1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3
4 **INDICTMENT NO: 0025/2019**
5
6
7 **REGINA**
8
9 **v.**
10
11 **J'DANTE MARK RAMOON**

12
13
14 **Appearances:** **Ms. Kerri-Ann Gillies for the Crown**
15
16 **Mr. Rupert Wheeler of Samson Law for the**
17 **Defendant**
18

19 **Before:** **Justice Frank Williams (Actg.)**

20

21 **Judge Alone Trial:** **2019: September: 23, 25, 26, 27, 30. October: 1,**
22 **2, 3, 4.**

23
24 **Delivery of Decision:** **29th November 2019**
25
26
27 **Delivery of Reasons for Decision:** **6th April 2020**
28

29

30 **HEADNOTE**

31 ***Criminal Law – Attempted Robbery*** *– Trial by Judge Alone.*
32

33

34 **VERDICT JUDGMENT**
35
36

37

1. The defendant, J'Dante Mark Ramoon, is charged with the offence of Attempted Robbery, contrary to s.242 of the ***Penal Code*** (2019 Revision). The particulars of the offence are that on the 18th day of February 2019, the defendant attempted to rob A & Z Mini Mart, using force.

2. Section 242 of the ***Penal Code*** states as follows:

> "*Robbery*
>
> *242. (1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.*
>
> *(2) A person who commits robbery is liable to imprisonment for life.*"

3. It is important, too, to appreciate why he is charged pursuant to the section that charges the substantive offence, when he is alleged "only" to have attempted to commit it. That reason can be seen in s.319 of the said ***Penal Code***. That section (so far as is relevant) reads as follows:

> "***Punishment for attempt to commit an offence***
>
> *319. (1) A person who attempts to commit an offence, commits an offence and is, unless any other punishment is provided in this Law or any other law —*
>
> ***a.*** *liable on conviction on indictment if the offence attempted is murder or any other offence the sentence for which is fixed by law, to imprisonment for life;*
>
> ***b.*** *liable on conviction on indictment if the offence attempted is indictable but does not fall within paragraph (a), to any penalty to which he would have been liable on conviction on indictment of that offence; and*
>
> ***c.*** *liable on summary conviction if the offence attempted is triable either way to any penalty to which he would have been liable on summary conviction of that offence*
>
> *(2) A person charged with an attempt to commit an offence shall be charged under the section, whether of this Law or any other law, creating the offence under which he would be charged as if the charge was of the complete offence.*

(3) *A provision in any law, including this Law, as to the consequences which may or shall follow conviction for any offence or as to the procedure or any other matter applicable where a person is convicted of an offence, shall apply equally where a person is charged or convicted of an attempt to commit the offence.*" (*Emphasis added*)

THE LAW

TRIAL BY JUDGE ALONE:

4. I recognise that sitting as a judge alone I need to direct myself both as to the law and as to my general approach in assessing the evidence and resolving the issues in the case. I acknowledge that I am required to advise myself on the applicable principles of law, give myself the appropriate warnings as necessary and state clearly the reasons for my findings. I also bear in mind the guidance given by Rowe, J. in ***Richards v. R***[1] as follows:

> *"When a trial judge sitting alone has advised himself as to the applicable principles of law and given himself any necessary warning, he must indicate clearly in his judgement his reasons for acting as he did, in order to demonstrate that he has acted with the requisite degree of caution in mind and he has therefore heeded his own warning. No specific form of words is necessary for this demonstration, what is necessary is that the judge's mind upon the matter should be clearly revealed."*

5. Additionally I note and apply the guidelines set out by the Cayman Islands Court of Appeal (CICA) in ***R. v. Dave Kennedy Whittaker***[2] and in ***Randy Martin v. R***[3]. In ***Whittaker***, the Court adopted the words of Lord Lowry LCJ in ***R v. Thompson***[4] where at page 83 the Learned Law Lord said:

[1] 2001 CILR 496
[2] 2010 (1) CILR 29
[3] CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)
[4] 1977 NI 74

> *"While on the subject I might say a word on the duty of the judge when giving judgement in a trial under the 1973 Act. He has no jury to charge and therefore will not err if he does not state every legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant aspect of the law or to give a full and balanced picture of the facts for decision by others. His task is to reach conclusions and to give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal, it may be seen how his view of the law informed his approach to the facts."*

6. In the case of ***Martin*** the Court adopted the reasoning of Lowry LCJ in ***R. v. Thain***[5] as follows:

> *"From these cases the following guideline may be discerned. The judge sitting in a criminal case without a jury, in rendering his decision and giving his reasons for so concluding, is not required to review every fact and to detail each argument on which the prosecution and defence rely as if he were summing up to a jury. The judge must set out the conclusion reached and make clear the reasons for arriving at that conclusion. He is required to have regard to any difficult or unusual points of law and to show how those points of law have in any way impacted the conclusion that he has reached."*

7. In summary I acknowledge that my task is to make findings, giving reasons in support of such findings. It is not necessary to review every fact in the case or to set out the detailed arguments as would be appropriate in a jury trial.

