



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**

3 **Neutral Citation Number: [2025] CIGC (Crim) 54**

4 **INDICTMENT NO: 50 of 2025**

5
6
7
8 **R**

9
10 **V.**

11
12 **LEVI AMBROSE POWELL**

13
14
15
16 **Appearances: Mr. Kenneth Ferguson, Crown Counsel of the Office of the Director of**
17 **Public Prosecutions for the Prosecution**

18 **Mr. Crister Brady of Brady Law for the Defence**

19
20 **Before: The Hon. Justice Cheryll Richards KC**

21
22 **Trial Heard: 18th and 19th September 2025, 1st October 2025, 3rd October 2025,**
23 **13th October 2025**

24
25 **Verdict Judgment: 16th October 2025**
26

27
28 *Criminal Law – Trial by Judge Alone pursuant to section 129 of the Criminal Procedure Code (2021*
29 *Revision); Circumstantial Evidence of Identification, DNA on a moveable object, Applicable principles,*
30 *Whether Prosecution has discharged burden of proof.*



VERDICT JUDGMENT

- 1
- 2
- 3 1. The defendant is charged with a single count of Aggravated Burglary contrary to s.244 (1) of
- 4 the *Penal Code* (2024 Revision).
- 5
- 6 2. The particulars are that he together with two other persons on the 3rd day of January 2025
- 7 entered as trespassers a building, namely No. 13 Brenda Lane, North Sound Estates, Grand
- 8 Cayman, Cayman Islands with intent to steal therein and at the time had with them an offensive
- 9 weapon, namely a knife.
- 10
- 11 3. The defendant pleaded not guilty and elected trial by judge alone pursuant to section 129 of the
- 12 *Criminal Procedure Code* (2021 Revision). In approaching this case this Court is guided by
- 13 the Court of Appeal judgment in the case of *K. Richards v. R*¹ with respect to the required
- 14 approach to trials by judge alone.
- 15
- 16 4. The Court reminds itself that the burden of proof is upon the prosecution to prove the
- 17 defendant's guilt to the required standard which is so that the Court is sure before there can be
- 18 a conviction. There is no burden on the defendant to prove his innocence. The burden is on the
- 19 prosecution, and it never shifts. These considerations were borne firmly in mind throughout
- 20 this case, as I listened to the evidence for the prosecution and the defence and as I considered
- 21 the verdict.
- 22
- 23 5. The offence of Aggravated Burglary requires proof of the following elements: -
- 24 i. That the defendant entered a building or part of a building as a trespasser meaning that
- 25 he did not have permission to be in the building, and he knew that he did not have that
- 26 permission.
- 27 ii. The entry was deliberate.
- 28 iii. At the time of entry, the defendant's intent was to steal.
- 29 iv. At the time of entry, the defendant had with him an offensive weapon, namely a knife.
- 30
- 31

¹ 2001 CILR 496, paragraph 32



1 **CASE SUMMARY**

- 2
- 3 6. Much of the evidence in this case is not disputed. On Friday the 3rd January 2025, shortly after
- 4 11:30am the complainant, Nathan Hudson locked up his house at 13 Brenda Lane and went to
- 5 purchase food at a nearby restaurant. He returned at about 12 noon. On his way home he noticed
- 6 a white truck parked on a lot next to his house with three persons inside of it. His front door
- 7 was wide open and on entering, he saw two men inside going through the drawers of his
- 8 kitchen. Both had knives in their hands. When he ran from the house, the men gave chase and
- 9 threatened to kill him when he attempted to hit one of them with his van. There had been an
- 10 attempt to take an Xbox game console from his living room.
- 11
- 12 7. The police were called to the scene, and a search of the surrounding area was made. In a bushy
- 13 area in the vicinity of Bergman Lane a black hoodie was recovered. Bergman Lane is about
- 14 five streets down from 13 Brenda Lane. When it was examined, the hoodie had DNA material
- 15 from which the defendant could not be excluded.
- 16
- 17 8. Closed Circuit Television (“CCTV”) footage was recovered. There was none from Brenda
- 18 Lane. However, there was footage from Bergman Lane and other areas which showed two men
- 19 coming from the direction of Brenda Lane at the material time. Both were in black clothing.
- 20 One had a white garment in one hand and a black object in the other hand.
- 21
- 22 9. James Romano Whittaker has entered a guilty plea to being one of the two persons. He is
- 23 awaiting sentence. The defendant denies being one of these persons. He denies being in the
- 24 area and Counsel on his behalf argues that other than the DNA on the recovered clothing, the
- 25 hoodie, there is no other evidence which either connects him to the scene or to the Aggravated
- 26 Burglary.
- 27
- 28 10. Thus, the primary issue is whether the Court can be sure on the evidence presented by the
- 29 prosecution of the identification of the defendant as one of the two burglars.
- 30
- 31
- 32



