



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

**Neutral Citation Number: [2025] CIGC (Crim) 44**

**Case Number: IND. 52 of 2021**

**THE KING**

**V**

**M**

**Appearances:**           **Ms. Nicole Petit, Counsel for the Prosecution**  
                                  **Ms. Amelia Fosuhene, Counsel for the Defence**

**Before:**                   **Hon. Justice Emma Peters**

**Ruling:**                 **25<sup>th</sup> September 2025**

*Possession of Firearms and ammunition – Defence of Duress of Circumstances – When and on what evidential basis such a defence should be left to a jury*

**Ruling on the argument as to whether the Defence of Duress be left to the jury**

1. The parties made submissions to me yesterday (24<sup>th</sup> September 2025) in respect of whether I ought to leave the defence advanced in this case by M to the jury. I have been assisted by Ms. Petit and Ms. Fosuhene in considering the law on the issue of when a defence of duress by circumstances, a defence the evolution of which is often linked to that of necessity, ought to be left to the jury.



## When should a defence be removed from consideration by a jury?

2. The Crown urge me not to leave the matter to be decided by the jury since they submit that the basis for such a defence to be left does not exist. Conversely, Ms. Fosuhene submits in the strongest terms that if I were to remove the matter from the jury by ruling that the defendant is not entitled to this defence then I would be intruding into what is properly the jury's territory and usurping their function.
3. It is settled law that it is a matter for a judicial decision to be made as to whether the evidence is such that the defence ought to be left. But if I may summarise it in this way – each case urges a judge to be careful and perhaps to be slow to refuse to leave a defence to a jury especially when the matter concerns what it was that was in the defendant's mind at the time.
4. As Laws LJ said in *R v Bianco* [2001] EWCA Crim 2516:

*“It is certainly true that once a defence such as duress is left to the jury then it is for the Crown to disprove it to the criminal standard. In our judgment if the case is one where no reasonable jury properly directed as to the law could fail to find the defence disproved then no legitimate purpose is served by leaving it to the jury. It is not generally within a jury's constitutional function to arrive at what ex hypothesi would be a perverse result in circumstances such as these. There must at least be some evidence upon which a jury could properly conclude that the defence of duress had not been negated.”*

5. The power of a judge to withdraw a defence from the jury is to be exercised with caution. Moses LJ in *R v Hammond* [2013] EWCA Crim 2709 said there was a thin but clear line between the “*impermissible resolution of a case on the facts and making a ruling as to the law*”.
6. As Gross LJ said in *R v Brandford and others* [2016] EWCA Crim 1794:

*“a defence should not lightly be withdrawn from the jury – it is of the first importance that judges do not usurp the jury's function. The thin but clear line articulated in Hammond must not be crossed, indeed the temptation to do so should often be resisted. ... Judges should not be deterred from a robust and reasoned approach where fanciful defences of duress are raised.”*



7. In *R v Pommell* [1995] 2 Cr App R 607, Kennedy LJ observed at paragraph 4 that a judge will be entitled to withdraw the case from the jury where there is no evidence to support the defence upon which it is sought to rely but they also cite what are described as the cautionary words of Lord Widgery CJ in *R v Bello* [1978] 67 Cr App R 288:

*“The circumstances in which a judge can properly rule against a defendant that his defence is not a defence known to the law are very, very few and far between and it was treading on the most dangerous ground in this case to invite a ruling by the judge that the defence put forward was not available as a defence in law without recognising that there might well be questions of fact and degree as to the precise state of the defendant’s mind which might arise for consideration”.*

8. The most recent and, given the composition of the court (the Lady Chief Justice delivering the judgment), arguably the most authoritative judgment on this issue is however that of the Court of Appeal Criminal Division (CACD) in AG’s Ref Number 1 of 2023 [2024] EWCA Crim 243:

#### Removing a defence from the jury

54. *In deciding whether a defence should be left to the jury, the appropriate starting point is the guidance given in Attorney General’s Reference (No.1 of 2022) where Lord Burnett of Maldon CJ stated (at [118]):*

*“When considering whether an issue should not be left to the jury, we have well in mind two principles. First, the judge may not direct a jury to convict. But that prohibition is to be distinguished from circumstances in which a judge is entitled to withdraw an issue from the jury, or where an issue does not arise on the evidence and so no direction need be given about it to the jury (*R v Wang* [2005] 1 WLR 661 at [3] and [8] to [14]).*

*Secondly, a judge may withdraw an issue from the jury if no reasonable jury properly directed could reach a particular conclusion (e.g. that the defendant might have acted under duress (*R v Bianco* [2001] EWCA Crim 2516 at [15]); that the defendant might have a “reasonable excuse” (*R v Nicholson* [2006] 1 WLR 2857 at [9]; *R v G* [2010] 1 AC 43,*



87D); or loss of self-control (*R v. Martin* [2017] EWCA Crim 1359 at [39]).”

