

1. The defendant Devon Anglin elected to be tried by judge alone on the present indictment and the matter came on for trial before me on 1<sup>st</sup> December 2011.
2. The indictment contains three counts. The first, for murder, alleges that the defendant, on the 10<sup>th</sup> day of September 2009 at the Next Level Night Club, West Bay Road, George Town, Grand Cayman, murdered Carlo Webster. The defendant is alleged to have shot Carlo Webster at near point blank range to the head and twice to the body after he had fallen, killing him instantly.

**JUDGMENT**

**APPEARANCES:** Ms. Cheryl Richards, QC, Director of Public Prosecutions and Ms. Elizabeth Lees, Senior Crown Counsel for the Crown  
 Mr. Dorian Lovell-Pank QC instructed by Ms. Lucy Organ of Samson and McGrath for the Defence.

**IN OPEN COURT  
 BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE  
 THE 1<sup>ST</sup> TO 15<sup>TH</sup> DECEMBER 2011 AND 20<sup>TH</sup> JANUARY 2012**

**DEVON ANGLIN**

**-VS-**

**REGINA**



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 CRIMINAL DIVISION  
 INDICTMENT NO: 20 OF 2011**

*22/1/12*

3. The second count on the indictment alleges the attempted murder by the defendant of Christopher Solomon who was shot with the bullet entering the side of his torso, during the same shooting incident in which Carlo Webster was killed. While acknowledging that Webster would have been the intended victim of the shooting, the Crown relies in proof of this count of attempted murder, on the doctrine of transferred malice.
4. The third count on the indictment alleges the unlicensed possession of the firearm said to have been the weapon used by the defendant. It is an admitted fact in the case that the defendant was not the holder of a firearm user's licence.
5. The tragic and terrifying killing having taken place in a crowded and dimly lit night club, the disputed primary issue of fact to be decided is the identity of the gunman.
6. The defendant, although admittedly present in the nightclub when the shooting took place, denies the allegations and maintains his innocence by his plea of not guilty.
7. The burden has thus rested and remained throughout upon the prosecution to prove his guilt. The prosecution must do so to the requisite standard – which is to make me sure of his guilt – before I might convict the defendant.
8. For proof of the crucial issue of identity, the prosecution relies especially upon the evidence of two witnesses. Witnesses who, because of anonymity orders earlier made by Justice Quin on the 31<sup>st</sup> August 2011 (and maintained by me throughout the course of the trial), came to be referred to as Witness B and Witness E.
9. The evidence given by these two witnesses was, however, sought by the prosecution to be supported by that of Mr. Grant Fredericks, the forensic video analyst who gave evidence based upon his examination and analysis of CCTV recorded video footage

obtained from the Next Level Night Club; and recorded during the night of 9<sup>th</sup> September into the early morning of 10<sup>th</sup> September 2009.

10. Separately and together, the evidence of these three witnesses, going to the identification of the defendant as the gunman, became the central focus of the trial.

11. There was nonetheless, the evidence of a number of other persons who were present at the nightclub and police officers who came to have varying roles in the subsequent investigation, which required of careful consideration as potentially supporting or contradicting in different ways, that of Witness B, Witness E and Mr. Fredericks.

12. All of the relevant evidence, touching upon the crucial issue of the identity of the gunman, therefore required of very careful consideration.

13. Before turning to it, I should set out here the considerations of law that must guide my assessment of the evidence in this case.

Witness Anonymity

14. In this case it was found to be appropriate that Witnesses B and E should be allowed to testify without their identities being revealed to the defendant. That was the consequence of the order made by Justice Quin on 31<sup>st</sup> August 2011 for reasons explained in a comprehensive ruling delivered by him on that date.

15. I have, myself, for reasons explained in a ruling delivered on the 14<sup>th</sup> December 2011 during the course of the trial, refused an application by the defence for the discharge of Justice Quin's order and so refusing to allow the disclosure of the identities of Witnesses B and E that would follow. It is expressly a condition of the anonymity orders (and of my subsequent ruling maintaining them) that the Court must conclude that the measures specified in the respective orders are necessary to protect the safety

of the witnesses. See in this regard, Section 13 (1) (a) (i) of the Criminal Evidence (Witness' Anonymity) Law 2010.

16. Such a conclusion may seem capable of carrying the inference that the risks to the safety of the witnesses are considered by the Court to emanate from the defendant. That, however, is neither an implicit nor necessary element of anonymity orders, which stand instead upon a very different premise.

17. This is that from all the circumstances of the case – including especially in this case the presence of what has been described as “the outrageous arrogance displayed by the killer (whoever he was)” – (see R v Mayer [2009] 1 Cr. App R 30 para 27) – it must be and was accepted by the Court that the witness would not testify for fear of his or her own safety, without the protection of an anonymity order. As already noted, this is the first condition of Section 13 of the Law to be satisfied before an anonymity order can be made. The problem presented to the Court arises if and when the safety of the witnesses is under actual threat or may objectively be regarded as under threat – a threat that may come from any source – (see again R v Mayer above at paragraph 28).

18. A determination that a witness should be protected against such a concern in no way pre-judges what is to be made of the evidence that the witness might give.

19. It follows, and I must so remind myself, that the presumption of innocence in favour of the defendant is in no sense undermined by the making of a witness anonymity order and the burden and standard of proof in no way lightened or eroded. Nothing involved in the making or maintaining of a witness anonymity order necessarily involves a predetermination by the Court of the accuracy or veracity of what the

21. The count on the indictment for murder requires that the prosecution proves the elements of that offence to the requisite standard before the defendant can be convicted. The offence involves the unlawful killing of another human being (here Carlo Webster) with the intention to kill or to cause grievous bodily harm.
22. Requiring as the offence does of proof of the objective state of mind of the accused, I record my conclusion here that there can be no doubt that the person who put the gun to Carlo Webster's head and fired the fatal shots, intended to kill him.
23. The offence of attempted murder charged in Count 2 requires proof that the defendant committed an act that was more than merely preparatory to the commission of the offence, with the intention to kill Christopher Solomon.

The Indictment

20. As was declared in R v Mayer (above, at para 14): "In general terms the warning *anonymity order having been made*":
- "appropriate to ensure that the defendant is not prejudiced by the fact of the given to a jury (and here to myself as judge alone) in the words of the section resolution at trial. This is the judicial warning required by section 16 of the Law to be witness might say inculpatory of the defendant. That is the crucial issue that requires *anonymity order has been made, and in particular, must not draw an implication or adverse to the defendant, or favourable to the witness, from the fact that an inference of guilt against the defendant*". I note that I have that warning firmly in mind.

28. The circumstances under which the recognition was made must therefore be examined with great care. These included the state of the lighting; the distances, length of the time of observation; the crowded state of the Club – said to have been about 300 persons at the time of the shooting – and causing possible obstruction of vision; whether any other individual(s) may have been similarly dressed or for other reasons, mistaken for the defendant. Highly relevant also would be whether and if so, as the man who shot Carlo Webster.

27. In this case, the direct evidence of the identification of the defendant as the gunman comes from Witness B only. It is evidence of the visual recognition of the defendant said to be made by Witness B at different points in time during the night of 9<sup>th</sup> September 2009 in the Next Level night club, and most importantly, of the defendant assessment of evidence of visual identification of an accused person.

26. I was reminded by counsel during the submissions in the case and I remind myself now, of the instructions given in the case law on the proper approach to the

**Evidence of Visual Identification**

25. The third Count, - that of possession of unlicensed firearm – proceeds on the basis that the gun was certainly a lethal barreled weapon as required by the Firearms Law and , if proven to have been in the possession of the defendant as the gunman, was not so under and in accordance with the terms of a firearms user's licence.

24. As mentioned above, the Crown's case on this Count is that the defendant pointed and fired the gun with the intention to kill Carlo Webster and in the same act shot Christopher Solomon, the intention to kill Christopher Solomon having thus been transferred to him from Carlo Webster.

30. The general rule is that a statement of opinion on any relevant matter calling for expertise may be made by a witness qualified to give such an expert opinion.

**Expert Evidence**

29. In other words, and again by way of emphasis: even an honest witness can be mistaken in the identification of someone he already knew.

*“mistaken...”*

*did – he swore that it was the person he thought it was. But he may have been*

*which a judge should give, because that was exactly what a testifying witness*

*“The expression I could have sworn it was you indicated the sort of warning*

terms:

recognition and the need for the warning in Bentley [1991] Crim. LR 620 in these or recognition by a witness. Lord Lane CJ commented on the foibles of visual remind myself about the special need for caution in reliance on visual identification conditions, it becomes a matter for my assessment provided always however, that I a period of observation made in difficult conditions but is made under satisfactory Where, however, the purported identification is not based on a “fleeting glance” or on mistakes in recognition, even of close relatives and friends, are sometimes made. purporting to recognise someone whom he knows, I am therefore reminded that was well known before the time of a purported identification. Even when a witness is [1977] 1 QB 224 warns could lead to mistaken identification, even of someone who are the kinds of circumstances and factors which the leading case of R v Turnbull for how long before the events that the defendant was known to the witness. These

31. In this case the need for expert evidence of forensic video analysis was not contested. Nor was the qualification of the witness Mr. Grant Fredericks to give that evidence. He is indeed, qualified and experienced in the field of the recovery, scientific examination and evaluation of recorded video and audio information involving criminal investigations. He has been continuously active in this science since 1984 and has testified as an expert in many Courts of the United States of America and Canada and, on previous occasions, in the Cayman Islands.

32. He is also a lead instructor and lecturer of the science for national law enforcement academies, including the Federal Bureau of Investigation of the United States and at the University of Indianapolis.

33. Mr. Fredericks gave evidence based on his examination and evaluation of the CCTV footage recorded and recovered from eleven (11) cameras operating at the Next Level Night Club on the night of 9<sup>th</sup> September 2009. Much of his evidence is unchallenged by the defence but some, involving his expression of conclusions about the identity of the defendant as the man seen on the footage and most relevant to the evidence of Witness E about that person, is challenged by the defence. As Mr. Lovell-Pank QC framed this objection, Mr. Fredericks's opinion that the man seen at 01.30.19 (i.e. 1:30 am and 19 seconds on 10<sup>th</sup> September 2009) on the footage is the defendant Anglin, "is unscientific and involves nothing more than Mr. Fredericks' visual observation of the footage compared to other footage, an exercise that the Court can undertake for itself. Thus, Mr. Fredericks purports to give opinion which is outside the area of his expertise and if allowed, would usurp the function of the Court."

36. Consistent with the burden of proof resting throughout the trial upon the prosecution, the defendant has the right to put the prosecution to proof of its case and, in turn, to elect to remain silent. That was the election of the defendant in this case. He gave no evidence and called no witnesses to testify on his behalf. The fact that he elected so to do so proved nothing, one way or the other. By his plea of not guilty and by the cross-examination of the prosecution witnesses by his counsel, the defendant denies the evidence of Witness B and Witness E respectively identifying him or tending to identify him, as the gunman. It was his right to put the prosecution to proof in that way.

**The Defendant's right not to give evidence**

35. As the trier of fact it is a matter for me what I make of the evidence of the witnesses – what weight I should ascribe to the evidence and how reliable or unreliable I might find any witness to be. It also follows that I might accept all or part only or reject all or part only of the evidence of any witness.

**General treatment of the evidence of witnesses**

34. Whether that is a valid criticism will be a matter for me to decide as well the question in general, of how reliable I regard his evidence to be and what weight I should attach to any of Mr. Fredericks' evidence that I consider to have been given properly within the compass of his area of expertise.

The Summary of the Evidence

37. I will examine the evidence of each witness in turn and take into account the evidence admitted, either by way of statements read by consent of the defence or by way of the several formal admissions agreed between the prosecution and the defence.
38. In so doing, I will be testing the evidence as against in particular, the concerns raised by defence counsel in cross-examination and by way of their submissions on behalf of the defendant.
39. I will also, of course, be taking account of the arguments presented by the prosecution in response. I will then, at arriving at my verdict in this matter, express my findings of fact having thus taken into account all the circumstances of the case as presented by the evidence.
40. As I directed before commencement of the testimony, the masculine and the feminine pronouns may be used interchangeably in reference to Witness B and to Witness E without attribution of gender, in keeping with the objectives of the anonymity orders.
41. These witnesses testified by way of closed-circuit video and audio links, with myself (apart from the technicians in attendance) being the only person in the Courtroom who could see the witnesses as they testified. The court stenographers and I were the only persons who could hear the natural unmodulated voices of the witnesses by way of speaker headphones. Everyone else in the Courtroom heard their modulated voices over an open speaker system.
42. The voices were nonetheless quite clear and the witnesses were required to speak slowly and as clearly as they might.