1 **EVIDENCE AT TRIAL - THE CASE FOR THE PROSECUTION**
2

3 11. In recounting the evidence. I shall focus on those aspects which assist with the issue of
4 identification.

5
6 ***Evidence of Nathan Hudson***
7

8 12. The statement of Mr. Hudson dated 4th January 2025 was read by agreement of the parties. The
9 recording of his 911 call was received as an exhibit and played by agreement. Mr. Hudson
10 describes the two men who he saw in his house as having on black masks. One was wearing a
11 white baseball cap. Both had on gloves, full black clothing and were “fully covered up”. One
12 of them had long hair.

13
14 13. He stated that after he hit one of the males with his van, both males walked toward Brenda
15 Lane and then up Leeward Drive towards Water Street. They then ran in the direction of where
16 the white truck was parked. The male that he hit had a red marking on his neck like a tattoo.

17
18 14. When the police arrived, they recovered a number of items from Mr. Hudson’s yard. These
19 included a white baseball cap from the hood of his car, a black bag and a white knife from
20 underneath his truck and a pair of black Nike slippers by a trailer in the yard.
21

22 ***Evidence of Kenneth Pryce***
23

24 15. The statement of Kenneth Pryce dated 4th January 2025 was read by agreement of Counsel. Mr.
25 Pryce was working on a construction site on Leeward Drive on the day in question. He states
26 that around midday he was with other workers when he observed two males running past the
27 construction site towards the top of Leeward Drive.

28
29 16. He describes the first male as having dreadlocks, dark complexion, wearing full black and five
30 feet eight inches tall. He said that he was twenty feet away from where the male was. He could
31 see the male clearly. When the male saw him, the male covered his face with a white t-shirt, so
32 Mr. Pryce was not able to see the male’s face. He said that if he saw the male again, he would

1 not be able to identify him because his face was covered. The second male ran past them about
2 two to three seconds thereafter. He was wearing full black clothing with a black mask covering
3 his head and face. He could only see the eyes and nose of that male. The male was barefoot and
4 had a knife in his right hand.

- 5
6 17. Shortly thereafter he saw a brown skinned male coming towards him. The male was very upset
7 and said that the two men had just robbed him.
8

9 ***Evidence of PC Olivia Samuels***

- 10
11 18. Olivia Samuels is a police constable of the Royal Cayman Islands Police Service. She testified
12 that she was on duty on Friday the 3rd January 2025. She received information as to the robbery
13 and went to the scene together with other officers. She was tasked by DS Barnett to conduct a
14 search of the immediate area where the Aggravated Burglary had taken place.
15

- 16 19. Her search included Bergman Lane which runs off Leeward Drive. Brenda Street is five streets
17 down from Bergman Lane. In a bushy area adjacent to 12 Bergman Lane, she recovered a black
18 hoodie which she later sealed and labeled as OS 1. PC Samuels produced photographs of the
19 hoodie and of the area from which it was recovered.
20

- 21 20. PC Samuels further testified that on Tuesday the 7th January 2025 she viewed CCTV footage
22 recovered from Bergman Lane and later compiled a story board of clippings. From the footage
23 she observed a male with dreadlocks running from the rear of certain premises. He had a white
24 shirt in his left hand and a dark coloured object in his right hand.
25

- 26 21. At 12:35pm on the footage she observed the male throw an object in the bushy area near where
27 she recovered the hoodie.
28



