Neutral Citation Number: [2025] CICA (Crim) 7

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

Criminal Appeal No. 18 of 2023
Ind No. 11/2022
SC#02083/2021

BETWEEN

MARCUS STEVE MANDERSON

Appellant

V

HIS MAJESTY THE KING

Respondent

BEFORE:

The Rt Hon Sir John Goldring, President
The Hon Sir Michael Birt, Justice of Appeal
The Hon Clare Montgomery KC, Justice of Appeal

Appearances: **Mr Jonathon Hughes, Samson Law for the Appellant**
Mr Scott Wainwright, Office of the DPP for the Respondent

Date of Hearing: **17 September 2025**

Date of Judgment: **19 September 2025**

JUDGMENT

Montgomery JA

1. This is the judgment of the court. On 18 February 2022 the Appellant pleaded not guilty to indictment No 11 of 2022 in which he was jointly charged with Thalia Barnes with possession of an unlicensed

firearm (count 1) and unlicensed ammunition (count 2). The trial was set for 25 April 2022 and both defendants were warned they had to return for the trial date. The Appellant was granted bail on 16 March 2022 subject to electronic monitoring. On 5 April he removed his monitor and disappeared. He did not attend for trial, and a warrant was issued for his arrest. The trial date was adjourned. The trial was refixed for 28 November 2022.

2. On 28 November 2022 the Honourable Justice Richards (the trial Judge) granted the application by the Crown to try the Appellant in his absence. She held that the court had a discretion to commence a trial in the absence of a defendant though she recognised it was a discretion that must be exercised with great caution. She decided that Appellant's absence from his trial was deliberate and amounted to a clear waiver of his right to appear. The Judge concluded that no purpose would be served by further adjournments since the Appellant clearly did not wish to be found.

3. The Judge found that there was a public interest in proceeding to trial since the co-defendant Ms Barnes was subject to strict conditions of bail and it was in her interest as well as the interests of justice for a joint trial to proceed promptly. The Appellant had given an account in an interview under caution, and his lawyers, who continued to represent his interests, had obtained defence expert evidence dealing with the DNA evidence against him. She concluded that a fair trial was possible.

4. On 2 December 2022 the Appellant was convicted together with Ms Barnes. On 4 July 2023 the Appellant was sentenced to 11 ½ years' imprisonment. Two grounds of appeal are raised. The first is that that there was no power to try the Appellant in his absence. The second is that his defence was not conducted competently, in that the closing defence speech did not make any reference to the defence advanced in the Appellant's interview under caution that the firearm and ammunition had been planted on him by his own father

Trial in absence

5. The Appellant argues that the Grand Court does not have power to hold a jury trial in the absence of a defendant. The argument depends upon the proposition that whilst s 62 of the Criminal Procedure Code makes specific provision for the procedure to be adopted, before a decision is made to hold a summary trial in absence, there is no equivalent procedure contained in Part VI which deals with procedure in trials before the Grand Court. It is argued that this must reflect a deliberate legislative intention to prohibit trials in absence in Grand Court jury trials.

6. However, there is no material to support the contention advanced. Section 62 of the Criminal Procedure Code merely stipulates specified procedural steps that the court must follow in summary cases before proceeding to a trial in absence. This is because (amongst other things) the court is required to ensure that any summons has been served in a reasonable time and that the person has either wilfully refused to attend or consented to a trial in absence. Section 62 also gives the court power to issue a warrant for the arrest of the defendant.

7. No such elaborate scheme is required for Grand Court trials. The defendants will be aware of the trial by virtue of their arrest and remand. They will have been committed or transmitted for trial. They will, as in this case, have been formally arraigned and told of the trial date. There is therefore no need to have any statutory equivalent of s 62 to protect the rights of the defence in the Grand Court

8. The absence of a provision equivalent to s 62 is said to be a product of the right to elect a Judge only trial. However, the same pattern of provision in relation to trials in absence in summary trials coupled with an absence of specific reference to trial in absence in jury trials is a common feature of statute law. In England and Wales s 11 of the Magistrates Court Act 1980 makes specific provision in relation to trials in absence in summary only matters. There is no equivalent provision in relation to jury trials in the Crown Court. Notwithstanding this feature, which was pointed out in argument, the House of Lords affirmed that the criminal courts had always had a discretion at common law to try defendants in their absence, see *R v Jones* [2002] UKHL 5, [2003] 1 AC 1. Trial in the absence of an accused is permitted in almost all European jurisdictions, as well as in Canada and the United States

9. Furthermore, we do not consider that the argument that s 62 conferred a standalone power to conduct summary only trials in absence is correct. We consider its provisions are merely procedural rather than substantively establishing a right to try summary cases in absence.

10. The Constitution confirms that there is a power to conduct any criminal trial in absence provided that the conditions in s 7 (2) of the Constitution are met: That is either where the defendant has consented or "*he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.*"

11. It follows that it is not possible to construe the Criminal Procedure Code making express provision for trials in absence so that the lack of any provision in the case of jury trial can be taken to indicate a legislative intention that no such power should exist. There is simply no basis for inferring that the legislature has decided to distinguish summary trials and judge-alone trials on the one hand, and jury trials on the other. On the contrary, a distinction between the forms of trial would not be justified by any defensible policy considerations. It would make no possible policy sense if a defendant who wished to abscond could render themselves immune from trial merely by electing jury trial.

12. The policy reasons underlying the practice of permitting trials in absence apply with great force to jury trials. Without such a power, defendants would seek to gain a forensic advantage from their absence at trial, and there would be significant delay in the administration of justice for victims, witnesses and co-accused. Absconding is a difficulty that plagues the criminal justice system. There does not seem to be any good reason for exempting defendants in jury trials from the possible consequence of being tried in their absence. For these reasons this ground of appeal is dismissed.

Competence of counsel

13. The point that is raised under this ground of appeal is that the closing speech by defence counsel (Mr Myers) on behalf of the Appellant did not advance the defence first advanced in the Appellant's interview under caution, that the firearm had been planted on him by his own father. We have not been provided with any record of the speech by defence counsel and Mr Myers has not provided any information as to its contents.

14. The only information that the court has been provided with is that the Crown made a mental note that the closing speech on behalf of the Appellant did not touch upon the issue of the alleged planting of the firearm.

15. However, as the Crown has also pointed out, the summing up set out this case and made specific reference to the allegation of the planting of the firearm – see specifically page 14 line 20 onwards; page 25 line 13 onwards and page 129 line 5 onwards of the transcript of the summing up.

16. On the assumption that no mention was made of the planting defence in the course of the defence speech, the possibility exists that this was a deliberate forensic choice made by the trial advocate for the Appellant, in the light of the need to explain the presence of his DNA on the firearm. It was within

the range of possible responses for the defence to focus on the evidence dealing with the possibility of the transfer of DNA rather than the provenance of the firearm.

17. The defence case of plant was also not capable of being advanced without some evidence from the Appellant. Some evidence was given by Ms Barnes to the effect that Mr Manderson's father was not a nice character, but she said she would not have given him access to the house. Accordingly, defence counsel might reasonably have considered that the defence of plant could not sensibly be urged on the jury without any evidence from the Appellant.

18. The questions for us is what the effect of any deficit in the approach of defence counsel is on the safety of the conviction. It is counsel's responsibility to make forensic decisions and to devise strategy. Counsel is not merely a defendant's mouthpiece. Even if there were grounds for criticising the conduct of counsel at the trial, any difficulty was remedied in the summing up. The issues were fully and fairly explained to and left to the jury, and the necessary process of reminding the jury of the defence of plant was carried out. Any difficulties for which counsel was responsible did not undermine the trial process, which remained fair overall.

19. For these reasons this appeal is dismissed.