47. Witness B was the first witness of fact. This witness recalled arriving at the Next Level Night Club at about 10:00 pm on the night of the 9<sup>th</sup> September 2009. Devon Anglin, whom the witness said he/she knew for over ten years and would come across on the weekly basis, was first noticed by the witness to have arrived at the club about

the layout of the Club.

46. The person in charge of the investigation – former DCI Peter Kenneth – gave sworn evidence in Court for the purpose of explaining the changes which had taken place to CCTV footage.

45. The Court made a visit to the *locus in quo* at the Next Level Night Club. After such changes to the layout of the Club as had occurred were explained, views were taken of different locations and vantage points inside the Club as would allow for a better appreciation of the testimony of the witnesses and of the images to be seen from the conclusion of this judgment.

44. As I observed and listened to these witnesses, I was of course, mindful that I was the only person who could see them testify and so, from time to time, as the need arose, I explained my observations to counsel and to the Open Court. This became necessary in particular in relation to Witness E as he/she deliberated or answers requiring specific recollection of the sequences of events and, indeed, on one occasion became unsettled to the point of becoming tearful about certain recollections. The firm impressions that the witnesses left with me will be a matter for further comment at the bench.

43. Thus, as the trial judge, I had clear and close impressions of the witnesses as they testified with their images presented on a television monitor placed close to me on the

5 to 10 minutes after the witness arrived. Anglin was described by the witness as wearing long jeans pants, a polo shirt with horizontal blue and black stripes and white sneakers on his feet. It also came out in cross examination that the witness saw Devon Anglin on a number of occasions around inside the Club during the course of the night, thus confirming that the witness would have had several opportunities for recognising and observing Anglin, as they moved around in the Club.

48. The examination-in-chief was directed primarily to what the witness said happened at around 1:00 am and during the period immediately following, on the 10<sup>th</sup> September 2009.

49. Carlo Webster, the deceased, whom the witness said he/she also knew for some time before but only on "a greeting basis", was also seen by the witness at the Club.

50. At that time, Anglin and Webster were both standing on the side of the main bar nearest the main entrance, directly across from where the witness was then standing and about ten feet away.

51. The witness said that a fight then broke out involving three persons – Devon Anglin, Carlo Webster and a third person – known to the witness only by name as Chadwick Bodden and as someone who, like Devon Anglin, hailed from West Bay.

52. The witness said that Devon Anglin punched Chadwick Bodden and kicked him as he fell to the ground. From where the witness was standing he/she could then see Devon Anglin's "full body" from the side. The witness insisted that Devon Anglin could not have been mistaken for anyone else and that he/she recognised him by seeing his face as well.

53. As it was commonly acknowledged in the trial that the lighting conditions inside the night club at that point in time would have been dim, the witness was asked specifically about the lighting and responded:
- "I wouldn't call it dark, I wouldn't say it was dark but it had enough light from the bar...to allow me to see."*
54. The witness later identified from photographs (exhibit No. 13) the lamps hanging from the ceiling down and over the bar counter that provided this light and explained that Devon Anglin was then standing about two feet away from the closest lamp.
55. As the witness observed the altercation between Anglin and Chadwick Bodden from the opposite side of the bar, the witness explained that he/she could tell that Anglin kicked Bodden while Bodden was on the ground, because Anglin moved backwards and forward with his leg in motion "as if kicking a ball". That fight said the witness, lasted for about 30 seconds to one minute, until the security guards came and took Chadwick Bodden out of the Club.
56. After Bodden was removed from the Club, then it was, said the witness, that Carlo Webster punched Devon Anglin to the face. This took place at about the same spot where the earlier altercation between Anglin and Chadwick Bodden had occurred. Anglin was then seen by the witness to walk away to the male rest room. Webster then also moved slowly toward the male restroom when he was intercepted by Ophia, a young woman believed by the witness to go by the surname of Smith and although he/she knew her before, did not know of her "connections" with anyone else.
57. As it transpired during the trial, Ophia Smith was described by other witnesses who had been present at the Club that night, as Devon Anglin's girlfriend.

61. Witness B maintained that in that area there was light enough to see what was separating them. happening and that the light was coming from the area of the restroom as well as from the dance floor. The witness would later in testimony identify from the photographs a light fixture above a column, one of a number of columns that then demarcated the

60. Witness B continued that when Anglin was first seen to pull the gun from his waist, Anglin was in the same pathway leading to the restroom and along side the dance floor. Carlo Webster was then standing in front of Anglin, a distance of five feet

59. This happened, said the witness, approximately two minutes after Devon Anglin had been seen to have gone into the restroom. The witness was then about 15 feet away and able to see "*the whole body of Devon Anglin, including his face*". There was then, said the witness, nothing between the witness and Anglin obstructing that view.

58. Witness B said that immediately following that second altercation described as involving Webster and the defendant, Carlo Webster and Ophia Smith became engaged in conversation in the pathway leading to the restroom. By this time the witness had changed his/her own location in the Club and was then dancing in an area described as Lounge #1. As the witness explained, this new location was in one of two lounges located to the left, diagonally across the main bar, from the witness's earlier location from which the altercations between Anglin and Bodden, and then Webster and Anglin, had been observed. Then, as to the terrifying event of the shooting, the witness said that while Carlo Webster and Ophia Smith were talking in the hallway leading to the restroom "*Devon Anglin walked out of the restroom and took the gun out of his waist, point it at Mr. Webster and started shooting*".

64. Clear and straightforward though that account of the shooting appears, much in the trial came to be made especially of that latter aspect of the witness's account of seeing Anglin walk towards (and later in cross-examination, said to have seen him exit through) the exit door at the VIP area.

A: "Area."

Q: VIP what?

A: The one close to the VIP

Q: Could you see towards which exit door?

walked towards the exit door.

A: "Everybody start running. The lights was on and Mr. Anglin said:

63. Witness B then described in more detail, seeing Devon Anglin shoot Carlo Webster. As the witness heard the first shot, Carlo Webster appeared to grab at his side as he was falling to the ground. Then Anglin fired a second shot, the sound of which seemed to the witness to have been muffled by the music in the night club. And then, as Webster was on the ground, Witness B said Anglin "walked up to him, point the gun at him and shot him." When asked about what happened thereafter, the witness

the witness earlier.

62. Anglin was still dressed in the same striped polo shirt and jeans pants as noticed by

"that it had enough light for you to see what was going on."

three feet away resulting, said the witness, in the area not being "too dark", rather, closest light fixture to Anglin at the time when he shot Carlo Webster, was about dance floor area. This light fixture, the witness said, was then on. Further, that the

65. This became of importance because, while it was admitted by the defence that Anglin was indeed present at the Next Level Night Club that night, it was also admitted by the prosecution, that he did not leave the Club after the shooting through that exit door. Rather, it is the prosecution's case that he was seen by the CCTV cameras to exit from the Club at 1:30.27 seconds through the main exit door, that nearest to the main entrance.
66. That contradiction within the Crown's own case is therefore a pivotal matter requiring of very careful consideration. The Defence poses the question: What if Witness B is correct in the observation that the man who shot Carlo Webster exited at the VIP exit, must not the witness therefore be mistaken in the identification of Devon Anglin as the gunman?
67. This issue arises in the further context of Witness B testifying that he/she had Devon Anglin under observation for the two minutes that it took Anglin to walk out of the restroom, shoot Webster and walk towards the exit. I will come to consider these important issues when expressing my conclusions on the evidence as a whole.
68. Witness B was asked to describe the gun and said it appeared to be either a 9 millimeter or .22 millimeter based on its sound and size. This impression of the firearm, the witness said, was based on familiarity with firearms gained from having attended at firing ranges while overseas with family. In other words, as I understand it, a familiarity with firearms gained from recreational use.
69. The concerns about the witness's ability to see and accurately recall the actual shooting, arose in the context of the witness admitting that there were numerous

70. people there (where Carlo Webster was standing when he was shot) "because it was near the dance floor." The concerns were also raised in the context of the witness – unlike other witnesses – having described the two fights involving Chadwick Bodden, Webster and the defendant as "having a short space between them"; and the witness, admittedly for no particular reason, claiming to have kept Carlo Webster under observation throughout, despite the witness having changed position by moving around the night club.

71. The circumstances under which the witness made the observations must also however be taken to include the further account that, by the time of the shooting, the witness had moved into Lounge #1 which is an area elevated above the main floor of the Club and which would have provided the witness with a vantage point from which to see (looking across Lounge #2) the location of the shooting.

Witness B was asked to mark and number on a plan of the Club, the different locations mentioned. The markings were allocated as follows:

Location #1 – the area between the main entrance and main exit, across the bar from where the witness was standing and where the altercations occurred involving first, Chadwick Bodden and the defendant and then between Carlo Webster and the defendant.

Location #2 – the area where the witness said he/she first observed the defendant as the defendant emerged from the male restroom and approached Carlo Webster, pulled the gun from his waist and started shooting.

Location #3 – the exit door by the VIP area which in examination-in-chief the witness said the defendant walked towards after the shooting and (in cross-examination) through which the witness said the defendant exited the night club.

Location #4 – the area where the witness said he/she was standing when the altercations at location 1 were observed.

76. The witness then described the time that elapsed after this punch was delivered and when Carlo Webster was intercepted by Ophia Smith and remained standing in the face.

75. It was not accepted by the witness as suggested by defence counsel, that Anglin had simply pushed Chadwick Bodden because Bodden was drunk and had bumped into him, nor that Bodden fell only as the result of the push. Nor did the witness accept Defence Counsel's suggestion that Carlo Webster did not punch Devon Anglin to the defendant; according to this witness.

74. And when asked in re-examination to explain "a short space of time"; the witness answered that Webster punched Anglin to the face "about 5 seconds" after the security officer had taken Chadwick Bodden outside the Club. Thus, while the witness described a separation in time between the two altercations, there was no precise estimate because no measure of time was given for how long it took the security officers to intervene by removing Bodden and before Webster punched the staff.

73. As to the time that elapsed between the first fight involving Chadwick Bodden and the defendant and that involving Carlo Webster and the defendant, the witness said it was "a short space" of time, with the first fight having been broken up by the security staff. They are to be noted as follows.

72. Much was also sought to be made about the witness' estimates of time in relation to Location #5 - the area in Lounge #1 where the witness said he/she was standing (and moments before was dancing) as the defendant Anglin was seen to emerge from the restroom, and make his deadly approach to Carlo Webster.

pathway to the male restroom, until Devon Anglin emerged from the restroom, as

“approximately two minutes”.

77. This estimate of time in particular is said to be irreconcilable with the CCTV footage that shows the defendant to have spent more than 5 minutes inside the restroom immediately before the shooting occurred, with Carlo Webster shown to have been inside the restroom as well, or at the threshold of the doorway to the restroom, for most of that time.

78. Witness B is therefore shown to be unreliable when claiming to have had Carlo Webster under observation in the pathway to the restroom for “all the time” until the defendant re-emerged from the restroom.

79. The witness’s estimate of the time that elapsed, after the defendant Anglin was seen to re-emerge from the restroom, approach and shoot Carlo Webster, until last seen by the witness exiting from the night club, was also two minutes.

80. The narrative can now be picked up, against that background, from the transcript of the cross-examination as follows: (page 17 of 2<sup>nd</sup> December 2011):

“Q: You told us yesterday, Witness B, that you were in lounge number one

when the shooting started?

A: Yes Sir

Q: I just want you to think back. Just imagine you are back there in

lounge one dancing with your friends. What was the first thing that

you became aware of? There you are dancing. Did you suddenly hear

a shot?

A: No Sir.

Q: What was the very first thing you became aware of? We are now dealing with the shooting?

A: Mr. Anglin...

Q: Yes?

A: coming out of the restroom and walking up to Carlo.

Q: Well now think back Witness B. When he came out from the restroom, was he alone or was he with anybody?

A: Alone.

Q: Is that something you can see in your mind's eye – that he was alone and not with anybody?

A: Yes Sir.

Q: Was he not part of a group of people who came out of the restroom?

A: No Sir ....

Q: I want you to think really really carefully about this Witness B, just try to see it in your mind's eye – there you are in lounge number one and Anglin comes out of the restroom. Are you saying that you are sure he was not one of a group of people?

A: No Sir.

Q: Right

The Court: No, what?

A: I am not sure if he was with anyone else.

Q: Just keep thinking about that scene in your mind's eye. Are you saying that he might have been in a group of people?