- 1 22. Shortly thereafter she saw a second male jump over the fence of a yard on Bergman Lane. He
2 was wearing a bandana over his head, dressed in dark coloured shirt, short knee-length pants
3 and no shoes.
- 4
- 5 23. From the footage she was able to develop a registration plate number for the truck which had
6 been used by the burglars and to identify the registered owner.
- 7
- 8 24. PC Samuels arrested the defendant on the 4th April 2025. He was interviewed that same
9 afternoon in the presence of his attorney. He exercised his legal right and answered no comment
10 to all questions asked of him.
- 11
- 12 25. PC Samuels produced a still image timed at 12:35:34² pm which showed a male walking along
13 Bergman Lane from the direction of Brenda Street toward the area where the black hoodie was
14 found. The male had white clothing in one hand and a black object in the other. She also
15 produced the CCTV footage itself which was received in evidence and played in Court. In
16 particular there was footage from cameras 2 and 6 which showed 10 and 12 Bergman Lane.
17 The first clip started at 12:30pm.
- 18
- 19 26. Her evidence was that at 12:35:46 pm, camera 6 showed the first male throwing what appeared
20 to be a black cloth like object in the bushy area adjacent to a house at 12 Bergman Lane. This
21 was the same area from which the hoodie had been recovered. She said that the movement
22 happened in the vicinity of a palm tree and happened quickly. The first male was followed by
23 a second male, and both were headed in the same direction.
- 24
- 25 27. Footage from further down the street at number 22 Bergman Lane showed the same
26 dreadlocked male at 12:36pm with a white object in hand but no black object.³ The male was
27 walking from the direction of number 12. PC Samuels said that she was able to follow the
28 progress of the males heading from 12 Bergman Lane onto Water Street. The dreadlocked male
29 then had the white cloth material over his right shoulder and nothing in his hands.
- 30
- 31

² Page 144 of Exhibit Bundle

³ Page 151 Exhibit Bundle.





1 ***Cross-Examination***
2

3 28. In cross-examination, PC Samuels said that she was not able to identify any of the two men
4 from the footage. She could see their body structure and they appeared to be male rather than
5 female. She said that in none of the footage did she see any person wearing a black hoodie. She
6 said that she would not be able to say how long the item found had been in that spot. There is
7 no footage of that area before the time that she went there. The footage viewed started from 12
8 pm on the day of the incident. There is no footage before that date.
9

10 29. She said that she did not see any person wearing a black hoodie in any of the footage.
11

12 30. She said that no attempt had been made to enlarge the footage produced and that she would not
13 be able to say whether or not the first person did or did not have a tattoo. No analysis was
14 carried out to determine the height of any of the suspects.
15

16 31. She would not be able to help with whether the person had been wearing the hoodie or picked
17 it up at number 12.
18

19 32. She said that she did not know if all the cameras were synchronised to the same time. She
20 accepted that the footage where she said that the object was thrown is difficult to see and that
21 it is largely obscured by what appears to be a palm tree but she said that it is not an assumption
22 that the suspect threw something because of the object which she later found. She said that it
23 is correct that she had no way of knowing that the object was not there before the time that she
24 said something was thrown.
25

26 33. She agreed that the suspect appeared to be wearing dark clothing. From what she observed it
27 was black in colour. She said that she did not agree that the hoodie could have been over the
28 shoulder of the suspect and that she would not have noticed it.
29

30 34. She said that she found the black hoodie first and then looked at the CCTV footage some days
31 later. She said that there is no footage prior to 12:00 pm of the area where she says that she
32 observed the suspect throwing the item. The footage of the throwing is the only footage that is

1 available that depicts that view. She said that she did not know who owned the wide-open area
2 of land and that anybody could access it.



3
4 ***Re-examination***

5
6 35. In re-examination PC Samuels testified that she did not speak or have any reason to speak with
7 any of the occupants of number 10 Bergman Lane or 12 Bergman Lane. The men drove to the
8 area in the white truck. She was not able to identify the driver. The area where the burglary
9 took place at 13 Brenda Street had no security cameras so she would not have known whether
10 the persons who committed the burglary were wearing any particular type of clothing.