55. *Where an issue does not arise on the evidence, the judge is entitled to withdraw the issue from the jury. No party to these proceedings suggests otherwise.*

56. *As to the second principle identified by Lord Burnett, such circumstances can arise when there is some evidence which could be said to substantiate a defence. Mr Blaxland argued that, where the defence is entirely based on the state of mind of the defendant, there is no scope for withdrawing the issue from the jury, however implausible the proposition. He relied in particular on *R v Asmeron* [2013] EWCA Crim 435 (*Asmeron*).*

57. *Reference was made to *R v Nicholson* [2006] EWCA Crim 1518; [2006] 1 WLR 2857 (*Nicholson*) where Auld LJ stated (at [9]):*

*“If, however, on the facts advanced or to be advanced by the defence, a jury could find them to support an evidential issue raised by the defence, particularly one involving a value judgment such as that of reasonable excuse, then he should leave it to the jury. If such a proposition requires cited authority, it is to be found in the principle enunciated by the House of Lords in *R v Wang*...., in which their Lordships considered in a wholly different statutory context a statutory defence defined by reference to the defendant's state of mind. Their Lordships held that where the defence raise such an issue, the judge is only entitled to withdraw it from the jury if there is no evidence going to that issue. If there is some evidence, however tenuous or nebulous, the question should be left to the jury”.*

58. *This was interpreted in *Asmeron* at [22] by Toulson LJ as follows: “[t]he fact that a defence might be considered hopeless on the merits is not a good reason for a judge to withdraw it from the jury”. Toulson LJ also stated at [15] that “[e]ven if the judge had been satisfied that no reasonable jury could have resolved that issue in the defendant's favour, he would still have been wrong to have withdrawn the defence...”*



59. *We consider that, taken at face value, this goes further than was suggested in Wang and Nicholson. It is also not consistent with what was said in Attorney General's Reference (No.1 of 2022) as set out above. Further, such an approach has not been applied in any subsequent authority of which we have been made aware. It has only been cited once in any reported case: R (Khalif) v Isleworth Crown Court [2015] EWHC 917 (Admin). That was solely in relation to the interpretation of section (2)(4)(c) of the Asylum and Immigration (Treatment of Claimants) Act 2004.*

60. *Furthermore, Asmeron must be understood in its context. In particular, Toulson LJ went on to state in [22] that:*

*“The court can only rule that the explanation advanced by a defendant is incapable in law of amounting to a good reason or a reasonable excuse if it can properly be said, on the true construction of the Act, that it would be inconsistent with the essential nature and purpose of the offence for the defendant's explanation to be capable of amounting to a defence. R v Kelleher 147 SJLB 1395 is a good example...”*

61. *The case of Kelleher concerned a protestor who had knocked the head off a statue of Margaret Thatcher. The defendant argued that he had a lawful excuse because he was seeking to draw attention to his strongly and sincerely felt concerns that the policies of the UK and certain other Western countries were leading the world towards its destruction. The court held that the trial judge had been right to direct the jury that the defendant's explanation of his conduct did not fall within the reach of what was capable of being a lawful excuse within the meaning of the statute. Toulson LJ in describing the judgment said at [18] that “one can readily understand that it cannot have been Parliament's intention that a desire to make a political point, and attract publicity for it, should afford a lawful excuse for the deliberate destruction of another person's property”.*

62. *Given that Kelleher was cited with approval in Asmeron, the statements of Toulson LJ are not to be understood as identifying a new threshold for the removal of a defence from a jury. The decision in Kelleher did not concern whether it would be ‘inconsistent with the essential nature and purpose of the offence’ to remove the defence from the jury; rather, it applied orthodox principles to find that the alleged act of protection was too remote from the damage caused for the defence to be available.*



63. *As such, if Toulson LJ's remarks are read in their full context, the decision stands simply as an example of the caution that ought to be applied when removing a defence from the jury, particularly where the defence goes to the defendant's state of mind.*

64. *In our judgment, the principles that are to be applied in determining when a defence ought to be removed from the jury remain those stated at [118] of Attorney General's Reference (No.1 of 2022). A judge may withdraw a defence from a jury if no reasonable jury properly directed could reach a particular conclusion. We emphasise that a judge must exercise considerable caution before taking that step. It is not for the judge to substitute his or her decision for that of the jury when deciding to withdraw the defence. The judge is only entitled to withdraw the defence from the jury where no reasonable jury, properly directed, could find the defence to be made out.*

9. It is that last paragraph that perhaps perfectly summarises the law on this point. A judge may withdraw a defence from a jury if no reasonable jury properly directed could reach a particular conclusion. The judge must exercise considerable caution before taking that step. In making this decision it is not for me to substitute my decision for that of the jury when deciding to withdraw the defence. I am only entitled to withdraw the defence from the jury where no reasonable jury, properly directed, could find the defence to be made out.

