

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **IND. NO: 0011/2018**

5
6
7 **THE QUEEN**



8
9 **v.**

10
11 **ELMER¹ WATLER WRIGHT**

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15 **Appearances:**

**Mr. Patrick Moran, Deputy DPP (at the
time of the trial) for the Crown**

**Ms. Amelia Fosuhene of Brady Attorneys
for the Defendant (from 9th May to 27th
September 2019)**

**Mr. Keith Myers instructed by Stenning
Associates for Defendant (from 10th
October 2019 to 27th November 2019)**

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26 **Before:**

Justice Roger Chapple (Actg.)

27 **Judge Alone Trial:**

**9th – 21st May 2019. Thereafter, on varying
dates up to the 27th November 2019**

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32 **HEADNOTE**

33 ***Criminal Law – Aggravated Burglary, Robbery, Attempted Burglary, Possession***
34 ***of an imitation firearm – Trial by Judge Alone.***

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36 **VERDICT JUDGMENT**
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38 ***Note:***

39 ***This Judgment, dated the 29th January 2020, was not released for circulation on any website or***
40 ***publication until the conclusion of the case of Ind. 102/19 R v Shane Edward Connor.***
41 ***Mr. Shane Connor was sentenced on Ind. 102/19 on the 10th December 2021 and thus this Judgment was***
42 ***approved for circulation following that date.***
43

¹ On the 28th January 2020 confirmed as the correct spelling of the defendant's name as this indictment bore the incorrect spelling "Elemer". Application to amend the indictment was approved on the 28th January 2020



1 1. This defendant, Elmer Walter Wright, together with Caine Demetree Thomas and
2 Nikel Emanuel Thomas, are charged on an indictment containing six counts, as
3 follows:

Ind. #	Count	Offence	Particulars
11/18	1	Theft	Honda Civic
	2	Attempted Burglary	#2 Camelot Palms
	3	Possession of an imitation firearm with intent to commit an offence	# 2 Camelot Palms
	4	Damage to property	# 2 Camelot Palms – doors and a CCTV camera - \$11,800
	5	Aggravated Burglary	Amity Street – firearms
	6	Robbery	Amity Street - \$30,000

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5 2. All offences are alleged to have taken place over a period of about 4 hours in the
6 early hours of 17th June 2017.

7 3. Nikel Thomas and Elmer Wright entered pleas of not guilty to the indictment and
8 elected trial by judge alone. On the 20th July 2018, Caine Thomas entered guilty
9 pleas to all counts of the indictment. Sentence in his case was adjourned until the
10 conclusion of the trials of Elmer Wright and Nikel Thomas.

11 4. That trial commenced as long ago as 9th May 2019; it was beset with problems
12 necessitating substantial delays – a topic to which I will return later in the course of
13 this judgment.

14 5. On 24th October 2018, when the trial was due to resume after further delay, upon
15 Nikel Thomas' application, counts 2 and 5 of the indictment were put to him again.
16 He then pleaded guilty to count 2 (attempted burglary at #2 Camelot Palms) and,
17 upon count 5 (10 Amity Street), not guilty to aggravated burglary but guilty to
18 simple burglary. Those pleas were acceptable to the prosecution and accordingly,
19 the trial then proceeded against Elmer Wright alone. Nikel Thomas now awaits
20 sentence along with his brother, at the conclusion of Elmer Wright's trial.



1 TRIAL BY JUDGE ALONE

2 6. Given that this is a trial by judge alone, I have reminded myself, borne in mind and
3 followed the legal analysis helpfully provided by Quin, J in *R v George Dexter*
4 *Evans*². I must advise myself on the applicable principles of law, give myself
5 appropriate warnings as necessary and state clearly my reasons for acting as I do,
6 so that my reasoning is clear. I also bear in mind the guidance given by Rowe, J in
7 *K. Richards v R*³, as follows:

8 *“When a trial judge sitting alone has advised himself to the applicable*
9 *principles of law and given himself any necessary warnings, he must indicate*
10 *clearly in his judgement his reasons for acting as he did, in order to*
11 *demonstrate that he has acted with the requisite degree of caution in mind and*
12 *has therefore heeded his own warning.”*

13

14 7. The judge’s duty and method of approach when sitting in a judge alone trial was
15 recently analysed by the Caribbean Court of Justice (CCJ), on appeal from the
16 Court of Belize, in the case of *Dioncicio Salazar v The Queen*⁴. I have found that
17 judgment useful and have followed its guidance. The CCJ quoted with approval
18 from the judgment of the Court of Appeal in Northern Ireland in *R v Thompson*⁵ in
19 which it was said of the duty of a judge sitting alone in a bench trial:

20 *“He has no jury to charge and therefore will not err if he does not state every*
21 *relevant legal proposition and review every fact and argument on either side.*
22 *His duty is not as in a jury trial to instruct laymen as to every relevant legal*
23 *aspect of the law or to give (perhaps at the end of a long trial) a full and*
24 *balanced picture of the facts for decision by others. His task is to reach*
25 *conclusions and give reasons to support his view and, preferably, to notice any*
26 *difficult or unusual points of law in order that if there is an appeal it can be*
27 *seen how his view of the law informs his approach to the law.”*

28

29 8. The CCJ continued:

² Indictment No 18 of 2011 paragraphs 67 to 71

³ 2001 CILR 496

⁴ [2019] CCJ 15

⁵ [1977] NI 74



1 *“Equally, a judge sitting alone and without a jury is under no duty to*
2 *“instruct”, “direct” or “remind” him or herself concerning every legal*
3 *principle or the handling of evidence. This is in fact language that belongs to a*
4 *jury trial (with lay jurors) and not to a bench trial before a professional judge*
5 *where the procedural dynamics are quite different (although certainly not*
6 *similar to those of an inquisitorial or continental bench trial).”*

7
8 9. This has been a lengthy trial. As already mentioned, there have been many
9 difficulties and frustrations along the way. A great deal of evidence has been
10 placed before me, some of it technically complex. The prosecution case relies
11 upon a number of strands of evidence. I have had to consider those strands
12 individually and also give consideration to the cumulative effect of such strands
13 about which I am sure. It then seems apposite to draw attention to what was said
14 by Lord Lowry, LCJ in *R v Thain*⁶,

15 *“Where the trial is conducted and the factual conclusions are reached by the*
16 *same person, one need not expect every step in the reasoning to be spelled out*
17 *expressly, nor is the reasoning carried out in sealed compartments with no*
18 *intercommunication or overlapping, even as the need to arrange a judgment in*
19 *a logical order may give that impression. It can safely be inferred that, when*
20 *deliberating on a question of fact with many aspects, even more certainly than*
21 *when tackling a series of connected legal points, a judge who is himself the*
22 *tribunal of fact will (a) recognize the issues and (b) view in its entirety a case*
23 *where one issue is interwoven with another.”*

24
25 10. Returning to the decision in *Salazar*, the CCJ observed,

26 *“As a rule, the judge will consider the prosecution’s evidence first. If that*
27 *evidence seems strong enough to carry a conviction, the judge will consider*
28 *the evidence of the defence. The judge will then look at the totality of the*
29 *evidence to reach a final decision. It is there where the intercommunication*
30 *and overlapping take place. It is after this polymorphic process that the judge*
31 *needs to arrange his or her judgment in a logical order which will not always*
32 *be able to reflect the complicating thinking process as such.”*

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⁶ [1985] NI 457

1 11. As I have been preparing this judgment, appreciating as I do the need to explain
2 my reasoning, those observations have struck me as particularly apt. I could not
3 hope, neither is it necessary, for me to explain every part of my thinking process,
4 or deal with every piece of evidence and how I have approached or evaluated it.

5 **SUMMARY**

6 12. There is no dispute in this case that a robbery took place at #10 Amity Street,
7 Prospect, the home of Maria and Steven Butler, at about 4 a.m. on the 17th June
8 2017. Mr and Mrs Butler awoke to find 3 men at the foot of their bed. Two were
9 carrying guns, another was armed with a hammer. Each of the robbers had covered
10 his face, with either a mask or a garment. The ordeal of Mr. and Mrs. Butler has
11 aptly been described by defence counsel, Mr Myers, on behalf of Elmer Wright, as
12 horrific. They were subjected to a terrifying ordeal of threats, indignities and
13 violence; property to an estimated value of US\$30,000 was stolen.

14 13. Earlier that morning, a property at #2 Camelot Palms, off West Bay Road, was
15 attacked; the activities of the 3 would-be burglars were caught on a private CCTV
16 system installed at the premises, until one of the burglars disabled the camera with
17 the expedient of a brick, rock or similar. Concerted, but ultimately unsuccessful,
18 attempts were made to gain entry to the premises; damage was caused to the tune
19 of \$11,800. The premises were unoccupied, the owner Mr Cristiano Vincentini
20 being off-island at the material time. In the course of events, a Honda Civic motor
21 car was stolen from the staff car park of the Marriott Hotel, West Bay Road.
22 Again, CCTV footage is available.



1 14. Thanks to a “find my iPhone” application, officers who attended at Amity Street
2 were soon able to find Mrs Butler’s iPhone, at Slate Drive, off West Bay Road.
3 Police found two rucksacks hidden under a storage container in Slate Drive – those
4 rucksacks contained Mrs Butler’s iPhone and other items stolen from her home,
5 together with other items of interest. The stolen Honda Civic was found
6 abandoned nearby, in an empty lot off Courts Road (adjacent to Watlers Drive).

7 15. At 5 o’clock that morning, Nikel Thomas was found by police officers sitting
8 outside his home at Clarence Drive, George Town (this address, owned by his
9 father, Neil Thomas, is adjacent to Owen Roberts Airport). As a result of what he
10 said to the police, he was arrested; his mobile phone was seized.

11 16. Later that same morning, at about 10.25a.m., police officers on duty in the George
12 Town area stopped a Honda Inspire motor car, having noticed that it had a
13 defective indicator. As the officers were walking across to speak to the driver of
14 the vehicle, it sped off. A chase ensued, brought to an end when the Honda
15 collided with a light pole. The driver of the vehicle, Caine Thomas, was arrested.
16 From the front passenger foot-well, officers recovered a Halloween style mask;
17 from the rear of the car a plastic bag containing items of clothing that had
18 apparently been doused in petrol was recovered.

19 17. In her witness statement (read to the court by agreement), Mrs Butler described a
20 mask worn by one of the robbers in this way:

21 *“a clown looking mask.... Having a broad white grin, it had orange or red*
22 *colour and it had what looked like black or dark eyebrows.”*





1 18. From assembled photographs of a number of similar masks, she was able to
2 identify the mask recovered from the foot-well as similar to that worn by one of the
3 robbers. Analysis of the mask obtained a DNA match for Caine Thomas. There is
4 no dispute that Caine Thomas was wearing that mask, both at Camelot Palms and
5 at Amity Street. The items of clothing in the plastic bag were analysed – DNA
6 matches were obtained for Elmer Wright on two gloves and a black-hooded jacket.
7 DNA matches for Caine Thomas were obtained on a Fila jacket – and again it is
8 not disputed that he was wearing the jacket while committing the offences to which
9 he has pleaded guilty.

10 19. The prosecution case against Nikel Thomas is that his involvement in these
11 offences was limited to acting as a look-out; from his vantage point at Clarence
12 Drive, he could quickly see if the police helicopter was deployed. He sent a
13 number of messages to mobile phones attributable to Elmer Wright and to one
14 Shane Connor, warning that police were indeed being deployed: by way of
15 example, “2 police cars heading town area”, “they getting ready go in air.” There
16 is no suggestion that Nikel Thomas was present at Camelot Palms, the Marriott
17 Hotel or Amity Road.