11
12 36. She said that the burglary was committed at 12:30pm and that a hoodie is of a thick cloth while
13 a shirt is thinner so she thinks that she would have been able to see if the male was wearing the
14 hoodie or carrying it.

15
16 37. She said that when she viewed the footage she adjusted the speed of it by slowing it down and
17 she watched it two or three times. She said that she has no doubt that the male person threw a
18 black object into the bushes.

19
20 ***By Court***

21
22 38. In answer to a question from the Court, PC Samuels said that from the footage she could not
23 tell that it was clothing that had been thrown. She could not tell anything else about what was
24 thrown other than that it was black.

25
26 ***Evidence of Carmella Strong***

27
28 39. Carmella Strong is employed as the Forensic DNA Technical Leader at the Cayman Islands
29 Forensic Science Laboratory since September 2022. She holds a Bachelor of Science Degree
30 in Biology and Anthropology obtained from the University of Nebraska-Lincoln in December
31 1996 and a Master of Forensic Science with emphasis in Forensic Biology obtained from the
32 Nebraska Wesleyan University in December 2003. She has been working in the field of forensic

1 science since 1998 and as a DNA examiner since 2003. Her curriculum vitae was tendered as
2 Exhibit 9 for the purpose of the trial and shows that she has extensive experience, continuing
3 education and membership of professional bodies.
4

5 40. There was no challenge to her expertise and experience, and she was received as an expert
6 witness in the field of DNA Analysis.
7

8 41. In summary, her evidence is that she received from Scenes of Crime Officer Tiffany Rankine,
9 OS 1, the black hoodie, as well as other items recovered from the crime scene. The hoodie was
10 swabbed, and a mixed DNA profile was obtained from the swab. Ninety percent came from
11 one person, a male, and about ten percent included another two individuals. The ten percent
12 was too low a level to determine whether any additional males were present. She could not say
13 whether any female was included.
14

15 42. The areas of the hoodie which were swabbed included the areas around the cuffs of the arms,
16 the neck area as well as the inside of the front pocket. She said that when they are looking for
17 the possible wearer of clothing, they are looking at areas where there is going to be friction
18 with the skin.
19

20 43. She subsequently received a buccal swab for the defendant from which she generated a DNA
21 profile. She compared the two profiles and the defendant could not be excluded from the profile
22 obtained from the black hoodie. The statistical analysis concluded that it was 20 septillion times
23 more likely that the profile from the hoodie came from the defendant versus an unknown and
24 unrelated individual. She said that it is strong support that the DNA originated from the
25 defendant as opposed to an unrelated individual.
26

27 44. The defendant was excluded from all the other items recovered from the crime scene. James
28 Romano Whittaker was excluded from the black hoodie.
29



1 45. She said that she cannot say just by the fact of the DNA on the item, how long it was there
2 before the police recovered that item. The most logical explanation for how the DNA would be
3 on the hoodie is that the defendant was the primary wearer. She said that the hoodie could have
4 been handled by anybody else other than the defendant, but she cannot make any positive
5 assertion.

6
7 46. She said that if a person is wearing gloves, she would not expect that DNA would be transferred
8 on to the item. This depends on a number of factors. If it was worn by someone else, it would
9 depend on how they were wearing it.

10
11 ***Cross-Examination***



12
13 47. In cross-examination, the witness said that she would not be able to say how long the hoodie
14 had been worn or how long it was at the place where it was found. She would not expect any
15 other profile to match unless it was of an identical sibling. If there were identical twins you
16 would not be able to distinguish between the two.

17
18 48. She said it is not a single source DNA profile. There were two minor contributors to that profile.
19 There was not enough information as to the two minor contributors for there to be a conclusive
20 finding as to whether any other person could be excluded or not. An interpretable profile
21 depends on the quality of the profile, the amount of DNA and how many individuals are in the
22 mixture.

23
24 49. She said that if another person had been wearing the hoodie, one would expect to see a bit more
25 DNA. If they were only touching it, it would depend upon where they were touching it. If they
26 were holding it, was there any sweat on their hands? If they had worn it, she would anticipate
27 that they would be able to detect some of their DNA on that item.

