

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 53 of 2026**

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

AND

DELMARO JOHNSON

Respondent

BEFORE: **The Honourable Mr. Justice Evans, P
The Honourable Mr. Justice Smith, JA
The Honourable Madam Justice Fraser, JA**

APPEARANCES: **Ms. Cashena Thompson, with Mrs. Kristin Butler-Beneby, Counsel
for the Appellant
Ms. Kristina Saunders, with Ms. Christina Galanos, Counsel for
the Respondent**

DATES: **28 July 2026; 1 September 2026**

Criminal Appeal — No case submission — Vehicular Manslaughter by Dangerous Driving — Dangerous Driving — Negligently Causing Grievous Harm — Whether trial judge erred in withdrawing case from the jury — Section 44A of the Road Traffic Act — Section 271 of the Penal Code

This appeal arises from the ruling of the Honourable Mr. Justice Braithwaite, who upheld the Respondent’s no case to answer submission and directed verdicts of not guilty on charges of Vehicular Manslaughter by Dangerous Driving and Negligently Causing Grievous Harm.

The Prosecution’s case in the court below was that immediately before the collision, an altercation between the Respondent and his passenger occurred. The Prosecution alleged that immediately following the collision, the passenger made a spontaneous admission that she pulled the steering wheel. The Crown further adduced evidence that, during the subsequent police investigation, the passenger denied having done so.

Both the Respondent and the Passenger were thereafter charged as being concerned together.

At the close of the Prosecution’s case, the Respondent made a submission of no case to answer. The Learned Judge applied the ‘but for test’ and upheld the submission.

The Crown appealed the Learned Judge’s decision on 9 April 2026.

Held: Appeal allowed; matter remitted to the Supreme Court for retrial.

The Learned Judge erred in upholding the no case submission in favour of the Respondent.

The central issues for determination by the jury were, who was driving, whether the death resulted from the collision, and whether the vehicle was driven negligently or dangerously.

The Learned Judge's reliance on the 'but for' test was misconceived where the fact of whether the passenger pulled the steering wheel was disputed in evidence. Even if she did pull the wheel, the Respondent's continued driving at excessive speed while engaged in a struggle or distracted by an agitated passenger, may amount to dangerous driving within section 44A (2) of the Road Traffic Act, Chapter 220 in the present circumstances.

It was both significant and unfortunate that the Learned Judge did not address the second count of Negligently Causing Harm in his ruling. On the evidence, if accepted by the jury, it was open to them to conclude that the Respondent was driving negligently. Considering the high rate of speed the Respondent was driving at and the struggle with his passenger, it was foreseeable that an accident could occur.

Director of Public Prosecutions v. Varlack (British Virgin Islands) [2008] UKPC 56; applied.
R v. Galbraith [1981] 1 WLR 1039; applied.

REASONS FOR DECISION

Delivered by The Honourable Mr. Justice Evans, P:

INTRODUCTION

1. This is an appeal against the ruling of the Honourable Mr. Justice Neil Brathwaite ("the Learned Judge"), delivered orally on 31 March 2026, with written reasons delivered on 1 April 2026 ("the Decision"), whereby he upheld the Respondent's submission of no case to answer and directed verdicts of not guilty in respect of the charges of Vehicular Manslaughter by Dangerous Driving, contrary to section 44A (1) of the Road Traffic Act, Chapter 220 and Negligently Causing Grievous Harm, contrary to section 271 of the Penal Code, Chapter 84.
2. The appeal came on for hearing before us on the 28 July 2026 and after hearing submissions from Counsel we allowed the appeal and remitted the matter back to the Supreme Court for trial. At that time, we promised to provide written reasons for our decision. This we do now.

BACKGROUND FACTS

3. The proceedings in the court below arose following a motor vehicle collision which occurred on 21 April 2025 on Carmichael Road, New Providence, involving a 2011 Honda Pilot driven by the Respondent, Mr. Delmaro Johnson, with Ms. Kiara Murphy seated in the front passenger seat, and a Nissan Cube occupied by Mr. Timothy Stubbs ("the

Deceased”) and his son, Mr. Travonne Stubbs. As a result of the collision, Mr. Travonne Stubbs sustained injuries. The Deceased likewise sustained injuries and subsequently died.