18 20. The prosecution case is that, putting Nikel Thomas to one side, the same three men
19 committed all offences set out in the indictment. One of those men, it is not
20 disputed, was Caine Thomas. Another, the prosecution say, was Elmer Wright. The
21 third man, the prosecution now aver, was Shane Connor, who was not charged with
22 any offences, the view being taken that there was then not sufficient evidence
23 against him. As this trial has unfolded, that decision has been revisited in the light
24 of newly emerging evidence. I am given to understand that sometime after the
25 evidence and closing speeches in Elmer Wright’s case were concluded, Shane
26 Connor was charged with these offences. In any event, I am not of course trying



1 Shane Connor and do not for a moment seek to come to any conclusion in respect
2 of him – that is for another court at another time. My task is to decide whether or
3 not I am sure Elmer Wright is guilty of one or more of the offences alleged in the
4 indictment.

5 21. As mentioned above, the prosecution case relies upon a number of strands of
6 evidence to prove Elmer Wright’s involvement, including the evidence of Caine
7 Thomas.

8 22. The defence case is that Elmer Wright was not involved in any of these offences.
9 He has given sworn evidence to that effect. He is unable now, given the passage of
10 time, to say where he was at the time of these offences, but is adamant that he was
11 not at Camelot Palms, the Marriot Hotel or at Amity Street. The defence contend
12 that the three burglars/robbers were Caine Thomas, Shane Connor and one other,
13 an associate of Shane Connor. It was Elmer Wright’s practice to have a number of
14 mobile phones at any one time – essentially to keep his several girlfriends and
15 liaisons concealed from each other and from Dedra Christian, his baby mother. He
16 often left one or more of those mobile phones at Neil Thomas’ home.

17 23. The defence accept on the totality of the evidence the strong likelihood that at least
18 one – and more likely two - of the mobile phones attributable to Elmer Wright was
19 in the possession of one of the burglars on the night of 17th June. The logical
20 explanation, say the defence, given that Elmer Wright was not involved, is that
21 Shane Connor had helped himself to one or two of his phones and to the black
22 jacket and gloves that Elmer Wright kept, along with his dirt bike, at Neil Thomas’
23 premises, which he (Shane Connor) was wearing when committing these offences.
24 Caine Thomas has a purpose of his own to serve in giving evidence, every motive
25 to lie and indeed did repeatedly lie to me in evidence. I should, it is urged by the

1 defence, reject Caine Thomas’ evidence that Elmer Wright was involved in these
2 offences.

3 **THE HISTORY OF THE TRIAL**

4 24. I have already drawn attention to the unhappy history of this case and the
5 difficulties faced by those involved in it. The case proceeded with reasonable
6 despatch from 9th until 21st May when Mr Moran for the Prosecution indicated,
7 with obvious personal embarrassment and some exasperation, that further
8 evidence, said by the prosecution to be significant, had recently come to light. The
9 prosecution served that evidence on 22nd May, seeking the Court’s leave to adduce
10 it. The application was strenuously opposed by Ms Fosuhene, then representing
11 Elmer Wright.

12 25. I heard full argument from prosecution and defence and considered firstly why it
13 was that this evidence had only recently come to light. The evidence consisted
14 largely of downloads from and data relating to a Samsung mobile phone (exhibit
15 BH1) seized from Elmer Wright’s home when he was first arrested. I was told that
16 whilst the phone had been noted in the relevant search log, it had been stored under
17 a separate exhibit number. Whilst I did not altogether understand how this had
18 happened, I was satisfied that this was due to inefficiency and/or mistake, rather
19 than any bad faith on the part of the prosecution generally. Mr Moran explained
20 that he had been asked to make an admission in respect of part of the telephone
21 evidence; in the course of making sure he could properly make the admission
22 sought, exhibit BH1 came to light. It was realised that it had not been interrogated
23 – and arrangements were then made for that to be done. It was only then that its
24 significance was appreciated.





1 26. I had to consider the potential importance of the new evidence in the case as a
2 whole, weighing that against any unfairness that may be occasioned to Elmer
3 Wright, were the evidence to be admitted. There was evidence that SIM cards
4 which had already been mentioned in evidence had been used in BH1, evidence
5 that Elmer Wright was known as “Poochie” – something which had earlier been in
6 dispute but which is now accepted - and photographs which may have a bearing on
7 this case. I gave a full ruling at the time, but in summary concluded that the
8 interests of justice required that the evidence be admitted, with the caveat that the
9 defence must have sufficient time properly to digest and consider the evidence and,
10 if thought helpful, instruct an expert to assist.

11 27. The trial had already occupied the court for some 8 days, I had heard from a
12 number of witnesses and particularly three expert witnesses, two of whom had
13 travelled from the USA to give evidence. This is a small jurisdiction with limited
14 judicial resources and intense pressure on court time. Given that this was a trial by
15 judge alone rather than a jury trial, aborting the trial and starting again at some
16 future date was not a viable or sensible option – and, crucially, not necessary in the
17 interests of justice.

18 28. That ruling spawned more applications, firstly an application that I should recuse
19 myself since, it was said, I had demonstrated bias by giving leave to the
20 prosecution to adduce the new evidence.

21 29. When that application failed, Elmer Wright indicated that he wanted to dispense
22 with Ms Fosuhene’s services, primarily, as I understood it, on the basis that she had
23 not pursued the application to recuse me with sufficient vigour. Later, having had
24 time to reflect, Elmer Wright decided that he did not want to pursue that
25 application further, content that Ms Fosuhene continued to act.

1 30. The case was then adjourned in order for the defence to have time to consider the
2 new evidence; that adjournment was for very much longer than was ideal, largely
3 because of the unavailability of attorneys during the summer months. The case was
4 due to resume at the end of September.

5 31. At the end of September Ms Fosuhene applied to come off the record, since she
6 was, it was said, unable to properly represent him. Elmer Wright addressed me at
7 some length himself in support of the application that she should no longer act for
8 him. I granted a transfer of the legal aid representation order since that, it seemed
9 to me, is what the interests of justice required. The court is grateful to Mr Myers
10 for stepping into the breach and representing Elmer Wright.

11 32. Albeit that I have given reasoned judgements when dealing with all applications
12 made as the trial has proceeded, I have made reference to at least some of them
13 here, primarily to give context to and to repeat the assurance I gave to Mr Myers in
14 the course of his closing submissions; Mr Myers relayed Elmer Wright's concern
15 that I may hold one or more of the applications made against him. Elmer Wright
16 was also concerned that it may count against him that he had said things in the heat
17 of the moment and used intemperate language. I repeat the assurance I gave to Mr
18 Myers at the time, that I have broad shoulders, that I have not held anything about
19 those applications against Elmer Wright. I readily understand his frustration and
20 annoyance at many of the problems that have surfaced in this trial – and to an
21 extent, I shared them. I also understand that in a trial such as this, feelings can and
22 do run high; things are said and done in the heat of the moment. I have put all
23 extraneous matters aside, concentrating on the evidence placed before me in the
24 case, in accordance with my judicial oath and duty.

25





1 **INITIAL LEGAL DIRECTIONS**

2 33. Upon the same theme, it is convenient to add here that, as in any case, it is my
3 duty, when weighing and considering the evidence, to put any emotions or personal
4 feelings I may have from my mind. The ordeal of Mr and Mrs Butler was referred
5 to on several occasions during the trial. I have already referred to Mr Myers' much-
6 used adjective to describe that ordeal. No right-thinking person could be other than
7 outraged by what happened to the Butlers. That said, my duty is to put emotions to
8 one side. What is required from me is cold clinical dissection of the evidence, un-
9 swayed by any emotion. The essential question at the heart of this case for me is
10 whether I am sure that Elmer Wright was one of the men who invaded the Butlers'
11 home.

12 34. I must of course apply the rules of evidence and ignore anything placed before me
13 that, in the event, is not admissible. By way of example, although I was properly
14 told in the course of the prosecution opening of what Nikel Thomas said to the
15 police on arrest and in interview I must now ignore it. It was only ever evidence in
16 Nikel Thomas' case – and not admissible evidence for or against Elmer Wright –
17 and now, since Nikel Thomas pleaded guilty, not admissible evidence in the case at
18 all. The fact that Nikel Thomas has pleaded guilty is of no relevance at all to Elmer
19 Wright's case; it is entirely neutral. Both prosecution and defence ask me to
20 approach this case on the basis that Caine Thomas was one of the men involved in
21 these offences; to that extent his guilty pleas are relevant. But the fact that he and
22 Nikel Thomas have pleaded guilty does not for one moment mean that Elmer
23 Wright is somehow more likely to have committed these offences.



1 **BURDEN AND STANDARD OF PROOF/SEPARATE TREATMENT**

2 35. The prosecution brings these charges against Elmer Wright. The prosecution must
3 prove a charge so that I feel sure about it, if there is to be a conviction. It is not for
4 Elmer Wright to prove his innocence. Unless I am sure of his guilt upon a charge I
5 must find him not guilty of it. I remind myself that these charges do not necessarily
6 stand or fall together. It is my duty to consider the evidence against and for Elmer
7 Wright on each count separately. The evidence is different and my findings do not
8 have to be the same. That said, the majority of the evidence is relevant to all
9 counts. My duty to consider the evidence against and for the defendant on each
10 count separately does not mean I look at each count in an evidential vacuum.

11 **THE BAD CHARACTER OF THE DEFENDANT**

12 36. At the start of his evidence, in answer to questions from Mr Myers, Elmer Wright
13 told me that he was released from HMP Northward in August 2016 after serving a
14 lengthy sentence of imprisonment. He told me that he had, whilst serving that
15 sentence, been making relatively speaking, substantial sums of money (perhaps
16 \$10,000 - \$15,000) by selling mobile phones to other inmates. He was duly
17 cautioned before giving these details that he was not obliged to answer questions
18 that may tend to suggest that he had committed other offences, but he nevertheless
19 chose to answer, admitting that he was involved in a lucrative criminal enterprise
20 whilst serving that sentence of imprisonment – with, he told me, the assistance of
21 his baby mother and sisters. He was able to sell phones to inmates for \$300 or
22 thereabouts. It goes further than this. In the course of his evidence to me, Elmer
23 Wright confided that:

24 a. At the time of these offences, he was looking after goods stolen by Shane
25 Connor;

- 1 b. That on occasions, he and Shane Connor went stealing together;
- 2 c. That the police were looking for him in connection with a shooting at the Roof
- 3 Top Bar.

4 37. It became known to me at an earlier stage of this case that Elmer Wright was held

5 in custody whilst the trial was proceeding. As the trial developed, increased

6 security measures were put in place both to transport Elmer Wright to and from

7 HMP Northward and whilst he was in court. I do not know why those measures

8 were thought necessary or appropriate and I declined Mr Myers' invitation to find

9 out. Whatever the considerations may have been, they could not have assisted me

10 in the task I have to perform or the decisions I have to make.

11 38. In the particular circumstances of this case, I have put all those matters to one side;

12 the defendant's bad character has been given no weight in this case and has played

13 no part in my decisions in this case. The only relevance of ElmerWright's evidence

14 that he was making a substantial profit from the unlawful supply of mobile phones

15 is that it may provide an explanation for the large amounts of cash which Elmer

16 Wright displays in photographs downloaded from a handset. For the avoidance of

17 doubt, I have not taken into account bad character evidence for any other purpose –

18 particularly not in respect of propensity.



19 **CIRCUMSTANTIAL EVIDENCE**

20 39. Whilst the question at the heart of this case is whether I am sure that Elmer Wright

21 was one of those present and involved in the offences set out in the indictment, this

22 is not, I am sure, a *Turnbull* case, as Mr Myers submits. This is not a case which

23 relies upon the correctness of one or more identifications of the defendant which

24 are said to be mistaken. Caine Thomas has given evidence that Elmer Wright was

25 one of the burglars/robbers – it is not suggested that he is mistaken about the

1 identity of Elmer Wright – rather, that he is lying. The *Turnbull* warnings about the
2 dangers of identification evidence are neither relevant nor appropriate.