### **The law of duress of circumstances or necessity**

10. So far as the law as to the requirements of the defence as advanced in this case is concerned, it appears to be common ground that the test remains that as set out in *R v Graham* [1982] 1 WLR 294.
11. Lord Lane CJ in *Graham* set out the test:

*(1) Was the defendant, or may he have been, impelled to act as he did because, as a result of what he reasonably believed King had said or done, he had good cause to fear that if he did not so act King would kill him or (if this is to be added) cause him serious physical injury?*

*(2) If so, have the prosecution made the jury sure that a sober person of reasonable firmness, sharing the characteristics of the defendant, would not have responded to whatever he reasonably believed King said or did by taking*



*part in the killing? The fact that a defendant's will to resist has been eroded by the voluntary consumption of drink or drugs or both is not relevant to this test.*

12. These directions which Lord Lane CJ stated should be given to the jury were approved by Lord Mackay in the House of Lords in *R v Howe* [1987] AC 417 as “entirely correct”. They have subsequently been followed more than once by the Court of Appeal. In *R v Conway* [1989] QB 290 Lord Woolf giving the judgment of the court said that “the approach must be that indicated by Lord Lane CJ in *Graham*”. *Conway* was itself approved and followed in *R v Martin* (1989) 88 Cr App R 343.
13. The law is clear that the jury must judge the defendant on what he reasonably believed to be the situation. For that reason, for the purposes of this ruling I propose to take the case as advanced by the defendant and reach my conclusions on his case as to when and how he found the gun and what his reasons were for thereafter keeping it for the next five days before the police searched his house and arrested him for its possession. Effectively, I am using the contested but most favourable version of events as would be open to a jury to accept if they were so minded.
14. The case of *Pommell* held that if a ruling was to be made by the Judge, it was important that there was agreement as to the facts or hypothetical facts upon which the ruling was made. I agreed with counsel that for the purposes of this ruling I should construe the case at its highest for the defendant and so thus some time was spent at the start of the submissions agreeing what the factual basis upon which I should make this ruling was and the following was agreed. I stress this is taking the defence case at its highest, in the most favourable way a jury could construe it in favour of the defendant:
  1. He found the firearm and extended magazine in the back yard of his workplace in the early hours of the morning of 29 July. He was afraid and concerned about the items being there. He didn't feel he could leave them there and he didn't know whether they were left there by someone who intended to come for him to kill him or his business or his family.
  2. He picked them up and put them in his car. Prior to driving off he made two attempts to phone Officer Howell.



3. He drove past the George Town Police Station (GTPS) and looked for Officer Howell's car but upon not seeing it in the car park went home (via Casa). Had Howell's car been there, he would have gone into the GTPS and reported to that officer what he had just found. As he drove home he drove round the neighbourhood and he checked whether he was being followed and found that he was not.
4. On arriving home, he put the items in his bedroom where they remained for the next five days until his house was searched on the morning of the 3<sup>rd</sup> August.
5. Over the intervening weekend he stayed at the Westin hotel as he felt concerned for his safety and the safety of his family.
6. Over that weekend he drove to West Bay Police Station (WBPS) to look for Officer McDonald but on not seeing his car (which he also would have recognised) he didn't stop. Had he seen his car he would have gone in and reported the discovery of the items to that officer.
7. He knew Howell and McDonald as serving police officers and he trusted them. He had Howell's contact details. He knew them well enough to know what their cars looked like.
8. Courtney Myles, a family friend who has given character evidence for the defendant and has known him since he was a child, was at the time of the defendant taking possession of this firearm and magazine into his possession also a serving police officer but he personally did not have Myles contact details.
9. He had been warned to be careful about which police officers he spoke to by Howell after the broadcast of his name following an earlier incident involving a firearm in July. He took that warning seriously.
10. He was concerned by gun crime in Cayman and whether it might affect his business in the same way as it had affected other local small businesses such as the incidents



involving firearms at Globe Bar or Vic's bar. He was also concerned about a previous incident earlier in July including where someone had come to his bar with a firearm.

11. He thought that the police systems were lax when it came to security of information given his experience earlier that month of a report he had made finding its way just a few hours later onto Cayman Marl Road and that referred to at para 9 above.

