

W. H. H.

*12-6-12
Henderson*

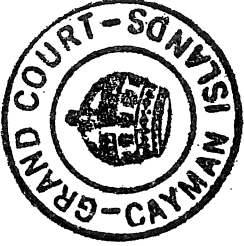
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN IN GEORGE TOWN, GRAND CAYMAN

3 CAUSE NO. IND NO. 79/11

4 COURTS OFFICE LIBRARY

5 BETWEEN

6 REGINA



7 -AND-

8 CHAKANE JAMEILE SCOTT

9
10
11
12 Appearances: Mr. Trevor. Ward for the Crown
13 Ms. Nicole Petit for the Crown
14

15 Ms. Sasha Wass Q.C. for the Defendant
16 Ms. Lucy Organ of Samson & McGrath for the Defendant
17

18 Heard: June 12th, 2012
19

20 REASONS FOR JUDGMENT

21
22 1. The defendant, Chakane Jameile Scott, is charged in an indictment containing
23 three counts which arise from the same incident. Count 1 is a charge of the
24 murder of Asher William McGaw on John McLean Drive, East End, Grand
25 Cayman. Count 2 is a charge of possession of an unlicensed firearm. Count 3 is
26 possession of an unlicensed firearm, to wit, three rounds of 38-calibre

1 ammunition. Each of the offences is said to have taken place on September 22nd,
2 2011.

3 2. There is just one essential issue in this case: is the main Crown witness, Antascio
4 Rankine, who is said to be the sole witness to the death of Asher McGaw, telling
5 the truth?

6 3. The burden of proof is, as always, upon the Crown. It has not shifted. If I am sure
7 Antascio Rankine is telling the truth, I should convict. If I am not sure, I must
8 acquit.

9 4. In the circumstances I will relate in detail any conclusion that Antascio Rankine is
10 mistaken is entirely unrealistic; the question is whether he is telling the truth or
11 engaged in a deliberate lie.

12 5. I have been assisted by transcripts of the evidence of the two most important
13 witnesses, Antascio Rankine and Earl Hart.

14 6. Mr. Rankine was 18 years of age at the time of giving evidence and 17 at the time
15 of the alleged offence. He lives on John McLean Drive in East End. He has
16 known the deceased, Asher McGaw, since the two boys were young. Rankine
17 described his relationship with Asher McGaw as one of "best friends". McGaw
18 lived right across the street from Rankine's house.

19 7. On September 21st, 2011 around 8:00 or 9:00 p.m. Rankine says that McGaw
20 came to Rankine's house. They remained together a short time and then Rankine

1 left to go get "a draw of weed". Rankine says that McGaw returned to Rankine's
2 house about half an hour after that. Around this time, three men, referred to as
3 Dalvy, Earl and CJ, also came to Rankine's house. CJ is the defendant, Mr. Scott,
4 and I will from time to time refer to him by his initials. "Earl" is a reference to the
5 Crown witness Earl Hart.

6 8. Mr. Rankine said that he has also known CJ from the time that both men were
7 young. He described the relationship as that of "friends". CJ lives in Newlands but
8 spent time in East End.

9 9. He said that Hart, Dalvy and CJ had come to Rankine's yard to buy a draw of
10 weed. They hung out for about five minutes, according to Rankine, and then
11 Dalvy and Earl Hart left. At this point, Rankine, Asher McGaw and CJ were the
12 three who remained in the yard. The three decided to get some cigarettes. They
13 went down to Miss Maria's place on Fiddlers Way for that purpose. Rankine
14 described it as a house where people hang out. When they got there, they found
15 that Miss Maria was closed. At that point, according to Rankine, Asher went to
16 the Pirate's Cove bar to buy cigarettes, but CJ and Rankine did not accompany
17 him. Rankine said that after about 30 or 40 minutes of waiting for CJ to return, the
18 two men left Miss Maria's and went up to the bar to look for Rankine. They did
19 not see him at first. They did not enter the bar, but stayed in the parking lot; the
20 reason was that Rankine had a curfew arising from bail conditions on a wounding
21 charge. He was asked if he eventually saw McGaw again that evening, and he said
22 yes, at the bar. In the context, that would mean outside the bar. He said "McGaw

1 came by us and we walked to my house." That was a reference to McGaw,
2 Rankine and CJ. They stayed at Rankine's house until the bar closed and then they
3 went down to a dock for the purpose of retrieving a flare gun from Rankine's
4 father's boat. He said he did not want to get the flare gun until the bar had closed
5 because of the curfew.

6 10. At the dock, CJ waited while Rankine and McGaw got into a small boat and went
7 to Rankine's father's boat which was tied up in front of a bar. That is not a
8 reference to Pirate's Cove bar, but a different bar. They used a smaller boat to row
9 out. Rankine said he took a flare gun and two cartridges from the boat, then rowed
10 back in and tied up the boat. He said Asher jumped up on the dock and "I gave the
11 flare gun to CJ, then Asher pulled me up." "We put on our shoes and got on our
12 things." "We put the paddles back and then walked a little further." Asher asked
13 CJ if he was going to shoot it. He said no. "Then I put a shot in it and I fired it."
14 He was asked if he walked back up the beach and cut through the church hall. He
15 said yes, and said that the three men were heading to Rankine's house. He was
16 asked if he saw anybody around at that hour. He said yes, Darney McLaughlin;
17 "he was by the bathroom."

18 11. The three men took Fiddlers Way to get back to Rankine's house. As they walked
19 along Fiddlers Way, Rankine said he saw Keith Gourzong sitting on his swing.

20 12. At Rankine's house, Asher McGaw wanted to shoot the flare gun. Rankine said he
21 had to go inside his house to get the next shot because he had dropped one of the
22 cartridges. He also did not want the flare gun shot in the vicinity of his house

1 because it would wake up his parents. I should say also that Rankine fired one
2 shot from the flare gun while the three men were still at the beach. So, having
3 dropped the second cartridge, he had no cartridges by the time he arrived back at
4 his house.

5 13. Rankine retrieved a cartridge from his house and then suggested that the three
6 men shoot the flare gun by the "clinic". This was a reference to the health centre
7 which was in the immediate vicinity of Rankine's house.

8 14. The three men walked to the health centre and stood at the left side of the
9 generator room. At that stage, Asher McGaw had possession of the flare gun. He
10 cocked it, put it up in the air and shot off a flare. At this point, Asher was in front,
11 CJ was behind and to the left of Asher, and Rankine was behind CJ. He said that
12 Asher McGaw was about five feet from CJ.

