In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
2025: No. 23

THE KING

-v-

CLAUDISHA CHARLEY
KEVIN ROUSSEAU

Respondent

RULING

Date of Hearing:	**10th & 11th September 2025**
Date of Ruling:	**29th September 2025**
Date of Written Reasons:	**6th October 2025**[1]
Appearances:	**Mr Daniel Kitson-Walters,** **Acting Senior Crown Counsel for the Prosecution** **Ms Elizabeth Christopher,** **Counsel for Ms Charley** **Ms Susan Mulligan,** **Acting Senior Legal Aid Counsel for Mr Rousseau**

Reporting Restriction

Section 32 of the Criminal Jurisdiction and Procedure Act 2015 applies to those portions of this Ruling which concern the applications to dismiss, made pursuant to section 31 of the Act.

[1] This final and authoritative version of the ruling was published on completion of the criminal proceedings. Some typographical errors have been corrected since it was issued to Counsel in hard copy.

RULING of Richards J

Introduction

1. On 10th September 2025, I heard an application by the Prosecution for an extension of time, pursuant to section 30 of the Criminal Jurisdiction and Procedure Act 2015 ("**CJPA**"). I refused that application. On 10th and 11th September 2025, I heard applications on behalf of both Defendants to dismiss all the charges then appearing in the Indictment, pursuant to section 31 of the CJPA. Given the outcome of the extension application, the dismissal applications proceeded on the basis of the evidence contained within the Record only. In the course of that application, I was also invited to give leave for a prosecution witness, Pedro Angono, to give oral evidence. On 29th September 2025, I refused that application and the dismissal applications and gave brief oral reasons for doing so. These are my written reasons for refusing all of the above-mentioned applications.

The Section 30 Application ("Extension Application")

2. Section 29 of the CJPA provides that *"where a person is sent [to the Supreme Court] for trial… the prosecution must disclose its case… as soon as is reasonably practicable"* and in any event *"no later than 70 days after the date on which the person was sent for trial"*. In this case the Defendants were so sent by the Magistrates' Court on 7th April 2025 and so the disclosure period expired on 16th June 2025. The Record, comprising some 73 pages of evidence, was filed on 30th April 2025. No further evidence was filed thereafter[2].

3. Section 30 of the CJPA provides that *"the prosecutor may apply orally or in writing to the Supreme Court for any period prescribed by section 29 to be extended".* It is established[3] that such an application may be made (and granted) after the disclosure period has expired.

4. Section 30 does not provide a test for the determination of an extension application. I recently heard more detailed argument about the applicable test in the course of an extension

[2] A Notice of Additional Evidence was filed after my rulings, but before these reasons were issued.
[3] See *R (Fehily) v Governor of HMP Wandsworth* [2002] EWCA 1295 (Admin), applied locally (by me) in *Cadell Smith* [2025] SC (Bda) 101 Cri.

application in connection with Indictment 13 of 2025 and shall address the test more fully in the course of my written reasons for granting that application in part and refusing it in part.

5. In this case, the Prosecution sought leave for an extension so that they could serve the following items:

"a. Statement of FSU Officer…;

b. Digital Data from the electronic devices seized from both defendants;

c. DNA Swab results

d. CCTV Footage"

6. That application was supported by the Affidavit and oral evidence of DC Damon Hollis, who was cross-examined by Ms Christopher and Ms Mulligan, on behalf of the Defendants. He confirmed that he is the officer in charge of this investigation.