[5] [1985] NI 457

1 **SUMMARY OF THE EVIDENCE - THE CROWN'S CASE**

2 **WITNESSES**

3 *Ms. Danecia Olivia McLaughlin*

4 8. The first witness for the Crown was Ms. Danecia Olivia McLaughlin. She gave evidence
5 of being employed to the owner of the mini mart, Ms. Zelma Bodden, on the day in
6 question and as to a shift system in operation there. There were two shifts: one from 9
7 a.m. to 5 p.m. and the other from 5 p.m. to 9 p.m. On the day in question she worked on
8 the morning shift – that is from 9 a.m. to 5 p.m. As a part of her duties she would wipe
9 the glass counter near to the cash register. To the best of her memory and although she
10 could not give the specific time, the last time that she wiped the counter was about 5
11 minutes before the shift changed at 5 p.m. She handed over responsibility for the store
12 to Mr. Herapersaud Jairam and left after she did so.
13
14 9. It was suggested to her in cross-examination that she could not remember the times at
15 which she wiped the counter. She maintained however that, although she might not be
16 able to remember precisely when she wiped the counter, she was sure that she had wiped
17 it a few minutes before closing time.
18
19 *Mr. Herapersaud Jairam*

20 10. The next witness was Mr. Jairam. He gave evidence about taking over the store from
21 Miss Danecia McLaughlin around 5 p.m. on the day in question. He too gave evidence
22 about wiping the counter several times during his shift – the reason for this being that
23 when persons put items that they wish to purchase on the counter which is made of glass,

1 it soils it and so it is necessary to wipe it. He could not remember the exact times at
2 which he wiped it, but is certain that he wiped it at least two times on the day in question.
3
4 11. He testified to a man entering the store around 8:30 on the night in question. The man
5 was wearing blue jeans, a hoodie and all that he could see of his face were his eyes. In
6 his right hand the man brandished an object which was covered by a black piece of cloth.
7 He pointed the object at him, hit the counter with it and said: "*put the money in the bag*
8 *or I'll shoot*", throwing or handing to him a white plastic bag that he had in his left hand.
9 Mr. Jairam took up a metal awning handle and hit the man with it. A struggle ensued
10 and the man later ran from the store towards the back of the building and disappeared.
11
12 12. Mr. Jairam called the police. The police came and processed the scene and took the items
13 left behind by the man who attempted to rob the store. He gave a description of the
14 clothes that the man was wearing.
15
16 13. In cross-examination he insisted that, although he could not remember exactly how many
17 times he had wiped the counter on the day in question, he was certain that he had wiped
18 it at least twice. It was suggested to him that he had not mentioned that fact (of his wiping
19 the counter) in the written statement that he had given to the police. His answer was that,
20 if he had not, that would have been due to the fact that he might not have considered it
21 important at the time.
22
23 14. He showed the police the Closed Circuit Television (CCTV) footage of the incident, first
24 on his telephone, then on a laptop. The police returned to the store about two days later
25 and downloaded the footage. Apart from the police, no one was allowed to enter the
26 store after the incident, until the police had finished processing the scene and the store

1 opened for business the following day. The police left the store, perhaps after 12
2 midnight.
3
4 *Detective Constable Sheldon Rennalls*

5
6 15. The next witness for the Crown was the investigating officer, Det. Cons. Sheldon
7 Rennalls. He testified that, on the evening in question, he was attached to the Drugs and
8 Serious Crimes Task Force which deals with serious crimes in the Royal Cayman Islands
9 Police Service (RCIPS). He overhead a transmission on the police radio, and, as a result,
10 left his base in the Bodden Town area for the location of the attempted robbery. There
11 he saw other police personnel who were already on the scene. They introduced him to
12 the complainant Mr. Jairam. He observed a K9 team arrive and a dog and its handler
13 attempt to track the would-be robber. He also remained on the scene doing general
14 investigative work and also observed the Scenes of Crime Officer (SOCO), Tommy
15 Taylor, arrive at the scene and take photographs of the scene, of fingerprints and process
16 the scene generally.
17
18 16. During the course of his investigations, he received certain information from the
19 fingerprint expert, Ms. Hayley Noddings. As a result of the information from the expert,
20 he checked the RCIPS database and obtained a search warrant to search the home of the
21 defendant located at 23A Brushy Avenue, in the Swamp area of Georgetown, Grand
22 Cayman. There the warrant was executed and the following items seized:
23
24 **i.** a black polo-type shirt (found in the oven section of a stove on the outside
25 of the "premises" – clarified to mean "house");

1 **ii.** a pair of blue jeans pants, with a belt with a white tag on the inside, in the

2 loops (the jeans were also found in the stove);

3 **iii.** a black "hoodie" jacket;

4 **iv.** a pair of black Vans shoes.

5 These items, he testified, fit the clothes being worn by the would-be robber in the footage

6 from the CCTV.

7

8 17. Through this witness were tendered the following exhibits:

Exhibit #	Item	Details
1A	CD 1 of 2 of the CCTV footage	
1B	CD 2 of 2 of the CCTV footage	
2	Six (6) still photographs taken from the CCTV footage	These show: • the suspect on the outside of the mini mart opening the glass door, about to enter, with a piece of cloth on his right hand, covering an object; • the suspect placing a stone in front of the door he had opened to prevent it from closing; • The inside of the mini-mart; • Contact between the complainant and the suspect (image #9) • The suspect with a white plastic bag in his left hand at the counter (image #8 in particular).
3	Four (4) photographs of items of clothing taken from the defendant's home	These show: • a black polo-type shirt removed from inside a stove just on the outside of the house; • a blue jeans pants with a black belt with a white tag in the loops – also removed from the stove; • a pair of black Van's Off the Wall sneakers; • a black "hoodie" pullover – taken from a room the suspect said that he sleeps in sometimes

18. Officer Rennalls testified that the items seized had a special significance for him, in that they appeared to match the items of clothing that the would-be robber in the video was seen wearing. Officer Rennalls pointed out in the video, certain parts of the footage that he believed were of particular significance to this case. These included:

a. the point at which the suspect, using his left hand, handed the white plastic bag (which he had removed from his pocket) to the complainant;

b. that it could be seen that the suspect was not wearing any gloves; and

c. when the suspect placed his left hand on the counter, whilst not wearing gloves (this occurred around 8:34:26 on the time stamp on the video).