13 15. Right after the flare was fired, Rankine says he heard a gunshot. He saw a spark.
14 He turned around and ran. The spark came from immediately in front of him. He
15 turned and ran back out the way the men had come in to John McLean Drive. As
16 he ran, he looked back and he says he saw Asher run around the side of the
17 generator room with CJ pursuing him. He said Asher ran around the right side of
18 the generator room. As Rankine continued to run, he heard another shot. He made
19 it out of the gate of the health centre but just before doing so he heard a third shot.
20 He said in his evidence "about four shots I heard". In his statements to the police,
21 he recalled only three shots. The second shot was fired after he had looked back

1 and seen CJ chasing Asher. The third shot was fired before Rankine exited the
2 health centre grounds by the gate.

3 16. After he had run out of the gate, he turned around again and saw Asher drop face
4 first. By this time, Asher also had made it out of the clinic compound. At this
5 point, Rankine says he saw CJ run up to Asher and shoot him from close range.
6 This was the fourth and final shot. He demonstrated in court what he saw. The
7 witness had his left hand pointing down towards the ground at about a 45 degree
8 angle.

9 17. He then saw CJ run off and Rankine himself ran to his house. He saw CJ run
10 towards Sea View Road. He did so by running towards the clinic. Apparently
11 there was a well recognised means of getting through the clinic grounds to Sea
12 View Road.

13 18. He was asked how CJ was dressed. He said "short black pants, a white T-shirt and
14 a silver or gray fitted hat and a rag underneath it."

15 19. He was asked how he felt. He said "I was frightened and confused and stupid." He
16 was asked what caused the confusion. He said "I couldn't understand what he was
17 shooting for." "I ran in my room, took off my shirt and pants and went in my
18 bed." "I couldn't sleep because of what I had just seen."

19 20. He was asked if he saw CJ again on the morning of September 22nd. He said yes,
20 he did, at Earl Hart's place. That house is very close to the location where the

1 shooting occurred. Rankine said he went to Earl Hart's house to get a draw of
2 weed. "There were people by my yard," he said, " ... the police." He needed a
3 draw of weed to calm his nerves.

4 21. When he got to Earl Hart's house, he encountered CJ again. He had not expected
5 that. He was asked "what was your reaction on seeing him"; he said "I held my
6 head down". He was asked why. He said because CJ shot Asher and he was still
7 in East End. He was asked how CJ was dressed at this point. He said he had long
8 pants, cut, and was wearing slippers. The pants came to a line about half way
9 between the ankle and the knee. CJ suggested to Rankine that they go to CJ's
10 father's house which was in East End, not far away, and Rankine went with him,
11 as he put it, "like a fool". The purpose of this trip was to get another draw of weed
12 because Earl Hart said he did not have any. CJ had suggested getting a draw of
13 weed from CJ's father.

14 22. He was asked why he accompanied CJ at all and he said" I was frightened, I didn't
15 want him to think I was going talk". He was asked if he had any conversation on
16 the way to CJ's father's house. He said that CJ said to him "Don't make nobody
17 know about this, meaning if I say something he going to do something". He was
18 asked again what was said and he said "Don't make nobody know nothing about
19 it". At CJ's father's house, they did get a draw of weed and then Rankine went to
20 his own house. He had separated at that point from CJ. CJ said he was going Earl
21 Hart's house.

1 23. Rankine was then asked if he had spoken to CJ after that morning and he said yes.
2 CJ had told Rankine to call him. He did so the same evening or early morning
3 when the two men were going towards CJ's father's house. Rankine recalled
4 calling CJ in the morning. He said he did so because "I didn't want him to feel
5 that I was going to talk on him". He had not told anybody at this point what he
6 had witnessed.

7 24. There are phone logs in evidence. They show that on September 22nd, Rankine
8 made three calls to CJ at 8:38 a.m., 10:00 a.m. and 10:01 a.m. He also made a call
9 to CJ the following day at 10:02 p.m. There is one text message sent from CJ to
10 Rankine on September 24th at 9:08 a.m.

11 25. On September 26th, Rankine was taken voluntarily to the police station and gave
12 two statements to the investigating officers. I will deal more fully with that later.
13 He also supplied clothing and was swabbed for gunshot residue and DNA.

14 26. In cross-examination, Rankine agreed that he was aware of no motive whatsoever
15 for the shooting of Asher McGaw by CJ. The only thing he could think of was, as
16 he put it, "something about a scooter", but he agreed with defence counsel that
17 that was a trivial incident. He also agreed that he was aware that McGaw had
18 made a statement to the police about a robbery at Barefoot Beach. He said "I
19 heard people talking about it, but I never knew it was true". There was no
20 evidence of the content of McGaw's statement. Rankine agreed that he and Asher
21 were very close and they had no secrets between each other. He reiterated that

1 prior to speaking to the police he had not told anybody at all about what he had
2 witnessed.

3 27. He was asked whether there were three shots or four and he repeated “about three
4 or four”. He was asked then if he knew, immediately after having heard the shots,
5 whether Asher was alive or dead. He agreed that he did not know. He did not
6 know whether the wounds were fatal. He was asked why he left his best friend in
7 such a distressed position without trying to help him; he said “I couldn't think”.
8 He was pressed on the point and he said “because I was frightened”. He was
9 asked, “when you got back to the house, your house, why did you not call for
10 help?”. He agreed that he had a mobile phone and could have dialed 911, but his
11 explanation for not doing so was “I couldn't think, I was confused”.

12 28. Rankine agreed that when he gave his first statement to the police, which says
13 nothing at all about having witnessed the shooting and does not incriminate CJ in
14 any way, he was not under arrest and had given that statement voluntarily without
15 being pressured. He accepted that no one at the police station had told him what to
16 say. He made that first statement quite freely. In the first statement, he says that
17 after separating from Asher at Pirate's Cove bar, Rankine left and went home,
18 watched television and fell asleep. He agreed, therefore, that large parts of his first
19 statement were untrue.

20 29. The second statement was made within minutes of the first statement and is
21 broadly in accordance with the evidence he gave in court. He was asked why he
22 changed his mind and gave the second statement. He said “I couldn't hold it in no

1 more". "The police thought I knew about what happened." He agreed that the
2 police thought he was hiding something. He was asked if the police had asked
3 him, over and over, questions about the shooting, and he said "they asked me like
4 two times".

5 30. Rankine said that at the time of being interviewed by the police, and at the time of
6 giving evidence he was on bail for a charge of wounding. It was alleged that he
7 had stabbed someone. The curfew to which I have alluded earlier was part of his
8 bail conditions. He was asked, "do you know whether that case is still going on or
9 not?" and he said no. He was then asked if he thought it would help his wounding
10 case if he assisted the police by being an important witness in the present murder
11 case. He said no, he did not think that.