4. On 29 May 2025, the Respondent and his co-accused, Ms. Kiara Murphy were jointly charged with Manslaughter by Negligence, contrary to section 293 of the Penal Code, and causing Grievous Harm, contrary to section 270 of the Penal Code. The particulars of the Voluntary Bill of Indictment alleged that the Respondent and Ms. Kiara Murphy, “being concerned together”, drove the Honda Pilot in a dangerous manner, thereby causing the death of the Deceased and grievous bodily harm to Mr. Travonne Stubbs.
5. The trial commenced on 17 March 2026 before the Learned Judge, sitting with a jury. At the commencement of the trial, the Prosecution amended count two from Causing Grievous Harm to Negligently Causing Grievous Harm, but elected not to amend the particulars of the Indictment.
6. The Prosecution closed its case on 26 March 2026. Thereafter, Counsel for the Respondent and Counsel for Ms. Kiara Murphy each provided written submissions in support of their respective submissions of no case to answer, which were supplemented by oral submissions on 30 March 2026. The Prosecution likewise provided written submissions and advanced oral submissions on 30 March 2026, contending that both accused had a case to answer on both counts of the Indictment.
7. Following consideration of the written and oral submissions advanced on behalf of both accused and the Prosecution, the Learned Judge delivered his oral ruling on 31 March 2026, upholding the Respondent's submission of no case to answer and directing verdicts of not guilty in favour of the Respondent. The written reasons for that ruling were subsequently delivered on 1 April 2026.
8. In arriving at his decision, the Learned Judge observed as follows:

“15. In deciding the issue of whether a case has been made out against the defendants, I bear in mind the decision of Galbraith as cited above, and the fact that at this stage the Prosecution is only required to make out a prima facie case against the defendants.

16. In considering this matter, attention must be paid separately to the actual evidence against each defendant. In respect of Johnson, it is not disputed that he was the driver of the Honda Pilot. The Prosecution’s case against Johnson is that, as the driver of the vehicle, he drove at a high rate of speed in a vehicle with an agitated passenger, with whom he had been quarrelling while driving for some distance. The evidence is further that Murphy threw Johnson’s phone from the car, that he turned around to retrieve that phone, and at some point attempted to call the police, while continuing to drive with Murphy in the vehicle. The Prosecution also relies on the evidence from the 919 call in which the caller said the driver was fighting the passenger in the car, and the car then collided with the Nissan Note.

17. Counsel on behalf of Johnson contends that the treatment of the deceased constituted an intervening act, so that there is no evidence that the traffic accident caused the death of Timothy Stubbs. This submission must be summarily rejected, as the evidence of Dr. Bridgewater is that the clots were as a result of immobilization which was itself as a result of the injury sustained by the deceased in the collision. Treatment would not have been necessary were it not for the accident. I am therefore satisfied that it is open to the jury to conclude that the accident was a substantial cause of the death of the deceased.

18. The evidence of Sgt. Hepburn, the traffic reconstructionist, is that the Honda Pilot driven by Johnson was travelling at over 56 mph and made a sudden right turn into the lane occupied by the Nissan Note. The evidence is therefore that the crash was caused by the sudden right turn. If the evidence ended there, Johnson would certainly have a case to answer. But the Prosecution's evidence is also that Murphy grabbed the steering wheel, causing the vehicle to veer into the oncoming lane. The Prosecution therefore suggests that Johnson should have been aware of the danger of such an occurrence, and continued to drive being aware of that danger. I must respectfully disagree, as I do not consider it to be open to a jury properly directed to conclude that it was foreseeable that Murphy would grab the steering wheel in such circumstances, thereby placing other road users and indeed herself in such danger.

19. The Prosecution has also adduced evidence of a 919 call in which the caller said that the driver was fighting his passenger before the accident, and suggests that this means that Johnson was equally at fault. In my view the admissibility of this evidence, while it was not challenged, is questionable. Further, the identity of the caller is unknown, and the veracity of that account cannot be tested. I am therefore of the view that this evidence could be considered tenuous at best.

20. I also see no basis for a conclusion that these defendants were a part of any joint enterprise, as this would require Johnson to be aware, prior to the grabbing of the wheel by Murphy, that she intended to grab the wheel. There is simply no evidence to support this contention. Further, I note the case of *R v Spurge* in which it was held in essence that a driver could not be considered to be driving dangerously so as to be responsible for a collision, when the actual cause of the collision was something beyond the control of that driver. In this case, applying a simple "but for" test, the question is

whether, but for the actions of Murphy, would the collision have happened? The answer must be no, as the Prosecution's evidence is that the crash was caused by the sudden sharp turn."