GRAND COURT - CAYMAN ISLANDS

19. As is standard police procedure, the defendant was fingerprinted. This was done by Auxiliary Constable Courtney Williams when the defendant was taken to the Detention Centre.

20. Officer Rennalls said that he had watched the video several times - both at regular speed and slowed down. This enabled him to see the details on the items of clothing worn by the suspect.

21. In cross-examination, he stated that his role as investigator is to "find the truth". He has to go wherever the investigation takes him and he approaches all matters with an open mind. He agreed that viewing more of the footage could have assisted him in ascertaining whether the counter had been wiped; and, if so, when. It might also have assisted in finding out when the defendant had last been in the shop. He said he was not the one

who recovered the footage and that it was Det. Rodriguez. The CCTV machine records about a month's footage on it.

22. Officer Rennalls said he did not carry out any research on the type of the belt found in the jeans. He agreed that blue jeans are incredibly common and he confirmed that he did not go to any belt manufacturers and conduct a survey. According to his analysis, the probability of finding that type of belt, in blue jeans, with similar items of clothing, is limited.

23. In re-examination, he said it was not incredibly common to find all the items of clothing together – especially the items together in the stove. He was asked whether the defendant told him that he had entered the store on the day of the attempted robbery and he said no. He did not consider it necessary to view the footage for the whole day based on that statement of the defendant and the statement from Miss McLaughlin.

Scenes-of-crime officer (SOCO) Tommy Taylor

24. SOCO Tommy Taylor is assigned to the Scientific Support Branch of the RCIPS and has been so assigned since 2011 – that is, some 8 years at the time of this trial. Before that he had worked as a SOCO in Jamaica for some 6 years. He has received training in crime-scene processing and photography from the International Crime Scene Investigators Association over a one-year period in Jamaica. That training included crime-scene processing; dusting for fingerprints; photographing the fingerprints; processing the prints; retrieving DNA samples and training in other forensic areas. Since his RCIPS assignment in the Cayman Islands, he has processed over 1500 crime scenes. In Jamaica a rough estimate of the crime scenes he processed would be 2000. Of those

1 scenes in the Cayman Islands, about 90% would have included fingerprints: that is,
2 dusting for prints and processing scenes for prints.

3
4 25. He remembered the 18th day of February 2019. He attended the crime scene at Godfrey
5 Nixon Way, where he spoke with Det. Cons. Rennalls who was there with other police
6 personnel. DC Rennalls pointed out some items to him and gave him some information.
7 He also spoke with the complainant. He made observations of the scene and also made
8 notes. In particular, he observed a black piece of cloth by the entrance to the store and a
9 white plastic bag by the cashier counter. He identified the store he went to in the video
10 he was shown. He photographed the inside and outside of the store and collected both
11 the black cloth and the white plastic bag for processing. He did so before viewing the
12 footage on the complainant's cell phone.

13
14 26. In the footage, he identified that the suspect was not wearing gloves and was touching
15 the counter with his bare hands – in particular his left hand and what appeared to be the
16 "writer's palm". On exhibit A, he identified this as occurring around 8:34:25 p.m. He
17 also observed the suspect put a white plastic bag on the counter top.

18
19 27. He said that, having observed that particular bit of the footage, he processed the area of
20 the counter top for fingerprints –targetting the area the suspect touched.

21
22 28. He described the process by which he processed the scene – which was how he was
23 trained to do it, and which process he has used in the 90% of the 1500 crime scenes he
24 has processed for fingerprints. In essence he used a brush to apply a black powder to the
25 mark. The black powder creates contrast by adhering to the amino acid that is left behind
26 when a mark is made. He observed ridge details or impressions that could have been left
27 by fingers or palms on a surface. He took photographs of them and also used clear tape

to lift the impressions he had seen and put them on a white backing card. He also swabbed the awning stick that figured in the tussle between the complainant and the suspect for traces of deoxyribonucleic acid (DNA), but nothing useful was found. The black piece of cloth was not processed.

29. His other main evidence concerned the white plastic bag that he had taken from the scene and locked in a secure locker to which only he had the key. He later removed it and took it to the SOC Lab where he superglued it by applying heat to the glue in an enclosed chamber. This, he said, causes the fumes to adhere to any fingerprints that might be on the item. He then applied a particular dye to the bag, and, after 10 seconds, rinsed it in water to remove the excess dye. He then dried the bag in a fume hood and then used a light source to examine it for fingerprints. He identified and photographed a number of fingerprints on the bag. All the prints were later sent to the fingerprint department for analysis.

30. Through this witness Exhibit 4 was tendered into evidence – that is a CD/DVD of photographs taken at the scene and of the fingerprints. He had a discussion with the fingerprint expert before photographing the images on the plastic bag.

31. In cross-examination, he said he did not know for sure if anyone, apart from the suspect and the complainant, had touched the plastic bag when he got to the scene. He could only go on what he was told and no one admitted it when he enquired. He never took elimination fingerprints from the officers on the scene. He would only have done so if he had had reason to believe that they had touched items or areas from which he had pulled prints.

1 32. The process of obtaining prints from the bag is a mechanical one and the temperature
2 (which is not high) is pre-set. The temperature is just enough to agitate the glue to release
3 fumes. The process cannot damage the quality of the prints, to his knowledge. He does
4 not accept that exposure to glue is more likely to damage the print. He has done the
5 process hundreds or thousands of times and he had not experienced distortion of the print
6 caused by fumes. When the dye is applied, it just causes parts that are latent to become
7 more visible to a forensic light source.
8
9 33. He could not take someone's prints and put them elsewhere. No method can make it
10 somebody else's.
11
12 34. When taking a print, if too much pressure is applied, that might cause a print to become
13 distorted. There is not a set amount of pressure required to be applied.
14 35. When shown the exhibit TT7, he said that that was not his lift; but a photocopy and you
15 could not say from a photocopy how clear the original is.
16
17 36. The witness said you cannot age a print.
18
19 37. He agreed that the placing of tape on the print, if not done properly, can affect the quality
20 of the print – causing bubbles that could damage ridge details. It can cause defects; but
21 he has never seen slippage causing it to smudge.
22
23 38. From the angle at which he viewed the image, it appeared to be the writer's palm of the
24 suspect that he placed on the counter; but he cannot definitively say that it was the
25 writer's palm.
26

39. The decision not to test the black cloth found on the scene was a question for his supervisor to answer.

40. The front door handle was never examined for DNA, as it is a public space handled by many persons. It was tested for finger prints; but nothing found.