12. He had received no actual threats to his life or his personal safety or that of his family. He was, however, concerned as to whether the presence of the firearm in the place he says he found it was indicative of a threat to life or serious injury against him, his family, his business or his customers.

15. I have concluded that there are four issues that require to be determined in order for me to assess whether the defence should be left to the jury. I must therefore consider whether there is evidence of each of these issues such that a reasonable jury properly directed could conclude that the defence is made out. The issues are:

1. The threat or set of circumstances that the defendant reasonably believed to exist
2. The danger of death or serious injury to him or his family arising from that situation
3. The extent to which he would have been able to evade that threat or risk short of committing the offence itself
4. Whether the threat or circumstances persisted such that the necessity or duress was continuing

### **Issue 1 – The threat or set circumstances**

16. The defendant does not suggest that he was actively or expressly threatened. He says that when he found the firearm at 2am on the 29<sup>th</sup> July behind the air conditioning unit in the external area of his



business that he was terrified as he thought that the item may have been put there by someone who intended to kill him or do him or his family or his business harm.

17. In *R v Safi* [2003] EWCA Crim 1809 (an authority provided by the Crown but not addressed by either counsel in their oral submissions) the Court of Appeal Criminal Division of England and Wales (CACD) dealt with a situation where at a trial and then a retrial the two trial judges had given different legal directions to the jury as to the test to be applied in a case where the defence were asserting duress of circumstances. The threat that the defence alleged existed was that created by the murderous Taliban regime. It was that threat that had led the defendants to hijack an aeroplane.

18. At trial one the trial judge had asked the jury:

“Was the defendant or may he have been driven by circumstances to act as he did because he genuinely believed that if he did not act in that way he or those for whom he was responsible would soon be killed or seriously injured?”

19. The equivalent question asked by the (different) trial judge in trial two was:

“Was the defendant whose case you are considering subject to an imminent threat of death or serious injury or may that have been the case?”

20. The underlining is mine.

21. The CACD concluded that the second judge had been wrong to hold that there must be a threat in fact rather than something the defendant reasonably believed to be a threat for the defence of duress to be invoked. Longmore LJ at para 14 said:

*It is clear that it is the defendant's reasonable belief in relation to the words or the conduct said to constitute the threat for the purpose of the defence of duress that is critical; that is separate from the fact that the defendant must also have good cause to fear death or physical injury.*



22. In *R v Martin* [1989] 88 Cr App R 343 Simon Brown J delivered the judgment of the court (including Lord Lane CJ) and summarized the principles thus:

*First, English law does, in extreme circumstances recognise a defence of necessity. Most commonly this defence arises as duress, that is pressure upon the accused's will from the wrongful threats or violence of another. Equally, however, it can arise from other objective dangers threatening the accused or others. Arising thus it is conveniently called "duress of circumstances".*

*Secondly, the defence is available only if, from an objective standpoint, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury.*

*Thirdly, assuming the defence to be open to the accused on his account of the facts, the issue should be left to the jury, who should be directed to determine these two questions: first, was the accused, or may he have been, impelled to act as he did because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious physical injury would result?*

*Second, if so, may a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted? If the answer to both those questions was yes, then the jury would acquit: the defence of necessity would have been established.*

23. As the Court of Appeal said in *Pommel*, referring to *Martin*:

*"Most commonly it arises when wrongful acts put pressure upon the accused but it can arise from other objective dangers threatening the accused or others and then it is conveniently referred to as duress of circumstances."*

24. So, the objective dangers threatening the accused do not necessarily have to be caused by actual threats. The question is whether he had good cause, given what he reasonably believed the situation to be, to have the requisite fear. I am clear that the fact that the defendant does not say that there was an actual



threat made to him does not prevent him from relying on the defence of duress. I accept that if he considered the presence of the weapon in that public place in that moment to constitute a set of facts that caused him fear then that could suffice for the defence to apply. Which takes me to the second question as to the extent of fear caused by that set of circumstances.

## **Issue 2 - The danger of death or serious injury to him or his family arising from that situation**

25. The defendant's case is that the fear that he was caused by finding that weapon was of the risk of him or his family being killed. He thought that might be the reason that the weapon had been placed there – to be ready for such an attack.

26. In Martin the court said:

*The defence is available only if from an objective standpoint the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury.*

27. Again, in that moment I accept that it would be open to the jury to conclude that the defendant may have reasonably feared that someone may come and take up the weapon and cause him such harm. That being so, when deciding on his actions in that moment I consider that a reasonable jury properly directed would be entitled to reach the conclusion that his taking it into his possession was something he did through duress of circumstances.