[(Witness reflects, according to judge's note)]

A: *When he came out of the restroom, there was no one with him.*

Q: *We have all been to this club. We were there yesterday so we*

*understand the size of the door. And it may be that you can only have*

*one person coming out at a time?*

A: *Yes, Sir.*

Q: *But I want you to think about this, did a number of men come out of*

*the restroom at about the same time?*

A: *No Sir.*

Q: *So when you said a moment ago that you weren't sure if he was in a*

*group or not, what did you mean?*

A: *I thought you were saying that his friends were there with him.*

Q: *So you are saying that he came out alone and joined a group of*

*people?*

A: *Yes Sir.*

Q: *And of course you say Carlo Webster was there?*

A: *Yes Sir.*

Q: *Was Ophia Smith still there?*

A: *Yes Sir.*

Q: *And yesterday you told me there was another person there?*

A: *Yes Sir.*

Q: You said you couldn't describe him but he was about 20 [years old]

and wearing a white shirt, about five-foot six to five-foot seven is that

right?

A: Correct.

Q: Did you know who that person was?

A: No Sir.

Q: Had you seen him before?

A: No Sir.

Q: Was he a clear skinned man?

A: Yes Sir.

Q: And you say he was standing right next to Devon?

A: Yes Sir.

Q: Had he come out of the restroom with Devon or was he already there

outside when Devon came out?

A: He was already outside.

Q: As were the other men?

A: Yes Sir.

Q: So when the gun was fired, it was fired from within a group of people?

A: Yes Sir.

Q: Whoever you say the gun man was, it was not Devon Anglin?

(Pause)

The Court: Do you agree with that?

A: No Sir."

in re-examination in the following way:

“Miss Richards: Witness B, counsel asked you about the time when Devon Anglin came out of the bathroom and he asked you when the gun man fired, he fired from within a group of people and you answered “Yes”. Do

you recall that?

A:

Yes ma'am.

Q:

When you were asked questions in examination-in-chief yesterday, you said that when you saw Devon Anglin there was nothing between yourself and him when you saw him pull the gun and fire. Do you remember saying that yesterday?

A:

Yes ma'am

Q:

Can you explain these two statements for us? (Pause) Witness B do you wish me to repeat?

A:

No ma'am

Q:

Can you explain?

A:

Mr. Anglin was walking out of the restroom towards Mr. Webster, there were people there because it was near the dance floor. In my view I could have seen everything clearly because I was standing up and no one was blocking my view.

Q:

When you say no one was blocking your view, can you explain your answer to counsel that when the gun man fired, he fired from within a group of people?

A: The people were already around the area as Mr. Anglin fired the first

shot toward Mr. Webster, there was Mr. Anglin and the other guys,

Mr. Webster and Ophia facing each other.

Q: So when you said the firing was from within a group of people, what

did you mean in relation to you?

Q: In relation to me?

A: Yes?

The Court: You mean their position?

Ms. Richards: Thank you My Lord – their position in relation to you?

A: Where I was there was a group of six. They were sitting down. I was

standing, dancing, facing...

Q: Did you say standing facing the restroom area?

A: Correct.

The Court: And the dance floor?

A: Correct.

Q: And the other persons who were in the vicinity you say of Mr. Anglin,

where would they be in relation to him?

A: They were in Lounge #2 sitting down and by the pole standing on the

dance floor.

[The witness then was asked to do so and placed the #6 to mark the location of this

particular pole, one of the columns that then served to demarcate the dance floor

area.]

82. From that process of careful examination-in-chief, cross-examination and re-examination, emerges a picture of Witness B having been present during incidents leading up to the shooting and during the shooting itself, keeping under observation from different vantage points, persons known to the witness before, their interactions with each other and describing a clear view of the fatal shooting of Carlo Webster by the defendant, inferentially in a cold-blooded act of retribution for the earlier hostile exchange between them, which the witness also described.
83. The question raised nonetheless by the defence is whether Witness B is truthful and accurate in what the witness describes, having regard especially to the proven unreliability of the witness's account of Devon Anglin's exit from the Club through the VIP exit and about having kept Carlo Webster under constant observation in the pathway to the restroom until he was approached and shot by Anglin.
84. The evidence of Police Constable Ian Charley as it relates to Witness B is significant. His statement read by agreement of the defence tells of having known Witness B quite well before the night of 10<sup>th</sup> September 2009 and of Witness B being aware that he is a police officer. He tells of giving Witness B a ride on 10<sup>th</sup> September 2009 and that while driving, the witness told him that he/she had witnessed the murder of Carlo Webster the night before and had positively identified Devon Anglin as the person who shot Carlo Webster.
85. Charley states that he advised Witness B to tell the "Police Station" what the witness knew, but the witness was very reluctant to do this out of fear for his/her life.
- The Witness: In lounge two, it was people sitting down and besides, standing by the dance floor, it was people standing and dancing there.*

86. Charlery advised the witness to think carefully about the matter because of its importance and kept in touch with the witness "about every other day" to ask whether the witness had "decided to come forward." This continued over the course of the next two weeks until the witness agreed to speak to an officer engaged in the investigation. The witness however, refused to come forward without his/her identity being kept secret. This was agreed and Charlery then introduced the witness to Det. Chief Insp. Peter Kenneth at the George Town Police Station. Following this, an ordinary as well as an anonymised witness statement was taken from the witness.
87. Detective Inspector Dennis Walkington's statement was also read by consent of the defence in relation to Witnesses B and E. He is the officer responsible for the disclosure of evidentiary material in relation to this trial.
88. During the disclosure process he was charged with the duty of reviewing the CCTV footage recovered from the Club to ensure that the footage disclosed did not reveal the images of either Witness B or Witness E.
89. This he did by reviewing an exact replica of the footage with each witness in turn, identifying, with the assistance of the witness, the respective images of the witnesses as they appeared. Having confirmed to his satisfaction that the images were correctly identified, he caused the copy of the footage to be redacted of all images that could lead to the identity of either witness.
90. In this way the image of each witness was redacted from a number of places along the footage.

91. During the course of the trial, I was shown the unredacted footage by Officer Walkington. This occurred in my Chambers in the presence of the DPP Ms. Richards and Senior Crown Counsel Lee and with the knowledge of the defence.
92. My observations of the image of Witness E on that footage must be borne in mind when assessing the evidence of that witness, as well as the evidence of the expert Mr. Fredericks, in relation to the infrared images of the man shown at 1:30:19 on that, as well as on the redacted footage, and identified by Witness E as the gun man.
93. It is therefore most convenient to continue by review of the evidence now with the evidence of that of Witness E.
94. Although undoubtedly present at the Next Level Night Club on the night of 9th to 10th September 2009, Witness E testified to having been contacted by the police only some two weeks later.
95. In fact, one gathers from the evidence of Constable Jared Ebanks who also testified, that it was the result of his observation of the "body language" of this witness as seen on the CCTV footage at 1:30:19 on the morning of 10th September 2009, that it was thought that the witness might be of assistance to the investigation. Detective Sergeant Joseph Wright was then assigned to contact the witness, who was then conveyed to the police station and then agreed to testify.
96. Witness E testified to having gone to the night club with a number of friends on the night of 9<sup>th</sup> September 2009. The group of friends gathered around the bar and drinks were bought. The witness said that he/she remained in that position at the bar throughout. The witness did not know either the defendant Devon Anglin or the deceased Carlo Webster before that night. While gathered there with the group of



101. From this bit of narrative, it appears that the witness is describing the altercations that

took place in reverse order to that observed and described by Witness B, in particular. This and other aspects of Witness E's testimony became the subject of cross-

examination and will be addressed in that context.

102. To return to the narrative, Witness E said that after the participants in the second fight

had been ejected, the witness looked around the bar and saw the guy with the orange-coloured shirt near the restroom area. He was then about a meter and a half away from the entrance to the restroom. The witness estimated his/her own position then to be about six meters away from the man in the orange shirt who appeared to be standing there by himself. I pick up the narrative of the witness from the verbatim

transcript:

“Q: So after seeing him by himself at first, can you tell me what happened

there after?

A:

I saw the other guy with the striped shirt in front of him.

Q:

When you say the other guy in the striped shirt in front of him, which

guy in the striped shirt are you referring to?

A:

The same guy who was involved in the first fight.

Q:

When you say you saw the guy in the striped shirt with the guy in the

orange shirt, can you tell us what the distance between the two of them

was when you saw them?

A:

About 20 centimeters face to face

....

Q:

What happened next Witness E?

club, did you notice anything about him?  
Q: At the time when you saw the guy in the striped shirt walking out of the

A: The guy involved in the first fight

Q: Which guy in the striped shirt?

shirt walking out the club.

A: I turned around facing the bathroom and I saw the guy with the striped

shots?

Q: Can you tell me Witness E what next happened after you heard the

104. Then followed this exchange in the question and answers:

the club, from the bathroom (restroom) area through the exit doors."

witness said that after the first shot was heard, "people were running out of the bar,

thought there were as many as four shots but could not remember for sure. The

103. The witness then described hearing a number of shots, first one, then a second, and

A: Three seconds."

time passed before you heard the first shot?

Q: After you saw them and turned your face to the bar, about how long in

A: No, after I saw them I turned my face to the bar.

Q: Did you keep on looking in that direction or no?

A: Yes ma'am.

please? You saw them standing there. Yes?

Q: Wait a minute Witness E. Can I ask you to take it slowly for me

....

A: After that we heard the shots.

A: He was walking from the bathroom area coming to the entrance and

then he turned to the main exit door.

....

He was tall, 1.65 meter high, light skin, the hair was low, cut low.

Q: When you saw him, did you notice whether or not he had anything with

him?

A: When he was walking out he was having a gun in his hand.

Q: The gun that you saw in his hand, can you tell us what if anything that

guy did with that gun?

A: He put it in his pants waist and walked out the club.

Q: When you saw that, Witness E, did you do anything when you saw the

guy do that?

A: When he was walking out with the gun in his hand, he walked in front

of me and I extend my hand to protect my friends behind me from the

gun man."

(While speaking the witness motioned by moving the right arm from front to back in

a downward action – the same sort of motion shown on the CCTV footage at 1:30:19

as the man described walks towards and in front of the witness.)

Q: I want to ask you whether you saw the guy in the orange shirt who had

been standing outside the bathroom area. Did you see him again after

you had seen him standing there?

A: No ma'am. After the guy with the gun in his hand, the lights came on

and then I see the guy with the orange colour shirt on the floor.

107. Witness E also testified that as the man in the striped shirt with the gun walked by the witness and towards the main exit, the distance separating the witness from the man was about 50 centimeters (about 20 inches). The man was observable under the same

*“between me and them, I could clearly see them.”*

106. With that as the context of the witness's testimony, the witness also said in examination-in-chief that he/she could identify the men as they stood outside the bathroom area some six metres away as those earlier involved in a fight because there was enough light there to see people's faces. This light was coming from a fixture over the bathroom door and from the lights shining from the dance floor area. While there were many other persons also standing in the area, Witness E said there was a clear view of the two men from where the witness was standing: *“Nothing was in front of me”,* and although there were people walking backwards and forwards

the witness and was seen by the witness to walk toward the main exit door.

105. And so, from the narrative of this witness's evidence to this point, it appears that the deceased Carlo Webster was the man described as wearing the orange shirt who had been earlier engaged in the *“first fight”* with the man in the striped shirt, the same man seen to be in close confrontation with Webster in the pathway to the restroom just *“three seconds”* before the first shot was fired; and the same man described by the witness as having a gun which he placed in the waist of his pants as he approached the witness from the location of the shooting and who then walked past the witness and was seen by the witness to walk toward the main exit door.

A: *By the bathroom area and blood was around him.”*

Q: *And he was on the floor where?*

lighting that remained on around the bar area, with the closest lighting fixture about one meter away from the man as he walked by.

108. The man was then walking by himself but, as the witness explained in examination-in-chief, he was closely followed by another man, described as "tall and skinny with braided hair". The witness was then asked to and did mark by numerals on the plan

of the layout of the Club, the respective positions at which events unfolded, including the witness's own position marked #7 at the bar, and from which the witness saw events unfold.

109. Finally, in examination-in-chief, Witness E was referred to the CCTV footage, having been shown two versions of it by the police before testifying - the full and the redacted versions.

110. The excerpt from the transcripts follow:

"Q: The first footage that you were shown was the unedited version where you could see everything. Is that correct?

A: Yes ma'am.

Q: In that version where you could see everything, did you recognize anyone that you saw in that investigation?

A: I recognize myself and I recognize the gun man.