7. Since they are related, I shall deal with items a. and c. above (the "Statement of FSU Officer" and "DNA Swab results") together. The evidence before me was that the FSU Officer attended the Airport Police Station on 3rd April 2025 (in addition to a number of other BPS officers). She was present there during an inspection of the suitcase from which the controlled drugs in this case were recovered. She took a number of photographs and swabbed various items for DNA. Such officers often make notes of their actions in a Scene Examination Report. Assuming such a document exists in this case, DC Hollis advised that he, as the Case Officer, has not received it from the FSU Officer. Nor had he received her witness statement. He stated his belief that she had been on leave since mid-July due to a family emergency and only returned to the office recently. He stated that he had requested her statement prior to June and that he would have followed-up on the request, but could not say how many times. To DC Hollis' knowledge the FSU Officer has cause to travel often, but he did not know her to have been absent from work between April and July 2025. I was told that she had taken some 20 photographs, that these were in the cloud and that steps were being taken to make them available later that day. With respect to the DNA swabs, DC Hollis told me that 15 were taken (by the FSU Officer) and 5 had been sent for analysis. Approval for that analysis had been sought on 20th August and given by an officer of the appropriate

rank (Superintendent) the day before he gave evidence (i.e. 9th September 2025). That approval was for emergency testing. Since DC Hollis was not involved in their dispatch, he could not say where the swabs had been sent, but he knew that, until approximately 48 hours before he testified, no swabs connected with this investigation had been sent anywhere for any analysis.

8. On the evidence before me, I was satisfied that there was no good reason why the FSU Officer's statement had not been obtained and disclosed within the disclosure period. I was particularly unimpressed by the fact that it still did not exist at the time of the extension application (some 12 weeks after the disclosure period expired). I was told that she had been working on the statement on 9th September and had then been called out overnight. With respect, this is besides the point. This is not a complex matter; there is no reason on the face of it why the FSU Officer's statement should be expected to exceed two or three pages in length. On the evidence before me, it is difficult to understand why such a statement was not produced in April and certainly long before the Officer went on leave in mid-July. Furthermore, there were simple steps that could have been taken to ameliorate the absence of a witness statement, such as provision of her notes and/or the photographs. As to the DNA swabs, the evidence before me established no good reason for the fact that no analysis of any of them was even sought until 20th August 2025 (also well outside the disclosure period).

9. As regards item b. above ("Digital Data from the electronic devices seized from both defendants"), DC Hollis told me that the dump of approximately 250 GB of data had been present in the investigation file since June (at the latest). He could not say exactly when this data was extracted and supplied by the Digital Forensics Unit. The further delay was in sourcing additional drives onto which this data could be copied and supplied to the Department of Public Prosecutions (for their review and disclosure to the Defence). DC Hollis told me that that was done the day before he gave evidence. However, the data had not yet been analysed. It was also uploaded to the cloud the day prior, so that it could be accessed by a Police Analyst (who works remotely), who was expected to produce his report between 26th and 29th August 2025. Based on this evidence, I am unable to see any good reason why the data could not have been made available to the Police Analyst considerably

earlier. If it had been supplied to him in June, his report could have been produced and disclosed months ago. An extension may have been appropriate if it had, but it is not now, in my judgment.

10. With respect to item d. ("CCTV Footage"), the position may be shortly stated for present purposes: there is none and there is not likely to be any. Some (though not much) effort has been made to obtain footage from both Toronto Pearson International Airport (from which the Defendants travelled to Bermuda) and L. F. Wade International Airport ("**LFWIA**"). At this stage it would appear unlikely that any relevant footage continues to exist. The only possible source of such footage would be Skyport. In the circumstances Mr Kitson-Walters very sensibly did not seek to rely on this prospect in support of the section 30 application.

11. It remained the case that I was being asked to extend time in the hope that evidence which could and should have been obtained sooner might be obtained late and might offer further support for the Prosecution's case. This application was not only being made after the disclosure period had expired, but *over 70 days after it expired* (i.e. seeking to more than double the statutory period). I unhesitatingly refused that application. I may have done so even if the further evidence upon which the Prosecution wished to rely was immediately available, but since it was not, granting the application would necessarily have forced the adjournment of the applications to dismiss. In my judgment, there was no sufficient cause to deny the Defendants the opportunity to make and have those applications determined forthwith, based on the filed evidence.