12 31. He reiterated in cross-examination that Asher had only been gone to Pirate's Cove
13 bar for about 30 or 40 minutes. He stayed there, said Rankine, "for a little while".
14 He agreed that even when the bar closes people are permitted to stay on,
15 particularly in the area around the pool table under the porch.

16 32. Rankine agreed that after he had given his first two statements to the police he
17 told some people about what he had seen. He was asked if the reason Asher
18 wanted possession of the flare gun was in order to have something for his own
19 protection. He agreed with that. I note, however, that after Asher himself fired off
20 the last cartridge there is no evidence that there were any more flares available.

1 33. He said he had made further statements after September 26th because the police
2 "wanted me to clear up parts".

3 34. It was put to him that his father had advised the police that he had since recovered
4 a flare gun from his boat. He was asked whether he was telling the truth about
5 taking the flare gun himself. He replied "there could have been more than one".
6 He said his father bought the boat and he never knew about the second flare gun.
7 He said it was there but he never realised. When he was asked if he had flare
8 cartridges (in the plural) at his house, he said "yeah, I had one". He also said he
9 had one flare gun at his residence but he had kept playing with it and the spring
10 broke.

11 35. It was put to Mr. Rankine that the flare gun the boys were shooting on the night in
12 question was Rankine's own flare gun from his house, the implication being that
13 Rankine was lying. He said "that wasn't the same flare gun, I had one before
14 that". He was asked if he and McGaw had taken off their shoes and socks when
15 they went in the boat. He agreed that they did. He agreed that they had become
16 wet on this journey in the small boat because they had to walk out through the
17 water to it.

18 36. Rankine said that when Asher fired the flare gun at the health centre he fired
19 towards the front road, i.e., Sea View. Rankine agreed that he could see CJ clearly
20 at the time of the gunshot. He was in his line of sight. CJ was not carrying
21 anything with him. He was asked if there was any room about CJ's person for the
22 concealment of what counsel called "a large revolver". Rankine said "I don't

1 know". Then he replied, "he got on jeans pants - he can carry anything in jeans
2 pants". He was asked how long the gun appeared to be and he indicated with his
3 hands a size of about 12 inches. He agreed that he had not seen anything bulging
4 out of CJ's pockets or tucked into his waistband at all. He was not asked how long
5 CJ's T-shirt was.

6 37. With respect to the respective positioning of the three men at the time the first
7 shot was fired, he said, in cross-examination, that CJ was about three feet behind
8 McGaw and one foot to the left. He agreed that he could see Asher McGaw's back
9 for a very brief time when the first shot was fired, but he was unable to say
10 whether McGaw had been hit or not.

11 38. With respect to the second shot, Mr. Rankine agreed that McGaw was in front of
12 CJ when it was fired. The shot therefore was fired towards McGaw's back. He
13 acknowledged that he had not mentioned four shots, but rather a total of three in
14 his police statements. He said the fourth shot was fired about three to four feet
15 from CJ's body (but the fact that CJ was holding his arm out would have
16 shortened that distance). He also added, "I can't tell distances".

17 39. Rankine agreed that McGaw was wearing shoes that night. They were referred to
18 as "trainers". He said he had taken those shoes off to go on the boat. He was then
19 asked again by counsel "did he take his socks off?" and he said "I don't
20 remember; he could have, I don't know". He was then asked again "did Asher
21 ever take off his shoes?" and he said "I don't know". That appears to have been, in
22 context, a reference to taking off his shoes later on after the shooting started. He

1 was asked if McGaw was wearing shoes when he dropped to the ground. He said
2 "I believe so".

3 40. At the time immediately before the shooting nobody was around. Mr. Rankine
4 was again asked about his failure to alert an ambulance to assist his friend and he
5 said "I was paralyzed. I can't explain that. I wasn't thinking. How could I think."

6 41. Rankine said that CJ sometimes sleeps at his father's home and sometimes sleeps
7 at Rankine's home. It was put to him that CJ had been staying at Earl Hart's place
8 for three or four nights, but Rankine was unable to confirm that. He was pressed
9 on why he went back to Earl Hart's house after this horrific event. He again said
10 "I didn't want CJ to feel I was going to say anything to anybody".

11 42. By the time the two boys went to CJ's father's house, the police had arrived in the
12 area. CJ made no attempt to leave the area straight away. Rankine was asked
13 again about why he would phone CJ if he was afraid of him and he said, again,
14 "because I didn't want him to think nothing".

15 43. In re-examination, he repeated that he had told the police everything in his second
16 statement, the one which incriminates CJ for the first time, "because I couldn't
17 hold it in any more".

18 44. The evidence of Antascio Rankine about the shooting is sufficiently detailed and
19 sufficiently confirmed by other evidence that I am sure he was present during the
20 shooting and therefore knows who did it. The sole question is whether he is lying

1 when he says this defendant was the culprit. Since Rankine was, at the time he
2 gave his statements to the police and at the time of trial, facing a charge of
3 wounding which has not yet been disposed of, he has a motive to cooperate with
4 the authorities. I must be alert to the possibility that he is assisting the Crown in
5 the hope that he will receive a more lenient sentence in due course, which in turn
6 may cause him to lie about the defendant's involvement. I remind myself that it
7 would be dangerous to convict Mr. Scott based solely upon the unsupported or
8 unconfirmed evidence of Rankine. I must look for reliable evidence independent
9 of Rankine which supports or confirms his credibility concerning his essential
10 allegation that CJ, and not any third party or Antascio Rankine himself, shot
11 Asher McGaw. The balance of the evidence I will examine is relevant to that
12 question.

13 45. Neither the Crown nor Mr. Rankine is able to suggest a motive for the shooting. It
14 is a commonplace that the Crown is not required to prove a motive, but lack of
15 evidence of a motive is always a factor to take into account when weighing the
16 evidence, and I do so. Of course, lack of evidence of motive must be
17 distinguished from a proven absence of motive. It is the former, not the latter,
18 which represents the state of the evidence before me.

19 46. I turn to the evidence of Earl Hart.

20 47. Earl Hart was living on John McLean Drive near where the events I have related
21 took place. He was living there with Nikita Ferguson, his baby mother, and their
22 child. He said he has known the defendant, Chakane Scott, "basically all of my

1 life". He said "he is my little cousin". He also had known Asher McGaw for
2 essentially all of his life.