Q: When you say you recognised yourself in that version, what could you see yourself doing?

A: Extending my hands to protect my friends behind me.

Q: Do you remember the time on the footage that you saw that?

A: 1:30:19 seconds.



112. In the same vein, the witness was then cross-examined about what the witness had said to Sgt. Wright at the first interview on 22<sup>nd</sup> September 2009. To the extent that the notes of that interview contradict the evidence of the witness, they may of course, be relevant to the question of the reliability and credibility of the witness. It must however, also be borne in mind that the notes, as Sgt. Wright later acknowledged,

A: *It was the guy with the striped shirt."*

*shirt or was it somebody else?*

*it was the man with the striped shirt. Was it the man with the striped*

*statement that there was another guy there but today you are telling us*

Q: *I want you to think about that Witness E. You are describing in your*

A: *Yes Sir.*

....

*was the man in the striped shirt?*

Q: *Today witness E, today you have been telling us that that other guy*

A: *Yes Sir.*

*face of the guy who died". Do you see that in your statement?*

*There was also another guy there and he was standing directly in the*

*and saw the guy who died at the entrance to the bathroom standing.*

Q: *.... About eight or ten minutes after the second fight I looked around*

A: *Yes Sir.*

*eight or ten minutes after the second fight?"*

Q: *Look at your statement --- do you see the sentence beginning "about*

were never read over to the witness inviting acceptance or corrections. Sgt. Wright's

notes read as follows:

"I saw two fights in the club that night. The first fight involved the guy who died and two skinny guys with braided hair. This first fight was at the bar between the entrance door and the exit door in the middle and a girl in a blue dress tried to part them. The same girl that tried to part them I saw her dancing with the guy who died earlier before the fight started. The security parted that fight and I then turned my back to them so I don't know what happened with them and the security guards. I saw a second fight broke out at the same place where I saw the first fight broke out. I can't remember if Carlo was in this fight but I know the same two skinny guys were fighting with someone else but I can't remember who it was. I turned my back to the guys and when I turned again I saw Carlo at the bathroom. He was there with another guy who was dressed in a dark shirt. I saw like Carlo was up in this guy's face. I watched them for a few seconds then I turned from them again. I few seconds after that I heard four shots and people start run. Then I saw a guy dressed in jeans pants, and a stripe polo shirt. He had think the colour may be green and white or blue and white. He had low cut hair and he was not wearing a hat. He walked across me and I saw a gun in his hand as he walked pass me and I saw him put it in his waist. I can't say what his face look like. I can remember that he has clear skin colour and was not much taller than me."

116. Witness E has, however, been consistent throughout in the description of the gun man – the man passing by the witness at 1:30:19 – as the man in the striped polo shirt. The witness was also adamant in cross-examination – and despite the other versions being put to the witness – that the man in the striped shirt was the man in the first altercation with Carlo Webster when punches were exchanged. Finally, in this regard, the witness was also adamant in cross-examination that the man who was last seen by the witness confronting Carlo Webster (or being confronted by him) outside

115. The third version, that recorded in Sgt Wright's notes, does not involve Carlo Webster with the man in the striped shirt in either fight and describes the man last seen confronting Webster as "*a man in a dark shirt*".

or as being the man in the striped shirt.

114. It is said that three different accounts are given of this confrontation. The first, that given in evidence in Court, puts Carlo Webster in direct confrontation with the man in the striped shirt; the man, based on the other evidence in the case, the Crown contends is the defendant Anglin. And it is the man in the striped shirt who is described by the witness in Court as having confronted Carlo Webster "*three seconds*" before the shooting. But the second, that given in the witness' statement, refers to the man confronting Carlo Webster at that point in time, only as "another guy", without any reference to that being the same man in the first fight with Webster

rejected entirely for being unreliable.

113. Having regard to the witness's differing accounts of the altercations and of the description of Carlo Webster's antagonist confronting him only seconds before the shooting, Mr. Lovell-Pank QC submitted that Witness E's evidence should be

the bathroom door was the same man who walked by the witness at 1:30:19 and was seen by the witness with the gun which he placed in the waist of his pants' that is: the man in the striped polo shirt.

117. Sgt. Joseph Wright testified and, as his evidence turned out to be of most interest as it related to Witness E's evidence, his evidence can be most suitably addressed here.

118. He confirmed, that having been assigned to conduct the first interview of Witness E, his notes of what was said as set out above, records what the witness told him: that as the witness spoke, he wrote. He did acknowledge, however, that no formal statement was then taken from Witness E and that the witness did not see his notes. Rather, as he puts it: "the witness spoke to me, told me certain things and I wrote down what the witness said...I can't recall if I read back the notes to the witness or if the witness signed it."

119. When shown the originals of the notes he confirmed that they had not been signed by the witness. He testified also about having taken a formal witness statement from the witness three days later on 25<sup>th</sup> September 2009.

120. Then, he said:  
"I recorded what the witness said, made the witness read it over then sign to what was written.

...  
This different approach was taken (because) my notes were preliminarily intended for me to go to the investigating officer then for a decision, then a witness statement would be taken formally to be read and signed as to correctness."

121. He was then shown a copy of Witness E's formal statement and confirmed that its contents had been accurately recorded as dictated by the witness, including the accounts of the witness having witnessed the two fights inside the Club on the night of the 9<sup>th</sup> -10<sup>th</sup> September 2009.
122. The evidence of Mr. Grant Fredericks in relation to his examination and analysis of the CCTV footage can be most conveniently dealt with here because of its relevance also to of the evidence of Witness E in particular.
123. Mr. Fredericks explained to the Court the types and locations of the cameras within and outside the Club. As chance would have it, no camera covered the location of the fatal shooting outside the male restrooms. The witness also explained the technicalities of CCTV imaging technology. This included the significance of infra-red camera imaging, a matter of particular importance because the images recorded by camera 11 were recorded in an area illuminated by infrared light emitted from that camera. Camera 11 overlooked the area of the Club just inside the main entry and that area of the main bar where Witness E and the group of friends were described as having assembled. It is also the area most traversed by patrons as they enter and leave the Club.
124. The infrared electromagnetic frequency is outside of the colour spectrum and the result is that colour is not replicated on infrared recordings. In addition to loss of colour, infrared light often reflects off clothing, rather than being absorbed by the fabric. As a result, dark clothing often appears light in colour since it reflects the entire infrared frequency. Thus, a shirt with dark and light stripes will appear bright and so the stripes become indistinguishable from the surrounding fabric. Infrared will

however, enhance some images, such as those created by the lighted tip of a cigarette

or by reflective emblems on clothing.

125. The other ten cameras inside and outside the Club produced colour signals or black and white images.

126. Having in that and other ways set the technical background for his evidence, Mr. Fredericks explained that on 11<sup>th</sup> August 2011 he was provided by Chief Inspector Peter Kenneth with a hard drive from the Digital Video Recorder recovered from the Next Level Night Club on 10<sup>th</sup> September 2009. From that DVD hard drive the witness created what he described as "a forensic clone of the images recorded on it". He returned the original hard drive to Chief Inspector Kenneth.

127. From the forensic clone he recovered video images originally recorded on 9<sup>th</sup> and 10<sup>th</sup> September 2009. Mr. Kenneth had requested that he examined the video images in order to track the movements of a number of people as they moved about the Next Level Night Club from approximately 2220 hours on September 9, 2009 until approximately 0131 hours on September 10, 2009. These included the defendant Devon Anglin, the deceased Carlo Webster, and a third man Kelvin Carter, among others. Those subjects were identified to him by Detective Chief Inspector Kenneth from the CCTV images generated especially by Camera #1 – that which overlooked and captured images of patrons as they arrived at the entrance outside the Club on the 9<sup>th</sup> September to 10<sup>th</sup> September 2009. At the same time, he was provided with a list of the names identifying the individuals whose images were shown on still photographs developed from a copy of the CCTV footage and whose movements were also to be tracked – all as prepared by PC Jared Ebanks.

132. As to the individuals who had been identified to him from the CCTV footage, their images presented also from the still photographs were in colour allowing for specific details of clothing to be distinguished as between individuals. From these he was able to develop an "ensemble" of details of clothing and physical features for each individual which he was able to use to track the individuals as they moved around.

131. Mr. Fredericks explained that in order to track the movements of individuals, as the CCTV cameras had not all been recording in real time simultaneously for equal lengths of time but sequentially, it was necessary for him to develop a time line of the recordings sequenced from the respective cameras. By these means he was able to co-relate the images from one camera to the next as they recorded in sequence and so followed the movements of individuals in and around the Club.

130. As explained by the statement of Marcello Frances who installed them, the CCTV cameras recorded in real time (albeit, as Mr. Fredericks explained, not simultaneously but sequentially) and accurate to Cayman Islands time.

129. The witness was also provided with ten (10) pages of notes (which PC Jared Ebanks attested to having made from his examination of the CCTV footage – (Exhibit 5) and a booklet of photographs. This booklet contained the still photographs developed by PC Ebanks from the original CCTV footage showing clear images of the individuals whose movements were to be tracked (Exhibit 3).

128. The witness was also provided with a floor plan of the Next Level Night Club – a plan from which the witness explained he was able to make a further more accurate plan, showing the respective fields of view or areas covered by the CCTV cameras operating inside and outside the club on 9<sup>th</sup> to 10<sup>th</sup> September 2009.

This was so even if the movements were under the field of view of camera 11, the

infrared camera.

133. Having visited the locus in quo and compiled the material necessary for his work, Mr. Fredericks testified that he had then returned to his laboratory in the United States where he had the appropriate equipment and where he spent several days carrying out his analysis of the evidence and tracking the movements of the individuals.

134. As already mentioned, while there were eleven (11) cameras operating at the time at the Club, none covered the area outside the restrooms where the shooting took place.

All that the cameras recorded of the actual shooting were flashes of light which Mr. Fredericks was able to associate with gun fire because of their intensity – which was unlike any other lighting recorded – and because of the panicked reaction of the patrons of the Club recorded on the CCTV footage at the times of the flashes.

135. Mr. Fredericks' findings are therefore to be regarded at best from the prosecutions' point of view, as aiding in the identification of the man whom Witness E says is the gun man and whose image is shown at 1:30:19 on the footage.

136. Mr. Fredericks testified to having followed the images from four (4) cameras in particular, in his tracking of the movements of the defendant Anglin and of Carlo

Webster:-

Camera 11 – the infrared camera overlooking the bar area as patrons

arrive inside the Club from the main entrance;

Camera 2 – that covering inside the male restroom;

Camera 1 – that covering the outside of the main entrance; and

Camera 10 – that covering the outside of the main exit.

137. Mr. Fredericks testified that the defendant Anglin having been identified to him from the photographs; he was able to develop an ensemble of features, unique to the defendant among all other individuals present in the Club that night, and from which he was able to track his movements around the Club. This was notwithstanding that the defendant's facial features were often not visible or not fully visible.
138. The ensemble in relation to the defendant Anglin included a two toned baseball cap with a "New York Yankees" logo on front and a reflective object on the left side of the cap; a striped v-necked polo shirt with distinct layers of stripes in a particular pattern, jewelry on the left wrist; a medallion pendant on a chain visible at the center of the chest; blue jeans pants and white sneaker type shoes. These features along with Anglin's physical appearance, including hair style and facial features; were used by the witness to confirm sightings of the defendant in various areas within and outside the Club.
139. The witness developed six (6) charts containing composites of the images of the movements of individuals – Charts A-F (Exhibit 8). Chart A contains 148 images recovered from Camera 10 and Camera 1 of the defendant Anglin and two companions (Jared McKenzie and Conrad Powery) as they approach and arrive at the Club at about 22:24:05 on 9<sup>th</sup> September 2009.
140. Chart B contains the description provided by reference to infrared images of the defendant Anglin immediately after he first entered the night club on the night of 9<sup>th</sup> September 2009. (He is shown to have arrived and then remained for a time at the bar area.)

144. He testified that (as in his report prepared for the Court), on a number of occasions, Anglin is seen to move past Camera 11 and is seen within approximately 30 seconds in the men's restroom. When he leaves the restroom, he is again detected by Camera 11. An examination of the Floor Plan (which he attaches) shows that patrons entering and exiting the men's restroom will enter into the view of Camera 11 when walking towards the front door area, which, he says, is where Anglin is often seen.

143. Chart D contained a reproduction of the movements of Anglin and Webster, tracked by reference to the Observation Timeline developed by Mr. Fredericks.

142. Mr. Fredericks presented Chart D as a complete visually reproduced pattern of Anglin's movements on Camera 11. This chart shows how Anglin's clothing is depicted within the field of view of the infrared camera each time he passes the camera. Apart from his cap (which was not always present), among the features that are very noticeable are his light coloured sneakers that appear white under infrared illumination and areas of his jeans pants which, although mid-toned, appear to be light as they reflect the ambient lighting from the bar area. His multi-striped elbow length V-neck polo shirt appears to be a single light colour although in reality it contains three primary dark stripes running horizontally with the other lighter toned stripes. By contrast, when Anglin comes within the field of view of Camera 2 (inside the restroom), his clothing appears consistent with the images from the outdoor cameras.

141. Chart C contained what the witness described as a complete description of the ensemble of features developed from the camera 11 CCTV images seen upon Anglin's arrival and used to identify the defendant Anglin's movement.

148. It is true to say, as the witness acknowledged in cross-examination, that the images do not show a direct conflict between the two and at best leaves such a conclusion to inference. In this regard Chart D shows, for a period of time until 01.26:09, Webster in the restroom. He leaves the restroom at that time. At 1:26:12 Anglin is seen moving quickly and appears to be off balance as he appears through the doorway into the restroom. Anglin is not wearing his cap at this time, and was last seen wearing his cap at 01:07:13 on Camera 2 (an earlier occasion leaving the restroom). At 1:26:12 Webster immediately follows Anglin into the restroom and Kelvin Carter stands in front of Webster, as if as a buffer between Webster and Anglin, and as if preventing Webster from getting at Anglin who moves further into the restroom. The

147. On Chart D is shown what Mr. Fredericks described as an altercation between Anglin and Webster in the restroom. The witness was criticized by defence counsel for venturing to express such an opinion based only on the images that were visible. coverage already mentioned.

146. The field of view of Camera 11 does not appear to have captured the altercations described by Witnesses B and E (and in varying ways by other witnesses) as having taken place between the main entrance and main exit along that side of the bar. This could however, have been due to that area not being covered or fully covered by Camera 11 and because of the intermittent and sequential nature of the camera at this time.

145. Both Anglin and Webster come into the field of view of Camera 11 at 00:34:07. At this time Webster is standing at the bar. Anglin walks into view and stands behind Webster for about 27 seconds. There does not appear to be any contact between them

154. The man identified as Anglin turns to the right, moving around the bar and walks directly toward the main exit door but fades from the footage as he leaves the field of view of Camera 11. However, eight seconds later, at just about the time it would take to arrive at the main exit, Camera 1 picks up his image exiting the night club. Now, in the brighter light on the outside of the Club, the striped pattern of a shirt like
- seconds later at 01:30:24, following the man identified as Anglin, drink still in hand.
153. The mask of the image of Witness E is visible as the man identified as Anglin walks past this position at 1:30:19. The image identified by Mr. Fredericks as that of Kelvin Carter, established as having braided hair, passes by the position of Witness E five main entrance, through the field of view of Camera 11.
152. At 01:30:18, Mr. Fredericks identified as being the defendant Anglin, the image of a man, bare-headed, moving right to left from the bathroom area towards the area of the the period immediately following the shooting.
151. Chart F was presented by the witness as showing events from 01:30:18 to 01:30:53, [Other evidence in the case establishes that three (3) shots were fired.]
- 01:30:07, some 29 seconds later.
150. What Mr. Fredericks describes as the muzzle flash from the first shot, is seen at exiting shortly after, at 01:29:38.
149. Chart E shows Webster exiting the restroom at 01:28:15 and Anglin, still capless, his face.
- camera's view of Anglin is then blocked by the presence of a number of other men entering and leaving the restroom until Anglin again emerges into the view of the camera apparently bent over the face basin in the restroom and appears to be washing

Anglin's is again visible, as the wearer appears to push a woman ahead of him with his left hand (on which jewellery is visible at the wrist) as he exits the Club and turns towards the view of Camera 10.

155. Anglin, says Mr. Fredericks, is last seen on Camera 1 at 1:30:27 and appears within the view of Camera 10 – that overlooking the main exit from a different angle to Camera 1 – at 01:30:31. In this image, only the left side of Anglin's face, short cropped hair line, the left shoulder and sleeve areas of his shirt, are seen.

156. Mr. Fredericks presented juxtaposed images of Anglin and his clothing recovered from Camera 1 when he first arrived at the Club (Chart A) with this image of Anglin as he exits and enters the field of view of Camera 10. Having seen and followed carefully that juxtaposition, I note here my own firm impression that the images are identical.

157. Anglin exits the field of view of Camera 10 at 01:30:32 and enters the field of view of Camera 7 in the car park area. Anglin is then next seen running left to right away from the Club on Camera 7 at 01:30:35, the last image of him on the cameras.

158. This identification of the defendant Anglin as the man seen at 1:30:18, at 1:30:19 and thereafter tracked to the main exit until finally seen running away from the Club at 01:30:35; was disputed in cross-examination by defence counsel.

159. Indeed, and as already mentioned, Mr. Fredericks was heavily criticised as seeking to usurp the function of the Court by expressing opinions at what the images at 1:30:18 – 1:30:35 reveal when that, as nothing more than a function of observation, can be carried out by the Court itself and did not depend on any particular expertise of the witness.

163. He testified that despite his long standing knowledge of the defendant he was unable to identify him as the man shown at 1:30:19 on the CCTV infrared images. Moreover, he was of the impression that that man had braided hair, an impression he said he formed having regard mainly to what appeared to be the length of hair seen from behind, as it covered the nape of the neck down to the collar of the shirt.

162. Mr. Fredericks' evidence was said also to be unreliable, having regard to the evidence of PC Jared Ebanks, the officer who knew the defendant Anglin and a number of the other individuals very well, having hailed from the same district of West Bay. It was especially for that reason, and while not trained in CCTV image analysis, that PC Ebanks had been assigned to examine the CCTV footage in the hopes of identifying various individuals including, if possible, the gun man.

161. Having had the benefit of many days spent tracking the movement of the individuals on the CCTV footage, including those of the defendant Anglin's unique ensemble of features, and having the benefit of his expert understanding of how images might change and be differently depicted under infrared illumination compared to colour or black and white imagery; I conclude that I might properly rely upon the opinions expressed by Mr. Fredericks as to the identification of the various images. I would add that I was particularly impressed with the detailed and careful manner in which he conducted the imagery comparisons by reference to the features of the individuals as well as their respective and unique ensembles of clothing.

160. While I accept that any conclusion to be reached as to the identification of those images—as being of the defendant Anglin or otherwise—must be for me as the trier of fact; I do not accept those criticisms of the opinions expressed by this witness.

168. Some time was taken in cross-examination of Mr. Fredericks also over the question of whether the defendant Anglin is shown on the CCTV footage on entry into the Club bearing a slim moustache, a goatee beard and a little track of hair running up the side of his chin. This became of significance to the defence because it was submitted that these respects.

167. Mr. Fredericks explained that he had immediately concluded that PC Ebanks was mistaken in these regards, once he had seen PC Ebanks' notes (Exhibit 5) and having carried out his own analysis and comparisons. I accept Mr. Fredericks' evidence in at 1:30:19, is obviously different.

166. The error of PC Ebanks observations in this regard was readily demonstrated by Mr. Fredericks by reference by comparison, to the clearly braided hair worn by Kelvin Carter shown at 1:30:24.2 which, when compared to the hair of the individual at 1:30:19 and thought by PC Ebanks to be braided hair.

165. As an instance of my reasoning; not being trained in the science of CCTV image analysis, PC Ebanks was unaware of the effect that infrared illumination would have upon the images, especially upon images of the ensembles of clothing that he was examining. He was also unaware of the effect of what Mr. Fredericks described as the "digital compression" of the pixeling of images, such as would cause the hair line of individuals to seem to extend in a way that would show hair to be longer than in reality – the phenomenon that explains the appearance of the hair worn by the man at 1:30:19 and thought by PC Ebanks to be braided hair.

164. I do not accept this comparison of PC Ebanks' evidence with Mr. Fredericks', as a basis for impugning the evidence of Mr. Fredericks.

a visibly bearded Anglin would be inconsistent with the description given by Witness

E of the gun man shown at 1:30:19, as not having hair on his face.

169. Mr. Fredericks' opinion was that again, because of the effects of digital compression,

the known images of Anglin shown in the CCTV footage did not necessarily depict

hair, but could well have been the effect of artifacts left by the digital compression of

the dark borders of his shirt nearest his face or images created from the shadows

across his face over the upper lip, where a moustache would grow. At all events, said

the witness, if there was then facial hair in those areas, it must have been quite slight,

no more than a day's growth. Photographs taken of Mr. Anglin at the Police Station

some 36 hours later (photo #24 Exhibit 14) clearly show the presence of a thin

moustache and other facial hair but not heavy enough, in my view, to have been very

noticeable 36 hours earlier and certainly would have been hardly noticeable in the

dimly lit environment of the night club.

170. I can therefore state at this juncture that I regard the question of the presence or

absence of facial hair to be insignificant to the issue of the identification of the

defendant.

171. As indeed I regard the question raised over the height of the gun man given by

Witness E at 160-165 cm (5'4" to 5'6") when compared to the 5'9" recorded in

respect of the defendant Anglin by the police when arrested on 10<sup>th</sup> September 2009.

In evidence in Court, Witness E estimated the height of the gun man by reference to

the witness' own height, saying he appeared not much taller. What was not

established in evidence however, was the elevation or posture of the witness relative

to the man as he passed by.

172. It is convenient to also deal more fully with the evidence of PC Jared Ebanks here at this juncture.

173. As already mentioned, he was assigned to review a copy of the CCTV footage to identify as many of the persons as he could from among those who attended at the Club on the 9<sup>th</sup> to 10<sup>th</sup> September 2009.

174. He did so and made still photographic images from the footage of many individuals, photographs and identifications which later assisted Mr. Grant Fredericks in his work.

PC Ebanks identified the defendant along with Conrad Powery and Jared McKenzie arriving at the Club at 22:24:30; and Carlo Webster arriving with Christopher Solomon at 23:45:06. The witness also helpfully identified several of the persons whose images were captured on Camera 2 in the male restroom at that time shortly before the shooting, including that of Carlo Webster, the defendant and Kelvin Carter in particular, apparently acting as a buffer between the defendant and Webster.

175. As to the question whether this witness' evidence should be regarded by me as contradicting that of Mr. Grant Fredericks, defence counsel sought to establish the basis by reference to the notes which the witness had made, when reviewing the footage.

176. However, as to whether the man seen at 1:30:19, unlike the defendant Anglin, had braided hair, the witness had this to say in examination-in-chief:

“Q: Were you able to recognise that person at all?”

A: No ma'am.

Q: What about that person when you looked at the CCTV footage made

you think that person had braids? Can you tell us or show us?

A: When I viewed just looking by the collar it appeared that the person's

hair was on the collar of the shirt drawing the conclusion that the

person may have braids.

Q: I see. You are drawing the conclusion from the hair being down to the

collar?

A: It appeared that way ma'am, in the images ma'am."

177. It is the error of that conclusion that was carefully explained by Mr. Fredericks by

reference to the effects of "digital compression"

178. As to the witness's inability to identify the man at 1:30:19 as the defendant Anglin

despite his longstanding knowledge of Anglin and so, according to the defence,

leading to the inference that that man was not Anglin, the following exchanges with

defence counsel in cross-examination are instructive:

Q: And whether that may have been...let's assume it was a man. If that

man has or has not got braided hair whether he has braided hair or

not, the way he moves and his build and his whole appearance is not

one that you recognise?

A:

Not one that I recognise.

Q:

In fact, a phrase you used this morning in answer to Miss Richards

was "I don't recognise that person at all".

A:

Clearly I can see it is a male but I can't tell you who is the person.

Q:

No and as you told us earlier you know Devon Anglin well enough that

if you saw him you would recognise him as you did with him in the

bathtub?

181. This witness touched upon two other matters of interest. He confirmed that as the result of the body language of Witness E as the man passed by at 1:30:19, he and quality of the infrared image.

180. That is, however, itself a speculative proposition and therefore not one to which I can attach any probative value one way or the other, for or against the defendant. In effect, therefore, I regard this witness as saying nothing more than that he simply could not identify the man whose image is shown at 1:30:19 because of the visual infrared recording.

179. From that rather inconclusive exchange, the impression I am left with is that while the witness might have expected to be able to identify people whom he knew before from the CCTV footage, the infrared images he saw of the man at 1:30:19 were not clear enough to allow him to do so, even if, in fact, they were images of someone he knew before. Hence the witness' proposition that "if I saw him (Devon) as I see him now, I could identify him." "As I see him now", as distinct from seeing images of him on an A: Yes Sir."

Q: The reason you were asked to look at the footage was you were someone that would have been familiar with a lot of people in that club?

A: But referring to the question, if I saw him as I am seeing him now, I could tell you that's Devon.

Q: That's very flattering of you

A: If I saw you outside I could recognise you.

- other officers set about locating Witness E, leading to the testimony of that witness being available in Court.
182. Finally, in cross-examination, a still photographic image of a man wearing a polo shirt with horizontal stripes leaving the Club as caught on Camera 1 at 1:30:19 (Exhibit 4); was shown to PC Ebanks.
183. This photograph was put to him in cross-examination to refute his evidence given in examination-in-chief to the effect that he (like Mr. Grant Fredericks) had seen the image of the defendant leaving the Club on Cameras 1 and 10 at 1:30:27, with his arm outstretched appearing to push a woman ahead of him. This image at 1:30:27 also shows the shirt with the pattern which this witness said was that of Anglin's shirt.
184. The matching of the two shirts (that in Exhibit 4 and that shown at 1:30:27) was however, refuted in re-examination by the witness explaining why the patterns of the shirts were different and why that of the shirt shown at 1:30:27 on Camera 1 matched that of Anglin's shirt as shown on other known images, including the still colour images printed from the CCTV footage recorded that night.
185. In this respect, this witness and Mr. Grant Fredericks were in agreement. Mr. Fredericks also testified to having made the same comparison (as he testified to have done with every other striped polo shirt captured on the images of the CCTV footage) and found none to have matched the unique pattern of that worn by the man who emerged from the Club at 1:30:27 and identified as Anglin.
186. PC Ebanks also testified that he had seen from the CCTV footage, Anglin entering and re-entering the Club on at least three different occasions during that night.

191. On 9<sup>th</sup> September 2009 at about 11 pm, she went with Ophia Smith and another young woman, Kenia Powell, to the Next Level Night Club. There, among the persons she saw that night, were the defendant Devon Anglin and the deceased Carlo Webster. It seems that there was no pre-arrangement to meet the defendant at the Club but upon arrival he mingled with her group and photographs were taken. These became Exhibit 2 in the trial and two (photos 22 and 23) show the defendant Anglin in conversation with Ophia Smith, a fact admitted by defence counsel in Court. Photo 23, in particular, gives a clear impression of the distinctive striped pattern of his polo typed shirt and medallion pendant and does appear to show a slight growth

before".  
 come to know the defendant Devon Anglin, although she had "seen him around incident, was the roommate of Ophia Smith. In that connection it was that she had

190. Chelsea Tania Watler testified. She is a young woman, who, at the time of the avoided by taking shelter around the bar.  
 followed by the sudden rush of people trying to leave the night club, which he

189. So far as the actual shooting was concerned, the witness testified to having heard only what sounded like "pops" which he thought were caused by the DJ's equipment;  
 identifying any of the antagonists.

take place in the same area as described by Witness B and Witness E, but without actually happened. This witness did however testify to having seen two altercations shooting, like several other witnesses testified to having seen very little of what

188. Craig Miller Frederick, although present in the Club as a patron at the time of the  
 187. I turn now to the narratives of the other witnesses.

of facial hair. One bears in mind of course, that a flash camera would have been used

to take these pictures.

192. Although present at the important times of the altercation between the defendant and Chadwick Bodden and of the shooting, this witness, who appeared quite nervous throughout her testimony, claimed to have seen very little else.

193. As to the altercation with Chadwick Bodden, although present at the location where it occurred and was aware that harsh words may have been exchanged and that there was a "scuffle" between them, she claimed to have been using her cell phone at the moment when Bodden fell to the floor. She therefore could not say whether that was the result of a blow from the defendant, the result of Bodden's state of inebriation or the result of the intervention of the security guards. She was, however, aware that Bodden had become offensive in his behaviour towards Ophia Smith, in particular. As to whether there had been an altercation involving the defendant and Carlo Webster, the witness said nothing. She did however, speak about Webster having greeted herself and Ophia Smith upon their arrival (it seems before the defendant Anglin arrived) and was friendly towards them, buying them each a drink.

194. As to the shooting and killing of Carlo Webster, the witness again claimed to have been speaking on her cell phone with her back towards the dance floor, when the shooting took place. She therefore was not able to assist the Court with the identity of the shooter. In her words:

"I had my back to the dance floor and in front of me was a mirror and through the mirror I just saw light and I heard noise, I just heard bottles drop and the music shut off."

195. She said that she then left the club.
196. Michael Omar Samuels testified to being present at the Club on the night of 9<sup>th</sup> September 2009 in his capacity as a security guard.
197. While there, he witnessed an altercation between the defendant Devon Anglin and Chadwick Bodden during which Anglin struck Bodden who had "*kept coming towards Devon causing trouble for him*". This was after "*Devon had brushed him off the first time*" trying not to pay him any mind. Bodden fell to the ground when punched by the defendant and although the witness recalled that the defendant kicked him while he was on the ground, he could not be "too sure" about that. He, the witness, was then running towards that altercation which was taking place near the main exit (the same location as identified by Witnesses B and E) to stop it. Before he got to the location, the witness said another security officer intervened, grabbed Bodden from the floor and took him out of the Club.
198. The witness said he next saw that a crowd of people starting going towards the restroom and he followed them because he did not know what was going on. He went to the male restroom and there were other security guards inside – known to him only by the nicknames of "DC" and first name "Salvador". As he entered the restroom behind the crowd, he saw the defendant and noticed that he had a cut above his eye. He does not know how the cut came about. He observed that Anglin was then washing his face and there appeared to have been an argument in the restroom. He, the witness, could not say for sure who were the persons involved in the argument but he saw Carlo Webster pointing inside towards the back of the bathroom – and thus towards Anglin – in an angry manner (the witness indicating).

199. The witness intervened, and with the assistance of his colleague DC, managed to extract Carlo Webster from the rest room. The crowd, including Devon Anglin, followed from inside the restroom and as the witness was speaking with DC inside the restroom about what to do with the "guys who appeared to have been fighting"; he heard two shots fired. These, at first, he thought were sounds from the music system, but when he heard a third and fourth shot, he took cover further inside the restroom in the area of the urinals. All he therefore saw of the shooting were the flashes of light emitted from the gun shots. His view of the location of the shooting was then blocked by the backs of the persons who had been leaving the restroom ahead of him. The witness remained inside the restroom for about three minutes and while there he called the police using his cell phone.
200. When he emerged from the restroom he saw the deceased Carlo Webster on the floor and one Gary Whittaker standing over him calling his name, but to no avail. The police arrived about ten minutes later.
201. This witness spoke of having known Devon Anglin since primary school days and to having grown up, like Anglin, in the West Bay area.
202. There appeared to be no dispute about this, as no challenge was taken in the cross-examination which focused instead upon the crowded conditions inside the restroom when the witness said he saw Anglin washing his face. To this the witness responded that, Anglin included, there were about six men there at that time. The other five came up to Anglin in the restroom and kept asking him what happened. That group, including Anglin, exited the restroom "pretty much at the same time" and

206. Donovan Crooks next testified. He was also on that night, engaged as a security guard at the Club, and the one referred to as "DC", according to the witness Michael Omar Samuels. This witness also testified to having seen remarkably little of what happened and was agitated and visibly nervous as he sat in the witness box. So little

one gets to the restroom door from outside.  
the light was emitted as one leaves the restroom is in the area of the alcove just before regard, the witness explained further in cross-examination that the fixture from which the lighting in the area outside the restroom, all as described by this witness. In this within the group of which the defendant was a part, having regard also to the state of whether Witness B in particular, could have seen clearly who it was that fired from From the defence's point of view, the questions raised by this witness' evidence is

205. particular in Chart D as presented by Mr. Grant Fredericks.  
with the defendant, is consistent with what is shown on the CCTV footage, in happenings inside the restroom as inferentially involving the deceased Carlo Webster in the altercation with Chadwick Bodden is reaffirmed. His description of the From the evidence of this witness, the identity of the defendant as the man involved

204. *it brightens back up as you get towards the bar."*  
*There is an area by the bathroom and after that it just gets darker and*  
*"The only time you can see is after you come out of the bathroom.*

explained in these words:  
203. As to the state of the lighting in that section of the club at that time, the witness two shots. The witness repeated that he did not see who fired the shot.  
were standing in a group outside the restroom at the time the witness heard the first

209. This witness, who described as many as 15 men being in the restroom at once, also said that, as he was leaving the rest room to "see what the other guys were doing" (a reference it seems to the deceased and others whom he said had already ejected from

*could escalate into a fight...no one was calm as yet."*

208. Following this, the witness did explain that he had put the deceased (referred to as wearing an orange shirt) out of the restroom. But once "orange shirt" was out of the picture, things did not calm down inside the restroom because "two guys continued arguing in there" and "there was a bunch of little arguments.... I stayed in there because it was two more guys were still arguing. I didn't want to leave things that

*of the club."*

207. The relevance of his evidence at its highest is as it relates to having seen the deceased in an argument at some stage outside the restroom with a man he described as "a tall dark guy." However, this witness also spoke in cross-examination of seeing the deceased later inside the restroom, engaged in an argument with another man this time described in this way:

*"The man with whom he was arguing is about five-foot six tall. He appeared to be 21 or 22 years of age. He had his hair plaited in corn rows. He is slim and light brown complexion. He is a regular patron*

out of the Club.

did he claim to have seen of events, that despite the several other witnesses having described the altercations, he was adamant, not only that he saw none; but also that no fight took place at the Club that night and that there had been no need to put anyone

213. He said that when he got to the restroom, he saw the deceased Carlo Webster apparently rolling a cigarette (whether of tobacco or marijuana he could not say) and he kept an eye on him to prevent him from "lighting up" in breach of the Club rules. According to this witness, a group of three guys then came into the restroom and upon entering, one of them slipped and bumped into Webster. That person was the defendant Anglin whom the witness knew well before, having gone to school with him. Webster sought to engage Anglin verbally about this but while Anglin remained silent, his two companions started to argue with Webster. Anglin could hear what was being said and was then bent over the basin washing his face, apparently bleeding from a "little gash" he had received over his eye. This injury, the witness said, was received when Anglin apparently came into contact with the door as he

male restroom at the time just before the shooting.

212. Arian Meza Quinterro next testified. He also was on duty at the club as a member of the security staff and spoke mainly of being involved in keeping the peace inside the be believed.

211. I can note immediately that I found this witness to have been most unhelpful, with his evidence proving to be unclear and confused. He struck me as being intent upon avoiding having to describe the altercations which actually occurred and of which he must have been aware, if the evidence of Michael Omar Samuels, in particular, is to

remaining inside for safety, once he heard the shots.

210. The witness saw nothing of the actual shooting, having closed the restroom door

*guys in the restroom"* and about 300 people inside the club.

the restroom), then it was that he heard the shots. There was then still "a bunch of

214. bumped into Webster on his way into the restroom. The situation started to escalate, DC then came to his assistance and after some insistence on their part, they managed to get Webster to leave the restroom.
215. Anglin and his companions followed leaving the witness and DC in the restroom and while speaking to DC about banning the group from the Club, the witness said he then heard the gunshots. As he was then still inside the restroom, he saw nothing of the actual shooting. When he emerged from the restroom two minutes later, he saw the body of the deceased.
216. While the effect of the witness' evidence would be to attribute the injury over Anglin's eye to an accidental slip rather than to the punch to the face of which Witness B spoke (or the exchange witnessed by other witnesses), his evidence does confirm that there was a heated exchange inside the restroom between Carlo Webster on the one hand and the defendant Anglin and his companions on the other, just moments before the shooting outside the restroom.
217. The images captured on Camera 2 – and in Mr. Fredericks' Chart D – show the same exchanges.
217. Howard Burke was another a security guard employed at the Club. He was off duty that night but went to the Club as a patron. He witnessed what must have been the same two altercations in the area between the main entrance and main exit of which other witnesses spoke but was, like a number of the witnesses, also quite vague about the defendant's involvement. He did however identify Anglin, whom he had met and spoken to before that night in these words, as being present:

223. Solomon was handed over to a medical unit for treatment.  
wound to his right side.  
right side of his shirt and when searched found to have what appeared to be a gunshot  
intoxicated state. Solomon was noticed to have blood on his right arm and on the  
Groves came across Christopher Solomon outside the premises, in a highly  
222. While securing the perimeter of the premises as a scene of crime, he and Officer  
where he saw the lifeless body of Carlo Webster.  
Const. Groves, the first police officers on the scene at the Club after the shooting  
221. Constable Jonathan Horner next testified. He spoke of having been, along with  
said he heard the sound of the gunshots.  
220. As he left the restroom area walking towards the main entrance/exit area, the witness  
right. The Defendant did not respond or if he did, he does not recall a response.  
go elsewhere but before leaving he spoke to the defendant, asking him if he was all  
219. Not being able to wait any longer, the witness said he decided to leave the restroom to  
face.  
time". Anglin was however, at that time, seen at the face basin washing blood off his  
was agitated and uttering words to the effect "you have dissed the wrong man this  
Webster and someone else, but again he was not sure who that person was. Webster  
while waiting in line to use the urinal, he observed an argument involving Carlo  
218. The witness said that about five minutes afterwards he went to the male restroom and  
"There was a couple of people there I remember seeing. Devon was  
there and a couple of other people but I couldn't tell who...like who  
exactly was like in the fight."

224. Webster's body was released to the paramedics for transport to the George Town Hospital where upon arrival, Webster was pronounced dead and the body was escorted to the hospital morgue.
225. Constable Horner later that day was involved in the arrest of the defendant at Lakes Land Villas, George Town.
226. Kenia Powell was one of the group of friends in attendance with Ophia Smith at the Club. She explained in more detail the troublesome behaviour of Chadwick Bodden (whom she referred to by the nickname "Barcadi"), towards Ophia Smith and which this witness said led to the altercation between Bodden and the defendant Anglin. She did not, however, mention a second altercation between Anglin and Carlo Webster. Instead, her sequence of events had her, after Ophia Smith and herself noticed that the defendant was no longer in their presence, wondering where he had gone to and not seeing him around, walking off together towards the restroom. As she approached the doorway to the female restroom with Ophia, she noticed that a "bunch of guys" had assembled inside and outside the male restroom with the door ajar but, because the area was dark, she was not able to identify them.
227. She said that as she entered the female restroom with Ophia, with the door open and then blocking the view across to the area of the male restroom, she then heard "*like a pop sound or sound like a fire rocket*". She said Ophia and herself then ran into a cubicle of the restroom for shelter.
228. Further in cross-examination and re-examination, the witness explained that although the area outside the restroom was dark one can see well enough to make one's way

229. Christopher Solomon next testified. He proved to be a rather recalcitrant witness, expressing unwillingness to attend to testify because attendance at Court would interfere with his ability to fish, which he claimed to do for a living. He was bound over to testify and eventually did testify. He described the evening and early night of the 9<sup>th</sup> September 2009 as having been spent with Carlo Webster at Kelly's Bar in West Bay, drinking beer. By the time they made their way to the Next Level Night Club at about 10:30 pm, he had already had 4 beers to drink and at the Club continued to consume alcohol so that by some time after 11:30 pm he starting feeling "quite *boozy*". He nonetheless continued with his binge until he recalled slumping to the dance floor where he remained for about half-an-hour. Later, he recalls standing around outside the restroom until "*he started to feel dizziness*", when he went outside. There, according to the witness, he felt his side and noticed blood flowing from it and he started to feel weak. He does not know how he came to be bleeding.
230. Before he attended at the Club that night, he had no injury to his side. Carlo Webster was somewhere inside the Club and the last time he saw him was about half-hour before going to the dance floor.
231. He was helped by two or three officers who found him outside the Club and taken to the hospital where he was later operated upon.
232. So, despite having been shot as the medical evidence confirmed, this witness attested to knowing nothing about the shooting, nor even to having been in the presence of Carlo Webster at the time of the shooting.
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232. So, despite having been shot as the medical evidence confirmed, this witness attested to knowing nothing about the shooting, nor even to having been in the presence of Carlo Webster at the time of the shooting.

233. Finally, of the witnesses who testified, former D.Ch. Insp. Kenneth took the witness stand to confirm the things he did as the lead investigator. These included his briefing of Mr. Grant Fredericks, the CCTV analyst and the provision of the evidentiary material to him for those purposes.
234. He was present at the post mortem examination of Carlo Webster and when bullets were recovered (one from the head and the other from inside the clothing near the shoulder), they were handed over to the Scenes of Crime Officer Best by Dr. Bruce Hyma, the pathologist.
235. Among the 19 admissions in the case, it was admitted that those bullets, along with that recovered from the torso of Christopher Solomon, were found by firearm expert Alan Greenspan to match three spent shells recovered from the Club premises in the area of the restroom, by Scenes of Crime Officer Best. The bullets could all have been fired from the same firearm and the three shells were all positively found to have been fired from the same firearm.
236. Dr. Hyma was able to establish that Carlo Webster had been shot three times – once to the head at near point blank range (Wound A) once to the left chest (Wound B) and once to the right forearm (Wound C). Gunshot wound A would have resulted in immediate unconsciousness and death.
237. Christopher Solomon was attended at the George Town Hospital by Dr. Huzinga. He was found to have suffered a gunshot wound to the abdomen with one entry wound to the right lower abdomen and no exit wound. The bullet was eventually recovered by further surgery, lodged under the skin of the right buttock, on 23<sup>rd</sup> September 2009.

238. Mr. Solomon was last seen at the hospital for the gunshot injury on 3<sup>rd</sup> October 2009 when he was found to be fully recovered.
239. The Defendant Anglin was arrested on 1<sup>st</sup> September 2009 for the murder of Carlo Webster and interviewed under caution by Mr. Kenneth on 23<sup>rd</sup> September 2010 but exercised his legal right not to answer questions. He was formally charged in respect of the murder of Carlo Webster, on 12th January 2011.
- Analysis of the evidence
240. Much depends in this trial on what I make of the credibility of Witness B and Witness E as the case for the prosecution depends entirely upon the identification of the defendant as the man who shot and killed Carlo Webster.
241. I note immediately therefore, that these two witnesses impressed me as being truthful in their efforts to recall and relate events as they witnessed them on the night of 9<sup>th</sup> - 10<sup>th</sup> September 2009.
242. Neither witness had any reason to be untruthful. Neither had a motive for wishing to implicate the defendant Devon Anglin in the killing of Carlo Webster.
243. While it is the case that no witness other than Witness B (directly) and Witness E (indirectly) state that Carlo Webster was involved in a fight with the defendant, at least two other witnesses, Howard Burke and Arlan Miza Quinterro, spoke of hostile exchanges between the two, the state of hostility that Camera recorded inside the male restroom. The witness Michael Johnston also spoke of Anglin's companions enquiring of Anglin in the restroom about the situation.

250. It was this lighting in particular that enabled Witness E to observe the movements and clothing of the man as he walked by within arms reach at 1:30:19 and which allowed received from transactions at the bar.

249. A number of witnesses described lighting above and immediately around the area of the main bar which, in the words of Witness E, was sufficient to count change state of lighting inside the Club before the shooting.

248. It is, however, established from all the evidence that visual identification could nonetheless be made if, for whatever reason, particular attention was being paid and especially if persons being observed, were well known before. Footage from Cameras 6, 3, 4 and 5 taken inside the Club, give a fair impression of the sources and

247. The dimly lit and crowded environment of the Next Level Night Club in which the witnesses made their observations was not ideal for the visual identification of others, even of others known before.

246. I am also satisfied that the issues of concern relating to the evidence of Witnesses B and E will not be their truthfulness but the reliability and accuracy of their observations and recollections.

245. It follows, and I so find, that senseless and unspeakable though the killing was, the only person to whom a known motive is attributable, is the defendant Anglin.

244. I am satisfied that there is reliable evidence, not only from Witness B and E about the hostilities between the defendant and Carlo Webster, but also from evidence independent of them. And this is in addition to the fact that in those important respects, Witnesses B and E may properly be regarded as corroborating each other.

Witness B to identify Devon Anglin as one of the antagonists in the fights which occurred by the bar and as the man who exchanged punches with Carlo Webster.

251. While Witness E describes a different sequence for the fights, the same lighting at the bar area allowed that witness to observe the fights and observe the clothing worn, in particular, by two of the men involved – described respectively by the witness as

wearing the “orange shirt” and the “polo shirt with stripes running horizontally”; descriptions which matched those given by Witness B in relation to Carlo Webster and Devon Anglin. These were the men Witness E later saw in close confrontation

outside the restroom area, only three seconds before the shooting.

252. This witness’ failure to mention the involvement of the man in the stripe shirt in that confrontation with Carlo Webster when first interviewed by Det. Sgt. Wright and

when giving the formal statement, the Witness ascribed only to having been afraid at those times in these words in cross-examination by defence counsel:

“Q: And then the words that you told Sergeant Wright he has written down.

Let me read them together with you: “There was also another guy there and he was standing directly in the face of the guy who died.”

Who was that guy?

[The Court: Did you get that question Witness E?

A: Yes Sir.

The Court: Can you say who was that other guy? (Pause)

The Court: The witness appears to be thinking.]

A: The same guy with the striped shirt.

The Court: Did you say the same guy with the striped shirt?

....

A:

*I am still afraid."*

*on so that you were able to mention the guy in the striped shirt?*

Q:

*Had you stopped being afraid by the time you had got six lines further*

A:

*Yes Sir*

*those words?*

*shirt that was involved in the first fight with the dead guy. Do you see*

Q:

*Let's read it together. A few seconds later I saw the guy in the striped*

A:

*I see it.*

*that?*

*seconds later after the shots...?" "a few seconds later". Do you see*

Q:

*Go down a bit further. Do you see the sentence beginning "a few*

A:

*Yes Sir*

*instead of "the guy in the striped shirt"; is that what you are saying?*

Q:

*And so because you were afraid did you use the words "another guy"*

A:

*Yes*

Q:

*Did you say you were afraid?*

A:

*Because I was afraid.*

*also another guy there. Why didn't you mention the striped shirt man?*

*with the striped shirt, the words you gave Sgt. Wright are "there was*

Q:

*Why didn't you say that in your statement? Instead of saying the man*

A:

*Yes, your honour*

255. The point of all this of course, is that, if the witness is correct in the evidence given in Court (as distinct from the earlier accounts) and if the man in the striped shirt is proven to be the defendant Anglin, then the defendant would be proven to have been involved not only in what the witness described as the first fight with the man known Webster outside the restroom?

254. Thus, the question remains: what is to be made of this issue of the witness' failure earlier in the interview with Sgt. Wright and in the formal statement, to say – as said in Court – that the man in the striped shirt was also involved in the confrontation with Webster outside the restroom?

A: No, your honour.  
 Court: Can you answer the question?

Witness pauses and reflects

striped shirt if he was there?

Q: but when you talk about the bathroom incident, you say there was also "another guy" there. Why did you not mention the man with the striped shirt if he was there?

A: Yes Sir.

Are we agreed so far?

Q: In the statement you are reading, you say the man in the striped shirt who had been involved in the first fight and you say the man, the same man in the striped shirt walked past you with the gun by the bar later.

witness only three seconds before the shooting:

253. The cross-examination continued in the same vein to emphasise that the witness had not been consistent in identifying the man in the striped shirt as being involved in the confrontation with the deceased outside the restroom, the confrontation seen by the

to have been Webster; but also in the confrontation with Webster outside the restroom immediately before the shooting; as well as being the man who walked by the witness at 1:30:19, with the gun tucked into his waist.

256. Taking as careful and objective an approach to this issue as I might, I am obliged to note that references to the man in the striped shirt did appear throughout – from first to last – in this witness’ accounts of the events.

257. In Sgt. Wright’s notes of the interview, the witness is recorded as saying: “a few seconds after I heard four shots and people start run. Then I saw a guy dressed in jeans pants, (and) a stripe polo shirt...he walked across me and I saw a gun in his hand...and I saw him put it in his waist.”

258. In the witness’ formal statement, as the cross-examination quoted above reveals, the witness reported that the man in the striped polo shirt seen to pass with the gun in his hand was the man seen in the first fight with Carlo Webster (described here in the witness’ statement as “*the dead guy*”).

259. And, finally, in evidence in Court, the man in the striped polo shirt is reported as having been involved in all three incidents, including the confrontation with Carlo Webster outside the restroom (“the intermediate incident”).

260. When considered objectively and fully in that foregoing context, I have no hesitation in finding that this witness, who impressed me throughout as seeking to be truthful; had failed earlier to mention the man in the striped polo shirt as involved in the middle incident only through inadvertence; inadvertence that could well have been due to being unsettled and afraid because of the frightening experience of events on the night of the 9<sup>th</sup> to 10<sup>th</sup> September 2009.

