

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 CRIMINAL SIDE

3

INDICTMENT NO: 15 of 2020

4

5

THE QUEEN

6

V.

7

DEAN RYAN DERBY

8

9



10 **Appearances:**

Mr. Neil Kumar for the Crown

11

Mr. Keith Myers Q.C. for the Defendant

12 **Before:**

Justice Cheryll Richards Q.C.

13 **Judge Alone Trial:**

29<sup>th</sup> and 30<sup>th</sup> June, 1<sup>st</sup> and 2<sup>nd</sup> July and 21<sup>st</sup>

14

August 2020

15 **Date of Decision:**

26<sup>th</sup> August 2020

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#### HEADNOTE

19

*Criminal Law - Section 15 (1) and (5) of the Firearms Law, (2008  
Revision) Possession of Unlicensed Firearm and Ammunition - Nature of  
offence, whether strict liability, momentary possession.*

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#### VERDICT JUDGMENT

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1           1.       The Defendant, Dean Ryan Derby is charged on indictment 15 of 20 with two offences,  
2  
3           Possession of an Unlicensed Firearm and Possession of an Unlicensed Firearm  
4           (Ammunition) both contrary to s.15(1) and s.15(5) of the *Firearms Law* (2008  
5           Revision).

6           2.       The particulars of the first count are that he on the 13<sup>th</sup> day of February 2020 at Ms.  
7           Francis Lane in the vicinity of #3 Myles Lane, George Town, Cayman Islands, had in  
8           his possession an unlicensed firearm, namely a Smith and Wesson M & P 9 mm semi-  
9           automatic pistol, serial number DVF5443 which was not under and in accordance with  
10          the terms of a Firearm User's License.

11  
12          3.       The second count charges that he, on the said date and at the same time had in his  
13          possession 9 rounds of ammunition, namely 9mm cartridges, which was not under and  
14          in accordance with the terms of a Firearm User's License.

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16       **FIREARMS LAW**

17          4.       Section 15(1) of the Firearms Law provides that no person shall be in possession of any  
18          firearm except under and in accordance with the terms of a Firearm User's (Restricted)  
19          Licence. By ss.5 a person who contravenes this section is guilty of an offence.

- 20  
21          5.       By ss.(2), ss.(1) shall not apply to: -
- 22               (a)       *the holder of any Gunsmith's Licence in respect of any firearm delivered to him for*  
23               *the purpose of effecting any repair or lawful alterations thereto;*  
24  
25               (b)       *any person who comes into possession of any firearm in the capacity of executor or*  
26               *administrator of the estate of any deceased person or Trustee in Bankruptcy or*  
27               *liquidator of any insolvent person or of any company in liquidation, during the*



1  
2 period of thirty days after the day upon which he came into possession of such  
3 firearm;

4 (c) any servant or agent of any of the persons referred to in paragraphs (a) and (b) in  
5 respect of any firearm entrusted to him for delivery to the owner thereof in  
6 accordance with this Law;

7  
8 (d) any constable or customs officer in respect of his possession of any firearm which  
9 came into his possession pursuant to this Law during such period as such firearm is  
10 so retained by him;

11  
12 (e) any person in respect of the possession by him of any firearm entrusted to him by  
13 any constable for transportation pursuant to section 9 from any place to any other  
14 place during such period, not being longer than is reasonably necessary for the  
15 transportation of such firearm, as such firearm is contained in a sealed packet; or  
16

17 (f) any person in respect of the possession by him of any firearm delivered to him in  
18 accordance with paragraph (c) of section 36(2), during the period of the absence  
19 from the Islands of the owner of such firearm and two weeks thereafter, or the  
20 departure of such owner from the Islands whichever shall be the shorter.  
21

22 6. The Defendant first appeared before the Grand Court on the 6<sup>th</sup> March 2020. He was  
23 arraigned on the 1<sup>st</sup> May 2020. He entered pleas of not guilty to both counts of the  
24 indictment. On the 28<sup>th</sup> May 2020, he elected trial by judge alone in accordance with  
25 s.129 of the *Criminal Procedure Code*. The trial took place over four days from the 29<sup>th</sup>  
26 June to the 2<sup>nd</sup> July 2020. Further submissions were heard on the 21<sup>st</sup> August 2020.

27  
28 **APPLICABLE PRINCIPLES – JUDGE ALONE TRIALS**

29 7. In approaching this case this Court is guided by the Cayman Islands Court of Appeal  
30 (CICA) in its judgement in the case of *K. Richards v. R<sup>1</sup>* in which the Court stated:

31 “When a trial judge sitting alone has advised himself of the applicable principles of  
32 law and given himself any necessary warning, he must indicate clearly in his  
33 judgment his reasons for acting as he did, in order to demonstrate that he has acted  
34 with the requisite degree of caution in mind and has therefore heeded his own  
35 warning. No specific form of words is necessary for this demonstration. “What is

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<sup>1</sup> 2001 CILR 496, paragraph 32

1                    *necessary is that the judge's mind upon the matter be clearly revealed": see R. v.*  
2                    *Simpson (15) ([1993] 3 LRC at 641, per Downer, J.A.)."*  
3

4            8.        The Appellate Court indicated its adoption of the principles of law as stated in the cited  
5                    cases and considered that a judge sitting alone is required to provide a reasoned judgment  
6                    in the case and to demonstrate in so doing an understanding of the following:-

- 7            i)        The importance of fully articulating the legal principles which apply to the particular  
8                    case before the Court.  
9  
10           ii)       The importance of warning himself in relation to any special category evidence.  
11  
12           iii)      The necessity to set out the evidence on which he intended to rely for his decisions;  
13  
14           iv)      Specifically and specially determining ultimate facts from that evidence and drawing  
15                    inferences therefrom; and  
16  
17           v)       coming to a conclusion and judgment based on his ultimate findings of fact and the  
18                    applicable rules of law.  
19

20           9.        Additionally in the case of *R. v. Dave Kennedy Whittaker*<sup>2</sup>, the Appellate Court referred  
21                    with approval to the decision of the Court of Appeal in Northern Ireland from a decision  
22                    of a judge sitting alone, and stated:-

23                    *"50 In R. v. Thompson*<sup>3</sup> *(11), Lowry, L.C.J., giving the judgment*

24                    *"While on the subject I might say a word on the duty of the judge when*  
25                    *giving judgment in a trial under the 1973 Act. He has no jury to charge and*  
26                    *therefore will not err if he does not state every relevant legal proposition*  
27                    *and review every fact and argument on either side. His duty is not as in a*  
28                    *jury trial to instruct laymen as to every relevant aspect of the law or to give*  
29                    *(perhaps at the end of a long trial) a full and balanced picture of the facts*  
30                    *for decision by others. His task is to reach conclusions and give reasons to*  
31                    *support his view and, preferably, to notice any difficult or unusual points of*  
32                    *law in order that if there is an appeal, it may be seen how his view of the*  
33                    *law informed his approach to the facts."*  
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<sup>2</sup> [2010 (1) CILR 29]

<sup>3</sup> [1977] NI 74



1           10.     This case is approached and considered with these principles in mind. My task is to make  
2                     findings, to give reasons in support of those findings and to address any areas of law  
3                     which apply. It is not necessary to detail every fact in the case or all the arguments as  
4                     would be the case in a jury trial.

5

6     **PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

7           11.     The presumption of innocence is enshrined in s.7 of the *Cayman Islands Constitution*  
8                     2009.

9

10          12.     This provides:

11                     “7. - (1)   *Everyone has the right to a fair and public hearing in the determination*  
12                     *of his or her legal rights and obligations by an independent and impartial*  
13                     *court within a reasonable time.*

14

15                     (2)   *Everyone charged with a criminal offence has the following minimum*  
16                     *rights -*  
17                     (i) *to be presumed innocent until proved guilty according to law.*  
18

19          13.     In criminal trials the applicable rule is that the burden of proof is on the Prosecution to  
20                     prove its case to the required standard, which is so that the judge or jury feels sure of  
21                     guilt of a defendant’s guilt before there can be a conviction. That burden remains on the  
22                     prosecution from the beginning and throughout a case and does not shift. There is no  
23                     burden on the Defendant to prove his innocence.

24

25          14.     I bore these considerations firmly in mind throughout this case, as I listened to the  
26                     evidence for the Prosecution and the Defence and as I considered the verdict.

27

28

29



1    **CASE SUMMARY**

2       15.    In summary, the case for the Prosecution is that on the said date, the described firearm  
3            and ammunition were found by the Police in the glove compartment of a silver  
4            Mitsubishi Colt motor car registration number 173015 which was driven by and in the  
5            possession of the Defendant. The car was found parked in the vicinity of the house of  
6            Matteo Ramoon at 3 Myles Lane. This runs off Shedden Road in George Town.

7

8       16.    The case for the Defence is that the Defendant found the gun in the glove compartment  
9            of the car just about three minutes before the arrival of the Police. The Defendant thus  
10           alleges that he was “*set up*”. This, on the basis that the car had, in the course of that  
11           day, been in the possession of other persons, that the firearm and ammunition did not  
12           belong to the Defendant, had not been placed in the car by him and must therefore have  
13           been planted by a person or persons unknown.



14

15    **THE EVIDENCE – THE PROSECUTION’S CASE**

16

17       17.    The Prosecution called three live witnesses and with the agreement of the Defence read  
18            the statements of seven witnesses. In addition, there were a significant number of agreed  
19            facts between the parties, pursuant to s.34 of the *Evidence Law*. These included the  
20            following background details. It is agreed that the Defendant is a 26-year-old Jamaican  
21            national with no previous convictions. At the time of his arrest, he held a valid Work  
22            Permit and was employed as a construction worker. On the 20<sup>th</sup> December 2019 the  
23            Mitsubishi Colt motor car was leased to Niko Giovanni McField from ‘3D Rent a Car’  
24            for an initial period of seven days. Mr. McField leased the car on behalf of the Defendant.



