



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

P.O. BOX 633,

KINGSTON,

JAMAICA

August 15, 2016

MEDIA RELEASE

RE: REPORT OF AN INTERVIEW WITH FORMER ASSISTANT COMMISSIONER OF POLICE, LESLIE 'LES' GREEN PUBLISHED BY THE MIAMI HERALD ON THE 14TH OF AUGUST 2016 ON ALLEGATIONS TOUCHING AND CONCERNING A PUBLIC FIGURE IN JAMAICA

The captioned story published in the Miami Herald was brought to my attention by members of the local media. I had sight of this story yesterday and also observed a limited reportage of this story on the electronic media. I will only comment on references made to my office and seek to add clarity without going into the content of this matter.

On April 1, 2011 - a file was forwarded to the Office of the DPP by former ACP Leslie 'Les' Green pertaining to certain allegations made by two(2) civilians A and B about a known public figure in Jamaica. The Office of the Director of Public Prosecutions guidance and assessment of the material on the file pertaining to a possible prosecution was canvassed. We followed the usual operational protocols within the office and a team of 2 senior lawyers did a preliminary assessment and prepared a detailed legal opinion for discussion with me. After a thorough review, I concurred with their legal opinion and we prepared a seven(7) page document giving our best legal advice and recommendation based on our assessment of the material and the relevant law. This was sent to former ACP Les Green on June 4, 2011.

The following recommendations in brief, were made as follows:

1. The two civilian witnesses A and B as a matter of law would fall into the category of witnesses with an “**interest to serve**” and therefore as the case law has stated, it would be desirable for corroborative material to be obtained by the police investigators. If not obtained then it would give rise to possibly successful significant challenges that could be mounted to their credibility by any defence counsel. **It was clearly stated that for any successful prosecution the standard of proof to be achieved is beyond a reasonable doubt.**
2. We indicated different areas in the allegations contained in the statement that would need this independent corroborative material .
3. Any allusion to the public figure status of the target of this investigation was done in a particular context in the document such as to highlight the fact that these two civilian witnesses who were allegedly former associates of this target may lack enthusiasm in maintaining their stories during a lengthy trial process in the full glare of what would be a high public interest matter. This concern is borne out of experience as prosecutors in some high profile matters in Jamaica which is a small island. It was pointed out that the investigation had to be meticulous and thorough and that it was critical that cogent credible material be gathered which is capable of corroborating aspects of the two civilian witness' statements given the nature of the allegations.
4. We made it quite clear **in writing** and in subsequent discussions with Mr Les Green and his investigators, that we respect and recognise the **primacy** of the Jamaica Constabulary Force in charging and arresting any target of any investigations whether they agree or disagree with the prosecuting authority's recommendations. This is recognized in the Jamaica Constabulary Force Act, in the Constitution and in recent case law from the Privy Council case of *The Commissioner of Police and Another vs. Steadroy C.O.Benjamin [2014] UK PC 8*. In fact, in paragraph 5 of my written letter to Mr Les Green of June 4, 2011, I stated “**it is always within the purview of the Jamaica Constabulary Force under the Constabulary Force Act and the Constitution of Jamaica -**

- **if in their view there is sufficient material to raise a reasonable cause to suspect an offence has been committed: and**
 - **if they believe they have sufficient material to take any matter to Court;**
- In those circumstances they can proceed to lay criminal charges”.**

I have noted in the Miami Herald story, that it outlined that “Leslie ‘Les’ Green.....*found enough evidence where he recommended that prosecutors charge the politician*”. This was a strange statement because it was always open to him to arrest and charge any target of any investigation **including this one without recourse to the ODPP. The prosecutor has no power to arrest and charge anyone, as that is the sole purview of the police investigators.**

Only Mr Green, the chief investigator in this matter can explain **why he did not proceed to arrest and charge the target of this investigation if he was convinced that he had sufficient material so to do rather than send this file to the Office of the DPP or await our consideration of the contents of the file.** On December 12, 2011 the Office of the DPP received additional material from Mr Les Green taking into consideration our previous recommendations outlined in correspondence dated June 4, 2011.

5. My team and I, considered this additional material, and also received information that potential witness A who had been on the Witness Protection Programme could not be located by the police to give evidence in another matter and the accused in that matter was therefore discharged by the Court. The other witness B, we were informed, was reportedly outside the jurisdiction and his whereabouts were unknown.

The arrangement for protecting and keeping track of witnesses is not the purview of the prosecutor, but it is a function of the investigator.

6. My team and I convened a meeting with Mr Green and his investigators to discuss and review the material that was available in a bid to resolve issues surrounding the cogency of the material and the nexus to the target of the investigations of the allegations and to discuss whether there was any viable prosecutable case in respect of any offence. We had also been provided with several other case files pertaining to former associates of witnesses A and B as well as the target of the investigation. This material among other things, provided innuendo and hearsay which in our view as prosecutors, did not offer corroboration as a matter of law, and would not have been helpful to prove the case.

7. It was also our opinion that if this matter went forward in the absence of witnesses A and B, it would not be an appropriate case to make an application to the Court for the statement of these civilian witnesses to be admitted into evidence. The Crown would have had to disclose to the defence all the material it would be relying on and we would have been obligated to produce the civilian witnesses A and B in order for their credibility to be tested in cross examination by defence counsel. The case law on these issues is quite clear and **it would have been unethical as prosecutors to attempt to mount a case in circumstances where there were obvious significant credibility issues surrounding witnesses A and B.** These issues would then place the prosecution's case in jeopardy of succumbing to a successful application by the defence that the trial should be stayed because it would be an abuse of the process of the court for it to proceed as it would be unfair to the defendant not to be able to test the credibility of these witnesses given the nature of the allegations and the fact that the witnesses are persons with an interest to serve.

8. All this was explained to the investigators and Mr Green with the caveat that the issue of arresting and charging the target would always remain with the police. I appointed one of the Deputy Director's to continue to liaise with the police in other connected matters as well as this matter if the need arose. To date, those companion matters were dealt and completed in the courts, but, **we have not received any further material for our consideration in this matter and only the police can inform on the status of the investigation and whether it is still ongoing or has it been closed.**

CONCLUSION

I have sought to explain the Office of the DPP's role in this matter without going into any content in order to assure the public, that contrary to the impression that this article was seeking to convey, we have at all times acted in the highest traditions of prosecutorial ethics.

It is unfortunate that Mr Green in his recounting to the Miami Herald, may have suffered from a lapse of memory here or there, causing him to be less than fulsome. We certainly are bound by rules of confidentiality where ongoing investigations by law enforcement are concerned. A viable prosecution can only be based on credible, cogent, reliable evidence which usually comes from the mouths of witnesses who are available or documentary material. **The standard of proof in criminal proceedings is beyond reasonable doubt.** It is unethical for any investigator or prosecutor to initiate prosecutions and mount a case against anyone where the material is below the standard required; this is an objective standard.

The target of any investigation, regardless of status, occupation, antecedent, or gender is always entitled to due process of law irrespective of who that individual may be. Jamaica observes and respects the rule of law which obligates us at all times in making our decisions and assessing any matter to recognise the rules of evidence and always to observe high principled prosecutorial ethics in the conduct of our core functions.

Paula V. Llewellyn, QC.

Director of Public Prosecutions