3 48. On September 21st, 2011, he saw Asher McGaw in Fiddlers Lane. Hart
4 remembered it as a little after 10:00 p.m. Hart was with Ferguson, CJ, Dalvy and
5 Jamesy. He had encountered CJ going up Fiddlers Lane, walking across it. After a
6 short time, Hart went to Pirate's Cove bar on Sea View Road. He said he was
7 there until a little after 11:00 p.m. Hart did not mention seeing McGaw there. Hart
8 said he then walked down the front road on Sea View, cut up by the clinic, got to
9 John McLean Drive and headed towards Hart's apartment. At that point, he saw
10 CJ coming down the road at the same time. When asked how long he spent at
11 Pirate's Cove bar, Hart said "maybe 45 minutes to an hour, if that".

12 49. At the time he saw CJ on John McLean Drive he also saw Asher McGaw and
13 Antascio Rankine sitting in Rankine's yard. CJ was coming towards Rankine's
14 yard. Hart described him as wearing short black dress pants, a pair of black shoes,
15 a gray and black fitted hat and a white shirt. He said that he and CJ talked for a
16 little bit. At this point, the following people were present: Rankine, McGaw, CJ,
17 Hart and Nikita Ferguson. CJ, during the conversation, asked Hart if CJ could
18 sleep at Hart's residence. Hart agreed and said he would leave the sliding door
19 open for CJ. When CJ slept there, he was accustomed to sleeping in the living
20 room on the floor. As Hart and Ferguson left, CJ reminded him that he was going
21 to be sleeping at Hart's residence. Hart says he only spoke with the others for five

1 or ten minutes, leaving them around 11:15 p.m. As he left, Rankine, McGaw and
2 CJ were together.

3 50. Hart and Ferguson went home, went to sleep, and then, in the early morning, Hart
4 says that Ferguson heard the door and woke him up. Hart grabbed his cell phone,
5 looked at it, and found that the time was 3:16 a.m. He then said to Ferguson
6 “remember CJ say he want to sleep”. Hart heard the door close. He laid back
7 down, but did not actually fall asleep, it would appear, because very shortly after
8 that he heard pounding on his bedroom door. Ferguson got up and opened the
9 door. CJ entered the room and said that “Heath” had just called him and that
10 “somebody got shot up here”. The phone logs do not show any call from a phone
11 registered in Heath's name to CJ, but they do show a phone call from a phone
12 registered in Heath's girlfriend's name to CJ at 3:27 a.m. Hart described the time
13 lapse between the sliding door opening and the pounding on the door as not even
14 half an hour.

15 51. He was asked what CJ was wearing when he pounded on the door to report the
16 news. Hart said he was not wearing the same clothes. He actually had on “no
17 shirt, a jeans pants that you could see wasn't even his size, that is how tight it was,
18 and a pair of slippers, like toe slippers”.

19 52. Hart went on to say that his phone rang and one Shane Jackson told him that he
20 had heard Asher McGaw was dead. The phone logs show that Shane Jackson
21 called Hart at 3:51 a.m. At that point, Hart got up, went to his front door and saw
22 a police car outside the house. He saw a number of people going down towards

1 what he called "the school" which was taped off. He, Hart, went down towards
2 Rankine's house where he saw Asher McGaw's sister and other people and he saw
3 McGaw down on the road.

4 53. The body of McGaw had been found by two police officers around 3:00 a.m.

5 54. Hart said that at this point CJ was in the vicinity of "my house". In context, it
6 appears clear that CJ was outside the house. He was wearing what I have
7 described a minute ago: no shirt, jeans that were not his size and were too tight,
8 and slippers.

9 55. Hart then went down to talk to Antascio Rankine. He was there for a short period
10 of time and then walked back to his house. He found CJ on his porch, sitting on
11 the corner. He observed at this point that Antascio Rankine was also at the house
12 and had his head down.

13 56. Hart was asked about an incident which occurred on the morning of September
14 22nd. He said it was around 9:00 a.m. and it was after Asher had been picked up
15 off the ground. Hart was walking towards the school with Ferguson and coming
16 back on Sea View Road he saw CJ on a public bus. CJ hollered out to him from
17 the bus and said "yo!". Hart replied, "Yo! where are you going?" And CJ replied,
18 "I going down because up here is too hot." The bus was heading towards George
19 Town.

1 57. When Hart got home, he noticed a towel in a plastic bag and a shirt which had
2 been left there by CJ. He was asked if CJ had any other items of clothing at Hart's
3 apartment and he said he did not think so.

4 58. He said he heard from CJ a couple of days later. CJ called him and told him that
5 he had been locked up; the police had arrested him on suspicion.

6 59. The next time Hart saw CJ was a few days after that phone call, down at Fiddlers
7 Lane. Hart was sitting underneath a breadfruit tree playing dominoes. CJ hailed
8 him and asked what was going on. After that, Hart left CJ and went up to
9 Rankine's house. A little while later, Hart and Rankine came back down to
10 Fiddlers Lane and stopped in the houses between Sea View and Fiddlers Lane. At
11 that point, CJ approached and called Rankine. According to Hart: "After, like he
12 was trying to hold some sort of conversation, but I'm not too sure what he was
13 saying about". In other words, CJ was attempting to hold a conversation with
14 Rankine. Hart said "the only part I heard when I started to walk towards them, CJ
15 said 'just hold your mouth' or something like that". "He said to Rankine, 'Hold
16 your mouth'". Hart followed the two men up Sea View and most of the time CJ
17 was talking to Rankine. According to Hart, Rankine was trying not to answer CJ,
18 trying not to say anything. "He was trying to ignore him".

19 60. In cross-examination, Hart agreed that CJ's father lives on Sea View Road and CJ
20 also had a sister who lived on John McLean Drive, although CJ lived with his
21 mother in Newlands most of the time. Hart was asked if CJ used to leave changes
22 of clothes at his father's address and his sister's address and he agreed that he did.

1 He was asked if he had seen what CJ was wearing when he came in through the
2 sliding door at Hart's residence. He agreed that he did not see the clothing at that
3 point. He remembered the T-shirt left behind by CJ as a white T-shirt. He said it
4 was in a plastic bag. He confirmed that CJ had remained in the area of the
5 shooting for some considerable time after the police arrived.

6 61. Before analysing the evidence, I need to make reference to some other bits of
7 evidence provided by Crown witnesses.

8 62. Jamal McLaughlin says he arrived at the Pirate's Cove bar at 8:00 or 9:00 p.m. on
9 September 21st. Close to 11:00 p.m., Asher McGaw came in. Jamal McLaughlin
10 said the bar closed at 1:00 a.m. At around 2:10 a.m. McLaughlin went home. He
11 knows the time was 2:10 because he looked at his cell phone. Asher McGaw was
12 with him the entire time until McLaughlin went home. Everyone left the bar
13 together. That statement was given October 18th, 2011.