12. Before leaving this topic entirely, I pause to observe that, in ruling as I have, I should not be understood to be laying the blame for this situation at the feet of any particular person. It is the system which must operate better. This is not a complicated case. 70 days from sending should have been more than sufficient time for these items to be obtained and (to the extent that they proved relevant and probative) filed and served. The only one which might reasonably have been expected to take longer is CCTV footage from outside the jurisdiction. If that had been requested via the timely despatch of an International Letter of Request, it may be that a response would not have been received within the disclosure period.

13. I further think it right to acknowledge that the speed with which these Defendants were placed before the courts is an improvement on what has tended to happen in the past. Non-resident defendants suspected of offences like these have sometimes been kept on police bail for substantial periods between arrest and charge (while the suspected controlled drugs are being analysed, for example). That can be very difficult for them, especially if they lack any means to support themselves in Bermuda. It is fortunate that a charging decision was able to be made swiftly in this case, but that having happened, the statutory disclosure clock immediately began ticking. I would not wish my decision to dissuade anyone from taking a similarly expeditious approach in the future, but it is important that the remaining evidence-gathering not falter once charges have been approved. That seems to be what happened here.

14. In announcing my decision to refuse the extension application on 10th September, I observed that the Prosecution would not necessarily be prevented from seeking to rely on some or all of the material in respect of which the extension was sought at any trial, if they succeeded in resisting (either or both of) the applications to dismiss. The *"right of the prosecutor to… rely on additional evidence at trial, provided that the prosecutor first serves a copy of the additional evidence on the accused person"* is recognised by section 3(4)(c) of the Disclosure and Criminal Reform Act 2015 ("**DCRA**"). However, it remains subject to the court's powers under section 93 of the Police and Criminal Evidence Act 2006 ("**PACE**"), which may extend to excluding evidence that is served so late that its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

The Section 31 Applications ("Dismissal Applications")

15. Both Defendants sought to challenge the sufficiency of the evidence against them, pursuant to section 31 of the CJPA. Sub-section (2) of that section provides that the judge *"shall dismiss a charge… which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him."*

16. No rules governing *"the manner in which evidence is to be submitted"* for the purposes of such an application have yet been made[4], but it is clear that oral evidence is intended the be the exception rather than the norm; the former *"may be given on such an application only with the leave of the judge or by his order; and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so."* [5] If a witness does not give oral evidence despite a judge being satisfied that they should, *"the judge may disregard any document indicating the evidence that he might have given."*[6] By necessary implication, therefore, the judge should take into account such a document when he does not conclude that the interests of justice require oral evidence from the witness.

17. Mr Kitson-Walters very properly accepted that, both Defendants having indicated an intention to challenge the sufficiency of the evidence against them, he should set out first how it is that the Prosecution says that a sufficiency exists. I therefore heard from him first and Ms Christopher and Ms Mulligan responded. They spent more time on the test that I should apply in deciding this application than did Mr Kitson-Walters and they advocated for slightly different approaches. He said that, whichever approach I took, there was a sufficiency.

The Sufficiency Test

18. Ms Christopher contends (as she has before[7]) that there is a material difference between the test that is to be applied on a submission of no case to answer made during a trial at the close of the prosecution's evidence (generally that set out by the English Court of Appeal in *Galbraith*[8]) and the test that should be applied on a section 31 application. Per Lord Lane CJ the *Galbraith* test is as follows:

> "(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty – the judge will stop the case. (2) the

[4] as permitted by section 31(7)(c)
[5] section 31(4)
[6] section 31(5)
[7] See the Ruling of Wolffe J dated 17th July 2023 in *Clinton Smith* (Indictment 14 of 2022)
[8] 73 Cr App R 124

> 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 concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness'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 on which the 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."