28
29 ***Evidence of DS Barnett***

30
31 50. Dave Barnett is a Sergeant of Police attached to the Police Service. He responded to the scene
32 shortly after the Aggravated Burglary was reported. He says that he carried out what he

1 describes as a CCTV trawl along Leeward Drive and Bergman Lane and was able to view
2 footage from cameras at various areas. He was not able to identify any person from the footage
3 viewed. He produced six maps which were received in evidence which depict the route taken
4 by the suspects from Brenda Street to Water Street. He said that from Brenda Street to Bergman
5 Lane is 620.52 meters. This is the distance between where the burglary occurred and where the
6 hoodie was found.



7
8 ***Cross-Examination***
9

10 51. In cross-examination DS Barnett said that there was no CCTV footage which showed the male
11 picking up or wearing that hoodie. He said that he cannot answer whether it would be possible
12 for the male to have picked it up along the way. There was no opportunity for CCTV at 13
13 Brenda Street so he would not have known if any of them had worn any specific items.
14

15 ***By Court***
16

17 52. In response to a question from the Court he said that the Aggravated Burglary occurred at 12:50
18 pm. Police responded at 12:53pm and the hoodie was found sometime after 1pm.
19

20 53. He said that after he responded to the scene he spoke to the victim and would have gotten an
21 idea of the route. He gave instructions to first check for cameras as well as possible witnesses
22 and it was during that time that the hoodie was reported to have been seen in the bushes on
23 Bergman Lane.
24

25 ***The Agreed Facts***
26

27 54. In summary the Agreed Facts 1 to 14 speak to the recovery of items of interest at the scene, the
28 processing of them, the continuity of exhibits recovered through to their transfer to the Forensic
29 Science Laboratory, the 911 call made by Mr. Hudson and the transcript of it, and the arrest and
30 collection of a buccal swab from the defendant and its submission for analysis. Agreed Fact
31 15 states that James Romano Whittaker entered a guilty plea to the Indictment on the 8th
32 September 2025.



1 **EVIDENCE AT TRIAL - THE CASE FOR THE DEFENCE**
2

3 55. At the close of the prosecution case, I gave the necessary warning to the defence that the stage
4 had now been reached where the defendant may give evidence and the possible inference from
5 any failure so to do. Counsel for the defence indicated that the defendant had been advised and
6 chose not to give or call any evidence.
7

8 **THE SUBMISSIONS**
9

10 56. Counsel for the prosecution drew to the Courts attention paragraph 14- 86 of Archbold 2024
11 dealing with Identification by DNA evidence. Counsel submitted that the CCTV footage
12 produced shows the movement of the two burglars and the white pickup truck used to transport
13 them to and from the locus.
14

15 57. Counsel said that while there is no direct evidence to say that the defendant committed the
16 burglary, there is DNA evidence from the black hoodie. This was recovered by PC Samuels
17 about two hours after the burglary is said to have occurred.
18

19 58. Counsel said that given the evidence of Mr. Hudson, the CCTV evidence as to the movement
20 of persons and the truck there should be no doubt that the burglar deposited the black hoodie.
21

22 59. Counsel said that the first male had what appeared to be black clothing and white clothing while
23 he was on the adjoining premises. The black item was thrown while he was behind the tree. No
24 other item was seen in that vicinity. There can be no doubt that it was deposited at that time.
25 There is no evidence that the defendant was resident in that area. He is excluded from the other
26 items.
27

28 60. Counsel for the defence submitted that on the evidence the Court cannot be sure of the
29 defendant's guilt. Counsel said that the case turns on what weight if any should be given to the
30 circumstance of the black hoodie. It was found in an open lot. Counsel says that the footage on
31 which reliance is sought to be placed is not the clearest. Counsel said that no one can be sure
32 that it was a hoodie that was thrown even if it is accepted that something was thrown. It is not

1 clear what was being thrown, a hoodie, bag or towel. It is unknown how long the hoodie had
2 been there.

3
4 61. Counsel said that the description of the suspect is not specific. It is unknown whether he was
5 wearing a wig or whether that was his real hair.