14 63. Javal McLaughlin, Jamal's brother, said that he went to Pirate's Cove bar around
15 3:20 p.m. on September 21st. He said the bar closed at midnight. He said
16 everybody left the bar together around 2:45 a.m. Javal McLaughlin says he knows
17 the time, 2:45 a.m., because he looked at his cell phone. He said that Asher
18 McGaw left with the others at that time. That statement was given on the same
19 day, October 18th.

20 64. Justin McLean is the manager of the Pirate's Cove bar. He remembers Asher
21 McGaw arriving at the bar about 10:00 p.m. on the night in question. He said the

1 bar closed at 12:45 or 1:00 a.m. When McLean went home, McGaw was still in
2 the bar. That statement was given October 19th, 2011.

3 65. Darney McLaughlin testified that he saw three persons in the early hours of the
4 morning. Two were in a boat and one was on the dock. McLaughlin was about
5 200 feet away. He says he knows McGaw and knows CJ, but did not recognise
6 either of them that night. He also said there was no light where the three men
7 were.

8 66. Nikita Ferguson was living with Earl Hart at the time of these events and knew
9 CJ. She said she saw CJ around 7:00 p.m. at Miss Maria's house on September
10 21st. Later, she was at Rankine's house and saw CJ just arriving as she got there.
11 The three men were together when she left. At approximately 3:30 a.m., Ms.
12 Ferguson was at Earl Hart's residence when CJ knocked on the bedroom door and
13 asked if she and Hart were aware that somebody had been killed.

14 67. The Crown says that the evidence of the movements of Rankine, McGaw and
15 Scott earlier in the evening confirms and supports the credibility of Mr. Rankine. I
16 am satisfied that it does not have that effect. Rankine said several times in
17 evidence that McGaw was gone only 30 or 40 minutes when he went to Pirate's
18 Cove bar. That assertion must be viewed as incorrect in light of the evidence of
19 Jamal McLaughlin and Justin McLean. Hart says he was in Pirate's Cove bar that
20 evening but makes no mention of seeing McGaw there. Keith Gourzong also says
21 he was there "at some point" but does not mention seeing McGaw. (There is no
22 evidence, however, that Gourzong can recognise McGaw.) Earl Hart makes no

1 mention of meeting the three men around 8:00 or 9:00 p.m. at Rankine's house.
2 He saw McGaw after 10:00 p.m. and was in CJ's company when he encountered
3 him. When Hart left Pirate's Cove bar a little after 11:00 p.m., he saw CJ "coming
4 down the road" while Rankine and McGaw were sitting in Rankine's yard.
5 68. There are other minor inconsistencies between Rankine's account and the other
6 Crown witnesses. The Crown witnesses other than Rankine also contradict each
7 other on points of detail. Overall, the evidence of the events earlier in the evening
8 fails to offer any support for Rankine's credibility.

9 69. The defendant says that Rankine's evidence of the whereabouts of the three men
10 — Rankine McGaw and CJ — on the night in question is untrue and that shows
11 that Rankine is lying. As I have said, it is of little assistance to the defendant to
12 show that Rankine is mistaken about collateral details, is a poor observer of
13 events, or has a faulty memory. The question is whether he is lying and, for
14 present purposes, whether the contrast between his evidence and the other
15 witnesses points to that conclusion.

16 70. I start with the proposition that Rankine has no reason to lie about the
17 whereabouts of McGaw earlier in the evening of September 21st. The evidence
18 shows that Rankine smoked weed during the evening, although there is no
19 evidence about how that may have affected his ability to recall. The chronology of
20 these events and the duration of McGaw's visit to Pirate's Cove bar must have
21 seemed entirely insignificant to Rankine at the time. It is a commonplace that
22 witnesses asked to recall events which seemed insignificant at the time will, while

1 attempting to be truthful, differ on points of detail. For example, Jamal and Javal
2 McLaughlin cannot both be correct about the time at which everyone left the bar,
3 although they both say they got the time from their cell phones. Neither can both
4 men be correct about the time at which the bar closed. Nevertheless, there is no
5 suggestion that either man is lying. I regard the inconsistency between Rankine
6 and the other Crown witnesses about the events preceding the shooting in
7 essentially the same way: it is not evidence which impresses me as casting doubt
8 upon Rankine's truthfulness as opposed to his ability to recall accurately.

9 71. There are other bits of potential corroboration advanced by the Crown to which I
10 will now refer.

11 72. The evidence of Nikita Ferguson and Earl Hart shows that the defendant was
12 aware there had been a shooting within a few minutes of the body being found by
13 police. I draw no inference from that. The phone logs provide a plausible
14 explanation for his early knowledge: CJ's friend Heath, using his girlfriend's
15 phone, had advised him of the shooting using the telephone.

16 73. Throughout the night before the shooting CJ was wearing short black jeans or
17 dress pants, black shoes, a gray and black fitted hat with a rag underneath it and a
18 white T-shirt. I take that description from the evidence the Hart and Rankine.
19 When Hart saw CJ shortly after 4:00 a.m. outside the residence, the defendant was
20 wearing jeans pants that were tight and "not his size" and a pair of slippers. He
21 was not wearing any shirt. On the evidence before me, CJ had not left any of his
22 clothing at Hart's residence except a shirt. Rankine says that immediately after the

1 shooting he saw CJ go towards Sea View Road. The defendant's father lives on
2 Sea View Road near the clinic. I conclude that the defendant changed his pants
3 and shoes at some point after Hart last saw him at 11:15 p.m. on September 21st
4 and before Hart saw him again around 4:00 a.m. When doing so, he exchanged
5 his pants for a pair of tight jeans which were not his size and his shoes for
6 slippers. He opted to wear no shirt at all.

7 74. I consider this change of clothing to be a suspicious circumstance. An 18-year-old
8 Caymanian is likely to be very conscious of his appearance and unlikely to wear
9 undersized jeans and slippers without good reason, such as a desire to avoid
10 recognition through his clothing or because his more presentable clothing is being
11 washed. Moreover, the evidence suggests that the jeans and slippers were not
12 items he had brought with him to Hart's residence initially, so he must have gone
13 out of his way to obtain them at an early hour of the morning and without any
14 apparent reason.

15 75. Around 9:00 a.m. on September 22nd, Hart saw the defendant on a bus. The
16 defendant said to Hart "I am going down because up here is too hot". By this
17 point, a number of police officers were in East End to investigate the shooting. In
18 the vernacular, "too hot" means there was too much police activity to suit the
19 defendant in East End. I consider this remark, in its context, to carry a suspicious
20 connotation.