19. Ms Christopher relies heavily upon the decision of the English High Court in *R (Inland Revenue) v The Crown Court at Kingston (re Robin Wayne John)*[9], wherein it was said (per Stanley Burnton J) that:

> "On an application under [the equivalent of section 31 of the CJPA], it is not appropriate for the judge to view any evidence in isolation from its context and other evidence, any more than it is appropriate to derive a meaning from a single document or from a number of documents without regard to the remainder of the document or the other connected documents before the Court. We reject the argument that the judge was bound to deal with the application under [the equivalent of section 31 of the CJPA] by assuming that a jury might make every possible inference capable of being drawn from a document against the defendant. [The equivalent of section 31 of the CJPA] expressly provides that the judge will decide not only whether there is any evidence to go to a jury, but whether that evidence is sufficient for a jury properly to convict. That exercise requires the judge to assess the weight of the evidence. This is not to say that the judge is entitled to substitute himself for the jury. The question for him is not whether the

[9] [2001] EWHC 581

> defendant should be convicted on the evidence put forward by the prosecution, but the sufficiency of that evidence. Where the evidence is largely documentary, and the case depends on the inferences or conclusions to be drawn from it, the judge must assess the inferences or conclusions that the prosecution propose to ask the jury to draw from the documents, and decide whether it appears to him that the jury could properly draw those inferences and come to those conclusions."

20. Ms Christopher contends that *John* is binding precedent. She further contends that the decision of the local Court of Appeal in *Tonae Perinchief-Leader*[10] is not binding precedent because it was decided *per incuriam*. In that case Sir Christopher Clarke P stated:

> "…there are two stages at which a defendant has the right to challenge the sufficiency of the evidence on what are customarily referred to as *Galbraith* grounds: prior to arraignment under section 31, and at the conclusion of the Crown's case on a submission of no case to answer."

21. Ms Christopher's contention that *Perinchief-Leader* was decided *per incuriam* rests on the fact that *John* was not before the court that decided it. I appeared as Counsel for the Appellant in *Perinchief-Leader* and, to the best of my recollection, it is correct that the judgment in *John* was not relied upon by either side. However, a paragraph of *Archbold* (1–54) upon which Ms Christopher also relies, was put before the Court of Appeal. This text includes the observation that *"it has been said that this test… requires application of the criteria commonly applied on a submission of "no case to answer""* and also substantially adopts the extract from *John* quoted above.

22. In my judgment, *John* is not binding upon me and *Perinchief-Leader* is binding. *John* is a decision of the English High Court (albeit a divisional constitution), which is a court of equal jurisdiction to this Court and not part of the Bermuda court hierarchy. Even if it were binding upon me, it certainly would not be binding upon Bermuda's Court of Appeal, who in *Perinchief-Leader* actually declined to follow a judgment of the English Court of Appeal.

[10] [2020] CA (Bda) Crim 11

23. I have other reservations, in principle, about preferring *John* over *Perinchief-Leader.* The former was an application for judicial review – a mechanism which has since been held not to be available to challenge a dismissal[11]. This does not directly undermine its reasoning, but it means that the standard of review the High Court was bound to apply was a necessarily deferential one[12]. Further, since it has not been possible to challenge the correctness of a dismissal in England since 2006[13], their courts have not continued to debate and opine on the applicable test. By contrast, *Perinchief-Leader* is a comparatively recent decision reached upon a direct challenge to the correctness of this Court's approach to a dismissal application.

24. Fascinating though these finer points of *stare decisis* may be from an academic perspective, I do not agree with Ms Christopher's underlying proposition that there is a meaningful difference between the tests to be derived from *Galbraith* and *John*. I asked her in argument if this boiled down to the absence of a requirement in *John* to take the Crown's case at its highest and she agreed. Superficially this may appear to be inconsistent with *John's* rejection of *"the argument that the judge was bound to deal with the application… by assuming that a jury might make every possible inference capable of being drawn from a document against the defendant"*. However, under *Galbraith* the requirement to take the Crown's evidence at its highest, 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."* In such circumstances the question is whether that evidence is such that a jury properly directed could properly convict on it. That presupposes that, even when the Crown's evidence is taken at its highest, sometimes its inherent weakness, vagueness or inconsistency will still be such that it could not properly support a conviction. I do not view anything said in *John* as being inconsistent with that. To *"view any evidence in isolation from its context*

[11] *R (Snelgrove) v Woolwich Crown Court* [2004] EWHC 2172 (Admin) and *R (O) v Central Criminal Court* [2006] EWHC 256 (QB).