6
7 62. Counsel said that it is clear that the defendant's DNA is on the hoodie that was found. While
8 it must be accepted that at some time, he must have worn it or had significant contact with it,
9 the question is when. Counsel said that there are questions. When was the last time that the
10 suspect came into contact with it? Did the suspects take it or find it during the incident?

11
12 63. Counsel said that there is no DNA or fingerprints that place the defendant inside the
13 complainant's property. There is nothing to tie him to the burglary. The DNA only ties him to
14 the hoodie which was found in an open lot some 650 feet away from the burgled property.
15 There is no CCTV footage of the suspects picking up or having on the hoodie. There is no
16 footage available to make any comparison between the suspect and the defendant.

17
18 **ANALYSIS**

19
20 64. I remind myself of the relevant directions from the *Crown Court Compendium* on expert
21 evidence, DNA evidence and circumstantial evidence.

22
23 65. The defendant has not given evidence. In *Tsekiri*⁴, the English Court of Appeal noted citing
24 with approval *R v FNC*⁵ that in DNA cases the absence of an explanation means that there is
25 nothing to undermine the conclusion to be drawn from the DNA evidence.

26
27 66. For the reasons which I will set out below I do not consider that the prosecution's case is so
28 strong that the defendant's failure to give evidence should count against him. I also remind
29 myself that I cannot convict the defendant wholly or mainly because of that failure.

30
31

⁴ [2017] EWCA Crim 40
⁵ [2015] EWCA Crim 1732



1 67. There is no challenge to the DNA evidence in this case but there are limitations to it.

2
3 68. The issue is that this is DNA on a moveable object which was not left at the crime scene but
4 some distance away from it. It is not a single source profile but is a mixed one.

5
6 69. In the case of *Ogden*⁶ a scarf had been recovered at a crime scene. Blood was found on it from
7 which the defendant could not be excluded to a probability ratio of one in a billion. The English
8 Court of Appeal noted that as it was not possible to date the DNA, it was possible that another
9 person had carried the scarf to the scene of the burglary, and it already had the defendant's
10 DNA on it. It was not possible to say how the DNA had been deposited on it and there were
11 evidential problems. In addition, there was no other evidence which suggested that the burglar
12 had cut himself at the scene. The DNA evidence was the only evidence against the appellant.
13 The appeal was allowed and the conviction quashed.

14
15 70. This case was distinguished in the case of *Darnley*⁷ where DNA was found on an item left at
16 the crime scene and the defendant also had previous convictions for domestic burglary which
17 had been admitted in evidence. The conviction was upheld.

18
19 71. In *Tsekiri*, the English Court of Appeal said that there is no principle which prevents a case
20 being left to a jury solely on the basis of a DNA profile on a movable article left at the scene
21 of a crime. This was a case where the prosecution evidence rested solely on the presence of
22 DNA on the door of a car handle at the scene of a robbery. The victim's description of the
23 assailant was generic and there had been no inculpatory responses from the appellant to the
24 police.

25
26 72. The Court said this: -



27
28 "6. This court has very recently had the opportunity to review the authorities relating to
29 DNA evidence and the extent to which such evidence of itself can provide a sufficient basis
30 for a jury to convict: see *R v FNC* [2016] 1 Cr. App. R. 13 at paragraphs 19 to 26. It is not
31 necessary for that review to be repeated here. The conclusion of the court was that the

⁶ [2013] EWCA Crim 1294

⁷ [2012] EWCA Crim 1148



1 authorities established that, where it was clear that DNA had been directly deposited in the
2 course of the commission of a crime by the offender, a very high DNA match with the
3 defendant would be sufficient without more to give rise to a case for the defendant to
4 answer. That was the factual position in FNC.”

5
6 73. The Court also stated: -

7 “14. The facts of this appeal require us to determine the position when a defendant’s DNA
8 profile at the scene is the only evidence. In our view the fact that DNA was on an article
9 left at the scene of a crime can be sufficient without more to raise a case to answer where
10 the match probability is 1:1 billion or similar. Whether it is will depend on the facts of the
11 particular case. Relevant factors will include the following matters.”