21 76. Rankine testified that after the shooting, while he was walking with CJ to get
22 some weed, the defendant said, "Don't make nobody know about this", or "Don't

1 make nobody know nothing about it", in a threatening manner. According to Hart,
2 the defendant was arrested on suspicion and later released. A few days later, Hart
3 overheard the defendant say to Rankine "Just hold your mouth". The defendant
4 had sought out Rankine, who by this time was cooperating with the police, for the
5 conversation. Hart then followed the two men as they walked and talked further.
6 CJ was doing most of the talking and Hart gained the impression that Rankine
7 was trying not to say anything.

8 77. Hart impressed me as a truthful witness. He has no apparent motive to lie about
9 the defendant, who is his cousin and someone who was trustworthy enough to be
10 allowed to enter the residence at 3:15 a.m. while Hart and his family were asleep.
11 I am satisfied that Hart overheard the defendant warning Rankine against talking
12 to others about something of importance to the defendant. This is independent
13 support for Rankine's evidence that the defendant told him in a threatening
14 manner, very soon after the shooting, to keep quiet.

15 78. Keith Gourzong says in his witness statement that late in the evening of
16 September 21st he saw a man, alleged to be the defendant, walk by with two other
17 men and cover his face as he passed. The description given of this man is that he
18 had something white wrapped around his head, wore a cap, wore short pants —
19 no colour was mentioned — and had stocky legs. No other witness has described
20 the accused as having stocky legs. Because of that, I am not satisfied from this
21 brief description that the man who covered his face was the defendant, so I draw
22 no inference from Gourzong's evidence.

1 79. Sergeant Mason testified that one of McGaw's shoes was tucked into his shorts
2 when the body was found. This is shown in one of the photographs. In cross-
3 examination, Rankine said that when McGaw accompanied him to the boat they
4 both took their socks off. Later, when asked again if McGaw took his socks off,
5 Rankine said he could not recall. I accept this second answer as correct. The
6 defendant invites me to conclude that the apparent lack of any sea water on the
7 socks or clothing when the body was found casts some doubt on Rankine's
8 credibility.

9 80. I do not view either the evidence about the shoe or the evidence about the socks as
10 having any adverse impact on Rankine's credibility. The former is simply an
11 unexplained mystery. As for the latter, McGaw may have taken the socks off and,
12 in any event, his socks and clothing may well have dried out in the hot tropical
13 climate.

14 81. Dr. Mark Shuman, a forensic pathologist, gave expert evidence about McGaw's
15 wounds. There were three gunshot wounds. If four shots were fired, one must
16 have missed the target. That hypothesis is not inconsistent with Rankine's
17 evidence.

18 82. One gunshot wound, which I will call number one, was to the head. The path of
19 this shot was from left to right, front to back, and downward. There was another
20 shot which entered the back of the left arm, exited the arm and then re-enters the
21 body at the left back area of the chest. I will call this wound number two. The arm
22 would have been roughly parallel to the ground if McGaw was standing when

1 shot, and raised somewhat if McGaw was on the ground but the shooter was
2 standing. The third gunshot wound, number three, entered the body in the lower
3 right area of the chest and passed from right to left, lodging in the left chest area.

4 83. Rankine says the first shot was fired while CJ was about three feet behind McGaw
5 and two feet or so to the left. Rankine cannot say whether this shot hit CJ or
6 missed. The second shot was fired by CJ towards McGaw's back while he was
7 chasing him. There is no evidence whether this shot hit or missed. Rankine heard
8 the third shot, which was not mentioned by Rankine until he gave evidence, but
9 did not see it being fired, so he cannot say whether it hit or missed. Rankine says
10 that he saw CJ point the gun downward at an approximate 45 degree angle when
11 firing the last shot.

12 84. The evidence about what I have called gunshot wound number one is consistent
13 with Rankine's testimony about the fourth shot. Gunshot wound number two
14 might have been sustained from the second or third shots, but is inconsistent with
15 the positioning of CJ and McGaw at the time of the first shot. It seems unlikely
16 that the second gunshot wound would be the result of the fourth shot; because of
17 the severity of the head wound, that was likely suffered last.

18 85. What I have referred to as gunshot wound number three is inconsistent with what
19 Rankine says he observed at the time of the first, second and fourth shots, but
20 could be the result of the third shot fired.

1 86. In summary, if Rankine's evidence is truthful, gunshot wound number one
2 occurred on the fourth shot, wound number three could only have been sustained
3 on the third shot, and wound number two would have been sustained on the
4 second shot while CJ was chasing McGaw. The inference is that McGaw's left
5 arm was extended backward when the shot was fired. There is no evidence from
6 Rankine of the position of McGaw's arm when the shot was fired. These
7 conclusions suggest that the first shot simply missed.

8 87. I emphasise, again, that the issue is not the accuracy of Rankine's memory, but his
9 truthfulness overall. The question I must ask regarding this pathology evidence is
10 whether it provides a reason to disbelieve Rankine's essential assertion that he
11 saw CJ, and not someone else, kill McGaw. I do not consider that it does. The
12 three wounds could have been sustained in the manner I have described.

13 88. Rankine saw McGaw drop face first to the ground between the third and fourth
14 shots. Obviously, he would have sustained significant injury from that fall.
15 However, when describing the abrasions on the body, Dr. Shuman listed 23
16 separate observations, including abrasions on the thigh, ankle and great toe. These
17 were all recent injuries. It is unlikely that all these abrasions could have been
18 sustained in a single fall. There is no evidence from any source which might serve
19 to explain how the injuries originated. McGaw could have suffered relatively
20 minor injuries in some sort of accident or altercation shortly before the evening of
21 his death. He might have struggled briefly with the shooter at a time when
22 Rankine was not watching. The failure of Rankine's evidence to "explain" the

1 presence of these additional injuries cannot be elevated into a reason for
2 disbelieving him.

3 89. Ms. Wass says Rankine lied in his evidence about the flare gun so the rest of his
4 evidence is untrustworthy. He testified that he retrieved it from his father's boat,
5 but the father has since said to the police that a flare gun is still on the boat. In
6 general, a boat owner needs only one flare gun. Rankine also agreed that after
7 losing one flare cartridge he obtained another from his residence. This, says Ms.
8 Wass, shows that Rankine had possession of a flare gun at his residence and that
9 was the gun the men were firing. Although Rankine admitted to owning a flare
10 gun, he said it was broken and could not be fired. The suggested conclusion is that
11 Rankine was lying about retrieving and firing a flare gun from the boat rather than
12 from the residence.

13 90. It is entirely unclear why Rankine would choose to lie about such a collateral
14 point. There is no evidence that he could find himself in any sort of difficulty if he
15 admitted to firing his own, as opposed to his father's, flare gun. The father's boat
16 had been purchased from another owner. As Rankine suggested in cross-
17 examination, it is not unreasonable to think there might have been another flare
18 gun on the boat although the father did not realise it. The father was not called as
19 a witness. Upon analysis, I do not find that Rankine's evidence about the flare gun
20 provides a reason to question his truthfulness.

21 91. Ms. Wass has observed that no witness saw any indication that the defendant was
22 carrying a handgun on the evening in question. No one said, for example, that he

1 appeared to have a heavy or bulky object in a pocket or tucked into his waistband.
2 However, Rankine said "He can carry anything in jeans pants" when referring to
3 what CJ was wearing. I infer that the jeans pants in question were large and
4 baggy, of the sort favoured by most young Caymanian men. Hart called the pants
5 "dress pants" but was not questioned about their apparent capacity to conceal a
6 gun.

7 92. The evidence does not go as far as the defendant suggests. The defendant could
8 have carried a firearm in a pocket or tucked a firearm into the waist of his pants
9 and covered it with a white T-shirt. No one has testified to the length of that T-
10 shirt. I do not consider that the absence of affirmative evidence that CJ was
11 carrying a gun shows that he was not doing so.

12 93. A handgun could also have been concealed, to the defendant's knowledge, in the
13 area around the clinic before the shooting. It is a common practice on this island
14 for guns to be concealed on land which is unconnected with the gun's owner.

15 94. After the shooting, Rankine ran to his home and got into bed. He made no effort
16 to assist McGaw, his best friend, either immediately afterwards or when he was
17 safe at home and could have dialed 911. I believe he became deeply ashamed of
18 his failure to help and that, in turn, was a significant factor in his decision to
19 provide his second statement to the police. His failure to help casts no doubt upon
20 his credibility but, on the contrary, serves to make his subsequent behaviour more
21 understandable.

1 95. Sergeant Mason said he saw Rankine at Rankine's home on September 26th,
2 2011. Mason viewed him as a witness, not a suspect. He said "I had no
3 information causing me to view him as a suspect". Rankine was not himself.
4 Apparently Rankine was known to Mason. He said Rankine was very irritable at
5 times. "He hung his head." "He was different." Mason took Rankine to the police
6 station to give a statement. Rankine gave the first statement, which contained
7 nothing incriminating about CJ.

8 96. Mason said "I went to the front office to share my observations of Rankine".
9 Detective Inspector Walkington was there. Rankine was left alone for two or three
10 minutes. Walkington then went to see Rankine. Mason returned to the room and
11 Mason said that when I arrived Walkington was saying "if Rankine knew
12 something he should speak up". Rankine made no response. He hung his head. He
13 then got up and walked to the bookcase and sat down. He then got up and walked
14 to the door. He was crying. He said "CJ kill Asher" and started bawling. Mason
15 said: "What did you just say?" and Rankine repeated "CJ kill Asher".

16 97. Mason said it was necessary to give Rankine time to compose himself and then he
17 took the second statement in which CJ is incriminated. While giving the second
18 statement, Rankine broke down repeatedly. Mason said the taking of the first
19 statement took about an hour. He said that Detective Inspector Walkington was
20 mild mannered in his approach to Rankine.

21 98. Detective Inspector Walkington gave evidence as the senior investigating officer.
22 He said he had never met Rankine prior to September 26th. He was not told that

1 Rankine was a suspect. Around 6:40 p.m., Officer Lee entered the office and
2 began printing off the first witness statement. Mason and Lee both said that
3 Rankine wanted to tell what happened but had stopped short in their opinion.

4 99. Walkington left the office and went to the room in which Rankine was held.
5 Rankine was seated with his head bowed. Walkington told Rankine who he was
6 and called to Rankine by name. Walkington said "I have 34 years' police
7 experience and you are hiding something, I can see it in your face". He testified
8 that Rankine was getting emotional. Walkington said "what happened to Asher
9 was wrong and whoever was responsible had to be brought to justice before
10 anyone else gets hurt". Mason then entered the room. Mason explained to
11 Rankine who Walkington was and "said that we could help him". Rankine
12 lowered his head which he rested on his left hand. Walkington said: "were you
13 and Asher friends?" Rankine said "for a long time". Walkington said: "don't you
14 think you owe it to him to tell us what happened?" Walkington said he
15 "understood" if Rankine was fearful of what could happen to him but he reassured
16 Rankine that the police would do "everything in their power" to ensure his safety.
17 Rankine got out of his chair, walked to the back door, pulled it shut and locked it.
18 He then returned to his seat and said "I was there when Asher got shot". At this
19 point, Walkington instructed Mason to continue with the second interview.

20 100. The defendant says that the police pressured Rankine to change his story, no
21 doubt in exchange for favourable treatment later. Rankine was just 17 at the time
22 of the interview and vulnerable as he was on bail for wounding. Ms. Wass argues

1 that the manner in which the second statement was obtained renders it inherently
2 unreliable.

3 101. I acknowledge that the factors I have mentioned require a special degree of
4 caution in weighing Rankine's testimony. I am satisfied, however, that the real
5 reason Rankine changed his story is not the hope of later advantage but an
6 overwhelming feeling of guilt that he had done nothing to assist his now deceased
7 friend. He hung his head. He cried. He needed time to compose himself. His
8 demeanour appeared "different" to Mason, who knew him. I observed Rankine's
9 demeanour closely while he gave his evidence and I also detected an element of
10 embarrassment and guilt as he spoke. I saw no indication in Rankine's demeanour
11 that he was feigning. Overall, I am satisfied that the reason for his change of story
12 is the one he gave: "I couldn't hold it in any more." It follows that I do not regard
13 Rankine's prior inconsistent statement to the police as a reason to reject his
14 evidence.

15 102. Upon arrest, the defendant made no comment and exercised his right to silence. I
16 draw no inference at all from that fact as the circumstances in which I might do so
17 have not arisen.

18 103. The Crown says that I am permitted to draw an adverse inference from the failure
19 of the accused to give evidence and I should do so. There is statutory support for
20 such an inference. The *Evidence Law (2007 Revision) s.18(b)* reads:

1 "The failure of a person charged with an offence to give evidence shall not be
2 made the subject of comment by the prosecution but the court or jury may draw
3 any reasonable inference from such failure."