[12] Para. 18: *"this application can succeed only if the Inland Revenue can establish that the Judge's decision was perverse, i.e., unreasonable in the Wednesbury sense."* Para 35: *"it cannot be said that the Judge's decision was perverse or one that he could not reasonably have arrived at. We do not say that we should necessarily have made the same decision."*

[13] The preferment of a voluntary bill of indictment on the dismissed charge(s) remains possible, but that is a fresh application and not a review of or appeal from the dismissal.

and other evidence" or *"derive a meaning from a single document… without regard to the remainder of the document or the other connected documents"* would not be consistent with *Galbraith*. That would not be taking the Crown's evidence at its highest; that would be taking only the highest points of the Crown's evidence.

25. A difference that undoubtedly does exist between an application to dismiss and a submission of no case to answer is that the latter will be determined after the witnesses relied upon by the prosecution (and whose evidence is not agreed) have given oral evidence (and thus been cross-examined). However, that does not seem to me to affect the test to be applied since *"a witness's reliability, or other matters which are generally speaking within the province of the jury"* are not for me to determine, regardless of the stage of proceedings.

26. Having regard to the nature of the evidence in this case, I was further assisted as to the test that I should apply on the dismissal application by the authorities to which I was taken by Ms Mulligan. I will not cite them all, but in *DPP v Selena Varlack*[14] (an appeal from the British Virgin Islands) the Judicial Committee of the Privy Council cited with approval decisions from South Australia and England. In *Questions of Law Reserved on Acquittal (No 2 of 1993)*[15] the Supreme Court of South Australia said (per King CJ):

> "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

[14] [2008] UKPC 56
[15] (1993) 61 SASR 1

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."

27. In *R v Jabber* [2006] EWCA Crim 2694 the English Court of Appeal said (per Moses LJ):

"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."

28. I do not regard either of these decisions as saying anything inconsistent with *Galbraith* (and nor, at least as far as I understand them, did the Judicial Committee in *Varlack*). Instead, like *John,* they further explain how a judge is to assess sufficiency in particular types of cases.

29. In *Arcuri v The Queen*[16] the Supreme Court of Canada specifically addressed the test to be applied by a preliminary inquiry judge and reaffirmed *"the well-settled rule that a preliminary inquiry judge must determine whether there is sufficient evidence to permit a properly instructed jury, acting reasonably, to convict and the corollary that the judge must weigh the evidence in the limited sense of assessing whether it is capable of supporting the inferences the Crown asks the jury to draw."*

The Application to Call Pedro Angono

30. Ms Christopher clearly has questions she intends to ask the prosecution witness Pedro Angono. In support of her application that he be called on this application, she referred me to the House of Lords' decision in *Neill v North Antrim Magistrates' Court*[17]. I did not find the decision of assistance. It dates from a time when a defendant was generally entitled to require a prosecution witness to be called in the course of committal proceedings (a precursor to the application to dismiss). However, the Magistrate hearing the particular committal proceedings had decided to receive the relevant witnesses' statements in evidence because he was satisfied that their makers had refused to give oral evidence through fear. The evidence he had accepted to that effect was not properly admissible for the purpose. Thus the statements were found to have been improperly admitted because the evidence had not been tested by cross-examination.