3 40. In addition to the direct evidence of Caine Thomas, the prosecution relies upon
4 circumstantial evidence – including telephone and DNA evidence. A circumstantial
5 case is one which depends for its cogency on the unlikelihood of coincidence:
6 circumstantial evidence “*works by cumulatively, in geometrical progression,*
7 *eliminating other possibilities*”⁷. As is said in the UK Crown Court Compendium
8 (revised 2019):

9 “*The prosecution seeks to prove separate events and circumstances which can*
10 *be explained rationally only by the guilt of the defendant. Those circumstances*
11 *can include opportunity, proximity to the critical events, communications*
12 *between participants, scientific evidence and motive. The subsequent conduct*
13 *of the defendant may also furnish evidence of guilt, for example evidence of*
14 *flight, fabrication or suppression of evidence, telling lies or unexplained*
15 *possession of recently stolen property*”.

16
17 41. I remind myself of the observations of Pitchford, LJ in *R v Masih*⁸. The question
18 for me is whether I can exclude all realistic possibilities consistent with the
19 defendant's innocence? Circumstantial evidence must always be:

20 “*... narrowly examined, if only because evidence of this kind may be fabricated*
21 *to cast suspicion on another. ...It is also necessary before drawing the*
22 *inference of the accused's guilt from circumstantial evidence to be sure that*
23 *there are no other co-existing circumstances which would weaken or destroy*
24 *the inference*”⁹.

25 I will be examining the strands of evidence upon which the prosecution relies in
26 the course of the judgement.



28

⁷ *DPP v Kilbourne* [1973] AC 729 at p.758 per Lord Simon

⁸ [2015] EWCA Crim 477

⁹ *R –v- Teper* [1952] UKPC 15 at p.3 per Lord Normand



1 **THE EVIDENCE**

2 42. The evidence placed before me in this case has come in a number of different
3 forms. Formal admissions have been made, pursuant to s.34 of the *Evidence Law*
4 (2011 revision) - I am grateful to Mr Moran and Mr Myers for their industry and
5 co-operation in this regard. I remind myself that these are given facts in the case –
6 it is not for me to doubt or question that which has been admitted to be the fact by
7 both prosecution and defence. The statements of some witnesses have been read
8 by agreement between the parties, particularly the witness statements of Mr and
9 Mrs Butler and Inspector Lauriston Burton.

10 43. I heard oral evidence from a number of prosecution witnesses, including:

- 11 a. Mr Christiano Vincentini, the owner/occupier of 2 Camelot Palms and his
12 brother in law, Enrico Carmassi, who discovered the attempted burglary;
- 13 b. Barrington Latham, who retrieved the CCTV footage;
- 14 c. Odell Smith a computer technician who installed the video surveillance system
15 at 2 Camelot Palms;
- 16 d. Alphonso Wright, a loss prevention officer at the Marriot Hotel;
- 17 e. Sarah Hough, a scenes of crime officer (SOCO);
- 18 f. Acting Chief Inspector Wright (as he now is), the officer in the case;
- 19 g. Caine Thomas;
- 20 h. Elmer Wright;

21 44. I also heard oral evidence from a number of expert witnesses as follows:



- 1 i. Joanne Delaney;
- 2 ii. Samantha Wandzek, a DNA analyst (USA);
- 3 iii. Ms Tanzillo-Swartz, DNA analyst;
- 4 iv. Grant Fredericks, Forensic Video Analysis (USA).

5 45. In the course of the trial, the expert witnesses were extensively cross-examined in
6 considerable detail. However, as it now turns out, there is very little dispute about
7 the expert evidence placed before me. I should nevertheless remind myself that it
8 is by no means unusual for expert evidence to be called in a criminal trial to assist
9 the fact-finding body with matters that are not common knowledge and/or are
10 beyond the expertise of that fact-finding body. It is my task to weigh up each of
11 the expert witnesses and decide whether and if so to what extent I accept the
12 evidence. That is so even when, as here, most of it is not in dispute. The expert
13 evidence, I remind myself, is simply part of the evidence; I must reach my findings
14 by considering all of the evidence.

15 46. Several schedules were prepared both before and during the course of the evidence,
16 all of which are now agreed. A separate bundle of telephone evidence was
17 prepared by Ms Delaney to assist the court.

18 47. Exhibit JD/1A/7a (to be found at tab 1 of the bundle of telephone evidence), sets
19 out calls made and received by a number of telephones said to be significant,
20 correlating those calls with events where timings are known. This schedule
21 loomed large in the course of the trial.

22 48. At tab 2 of the bundle, there is a useful chart detailing the frequent swapping of 2
23 SIM cards associated with Elmer Wright between 3 handsets and details of when
24 and where credit was added to these cards.



1 49. The remainder of the telephone bundle contains material relating to cell sites, all of
2 which were referred to and explained by Ms Delaney in the course of her evidence.
3 Substantial additional telephone evidence was, as I have already mentioned, served
4 during the course of the trial. That is largely to be found in the main exhibits
5 bundle rather than the separate telephone evidence bundle. I have also been
6 assisted by a schedule of DNA results prepared by the prosecution. I have
7 additionally considered photographs, CCTV footage and documentary exhibits.

8 50. In the course of the trial, I have been assisted further by a note of opening prepared
9 by the prosecution (subsequently revised to take account of evidence served after
10 the trial was under way), skeleton arguments in support of submissions made along
11 the way and written closing submissions from both Mr Moran and Mr Myers,
12 served in advance of oral closing submissions.

13 **SUMMARY OF RELEVANT EVIDENCE**

14 THE EXPERT EVIDENCE:

15 GRANT FREDERICKS:

16 51. Mr Fredericks, a forensic video analyst, examined the available CCTV footage
17 from Camelot Palms and from the Marriott Hotel and items of clothing, bags and
18 other items seized in the course of the investigation – particularly, clothing seized
19 from the Honda Inspire when Caine Thomas was arrested. Mr Fredericks was an
20 impressive expert witness, with long experience, giving his evidence clearly and
21 thoughtfully, identifying areas where he could not arrive at firm conclusions.
22 Despite cross-examination to the contrary, Mr Fredericks’ evidence is not, at the
23 end of the day, in dispute. Whilst Mr Fredericks was cross examined to the effect
24 that the black jacket seen in the Camelot Palms footage was not the black jacket
25 seized from the Honda, Elmer Wright, in the course of his evidence, did not dispute



1 that it was the same jacket (although of course asserting that he was not wearing
2 the jacket at the material time).

3 52. I have been provided with an electronic copy of his report (the report is dated on its
4 first page 20/2/17, but that is plainly a mistake - from the body of the report, it is
5 clear that Mr Fredericks was first instructed on 26/6/17). That electronic copy is a
6 helpful document – it contains links to other documents referred to and to the
7 relevant CCTV footage embedded within the report.

8 53. Mr Fredericks noted a time during the Camelot Palms CCTV footage when male 2
9 (wearing the black jacket) removed a glove from his left hand, revealing a ring on
10 the middle finger. He was asked to compare that footage with a distinctive (\$
11 sign) ring recovered from Elmer Wright on arrest. His conclusion, which I accept,
12 was that *“there is not enough image resolution to offer any reliable opinion
13 regarding the ring. Although the known ring cannot be eliminated as being the
14 questioned ring, caution should be applied to any statement implying a match.”*
15 Whilst on the subject of the \$-sign ring, I note that Elmer Wright is shown wearing
16 the ring in several photographs downloaded from a handset Elmer Wright accepts
17 is his. In each photograph, he is wearing the ring on the middle finger of the left
18 hand. Elmer Wright confirmed in his evidence that he habitually wore this ring on
19 his left middle finger.

20 54. Mr Fredericks explained that the CCTV footage he examined was recorded during
21 the hours of darkness. The cameras use infra-red light to “see” in the darkness; he
22 explained that this makes things brighter than they really are and can change the
23 appearance and colour of clothing (“there is no colour in the infra-red spectrum”).
24 Organic material absorbs infra-red light and thus fabrics appear darker, synthetic
25 material appears lighter. He also explained the problem of “over-saturation” – an
26 apparent change of footwear of one of those seen at the Marriott was, he was sure,



1 due to over-saturation. In cross-examination, he was asked why he had not carried
2 out a comparison of the heights of the three people seen in the footage. His answer
3 was that he had not been asked to carry out that exercise and in any event, he
4 added, he would not have been able to give any useful assistance, explaining that
5 apparent differences of 4” – 5” were explainable by perspective, proximity to the
6 camera, angle to the camera and so on, concluding that “my conclusion in this
7 regard would likely be so broad as to not be helpful.” For similar reasons, and
8 because of different playback resolution, he advised caution about assessing build
9 and body mass from the footage.

10 DNA:

11 55. Sarah Hough, SOCO, took swabs from various items, which were examined by two
12 DNA analysts, Ms Cheri Langston and Ms Sandra Wandzek. Ms Langston is no
13 longer available but I heard evidence from Ms Tanzillo Swartz, who peer-reviewed
14 Ms Langston’s work. Whilst there are some differences between their approach
15 and findings (largely explainable on the basis of different tests applied in different
16 jurisdictions, different databases used and different equipment utilized) these are
17 no longer of any significance, since, as Mr. Myers confirmed in the course of his
18 closing submissions, there is no dispute about the DNA evidence. Mr Myers
19 further confirmed that in this case, there was no need for me to dwell upon random
20 match probabilities, likelihood ratios and so on; sensibly and pragmatically, it is
21 accepted in this case that such were the probability ratios that where a DNA match
22 was found in this case, it was indeed the DNA of the person in respect of whom a
23 probability match had been expressed.

24 56. It is then accepted that, unsurprisingly, Caine Thomas’ DNA was found on the
25 Halloween mask, the Fila jacket, a pair of gloves and on the inside front passenger
26 door handle of the Honda Civic.

1 57. The findings in respect of Elmer Wright which are said to be significant are
2 summarized in the DNA schedule, as follows:

3 i. Black hooded jacket (exhibit 2). A multiple source DNA profile from
4 at least 3 individuals was found. The major profile matches Elmer
5 Wright with a random probability match of 1 in 44 sextillions (I was
6 reminded that there are 12 zeros in a trillion and 21 zeros in a
7 sextillion);

8 ii. Grey leather gloves (exhibit 2): A multiple source DNA profile from at
9 least 3 individuals was found. The major profile is 310 quadrillion
10 times more likely to have come from the DNA of Elmer Wright than
11 another;

12 iii. Swab from inside rear passenger handle of Honda Civic. A multiple
13 source DNA profile from at least 3 individuals was found. The major
14 profile matches Elmer Wright with a random probability match of 1 in
15 4 trillion.

16 58. As I have said, it is accepted that Elmer Wright's DNA was found on the jacket,
17 the gloves and the car door handle. I deal only with that part of Ms Wandzek's
18 cross-examination (which was wide-ranging) that is now relevant. She said that she
19 would expect the last person who wore a garment to be the major contributor, but
20 that does not necessarily follow. They are a number of variables, including the
21 degree to which an individual sheds DNA. Ms Wandzek was asked about the
22 possibility of transfer of DNA, but only in respect of garments – this possibility
23 was not canvassed with her in respect of the DNA sample obtained from the inside
24 rear passenger door of the Honda Civic.