41. In re-examination he said that the door handle was processed for finger prints; but nothing useful was seen.

Auxiliary Constable Courtney Williams

42. The statement of this officer was, by agreement, read into evidence.

43. It simply speaks to the taking of the finger prints of the defendant around 20:44 hours on the 28th February 2019 at the Detention Centre.

Hayley Noddings

44. The next witness for the Crown was Ms. Hayley Noddings. Ms. Noddings gave evidence that she is a fingerprint expert employed to the RCIPS and has been so employed there for the past seven (7) years. Before that, she worked with the British Transport Police as a fingerprint examiner at first and then as an expert, after she had qualified to become one.

45. Her primary role in the Fingerprint Department of the RCIPS is to analyse fingerprint ridge detail from crime scenes and compare them to prints from any given suspects and search against the Cayman Automated Fingerprint Identification System (CAFIS) to see whether identification can be established.

46. She has completed and passed the National Policing Improvement Agency Fingerprint Programme. That consists of formal training courses, combined with on-line training from a fingerprint expert trainer over a period of roughly four years. She also holds a foundation degree in fingerprint identification from Teeside University and has completed multiple training courses in relation to fingerprints in the US and UK to keep up with what she learnt in her initial training. All of these are listed in her curriculum vitae, which was admitted into evidence as Exhibit 5.

47. In her years of service with the RCIPS she has carried out fingerprint analysis on, she estimates, hundreds of thousands of different fingerprints and different marks from crime scenes; and has analysed and compared them.

48. The identification method she uses is classed: Analysis; Comparison; Evaluation & Verification (ACE-V). She described the various stages of that process as follows: In the analysis stage, she looks at the unknown mark to determine what level of detail is in the mark: the friction ridge detail itself – what the mark has been developed on and any distortion within the mark etc. Within the comparison stage, she compares the unknown mark to an identified finger or palm area to try to establish a coincidence sequence of characteristics. She would then, in the evaluation stage, evaluate everything she analyzed and compared, to consider whether the unknown mark was made by the same person who made the known impression. At the verification stage, it is then independently verified by at least one further expert who will complete their own analysis, comparison and evaluation to see whether her evaluation will be verified.

49. Through her, were put in evidence the following:

i. Exhibit 6: original lifts labelled: TT4, 5, 6 and 7;

ii. Exhibit 7: a fingerprint form in the name J'Dante Mark Ramoon; and

iii. Exhibit 8: a visual aid created by her to assist the court and make it easier for her to demonstrate her findings in relation to three prints received from SOCO Tommy Taylor.

50. She identified TT7 to be the left palm of the fingerprint form in the name of J'Dante Mark Ramoon. She found 25 characteristics in agreement, with none in disagreement; but she only showed 10 on the visual aid. She also identified TT3C with his right little finger and TT3E with his right middle finger, respectively. For TT3C she found 14 characteristics, with no areas of disagreement. There were also no areas of disagreement with TT3E.

51. That is the method in which she received training. It is the standardised method within the fingerprint community since 2001. She carries out her role as a fingerprint expert in an impartial manner.

52. She explained what friction ridge detail is by saying: it is the skin found from the tip of the finger to the base of the palm, or top of the toe to the heel of the foot. It forms between the 5th and 24th week of foetal life. During this time, a biological process of random and differential growth makes each area of friction ridge skin unique. All friction ridge skin is made up of ridges – and those ridges begin as individual ridge units. It is the forming of these units that make fingerprints unique.

53. The verification process was carried out by Clare Ryman-Tubb. She did not discuss her findings with her.

1 54. Ms. Noddings was cross-examined extensively. The thrust of her cross examination centred on challenges to:

i. the reliability of the ACE-V method of fingerprint analysis;
ii. the extent to which she followed even that methodology;
iii. the extent to which she might fairly be regarded as an expert; and
iv. the possibility of her having used poor-quality prints to work with, resulting in unreliable conclusions, and so on.

55. The fingerprint report that she prepared as an expert is an entire report of her conclusions. Her findings left her "*in no doubt whatsoever*" about her conclusions. She said the unknown impressions match the known impressions to the exclusion of all other people. She said further that there is no one else who could have made the impressions in TT7, TT3C and TT3E other than the person who made the impressions on the fingerprint form. She said no two persons have ever made the same print – in the hundreds of years that fingerprinting has been used.

56. She accepted that, as fingerprinting is a human activity, there is a possibility of making an error in the process – and said that that was why the verification process exists – to counter that. She did not accept that she had made an error in this case.

57. She and the verifier did different analyses and came to the same conclusions. The verifier did not look at her analysis. The verification process is a step taken to lessen human error. She followed the methodology that is standard within fingerprinting. Her conclusions are based on her experience, knowledge, many, many years of history and papers written on fingerprint identification.

58. She accepted that fingerprint identification only works if people have unique fingerprints.

59. No two persons have ever been found to share the same fingerprints. Fingerprint identification using the ACE-V method is considered to be "practically infallible". Each country has its own fingerprint system, with millions of fingerprints on them and no two have ever been found to be the same. There is no database that holds all fingerprints in the Cayman Islands – only those of persons that have been arrested. She believes in the practical infallibility of fingerprinting and that no two individuals have the same prints.

60. She said that she is not a member of the International Association for Identification. She is somewhat familiar with that organization. She is not aware of a 2009 resolution from them. Most of her training is UK-based and that association is predominantly United States-based.

61. With her training, ~~and~~ knowledge and methodology, she has no doubt about her evaluation and conclusion. She has never made a comparison identification mistake. The verifier would not see what she has done, in order to avoid any possibility of bias. One research paper said the details to be identified to make an identification range between 35 and 175.

62. Several issues can affect the quality of the print. The quality and size of the print influence the ridge detail. If an impression is made twice by the same finger, the finger ridge detail would be the same. A scar could affect it. Residue on fingers could affect it - so too, could sweat, oil, blood; these can affect an examiner's ability to read the sample. The degree of pressure with which the impression is made can affect the shape of the print, as the skin is elastic. One has to allow for movement in the skin to make the

comparison. However, pressure will not change the finger ridge characteristics. They might appear closer together; but that would not change the formation. She relied on ridge endings and bifurcations.

63. She also accepted that the surface of the material on which the unknown mark is left could also change the quality of the print. She was asked whether a crumpled plastic bag was an ideal surface and she replied that, in fingerprinting, there is no such thing as ideal. The marks on the plastic bag in this case were sufficient to make a comparison and identification. She rejected the suggestion that the ACE-V method was not specific enough to qualify as a validated method of fingerprinting, and she said several times that that is the method accepted in this and other courts. She also stated that she used the method she is required to use. She said that if she had kept better documentation that may assist in court; but not in her analysis. She said that she is an expert, with an overriding duty to disclose information to the court.

64. In relation to the person who verified her identification in this case, she stated that, other than emailing her and seeing her CV, she has never seen or met her. She knows that the verifier was a fingerprint expert employed to the RCIPS before she (herself) became so employed.

65. ACE-V uses a non-numeric system; but her work is examined by another - a minimum of one – as is accepted. She said she is not influenced by knowing who the prints come from and explained that her job is to look at the finger-ridge detail.

66. She was also cross-examined about the decision ***R v Smith (Peter)***[6], and in respect of information in several journals.

67. Through this witness, Exhibits 9 and 10 were admitted into evidence – exhibit 9 being her report; and exhibit 10, being ~~her~~ a five-page document indicating the marks she identified.

68. At the close of her evidence, exhibit 11A (the CD of the defendant's interview by the police) and 11B (the transcript of that interview) were admitted into evidence.

Claire Elizabeth Ryman-Tubb

69. The next witness for the prosecution was Ms. Claire Elizabeth Ryman-Tubb, the person who verified Ms. Noddings' work. She is an independent fingerprint expert, self-employed in the UK since 2007. She began her career in 1992 as a trainee in fingerprinting. She did a five-year training programme and in 1998 she did an advanced fingerprint course. Her résumé was admitted into evidence as exhibit 12.

70. Her role in this case was to verify some individualizations done by Ms. Noddings. She described the process by which she did so. Her duties require her to be impartial in her analysis. She made notes from all she could see on the exhibits. She performed the V of the ACE-V method – doing so in relation to the three exhibits: TT3C; TT3E and TT7. In her examination of these exhibits, she found characteristics that agreed - but none in disagreement. She concluded that TT3C and the mark from the right little finger of the fingerprint form for the defendant were made by the same person. TT3E, she said,

[6] [2011] EWCA Crim. 1296

1 matched the right middle finger on the fingerprint form for the defendant. TT7, she
2 testified, matched the certified copy of the left palm of the defendant.
3
4 71. She has been using the ACE-V method since she started in fingerprinting in 1992. The
5 methodology has remained the same since 1901.
6
7 72. She performed her function by looking at different levels of clarity.
8
9 73. In relation to TT3C, she found that there were 13 characteristics at level 2 that agreed in
10 detail and position with the print of the form. There were also 13 characteristics in
11 agreement in relation to TT3E and in excess of 15 at level 2 in respect of TT7.
12
13 74. She had "no doubt whatsoever" that the marks were left by the same person.
14
15 75. In cross-examination, she said that in performing her task of verification, she is not told
16 what conclusion the expert had come to. Also, the expert's opinion does not influence
17 her in her own analysis. She does not check the reasoning of the expert.
18
19 76. She was not aware of the case of ***R v Smith***.

20
21 77. She looked at every single characteristic in detail: she examined the whole finger mark.
22 When questioned about whether there was anything in her notes in respect of TT7 about
23 her analysis of the known mark, she said that, had there been any abnormalities, she
24 would have recorded them.
25
26 78. She has done many thousands of fingerprint analyses. Her analysis is based on
27 knowledge, training, experience and methodology. There is no objective standard. She
28 has sat no formal examinations since 1998, when she sat the advanced course.

Fingerprint analysis is not her primary job at the moment. Her primary job is as a cognitive behavioral therapist. Fingerprinting is a minor part of her professional life these days. In the last year she has done about two fingerprinting cases a month and all have come from the RCIPS. She has never met Ms. Noddings.

79. She too was cross-examined as to her familiarity with various organizations and publications relating to fingerprinting.

80. She did not agree with the suggestion that she was wrong in coming to her conclusion that the marks can reliably be attributed to the defendant.

81. In re-examination, she was asked specifically whether the marks that she examined were of poor quality. She said that they were not: they contained sufficient finger-ridge detail for her to analyze. She has given evidence in court before and it is not usual in the fingerprinting field to be required to give evidence as to every characteristic observed.

82. The absence of a full impression does not mean that a full comparison cannot be made. Stretching changes the shape of a mark; but not the detail: the detail remains the same.

83. The ACE-V method is the accepted method within the community of fingerprinting.

THE DEFENDANT'S CASE

84. The defendant chose to give sworn testimony.

85. He gave his date of birth as November 5, 2000, making him 18 years of age at his trial.

86. He testified that he is not the person who attempted to rob the mini mart, though he is aware of it. He goes there frequently; but could not recall if he went there on 18th

February 2019. He would go there to buy things like Skittles. He has touched the counter there. He is not able to remember the last time before 18th February 2019 that he touched the counter. At his home, there is a drawer full of plastic bags. A bag is a "transmitted thing". He touches a good amount of plastic bags. He and his family just recycle them after use - they don't throw them away.

87. On the 18th February 2019 between 7 and 9 p.m. he was at home watching Jurassic Park in his room.

88. He saw the CCTV footage. He does not know if he could fight off Mr. Jairam, who is a grown man, while he (the defendant) weighs 105 pounds. In relation to the items of clothing found at his home, he said that (with the exception of the black hoodie that he said belonged to his aunt) they were his. In relation to the finding of the pants in the stove, he said that he had done landscaping in them and they were soiled and not good anymore. He had put them outside in the garbage; but his grandmother removed them from outside and put them in an old stove in the yard that was to be thrown out. The polo shirt was old and was used as a rag.

89. He said the jeans in the picture do not look that bad; but he wanted to throw them out.

90. He disagreed with the suggestion that he had put the items of clothing in the stove in an attempt to hide them. When asked if he agreed that the items of clothing seen in the footage and pictures match those seized from his home, he said: "It seem about that".

91. He said he did not tell the police, when asked by them when last he had visited the mini mart, that it probably had been a while. He said he told the police he could not remember the last time he went; but that he would go there frequently.

1 92. He said he saw in the video that the person who attempted the robbery threw a white
2 plastic bag to Mr. Jairam and that the person also pressed his left palm on the counter.
3
4 93. He also recalled telling the police about a shortcut between his Brushy Avenue home
5 and the mini mart; but explained that everybody in Swamp knows that short cut. He
6 admitted that the police told him that their dog had tracked the would-be robber along
7 the same path.
8
9 94. He denied being the person who had attempted to rob the mini mart on the day in
10 question.
11
12 95. In re-examination, he said, among other things, that he knew that he would have been at
13 home at that time on the day in question, as that was in keeping with a deal that he had
14 had with his father, who was in the process of getting him to join him in the United States
15 of America – that is, to be at home before 7:00 pm.
16

17 **DISCUSSION**

18 MAIN PRINCIPLES

19
20 96. The starting point for any court to consider in a criminal trial is, of course, the
21 presumption of innocence, enshrined in s.7 of the Cayman Constitution, 2009. That
22 section states:

23 "*Fair trial 7. —*

24 *(1) Everyone has the right to a fair and public hearing in the determination of*
25 *his or her legal rights and obligations by an independent and impartial*
26 *court within a reasonable time.*

27 *(2) Everyone charged with a criminal offence has the following minimum*
28 *rights—*

1 (a) <u>*To be presumed innocent until proved guilty according to law;*</u>*"*
2 *(Emphasis added).*

3

4 97. Inextricably bound up with this presumption is the rule that in criminal trials there is the
5 onus of proof on the prosecution to prove the defendant guilty. The prosecution must do
6 so, so that the judge or jury feels sure of the defendant's guilt.

7

8 98. I bore these considerations firmly in mind as I listened to the evidence in this case;
9 considered it in all its aspects, and as I considered the verdict.

10

11 99. In as much as the defence that the defendant advanced in this case is in the nature of an
12 alibi, I give myself the following warnings:

13

14 i. The defence of alibi means the accused says that he was not at the scene of
15 the crime when it was committed;

16

17 ii. In keeping with the general burden of proof, it is the prosecution which has
18 to prove, so that the judge or jury feels sure, that he was at the scene of the
19 crime;

20

21 iii. The defendant does not have to prove that he was elsewhere at the time and
22 does not have to bring witnesses to support his alibi;

23

24 iv. Even if I conclude that the alibi is false, that does not by itself entitle me to
25 convict the defendant. In such a case I would have to return to the
26 prosecution's case and determine if it convinces me of his guilt;

27

v. I should also bear in mind that, in some cases, a false alibi might sometimes be invented in an attempt at bolstering a genuine defence.

100. In the course of giving his evidence, the defendant also disclosed that he has one conviction for marijuana possession. I do not take that into consideration in arriving at the verdict. It is a conviction for an offence that is of an entirely different genus to the one relating to this matter; and is not one involving violence. By the evidence he has given, the defendant has put himself forward as someone of good character. I recognize that as something to be taken into account in his favour. Whilst I recognize that it is not a defence, and that it cannot assist him if the case against him is otherwise strong, his good character is something to be considered in his favour - in that, someone of good character is less likely to have committed an offence of this nature, than someone of bad character. Additionally, someone of effective good character is likely to be more capable of belief than someone of bad character. (See, for example: ***R v Vye***[7]; ***R v Aziz***[8] and ***Teeluck & Anor v. The State (Trinidad and Tobago)***[9].)

<u>Summary Submissions</u>

101. In a very brief and general outline: The submissions made on behalf of the Crown advance the position of there being a strong case of forensic and circumstantial evidence against the defendant. On the other hand, and not unnaturally, the submissions of the defendant were geared at seeking to undermine any perception as to the reliability of the

[7] [1993] 1 WLR 471
[8] [1996] AC 41
[9] [2005] UKPC 14 (23 March 2005)

1 forensic evidence and to persuade the court to the view that the case against the
2 defendant was weak and not sufficient for a conviction.
3

4 THE DEFENDANT'S CASE

5
6 102. Although I, of course, considered the prosecution's evidence first, I will, in this
7 judgment, deal with the defendant's case first.
8
9 103. I closely observed the defendant as he gave his evidence. He did not impress me as a
10 witness of truth. His explanation, for example, about the items found in the stove, simply
11 made no sense to me. I did not accept that he had, as he testified, placed the items later
12 found in the stove outside the premises to be taken away as garbage, and that his
13 grandmother took them out of the garbage, brought them back inside the premises and
14 put them in the stove to the end that they would eventually have been thrown away with
15 the old stove. I found that he lied in this regard. I considered (but later rejected) the
16 possibility that he lied, foolishly, to bolster his defence. I found instead he lied in an
17 effort to escape conviction for a crime that he committed and the consequences of that
18 conviction.
19
20 104. I also rejected as incredible his explanation of the presence of his fingerprint on the white
21 plastic bag as arising from his contention that a bag is "a transmitted thing" – meaning
22 he could have handled the bag and passed it on to someone else and it eventually found
23 its way to the store. However, even if that explanation were to be accepted in relation to
24 the bag, there was still the prosecution's contention that the defendant's print was also

1 found on the counter, which, if both the prosecution and defendant are correct, would be
2 an amazing coincidence.
3
4 105. With the rejection of the defendant's defence, I returned to consider the prosecution's
5 case.
6

7 THE PROSECUTION'S CASE
8
9 106. The prosecution's case rested primarily on expert evidence, along with circumstantial
10 evidence in this case. I considered the expert evidence, but I did not accept it
11 unquestioningly, recognizing that an expert's evidence is to be assessed like the evidence
12 of any other witness, and is to be considered along with the rest of the evidence in the
13 case.
14
15 107. Having done so, I make the following findings:
16
17 a. I accept and find Ms. Noddings and Mrs. Ryman-Tubb to be experts in the field of
18 fingerprinting and accept their evidence as reliable and impartial. I accept their
19 evidence as to all the areas of agreement between the prints found at the scene and
20 those of the defendant; and that there were no areas of disagreement.
21
22 b. I find that the prints that those experts used to do their analysis were prints lifted by
23 SOCO Taylor, in a targeted processing for prints, based on the particular area of the
24 counter on which he observed in the CCTV footage the would-be robber place his
25 ungloved hand; and from the white plastic bag that he saw him throw to Mr. Jairam.
26

c. I find that the prints were not damaged or distorted in any way by the process used by SOCO Taylor; or the manner in which he processed the items and made the latent prints visible.

d. I find, in spite of challenges to the contrary, that the prints later examined and verified by the experts were of sufficiently-good quality to have enabled them to have made accurate comparisons. (It should be noted here that even the copies of copies that were prepared for the court's use were clear enough for the court to follow the experts' explanations and references as to how the process was carried out and what was observed).

GRAND COURT - CAYMAN ISLANDS

e. I accept the evidence of the experts and find that the ACE-V method is the method employed by the RCIPS, and, whilst not perfect, is a reliable method of fingerprint analysis and identification, and is a standardized method since 2001.

f. I accept the evidence of the experts and find that the exhibits TT3C; TT3E and TT7 are prints that the defendant left at the scene of the crime, whilst committing this offence, as shown on the CCTV footage. The defendant's prints were on the white plastic bag as he had it in his possession at the time of the attempted robbery – even though he is not shown on the video touching it with his right hand.

g. I find that the defendant is the person shown in the footage, attempting to rob the mini mart.

h. I also accept the evidence of DC Rennalls that the defendant told him that he had not been in the mini mart on the day in question.

i. I accept the evidence of Miss McLaughlin that she had wiped the counter a few minutes before she ended her shift on the day in question and that she had wiped it several other times during her shift.

j. I accept the evidence of SOCO Taylor and find that you cannot take a person's prints and transfer them somewhere else and that you cannot make a person's fingerprint someone else's.

THE CASES RELIED ON BY THE DEFENCE

108. In directing its challenge to the prosecution's case primarily in respect of the quality and reliability of the fingerprint evidence, the defence sought to rely on two cases:

i. ***R v Smith (Peter)***[10]; and

ii. ***R v Josué Alexander Carillo-Perez***[11].

109. The introduction to the judgment in ***R v Smith***, given by Lord Justice Thomas at paragraphs 1-6 of the judgment, gives an indication of the main issues in that appeal and are set out below:

"***Introduction***

1. *On 27 February 2007 Hilda Owen, a 71 year old widow, was murdered in her own home in Skegby. She had been attacked and severe injuries had been inflicted. The pattern of injury indicated that she had remained alive for somewhere between 15 and 24 hours after the attack. She was left to die. The appellant, her next door neighbour, reported to the police the finding of her body on 1 March 2007.*

2. *He was at first treated as a witness, but on 9 March 2007 he was arrested but released on bail. Between March 2007 and December 2007, 17 other people were arrested and interviewed but none was charged. On 3*

[10] [2011] EWCA Crim. 1296

[11] Ind. No 89/08, judgment delivered 26th July 2011

1 2 *December 2007 the appellant was re-arrested and interviewed. He was subsequently charged.*

3 4 5 6 7 8 9 3. *There was circumstantial evidence against the appellant (to which we shall refer at paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** below), including the making of a "will" in his favour, his involvement in her affairs, his financial difficulties and his opportunity to kill her. Apart from the pathology evidence (which is not in dispute) there were three areas of forensic evidence. The first related to the scenes of crime, the second to footwear and the third to fingerprint evidence.*

