 5 victims. However, the duty of care is a

creature of civil law and any charge brought against the Defendants under the Penal Code must be proved to the Criminal standard which is proof beyond reasonable doubt and not on a balance of probabilities.

Having regard to the counts charged, the relevant sections of the Penal Code, the evidence adduced, and to *Galbraith*, I conclude that the Prosecution's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it. In those circumstances, it is my duty to stop the case.

I will therefore direct the jury to acquit each Defendant on all counts for which they have been charged.

**DATED 16<sup>TH</sup> NOVEMBER 2022**

**JUSTICE**