1 Dinah Clarke is the owner/operator of '3D Rent a Car' (exhibit DJC/A) and she produces  
2 an agreed copy of the motor vehicle lease. Between December 2019 and the 13<sup>th</sup>  
3 February 2020 when the vehicle was seized by the Police, the Defendant facilitated the  
4 necessary arrangements to extend the lease for the vehicle and retained possession of it.  
5

6 **DC SHANE ENNIS**  
7

8 18. DC Shane Ennis was the first live witness for the Prosecution. His evidence detailed the  
9 finding of the firearm in the vehicle, the circumstances under which it came to be found  
10 and the initial interaction with the Defendant.  
11

12 19. DC Ennis gave evidence that he is currently attached to the Crime Task Force of the  
13 Royal Cayman Islands Police Service (RCIPS). On the afternoon of the day in question  
14 he was one of a number of Officers tasked to be part of a team to execute a search warrant  
15 at 3 Myles Lane. Together with other Officers he drove an unmarked police van to the  
16 area. He got to Myles Lane at approximately 5:50pm.  
17

18 20. He stopped the van on the right side of the road, facing the intended location in front of  
19 the parked silver motor car. He alighted from the Police vehicle along with other Officers  
20 and walked to the address.  
21

22 21. On passing the car, his attention was drawn to the loud music coming from it. No one  
23 was in the vehicle. The key was in the ignition and the engine appeared to be running.  
24 He identified the vehicle from a photograph which was shown to him which was marked  
25 as **Exhibit 1** in the case.

1 22. After going past the vehicle, he saw the Defendant standing with another Officer, DC  
2 Dwayne Simpson who was by another unmarked service vehicle. The Defendant was  
3 wearing a lime green shirt. At the request of DC Simpson, DC Ennis spoke to the  
4 Defendant in order to record his details. The Defendant gave his name, his date of birth  
5 as 6<sup>th</sup> October 1993, his address and occupation and told the Officer that he worked in  
6 construction at Camana Bay.

7  
8 23. When the Officer inquired as to his purpose at the location, he said that he was coming  
9 from work and stopped to check Matteo Ramoon who is otherwise called "Rasta". He  
10 said he got to the location by walking. He asked the Officer if he could leave. DC Ennis  
11 asked him if he had been searched. The Defendant turned indicating that DC Simpson  
12 had searched him. DC Simpson indicated yes he had searched him. After indicating this,  
13 DC Simpson sought to explain to the Defendant that he could not leave the location  
14 without the permission of the Sergeant who was not there at the time. DC Ennis in turn  
15 reiterated that to him. DC Simpson said that the Defendant had been seen coming from  
16 the house at the time.

17  
18 24. DC Ennis's next interaction with the Defendant was later that same afternoon when he  
19 was called by ADS Daley who inquired if the gentleman's details had been taken and  
20 whether he had been searched. ADS Daley then indicated to the Defendant that he could  
21 leave. Prior to him doing so, DC Ennis again asked the Defendant how he got to the  
22 location. He said he walked. He then walked away in the direction of Myles Lane.

23  
24 25. After the Defendant left the area, DC Ennis heard the music still playing from the car.  
25 He thought it strange at the time that the vehicle was parked. He explained that he  
26 thought this because he thought of the battery running down and the price of gasoline.





He inquired of DC Lauder and turned and shouted to the persons around the yard asking who the owner of the vehicle was. No one answered him.

3

4

26. He approached the vehicle together with DC Lauder in order to check it. With the assistance of a flashlight, he saw several items on the floor of the vehicle. The window of the vehicle was down. As he bent down for a closer look he smelled a scent of ganja. He searched the vehicle under the *Misuse of Drugs Law*. He put on a fresh pair of gloves over a pair that he already had on from his search of the house and he opened the driver's side of the vehicle. The time was 7:10pm.

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27. He began by bending down and checking the floor of the vehicle. Under the seat of the vehicle he found a leaf commonly used as a grabber. He checked the door and found several receipts associated with numbers.

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28. On the passenger's side which he next checked, he found on the floor, a white hard hat, pair of gloves, white AL Thompson bag that had in a mesh covering which is used to hinder flies from coming in. On opening the glove compartment, he saw a black firearm, with the butt and handle facing out with a magazine inserted in it. He immediately stopped the search and shouted out 'gun'. He identified photograph Exhibit 2 as a photograph of the firearm in the same position that he saw it in, in the glove compartment.

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29. He reported the find to his senior Officer and one of the firearm Officers was called. The vehicle was sealed until the arrival of the Scenes of Crime Officer and a wrecker that was summoned.

24

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26

1 30. In cross-examination he said that it was after a period of time after arriving at the scene  
2 that he thought of who owned that car. The car is a right-hand drive car and the glove  
3 compartment is on the left if you are sitting in the car. As far as he could remember the  
4 engine of the car was running although he could be wrong about that. The music was  
5 playing. When he opened the glove compartment door and looked inside, he saw the  
6 gun.

7  
8 31. The butt of the gun was facing him and he saw a magazine in it. He did not see any  
9 other part of the gun as it relates to the slide. He could see that underneath the gun was  
10 a scotia bank receipt.

11  
12 32. It was suggested to him that if one is right-handed and picked up the gun, the butt would  
13 be on the right and not on the left as it was when he first saw the gun.

14  
15 33. It was also suggested to him that the gun must have been placed in the glove  
16 compartment in that way by a left-handed person.

17  
18 34. He answered that he was not an expert as to someone's dexterity and that it depends on  
19 how the gun was being held on being placed inside the glove compartment.

20

21 **EVIDENCE OF CIVILIAN WITNESSES**

22 **MS. CLAUDIA CARBALLO**

23

24 35. Two civilian witnesses Claudia Carballo and Berna Melissa Smith Rizo gave evidence  
25 with the assistance of a Spanish speaking interpreter. Both are friends. Melissa Rizo  
26 was the girlfriend of the Defendant at the material time. There is no issue between the



1 Prosecution and the Defence that on Thursday the 13<sup>th</sup> February 2020, Melissa Rizo  
2 sought the assistance of the Defendant in order to run some errands. He offered to lend  
3 her his car. Claudia Carballo was the person who collected the car from the Defendant  
4 shortly after 12 noon and drove Melissa Rizo and two other ladies around for the  
5 afternoon before returning the car to the Defendant at around 5:30pm. The Defence  
6 point to the opportunity which Ms. Carballo and the other ladies would have had to place  
7 the firearm and ammunition in the vehicle.  
8

9 36. Ms. Carballo gave evidence that she is a domestic helper. She knew the Defendant as  
10 Sean, having come to know him through Melissa Rizo. It was her evidence that the 13<sup>th</sup>  
11 February 2020 was the day before Valentine's day, that in order to borrow the  
12 Defendant's car, he picked her up at about 12 noon and she accompanied him back to  
13 his work place where he was dropped off. She then had the car for the afternoon. She  
14 detailed her driving activities thereafter. These included driving back to her apartment  
15 to await Melissa Rizo who contacted her at about 1:30pm, going to Latin Taste  
16 Restaurant to order some food, collecting Melissa Rizo, purchasing gasoline for the car  
17 and going back to Latin Taste Restaurant to collect the food. Thereafter another person,  
18 a friend of theirs by the name of Yesenia joined them. She dropped both at their  
19 respective homes in order for them to change and drove to the Immigration Department  
20 to collect a form. On her return to Melissa Rizo's house, they waited on a fourth person,  
21 Danya, Ms. Rizo's sister to join them. All four, with her driving, went off to do some  
22 shopping. Ms. Rizo travelled in the front passenger seat of the vehicle.  
23





1 37. Their first stop was the Kirk Freeport perfume store on Cardinal Avenue. Ms. Carballo's  
2 evidence was that she parked the car in the parking lot of the complex which has the  
3 Burger King Store which is near to the Court house, locked it with the key and left it  
4 with the windows up. They were in the perfume store for a while, and the three others  
5 left her in the store as she waited for her purchases to be wrapped. She then joined the  
6 others at the Fossil store where they spent a shorter time before returning to the car. From  
7 that location they went to a department Store, AL Thompson where Ms. Rizo made a  
8 purchase of a mesh screen. Two of them remained in the car while the others went inside  
9 the store. They then went to a Laundry mat in George Town and were there for a while  
10 before Ms. Carballo went in the car sometime after five pm to collect the Defendant from  
11 his work place.

12

13 38. It was Ms. Carballo's evidence that whilst inside the car, she did not open the glove  
14 compartment and did not at any stage see anyone open the glove compartment. She was  
15 shown Exhibit 2, the photograph of the gun and said that she had never seen that gun  
16 before, it had never been in her possession.

17

18 39. In cross-examination she accepted that she had initially lied to the police about what had  
19 happened on the day in question. She said that she had done so because she had been  
20 driving without a license and was afraid. She said that she explained that to the Police  
21 Officer, apologised and told him the reason why she had lied.

22

23 40. She denied that the reason she had lied was because she knew that the gun was in the  
24 car. She said that she did not know that the gun was in the car and did not see any gun.

25

1 41. She accepted that after she dropped the Defendant at his work place after 12 noon, she  
2 was alone in the car. It was suggested to her that it is possible that she could have planted  
3 the gun in the car, since she was alone in the car. She replied:



4  
5 *"I already responded to that question and I said no. I did not put the gun in*  
6 *the glove compartment of the car. I am telling the truth because I am*  
7 *speaking having sworn on the Bible."*

8  
9 42. She said that she thought it was around 3pm by the time they got to the perfume store  
10 because it was almost 2pm when she went to pick up Melissa Rizo. She went to drop  
11 them off. She then went to the Immigration Department and then to the perfume store  
12 which must have been around 3pm. They were there for quite a while because they were  
13 there testing and smelling perfumes so they were there for more than 5 minutes.

