

✓
13-09-12

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

COURTS OFFICE LIBRARY

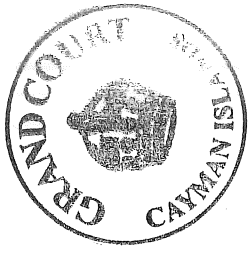
INDICTMENT NOS: 50/11 & 3/12

REGINA

v.

CHARLES MICHAEL EBANKS
&

FREDERICK AUGUSTUS BOOTHE



Appearances:

Ms. Tricia Hutchinson on behalf of
the DPP for the Crown

Ms. Lucy Organ of Samson and
McGrath for the Defendant Charles
Ebanks

Mr. John Furniss for Defendant
Frederick Boothe

Before:

Justice Carol Beswick (Actg.)

Heard:

3rd September 2012: Joinder
Application and Ruling;

4th – 7th September 2012: Trial;

7th September 2012: No case to
answer submissions from both
Defence counsel. Opposing
submissions from Prosecution
counsel;

10th September 2012: No-case to
answer Ruling delivered in favour of
Charles Ebanks and closing
submissions in relation to Frederick
Boothe

JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

1 The Defendant, Mr. Frederick Boothe, was charged with Mr. Charles Ebanks
2 on an Indictment containing one count for unlawful possession of an
3 unlicensed firearm, contrary to s.15(1) and 15(5) of the Firearms Law (2008
4 Revision). The Indictment states that the particulars of the offence are that
5 Charles Michael Ebanks and Frederick Augustus Boothe, on the 26th day of
6 March 2011 in the vicinity of the L.I. Night Club, Lawrence Avenue, Grand
7 Cayman, had in [their] possession a firearm, namely a Ruger .44 caliber
8 revolver, except under and in accordance with the terms and conditions of a
9 Firearms Users Licence.

10
11 2. Both pleaded not guilty to the offence and after submissions at the end of the
12 prosecution's case the Court ruled that Mr. Ebanks had no case to answer,
13 and a formal verdict of Not Guilty has been entered against him. The case
14 continued against Mr. Boothe alone.

15
16 3. Mr. Boothe chose not to give evidence or call witnesses and, I remind myself
17 at the outset that he has no burden to prove his innocence. Rather, it is the
18 prosecution who has the burden to satisfy me of his guilt, beyond a
19 reasonable doubt, before I can find him guilty. I must be sure of his guilt
20 before coming to such a verdict.

21
22 4. Whilst reminding myself of the burden of proof being that of the prosecution,
23 I also note that, because the Defendant Boothe has elected not to give
24 evidence or call any witnesses, in this way, he has not availed himself of the
25 opportunity to present optional reasons for his DNA found on the firearm, for
26 his presence in the vicinity of the location in which the firearm was found,

1 other matters related to this case, or, to have his statements tested under cross
2 examination for the benefit of the Court. He has the right to make that
3 election and I draw no adverse conclusion because of his election.
4

5 5. The Prosecution relied on several witnesses to prove its case. Some spoke to
6 the allegations and others spoke to the retrieval of items and scientific
7 analysis of them.
8

9
10

THE EVIDENCE

PC Jonathan Horner

11

12
13 6. PC Horner, an officer of the Royal Cayman Islands Police Service (RCIPS),
14 testified that at about 2:35 a.m. on Saturday the 26th March 2011 he was on
15 patrol when he received a transmission on the police radio. He went to the LI
16 Night Club with PC Smith who was with him, and drove to the front entrance
17 of the Club. PC Horner walked from the main entrance along the back
18 towards a dumpster, in the general direction of the rear exit door. He saw two
19 men, including Defendant Frederick Boothe, and covertly drew his firearm
20 and shouted to them to put their hands on the vehicle near them. The men
21 complied, the police searched the men and nothing was recovered. The men
22 were released.
23

24 7. Then PC Horner noticed that PC Smith was with another man who was later
25 identified as Charles Ebanks, whom, according to PC Horner, PC Campbell
26 had said he had seen secrete something in the bush.
27

1 8. The police searched the area surrounding Mr. Ebanks and found a firearm.
2
3 9. Charles Ebanks said that he had been with Defendant Boothe throughout the
4 night. PC Campbell, who had joined these officers, then went to get
5 Defendant Boothe, who was in the parking lot, and both Defendant Boothe
6 and Charles Ebanks were arrested.

7
8
9 PC Jeremy Smith

10
11 10. PC Smith testified that when he arrived on the location he searched
12 Defendant Boothe and another man. Having searched them and found
13 nothing, he released the men and joined PC Campbell who had by then
14 detained Charles Ebanks. PC Smith joined in the search of the bushes.
15
16 11. Within about 25 seconds, he found a firearm. There was a branch of an
17 almond tree extending over the pavement of the parking lot. PC Smith said
18 he lifted the branch with one hand and when he put the beam of his flashlight
19 under the branch he saw the firearm among dry leaves.
20
21 12. According to PC Smith he gave his colleagues instructions and it was then
22 that PC Campbell went for Defendant Boothe and brought him back to the
23 scene. PC Smith says that he asked Defendant Boothe and Charles Ebanks
24 what it was that he had found and who it belonged to. Defendant Boothe
25 replied that he knew what it was but did not know to whom it belonged or
26 how it got there. PC Smith identified the firearm, which is now in evidence
27 as Exhibit 1.

28
29

PC Derron Campbell

1
2
3 13. PC Campbell testified that he also responded to the transmission and went to
4 the rear of the parking lot at LI Night Club. PC Campbell said he could hear
5 PC Horner giving instructions to two males in the parking lot. At the same
6 time, according to PC Campbell, he saw a male, later identified as Charles
7 Ebanks, slightly crouched in bushes, appearing as if he were placing
8 something in the bushes.

9
10 14. Under cross examination PC Campbell agreed that he did not see Charles
11 Ebanks place anything in the bushes and agreed further that Mr. Ebanks's
12 movement was such that he could not only be putting down something, but
13 he could also be picking up something or searching.

14
15 15. The police searched the area and found what appeared to be a firearm under
16 some trash. The barrel was not hidden. Immediately, testified PC Campbell,
17 he went to the entrance of the LI Night Club where the Defendant Boothe
18 was standing, and asked him to return to where Mr. Ebanks and the other
19 RCIPS officers were.

20
21 16. Under cross examination PC Campbell testified that where the officer first
22 stopped Defendant Boothe was about 30 to 35 feet from the rear exit.

23
24
25
26
27
28
29
30
31

PC Norman Banfield

17. PC Banfield's statement was read into evidence. He described that he had arrived on the scene at the LI Night Club and had seen the police search Defendant Boothe, as well as other persons and nothing relevant was found.

Officer Orlando Williams

18. Officer Orlando Williams, who is attached to the Scientific Support Group (SSG) of the RCIPS, testified that he is trained and is experienced in crime scene investigation.

19. On the 26th March 2011, at about 4:10 a.m., he went to the LI Night Club in response to a call. Sgt. Christopher Richards of the Uniform Support Group (USG) gave him some information as a result of which Officer Williams made some preliminary checks of a particular area.

20. In that area Officer Williams saw what appeared to be a firearm in some bushes in the vicinity of the parking lot to the rear of the night club. According to Officer Williams, without removing the firearm, he took pictures of it and the area and therefore the firearm was photographed in the original state in which he had seen it.

21. Officer Williams describes that he and Sgt. Christopher Richards were dressed in protective covering, including latex gloves. Sgt. Richards then made the weapon safe and Officer Williams next put the weapon in a more

1 visible place where he took more photographs of it, as well as the two (2)
2 live rounds of ammunition which were in it.
3

4 22. Officer Williams packaged and sealed and labeled the firearm and
5 ammunition.

6
7 23. His evidence continues that later, Detective Sean Bryan arrived and joined
8 him, Sgt. Richards, and PC Campbell in conducting a detailed search of the
9 area – looking for ganja, cigarettes or anything of that sort. Nothing was
10 found.

11
12 24. Officer Williams returned to his office and downloaded the images of the
13 photographs he had just taken and created an album of photos – some of
14 which are exhibited. They are images of the firearm and the ammunition, as
15 well as the surroundings in which they were found.

16
17 25. Officer Williams identified photograph 5 as showing how the firearm was
18 positioned when he went to the LI Night Club location – that is, the handle,
19 the trigger guard and trigger were visible under a leaf.

20
21 26. Officer Williams took the firearm and the bottles he had found nearby, to the
22 examination room. There were no fingerprints, but he processed the items for
23 DNA. He wore personal protective clothing, with gloves. He used sterile
24 cotton tips from his kit to swab named areas of the firearm, areas which
25 would have been touched by a person using the firearm.

26
27

28

1 27. Officer Williams' evidence is that he handed over the firearm and rounds for
2 storage. On being further instructed by his supervising officer, Officer
3 Williams was present when, on the 31st March 2012, a board section of the
4 handle was dismantled. Officer Williams then took swabs from these other
5 areas for DNA testing. The expectation was that a person holding the firearm
6 would most likely sweat and the DNA would seep under that area.

7
8
9 28. In cross examination Officer Williams told the Court that the firearm was in
10 the bushes under the almond tree, about six to ten feet from the Club. Officer
11 Williams said he was in the bush when he saw the firearm and did not have
12 to lift a branch to see the firearm. He said he could not see the firearm from
13 the curb, but would have had to go into the bush to see it.

14

15 Det. Sgt. Sean Bryan

16
17 29. Det Bryan testified that on the 26th March 2011, at about 3:45 a.m., he went
18 to the George Town Police station and spoke briefly with Mr. Boothe and
19 Mr. Ebanks. Thereafter he joined Officer Williams at the scene of the
20 incident and gave Officer Williams instructions.

21

22 30. Det. Bryan's evidence is that he thereafter sought to obtain statements,
23 diagrams and records from the officers involved, and also from the 911
24 emergency centre.

25

26 31. Det Bryan further testifies that he and another officer, Ginn, returned to the
27 location at about 6:45 a.m. that morning. The search revealed nothing
28 relevant, as did the search of Mr. Boothe's house.

1 32. At approximately 5 p.m. that day Det. Sgt. Bryan, according to his evidence,
2 recorded an interview he had with Mr. Charles Ebanks, and thereafter, he
3 interviewed Defendant Boothe. Mr. Boothe had no attorney-at-law to assist
4 him at the interview and had no comment for the majority of questions he
5 was asked.

6
7 33. On the 15th April Det. Bryan obtained a buccal swab from the Defendant
8 Boothe for DNA purposes.

9
10 34. Det. Bryan's evidence is that later in the investigations he arrested Cleve
11 Borden – the person whose DNA was also found to have been on the firearm,
12 but there was insufficient evidence to charge him for an offence.

13
14

15 Det Constable Trevor Ginn

16
17 35. Det. Ginn's statement was read. His evidence was that at about 7:15 a.m. on
18 Saturday the 26th March 2011, he, with Det. Constable Bryan, searched a
19 wooded area of the car park at LI Night Club and later, with PC Bryan,
20 recorded an interview with Defendant Boothe.

21
22
23

Mr. Allen Greenspan

24
25 36. Mr. Greenspan is a firearms and tool mark examiner and I accept him as an
26 expert in the field of firearms and bullets.

27

28 37. In his statement which was read, Mr. Greenspan stated that on the 11th April
29 2011 he received a sealed, labelled box from the RCIPS with a Ruger

1 revolver and cartridges. He examined the items and found that the firearm
2 was in an operable condition and is a lethally barrelled weapon, capable of
3 causing either death or serious injury. The rounds, he thought, were viable.
4

5 Ms. Tiffany Roy

6
7 38. Ms. Roy was accepted by the Crown and Defence as being an expert witness,
8 she being a Forensic Scientist from DNA Labs International, Florida.
9

10 39. I remind myself that her evidence is to assist me with one particular area of
11 the matter, that is, DNA. I remind myself that I am not obliged to accept her
12 evidence as being true. Ms. Roy is a trained and qualified Forensic DNA
13 Analyst but is, in fact, simply a witness and I can accept what she says or
14 reject what she says. That also applies to all expert witnesses who have given
15 evidence based on their expertise, but whose evidence is subject to the same
16 examiner any other witness.

17
18 40. Ms. Roy explained that deoxyribonucleic acid (DNA) is found in the cells of
19 the body and comes 50:50 from each parent. It is found in body fluids, for
20 example, sweat. Nevertheless, it is possible to handle an item and not leave
21 DNA behind.

22
23 41. Ms. Roy testified that social factors affect the deposit of DNA on a surface.
24 These include the frequency with which an item is handled, and the quality
25 of one's skin.

26
27 42. Ms. Roy described the process in the laboratory in which any sample
28 received in the lab is given a unique number so that its passage through tests

1 in the laboratory can be easily followed. The specimen is first subjected to
2 chemicals which extract any DNA present. The next step is to measure the
3 amount of DNA present and then to copy it so that its presence can be
4 detected and displayed by a monitor. The scientist then analyses the
5 information and makes comparisons to determine, *inter alia*, if there is DNA
6 present from more than one person. Thereafter, the DNA of a known sample
7 is compared with DNA from the evidence.

8
9 43. Ms. Roy testified that on the 28th April 2011 she received specific items at
10 her laboratory and the items included the swabs which had been collected by
11 Officer Williams along with a specimen from Defendant Boothe.

12
13 44. Ms. Roy's evidence was that the results of the examination of the
14 swabs taken from the *outer handle of the firearm*, on both the right and
15 left side of it, showed a mixture of two individuals contributing to a
16 major and a minor DNA profile. Further research using the
17 Laboratory's database showed that the major profile matched the DNA
18 of Mr. Cleve Borden. Ms. Roy stated that the chance that a person,
19 chosen at random from the general population, matches this major
20 DNA profile is approximately 1 in every 45 million individuals. Mr.
21 Boothe was excluded as a contributor to that profile.

22
23 45. As it concerns a swab taken from *the hammer, the trigger guard and*
24 *the trigger of the revolver* the results showed a mixture of the DNA of
25 at least four individuals. Mr. Boothe could not be excluded as a

1 contributor to this mixed profile. The chance that a person, chosen at
2 random from the general population, matches that mixed DNA profile
3 is approximately 1 in every 1,550 individuals.
4

5 46. As it concerns a swab taken from *the rusty section of the cylinder of*
6 *the firearm* the DNA profile indicated a mixture of at least two
7 individuals and Mr. Boothe could not be excluded as a contributor.
8 The chance that a person chosen at random from the general
9 population, matches that mixed DNA profile is approximately 1 in
10 every 110 individuals.
11

12 47. As it concerns a swab taken from *the inner area of board portion of*
13 *the handle of the firearm* the DNA indicated a mixture of at least two
14 individuals and Mr. Boothe could be excluded as a contributor.
15

16 48. As it concerns *the metal section of the handle of the firearm* the DNA
17 profile indicated a mixture of at least four individuals. Mr. Boothe
18 could not be excluded as a contributor to this profile. The chance that a
19 person chosen at random from the general population, matches that
20 mixed DNA profile is approximately 1 in 230 individuals.
21
22
23
24

ANALYSIS

49. Section 15(1) of the Firearms Law (2008 Revision) provides that, subject to certain named exceptions, no person shall be in possession of any firearm except under and in accordance with the terms of a Firearm User's (Restricted) Licence.

50. It is agreed that the Defendant Boothe has no licence for a firearm and I accept as accurate the unchallenged evidence of Mr. Greenspan that the firearm is an operable, lethal barrelled weapon, capable of causing either death or serious injury. It therefore falls within the meaning of a firearm within the law.

51. The issue therefore is that of possession. Was Defendant Boothe in possession of the firearm?

52. According to s.3 of the Penal Code (2010 Revision):

“possession “ includes not only having in one’s own personal possession, but.....having anything in any place...for the use or benefit of oneself or any other person.”

53. In this matter Defendant Boothe did not have the firearm in his own personal possession, so the question becomes whether he had it in the place and also if it was there for the benefit of himself or any other person.

54. It is clear to me that whoever put the firearm where it was eventually found by the police, did so in order for it to be for the use or benefit either of himself or another person. The firearm was operable. It was capable of

1 being used to cause either death or serious injury. It is an item which would
2 be of great importance to persons who use firearms in the pursuit of their
3 own devices.
4

5 55. The question then is whether it was the Defendant Boothe who “had it in that
6 place” that is, that in being in that place the firearm was in his possession.
7

8 56. In order to establish possession in Defendant Boothe, the prosecution must
9 prove that he had some actual control of the firearm. The Court of Appeal in
10 **R v. Jacobs** [2002]EWCA Crim. 610 at par 10 stated that:

11
12 “*The reality, of course, is that there must be some actual control in order*
13 *to render a person guilty of being in possession of an object. It need not*
14 *be exclusive control. . .”*
15

16 57. In **Jacobs**, the firearm had been under a cushion in the home in which the
17 Appellant was lodging. The owner of the house was sitting on the cushion at
18 the time that the firearm was found. At the trial the Appellant had been
19 found to be in possession of the firearm.
20

21 58. The Court of Appeal, in allowing the appeal, quashed the Appellant’s
22 conviction for possession of a prohibited weapon, and emphasised that there
23 was no evidence that the appellant was in any way exercising any degree of
24 control over the weapon in question and he could not be properly convicted
25 of being in possession of it.
26

27 59. In the instant matter the prosecution submitted that by being in close
28 proximity to the firearm when it was found, Mr. Boothe was exercising

1 custody and control over it. There was however no direct evidence of the
2 distance that separated the Defendant from the firearm when it was found.
3 The evidence on which the Crown relies to say that he was in close proximity
4 to the firearm is inferential. They rely on the fact that PC Horner had
5 testified that he came upon the Defendant in the general vicinity of the rear
6 exit door of the nightclub, that the firearm was found under an almond tree,
7 and, that the almond tree was about 20 feet from the exit. Based on that
8 evidence, the Crown submits that the Defendant was about 20 feet from the
9 firearm when it was found by the police and that that must be taken to mean
10 he had custody and control of it.

11
12 60. Counsel for the defence argues however that the Defendant was physically
13 away from the firearm in an area of the parking lot of the nightclub and was
14 not walking to the bush or from the bush. His argument is that there was no
15 evidence that the Defendant was having anything to do with the firearm
16 when it was found.

17
18 61. Defendant Boothe had himself acted in no manner to arouse the suspicion of
19 the police that early morning and indeed it was not until Mr. Ebanks made
20 certain statements that the police went and brought Mr. Boothe to the place
21 where the firearm had been found.

22
23
24
25
26

DNA

1
2 62. I consider now the presence of the Defendant's DNA on the firearm.

3
4 63. The evidence of the Forensic Analyst has satisfied me so that I am sure that
5 the Defendant cannot be excluded from persons who came in contact with
6 the firearm in question.

7
8 64. Counsel for the Defendant has argued that the presence of his DNA is not
9 sufficient to find that he is in possession of the firearm and relies in support
10 of that on the Judgment of the Honourable Chief Justice **R v. Sciamonte and**
11 **Whittaker** [Indictment 94 of 2008].

12
13 65. There Mr. Sciamonte was found not guilty of possession of the firearm where
14 the only evidence connecting him with the firearm was the presence of his
15 DNA on it. Counsel for the prosecution did however indicate that in that
16 matter, the Defendant had not been in the location where the firearm had
17 been found.

18
19 66. I accept the truth of that argument by Defence but in my view this case is
20 clearly distinguishable from **Sciamonte**.

21
22 The unchallenged evidence here is that the Defendant Boothe was in the
23 vicinity of where the firearm was found. The question is whether his
24 presence was such that he can be found to be in possession. Mere presence is
25 not enough.

26

1 67. When The DNA was extracted by the Laboratory from the firearm, the
2 examination showed that several persons had come in contact with the
3 firearm.
4

5 68. I accept the expert evidence of the Forensic DNA Analyst and I am satisfied
6 so that I am sure that the Defendant Boothe's DNA cannot be excluded from
7 the DNA which was present on the *hammer, the trigger guard and the*
8 *trigger of the firearm as also on the rusty section of the cylinder of the*
9 *firearm, and the metal section of its handle.*
10

11 69. I accept that Defendant Boothe cannot be excluded from persons who have
12 had contact with the firearm and and, in view of the evidence that the places
13 where his DNA were found included the hammer, the trigger guard, the
14 trigger and the handle, I draw the inference, which I regard as reasonable,
15 that he has at sometime held the firearm.
16

17 70. The prosecution submits that the presence of the DNA also satisfies the
18 requirement that Defendant Boothe knew the item was a firearm because, in
19 holding it, he must be taken to have known what he was holding. I accept
20 that submission as accurate.
21

22 71. However, that is not sufficient to prove that he had possession of the firearm
23 at the time with which we are concerned.

24 72. He is charged with possession of the firearm on the stated date of the 26th
25
26 March 2011.

1 73. The charge is not that he had possession of the firearm at some time in the
2 past or some time unknown. I must be sure that he possessed it at the time for
3 which he is charged.
4

5 74. No doubt the prosecution was sensitive to this requirement when it made the
6 submission that it was likely that Defendant Boothe had held the firearm on
7 that evening. There is, in fact, no evidence presented to make me sure that
8 he was in possession on that evening.
9

10 75. The DNA expert was not able to say when the DNA was put on the firearm,
11 and her results make it clear that more than one person had had contact with
12 the firearm.

13 76. It was Mr. Cleve Borden's DNA that had the majority profile on the firearm.
14 Mr. Boothe's DNA was minor. The expert testified that the person with the
15 majority profile would have handled the firearm more than the person with
16 the minority profile.
17

18 77. The prosecution has not been able to provide evidence as to whether Mr.
19 Cleve Borden had been there that night and, the Defence submitted that, with
20 the state of that evidence, the prosecution could not know if the firearm had
21 been placed there by the person who had the majority profile.
22

23 78. The unchallenged evidence is that there were about 40 persons in the car
24 park. Generally speaking the presence of a defendant's DNA on a firearm
25 provides powerful evidence towards proof of its possession by the defendant.
26

27 However, in the peculiar circumstances of this case, additional factors must

1 be considered. In this case where there is the DNA of several persons on the
2 one firearm and the defendant's DNA has not been a definitive match, but
3 rather, could not be excluded from mixed profiles in certain samples, it
4 becomes important to identify the particular circumstances in which the
5 defendant's DNA was placed on the firearm.
6

7 79. A firearm can be in the joint possession of persons but only if each person
8 can be shown to have active involvement in its possession. It is not enough
9 that the person can have access to it.
10

11 80. The Court of Appeal in *R v. Jacobs* (*supra*) had noted that:

12 *"It is, of course, possible for items to be able to be used by a number of*
13 *different people. If that is so, and if there is evidence that they have*
14 *some active involvement in the use of the items, then they will all be*
15 *guilty of possession. But it is not sufficient that someone is capable of*
16 *taking control of the item in question."*
17
18
19
20

21 81. The firearm was found in a public place but was hidden from view. I readily
22 find as a fact that the firearm was placed in that position. It did not fall from
23 an unknown place. It was under some leaves under the branch of a tree. The
24 intent in my view was to hide it from discovery.
25

26 82. There is evidence that persons were in the car park but the only evidence of
27 civilians near to the firearm was that Defendant Boothe and Charles Ebanks
28 were nearby. Mr. Ebanks, however, was never seen touching the firearm and
29 his DNA was not on it.

1 83. These circumstances may cause the opinion to be formed that there is a very
2 strong suspicion that Mr. Boothe was in possession of the firearm as charged.
3 It becomes important to identify the occasion on which the prosecution is
4 alleging he had possession of the firearm, so that the circumstances can be
5 examined and it can be shown that he, not the others whose DNA also
6 appeared on it, was in possession. I have already accepted that the defendant
7 does not have a firearm's licence but that is but one element of the offence
8 charged. It is the possession of the firearm without the licence that is the
9 charge.
10

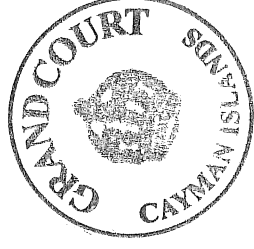
11 84. I am acutely aware that the society has suffered from the unwelcome
12 presence of firearms in the hands of a relatively small group of persons who
13 brazenly engage in antisocial behaviour. The Court must be sensitive to the
14 occurrences in the society and the decisions of the Court must serve to deter
15 unlawful behaviour and where necessary must send the message to the
16 individual offender and to the society in general that crime will not be
17 tolerated and carries a punishment.
18

19 85. At the same time I remind myself that in the quest to maintain order in
20 society and to uphold the law, the Court must not find itself failing to follow
21 the very laws which are at the foundation of the society, by succumbing to
22 the temptation of making decisions based on suspicion, no matter how strong
23 the suspicion may be.
24

1 86. In our system of law, before I am permitted to find the Defendant guilty, the
2 prosecution must satisfy me beyond all reasonable doubt that Defendant
3 Boothe is guilty. There must be evidence to make me sure of his guilt.
4

5
6 87. In the circumstances of this case I cannot be sure that this defendant on the
7 26th March 2011 was in possession of the firearm and had custody and
8 control of it. There is no evidence that the Defendant was in contact with the
9 firearm or had any control over the firearm at that time. I cannot properly
10 find that he was in possession of the firearm and I therefore enter a verdict of
11 not guilty on this charge.
12

13
14
15 **Dated this the 13th September 2012**



16
17 *CA Beswick*

18
19 **Madam Justice Carol Beswick (Actg.)**
20 **Judge of the Grand Court**