31. The law has moved on considerably since *Neill.* There is no longer a right to cross-examine a prosecution witness in the course of a pre-trial sufficiency determination. The Legislature cannot have been taken to have made that change for no purpose. In enacting the CJPA, it has not simply shifted that determination from the Magistrates' Court to this Court, but significantly modified the procedure to be followed. Clearly the legislative intention was that

[16] [2001] 2 SCR 828
[17] [1992] 4 All ER 846

sufficiency shall now generally be determined (at this stage) on the basis of written evidence and submissions. It makes no sense, therefore, to read section 31(4) as reproducing a right to require a prosecution witness to give oral evidence. More than a desire to test their evidence through cross-examination must be needed before it can properly be said that *"the interests of justice require"* them to give oral evidence. Based on the submissions made to me, it would appear that the defence may wish to suggest to Mr Angono that (or at least explore with him whether) he is more involved in a conspiracy to import the drugs in this case than they are. Such a line of cross-examination would necessarily take us into territory that is within the proper province of a jury (i.e. the view to be taken of the witness's reliability). I may have been persuaded that the interests of justice did require Mr Angono to be called on this application if the basis for doing so was a demonstrated lack of clarity as to the substance of his evidence. I was not so satisfied and so I refused the application.

The Evidence

32. I shall proceed to summarise what I consider there is evidence to show. In so doing, I am not to be understood to be making findings of fact. That is not my function and this evidence may of course not emerge during the trial, be undermined when it is tested through cross-examination or be contradicted by other evidence which is not currently before me.

33. At approximately 3:35 p.m. on 3rd April 2025, Ms Charley was spoken to by Customs Officer Marshall having disembarked BermudAir flight 2T604 from Toronto. She was asked if she had been to Bermuda before and said that it was her second time. She said that she had come to celebrate her birthday (which is 20th March). She was travelling with a small carry on. She exited the airport via the Green Channel (i.e. without collecting or enquiring after any checked baggage in her name).

34. At 3:40 p.m. the same day, Mr Rousseau approached a Bermuda Customs Secondary Inspection Counter at LFWIA, having disembarked the same flight. When asked if he was a visitor or resident, Mr Rousseau said he was visiting the Islands for 40 nights and staying at the St Regis Hotel. When asked to show proof of his reservation, he said that he did not have one and planned to book accommodation upon arrival. He made a phone call to confirm his

lodging and then showed the Customs Officer (CO Minors) a screenshot on his phone, which included the name "Ondo Angono" and the address "40 Ballast Point Road". Upon exiting the screenshot, Officer Minors noticed a received WhatsApp message: "Just tell them you're staying at an Airbnb".

35. Mr Rousseau was in possession of a suitcase which he placed on the search bench. CO Minors requested that he unlock it. Mr Rousseau asserted that it was not locked. When the officer pointed out a lock, Mr Rousseau claimed that it did not belong to him and requested the Officer to retrieve his actual bag. The airline baggage tag was checked and read "Charley, Claudis". The Officer advised a colleague who retrieved a virtually identical suitcase, which was confirmed to be Mr Rousseau's by reference to its airline baggage tag. These suitcases were both subsequently seized by police and I saw them during the hearing. The rose gold trimmings are of a slightly different hue (the sort of thing that is only likely to be noticeable when the cases are examined together), but the bags are certainly very similar in appearance.

36. No suspected controlled drugs were found in the suitcase with the tag that bore Mr Rousseau's name. It contained some clothing and some medications. When asked his occupation, he stated that he was assisting at a shelter, is unemployed and a recovering drug addict. He also noted a scheduled meeting with his counsellor on 15th April 2025. Another Customs Officer began to keep notes of the questions being asked by CO Minors and the answers received. Their statements as to what Mr Rousseau said are not exactly the same, but according to the notes, when asked what he did for work, he said he was "on disability" and did odd jobs around the shelter. When asked how much cash he came with, Mr Rousseau said, *"Three bucks here, I had some money on my PayPal card, $10 bucks on my credit card, and I have a check coming next week."* When asked how he expected to pay for his expenses in Bermuda for 40 nights, he said that *"I was supposed to have money today that didn't come through on my credit line. There was a mistake, and I had to reapply for it. It takes 3 to 4 days to come in."* He also said that he did not know anyone in Bermuda.