14  
15 43. It was put to her that from the CCTV evidence, the vehicle was seen on Cardinal Avenue  
16 at 3:18pm in the area of the perfume store. At 3:21 pm persons got out of the car and one  
17 person re-entered. The car was then seen going towards the junction of Cardinal Avenue  
18 and Edward Street. It was put to her that given her evidence that she was with her friends  
19 at the store, the person seen entering the car could not have been her.

20  
21 44. She said that she did not re-enter the car while at Kirk Freeport, i.e., in the area of the  
22 store. She did not give the keys to anyone while there. She maintained that she was  
23 telling the truth because she and her friends went there to buy perfume and each one of  
24 them did so. She maintained further that the car had been parked in the parking lot in the

1 complex, with the Burger King store, which is close to the Court house. She is right  
2 handed.

3  
4 45. In relation to how the vehicle had been left, she stated that she had the keys for the car  
5 and was the one in charge of securing it. She said that she left it closed with the key and  
6 with all the windows up. She pressed the lock button and the car made the sound that it  
7 makes when it locks. They all got out of the car to go to the store but she could not say  
8 who got out first.

9  
10 **MS. MELISSA SMITH RIZO**



11  
12 46. Melissa Smith Rizo is also a domestic helper. She had been in a relationship with the  
13 Defendant for about 6 or 7 months before the day in question. On the 13<sup>th</sup> February 2020,  
14 the day before Valentine's Day she asked the Defendant, who she calls Sean, if she could  
15 borrow his vehicle to do some shopping and she arranged for her friend Claudia to collect  
16 the car from him while she, herself was still at work in West Bay. Claudia picked her up  
17 on West Bay Road closer to 2pm and they with two others, Danya and Yesenia they  
18 went to various places before going shopping at the perfume and Fossil Stores. After  
19 leaving the Fossil Store, she needed to go to the AL Thompson store to purchase one of  
20 those curtains that you put on doors so that flies don't get in. All four went to that store.  
21 She was seated in the front of the vehicle; Claudia was driving and the other two were  
22 in the back. They spent a much shorter time at this store, about 15 minutes because only  
23 Danya and herself, went into the store. The others remained in the parking lot in the car.  
24 Thereafter they went to the Laundry mat behind Sol Y Luna where they all remained  
25 until sometime past 5pm, when Claudia left to pick up the Defendant.



1 47 She gave further evidence that whilst inside the vehicle on that day, she did not at any  
2 stage open the glove box. She did not at any stage see anyone open the glove box. She  
3 was shown the photograph Exhibit 2 and testified that she had not seen this gun before  
4 and had never possessed it.

5

6

48. In Cross examination, she described the Defendant's personality as being kind to her.

7

When she asked him to run errands, he would help her when he could. She had never  
8 seen him hold a gun in her presence or have any bullets in her presence. He had never  
9 spoken to her about guns.

10

11

49. She agreed that there were occasions during that afternoon when Claudia had not been  
12 with her. Initially when they went to the Latin Taste Restaurant she had gone to the back  
13 of the Restaurant and left Claudia Carballo at the front. Claudia Carballo had also left  
14 them during the afternoon and said she was going to the Immigration Department.

15

16

50. She testified that the car had been parked in the parking lot in the complex with the  
17 Burger King Store, near to the Court house, that they all got out at the same time and  
18 entered the store at the same time. Claudia Carballo had the key for the car but Ms. Rizo  
19 did not notice if she closed the car with the lock.

20

21

51. She stated that she believes that the windows of the car must have been up. From the  
22 moment they arrived at the shop she did not see any of them leave. She did not see  
23 Claudia Carballo leave for a period of time. She did not notice because they were all  
24 looking at perfumes.

25

26

52. She denied putting the gun in the car and said that she is not left-handed, she is right-  
27 handed.

1 53. As did the witness Carballo, Ms. Rizo stated that they were in the perfume store for a  
2 longer period, and a shorter time in the Fossil store. She also said that at the AL  
3 Thompsons store, she was the one who went shopping with Danya and that the other two  
4 remained in the car with Claudia in the driver's seat and Yesenia in the back.

5  
6 54. By agreement between the parties, the statement of Dilma Yesenia Mejia Hill dated 10<sup>th</sup>  
7 June 2020 was read. Ms. Hill detailed their movements on the day in question in broadly  
8 similar terms to the other women and stated said that while in the car with them, she did  
9 not check or place anything in any part of the car including the front compartment.

10  
11 **POLICE EVIDENCE**

12  
13 55. The statements of a number of Officers were read into evidence pursuant to s.34 of the  
14 *Evidence Law*. DC Dwayne Simpson in his statement dated 14<sup>th</sup> February 2020, stated  
15 that he was on duty on the day in question when at about 3pm he was tasked with  
16 assisting with a search at 3 Myles Road under the *Firearms Law*. On arrival at the  
17 location he saw the Defendant in a bright lime green long sleeved construction worker's  
18 shirt coming from the doorway of the house. He identified himself to him, told him of  
19 the reason they were at the location, searched him and found nothing illegal on him. He  
20 did not have any keys on him. The Defendant said that he had walked to the location and  
21 pointed towards the direction of Eastern Avenue. He said that he had just come to visit  
22 his "brethren" and pointed towards Matteo. The Defendant asked if he could leave and  
23 he was told that he had to wait until the search was completed.





1 said "I did not drive, I walked." A few seconds later DC Mendez was asked by ADS  
2 Francis to call the Defendant back but he was too far ahead and was walking very fast.

3  
4 59. DC Ricardo Lauder's statement is dated 15<sup>th</sup> February 2020. He was also part of the  
5 team of Officers who went to # 3 Myles Lane. He checked the Mitsubishi vehicle with  
6 DC Ennis and states that the music was playing, the driver's side window was down and  
7 the keys were in the ignition. Upon going closer to that window, he too smelt a scent of  
8 ganja. He stretched in through the window, turned off the car, removed the keys and  
9 secured them. Following the search of the vehicle by DC Ennis and the finding of the  
10 gun, the car was sealed and transported to the George Town Police Station.



11  
12 60. Later that night, he and other Officers located the mother of the Defendant and  
13 arrangements were made for him to hand himself into the Police Station.

14  
15 61. On the following day after the vehicle had been processed by Scenes of Crime Officer  
16 Sarah Hough. DC Lauder with DC Ennis recovered a number of items from the vehicle  
17 including, four 3D Rent a Car contracts in the name of Niko McField, 5 lottery tickets,  
18 a Rediform invoice book, \$165 .00 in cash and three money transfer receipts in the name  
19 of the Defendant. A gold colored chain was recovered from the glove box and a gold  
20 coloured ring from the driver's door. From the floor of the vehicle was recovered a mesh  
21 item with a receipt from the AL Thompson store.

22  
23 62. DC George Hylton's statement is dated 10<sup>th</sup> June 2020. He was also a member of the  
24 Police search team that afternoon. In addition, he states that when the Defendant turned  
25 himself in to the police station, he retrieved from a vehicle pointed out to him by the

1 mother of the Defendant, the neon green shirt and other clothing which the Defendant  
2 had been wearing earlier that night as well as the Defendant's cell phone.

3  
4 63. ADS Gareth Daley's statement is dated 11<sup>th</sup> June 2020. He was also a member of the  
5 search party. He details events in similar terms and adds only that Niko McField was  
6 also present at the location and he spoke to him in relation to the Mitsubishi vehicle.

7

8 **FIREARM AND DNA EVIDENCE**

9

10 64. It is admitted that the firearm, was recovered from the glove compartment of the vehicle  
11 at 8:56pm by PC Levy. PC Levy removed the magazine from the firearm and placed it  
12 in a brown paper bag. The magazine contained 9 live rounds of ammunition. The firearm  
13 was "made safe" and inspected to confirm that there were no rounds in the chamber of  
14 the weapon. The firearm was then placed in an exhibit box and secured and sealed. The  
15 firearm and ammunition were sealed and labeled by Scenes of Crime Officer Sarah  
16 Hough as SH-1 and SH-1A. She also photographed and swabbed a number of items for  
17 potential DNA.

18

19 65. Swabs of the grips, trigger, magazine, the overall firearm and the glove box handle were  
20 submitted to the DNA laboratory for analysis. Buccal swabs were taken by other officers  
21 from the Defendant, Claudia Carballo and Niko McField and were also submitted to the  
22 laboratory. The conclusion of the DNA Analyst in respect of the swabs from the areas  
23 of the firearm was that it was not possible to make any meaningful comparison between  
24 the DNA profiles obtained and those of the three persons. The DNA material on each  
25 swab consisted of partial multiple source DNA profiles of inseparable mixtures from



1 more than one individual. The swab from the glove box handle contained a partial  
2 multiple source DNA profile with an inseparable mixture from at least two individuals.  
3 All three individuals were excluded as contributors to this profile.

4  
5 66. It is also admitted that the firearm is not a registered firearm. It was test fired by APS  
6 Anthony Stewart and found to be fully functional and discharged without assistance. It  
7 is a lethal barreled weapon. All the ammunition appeared viable with primers and  
8 projectiles intact. The Defendant is not a licensed firearm holder.