266. The further question then is whether the defendant Anglin was the shooter? On the accepted evidence of Witness E by itself, the inference is inescapable. As the Witness' confrontation with the gun man as shown in the footage happened at

footage recorded on Camera 11 at about 1:30:19.

265. It follows, and I so conclude without any doubt, that the defendant was the man seen by Witness E with a gun which he tucked into the waist of his pants only seconds after the fatal shooting of Carlo Webster. The fact that Witness E saw all of this is compellingly revealed by the spontaneous reaction of the witness as shown on the

footage; was indeed, the defendant Anglin.

264. As explained earlier, I found the evidence of Mr. Fredericks to be instructive and helpful in arriving at my own conclusion that the man seen and identified by Witness E at 1:30:19 and tracked to the main exit eight seconds later at 1:30:27 on the CCTV

evidence of Mr. Fredericks, the CCTV analyst and that of Witness B.

263. In seeking the correct answer to this question, I have examined separately the man.

262. The crucial question that remains, then, is whether the defendant Anglin was that

*hand, then tucked into the pants waist.*

261. And so, while the witness may have recalled incorrectly the sequence of the two fights (relative to the sequence described by Witness B in particular), I accept the evidence of the witness as to the involvement of the man in the striped polo shirt in all three incidents; that is: the fight with Carlo Webster – described by the witness as the first fight; then the confrontation with Carlo Webster outside the restroom “three seconds” before the shooting; and then the approach towards the witness, gun in

1:30:19, only nine seconds after the last recorded shot at 1:30:10, it simply is fanciful

to suggest, as the defence at one stage postulated, that the shooter could have been

someone else.

267. I am invited to reject the evidence of Witness B who says that the defendant was the

shooter, primarily because Witness B is shown to be wrong in the testimony that the

defendant left the Club after the shooting, through the VIP exit.

268. Witness B's prior knowledge of the defendant and ability to recognise him is, to my

mind, clearly established.

269. Impressed as I am with this witness also as a witness of truth, I am entirely satisfied

about that aspect of the witness' evidence. And, being satisfied so that I am sure that

this witness would have no motive for seeking falsely to implicate the defendant, like

before with Witness E; the only question that remains in my mind is whether Witness

B was accurate and reliable in the recollection of events. I turn to consider then the

evidence of this witness taken as a whole.

270. Witness B had the occasions to identify the defendant Anglin as a participant in the

altercations around the bar under the same lighting conditions, already described as

the lamps around the bar, and can be seen from the photographs (Exhibit 13).

271. The observations of the witness at that time would, one can expect, have been

relatively dispassionate and detached and while knowing the participants and concerned

about the conflict, not however, apprehending any sense of personal danger.

272. The witness then changed locations until arriving inside Lounge #1 where, for a

while, the witness danced and mingled with friends.

278. Two minutes, as it happened, was almost exactly the amount of time that elapsed between Webster's final exit from the restroom to his final location and the firing of the first shot. It follows that that could well have been the period of two minutes during which Witness B claimed to have been observing Webster as he stood outside the restroom. With all of those factors in mind, the fact that the witness appears to

277. But should this conclusion cause me to doubt what the witness so clearly described as having witnessed in relation to the actual shooting? In this regard, I note as to the sequence of events, that the witness had Webster standing in that position outside the restroom for a period of only about two minutes after the defendant Anglin was last seen by the witness to enter the restroom.

276. I therefore find Witness B to have been mistaken in stating that Carlo Webster remained standing throughout in the pathway to the restroom after going from the area of the main bar.

275. The first shot is fired 29 seconds later, at 1:30:07. remained, Anglin was the last person to exit.

274. Indeed, the footage from Camera 2 taken inside the restroom, shows Webster to have been present there for some five minutes just prior to his final exit from the restroom at 1:28:15. The defendant Anglin exits the restroom at 1:29:38. And, as is shown by Camera 2, apart from four or five others including at least one security officer who

273. Under those circumstances, it is only logical to think that Witness B would not, contrary to what the witness claimed, have kept a steadfast eye throughout upon Carlo Webster so as to place him standing from then on at the same spot in the pathway leading to the restrooms.

283. I consider it to be of importance that the witness was able to identify, individually, a number of the persons who comprised that group. The witness did so under close cross-examination by defence counsel.

282. The crowded state of the area is also presented as a matter of concern: could Witness B have seen the defendant Anglin's deliberate and deadly approach to Carlo Webster and the pointing and firing of the gun, as claimed? It is suggested that I should be in doubt about this for the further reason that the witness admits to the shooting having occurred from within a group of people then gathered in the area.

281. Witness B, if standing in Lounge #1 and looking towards the area outside the restrooms and to the near side of the dance floor, would have been able to see and identify by the lighting coming from the dance floor, from the light fixtures above the columns and those immediately outside the entrance to the restrooms, individuals present in that area. Witness B would have been able, all the more so, to identify individuals well known before to the witness and whom had been earlier correctly identified and observed by the witness to be present at the Club.

280. This was confirmed from the visit to the locus in quo, despite the changes which have since taken place inside the Club.

279. I also note that in other respects, relative to the evidence given by Witness B, the site of the shooting, was a good one.

have failed to account for the five minutes or so that Carlo Webster was not standing in view but was at or inside the restroom, can hardly, I think suggest that the witness is unreliable.

279. I also note that in other respects, relative to the evidence given by Witness B, the witness' vantage point standing in Lounge #1, said to be only about 15 feet from the site of the shooting, was a good one.

285. This description of the shooting, taken with this witness' earlier account that Anglin, whose entire body including his face could then be seen and was seen "numerous times", was only some five feet away from Webster as he approached and pulled the firearm to shoot; is consistent with the forensic evidence of gunshot residue found on the right temple area of Carlo Webster and which is consistent with Webster having been shot at close range. By formal admission 9.3, the muzzle to skin distance was near contact to within inches. I also regard as significant the proven accuracy of Witness B's account of the number of shots (three) and, as supported by the pathologists' findings, of the sequence of the shots and the attitude of the shooter. So

*Mr. Webster and Ophia facing each other."*

*shot towards Mr. Webster, there was Mr. Anglin and the other guys.*

*The people were already around the area as Mr. Anglin fired the first*

*and no one was blocking my view....*

*view, I could have seen everything clearly because I was standing up*

*there were people there because it was near the dance floor. In my*

*"As Mr. Anglin was walking out of the restroom towards Mr. Webster,*

witness's ability to see, I repeat here what the witness said in re-examination:

284. First, the witness was firm in testifying that the defendant came out alone from the clear skinned but, whom the witness did not know before. Ultimately, as to the described as being about 20 years old, wearing a white shirt, about 5'6" - 7'7" and Webster was already among the group, as was Ophia Smith and another man restroom, when he approached and joined the group. The witness said that Carlo

289. First, simply as a matter of common sense, the witness' own state of calm and composure, ability to observe and recollect, would have been shaken by the terrifying and traumatic killing that the witness had just seen. It is most likely, with shots being fired within the confines of the night club, that the witness, like everyone else, would have been then most concerned about personal safety. The witness would therefore

288. Being satisfied as I am that the witness was throughout a truthful witness, seeking at all times to give an honest recollection of events; I have concluded that it is appropriate that I should consider the very different circumstances which prevailed immediately in the aftermath of the shooting and which would have affected the witness' ability to observe what was then occurring.

287. The real concern about Witness B's testimony therefore, is what the Crown has accepted was the witness' incorrect account of seeing the defendant Anglin walk from the site of the shooting toward the VIP exit and leave the Club through that door. The witness, in giving this account, seemed as sure about it, as about any other aspect of the witness' evidence; albeit that the account of the defendant as actually seen exiting through the door, came out only in cross-examination.

286. I emphasize that I feel able to take the approach being satisfied that the witness is a truthful witness. I also note that Witness B's perspective would have been very difficult from that of the security guards who testified about a group of men leaving the restroom at about the same time but is seen from behind the safety of the restroom door.

much so, that I am compelled to the conclusion, that only a witness who actually saw the shooting, could have described it in such detail.

not have remained transfixed to the position standing in Lounge #1 focusing on the site of the shooting. The witness' attention would not likely have been focused exclusively upon doing so, even if still attempting to follow the movements of the gun man. Moreover, the immediate and panicked reaction of the crowd within the then still dimly lit night club – as graphically displayed on the CCTV footage – would have made that kind of steadfast observation a most difficult exercise.

290. In this regard, I think that the witness' own narrative of what then happened is revealing.

291. In examination-in-chief the witness described the third shot and the immediate aftermath as follows:

“Q: You say there was a third shot. Can you describe what you saw and

heard for (sic) that third gunshot?

A: Mr. Webster was on the ground when Mr. Anglin walked up to him

point the gun at him and shot him.

Q: Could you see what happened thereafter?

A: Everybody start running. The light was on and Mr. Anglin walked

towards the exit door.

Q: Could you see towards which exit door?

A: The one close to the VIP...area

Q: I'm going to ask you some details now. From the time you first saw

Mr. Anglin come out of the bathroom to the time when he walked

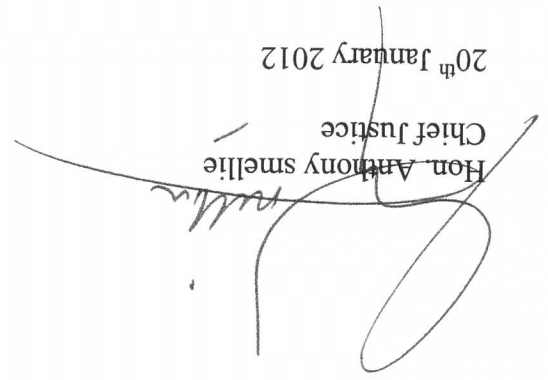
towards the exit door, about how much time was that?

A: It's like two minutes.”

292. The witness then explained about having observed the defendant Anglin's face "numerous times" and about "ten times" during that two-minute period and then said as follows about observations of the defendant:
- "(It) was for the whole entire two minutes that it took for him to walk out of the restroom shot Mr. Webster and walk towards the exit."
293. Just how much of that two-minute period the witness thought had occurred after the shooting was not established, although that would have been the period during which the departure of the gun man would have been observed by the witness.
294. What can be established from CCTV footage, however, is that some 30 seconds after the first shot, the lights were turned on inside the Club.
295. The first shot is fired at 1:30:07, 29 seconds after the defendant Anglin exits the restroom. The rush of people from the Club as recorded by the internal as well as the external CCTV Cameras occurs immediately after until, at 1:30:38, the lights inside the Club were turned on. At that time Cameras 1, 3, 4, 5 and 6 (that which covered the VIP exit) show only relatively few persons remaining and traversing back and forth inside the Club – it seems curious persons going to and from the spot where the body of Carlo Webster laid.
296. Given that state of things inside the Club after the lights were turned on, there is every reason to think, that whoever the gun man was, he would have departed from the Club and had ample opportunity to do so along with most other persons by then.
297. While it is already established that Witness B was mistaken in having tracked the defendant's exit to and through the VIP exit door, the witness, in my view, is also

- mistaken in identifying whomever it was seen to have exited through that door after the lights were turned on, as the gun man.
298. Given the circumstances then prevailing, and the less than composed state of mind to be expected, I conclude that I can safely take a different view of the reliability and accuracy of Witness B's observations and recollections before, than after, the shooting.
299. I conclude that the Witness' proven error about seeing the defendant leave the Club through the VIP exit, is not an error that undermines the otherwise clear and compelling evidence given about seeing the defendant shoot Carlo Webster three times.
300. Accordingly, while I do not regard as reliable, the witness' account of events immediately following the shooting, I am satisfied that I can rely upon the witness as to what the witness saw, recollected and reported about the shooting itself. I am satisfied so that I am sure that the witness, whom I regard as a truthful witness, did see the defendant Anglin shoot Carlo Webster.
301. I am satisfied so that I am sure that the defendant is guilty of the offence of the murder of Carlo Webster and I convict him accordingly.
302. I am satisfied so that I am sure that Christopher Solomon was shot during the shooting of Carlo Webster by the defendant, the defendant thereby attempting to murder him being reckless as to whether, but foreseeing nonetheless, that Solomon could be shot. I convict the defendant for the offence of the attempted murder of Christopher Solomon, accordingly.

303. The firearm used by the defendant in the commission of the offences of the murder of Carlo Webster and attempted murder of Christopher Solomon not having been licensed in keeping with the Firearms Law, I convict the defendant on Count 3 also.

  
Hon. Anthony Smellie  
Chief Justice  
20<sup>th</sup> January 2012