37. The suitcase bearing the name "Charley, Claudis" was not collected by anyone and came to the attention of CO Marshall. An X-ray of it revealed inconsistencies. CO Marshall was instructed not to open the bag and to contact the police. He viewed a passport photo of Claudisha Charley and recognised her as the person he had seen and spoken to at 3:35 p.m. He also identified her on some security camera footage, which has seemingly not been seized or preserved.

38. Police attended LFWIA at 4:55 p.m. on 3rd April 2025. One of those officers was DC Damon Hollis. When he asked Mr Rousseau where he had purchased his suitcase, he said a mall in Toronto. He went on to state that he used all his money to get here and was planning to stay for a month. When asked how he was going to sustain himself he said that he was awaiting a loan of $500 that was to come in a few days from his friend "Wes". He said that he had just over $100 on cards and $10 in cash. Mr Rousseau stated he had used all his savings to purchase his ticket to Bermuda, for which he paid $1200 on his card two days prior. He said he was travelling by himself, had never travelled to Bermuda and did not know anyone here. He said he is unemployed and receives a $1500 subsidy from the Government for disability.

39. The suitcase bearing the name "Charley, Claudis" was examined and found to contain 26 heat-sealed packages of plant material which the police suspected to be and has since been confirmed to be the controlled drug Cannabis. The bag also contained a vial of a waxy substance (the THC) and a number of scented dryer sheets.

40. It was noted, by reference to his passport, that Mr Rousseau had travelled to the Dominican Republic for two days on 18th February 2025 (very shortly after being issued the passport) and again for 9 days on 9th March 2025.

41. At 3:25 p.m. on 4th April 2025, police attended 40 Ballast Point Road in St David's. Ms Charley's passport and BermudAir travel documents were recovered from a room at that address. They included a baggage receipt for $54 dated 3rd April 2025, paid for with a MasterCard ending 0876. A MasterCard in Ms Charley's name ending with those four digits was also seized.

42. Pedro Angono ran an AirBnB at 40 Ballast Point Road. The room from which Ms Charley's items were recovered and another room were booked directly with him via WhatsApp by a person he knows as Amir (who had made previous bookings, initially through AirBnB and then directly). This was the second time that Ms Charley has stayed at 40 Ballast Point Road and other evidence confirms that Ms Charley had previously travelled to Bermuda on one occasion, earlier in 2025. Mr Angono supplied the police with the text of messages that identified the person staying with Ms Charley on this occasion as "Kevin rouseau". He stated that, when Ms Charley arrived on this occasion, he asked about "Rosso" and she told him he had a problem in the airport and did not come.

43. At 5:18 p.m. on 4th April 2025, PCs Roy and Watson were on uniformed duty at LFWIA. Ms Charley's passport image had been disseminated earlier in the day. They approached someone they saw sitting on a swing near the Whistle Frog restaurant, having formed the impression that she was Ms Charley. When asked if she was Ms Charley she said "no". When asked if her name was Claudisha, she said "no". She was arrested and subsequently confirmed to be Ms Charley.

Analysis & Decision

44. Mr Kitson-Walters made two submissions about the virtually identical suitcases which I do not accept. He said that *"the bag produced by Mr Rousseau had a lock on it which should have been obvious to him that it was not his bag"*. Having seen it, the lock in question is not so conspicuous that one could properly say that Mr Rousseau would necessarily have noticed it on claiming the bag. Mr Kitson-Walters made a similar submission in relation to the luggage label on the suitcase not having Mr Rousseau's name on it. I reject that for the same reason. If the Crown had CCTV or other evidence of Mr Rousseau making careful checks when retrieving a suitcase from the carousel, they may have been able to make these points good, but they do not. He otherwise sought to argue that the circumstances as a whole were such that a reasonable jury could properly infer the existence of a conspiracy to import these drugs into Bermuda, to which these Defendants must both have been parties. I agree with that submission.