1 TELEPHONE EVIDENCE

2 59. Ms Joanne Delaney is an intelligence analyst, with the RCIPS for the last 9 years.
3 Before that, she worked with Northumbria Police. She is an expert witness well
4 known to these courts. Her evidence is not in dispute as to calls made – the
5 schedules she prepared are accepted to be correct, although the conclusions I
6 should draw from the material she has provided are disputed. 5 handsets were
7 recovered from Elmer Wright in the course of his arrests (1 from his person, 4 from
8 his home). Cell phones were also seized from Nikel Thomas, Caine Thomas and
9 Shane Connor.

10 60. She obtained and collated material from:

- 11 a. Data downloaded from handsets;
- 12 b. Data provided by service providers (Digicell and Flow) – including billing and
13 toll data, call data, SMS data and where possible cell site data, time and
14 location of pay-as-you-go top-ups;
- 15 c. Information obtained from other sources in the course of the investigation,
16 including CCTV footage, 911 calls etc.

17 61. Ms Delaney gave no more than a brief explanation of telephone evidence generally
18 since all agreed this was unnecessary in a judge alone trial where the trial judge
19 and the attorneys were very familiar with such evidence, its potential value and its
20 limitations. I should record here what is now well known, that cell site evidence
21 cannot identify the precise location of a handset at the time a call was made or
22 received, or data was sent or received. What can be said with certainty in this
23 regard is that when activity on a handset is handled by a cell site mast and sector,
24 the handset is within the “footprint” (area of coverage) of that sector of that mast. I

1 should also add that data is at times incomplete. Ms Delaney is reliant upon the
2 material provided by the service providers – by way of example, cell site data is
3 often not available. No purpose would be served by summarizing her evidence - it
4 is to be found within the schedules and other documents she has produced. My
5 discussion of the telephone evidence later in this judgment is of course based on
6 Ms Delaney’s evidence and exhibits.



7 **CAINE THOMAS**

8 62. It was indicated to me at a relatively early stage of this trial that Caine Thomas was
9 likely to be giving evidence. Those early indications were that Caine Thomas
10 would be giving evidence for the defence. The case was adjourned on several
11 occasions for that prospect to be further explored and for Caine Thomas to be
12 advised by his own instructed attorney, Mr John Furniss. In two significant
13 documents signed by Caine Thomas, he confirms that Elmer Wright was not
14 involved in any of the offences and that he was willing to give evidence for the
15 defence, exonerating Elmer Wright.

16 63. Subsequently, Caine Thomas made it known that he wanted to see Acting Chief
17 Inspector Wright. When he did so, he explained that what he had said earlier about
18 Elmer Wright’s lack of involvement was untrue - that the truth of the matter was
19 that Elmer Wright was an active and enthusiastic participant in all of these
20 offences. Caine Thomas confirmed that he was willing to give evidence for the
21 prosecution to that effect. On 10th October 2019, Caine Thomas was interviewed
22 by ACI Wright; the interview was audio recorded; a transcript of that interview is
23 available (exhibit 13). Subsequently, on 13th October, Caine Thomas signed a full
24 and detailed witness statement; he gave evidence before me over the course of two
25 days, in the course of which he adopted the contents of the October interview and
26 statement.

1 64. As has rightly been urged upon me, Caine Thomas may very well have a purpose
2 of his own to serve by giving evidence against Elmer Wright. Elmer Wright
3 suggested in the course of his evidence that he thought CaineThomas was
4 motivated by a hope of gaining some advantage with Dedra, his baby mother. Mr
5 Myers' firm suggestion was that Caine Thomas' purpose and intention when giving
6 evidence was to ingratiate himself to the court in the hope of achieving a reduction
7 in his eventual sentence.

8 65. I have considered the guidance given in the leading authority in this area, **R v**
9 **Makanjuola**¹⁰. This is clearly a case where I should approach Caine Thomas'
10 evidence with caution. He has an obvious incentive to give evidence which he
11 hopes will put him in a good light with the court, in the hope of securing a
12 reduction in his sentence. I must consider Caine Thomas' position and motivation
13 carefully and ask myself whether he has, or may have, tailored his evidence to
14 implicate this defendant falsely. If that is or may be the position, his evidence is,
15 of course, worthless. If, however I am sure that, despite any ulterior motive he may
16 have, despite any hope of advantage he may have, he has told the truth, then I can
17 and should act upon his evidence.

18 66. What follows is a summary of the salient parts of Caine Thomas' evidence. It
19 would not be helpful – and it is not necessary - for me to recite here every note I
20 have made of his evidence. I have not always used Caine Thomas' exact words. On
21 many occasions, I have paraphrased, in order to keep this ruling to manageable
22 proportions.

23



¹⁰ [1995] 1 WLR 1348



1 67. In the course of his evidence, Caine Thomas told me that he had committed each of
2 the six offences to which he pleaded guilty with two others, that is to say, this
3 defendant and Shane Connor. He said that he had known Elmer Wright for
4 perhaps a couple of months prior to June 2017 and knew him as Poochie. He had
5 known Shane Connor for about three or four years. In June 2017, Caine Thomas
6 was 16 years of age, almost 17. He explained that his father lived at 29 Clarence
7 Drive. At the material time, he was living with his mother but visited his father
8 from time to time. Caine Thomas said:

9 *“I would see Elmer and Shane at my father’s house. Elmer was living there at*
10 *the time of these offences.... on 15 June 2017, I was at my Dad’s at about*
11 *10.30 to 11 pm, Elmer and Shane came out onto the porch discussing*
12 *something – I don’t know what - a burglary or something like that. I remember*
13 *Elmer asking me if I wanted to come. I said not really, but it was discussed*
14 *further. Elmer said I should listen to him, that this stuff was serious and that it*
15 *would be happening the next day. I saw them the next evening, in the yard at*
16 *Clarence Drive. Later in the night, they discussed it more. Shane was saying*
17 *they were nearly ready. Elmer told me to get ready. I asked what I should*
18 *wear. He told me to put on shoes and a jacket and stuff, advising me to cover*
19 *my tattoos. I borrowed a jacket from my brother – a white Fila jacket. Elmer*
20 *gave me some gloves and a pumpkin mask. They were chilling for a bit. One of*
21 *them spoke to my brother Nickel, asking him to watch out for any police*
22 *heading Prospect way. Shane gave my brother a number for Elmer, telling him*
23 *to call that number if the police were heading that way. Before we left, Shane*
24 *asked if I had a bag; I had a school Jansport bag which I gave him. I didn’t*
25 *take anything with me. Elmer left Clarence Drive and later returned with a*
26 *firearm. It was a chrome 38 with a spin barrel. Shane was checking the bag he*
27 *had brought with him, to make sure he had what he needed: WD40, a crowbar,*
28 *duct tape.*

29 *We went to my Mum’s car – a gold Honda Inspire – and drove off; I was*
30 *driving. We turned down the dead-end road opposite the Captain’s Bakery.*
31 *Elmer told me to park up, so I did. The bags were taken out of the trunk.*
32 *Shane gave me the Jansport backpack which I put on. We walked through some*



1 *bushes, got over a wall, went through a couple of yards, looking for a place to*
2 *burgle. Shane said, “this one” and we tried to get in. We tried to break the*
3 *glass doors with bricks and with the crowbar Shane had brought with him.*
4 *Elmer and I found a piece of 2 x 4 plywood - we managed to slip that through a*
5 *gap in a window. Elmer saw a security camera but told me not to worry as we*
6 *were all masked up. I remember him dancing in front of the camera; he had the*
7 *gun in his hand and was singing, “we’re going to break into your house.” I*
8 *joined in – it was stupid. He told me to jump up and break the camera – I*
9 *managed to hit it with a rock. As we tried the 2 x 4 again, the alarm went off,*
10 *so we grabbed our stuff and ran back towards West Bay Road.”*

11
12 68. Caine Thomas related how they had then stolen a car from the Marriott Hotel staff
13 car park and later drove to Prospect. Once out of the car, Elmer and Shane were
14 discussing a particular house and whether there was money in the house. Caine
15 Thomas continued:

16 *“Shane managed to slide up a small window with his crowbar and told me to*
17 *climb through the gap, because I was the smallest. I got into the house through*
18 *the window; Shane directed me towards the door and told me to open it for*
19 *them, which I did. We started ransacking the house; Elmer had the gun in his*
20 *hand, he and Shane were searching for things. They found a PlayStation 4, an*
21 *Apple computer, an iPhone, an iPad – Shane was putting these things in the*
22 *Jansport bag. There was a room to the right side of the house. Shane said*
23 *there was someone inside. He took a hammer out of his bag, Elmer cocked*
24 *back the hammer of the gun, reached in his pocket for a flashlight and turned it*
25 *on. Shane kicked the door and they rushed in. I saw two old people in the bed,*
26 *sleeping. Elmer said, and “freeze, this is the police. Do not move.” The woman*
27 *held her hands to her face because of the flashlight, Shane turned the room*
28 *lights on. I still had on the pumpkin mask. Elmer’s face was covered with a T-*
29 *shirt. Shane’s face was not visible, he was wearing a black shirt over his face.*
30 *The husband woke up. They realised we weren’t the police. Elmer and Shane*
31 *started demanding money. The Butlers said they didn’t have any money. Shane*
32 *said they were lying, they kept on they didn’t have any money. At one point,*
33 *Shane started a sexual conversation with Mrs Butler asking her if she gave*



1 *blowjobs and if he fucks her in the arse. I thought that was nasty stuff and I*
2 *told Shane not to do that as it made no sense. Elmer just had the gun pointed at*
3 *them. I think he was just asking where the money was. He said she was lying*
4 *and threatened: “if you don’t tell us where the money is, I’ll kill you – and*
5 *you’ll be the sixth or seventh person I’ve killed.” After that, I remember the*
6 *woman said okay we have some money over there and over there. Every*
7 *location she said, I ran over and got the money. I remember retrieving money*
8 *from a briefcase – I think US \$ and Euros, British and Canadian. I put the*
9 *money I got in my pockets.”*

10 69. In cross-examination, Caine Thomas added that he had later handed the cash to
11 Elmer Wright and that Elmer took the Butlers’ watches from their wrists, asking if
12 they were Rolex. Caine Thomas continued:

13 *“When Elmer threatened to kill the Butlers, I think they were by then sitting on*
14 *chairs – Shane had told them to get up and sit on chairs. Shane duct-taped*
15 *them to their chairs. Mr Butler was in his boxers, his wife I think in bra and*
16 *pants; she may have had a scarf like thing. Elmer was pointing the gun at*
17 *them. The Butlers were begging for their lives, saying, “Are you really going to*
18 *kill two old people?” They was saying they didn’t have any more cash. We*
19 *were wondering whether to believe them or not. Shane got vexed, got out of his*
20 *hammer and hit Mr Butler on the knee with it. Mr Butler cried out. Then we left*
21 *them. Shane took her phone so she couldn’t make any calls. We went through*
22 *the upstairs rooms but didn’t find anything.*

23 *I remember Elmer received a phone call whilst at the house. He went into the*
24 *living room to take the call.*

25 *Then we drove back to where my car was. Shane went and put the bag with the*
26 *Butlers’ property under a nearby container. I think Shane kept his bag. One of*
27 *them told me to drive my car. They remained in the stolen car and told me to*
28 *follow them. They stopped across the road from Burger King; Shane sprayed*
29 *the stolen car with WD40 and I drove them to my father’s place, but there were*
30 *police there. We waited until they’d gone and then went to the room Shane*
31 *uses at my Dad’s place, where we discussed about the money and the*
32 *jewellery. We agreed that it would all be split three ways.”*



1 70. In cross examination, Caine Thomas added that he never had received any money
2 or any part of the proceeds of the robbery. Caine Thomas continued:

3
4 *“Once I went outside again, my grandparents told me that my brother Nikel*
5 *had been arrested – something about catching something on his phone.*

6 *I went to my room and slept for a while. Elmer and Shane woke me. Shane*
7 *had a big black bag. Elmer was taking his clothes off and putting them in the*
8 *bag, Shane told me to do likewise. Then Shane filled up the bag with gas from*
9 *a big bottle. Shane said something about DNA. He told me to take the bag*
10 *and put it in the garbage. I put it in the back of my car. I went first to the gas*
11 *station to put some gas in the car; I remembered I had to get my chain fixed so*
12 *went to jewellery store, but it was closed. Soon after I drove off the police*
13 *started to follow me.”*

14 71. Caine Thomas then explained how he tried to escape from the police but had to
15 swerve to avoid a pedestrian and ended up crashing into a lighting pole. He agreed
16 with the police evidence about what was recovered from his car; the plastic bag
17 containing the gas-soaked clothes was white rather than black. A bundle of US and
18 Caymanian dollars was found in the car and Caine Thomas said that this was part
19 of the proceeds of the sale of a dirt-bike. He was taken to the police station but
20 then bailed. He went back to Clarence Drive. Caine Thomas added:

21 *“Elmer asked if I’d thrown the clothes away and got pissed when I told him I*
22 *hadn’t, saying that I had better hope and pray his DNA wasn’t on them.”*

23 **CROSS EXAMINATION OF CAINE THOMAS**

24 72. In answer to Mr Myers, Caine Thomas agreed that he had lied in various accounts
25 he had given to the police and to others. My Myers took him through those
26 accounts, which, have properly loomed large in this case. Caine Thomas agreed he
27 had lied to the police when first arrested, saying that the car belonged to him, rather
28 than his mother; this, he said was because he didn’t want the police to seize the car.



1 Caine Thomas was interviewed on four occasions under caution before charge. He
2 agreed that he had not told the truth in the course of those interviews, then denying
3 that he had any involvement in any of the offences about which he was being
4 questioned.

5 73. Shortly before Caine Thomas pleaded guilty to these offences (and that was on 20th
6 July 2018), a lengthy handwritten document was produced. Caine Thomas
7 confirmed that he had written and signed each page of this document (exhibits page
8 371 *et seq.*). In that document, Caine Thomas said: *“I feel the need to take*
9 *responsibility for my role in these crimes committed on 17th June 2017.”* He said
10 that he had committed the offences with a man called Shane and his Jamaican
11 friend. At Shane’s request, Mr Thomas had provided the Jamaican with a jacket
12 and gloves – these were Elmer Wright’s clothes which had been left in a shed at his
13 Dad’s home. In the course of that statement he emphasised that

14 *“I feel I need to state Elmer Wright not involved in these crimes and at no time*
15 *was with us on the night we left my dad’s house to commit these crimes. I*
16 *believe is my fault he is falsely accused in these crimes because I took his*
17 *jacket and gloves off his bike without his permission. I do not want to testify*
18 *against Shane and his friend because I am in fear for my life and my family’s*
19 *safety. But I have to make it clear once more, Elmer Wright has no involvement*
20 *with these crimes and I am willing to testify on his behalf if necessary.”*

21
22 74. In a handwritten document signed by both Caine Thomas and his attorney, Mr
23 Furniss, dated 30th September 2019, the following appears:

24 *“I Caine Thomas have been given advice by my attorney regarding the giving*
25 *of evidence in the trial of Elmer Wright.*

26 *I Caine Thomas however intend to give evidence despite the potential*
27 *consequences to myself.*



1 *I have not been threatened or forced to give this evidence. My evidence is true,*
2 *I maintain that Elmer was not there at the scene of the robbery and I will give*
3 *evidence to that effect.”*

4 75. As for the handwritten statement submitted in July 2018, Caine Thomas explained
5 in his October 2019 interview and statement and in his evidence to me that the
6 statement came about in this way: he had various discussions with Elmer Wright
7 when both were on remand at HMP Northward. Elmer told Caine Thomas that he
8 (Caine Thomas) needed to free Elmer up. Elmer Wright gave him a handwritten
9 letter and told Caine Thomas to copy it out in his own handwriting. He said that
10 was what I should say when I give evidence at court on his behalf. When we was
11 about to send this down to the court, Elmer made me flush the originals. As for the
12 30th September document, Caine Thomas explained that Elmer Wright had told
13 him that Mr Furniss would be asking him to sign something that he should indeed
14 sign it *“or else I knew what would happen – he would kill my family and me.”*
15 Whilst making it clear that any suggestion that Elmer Wright had threatened Caine
16 Thomas was denied, Mr Myers explored with Caine Thomas as to why it was that
17 some 10 days later, he expressed a willingness to give evidence for the prosecution.
18 Mr Myers explored particularly what Caine Thomas had said during his interview
19 on 10th October. Caine Thomas adopted and endorsed what he had said (page 378)
20 in interview, that is to say:

21 *“DI Wright: Please tell me why you contacted me yesterday afternoon.*

22 *Caine Thomas: Because at approximately, I would say 11–10 30 Elmer*
23 *Wright came into my block, came into my cell and threatened*
24 *me that if I don’t tell the judge and the lawyers and the*
25 *prosecution that he wasn’t involved, he is going to chop my*
26 *daughter head off, shoot my baby mother in her face, shot my*



1 *mother, shot my sisters and my brother and shoot my father*
2 *and my father's daughter in their face and I will die too. He*
3 *will kill me too, because I nah his family and he don't want*
4 *nothing to do with me. He's got fire power, he has guns*
5 *and stuff..... I was telling a lie on his behalf and I feel like now*
6 *it's time to like cough out the truth. So while he was*
7 *threatening me, I just said to him, "I had enough wha going*
8 *on." So that is why I contacted you to give you the full truth of*
9 *wha really going on." In re-examination, Mr Thomas put it in*
10 *this way: "I got enough threats and just decided I had to man*
11 *up and deal with it."*

12 76. Caine Thomas added that those threats were effectively the final straw and that he
13 had *"got sick of everything and decided it was time to do the right thing."* Caine
14 Thomas denied that he was giving evidence in the hope of getting a lesser sentence.

15 77. Caine Thomas' attention was drawn to Mrs Butler's witness statement, read to the
16 court by agreement. She described the robber wearing what she described as the
17 clown mask (and there is no dispute that must be Caine Thomas, since he was the
18 only one of the three wearing a mask, rather than a garment over the face) as the
19 loudest and most vicious of the three, that he was armed with a gun and that he was
20 the one asking where the cash was. Caine Thomas denied that this was the role he
21 played, venturing the view that Mrs Butler was understandably confused, given the
22 traumatic nature of the events. At the conclusion of his cross examination, Mr
23 Myers suggested Caine Thomas was a compulsive liar. Caine Thomas, conceding
24 that he had given contrary accounts, said that the only evidence that counted was
25 that which he had given in his oral evidence to the court, which was the truth.



1 ELMER WRIGHT

2 78. The defendant, Elmer Wright, now 26 years of age, explained that having been
3 released from prison in 8/16, he lived first in Bodden Town with Dedra Christian
4 (the mother of his baby daughter, born in 8/17). Later, he lived at addresses in
5 Savannah and then Prospect. He and Dedra then split up for a while and as at 6/17
6 he was living at Water Street, or Water Lane, Newlands. He estimated that by the
7 time he was released from HMP Northward, he had made about \$10,000 - \$15,000
8 from the sale of cell phones, explaining that one cell phone could sell for \$300 or
9 thereabouts. Dedra was holding the money for him.

10 79. Asked by defence counsel Mr Myers what he spent his time doing, Elmer Wright
11 said that he did not work, but his hobby was “trying to get other girls.” Asked
12 about his co-defendants, Elmer Wright said that he had known Nikel Thomas since
13 he (Nikel) was 6 or 7 years old; he had only known Caine Thomas since about 8/16
14 – “*I don’t really know him*”. He said their father, Neil Thomas, is his father’s first
15 cousin. Until these proceedings, the defendant, Caine Thomas and Nikel Thomas
16 got along fine, like family. Asked what he thought had prompted Caine Thomas to
17 give evidence against him, Elmer Wright said he thought Caine Thomas was trying
18 to cause trouble between him and Dedra.

19 80. In 6/17, Elmer Wright would visit Neil Thomas’ house at Clarence Drive every day
20 or every other day. There was one main house there together with 2 studios and a
21 spare room round the back. Elmer Wright said that he had never lived at Clarence
22 Drive – and had stayed there only for perhaps one or two nights. He may well have
23 been there on 16th June. With Neil Thomas’ permission, he kept his dirt bike in a
24 shed at Clarence Drive, together with a crash helmet, bike gloves and bike jacket –
25 which looked similar to exhibit 2 (the jacket recovered from the Honda Inspire CT



1 was driving at the time of his arrest). Likewise, the gloves contained within exhibit
2 2 looked similar to his gloves.

3 81. Elmer Wright explained that he had answered no comment to the questions asked
4 of him during the 3 interviews conducted at the detention centre on the advice of
5 his attorney.

6 82. He agreed that in June 2017 he had a number of mobile phones – I normally keep 3
7 phones I use although I have more than that – one to keep on me for use at all
8 times, one to keep hidden from my baby mother, one to keep hidden from the other
9 girls. He said that he normally kept those phones at Neil Thomas’s place when he
10 went out with a girl, the idea being to conceal the existence of one girl from
11 another.

12 83. Asked about the telephone calls listed in tab one of the telephone evidence bundle,
13 Elmer Wright explained that he had never spoken to Nikel Thomas on the phone
14 and was adamant that he had been nowhere near Camelot Palms. He accepted that
15 328-7861 was one of his phones - adding that, from what he had read in Caine
16 Thomas’ interviews, he could only assume that Shane Connor had taken his phone.
17 He was clear in his recollection that he had never received a text from Nikel
18 Thomas. He was adamant that he was not involved in the theft of a Honda Civic.
19 He said “I did not get into that car. I think my DNA was transferred from my
20 gloves or jacket” to the interior surface of the stolen car. He added that he was not
21 at Amity Street, Prospect. He said “I was not robbing people. If I left a phone at
22 Neil Thomas’ I will go back to get it after I had finished with the girl from whom I
23 was concealing the phone. I would normally leave a phone in the drawer of a chest
24 of drawers.”

1 84. Elmer Wright denied that he had ever swapped any SIM cards between the
2 handsets that he owned. He said “I would have no reason to do that” - although he
3 retracted that answer in cross-examination.

4 85. I have not at this stage summarised Elmer Wright’s evidence in answer to
5 questions put to him in cross-examination. Rather, I have incorporated relevant
6 answers in cross-examination in my general discussions about the evidence that
7 now follows.

8 **DISCUSSION**



9 86. Firstly, I look at the expert evidence:

10 DNA:

11 87. It should be remembered that DNA evidence is not the answer to everything. I
12 have reminded myself of all that was said by the UK Court of Appeal in **R v**
13 **Tsekiri**¹¹ and the cases that follow on from that. It does not inevitably follow that
14 because, for example, a suspect’s DNA was found on a garment, that he was
15 wearing it at the material time and/or place. That was conceded by Ms Wandzek in
16 cross examination. Whilst she was not asked about Elmer Wright’s DNA on the
17 interior door handle, I bear in mind the possibility of transference. Of the various
18 questions which it was suggested in *Tsekiri* should be considered, the most obvious
19 ones here are:

- 20 a. Is there any evidence of some other explanation for the presence of the
21 defendant's DNA on the item other than involvement in the crime, including an
22 apparently plausible account from the defendant in interview or is the evidence
23 unexplained?

¹¹ [2017] EWCA Crim 40

1 b. Is it more or less likely that the DNA profile attributable to the defendant was
2 deposited by primary or secondary transfer?

3 88. Elmer Wright has given an explanation for the presence of his DNA on jacket and
4 gloves – that these were his garments, but borrowed that night by one of the
5 burglars – the strong likelihood is that it was Shane Connor, it is said. However, I
6 bear in mind Ms Wandzek’s evidence that whilst it is not an invariable rule, she
7 would expect the last person who wore a garment to be the major contributor. On
8 the Crown’s case, Elmer Wright was the last person to have worn the jacket. On
9 the defence case, the last person to have worn the jacket was Shane Connor, yet his
10 DNA was not found on the jacket. In his evidence, Elmer Wright said that he had
11 never been inside the Honda Civic and ventured this view: “I think my DNA was
12 transferred from my gloves or jacket to the interior surface of the car.” That then is
13 a possibility I must consider, although it is hard to see how this could happen in
14 this case. The most obvious way for DNA to be left on a car door handle is by
15 contact with the handle – when one is opening the door.

16 89. This case is not to be decided by DNA evidence alone. It is one of the strands of
17 evidence to be considered.

18 FORENSIC VIDEO ANALYSIS:

19 90. Again, there is now no dispute about this evidence. Caine Thomas can be seen
20 wearing his Fila jacket and the Halloween mask. Elmer Wright agrees that male 2
21 is wearing his black jacket.



22 THE TELEPHONE EVIDENCE

23 91. I found the telephone evidence in this case, looked at as a whole, to be both
24 convincing and illuminating. As I have already noted, there is no challenge to the

1 accuracy of the data obtained by Ms Delaney or the schedules she has compiled.
2 She is clearly expert in her field; she carried out her duties and responsibilities in
3 this case with dedication and professionalism. I readily accept her evidence. The
4 defence recognise the strength of the telephone evidence, not in any positive way
5 resisting the inference – which I find to be altogether overwhelming – that one of
6 the burglars had with him the Samsung handset BH1, in which was the SIM card
7 328-7861. Both the handset and the SIM card, it is accepted, are properly
8 attributed to Elmer Wright. He confirmed to me in his evidence that he was the
9 owner/user of phones:

10 a. 328-7861



11 b. 328-8242

12 c. 329-0485 and

13 d. 322-1489

14 92. I refer hereafter to any relevant phone by its last 4 digits. As with DNA evidence,
15 there are of course limitations to what telephone evidence can and cannot establish.
16 To state the obvious, telephone evidence can say generally where a handset was
17 when there is activity involving that handset, it can establish what calls and
18 messages were sent from and received by that phone. It cannot of course, say who
19 was in possession of the phone at any particular time. Generally, as a matter of
20 common sense and general experience the inference is a strong one that an owner
21 and his or her mobile phone are never far away from each other. Nowadays, one's
22 mobile phone is an essential tool for living. That is not an infallible rule: an owner
23 may lend his phone to another, it may be taken from him, either by mistake or on
24 purpose. If someone owns, for whatever reason, more than one mobile phone, the
25 inference may be diluted. I also appreciate that since a mobile phone carries a great



1 deal of information, there may be times when an individual would rather not have
2 particular handset with him. Thus, while there is a strong presumption that an
3 owner is rarely far from his phone and that it is he who is making or receiving
4 calls, sending or receiving messages, using social media and so on, it is not an
5 infallible rule. Elmer Wright of course says that the likelihood is that Shane
6 Connor took his (Elmer Wright's) phone BH1 with him when he carried out the
7 offences set out in the indictment. If this is or may be true, then the presumption
8 does not apply and the evidence must be approached accordingly.

9 93. I cannot hope to summarise all the telephone evidence in this case. It would be
10 impossible and is not necessary – and I would not do so were I summing this case
11 up to a jury. My duty in a jury trial would be to ensure that the jury understands
12 how the telephone evidence and the schedules worked, drawing attention to
13 particular features of the evidence that were of significance to one side or another.
14 It would then be for the jury to work their way through the detail of the evidence
15 and draw their own conclusions. In this judge alone trial, I now discuss some
16 features of the telephone evidence which seem to me to be of significance and have
17 assisted me at arriving at the decisions I have to make:

- 18 i. At 23:35 on 16/6/17, 7861 was stored in Nikel Thomas's phone under
19 the name Poochie (now accepted to be a name by which Elmer Wright
20 is known). This can only have been done, Elmer Wright contends, by
21 Nikel Thomas under Shane Connor's instructions. Just before 1a.m.,
22 Nikel Thomas sends 2 texts to 7861 warning: "yooo 2 police cars
23 heading town, they just cross the road." 2 minutes later, Nikel Thomas
24 sends a similar message to Shane Connor's phone. During the early
25 hours of the morning of 17/6/17, Nikel Thomas makes a number of
26 calls to both Shane Connor's phone and to 7861. Whilst I should not



1 speculate, it is reasonable to ask oneself, when examining Elmer
2 Wright's suggestion, why Shane Connor should take Elmer Wright's
3 mobile phone when he had one of his own, that was, as the evidence
4 demonstrates, at all material times switched on and connected to the
5 service provider. It may perhaps have been to ensure that he was not
6 implicated by any telephone evidence, were he later to be arrested and
7 his telephone seized. However, had that been the reason, he would
8 surely then have either turned his own phone off, or at the very least
9 taken effective steps to ensure that Nikel Thomas did not contact him
10 whilst he was committing burglaries.

11 ii. Two calls, listed at 206 & 208 of exhibit JD/1A/7a are revealing. At
12 4.24 a.m. a call lasting 28 seconds is received by 8242. At 4.28am
13 7861 calls Nikel Thomas – the call lasts 21 seconds. Both calls are
14 handled by the cell site mast which, a radio frequency propagation
15 survey established, provided coverage to the home of Mr and Mrs
16 Butler. The strong likelihood is that both handsets were together and
17 both were at the Butlers' home– and whilst the robbery was in progress
18 (the 911 call reporting e.g. the robbery was made at 4.39am) It then
19 follows, if Elmer Wright was not there, that either Shane Connor took
20 not one but two of Elmer Wright's phones with him that night or that
21 burglar #3 also took one of Elmer Wright's phones.

22 iii. When the handset BH1 was examined, amongst other things,
23 WhatsApp exchanges were recovered between Poochie and Shanice
24 (those exchanges, between 28th May and 16th July 2017 are to be found
25 in court exhibit 16). Elmer Wright explained in the course of his
26 evidence that he was having what he described as a casual relationship



1 with Shanice. Elmer Wright agreed in his evidence that he sent a
2 WhatsApp message to Shanice at 11.28pm on 16th June (page 10 of ex
3 16). It follows that BH1 was then in his possession. Seven minutes
4 later, the 7861 number (the SIM then in BH1) was stored in Nikel
5 Thomas' phone under the name Pooch – during that seven minutes, if
6 Elmer Wright's evidence be right, he had left BH1 at Neil Thomas'
7 premises, left those premises, Shane Connor had taken the phone and
8 was arranging with Nikel Thomas for the BH1 number to be stored in
9 Nikel Thomas' phone.

10 iv. At 4.47am Shanice sends Elmer Wright a message, “where r u”
11 followed by a WhatsApp voice call at 4.48am that was not answered.
12 However, at 4.53am (entry 211 on exhibit JD/1A/7a), she made a call
13 to Elmer Wright's 8242 phone, which was answered; the call lasted 49
14 seconds. Given the duration of the call, the inference is strong that this
15 was a call between Shanice and Elmer Wright, although in his
16 evidence he denied that this was so. Cell site evidence shows that the
17 8242 handset was within the area covered by the Strathvale House
18 mast, as is Slate Drive, where various items, including Mrs Butler's
19 mobile phone were hidden beneath a container. It bears repeating that
20 the Butlers' 911 call was made at 4.39am. The movement of 8242
21 from the Prospect mast at 4.24am to Strathvale House at 4.53am is
22 entirely consistent with whomever was in possession of it being one of
23 the burglars, at 10 Amity Street at 4.24am and then concealing the
24 items at Slate Drive at 4.53am. Elmer Wright sent a WhatsApp
25 message to Shanice at 10.12am that morning, so he was clearly in
26 possession of BH1 at that time. Again, this demonstrates that both



1 BH1 and 8242 were in places associated with the criminal enterprise
2 unfolding in the early hours of 17th June.

3 v. Examination of another of the handsets recovered from Elmer Wright
4 revealed WhatsApp exchanges between Pooch and Butta. As Elmer
5 Wright explained and accepted in his evidence, Butta and Shane
6 Connor are one and the same. Exchanges between 3rd June and 15th
7 July were recovered, but it is those from 20th June onwards that the
8 prosecution say are revealing. I agree. They appear to be exchanges
9 between two people involved in these offences; there is discussion
10 about arrests, the police investigation and the sale of stolen goods.
11 Elmer Wright accepted that he was to some extent interested in these
12 alleged offences. He explained that the first he knew about the
13 offences was when he went to Neil Thomas' yard on 17th June and was
14 told that Nikel Thomas had been arrested. He started checking the
15 news broadcasts and then called Shane Connor to find out what was
16 going on. It soon became apparent, said Elmer Wright, that his name
17 had been mentioned in connection with these offences. At pages 345 &
18 346, Elmer Wright and Shane Connor, with apparent annoyance,
19 discuss the circumstances of Caine Thomas' arrest – with Shane
20 Connor saying that “tha thing when its sold, only me and you getting a
21 cut.” From the same handset, WhatsApp exchanges between Elmer
22 Wright and Oscar Solomon were downloaded. Again, it is hard to
23 understand some of these exchanges on any basis other than that Elmer
24 Wright was one of those involved in the criminal events of 17th June.
25 In cross examination, Elmer Wright was asked about a voice note left
26 with Oscar on 19th June. Elmer Wright agreed that he had said that he
27 had sold some gold chains and a Rolex for \$10,000, and that this had



1 to be split 3 ways. Elmer Wright said that this was a mistake – he had
2 meant to say that Shane Connor had sold these items. Also on 19th
3 June, Elmer Wright sends the following message, clearly about what
4 Caine Thomas had said to the police following his arrest:

5 *“The youth tell the feds he don’t know a they talking about all*
6 *he know he steal mommy car n crash it the all he kno. Like*
7 *they na find ntn in the car man why me n butter get link to it*
8 *because one of the youth them text me and him on the night”*

9 In his evidence Elmer Wright accepted that he had sent that message.
10 Asked in cross examination why he had said “the youth (and it seems
11 clear his must be a reference to Caine Thomas) text me and him”, he
12 said that this was a mistake. The message should have been “the youth
13 text my phone” – not “text me.”

14 vi. Elmer Wright’s phones contained a large number of photographs.
15 One, bearing the date 23rd June 2017 (6 days after these alleged
16 offences) shows him pointing at a quantity of cash in largely high
17 denomination US and Caymanian currency, together with a
18 PlayStation controller - significant, say the prosecution, because a
19 substantial quantity of cash in various currencies and a PlayStation
20 controller were stolen from Amity Street. Elmer Wright in evidence
21 said that this money was part of the proceeds of his business selling
22 phones to fellow inmates in prison. It is right in this context that I
23 should draw attention to another photograph downloaded from one of
24 his phones, showing a display of a large quantity of cash. This
25 photograph bears the date 19/5/17 and therefore cannot have been part
26 of the proceeds of the offences the subject matter of this indictment.

1 vii. Also downloaded (exhibits p 332 & 333) were 2 photographs of a
2 silver coloured revolver, dated 10th June 2017. Elmer Wright admitted
3 during his evidence that he briefly had possession of this item on that
4 date, 7 days before these offences took place. He sent one of the
5 photographs of the gun to his brother with the message “the wa I have
6 right now on me bro.” He referred to it in a voice note message at
7 about the same time as a bad-boy 9. He explained in evidence that he
8 had lots of friends who have guns. Someone came to him with the
9 gun, saying they wanted a picture of it. I just took the picture and gave
10 the gun back to him. He did not know whether the gun was fake or
11 real. He agreed that it was similar to the gun the Butlers described
12 seeing in the course of the robbery.



13 **CONCLUSIONS**

14 94. In a case where the prosecution relies upon a number of strands of evidence,
15 reference is often made of the strands that go to make up a rope – that the strands,
16 albeit individually varying in strength, become stronger when they are interwoven.
17 Not all strands will be of the same strength. I regard the telephone evidence, taken
18 as a whole to be compelling, a substantial strand of evidence. Having considered
19 all the telephone evidence, in the light of and with the support of the other evidence
20 in the case, I am driven to the conclusion that Elmer Wright was involved in these
21 offences and was in possession of exhibit BH1 (7861) and the handset using the
22 8242 number throughout the early hours of 17th June 2017 and particularly, whilst
23 these offences were being committed. Here are some of the features of the
24 telephone evidence that have driven me to that conclusion. I should stress that no
25 one feature of the evidence is decisive, but the cumulative effect of these features
26 taken together is compelling:

- 1 a. At 11.26pm, BH1 was, Elmer Wright accepts, in his possession; he was
2 sending a WhatsApp message to Shanice. 9 minutes later the BH1 number is
3 stored in Nikel Thomas' phone contacts. The purpose of giving Nikel Thomas
4 the 7861 number is obvious from the messages he subsequently sent to 7861. If
5 Elmer Wright is correct, in 10 minutes, he had left BH1 in a room he used at
6 Neil Thomas' yard, exited the room, Shane Connor had entered, taken BH1
7 and given the number to NT. This seems unlikely.
- 8 b. It is plain, particularly from #206 & 208, that 7861 and 8242 were both in the
9 same location (and within the cell site mast area that provided coverage to 10
10 Amity Street), at the time Mr and Mrs Butler were being robbed. Mr Wright
11 accepts that 7861 was at Amity Street; the only explanations for this, consistent
12 with his absence from Amity Street, is that either Shane Connor took not one,
13 but two phones or that another robber also had one of Elmer Wright's phones.
14 As mentioned above, it is difficult to see why Shane Connor should take one
15 phone (when his own was in good working order), let alone two.
- 16 c. Further, 8242 was in the Slate Drive area soon after that robbery, at a time
17 entirely consistent with the time at which the two bags were being stashed
18 under the containers. 8242 had a 49 second call with Shanice. Whilst possible,
19 the likelihood of anyone other than Mr Wright holding a 49-second
20 conversation with Shanice at 4.47am from one of his phones must be remote.
- 21 d. The WhatsApp exchanges strongly suggest the involvement of both Elmer
22 Wright and Shane Connor in the Amity Street robbery. They cannot be
23 explained on any other sensible basis. Elmer Wright's evidence that he had
24 typed "me" when he meant "my phone" was not credible





- 1 e. The photograph in BH1 of Elmer Wright pointing to a large amount of cash in
2 various currencies, together with a PlayStation controller, dated 6 days after
3 the Amity Street robbery strongly suggests that he was one of the robbers. True
4 it is that there is another photograph of Elmer Wright pointing to a large
5 quantity of cash that cannot be the proceeds of the Amity Street robbery, but
6 this does not in my view diminish the strong inference properly to be made
7 from the photograph. The fact that a PlayStation controller can be seen in the
8 photograph (and such a controller was taken in the course of the robbery) is
9 compelling.
- 10 f. The two photographs of Elmer Wright displaying a revolver seven days before
11 the robbery are in my view significant, as is the fact that he sent one of the
12 photographs to his brother with a caption demonstrating a degree of pride in
13 his possession of the firearm. The revolver is similar in appearance (although I
14 cannot and do not come to a definitive view) to that seen in black jacket man's
15 hand in the CCTV footage from Camelot Palms.

16 **DNA/VIDEO ANALYSIS**

17 95. The defence accept that one of the offenders that night was wearing the black
18 jacket and the gloves on which Elmer Wright's DNA was found. The DNA
19 evidence adds weight to the conclusion to which the telephone evidence drives me.
20 As I have already noted above, the expert view, which I accept, is that the last
21 wearer of a garment is likely to be the major DNA contributor, although that is not
22 an invariable rule. It seems to me highly unlikely, had Shane Connor worn the
23 gloves on 17th June that he would not deposit his DNA on the inner surfaces.
24 Additionally, no reason has been advanced as to why Shane Connor should wear
25 Elmer Wright's jacket and gloves that evening – any more than there is any reason
26 that bears close examination as to why he should take two of Elmer Wright's

1 phones with him. The presence of his DNA on one of the interior door handles of
2 the stolen Honda Inspire is very strong evidence of his presence in the car. Whilst
3 DNA can on occasion be transferred, this is, to my way of thinking, so unlikely in
4 this case that it can safely be rejected as a possible explanation. Whilst it is a point
5 of much less weight, I also bear in mind that part of the Camelot Palms CCTV
6 footage which shows the man wearing the black jacket remove the glove from his
7 left hand. He is wearing a ring on the middle finger of his left hand. Whilst Mr
8 Fredericks could not make any useful comparison with Elmer Wright's \$-sign ring,
9 the fact remains that black jacket man was wearing a ring on the middle finger of
10 his left hand – an unusual finger on which to wear a ring. Taking a step back, it is
11 coincidence too far for me to accept, in the light of all the evidence, that the man
12 who had taken Elmer Wright's black jacket, gloves and phones should also wear a
13 ring on the middle finger of his left hand and should also be carrying a revolver
14 similar to that shown in the possession of Elmer Wright some 7 days before the
15 robbery.

16 **CAINE THOMAS**



17 96. I have not thus far discussed the evidence of Caine Thomas. I have already directed
18 myself as to the need for caution in respect of his evidence. That said, in very large
19 measure, I found him to be a witness of truth, a witness on whose evidence I could
20 properly rely. Had his evidence stood alone, then the position may well have been
21 otherwise, but as I have emphasised elsewhere in this judgment, it is a mistake to
22 compartmentalise the evidence, or look at part of the evidence in a vacuum. It is
23 the cumulative effect of the evidence as a whole that matters.

24 97. When looking at the evidence of a witness in Caine Thomas position – an
25 accomplice who has pleaded guilty but not yet been sentenced - giving evidence
26 for the prosecution against a co-defendant, it makes obvious sense to look at other



1 evidence in the case, to see whether that supports or detracts from his evidence.
2 Caine Thomas' evidence is generally consistent with other evidence in the case.
3 He is now 19 years of age. He is obviously capable, as the events of 17th June
4 2017 prove all too well, of participation in dishonest, violent and shocking
5 behaviour. However, I do not believe he has the experience, ability or guile to
6 tailor his evidence to fit the detail of other evidence as comprehensively as it does.

7 98. I have considered with care the points made by Mr Myers about Mrs Butler's
8 description of the behaviour of the three robbers. She recalls only one of them
9 wearing a mask, saying that the other two had "covering" to their faces. She
10 describes the man wearing a mask as the loudest and most vicious of the three
11 robbers, "*the one who kept on asking us where is the cash, and demanded our*
12 *jewellery. He also told us that he has already killed five people and said my*
13 *husband and I would be the next two.*" On the evidence as a whole, it seems safe to
14 conclude that only one robber was wearing a mask – and that was Caine Thomas.
15 Yet Caine Thomas denies the behaviour Mrs Butler ascribes to him– the threats to
16 kill, the boast about killing six or seven people – saying that that was the behaviour
17 of Elmer Wright. This, the defence argue, proves that Caine Thomas is lying, that
18 he is trying to minimise his role in order to achieve a reduction in his sentence.

19 99. I have considered at length the statements of Mr and Mrs Butler and compared
20 them with other evidence. What is contained in her witness statement is Mrs
21 Butler's best recollection and impression of what took place. There are a number of
22 inconsistencies between the statements of Mr and Mrs Butler and with other
23 evidence in the case. Whilst both agree as to the main points of what happened, Mr
24 Butler's impression seems to be that all three men were wearing masks. Mrs Butler
25 describes robber #1 (the most vicious one) as shorter than the other two. If the
26 prosecution case be right, that the robbers were Caine Thomas, Elmer Wright and



1 Shane Connor, Caine Thomas is the tallest of the three. Mrs Butler recalled that
2 one of the taller ones hit her husband with a hammer. Mr Butler said that it was the
3 shorter one who did this. For my part, it is not remotely surprisingly that the
4 Butlers' recollection of these events is less than perfect. The ordeal they endured
5 was traumatic in the extreme. I return to Mrs Butler's recollection that one of the
6 robbers was particularly vicious. The appearance of the robber wearing the
7 Halloween mask would without doubt have been the most terrifying of the three
8 robbers. It may be that Mrs Butler has subconsciously transposed the most
9 frightening behaviour to the robber whose appearance was the most horrific. I note
10 that Mrs Butler describes one of the robbers as "*the gentle one in the group. He just*
11 *took orders from the other two but did not say much. I would not describe him as*
12 *vicious..... From his behaviour, I think he was a younger person.*" As already
13 mentioned, Caine Thomas was just 16 years of age at the time of these offences.
14 However, I should note that Mrs Butler recalls that gentler one hitting her husband
15 with a hammer – whereas Caine Thomas' evidence was that this was Shane
16 Connor. The discrepancies drawn to my attention do not cause me to reject Caine
17 Thomas' evidence. I remain of the view that he is, in large measure, a witness of
18 truth.

19 100. He was under no obligation to give evidence in this case. He is not a compellable
20 witness, for either prosecution or defence. It is clearly important to consider why,
21 in the event, he chose to give evidence. Caine Thomas' lengthy and detailed letter,
22 in which he expresses a willingness to give evidence for the defence, offers an
23 explanation for some of the evidence adduced in Elmer Wright's trial, and stresses
24 that Elmer Wright was not involved, is obviously an important document.
25 Assuming for a moment that the contents of the letter are true, insofar as they
26 concern Elmer Wright's lack of involvement, and that it was prompted by a desire
27 not to see justice miscarry, then what is the explanation for Caine Thomas then



1 giving evidence to precisely the opposite effect? A desire to achieve a reduction in
2 sentence cannot, in my view explain such a dramatic turnabout. Caine Thomas of
3 course says that Elmer Wright subjected him to a number of ever more graphic
4 threats of death or injury and produced a handwritten letter. Elmer Wright
5 instructed him to copy that letter in his own hand; Elmer Wright's original was
6 then destroyed. It is certainly true that I was made aware by the defence at various
7 stages of Caine Thomas' willingness to give evidence for the defence. Both were
8 on remand at HMP Northward, and albeit that Caine Thomas was accommodated
9 in the young persons' wing, there was contact between them. It would be naïve to
10 think otherwise. Elmer Wright is considerably older and more criminally
11 experienced. I have considered what is said in the letter in detail. Its contents and
12 phraseology are in my view very much more likely to have originated from Elmer
13 Wright than to represent original thought from Caine Thomas. Parts of the letter
14 give an explanation of evidence that, the likelihood is, Elmer Wright felt were
15 troublesome to his defence and are unlikely to have come spontaneously from
16 Caine Thomas. For example:

17 *“When I saw Shane, he asked me for an extra jacket and gloves for his*
18 *Jamaican friend, wanted to come with him I remember my cousin Elmer have a*
19 *jacket and a pair of gloves on his bike in my dad's shed.”*

20 *“during the night, at the same time my brother was calling and texting me on*
21 *one of the phones I had, the number is 328 7861. I would often use different*
22 *phones when going out.”*

23 101. I have no reasonable doubt that this letter was the work of Elmer Wright rather
24 than Caine Thomas, and that Caine Thomas complied with the demands made of
25 him because of fears for his own safety, and, that of his family, as a result of
26 threats made by Elmer Wright. Caine Thomas' signature on the statement drafted



1 by Mr Furniss is also consistent with threats being made to him. Likewise, his
2 decision to “man up” and do the right thing – that is to say, to give the court a
3 truthful account of the events of 17th June 2017 is consistent with the regime of
4 increasing threats to which he says he was subjected. This was, in my judgment,
5 his main motivation for giving evidence – and in my view, essentially truthful
6 evidence, particularly as it concerns the involvement of Elmer Wright.

7 102. It would be unrealistic to suppose that Caine Thomas does not hope to gain some
8 personal advantage by giving evidence for the prosecution. Doubtless he hopes
9 that this will bring about a reduction in his sentence. However, I do not think that
10 was the reason he gave evidence. Acting Chief Inspector Wright acted
11 appropriately when dealing with him on 10th October 2019, telling him in terms:
12 *“before we begin to hear what you have to say, I must also inform you that neither*
13 *I nor the prosecuting authority for this case can give you any assurances*
14 *whatsoever to the level of sentencing discount that you would receive for providing*
15 *a witness statement in this matter.”* In conclusion, I am sure that Caine Thomas’
16 evidence was essentially truthful and thus I can and should act upon it.

17 103. In the course of my deliberations, I have examined the evidence in this case in
18 many different ways, approaching the case from different angles in order to test my
19 evaluation of it. The way in which I have set out matters in this judgment does not
20 represent the order in which I approached the evidence in the course of my
21 deliberations. Rather, it is my best attempt to summarise the evidence and my
22 conclusions in a logical and understandable way. My approach is perhaps best
23 described as holistic. I have not acted upon a piece of evidence or an inference
24 which is contrary to the interests of Elmer Wright unless I am sure of it, but very
25 often one piece of evidence or inference supports and adds weight to another. I
26 have stepped back from the detail and looked at the picture presented by the



1 evidence as a whole. With that in mind, I come lastly to look again at the evidence
2 of Elmer Wright, reminding myself that despite what I regard as the strength of the
3 prosecution case, if Elmer Wright's evidence from the witness box is or may be
4 true, he is not guilty of these offences. I remind myself of Pitchford, L.J.'s
5 guidance in *Masih*¹²: can I exclude all realistic possibilities consistent with Mr
6 Wright's innocence? I bear in mind that over two years had passed since the date
7 of these offences by the time he came to give evidence. I make all allowances for
8 the problems of recollection that delay will have caused. It is understandable that
9 he could not, over two years later, explain, for example, why a particularly
10 WhatsApp message was sent or what was meant by it, what was said in the course
11 of a telephone call and so on. Very much less understandable is Elmer Wright's
12 evidence that he could not remember where he was or what he was doing at the
13 time of these offences. He was unable or unwilling to provide the police, in the
14 course of his interviews or this court in his evidence with any information as to
15 where he was whilst these offences were in progress. In that regard, he was not
16 having to think back two years. The evidence is clear that he was well aware within
17 two days of these offences that others had been arrested and that the police
18 suspected he was involved. He was then well aware shortly after these offences
19 that it may become important for him to provide details of his whereabouts at the
20 material time and details of any witnesses who may be able to support an alibi.

21 104. Elmer Wright was interviewed under caution on three occasions, on 18th July, 1st
22 September and 20th October 2017. For the most part, he did not answer the
23 questions asked of him, although when the DNA evidence was put to him, he did
24 comment that DNA is transferable. Before each interview, he was told that it was
25 his right to remain silent, but that it might harm his defence if he failed to mention

¹² *supra*



1 when questioned, something he later relied on in court. One of the essential facts
2 upon which he now relies by way of defence is that at least one of his phones,
3 which he was made aware implicated him in the offences, were not in his
4 possession at the time of the alleged offences. In the words of the caution, his
5 failure to mention that he did not have that phone with him at the time, having left
6 it at Neil Thomas' home, may harm his defence, since the inference could be
7 drawn that he has only subsequently thought up that explanation. However, I can
8 only draw that conclusion if I think it is a fair and proper conclusion, and I am
9 satisfied about three things. First, that he could reasonably have been expected to
10 mention the facts on which he now relies. Second, that the only sensible
11 explanation for his failure to mention the facts is that he had no answer at the time
12 or none that would stand up to scrutiny. Third, that apart from his failure to
13 mention those facts, the prosecution case as put to him in interview was so strong
14 that it clearly called for an answer by him. Elmer Wright told me in evidence that
15 he mistrusted the police generally and that he did not answer questions in interview
16 because he was relying on legal advice and exercising his rights. In my view, his
17 explanation was implausible. I am satisfied as to each of these three matters set out
18 above and satisfied that did not mention the defence on which he now relies – that
19 someone else had taken and was using his phones – because he had not by then
20 thought of it.

21 105. There were several occasions upon which I am sure Elmer Wright was lying to me
22 from the witness box, most obviously when seeking to explain the photographs
23 downloaded from his phone, showing him displaying a silver revolver. His
24 explanation that someone brought the gun to him as he wanted Elmer Wright to
25 take a photograph of it was plainly untrue. I am sure it was a lie. In the modern
26 world, it is rare indeed for anyone not to have the wherewithal – that is to say a
27 mobile phone – to take a photograph. Even if that were the way of things, why



1 would Elmer Wright then send a photograph of the gun to his brother with the
2 boastful message, “*The wa I have right now on me bro.*” It is significant that Mr
3 Wright has his finger on the trigger and his thumb is about to cock the weapon. I
4 remind myself, in accordance with the well-known authority of *R v Lucas*¹³ that a
5 defendant may lie for a variety of reasons. There may be an innocent explanation
6 for a lie. Here, I am sure that it was a deliberate lie and sure that the reason for the
7 lie was an attempt to distance himself from the fact that he had a firearm in his
8 possession (and not simply to take photographs of it) shortly before these offences.
9 I do then take these lies as evidence going to support the prosecution case. There
10 were, I am sure other lies: by way of example, in answer to questions from Mr
11 Myers, Elmer Wright denied that he had ever swopped any SIM cards between
12 phones; in cross-examination, once he was taken through clear evidence that he
13 must have done, he accepted that it was his habit, on occasions, to swap SIMS.
14 That lie I simply place in the balance when looking at his credibility as a witness.

15 106. I conclude that I can exclude all realistic possibilities consistent with the notion
16 that Elmer Wright was not present and actively involved in the criminal events
17 unfolding at Camelot Palms, at the Marriott hotel and lastly at the home of Mr and
18 Mrs Butler. The evidence taken as a whole drives me to the sure conclusion that he
19 was present and criminally involved at all three locations. Mr Myers was not
20 prepared to concede that, on the totality of the evidence, the same three men were
21 involved in all three offences. I am sure that they were. Caine Thomas has
22 pleaded guilty to all offences and all agree he was involved at all three locations.
23 The notion that his accomplices changed during the course of the night is bizarre,
24 when looked at against the evidence as a whole. There are many common features
25 shared between the three offences. For example, the use of WD40 at both scenes
26 and on the car, which demonstrates a level of criminal experience beyond Caine

¹³ [1981] QB 720



1 Thomas' years. I am sure that Caine Thomas is right that the three participants
2 were the same throughout and were as he names them. Nevertheless, it bears
3 repeating that I have considered the evidence against and for Elmer Wright
4 separately on each count.

5 107. I have not yet dealt with the ingredients of each of the offences alleged in the
6 indictment. The question at the heart of this case was whether Elmer Wright was
7 one of the three men involved in the criminality of 17th June. If I am sure of that
8 (as I am), the defence does not seek to suggest other than that he is guilty of all the
9 offences he faces, accepting that all the ingredients are made out. That being so, I
10 can, largely speaking, take the ingredients of the offence shortly. The prosecution
11 alleges, and I accept, that each of these offences were committed jointly by all
12 three men. For liability to follow upon the basis of joint enterprise, for the
13 purposes of this case, Elmer Wright must intend that the offence which I am
14 considering be carried out and that he played some part in the commission of the
15 offence. I am satisfied that concerted attempts were made by all three men to gain
16 entry to #2 Camelot Palms; the shared dishonest intention of all was to gain entry
17 to the premises in order to steal therefrom. Had entry been gained, it would have
18 been as a trespasser. I am satisfied also that one of the men (and I am satisfied that
19 it was Elmer Wright) had with him a gun. Since that item has never been
20 recovered, it is not possible to say whether it was a firearm within the meaning of
21 the relevant legislation – accordingly, it is properly charged as an imitation firearm.
22 I am satisfied, had entry been gained to Camelot Palms, Elmer Wright would have
23 entered with that imitation firearm. Accordingly, I am satisfied that he was in
24 possession of that item at Camelot Palms, intending to commit an offence of
25 aggravated burglary. As noted earlier, damage was caused in the attempt to gain
26 entry, to the value of \$11,000 odd. Again, I am sure all three men shared an



1 intention and participated in causing that damage. It follows that Elmer Wright is
2 guilty of counts 2, 3 and 4.

3 108. At the start of this criminal enterprise, the three men, I am satisfied, travelled to
4 Slate Drive in Caine Thomas' mother's car, as Caine Thomas explained in his
5 evidence. The car was left there, the intention being to, I am satisfied, return to it
6 later – as was the case. The three men drove back to Clarence Drive in Caine
7 Thomas' mother's car. It seems to me clear that the Honda Inspire car taken from
8 the Marriott Hotel staff car park was intended for use only to travel to and from
9 Prospect. The car was later abandoned. In those circumstances, I am cannot be
10 satisfied that there was any intention to deprive the owner of his vehicle
11 permanently. Accordingly, I find Elmer Wright not guilty of count 1. I am
12 satisfied, as against Elmer Wright and Caine Thomas that all the ingredients of the
13 offence of taking a conveyance without authority (s.246(1) of the *Penal Code*) are
14 made out. However, in this jurisdiction such an offence is triable only in the
15 Summary Court and accordingly, as I understand s.59 of the *Criminal Procedure*
16 *Code*, it is not an alternative verdict available to me.

17 109. As to count 5, there is no dispute that two of the three men who invaded the
18 Butlers' home had guns with them (the evidence of that is to be found in the
19 statements of Mr and Mrs Butler) – again these weapons were not recovered and
20 thus it is not possible to say whether they were firearms within the meaning of the
21 legislation. The three men, it goes without saying, were trespassers in the Butlers'
22 home. Their joint dishonest intention was plainly to steal. Elmer Wright played an
23 active and enthusiastic part in what went on there, including participation in both
24 threats of violence and the use of force. The joint intention of the robbers when
25 treating the Butlers as they did was put them in fear of being subjected to
26 immediate force, in order for them to reveal where valuable property could be

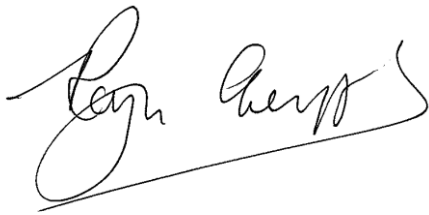
1 found so that it could be stolen. I am satisfied the men stole each of the items set
2 out in count 6. I am sure that Elmer Wright is guilty of counts 5 and 6.

3 110. My verdicts then are that Elmer Wright is not guilty of count 1, but guilty of counts
4 2, 3, 4 5 and 6.

5
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7

8 **Dated this the 29th day of January 2020**

9

A handwritten signature in black ink, appearing to read "Roger Chapple". The signature is written in a cursive style and is positioned above a horizontal line.

10
11
12
13

Justice Roger Chapple
Acting Judge of the Grand Court