9  
10 **CCTV EVIDENCE**

11  
12 67. By Admissions it is agreed that footage showing movements of the Mitsubishi motor  
13 vehicle was obtained from Government cameras in George Town. The time and  
14 movement correspond with the evidence of the witnesses and of the Defendant with one  
15 exception which was highlighted by the Defence in cross-examination and in closing  
16 submissions. At the time Claudia Carballo resided in a home located behind Archie's  
17 Bar on Shedden Road. Melissa Rizo resided in an area off Shedden Road next to  
18 Rohelio's Car wash. It is admitted that:



46. *At 12:19pm the vehicle travelled past School Road in the direction of 'Popeye's' and towards 'Flow'. It appears as though a male is driving the vehicle. There were no passengers present.*

47. *At 12:20:50pm the silver Mitsubishi Colt registration 173015 ('the vehicle') turned right at the stoplight at 'Flow' and traveled along Shedden Road. A male was driving the vehicle. There were no passengers present.*

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- 48. *At 12:20:57pm the vehicle enters the lane that runs between 'G and Gents' and 'Archie's Bar'. At 12:24pm the vehicle exits the lane back onto Shedden Road and travels towards the 'Flow' stoplights. The camera does not show the driver of the vehicle.*
  
- 49. *At 12:24:52pm the vehicle approaches the stoplight and turns left on to Eastern Avenue. A male is driving the vehicle. There was one passenger (gender unknown).*
  
- 50. *At 12:25pm the motor vehicle is driven from the direction of 'Flow' and travels toward Godfrey Nixon Way. It appears as though a male is driving the vehicle. The camera does not show if there are any passengers present.*
  
- 51. *At 12:37pm the vehicle travels from Godfrey Nixon Way and turns left on to Eastern Avenue in direction of School Road. It appears as though a female is driving the vehicle.*
  
- 52. *At 12:38pm the vehicle travels past School Road heading in the direction of 'Flow'.*
  
- 53. *At 12:39:36pm the vehicle turns right at the 'Flow' stoplight and travels along Shedden Road in the direction of 'Funky Tang'.*
  
- 54. *At 12:39:33pm the vehicle enters the lane that runs between 'G and Gents' and 'Archie's Bar'. The vehicle remains there until 1:43:31pm when it exits the lane onto Shedden Road, making a right and traveling towards town.*



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55. *At 2:47pm the vehicle seen traveling towards 'Funky Tang' from the direction of town towards the junction of Martin Drive and Shedden Road.*

56. *At 2:47:15pm the vehicle enters Martin Drive from Shedden Road and stops at a pathway next to 'Rohelio's Car Wash'. A heavy-set female exits the left right (sic) passenger door and walks down the pathway. The vehicle then travels down Martin Drive to the Junction of Martin Drive and Myles Lane, and continues straight on Martin Drive. At 2:49pm the vehicle returns to the junction of Martin Drive and Myles Lane, turning left on to Myles lane. At 3:04:14pm the vehicle is being driven up Martin Drive from the junction of Martin Drive and Myles Lane, and turns into the pathway next to 'Rohelio's Car Wash'. At 3:15:20pm the vehicle exits the pathway and travels to the junction of Martin Drive and Shedden Road turning left on to Shedden Road in the direction of town.*

57. *At 3:18:59pm the vehicle is seen exiting Albert Panton Street and turning left on to Cardinal Avenue. It then comes to a stop in the area of the 'Pena Perfume' (sic) store and persons exit the car. At 3:21pm a person then re-enters the car and it travels towards the junction of Cardinal Avenue and Edward Street.*



58. *At 3:21:26pm the vehicle travels across the junction of Cardinal Avenue and Edward Street on to Main Street.*

59. *At 3:51:34pm the vehicle exits Albert Panton Street turning left on to Cardinal Avenue before traveling towards the junction of Cardinal Avenue and Edward Street.*

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- 60. *GT27-Z-W-EDW-CAR camera shows the vehicle traveling across the junction of Cardinal Avenue and Edward Street and on to Main Street.*
- 61. *At 3:59pm the vehicle travels towards 'Funky Tang' from the direction of town. The driver appears to be female.*
- 62. *At 3:59:21pm the vehicle is seen going through the stoplight at 'Flow' and travel onto Sound Way in the direction of 'Welly's Cool Spot'. The driver appears to be female.*
- 63. *At 5:35:53pm the vehicle turns right at the 'Flow' stoplight on Shedden Road and travels towards 'Funky Tang'. A person in a bright green shirt is in the front passenger seat, and the driver appears to be female.*
- 64. *At 5:36:02pm the vehicle turns into the lane that runs between 'G and Gents' and 'Archie's Bar'. At 5:39:40pm the vehicle exits the lane onto Shedden Road turning left. A person in a bright green shirt is now the driver, with a passenger (gender unknown).*
- 65. *At 5:39:58pm the vehicle goes through the stoplight at 'Flow' and travels towards Cricket Square. At 5:42:29pm the vehicle travels through the stoplight at 'Flow' from the direction of Cricket Square. A person in a bright green shirt is the driver. There is one passenger (gender unknown).*
- 66. *At 5:42:34pm the vehicle is seen turning on to Martin Drive, off Shedden Toad. The vehicle travels past 'Funky Tang' without stopping or slowing down, goes over the speed bump in the vicinity of the 'Zodiac Bar' and turns on to Myles Lane without stopping. A person in a bright green shirt is the driver and there are no passengers. At 7:10:13pm a male dressed in a bright green shirt is*





1 71. Of significance is that between 8:01 pm and 8:17 pm on the 13<sup>th</sup> February 2020 the  
2 Defendant's phone using the name "sean yush" sent a series of a message to the phone  
3 of a female who he said in his evidence is a former girlfriend. These included the  
4 following:

5				
6	8:01:59	sean yush	-	"They already fine it
7	8:02:16	Female SW	-	OK
8	8:02:18	sean yush	-	They nah search the car
9	8:02:40	Female SW	-	Oh
10	8:02:44	sean yush	-	Police looking for me
11	8:02:52	Female SW	-	Wow
12	8:03:13	sean yush	-	Try link him on get to me
13	8:03:13	Female SW	-	Tell him what
14	8:03:37	sean yush	-	Oh long know he was trying to get to me
15	8:03:45	sean yushy	-	I gone fatty for years"
16				



17 72. At 8:04:28, the female asks what the Defendant has got himself into and then there are  
18 audio files which are not available.

19

20 **INTERVIEW OF THE DEFENDANT**

21

22 73. Following his voluntary surrender to the Police, the Defendant was interviewed under  
23 caution in the presence of his attorney on the 14<sup>th</sup> February 2020. The recording of the  
24 interview and transcripts were tendered in evidence. In the course of that interview the



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Defendant stated that he was on his lunch time at 12 noon on the 13<sup>th</sup> February 2020. He took the car to his girlfriend and she dropped him back at work. He said that he did not know where she went or her whereabouts between 12 noon and 5pm when she picked him up back at work. He dropped her off. He continued:

*“then I went in the car driving the car and the lady I owe some payment on the car, for the Lady who owns the car, she called me, she calling me so I pulled the glove compartment, I pull the gloves compartment ..... I frightened when I look I see a pistol I started to panic.”*

74. He said that he thought it was a toy and he realised it was not because he felt the weight of it when he picked it up. His fingerprint is on it because he picked it up and held it. He said that he thought that it was not a toy, it was a real gun, so he locked it back, put it back in the glove compartment and closed it. Then he drove down to Myles Lane where the police then came and conducted the search. He said he walked off panicking because he knew that the gun was in the car. He said he always goes down to Myles Lane because he used to wash cars in that area before he got another job.

75. He said that he frequently lends the car to Claudia who is the best friend of his girlfriend Melissa. His reason for being at Myles Lane is that he normally hangs out by Zodiac Bar after he leaves work. He just drove through and stopped to talk to his friend Matteo whom he has known for about a year. He had last seen him the day before the 13<sup>th</sup>.

76. He said that the lady was calling him for payment so he pulled the glove compartment to get the receipt and that was when he saw the pistol. He said that when he was driving the lady was calling him and he pulled the glove compartment to check for the receipt.

1 77. In response to the question when was the last time he went into the glove compartment,  
2 he said *"I didn't pull it in the morning, I went to work and nothing like that."*

3  
4 78. He was asked, so if you didn't put the firearm there how would it reach there. He replied:  
5 *"That's what I say I lend out the car so I don't know. I lend her the car so I*  
6 *don't know I just got back the car."*  
7

8 79. He said that he did not call Claudia because as he pulled up on Myles Lane and was  
9 sitting down there, the Police came.

10  
11 80. He said again that he was driving when he got the phone call and he saw this because  
12 she texted him back and said that he needed to make payment. He got the phone call  
13 after Claudia came out of the car. He did not go to the Police station and hand over the  
14 firearm because he panicked. He didn't know what to do and felt he would have been  
15 locked up in any event. He did not call Claudia because he didn't have any credit on his  
16 phone.

17  
18 81. He said that he did not get any time to do anything because *"as he dare"* his friend  
19 stopped him as he was driving past. He did not have time to drive back to Claudia. He  
20 was there talking to his friend for about 5 minutes and the Police drove up.

21  
22 82. He was asked:

23 *Q: So what did you intend to do with the firearm having found it*  
24  
25 *A: Well to be honest with you now I was gonna try figure out where it come*  
26 *from you understand. That's what I was trying to do."*  
27

28 83. He said in the interim he may have to bring it in. He did not really have a specific time  
29 for how long he would have taken to do his inquiries. He would either bring it in or find



1 out what was going on because he did not know who was driving the car. He was not  
2 planning to keep it. He did not say anything to his friend about it because he had no time  
3 to do that before the arrival of the Police.  
4

5 84. He said Niko McField had last driven the car about two weeks before the 14<sup>th</sup> February  
6 and had been off the Island during that week and returned on 13<sup>th</sup> February 2020.

7  
8 85. His interview consists of a mixed statement. He admits that the firearm was in his rented  
9 car but says that it was planted. I have to determine what weight should be given to this  
10 statement. I am to consider the whole of what he said, the incriminating part and the  
11 denials or excuses in deciding where the truth lies.  
12

13 **THE EVIDENCE – THE DEFENDANT’S CASE**  
14



15 86. In the course of the evidence of the Police on the Prosecution’s case, there is mention of  
16 a smell of ganja in the rented car. That is not a matter which I take into consideration in  
17 arriving at a verdict. It is entirely irrelevant to the issues at hand and in no way affects  
18 my judgment in this matter.  
19

20 87. The Defendant gave evidence on oath. He is a man of good character, with no previous  
21 convictions. I bear in mind that while good character is not a defence to the charges it  
22 is relevant to my consideration of the case in two ways. His good character is a positive  
23 feature which I take into account when considering whether I accept what he told the  
24 Court. Secondly, the fact that the Defendant has not offended in the past may make it  
25 less likely that he has acted as is now alleged against him.

1 88. It has been submitted on behalf of the Defendant that for the first time in his life he has  
2 been accused of a crime. He is 26 years old and has never been in trouble with the police  
3 before. He says that this is not something he would do. Counsel submitted that he is not  
4 the sort of person who would be likely to cast his good character aside in this way. That  
5 is a matter to which I do pay particular attention. I am also mindful that the weight  
6 which should be given to his good character and the extent to which it assists on the facts  
7 of this particular case are for me to decide. In making that assessment I take into account  
8 everything I have heard about the Defendant.



9  
10 **EVIDENCE OF THE DEFENDANT**

11  
12 89. The Defendant testified that between December 2019 and February 2020 he had been  
13 driving the vehicle 173 015 for most of the time. There were times when Niko McField  
14 who had rented the vehicle for him would drive it and on occasion he would lend the  
15 vehicle to Claudia Carballo so that his girlfriend would have access to it.

16  
17 90. He said that he handed over the car to Claudia at about 12 noon on the 13<sup>th</sup> February and  
18 she dropped him off at work. He did not look in the glove compartment of the car that  
19 day. The last time he had looked in the glove compartment was on either the Sunday or  
20 Monday some three days before. He normally kept JN receipts and stuff inside there and  
21 receipts for the car.

22  
23 91. That afternoon Claudia was late in picking him up from work. She came at about 5:30pm  
24 when he finished work at 5pm. Once she came, he left Camana Bay and dropped her at  
25 her house which took about 10-15 minutes. He waited for her while she changed and

1 returned to the car before dropping her off at another location. The car windows were  
2 down and there were packages inside the car. Once he dropped her off, he was alone in  
3 the car and drove down Martin drive. He said:

4 *“I was driving down on Martin Drive and I was checking the car because I*  
5 *am a person keep the car clean -to see if everything was okay with the car*  
6 *so I pull the glove compartment while down on Martin Drive.”*  
7

8 92. He then described seeing the gun, picking it up realising it was real and not a toy because  
9 of the weight of it, and becoming, confused, frightened and panicked. He said that he  
10 did not know what to do or where to turn. He stopped to talk to Matteo for about 5-10  
11 minutes and then he saw the Police drive up.  
12

13 93. He said that he is right-handed. He did not go to the Police because he did not know  
14 whose gun it was and did not know how it got there. He thought that perhaps the police  
15 would lock him up because they were going to say that he had a gun in his car, maybe  
16 they would not believe him. He repeated that he did not go to the Police because he did  
17 not know what to do. He did not know where to turn or where to go he was in shock. He  
18 stopped by his friend Matteo. He went to see him, because he called him at work to drop  
19 off some money for him to his child in Savannah and he said maybe he must just swing  
20 by.  
21

22 94. He explained that he was very close to Myles Lane when he found the gun in the car. He  
23 was in the same community, about 1 minute to 3 minutes away from the house of his  
24 friend.  
25



1 95. He got out of the car, left the keys in the ignition and the engine off. The radio was on.  
2 It was turned down; it was not up or loud.

3  
4 96. He said that he did not lock the car because he was not going to lock the gun up inside  
5 there. It did not belong to him. He called his friend and as he came out and spoke to him,  
6 the Police were at the scene. He got nervous and scared and believed that someone was  
7 trying to set him up.

8  
9 97. He told the Officers that he had walked to the area because he was scared and the gun  
10 was inside the car. He did not know what to do.

11  
12 98. After he was searched, he asked if he could leave and he was told he had to wait until  
13 the search was completed. Once this was done, he walked off to the Zodiac Bar leaving  
14 the car, because he was scared and did not know what to do.

15  
16 99. His mother contacted him and spoke to him and he turned himself in to the Police. He  
17 said that he did not know who the gun belongs to and that he is not that type of person.  
18 He does not know how to unload a gun.

19  
20 100. He said that he and his ex-girlfriend and Melissa had been arguing and having issues at  
21 the time.

22  
23 101. He was asked about the telephone messages detailed above as shown on Exhibit 12. He  
24 stated that he did not recall these messages on his phone. He said that the word "link"  
25 used in the message means trying to get with. He was asked directly and pointedly by  
26 his Counsel - do you have an explanation for these. He replied that he cannot help with  
27 them.



1 102. In cross- examination he accepted that he had told the police lies. He had not told the  
2 Police the truth when he said that he did not have a contact number for Claudia.

3  
4 103. He accepted that he had told the Police that he had been driving when he received the  
5 phone call from Ms. Clarke of the Rent-a-car Company. He also accepted that he had  
6 only received one call from her that day at 11:20 am. He accepted that he had lied when  
7 he said that she called him after 5pm. He did not go directly to the George Town Police  
8 station which was only minutes away because if he had he would be in the same position  
9 as he is now. He accepted further that whilst he was waiting during the search he could  
10 have told the Police about the gun. He did not tell any one of the Officers. He described  
11 himself as a hardworking construction worker who does not trouble anyone and no one  
12 troubles him.

13  
14 104. He was asked:

15  
16 Q. Do you mean when you say that you were going to try and find ... or figure  
17 out where it come from, do you mean that you were going to try and find the  
18 person that you got the gun from?

19 A. I didn't get no gun from anyone. I didn't put the gun there.

20 Q. What is the name of the person who gave you the gun?

21 A. I said I didn't put any gun there and no one didn't give me any gun.

22 Q. When did you first get the gun?

23 A. I said I didn't put any gun there. I didn't got any gun from no one, all right.  
24

25 105. In response to questions in re-examination he said that there are people who do not like  
26 him He said Melissa's friends did not want him to be with her. Claudia does not 100%  
27 like him, neither does, Melissa's sister Danya, who has now left the Island. He believes

1 that he has enemies on the road because people would say that he behaves better than  
2 them and because he has had a rented car for 3 months up and down.

3

4 106. He received the call from his friend about 3pm that day. He wanted a ride to drop off  
5 money to his daughter in Savannah. He did not tell anyone that he was going there.

6

7 107. When asked again in further re-examination about the phone messages, after a lengthy  
8 pause he answered by saying that he was referring to the gun in the message but the  
9 message relating to linking means try to get somebody to get back to him had nothing to  
10 do with the gun. He again said that he had not been threatened by anyone. He said that  
11 he was trying to find out who had access to the car and stuff like that but he did not get  
12 any time to do that.

13

14 108. He said that the car was a mess. At the same time that the lady called him for the money  
15 so he was checking on back receipts and that was when he pulled open the glove  
16 compartment.

17

18 **SUMMARY SUBMISSIONS**

19 109. The Prosecution submitted that:

20

21 i. The Defendant's account can be easily rejected but even if accepted the  
22 Defendant would still be guilty of the offence charged.

23

24 ii. The claim that someone else planted or left the firearm in the glove  
25 compartment is wholly implausible.

26

27 iii. The post-offence or after-the-fact conduct of the Defendant is further proof  
28 of his guilt.



1  
2 iv. The Defendant's account is unbelievable and should be rejected.

3  
4 110. Defence Counsel submitted that this case is peculiar, unlike many cases involving guns  
5 in the Cayman Islands. He highlighted a number of matters including the following:  
6

7 i. The Defendant gave an account in interview that he has maintained during  
8 trial.

9 ii. While it is accepted that he has told lies this does not mean everything is a  
10 lie. People lie for different reasons.

11  
12 iii. About 3 minutes, that is the length of time the Defendant knew he had a  
13 gun. He did not have it for weeks or months.

14  
15 iv. The Defendant is right-handed – so is Ms. Carballo. Exhibit 2 shows that  
16 the gun was placed in the glove compartment with the butt to the left. This  
17 suggests that it was placed therein by someone who is left-handed.

18  
19 v. The panicked reaction of the Defendant is a normal reaction. He was  
20 shocked and traumatised by the find.

21  
22 vi. The absence of fingerprints and DNA material on the gun and bullets.

23  
24 vii. The car does not legally belong to the Defendant.  
25



1                   viii. The Defendant has possible enemies in two camps - individuals, who were  
2                   jealous of him because he is hardworking and those who did not like his  
3                   relationship which he had with his then girlfriend.  
4

5   **LEGAL PRINCIPLES**

6           111. The Prosecution in closing submissions argued that possession of firearms is a strict  
7           liability offence. This submission is reflective of the position in a number of UK  
8           authorities and of decisions of the Grand Court in this jurisdiction which are of  
9           persuasive authority. No cases were cited during the hearing. The Court has drawn the  
10          attention of Counsel to the cases of *Hall v. Cotton and Another*<sup>4</sup>; *Warner v.*  
11          *Metropolitan Police Commissioner*<sup>5</sup>; *R v. Hussain*<sup>6</sup>; *R v. Bradish*<sup>7</sup>; *R v. Steele*<sup>8</sup>; *R v.*  
12          *Waller*<sup>9</sup>; *R v. Deyemi*<sup>10</sup>; *D. Ebanks v. R*<sup>11</sup>; *R v. GA General*<sup>12</sup>; *R v. Taylor*<sup>13</sup> and *Jenkins*  
13          *v. DPP*<sup>14</sup> .  
14

15          112. Counsel were given the opportunity to make submissions on these cases on the 21<sup>st</sup>  
16          August 2020. In the course of that hearing, Defence Counsel cited the additional case of  
17          *R v. Orrett, Borden, Montague and Ebanks*<sup>15</sup>. I have considered all the submissions  
18          made.

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<sup>4</sup> [1986] 3 W.L.R. 681

<sup>5</sup> [1969] 2 A.C. 256

<sup>6</sup> [1981] 72 Cr. App. R. 143

<sup>7</sup> [1990] 90 Cr. App. R. 271

<sup>8</sup> [1993] Crim L. R. 381

<sup>9</sup> [1991] Crim L.R. 381

<sup>10</sup> [2007] EWCA Crim 2060

<sup>11</sup> [1980-83] CILR 348

<sup>12</sup> [2002] CILR 276

<sup>13</sup> [2011] EWCA Cri, 1646

<sup>14</sup> [2020] EWHC 1307

<sup>15</sup> 2010 (1) CILR Note 7



1 113. The factual issue for the determination of the Court in this case is a narrow one. It is  
2 whether the Defendant was in possession of the firearm and ammunition found in his  
3 rented car. The defendant says that this is not his gun or ammunition. It is a question of  
4 fact whether or not a person is in possession of a firearm or ammunition. Possession is  
5 not the same thing as ownership. Possession refers to a firearm (or ammunition) being  
6 physically in the custody or under the control of a person whether or not that person is  
7 the owner. Hirst J. in *Hall v. Cotton* in describing a similar provision under UK Law, s.  
8 2 of the *Firearms Act 1968* stated:



9 “The purpose of section 2 is to regulate all persons who have shotguns in  
10 their possession, whether it be in their physical custody or their control, or  
11 who purchase or acquire shotguns, so as to ensure that such possession,  
12 purchase, or acquisition is unlawful without a certificate, which is of course  
13 only issued after extensive inquiries by the police as to the suitability of the  
14 applicant.”  
15

16 114. The Court in *Cotton v. Hall* concluded that one does not have to be present with a firearm  
17 in order to have possession of it. There could be proprietary as well as custodial  
18 possession.  
19

20 115. In *Warner v. Metropolitan Police Commissioner*, Lord Pearce in discussing physical  
21 possession or control in the context of the *Misuse of Drugs Act* stated: -

22 “By physical possession or control I include things in his pocket, in his car, in his  
23 room and so forth. That seems to me to accord with the general popular wide  
24 meaning of the word “possession” and to be in accordance with the intention of the  
25 Act.”  
26

27 116. In *R v. Hussain* the appellant appealed his conviction for possession of a firearm. His  
28 case was that he had thought that a metal tube found in his house was a toy gun. It had  
29 been used by his son to fire corks. The evidence at trial established that it was in fact a  
30 lethal barreled weapon. It was argued on his behalf that it was necessary for the

1 prosecution to prove that he had knowledge of the nature of the article in order to  
2 establish the *mens rea* of the offence. The English Court of Appeal referred with  
3 approval to the case of *Warner* and held that the trial judge had correctly directed the  
4 jury that the appellant would be guilty of the offence even though he might not know  
5 that what he had was a firearm.

6  
7 117. In *R v. Bradish* the appellant was charged under the *Firearms Act* 1968, s.5(1) with  
8 possession of a prohibited weapon without the authority of the Secretary of State. The  
9 weapon was a canister of CS Gas. At a *Newton* hearing the appellant contended that he  
10 had not known that it contained CS Gas.

11  
12 118. The English Court of Appeal reviewed a number of authorities including *R v. Hussain*  
13 and stated its agreement with the position that offences created by s.5 of the *Firearms*  
14 *Act* were offences of strict liability. The Court stated: -

15 *First, the words of the section themselves, "A person commits an offence if*  
16 *without ... authority ... he has in his possession ..." any firearm, weapon or*  
17 *ammunition of the type defined, makes plain that this is an offence of strict*  
18 *liability.*

19  
20 *Secondly, the comparable words and structure of section 1 of the 1968 Act*  
21 *have been held by this Court in Howells (supra) and Hussain (supra) to*  
22 *create an offence of strict liability.*

23  
24 *Thirdly, the clear purpose of the firearms legislation is to impose a tight*  
25 *control on the use of highly dangerous weapons. To achieve effective control*  
26 *and to prevent the potentially disastrous consequences of their misuse, strict*  
27 *liability is necessary, just as it is in the equally dangerous field of drugs. See*  
28 *per Lord Guest in Warner, at page 421 and p. 301, (supra). Given that*  
29 *section 1 has been held to create an offence of strict liability, this*  
30 *consideration applies a fortiori to section 5, which is concerned with more*  
31 *serious weapons, such as automatic handguns and machine guns, and*  
32 *imposes a higher maximum penalty."*  
33





1 119. That Court referenced the “stricter line” adopted by the English Court of Appeal in cases  
2 such as *R v. Hussian*. In addition the Court noted the following matters; the absence of  
3 a specific reference in s.1 and s.5 of the *Firearms Act* as to an accused’s state of mind  
4 as ingredients of the offence where those specific references were present in other  
5 provisions; that the scheme of the Act was such as to specifically provide for a defence  
6 in relation to a particular state of mind where that was intended; the difference between  
7 the provisions in the *Misuse of Drugs Act 1971* which had been under consideration in  
8 the case of *Warner v. MPC* and the provisions in the *Firearms Act*; and the need for  
9 effective control of the possession and use of firearms.

10  
11 120. The Court concluded that the approach in *Warner v. MPC* in relation to container cases  
12 did not apply to cases under s.1 and 5 of the *Firearms Act* such as to allow an accused  
13 to raise a defence that he did not know what was in a container. The Court concluded  
14 that the trial judge was correct that s.5 created an offence of strict liability.

15  
16 121. In the case of *R v. Steele*, the English Court of Appeal applied the principles in *R v.*  
17 *Bradish* and *R v. Waller* and refused the appellant’s application for leave to appeal. The  
18 appellant’s case at trial was that a few minutes before the arrival of the police, he had  
19 been given a holdall which proved to contain a sawn off double barrel shot gun. He had  
20 not become aware of its contents or been put upon notice. The trial judge had been asked  
21 to rule on the following question: -

22 *“If the defendant (1) has the custody (2) of a firearm (3) in a holdall (4) for*  
23 *a matter of minutes (5) without giving thought to the nature of the contents*  
24 *(6) or whether there were any at all (7) and has no realistic opportunity to*  
25 *inspect the contents; (8) has no reason to do so, (9) and is not put on notice*  
26 *as to anything amiss, is he nonetheless guilty of possessing a firearm without*  
27 *a certificate under section 1 (1) (a) of the Firearms Act 1968?”*



1       122.     The Court held that the trial judge was correct in his ruling that the fact that the defendant  
2                   had custody of the holdall for only a matter of a minute or did not know or could  
3                   reasonably have been expected to know that it contained a firearm would afford no  
4                   defence. The Court stated its recognition of the draconian nature of the legislation but  
5                   considered the mischief aimed at was obvious and serious.  
6

7       123.     In the case of *R v. Deyemi and Edwards* the Court considered and rejected the  
8                   appellant's argument that a provision imposing an offence of strict liability was of itself  
9                   capable of infringing the provisions of Articles 6 and 7 of the European Convention on  
10                  Human Rights.  
11

12       124.     In this jurisdiction in the case of *D. Ebanks v. R* the issue before the Grand Court on  
13                  appeal from a decision of the Magistrate's Court was whether the Prosecution had  
14                  established that the Defendant was in actual or constructive possession of a firearm. This  
15                  in circumstances where he had been seen by the Police to throw away an object which  
16                  when retrieved was found to be a firearm. The Court held that the Crown had presented  
17                  enough clear and cogent evidence to prove that the appellant had been knowingly and  
18                  willingly in control of the object which he had thrown away. Proof that he had actual  
19                  knowledge that the object in his possession had been a revolver was not required.  
20

21       125.     In *R v. G. A. General*, the Accused was charged with possession of a stolen handgun  
22                  and ammunition. He alighted from a car which was being chased by the Police, threw a  
23                  gun to the ground and tried to run away. His account at trial was that he had found the  
24                  gun in some bushes and had recovered it, with the intention of handing it over to the  
25                  Police in order to obtain a reward. He said that he had sought a lift from an acquaintance



1 who had refused to stop at the station and that this was shortly before the car was chased  
2 by the Police. The Court rejected his account and held that even if his account was true,  
3 it would not constitute a defence to an offence of possession of a firearm without a  
4 license contrary to section 15 (1) of the Firearms Law: -

5 *“Since the offence was one of strict liability and the accused did not fall*  
6 *within any of the exceptions listed in s.15(2). Despite the presumption - in*  
7 *the absence of a clear indication in the legislation as to the necessary mental*  
8 *element of the offence - that mens rea was required, the case law*  
9 *interpreting equivalent English legislation showed that possession of a*  
10 *firearm was an absolute offence.”*

11  
12 126. I have also reviewed two cases dealing with the issue of temporary possession.

13  
14 127. In the UK case of *Regina v. Taylor*, the Crown sought leave to appeal a preliminary  
15 ruling in which the trial judge had ruled that Taylor on the basis of his account could not  
16 have been in possession of a firearm. Taylor’s fingerprint had been found on the hand  
17 grip of a gun which had been recovered from the flat of another man. Taylor’s account  
18 was that he had gone to the flat and seen a bag which he had picked up. He had not  
19 known that it contained a firearm. On opening the bag, he had picked up the firearm,  
20 held it for “two milliseconds” and straight away replaced it in the bag. In that case the  
21 Prosecution accepted that the holding was momentary and that Taylor had immediately  
22 made clear that he wanted nothing to do with the firearm.

23  
24 128. In the case of *Taylor* the Court of Appeal referred to the case of *Warner v. MPC* on the  
25 question of possession. The Court stated:

26  
27 *“Lord Pearce considered what amounted to possession at page 306B:*

28 *“For a man takes over a package or suitcase as risk as to its*

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*contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as maybe he should examine it and if he finds the content suspicious reject possessing by either throwing them away or by taking immediate sensible steps for their disposal.”*

*Lord Morris of Borth-y-Gest, who dissented on the knowledge issue, stated in relation to possession at page 289C:*

*“In my view, in order to establish possession the prosecution must prove that an accused was knowingly in control of something in circumstances which showed that he was assenting to being in control of it: they need not prove that in fact he had actual knowledge of the nature of that which he had.”*

129. The Court also referred to the cases of *Waller*<sup>16</sup> and *Steele*<sup>17</sup> before concluding that:

*“We accept that there is no need for the prosecution to prove a conscious decision to be the possessor. What is required are words or actions revealing such power or control over the article, as contemplated in Warner, even if only for a very short period, as could fairly amount to possession of it by the defendant.”*

130. The Court noted that Taylor was a visitor to the flat and concluded that the learned trial Judge was correct to hold on the facts in that case that the momentary handling of the firearm followed by the immediate rejection of it did not constitute possession of the firearm within the meaning of s.5 (1) of the 1968 *Firearms Act*.



<sup>16</sup> 1991 Crim L. R. 381  
<sup>17</sup> 1993 Crim L.R. 298

1 131. In the recent case of *Stuart James Jenkins v DPP*<sup>18</sup>, the High Court considered an appeal  
2 against a conviction made by a Magistrates Court. The appellant had been found guilty  
3 of possession of a weapon designed or adapted for the discharge of electrical current  
4 contrary to s.5 (1)(b) of the *Firearms Act*, a stun gun. A car driven by the appellant was  
5 stopped. He had a female passenger in the car. In the glove compartment a stun gun was  
6 found. The appellant gave oral evidence at trial that the gun had been placed in the  
7 compartment by his passenger. He had not known that it was in her possession until she  
8 produced it in the car shortly before the police stopped him. His response to her had been  
9 to tell her to get it away from him. She then placed it in the compartment. This was some  
10 10 minutes before he was stopped by the police. His intention was to drive his passenger  
11 home where he expected her to remove the gun from the car.

12  
13 132. The Court referencing *R v. Taylor* stated that what the prosecution must prove is that an  
14 accused was knowingly in control of something in circumstances in which he was  
15 assenting to being in control of it. The Court held that the magistrates were correct to  
16 find possession on the basis that the stun gun was in the car to the appellant's knowledge,  
17 which car he chose to drive. He had allowed the stun gun to be placed in and remain in  
18 his car which he then drove for some 10 minutes, controlling its location. In analyzing  
19 the matter, the Court reviewed the options which the appellant could have exercised:



*“He could have insisted Ms Price leave the car with the stun gun; he could have left the car in the event that she refused. Whilst Mr Jenkins may have expressed concern at the outset, any objection did not prevent him from voluntarily continuing on his way with the stun gun in place. The fact that the period of possession was short-lived did not afford Mr Jenkins any defence.”*

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<sup>18</sup> 2020 EWHC 1307 (Admin)

1 133. I am mindful that each case must be considered on its own facts and that factual  
2 circumstances should not be elevated to principles.



3  
4  
5

**DISCUSSION AND FINDINGS**

6 134. Both the Prosecuting and the Defence Counsel are correct in their arguments that there  
7 is no reliable or credible evidence as to when the firearm and ammunition came to be in  
8 the possession of the Defendant or how or from whom the firearm was acquired.

9

10 135. The Prosecution's case as put in cross-examination is that the Defendant received the  
11 firearm from a person unknown and it was he (the Defendant) who placed the gun in the  
12 glove compartment. It is for the Prosecution to prove to the required standard that the  
13 gun was not planted in the car and that the Defendant was not being set up.

14

15 136. I have to consider with care the evidence of all the women who had been in the car that  
16 day. From the evidence of three of them, there was no occasion that Melissa, Danya or  
17 Yesenia were alone in the car by themselves and without Ms. Carballo. Melissa Smith  
18 Rizo travelled in the front passenger seat and is right-handed.

19

20 137. From the cross-examination of her, Ms. Carballo would have had the best opportunity  
21 to place the firearm in the car. She was alone in the car on multiple occasions.

22

23 138. Ms. Carballo acknowledged that she initially lied to the Police about whether she had  
24 been driving the car that day. She was specifically asked whether she had lied because  
25 she knew of the gun being in the car. She gave the reason for the lie as being because

1 she had been driving without a license. Having assessed her as she gave her evidence, I  
2 found her to be a credible witness. I accept that this was in fact the reason for her lying.  
3 I do not find that this lie means that she cannot be believed as to other aspects of her  
4 evidence namely as to her account of the events of that day and as to whether or not she  
5 placed the firearm in the car.

6  
7 139. The account which she gives of her movements that day substantially accords with that  
8 given by other civilian witnesses. The sequence of events is also borne out in large  
9 measure by the CCTV footage of the car travelling around George Town at the various  
10 times. There appears to be one discrepancy of significance. This is the CCTV footage  
11 of the sighting of the car between 3:18pm and 3:21pm on Cardinal Avenue, persons  
12 exiting and one person re-entering as per Admissions 57 and 58. This is inconsistent  
13 with the evidence of Ms. Carballo that they went directly to the parking lot in the  
14 complex with the Burger King store near to the Court house and from there went  
15 shopping. Neither civilian witness could explain the movement of the car recorded by  
16 the CCTV. They maintained that they did not spend three minutes in the perfume store  
17 and that the car was parked in the parking lot while they were in the store.

18  
19 140. I have considered what weight should be given to this inconsistency. The next  
20 Admission following, Admission 59, states that some 30 minutes later, at 3:51pm the  
21 vehicle again exited Albert Panton Street, turned left on to Cardinal Avenue before  
22 travelling towards the junction. For those 30 minute there is no other sighting of the  
23 vehicle recorded. It is a reasonable inference that for this 30 minute period, the car was



1 stationery at a location. This would lend support to the evidence of the car being parked  
2 at a location for some period.

3  
4 141. I am satisfied in the light of this other evidence that any inconsistency as to the  
5 movement of the car from Cardinal Avenue and their evidence of going directly to the  
6 parking lot is not material and does not cause me to doubt the reliability or truthfulness  
7 of their evidence on the major matters. I conclude that very likely Ms. Carballo is  
8 mistaken as to whether or not she went directly to the parking lot. I accept the evidence  
9 of Ms. Carballo that the car was parked in the parking lot identified. I also accept her  
10 evidence that she did not give the keys for the vehicle to anyone else that afternoon.

11  
12 142. In relation to a possible motive for Ms. Carballo to plant the gun in the car, the Defendant  
13 stated she did not like him 100%. There is of course no burden on him to prove anything.  
14 In assessing whether or not Ms. Carballo had a motive for the planting of a firearm on  
15 the Defendant I thought the suggestion of her not liking him or not liking his relationship  
16 with Ms. Smith, a most weak reason. There appears to be no credible evidence of conflict  
17 between any of them such as would drive them to plant a firearm in his car in order to  
18 set him up.

19  
20 143. It also seems surprising for Ms. Carballo to have chosen that day and time knowing that  
21 she had the car that afternoon and that suspicion would immediately fall on her. I  
22 assessed her as a witness of truth when she stated that she had not placed the gun in the  
23 car and had not seen anyone else place a gun in the car. These were young ladies out for  
24 a shopping afternoon, the day before Valentine's Day. I do not accept that they for  
25 reasons of dislike of the very person who was providing them with needed transport or



1 of his relationship with Ms. Rizo would have acquired, much less placed a firearm in the  
2 car.

3  
4 144. I accept the evidence of Ms. Rizo that she did not place the firearm in the glove  
5 compartment.

6  
7 145. I find as a fact that the gun was not placed in the car by Ms. Carballo or Ms. Rizo and  
8 that the other women could not have placed the gun in the car without Ms. Carballo  
9 witnessing this. I find as a fact that Ms. Carballo did not see anyone placing the gun in  
10 the car.

11  
12 146. Secondly, I considered whether the gun may have been planted by someone unknown.  
13 While Ms. Carballo gave evidence that the vehicle was locked by her whilst in the  
14 parking lot by the perfume store and there is evidence that it was not left unattended  
15 whilst at the AL Thompson Department store, there is no evidence as to the state of the  
16 car when she went to the Immigration Department and other places.

17  
18 147. The Prosecution submitted in its closing argument that it is implausible that someone  
19 else planted or left a firearm, which is a valuable item in the glove box. This argument  
20 has some force for a number of reasons. Firstly for the young ladies to have the car was  
21 an occasional rather than an everyday event. In the usual course the car would have been  
22 mostly with the Defendant or sometimes with Mr. McField who would use the car on  
23 occasion. The evidence was that Mr. McField had not had the car in the days leading up  
24 to the 13<sup>th</sup> February. The Defendant said that he rented the car so that he could use it to  
25 get to work on time rather than taking the bus and being late. It appears to me to be  
26 implausible that an unknown individual would have identified an opportunity to place



1 the gun in the car within the short window afforded by the shopping trip which had only  
2 been arranged on the morning of that day.

3  
4 148. Moreover, there appears to be no credible evidence of any unknown person having a  
5 motive to set up the Defendant. Jealousy of his prosperity at having a rental car and his  
6 being hardworking appears to be the extent of the suggestions made. I find these to be  
7 implausible.

8  
9 149. A major factual point on which the Defence rely to point to an unknown individual or  
10 an individual other than the Defendant is the fact that the Defendant is right-handed and  
11 the gun which was turned with the butt and handle to the left must it is said have been  
12 placed in the compartment by a left handed person. Neither Claudia Carballo nor Melissa  
13 Rizo are left-handed. It does seem to be speculative to say that it must have been placed  
14 in the compartment by a left-handed person and that the response of DC Ennis that it  
15 depends on how the gun is being held is correct.



16  
17 150. The point is also contradicted by the fact that the Defendant accepts that he, a right-  
18 handed person must have been the last person to pick up and hold the firearm. He said  
19 repeatedly in his interview that his fingerprints would be on the firearm because he  
20 picked it up.

21  
22 151. I do not find that the positioning of the gun in the glove compartment points to placement  
23 therein by a left-handed person or a person other than the Defendant.

24  
25 152. On the case for the Prosecution, the Police went to execute a search warrant at #3 Myles  
26 Lane under the *Firearms Law* within minutes of the Defendant arriving there. I have

1 given careful consideration to this singular fact in the context of the Defendant's claim  
2 that he was "set up". The timing of the arrival of the Police would appear at first blush  
3 to support his account. How is it that the Police arrived there so soon after the Defendant  
4 drove up in his car? I found the following evidence of significance in considering this  
5 aspect:

- 6
- 7 i. The Defendant would visit his friend at that address. While he appeared to  
8 frequent the area, he did not reside at that location.
- 9
- 10 ii. The Defendant was late leaving work that afternoon. He said that he would  
11 normally leave at 5pm but had to wait about an extra half an hour to be  
12 picked up by Claudia Carballo. He said that he was annoyed at this.
- 13
- 14 iii. The Defendant said that he went to Myles Lane because he was called at  
15 3pm by his friend and asked to provide a lift. He had not told anyone that he  
16 was going there.
- 17 iv. The focus of the Police search was the house at 3 Myles Lane.
- 18
- 19 v. The Defendant was searched it appears because he was seen coming from  
20 the house. He had nothing on him and was allowed to leave.
- 21
- 22 vi. The car did not appear to feature in the Police search.
- 23
- 24 vii. The car remained unquestioned by the Police for what appears to be a  
25 substantial time (about one hour and twenty minutes) until it attracted  
26 attention, because it had been left essentially abandoned and no one  
27 identified themselves as the owner.



1 153. From all of these circumstances, in my view the reasonable and inescapable inference is  
2 that the Defendant simply happened to be in the wrong place at the wrong time. In the  
3 circumstances as they unfolded, there is nothing to suggest that his vehicle appeared to  
4 be an initial target of the search. If the firearm had in fact been planted in the vehicle  
5 one would have expected the vehicle to have been the immediate focus.

6

7 154. I turn now to the Defence case.

8

9 155. I closely observed the Defendant throughout his evidence. He did not impress me as a  
10 witness of truth. I formed the view that he was not being truthful or forthcoming as to  
11 what took place.

12

13 156. In his interview the Defendant appeared to be saying that the firearm had not been in the  
14 car on the morning of the 13<sup>th</sup> February. In his evidence he said that he had last gone  
15 into the glove compartment on the Sunday or Monday before. Mr. McField had not  
16 borrowed the car that week.

17

18 157. He accepted lying to the police about whether he had walked to the location and as to  
19 not in fact receiving a call from Ms. Clarke just prior to going into the glove  
20 compartment.

21

22 158. I bear in mind that a defendant who tells a lie is not necessarily guilty, sometimes a  
23 defendant who is not guilty will tell a lie for an innocent reason such as to bolster a  
24 genuine defence or out of shock or panic.

25



1 159. The reason which the Defendant gave for telling the lie about walking to the location is  
2 that he was in a state of panic, he was scared and believed that if he told the Police about  
3 the gun which he says he found in his car the Police would not believe him.

4  
5 160. His account of finding the gun minutes before the arrival of the police relies heavily on  
6 a reason for going into the glove compartment. He said repeatedly throughout his  
7 interview that he did so because while he was driving, he received a call from Ms. Clarke  
8 about the car which lead him to check for the receipt in the glove compartment. Thus,  
9 he pinned the timing of the entry into the glove compartment to the timing of that call.  
10 This was repeated more than once in the course of the interview.

11  
12 161. In evidence he resiled from this and admitted that the only call he had received from Ms.  
13 Clarke was before 12 noon that day. His final answer was that he had been checking  
14 for the receipts while driving because Ms. Clarke had called him earlier in the day and  
15 he had been checking around the car which had been returned to him in a messy  
16 condition. This is an explanation which if true could easily have been given at the time  
17 of the interview.

18  
19 162. I find his explanation in interview for the reason for the timing of going into the glove  
20 compartment to be a deliberate lie. I am sure that it was not made for an innocent reason  
21 such as to bolster a genuine defence or shock, confusion or mistake. This was a lie  
22 designed to set the timing for his claim that he had suddenly discovered the firearm in  
23 the car. I consider that this lie is evidence which supports the Prosecution's case.<sup>19</sup>

24  

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<sup>19</sup> R. v. Lucas [1981] 73 Cr. App. R. 159; Strudwick and Merry [1994] 99 Cr. App. R. 326



1 163. The messages found on his phone are curious indeed as was his evidence in relation to  
2 them. Initially in response to questions from his Counsel, he said that he could not assist  
3 with them. When asked again in re-examination about them, there was a lengthy pause  
4 before he responded. It appeared that he was seeking initially to distance himself from  
5 these messages. Nowhere in this conversation which he finally admitted was initially  
6 about the gun does he say, the gun was planted in my car, instead he says '*they already*  
7 *fine it*'. Within twenty-one seconds after the last exchange about the gun, he asks the  
8 lady to whom he was speaking to '*link him*' and get back to him. He claims that this  
9 message was not about the gun. I find that the timing and sequence of the messages are  
10 significant.

11  
12 164. I took note of the initial claim not to be able to say what these messages were about, and  
13 the long pause before he answered that the initial messages were about the gun. I did not  
14 find his responses to be credible.

15  
16 165. On initial arrest and caution, he was asked how he had known that he was going to be  
17 arrested for a firearm. He replied, yes, he knew, but he does not want to say because he  
18 does not want to get into any trouble, he had driven the car.

19  
20 166. On his account the firearm had been found by him just minutes before and he was in a  
21 state of shock and panic. The way in which the car was left belies this. While he claimed  
22 that he did not wish to lock the firearm up in the car as it did not belong to him and did  
23 not have time to do anything, there was a casualness about this which appears to be  
24 inconsistent with someone shocked and panicked. The car window was down, the music  
25 was left on and the key was left in the engine. There seems to have been no concern that



1 anyone could access the 'real gun' which he had just found in his car. It was visible once  
2 the glove compartment was open.

3  
4 167. His conduct after the arrival of the Police and the lie told to the police that he had walked  
5 to the location was plainly in order to distance himself from the car and evidences the  
6 fact that he well knew that the firearm was in the vehicle and hoped that it would not be  
7 discovered.

8  
9 168. I did not find him to be a credible witness. I do not accept that he found the firearm in  
10 his rented vehicle minutes before in the circumstances which he described. The  
11 inescapable inference is that he deliberately lied as to the timing for entry into the glove  
12 compartment in order to give the appearance of momentary possession or planting.

13  
14 169. Having considered all the circumstances, I find his explanation as to the finding of the  
15 gun in the car to be untrue. I reject his account.

16  
17 170. Having rejected his account or excuse, I have again considered the case for the  
18 Prosecution - being mindful of the burden of proof. I make the following findings. The  
19 firearm and ammunition were found by the Police in the glove compartment of the rented  
20 car. They were not planted in the car by the women who had the car earlier in the day  
21 or by a person or persons unknown. The Defendant had custody and control of the car.  
22 He paid the rental fees and was the person who on his own evidence kept the car for  
23 most of the time, loaning it out in his discretion. The fact that he was not the legal renter  
24 of the car does not assist him against the background of the actual use and possession of  
25 the car as detailed in the evidence. The Defendant was therefore in possession of the  
26 vehicle and its contents. (See *Warner v. MPC*). The Defendant admits that he knew the



1 firearm was in his car and that he had held it. The firearm is a lethal barreled weapon  
2 and the ammunition viable within the meaning of the *Firearms Law*.

3  
4 171. I am satisfied so that I am sure on the Prosecution's case that the Defendant was in  
5 possession of the firearm and ammunition on the 13<sup>th</sup> February 2020 contrary to the  
6 provisions of the *Firearms Law* as is charged.

7  
8 172. Additionally, even if his account is true that his possession of the firearm and  
9 ammunition was only for a matter of minutes, it could not, in these circumstances,  
10 amount to a defence to these offences. Having found the firearm in the glove  
11 compartment, on his account his intention was to keep it until he could make his own  
12 inquiries as to how it came to be in his vehicle. There was no immediate repudiation of  
13 possession. He could have thrown the gun out of his vehicle, driven back to Ms. Carballo  
14 whom he had just dropped off or driven to the George Town Police Station which was  
15 minutes away. Instead he chose to keep it in his vehicle.

16  
17 173. It is no excuse, as he sought to say, that he did not have time to do anything when he  
18 also said that he intended to keep it for a time. By choosing to continue to drive with it  
19 remaining in his car, albeit for a short distance, he was controlling its location. The  
20 inescapable conclusion is that he was assenting to being in control of it.

21  
22 174. While he also claims that it was because of panic, shock and fear that he didn't go  
23 immediately to the Police station and did not tell the Police on the scene, his expressed  
24 intention was not to hand it over but to retain it. Again, a clear indication that he was  
25 assenting to being in control of it.

26



1 175. It is also noted that the discovery of the firearm was not immediate. On the evidence he  
2 remained at the location for some time while the search of the house took place. The  
3 Police did not approach the car until 7:10pm. The Defendant thus remained there for at  
4 least an hour between 5:45 pm and shortly before 7:10pm knowing that the gun was in  
5 his rented car and said nothing to any of the Police officers who were right there on the  
6 scene. In other words, for the entirety of this lengthy period, he did not repudiate  
7 possession.

8

9 176. Thus, even on this alternative basis, given the legal position as detailed above, I am also  
10 satisfied so that I sure that the Defendant would be in possession of the firearm and  
11 ammunition contrary to the provisions of the *Firearms Law* as charged.

12

13 177. The verdict is therefore one of guilty to both counts on this indictment.

14

15 **Dated this 26<sup>th</sup> day of August 2020**



16 **Honourable Justice Cheryll Richards Q.C.**  
17 **Judge of the Grand Court**