45. Ms Christopher argued that the documentation seized from 40 Ballast Point Road was not capable of establishing her client's connection to the drugs in the suitcase bearing the name "Charley, Claudis". I disagree. In my judgment the evidence summarised above, is capable of supporting the inference that the suitcase in which the drugs were contained was checked by Ms Charley in Toronto and that she thus caused its contents to be imported into Bermuda. Ms Christopher also argued that there was no evidence that Ms Charley knew that Mr Rousseau was going to be staying at the AirBnB. Again, I disagree. Her answer when Mr Angono asked her about the other guest he was expecting is properly capable of supporting the inference that she was aware of Mr Rousseau and that he was due to be staying at 40 Ballast Point Road with her. Indeed it goes a little further than that because it may reasonably be thought capable of supporting the inference that, despite having left the airport by herself without attempting to retrieve the suitcase she had checked (or any similar suitcase), Ms Charley was aware that Mr Rousseau had had a problem at the airport.

46. Ms Christopher submitted that there was no great significance to Ms Charley's presence at the airport the next day and I agree. Her untruthful denial that she was Claudisha Charley when asked is perhaps more probative, but even without that, I consider that there is circumstantial evidence from which a reasonable jury could properly infer that she must have agreed with someone to import the seized drugs. Put another way, the evidence as a whole is capable of leading a jury to exclude as not reasonably open, the possibilities that such a conspiracy did not exist and that, if it did, Ms Charley was not involved in it. They might very well not do so (in which case they would be bound to acquit her) but they properly could.

47. In my judgment, the case against Mr Rousseau is weaker than the case against Ms Charley, but it is still sufficient. Without the evidence of what he said to the Customs Officers and police and the fact that a room had also been booked for him at 40 Ballast Point Road, I do not think that a jury could exclude as not reasonably open the possibility of him having simply mistaken the suitcase Ms Charley had checked for his own. However, on the evidence as a whole, I believe they could do that. His account of himself and the circumstances of his travel to Bermuda is so internally inconsistent and inherently

implausible that it could properly be rejected. A jury would not be entitled to convict him simply by virtue of having done that, but if satisfied of the existence of a conspiracy to import the drugs, they could infer that he too must have been a party to it. I think a jury would be entitled to conclude that the two virtually identical suitcases, one containing the drugs and one not, must have been part of the plan. They could conclude that this was intended to allow both Defendants to attempt to distance themselves from the bag containing the drugs; Ms Charley by not collecting it herself and Mr Rousseau by disowning it (and seeking instead the bag checked under his name) if he was not able to leave the airport without being subject to an inspection of his baggage.

Conclusions

48. In my judgment there are certainly lines of enquiry that could have yielded evidence which may have strengthened the Prosecution's case against these Defendants. However, the evidence contained in the Record is sufficient for the matter to proceed to trial. When I announced that ruling on 29th September 2025, I nevertheless encouraged the Prosecution to reflect on whether it was necessary/desirable to proceed to trial on an indictment which combined as many inchoate and substantive charges as this one then did. Although I did not conclude that I should dismiss the Count, it did seem particularly odd to me that the Prosecution would simultaneously say that Ms Charley deliberately did not collect her suitcase in Bermuda and allege that she was nevertheless in possession of its contents here. This approach would also significantly complicate the legal directions that would need to be given to the jury, particularly in relation to *mens rea*. Happily, since then, Mr Kitson-Walters has revised the indictment and removed all the substantive counts. However, in doing so he has sought to add two Counts of Conspiracy to Supply Controlled Drugs. Since those counts were not before me during the submissions made on 10th and 11th September 2025, I think it would be open to the Defence now to resist their inclusion (particularly in relation to the THC (0.99 grams)).

Dated this **6th** day of **October 2025**

THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE