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

28/07/11

INDICTMENT NO: 83/10

THE QUEEN

V

SIMON JULIO NEWBALL



13 **Appearances:** Ms. Laura Manson for the Crown

14 Mr. John Furniss for the Defendant

17 **Before:** The Hon. Mr. Justice Charles Quin

18 **Heard:** 13th and 14th July 2011

19

20 **JUDGMENT**

21

22 *Introduction*

23 1. The accused is charged with one count of possession of an unlicensed
24 firearm contrary to s.15(1) and s.15(5) of the Firearms Law (2008 Revision).

25 2. The particulars of the offence are that the Defendant, Simon Julio Newball,
26 on Sunday the 24th October 2010 at Leafy Lane, George Town, Grand
27 Cayman, had in his possession a firearm except under and in accordance with
28 the terms of a firearm users' license.

29 *Case for the Prosecution*

30 3. The Crown's evidence depends entirely on the evidence of the Complainant,
31 Phillip McLaughlin. The Complainant is ten years older than his brother, the

1 Defendant, Simon Newball. The Complainant and the Defendant have the
2 same mother, namely, Velmay McLaughlin (“Mrs. McLaughlin”), but
3 different fathers.

4 Phillip McLaughlin – the Complainant

5 4. The Complainant’s evidence in chief was that on the 24th October 2010 he
6 received a call from his mother, Mrs. McLaughlin. The Complainant’s
7 evidence is that his mother was in a distressed condition and as a result of his
8 mother’s phone call he returned quickly to his home at 12 Leafy Lane.

9 5. The Complainant confirmed that 12 Leafy Lane is owned by the Defendant
10 and another brother, namely Francisco Newball. The Complainant, the
11 Defendant, Francisco Newball and Mrs. McLaughlin all reside on the 12
12 Leafy Lane property in separate apartments.

13 6. The Complainant’s evidence disclosed that there was ill feeling between the
14 Defendant and the Complainant.

15 7. The Complainant said that upon receiving his mother’s phone call he
16 returned to Leafy Lane and he parked his vehicle on Goring Avenue and cut
17 through a path into Leafy Lane.

18 8. The Complainant said that upon reaching on to Leafy Lane he saw the
19 Defendant further down the Lane – towards the Walkers Road end of the
20 Lane. The Complainant said he was walking quickly towards the Defendant
21 and when he was about 50 feet away from the Defendant he saw the
22 Defendant pull a gun out from his waist.

1 9. The Complainant's evidence is that he, the Complainant, broke into a run
2 towards the Defendant, and then he saw the Defendant go into his pocket and
3 take something out of his pocket. The Complainant described the gun as a .38
4 revolver and demonstrated to the Court how the Defendant held the gun in
5 his right hand and put two shells he had taken out of his pocket into the
6 chamber of the gun with his left hand.

7 10. The Complainant said he continued running towards the Defendant "*real*
8 *fast*" and he states that he saw the Defendant point the gun towards him. The
9 Complainant stated that the gun was pointed towards him but up in the air,
10 and that was when the Defendant fired a shot, which went up in the air.

11 11. The Complainant estimated that when the first shot was fired he was
12 approximately 15 feet away from the Defendant.

13 12. The Complainant said that after the first shot the Defendant started running
14 away and he chased the Defendant across Walkers Road, whereupon the
15 Defendant went into the bushes between some apartments and fired a second
16 shot, also up in the air.

17 13. The Complainant's evidence in chief was that the Defendant fired another
18 two shots – following on the first two shots. The Complainant states that the
19 last two shots were fired by the Defendant on Goring Ave when the
20 Complainant had given up chasing the Defendant and was returning to his
21 vehicle. The Complainant said that, again, the shots were in his direction, but
22 even more up in the air.

- 1 14. The Complainant said that the Defendant got away and so he returned to
2 Leafy Lane to check on his mother who was all shaken up and very stressed.
- 3 15. In cross examination the Complainant said that, when he first entered Leafy
4 Lane from the Goring Avenue end of the Lane, the Defendant had been
5 gesticulating outside the pharmacy and looking towards the Laundromat. The
6 Complainant also said that the Defendant said to him *“if you get into this that
7 you dead tonight too.”*
- 8 16. In cross examination it was put to the Complainant that the Defendant had
9 said at the Preliminary Inquiry that he never had a gun. The Complainant
10 disagreed and said that he saw the Defendant with a gun. The Complainant
11 said he knew what he saw. The Complainant also said he saw the Defendant
12 put two shells into the chamber of the revolver.
- 13 17. It was put to the Complainant that the Defendant denied ever firing any shot
14 or shots at the Complainant near the pharmacy.
- 15 18. It was also put to the Complainant that, not only did the Defendant not have
16 any gun, but he, the Complainant, had a machete with him when he was
17 approaching the Defendant on the day in question, and he chased the
18 Defendant with the machete. It was put to the Complainant that the reason
19 the Defendant ran away from him was because he, the Complainant, had a
20 machete. The Complainant denied that he had a machete with him.
- 21 19. The Complainant said that he saw the gun and he said he was familiar with
22 guns and recognised it as a .38 revolver. The Complainant said he could see
23 the flash and he could hear the bang from the gun and the bullet went up in

1 the air. The Complainant's evidence was consistent in both examination in
2 chief and in cross examination.

3 20. It was put to the Complainant that in fact it was he who had uttered the words
4 "Pussy-hole, if you such a big bad man, why you run? Why don't you stand
5 up?" The Complainant denied ever using those words to the Defendant.

6 21. The Complainant said that he returned to Leafy Lane after chasing the
7 Defendant, in order to check on his mother because she had been hysterical.
8 The Complainant said that Mrs. Barnes who owned the Laundromat next
9 door to 12 Leafy Lane was trying to hide the mother from the Defendant.

10 22. The Complainant was asked why he had not reported the shooting to the
11 police on the evening it occurred. The Complainant said everything happened
12 so quickly and, given the distressed state of his mother, he was uncertain
13 about what he should do at the time.

14 Detective Constable Manley Berry

15 23. The Crown called Detective Constable Manley Berry ("DC Berry"), who was
16 the investigating officer in this case. DC Berry told the Court that the
17 Defendant's clothes had been confiscated on Tuesday the 26th October 2010
18 and DC Berry said he recommended that gunshot residue ("GSR") testing be
19 carried out on the Defendant's clothing and on the Defendant. However, for
20 reasons unknown to DC Berry, the GSR testing was never carried out on
21 either the swabs or the clothing.

22 24. In relation to the CCTV camera outside the pharmacy DC Berry confirmed
23 that the camera only focused on the back door and did not protrude out on to

1 Leafy Lane itself. Consequently, there was no CCTV footage of the
2 altercation between the Complainant and the Defendant.

3 25. DC Berry said that DC Scott arrested the Defendant on or about 1:50 p.m. on
4 the afternoon of the 26th October 2010. DC Berry said he, (DC Berry) was
5 present when the Defendant was arrested. He said that DC Rodriguez tested
6 the Defendant for GSR and swabs were taken. He also said that the
7 Defendant's clothes were taken by the police.

8 26. On the 26th October 2010 DC Scott conducted a question and answer
9 interview with the Defendant and DC Berry said he was present. DC Berry
10 introduced the caution interview as an exhibit and read out the answers
11 which the Defendant gave to the police during the interview at George Town
12 Police Station.

13 27. When asked if the Defendant had read the questions and answers, DC Berry
14 said yes, he read them aloud and then signed the answers and endorsed the
15 interview at its conclusion.

16 28. In this statement the Defendant denied ever having a gun and told DC Scott
17 and DC Berry that on the 24th October 2010 at approximately 8:15 p.m. the
18 Complainant chased him with a "chrome" machete. The Defendant said that
19 at first he started to walk backwards, and then he eventually broke into a run
20 and headed across Walkers Road.

21 29. In his interview the Defendant denied ever having a gun and stated that if he
22 had had a gun, he would not have had to run away. The Defendant denied
23 ever having a firearm and said he did not have a firearm license. The

1 Defendant said he had no .38 gun and that the Complainant was telling lies
2 on him.

3 30. DC Berry confirmed that the Defendant's house was searched but nothing of
4 evidential value was found, and no firearm-related items were found.

5 31. In addition DC Berry made enquiries of other persons at the scene and
6 confirmed that nobody heard any noises or shots in the vicinity of the
7 pharmacy and the Laundromat and 12 Leafy Lane. DC Berry said he spoke
8 to a number of people and none of them heard anything except one lady who
9 heard a noise but she could not say whether it was a shot or not, or an
10 explosion.

11 32. In addition DC Berry confirmed in his evidence that no spent shells, caps,
12 bullets or other firearm items were found at the scene, and neither was a .38
13 revolver or any firearm ever recovered.

14 *Case for the Defence*

15 *Simon Julio Newball – The Defendant*

16 33. The Defendant elected to give evidence and entered the witness box. He said
17 he owned the property at 12 Leafy Lane with his brother Francisco Newball.
18 The Defendant described the property as being opposite the pharmacy and to
19 the right of the Laundromat.

20 34. The Defendant said that on the day in question he was standing by the
21 shutters in front of the pharmacy when he saw his sister looking behind him.

1 The Defendant said that was when he turned around and he saw the
2 Complainant, Phillip McLaughlin, coming towards him with a machete.

3 35. Asked what he did upon seeing the Complainant, the Defendant said he
4 started to back off and went into the pharmacy parking lot and ran across the
5 street – that is, he ran across Walkers Road away from the Complainant.

6 36. The Defendant said that the Complainant then chased him, whereupon he
7 continued running and two cars nearly hit him. The Defendant said he then
8 continued running in the direction of Smith Road.

9 37. It was put to him that he had a revolver and had shot it, and the Defendant
10 replied that nothing like that had ever happened. It was also put to the
11 Defendant that he fired at the Complainant and then fired three more shots,
12 and in reply the Defendant said, *“I do not have a gun, I do not have any
13 offensive weapon in my possession. Nothing like that happened, it was still
14 early in the night and the neighbours were around, they would have heard
15 something.”*

16 38. It was put to the Defendant that the Complainant saw him, the Defendant,
17 fire two further shots towards him on Goring Avenue. The Defendant replied
18 that he had run in the Smith Road direction through someone’s yard in front
19 of the hospital and then around to Smith Road and through the back to
20 Windsor Park.

21 39. In his evidence in chief the Defendant said he did not have a gun on the night
22 in question and he had no knowledge of any firearm nor did he have any
23 ammunition.

1 40. The Defendant admitted that “*he and Phillip do not talk*” and that they have
2 longstanding problems between them. The Defendant admitted that he
3 evicted the Complainant’s daughter because he did not like the way the
4 daughter was treating his mother.

5 41. The Defendant accepted that he was angry but stated in evidence that he did
6 not threaten his mother, nor did he threaten Phillip McLaughlin.

7 42. In cross examination the Defendant repeated that when he turned around he
8 saw the Complainant coming at him with a machete. It was put to him that
9 the Complainant does not have a machete, to which the Defendant said the
10 Complainant did have a machete, and further, if he did not have a machete,
11 he the Defendant, would have had no reason to run.

12 43. The Defendant stated in evidence that he does not have a gun nor does he
13 have any knowledge of any gun, and the story was made up by the
14 Complainant. The Defendant maintained that the case was a made-up story.

15 44. As with the Complainant’s evidence, the Defendant’s evidence was also
16 consistent in both examination in chief and in cross examination.

17 *Velmay McLaughlin – Mrs. McLaughlin*

18 45. The Defence called the mother of the Complainant and the Defendant, Mrs.
19 Velmay McLaughlin. She confirmed that she was the mother of both men
20 and that she also lived at 12 Leafy Lane.

21 46. She accepted that the Defendant had been angry some time prior to the
22 incident but she said he was not angry at the relevant time. Mrs. McLaughlin

1 in fact said that the Defendant started laughing when he was coming after her
2 in trying to prevent her from going over to the Laundromat.

3 47. Mrs. McLaughlin told the Court that she did not hear any explosions or any
4 loud noises of any nature on that evening.

5 48. Mrs. McLaughlin accepted that she did not want to return to her home after
6 the incident because the Defendant had appeared to be angry. She also
7 accepted that she and the Defendant had had an altercation relating to some
8 food that she had cooked for him.

9 49. She said that she had telephoned Phillip because she did not want Phillip to
10 bring his son to the house on that evening because she felt that would have
11 caused further trouble. She said that she did not recall telling Phillip about
12 the Defendant threatening him in his absence.

13 50. Mrs. McLaughlin did admit to going into Mrs. Barnes's Laundromat because
14 the Defendant had been angry, but, she denied that the Defendant threatened
15 her.

16 51. She said that she did not feel that the Defendant would hurt her, as he had
17 been very good to her in the house – cleaning it up and building a room for
18 her.

19 52. In addition Mrs. McLaughlin said she had never seen the Defendant with a
20 gun and she never heard any shots on that evening. She said there was
21 absolutely no sound of a gun or anything of that nature.

22

1

The Law

2 53. The Defendant elected to be tried by a Judge Alone, rather than a Judge and
3 Jury, pursuant to s.129 of the Criminal Procedure Code of the Cayman
4 Islands.

5 54. Our Court of Appeal first dealt with the duties of a Judge in Judge Alone
6 trials in its judgment in *K. Richards v. R* 2001 CILR 496 when Justice Rowe
7 stated:

8 *“When a trial judge sitting alone has advised himself to the applicable*
9 *principles of law, and given himself any necessary warning, he must*
10 *indicate clearly in his judgment his reasons for acting as he did, in order*
11 *to demonstrate that he has acted with the requisite degree of caution in*
12 *mind and has therefore heeded his own warning. No specific form of*
13 *words is necessary for this demonstration, what is necessary is that the*
14 *Judge’s mind upon the matter should be clearly revealed.”*

15

16 55. In *R. v. Dave Kennedy Whittaker* Cr. App. R. No. 14 of 2006, the Court of
17 Appeal gave some guidelines regarding the duties of a Judge in Judge Alone
18 trials. In the Judgment of Mottley J.A. he adopted the Judgment of the former
19 Lord Chief Justice of Northern Ireland Lord Lowry in *R v. Thompson* [1977]
20 NI 74 in which he stated at page 83:

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

31

1 56. More recently our Court of Appeal in *Randy Martin v. R* Crim. App. R. 2 of
2 2010 delivered their reasons for dismissing the Appeal on the 7th December
3 2010. Mottley J.A. again adopting *R v. Thompson* [1977] NI 24 also adopted
4 *R v. Thain* [1985] NI 457 where Lowry LCJ said at page 478:

5 *“Where the trial is conducted and the factual conclusions are reached by*
6 *the same person, one need not expect every step in the reasoning to be*
7 *spelled out expressly, nor is the reasoning carried out in sealed*
8 *compartments with no inter-communication or overlapping, even if the*
9 *need to arrange a judgment in a logical order may give that impression.*
10 *It can safely be inferred that, when deliberating on a question of fact*
11 *with many aspects, even more certainly than when tackling a series of*
12 *connected legal points, a judge who is himself the tribunal of fact will (a)*
13 *recognize the issues and (b) view in its entirety a case where one issue is*
14 *interwoven with another.”*

15
16 57. Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J.A. said
17 in *Randy Martin v. R* at paragraph 31:

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

27

28 **Conclusion**

29 58. As I stated above, both the Complainant and the Defendant gave clear and
30 consistent evidence despite the Complainant being subject to a tenacious and
31 searching cross examination by Defence counsel, Mr. Furniss, and, equally,
32 the Defendant being subject to a tenacious and searching cross examination
33 by Crown counsel, Ms. Manson.

1 59. Neither the Complainant nor the Defendant was evasive or inconsistent, and
2 yet, we have two diametrically opposing accounts of what occurred on the
3 evening of the 24th October 2010 at Leafy Lane.

4 60. I can find no evidence that either the Complainant, or the Defendant, has lied
5 to the police, or to the Court, yet one of the accounts must be untrue.

6 61. Accordingly I must also carefully review the evidence of the officer in
7 charge and the evidence of Mrs. McLaughlin, to see if their accounts support
8 and corroborate either the Complainant's or the Defendant's evidence.

9 62. DC Berry confirms that the Defendant was prepared to waive his right to
10 remain silent and to subject himself to a question and answer session without
11 having an attorney present. The answers that the Defendant gave on the 26th
12 October 2010 at George Town Police Station are largely consistent with the
13 evidence he gave both in examination in chief and under cross examination.
14 The Defendant has consistently stated that he did not have a firearm on the
15 24th October 2010, and that in fact it was the Complainant who attacked him,
16 the Defendant, with a machete. The Defendant stated to the Police from the
17 outset of their investigation that the Complainant had made up the story
18 against him, the Defendant.

19 63. DC Berry carried out a professional investigation. It is apparent that he
20 interviewed a number of potential witnesses who were at or near the scene at
21 the time the Defendant was supposed to have fired these shots. DC Berry
22 could identify no witnesses who heard any of the four gunshots or any
23 explosions or loud noises of any kind. In addition DC Berry found no spent

1 cartridges or any evidence relating to the discharge of a firearm and the four
2 shots.

3 64. In addition, it would appear from the Complainant's evidence that the
4 Defendant had only two bullets, and yet, the Complainant gave evidence that
5 the Defendant fired four shots. It is possible that the Defendant could have
6 added a further two bullets out of the sight of the Complainant, but there is a
7 distinct lack of evidence to support the Complainant's case in relation to the
8 firearm.

9 65. The Defendant and his clothes were swabbed for GSR. DC Berry
10 recommended that the swabs should be sent off for forensic analysis. The
11 recommendations of DC Berry were not acted upon by the Royal Cayman
12 Islands Police Service (RCIPS). Consequently, there is an absence of GSR
13 evidence to establish whether any firearm was discharged at Leafy Lane on
14 the 24th October 2010.

15 66. Mrs. McLaughlin found herself in a difficult position – having to give
16 evidence in a case involving a complaint against one son by another son.
17 However I do note that she also did not hear any gunshots, nor had she ever
18 seen the Defendant with a firearm.

19 67. I have considered the evidence very carefully and listened to the arguments
20 and submissions in the speeches of Crown counsel, Ms. Manson, and
21 Defence counsel, Mr. Furniss.

1 68. I remind myself that the burden of proof is always on the prosecution. It is
2 for the prosecution to prove that the Defendant is guilty, and further, it is
3 never for the Defendant to have to prove his innocence.

4 69. I also remind myself that the Prosecution must prove the Defendant's guilt to
5 a high standard of proof, namely, that I must be satisfied that the Defendant
6 is guilty of the charge of possession of an unlawful firearm beyond all
7 reasonable doubt or alternatively, so that on the evidence before me I can be
8 sure that he is guilty.

9 70. I am faced with two irreconcilable accounts of what happened on the 24th of
10 October 2010. When I examine the evidence of the investigating officer, DC
11 Berry, and the evidence of the mother of the Complainant and the Defendant,
12 I can find no evidence to corroborate the Complainant's case, and only
13 evidence which tends to support the Defendant's account.

14 71. Given the further evidence from the investigating officer and from the
15 mother of the two parties, I feel bound to find the Defendant not guilty of the
16 charge of possession of an unlicensed firearm.

17 72. I return a verdict of not guilty and discharge the Defendant.

18

19 Dated this the 28th day of July 2011

20

21

22 Honourable Mr. Justice Charles Quin
23 Judge of the Grand Court