4 104. The *Police Law, 2010, s.149(3)* contains this provision:

5 "Where this subsection applies, the court or jury, in determining whether the
6 accused is guilty of the offence charged, may draw such inferences as appear
7 proper from the failure of the accused to give evidence or his refusal, without
8 good cause, to answer any question."

9 105. There are constraints contained in s.149(1), which reads:

10 "At the trial of any person for an offence subsections (2) and (3) apply unless -

11 (a) the accused's guilt is not in issue; or,

12 (b) it appears to the court that the physical or mental condition of the
13 accused makes it undesirable for him to give evidence,

14 But subsection (2) does not apply if, at the conclusion of the evidence for the
15 prosecution, his attorney-at-law informs the court that the accused will give
16 evidence or, where he is unrepresented, the court ascertains from him that he will
17 give evidence."

18 106. Section 149 of the *Police Law* is in substantially the same form as s.35 of the UK
19 *Criminal Justice and Public Order Act 1994*, which was considered in depth by

1 the UK Court of Appeal in *R. v. Cowan et al.* [1996] 1 *Cr.App.R.* 1. The
2 conclusions of the Court of Appeal, which are apt in both jury and non-jury trials,
3 represents the state of the law in the Cayman Islands. The court concluded:

4 1. The legislation alters, and was intended to alter, the law and practice
5 applicable to a criminal trial where the defendant does not give evidence;

6 2. The proposition that an adverse inference should be drawn only “in
7 exceptional cases” is wrong;

8 3. The burden of proving guilt to the required standard remains upon the
9 Crown throughout;

10 4. No trier of fact may convict solely on the basis of an inference drawn from
11 the defendant's silence;

12 5. The prosecution must always establish a *prima facie* case before any
13 question of the defendant testifying and, as a consequence, before any
14 question of an adverse inference from silence arising is raised;

15 6. The judge retains a discretion as to whether an adverse inference should be
16 drawn;

17 7. In a jury trial, the judge retains a discretion as to what he should say to the
18 jury on the subject. The Specimen Directions suggested by the Judicial
19 Studies Board in the UK are “in general terms, a sound guide”;

1 8. The trier of fact may regard the inference from failure to testify as a
2 further evidential factor in support of the prosecution's case.

3 107. On the subject of the court's discretion to decline to draw an adverse inference
4 from silence at trial, the Court of Appeal said this:

5 "We accept that apart from the mandatory exceptions in section 35(1), it will be
6 open to a court to decline to draw an adverse inference from silence at trial and
7 for a judge to direct or advise a jury against drawing such inference if the
8 circumstances of the case justify such a course. But in our view there would need
9 either to be some evidential basis for doing so or some exceptional factors in the
10 case making that a fair course to take. It must be stressed that the inferences
11 permitted by the section are only such 'as appear proper'. The use of that phrase
12 was no doubt intended to leave a broad discretion to a trial judge to decide in all
13 the circumstances whether any proper inference is capable of being drawn by the
14 jury. If not he should tell them so; otherwise it is for the jury to decide whether in
15 fact an inference should properly be drawn."

16 108. In further elaboration upon what the trial judge may and should tell the jury, the
17 Court of Appeal said:

- 18 1. The jury must be told that the defendant is entitled to remain silent;
19 2. The jury must be told that an inference from failure to give evidence
20 cannot on its own prove guilt;

1 3. Before drawing any inference, the jury must be satisfied that the
2 prosecution have established a case to answer and they must be told that;

3 4. The jury is entitled to conclude that the defendant's silence at trial "can
4 only sensibly be attributed to the defendant's having no answer or none
5 that would stand up to cross-examination" in which case they may (not
6 must) draw an adverse inference."

7 109. Finally, the court made the important observation that advocates are not permitted
8 to "give evidence" under the guise of making a submission; it is improper for a
9 defence attorney to say anything to the jury about his client's reasons for failing to
10 testify in the absence of evidence supporting those reasons.

11 110. Before I can draw any adverse inference, I must be satisfied that there is a prima
12 facie case.

13 111. Mr. Rankine's credibility is confirmed by three bits of independent evidence: the
14 defendant's unexplained change of clothing shortly after the shooting; the
15 defendant's statement to Earl Hart that he was leaving the area during the police
16 investigation because it was "too hot"; and the defendant's insistence after being
17 arrested that Antascio Rankine "hold his mouth".

18 112. Mr. Rankine's demeanour when he made his two statements to the police also
19 provides some support for his credibility.

1 113. His confusion over the chronology of events before the shooting; his evidence
2 about the flare gun; the pathology evidence; and the lack of motive do not suggest
3 Mr. Rankine was lying, although they certainly support a conclusion that he is
4 mistaken about certain points of detail.

5 114. I consider that the evidence of Antascio Rankine, taken together with the pieces of
6 evidence described above which support his credibility does amount to a *prima*
7 *facie* case. There was no application to dismiss on the ground of no case to
8 answer. Had there been such an application, I would have rejected it.

9 115. This is not a case where it can be said, in the words of s.149(1)(a), that the
10 "accused's guilt is not in issue". There is no evidence before me that the physical
11 or mental condition of the accused makes it undesirable for him to give evidence.
12 I am, therefore, permitted to draw a "reasonable inference" or "such inference as
13 appears proper" from the defendant's silence at his trial. The drawing of such an
14 inference is not mandatory.

15 116. The Crown has presented a body of evidence which demands an answer. If the
16 change of clothing, and Mr. Scott's remark to Earl Hart as he was leaving town,
17 and Mr. Scott's demand that Antascio Rankine "hold his mouth" have innocent
18 explanations, then Mr. Scott was the appropriate witness to say so. The defendant
19 has chosen not to answer. That can only be because he considers that giving
20 evidence and submitting to cross-examination will not assist his defence. In these
21 circumstances, I do draw an adverse inference against the defendant and that,
22 together with the *prima facie* case described above, makes me sure of his guilt.

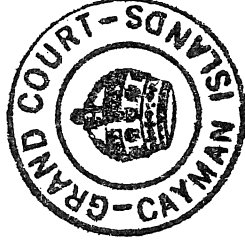
1 117. I find Mr. Scott guilty of each of the three charges in the indictment.

2 118. On Count 1, Mr. Scott, I sentence you to the only penalty permitted by law. I
3 sentence you to imprisonment for life. On Counts 2 and 3, I sentence you, in each
4 case, to imprisonment for ten years, the said sentences to be concurrent with the
5 sentence on Count 1.

6 119. I would like to thank counsel for their assistance in this case.

7 Dated this June 12th, 2012

8



9 *Henderson, J.*

10 Henderson, J.

11 Judge of the Grand Court