9. The Director of Public Prosecutions filed a Notice of Appeal later that same day, and on 9 April 2026, an Amended Notice of Appeal was filed advancing the following five grounds of appeal:

- "(a) The Learned Judge erred when he determined that there was evidence before the court to conclude that Ms. Kiara Murphy was the cause of the accident.**
- (b) The Learned Judge erred in applying the "but for" test when determining liability.**
- (c) The Learned Judge erred when he determined that Delmaro Johnson's driving was not the cause of the accident.**
- (d) The Learned Judge erred when he determined that Kiara Murphy was a driver of the vehicle driven on the 21st April, 2025.**
- (e) That in all the circumstances the Learned Trial Judge's decision could not have been supported having regard to the evidence."**

10. The principles which should guide a trial judge in the approach to deciding a no case submission are famously set out in the dicta of Lord Lane CJ in the landmark English Court of Appeal decision **R v. Galbraith** [1981] 1 WLR 1039. Lord Lane established a clear two-limb test for trial judges to follow when deciding whether to stop a criminal trial. According to the first limb, if there is no evidence that the crime alleged has been committed by the defendant, the judge must stop the case and direct an acquittal. Where however, there is some evidence, but it is of a tenuous character (e.g., inherently weak, vague, or inconsistent with other evidence), the judge must assess whether the prosecution's evidence is so weak or discredited that no reasonable jury, properly directed, could safely convict upon it. If it is that weak, the judge should withdraw the case; if a reasonable jury could still properly convict, it remains a matter for the jury to weigh.
11. These principles were addressed by the Privy Council in **Director of Public Prosecutions v. Varlack (British Virgin Islands)** [2008] UKPC 56 where Lord Carswell endorsed the second limb in Lord Lane's decision in **Galbraith** as expressed at page 1063 as **"a canonical statement of the law"**. The learned Law Lord then observed that:

"The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt. The canonical statement of the law, as quoted above is to be found in the judgment of Lord Lane CJ in R v Galbraith [1981] 1 WLR 1039, 1042. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown

as implicating the defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, is equally applicable in cases such as the present, concerned with the drawing of inferences.” [Emphasis Added]

THE EVIDENCE

12. The Prosecution’s case was that, immediately before the collision, an altercation occurred between the Respondent and Ms. Murphy inside the Honda Pilot, during which time Ms. Murphy pulled the steering wheel, causing the vehicle to veer into the opposite lane and collide with the Nissan Cube being driven by the Deceased. The Prosecution nevertheless maintained throughout the trial that, notwithstanding Ms. Murphy’s physical interference with the steering wheel, both accused were criminally liable because they were "concerned together" in the dangerous driving alleged in the Indictment.
13. In support of its case, the Prosecution relied upon the evidence of Police Constable 4074 Wright Jr., who testified that, upon attending the scene and speaking with Ms. Murphy she indicated that she pulled the wheel as the Respondent was fighting her. This was supported by Police Constable 4074 Wright Jr. who gave evidence of his interaction with Ms. Kiara Murphy at the scene, including her statement that she was "**fed up**" with the Respondent and had pulled the steering wheel.
14. It should be noted however, that the Prosecution also adduced Ms. Murphy’s Record of Interview and Statement Under Caution, in which she denied pulling the steering wheel. Accordingly, the Prosecution placed before the jury both Ms. Murphy’s alleged spontaneous admission at the scene and her subsequent denial during the course of the police investigation.
15. The Respondent relied upon the Prosecution’s evidence that Ms. Murphy admitted to pulling the steering wheel and the Prosecution’s reconstruction evidence confirming the Honda Pilot’s sudden movement into the lane in which the Nissan Cube was travelling immediately before impact.
16. The Respondent’s case was that, taking the Prosecution’s evidence at its highest, the Crown had failed to establish a prima facie case capable of supporting a conviction for either Vehicular Manslaughter by Dangerous Driving or Negligently causing Grievous Harm.

THE LEGAL FRAMEWORK

17. Section 44A of the Road Traffic Act, Chapter 220 provides as follows:

“44A. Vehicular Manslaughter by dangerous driving.

- (1) Any person who causes the death of another person by driving a motor vehicle on a road or in a public place dangerously, commits an offence and is liable on conviction on indictment to imprisonment not exceeding ten years.**

- (2) For the purpose of subsection (1), a person drives dangerously if (and subject to subsection (3), only if), having regard to the nature, condition and use of the road, the amount of traffic which is actually at the time or which might be expected to be on the road, and the speed and manner in which the motor vehicle was driven—
- (a) his driving falls far below what would be expected of a competent careful driver; and
 - (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- (3) A person is also to be regarded as driving dangerously for the purposes of subsection (1), if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- (4) In subsections (2) and (3), “dangerous” refers to the danger either of injury to any person or of serious damage to property; and in determining for the purpose of the provisions of subsection (1) what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he would be expected to be aware but also to any circumstances shown to have been within his peculiar knowledge.
- (5) For the purposes of subsection (3), in determining the state of the vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached.”

18. Section 271 of the Penal Code provides:

“Whoever negligently and unlawfully causes grievous harm to any person shall be liable to imprisonment for eighteen months.”

DISCUSSION, ANALYSIS AND FINDINGS

19. It is apparent that, notwithstanding the fact that the Appellant has identified five separate grounds, the pith of the challenge is that the Learned Judge usurped the role of the Jury in making findings of fact and in reliance thereon, dismissed the charges against the Respondent.
20. It is therefore necessary to look closely at the decision of the Learned Judge to observe the issues raised and how they were resolved. Firstly, the Respondent was charged jointly with Ms. Murphy, and they were both charged with both offences. The Crown’s case was that they, being concerned together, drove the vehicle in a manner dangerous in the first count and negligently in the second count. If the jury was satisfied that only one of the defendants was the driver then only that driver could be susceptible to being convicted.

21. The second issue which arose was, whether in fact the death resulted from the traffic accident or some intervening cause. This issue was relevant only to the first count which charged manslaughter.
22. The third issue was whether the vehicle was in fact driven in either a dangerous or negligent manner which resulted in the accident.
23. These are all issues in our view which the jury was required to resolve in order to arrive at a verdict. The role of the Learned Judge in reviewing the evidence was to determine whether there was sufficient evidence on which the jury could rely to arrive at a guilty plea. It was not his role to determine whether the jury would accept that evidence, as it is evident that not because they could, they would do so.
24. In our understanding of the Learned Judge's decision, he took the view that (1) There was evidence on which the jury could find that the accident was a substantial cause of the death of the deceased and (2) that,

“applying a simple “but for” test, the question is whether, but for the actions of Murphy, would the collision have happened? The answer must be no, as the Prosecution's evidence is that the crash was caused by the sudden sharp turn.”

25. It is significant to note that the Learned Judge in his decision did not advert to the second charge of Negligently Causing Harm. This was unfortunate. The evidence was that the Respondent was driving at a high rate of speed and was also fighting with Ms. Murphy. It is clear that if the jury accepted that evidence, it is possible for them to take the view that the Respondent was driving negligently. Further, that in fighting with Ms. Murphy while driving it was foreseeable that an accident could occur.
26. It is also significant that the Learned Judge took the view that the evidence was that the accident was due to Ms. Murphy grabbing the wheel. His conclusion and the apparent basis of his decision was that,

“applying a simple “but for” test, the question is whether, but for the actions of Murphy, would the collision have happened? The answer must be no, as the Prosecution's evidence is that the crash was caused by the sudden sharp turn”. [Emphasis Added]

27. The difficulty with this is that although the Prosecution produced witnesses who testified that Murphy indicated that she pulled the wheel, the Prosecution also adduced Ms. Murphy's Record of Interview and Statement Under Caution, in which she denied pulling the steering wheel. Accordingly, the Prosecution placed before the jury both Ms. Murphy's alleged spontaneous admission at the scene and her subsequent denial during the course of the police investigation.

28. In our view the question as to whether Ms. Murphy did in fact pull the wheel was one that had to be determined by the jury. The Learned Judge fell into error in applying the ‘but for’ test in circumstances where the factual basis had not been determined.
29. Moreover, even accepting that Ms. Murphy may have pulled the steering wheel, the continued operation of the vehicle at a speed above the limit while engaged in a struggle, or otherwise distracted by an agitated passenger, could in the circumstances amount to dangerous driving within the meaning of section 44A (2) of the Road Traffic Act, Chapter 220 (see paragraph 17 above for section 44A (2) of the Road Traffic Act).

DISPOSITION

30. It was for the aforesaid reasons that we quashed the order of the Learned Judge which directed an acquittal of the Respondent and ordered that the matter be remitted to the Supreme Court for retrial.

The Honourable Mr. Justice Evans, P

The Honourable Mr. Justice Smith, JA

The Honourable Madam Justice Fraser, JA