12
13 74. The Court then identified six factors as part of a non-exhaustive list but said that each case
14 would turn on its own facts. The factors are as follows:

15
16 i) Is there any evidence of some other explanation for the presence of the defendant’s
17 DNA on the item other than involvement in the crime?

18
19 ii) Was the article apparently associated with the offence itself?

20 Under this heading the Court said that from the evidence at trial there could be
21 no doubt that the offender had touched the handle of the car door. However:

22 “ **The position could be different if the article was not necessarily so**
23 **connected with the offence** e.g. if a DNA profile were to be found on a
24 cigarette stub discarded at the scene of a street robbery.” (My emphasis.)

25
26 iii) How readily movable was the article in question?

27 The Court said that a DNA profile on a small article of clothing or something
28 such as a cigarette end at the scene of a crime might be of less probative force
29 than the same profile on a vehicle.

30
31 iv) Is there evidence of some geographical association between the offence and the
32 offender?

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

- v) In the case of a mixed profile is the DNA profile which matches the defendant the major contributor to the overall DNA profile?
- vi) Is it more or less likely that the DNA profile attributable to the defendant was deposited by primary or secondary transfer?

75. The conclusion was that there was a case for the appellant to answer because he was the major DNA profile on the door handle of the car which had been used by the offender in the course of the robbery. There was no explanation for this fact at the close of the prosecution case. The expert evidence was that secondary transfer was an unlikely explanation for the presence of the appellant's DNA on the door handle.

76. In the instant case, the issue is not the presence of DNA on the hoodie. The defendant is the major contributor to a high statistical ratio. Direct transfer is more likely given the evidence of the expert that the major profile is likely from the wearer of the item. It is in essence accepted that the DNA is that of the defendant.

77. The hoodie is a moveable article. The issue is with the other two questions. Was the article associated with the offence itself and is there evidence of geographical association between the offence and the offender.

78. Counsel for the prosecution rightly concedes that there is no evidence of geographical association between the offence and the offender but urges that the article is associated with the offence itself. It is with this question that the Court has difficulty. There is no evidence that the black hoodie was being worn or carried by the burglars at the time of the burglary. The evidence of Mr. Hudson that the men were masked and fully covered is not specific to the wearing of a hoodie as Crown Counsel seeks to suggest.



- 1 79. There is no evidence that at the time of the burglary they had a black hoodie with them, whether
2 carried or worn.
3
- 4 80. The submission of defence Counsel is accepted that even if it could be said that there is a
5 reasonable inference that one of the burglars was carrying the black hoodie, there is no evidence
6 as to when or whether this was picked up in the course of or after the burglary.
7
- 8 81. Even if the reasonable inference is that what was thrown was the black hoodie, at that point it
9 was being carried and not worn. This is a mixed profile not a single source. I do not think that
10 given the evidence of the expert witness that one can exclude the possibility that it may have
11 been carried by one person and worn by another.
12
- 13 82. There are other concerns as raised by the defence that this was an open lot, some distance away
14 from the crime scene to which there was public access. No one knows what had been in the lot
15 before 12:00 noon or what had occurred in that lot between that time and the recovery of the
16 item.
17
- 18 83. There is no connection between any items recovered at the crime scene and the defendant.
19 There is no connection between the defendant and the white truck. The description given by
20 the two witnesses could apply to any number of persons.
21
- 22 84. In summary, in the absence of CCTV opportunities at the crime scene itself or evidence from
23 the scene as to the matters in issue, I do not consider that there is a sufficiency of evidence that
24 the hoodie recovered with DNA from which the defendant could not be excluded is associated
25 with the offence itself. There is no clear evidence that it is.
26
27
28
29
30
31
32
33
34



1 85. I can only convict if I am sure on the prosecution evidence as to identification that the defendant
2 was one of the persons who entered the complainant’s house as a trespasser or was a party to
3 that entry. I am not sure. Consequently, I find the defendant not guilty on the Count of
4 Aggravated Burglary.

5

6 **Dated this the 16th day of October 2025**

A handwritten signature in blue ink, consisting of a series of connected loops and curves, positioned above the judge's name.

7

8 **The Hon. Justice Cheryll Richards KC**
9 **Judge of the Grand Court**