10 11 12 13 14 4. *The appellant was tried between 18 November 2008 and 12 December 2008 before HH Judge Kramer QC at the Crown Court at Nottingham. We shall set out in a little more detail the course the trial took but the trial resulted in the conviction of the appellant for murder. He was sentenced to life imprisonment with a minimum term of 30 years.*

15 16 17 5. *He appeals by leave of the single judge on one ground – the difficulties faced by the defence at trial when a decision was made not to call its fingerprint expert and the fresh fingerprint evidence now available.*

18 19 20 21 22 6. *It was accepted by the Crown that there was fresh evidence in relation to the fingerprints; we will consider that evidence first and then whether, in the light of the test in Pendleton [2002] 1 WLR 72, it affects the safety of the conviction. We will therefore first set out the evidence in relation to fingerprints before turning to consider the safety of the conviction.*"

23

24 25 110. At paragraph 8 of that judgment, Lord Justice Thomas makes an important observation in respect of fingerprint standards. Said he:

26 27 28 29 "*8. The history of fingerprint standards and evidence was set out by Rose LJ in R v Buckley (Robert John) (1999) 163 JP 561. <u>He pointed to the accepted position that fingerprints varied from person to person and that such patterns were unique and unchanging throughout life</u>.*" (Emphasis added).

30

31 32 33 34 111. That observation ties in with the evidence of both Ms Noddings and Mrs Ryman-Tubb That observation aside, however, to my mind there are significant differences between the case of ***R v Smith*** and the instant case, that make them clearly distinguishable from each other. These are indicated below:

1 a. The observations made in ***R v Smith*** about fingerprint evidence and, in particular,
2 the observations that might be regarded as being critical of the ACE-V method, were
3 said to be made in respect of cases "where the print is not clear"[12]. In the instant
4 case, it is the court's finding that the prints were clear – to the extent that even a
5 copy of a copy used as an illustration aid, was sufficiently clear for the court to
6 follow.

7 b. There was an attempt to call expert evidence by the defence in ***R v. Smith***[13],
8 however, no such evidence was called or was attempted to be called in this case –
9 with the only expert evidence being called on the part of the prosecution.

10 c. Of importance (supporting the prosecution's case) in respect of the use of the ACE-
11 V method, is the observation, made at paragraph 10, that: "*it is for each police force*
12 *to establish its own quality management system.*" I accepted the expert evidence that
13 the ACE-V method is the method employed by the RCIPS.

14 d. At paragraph 60 of ***R v Smith***, the court acknowledged that the decision not to call
15 the defence expert, Ms Tweedy, dealt a "*severe disadvantage …to the defence of the*
16 *appellant*."

17 e. There was fundamental disagreement between the experts on basic matters – such
18 as, what parts of a print were ridges and what part furrows[14]. An attempt was made
19 during the cross-examination of Ms Noddings, to create some uncertainty in this

[12] (paragraph 61 of the judgment)
[13] See for example page 186, para 56, where reference is made to "a clear conflict between the experts."
[14] See, for example, paragraph 45 of ***R v Smith***

1 regard. That was not successful, however, as the copies were sufficiently clear and
2 there was no expert witness called by the defence.

3 f. In ***R v Smith***, fresh evidence was available, and the prosecution conceded that the
4 fresh evidence should be called.

5 g. In ***R v Smith***, the appeal was allowed; but, even with the concern expressed about
6 the ACE-V method, there was no verdict of acquittal; but a re-trial was ordered.

7 h. The criticisms of the ACE-V method were general ones, not made in specific
8 connection with the facts of ***R v Smith***, because (as shown in paragraph 5 of the
9 judgment) – there was only one ground of appeal and that ground related to: "*the*
10 *difficulties faced by the defence at trial when a decision was made not to call its*
11 *fingerprint expert and the fresh fingerprint evidence now available*."

12 i. The ***R v Carillo-Perez*** case was decided some two months and two days after ***R v***
13 ***Smith*** and really is a close application of the latter. The points made about ***R v Smith***
14 would also apply to ***R v Carillo-Perez***. Further, in ***R v Carillo-Perez*** there was an
15 admission by a SOCO that the quality of a print might have been compromised.

16 112. Accordingly, I accepted and placed heavy reliance on the expert evidence of Ms.
17 Noddings and Ms Ryman-Tubbs, finding their evidence to be reliable.

18 113. I find, and am satisfied so that I feel sure, that the prints left on the counter of the mini
19 mart and on the white plastic bag, by the would-be robber are those of the defendant, left
20 there by him during the course of the attempted robbery.

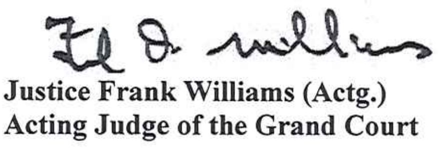
114. The defendant concealed the object with the black piece of cloth and uttered threatening words with a view to giving Mr Jairam the impression that he was armed with a firearm, seeking to put Mr Jairam "in fear of being then and there subjected to force", and in fact used force on him by struggling with him in the mini mart, within the meaning of s.242 of the ***Penal Code***.

115. It was also more than an unexplained coincidence that the tracker dog, following the scent of the would-be robber, led the police through a short-cut, known to the defendant, to the road on which the defendant lived, before losing the trail or scent.

116. Additionally, although many of the items of clothing were not uniquely identifiable singly, the finding of all the various items that seemed somewhat similar to the items of clothing worn by the would-be robber (in particular the jeans hidden in the oven and the hoodie) and the unbelievable explanation given by the defendant about the circumstances under which the jeans came to be found, have led me to conclude, so that I am sure, that the defendant is guilty of the offence of attempted robbery.

117. The verdict is, therefore, one of guilty.

Dated this the 6th April 2020



Justice Frank Williams (Actg.)
Acting Judge of the Grand Court