## **Issues 3 and 4 – Imminence, Evasion and the Continuing Offence**

28. I deal with these issues together and they are, in my view, inseparably linked.

29. The nature of a defence such as this is that, even in a case involving duress of circumstances rather than duress by threats, it must be necessary for there to be a level of imminence to the threat and there must be a requirement in a case involving a continuing offence that options for evasion are not just considered but effectively acted upon. Otherwise, a person who justifiably comes into possession of a firearm can simply sit back and keep it and that would have enormous public policy implications. Duress or



necessity as a species of defence has a very firm place in the legal lexicon but it must be kept within proper constraints that have been identified in the common law since its development.

30. If the weapon had been discovered by the police just a few hours after the defendant had taken it into his possession, then this would be a much more complex factor with which to wrestle and it would be likely that the matter would be properly left to the jury as the defence would be open to a reasonable jury to find was well founded.
31. Of course, the Crown say that the internet searches show that it is likely on their case that the defendant had the weapon for at least three weeks. But I have already said that I must base this decision (as to whether to leave the defence) on the question of what the factual conclusions that the jury could reach most favourable to the defence would be and the answer to that is that they could accept that he found it at about 0200h on the 29th of July.
32. If the circumstances of all that had gone before in that month together with the immediate fear of seeing the weapon were accepted by the jury, then they could conclude that him getting the weapon to a place of safety at his house may have been reasonable and justified on the basis of this defence.
33. But what about thereafter?
34. The defendant's evidence is that he picked up the weapon, got in his car and tried to phone Officer Howell twice but did not get through. Then he drove home past the GTPS to see if Howell's car was there and he did not see it. Apart from that, the only efforts that the defendant said he made between finding the weapon and it being found by the police (five days later) was to drive past WBPS to see if he could see Officer McDonald's car over the course of that weekend.
35. Although we may not have heard evidence as to exactly what he spent the entire weekend doing, we do know that when the police arrived on the Tuesday morning at about 10am he was at his usual place of work, the business that he owned.
36. In interview the defendant outlined that he knew many police officers. But we also heard that he had been warned by Howell not to trust the police generally. That being so, he had a limited number that he says he trusted. Howell and McDonald were two of these. And Courtney Myles, one of his own



character references, was another. That means that he had three police officers, none of whom were rookies on the beat and all of whom he could either contact with ease (he had Howell's number) or with relative ease (Myles was a family friend of decades standing) and McDonald he knew well enough to know the make and colour of his car. That, it seems to me, means that he was more than averagely acquainted with police officers on this Island that he trusted.

37. That a man (then) in his late 30s who interacts frequently with the police and knows and trusts at least the three of whom he told the jury of not to be able, on an Island of this size, to find and locate and talk to any police officer over the course of that five days is simply and utterly incredible.
38. It is necessary for this defence to operate that, from an objective standpoint, the accused can be said to be acting reasonably and proportionately to avoid a threat of death of serious injury.
39. Once he took the weapon away from the scene, I am unable to fathom what continuing imminent threat he faced, even on his own evidence, apart from the concern he said that he had about gun crime in Cayman generally and in particular what he had heard about over that preceding month. A concern about gun crime cannot found a claim to duress in these circumstances otherwise anyone found with a weapon in Cayman could say that they had it because they had heard on Cayman Marl Road about another shooting. The floodgates would then open and the public concern that I shall come to in a moment when I deal with public policy considerations would be well and truly founded.
40. Further, as time went on there was, even on the defendant's case, no imminence and even more possibility of evasion. Ms. Fosuhene says that where there is a spectrum it is a matter for a jury to decide where on that spectrum this case sits.
41. But I am clear that on the facts of this case, even on the most generous interpretation given to the defendant, that there was no continuing imminence or immediacy of any perceived threat and that no jury properly directed could conclude that there was.
42. It is clear that even on the defendant's own case the firearm came into his possession in the early hours of the 29<sup>th</sup> July 2021. He then kept it until his house was searched on the morning of the 3<sup>rd</sup> August. He had it for just over five days.

43. It is also clear that, even on the defendant's account, apart from two phone calls in the early hours of the 29<sup>th</sup> July and two drive-bys of police station car parks (the second of which was complete by the end of Sunday) there was nothing else that he did about resolving his possession of this firearm thereafter. Nothing can justify still possessing the weapon by mid-morning on the Tuesday. The imminence had long gone, even if it was ever there. The fact that the defendant, even on his own account, did nothing for the 36 hours at least that followed his driving past West Bay police station means that, in my view, this defence is not available to him and the jury should not be allowed to consider whether it is.

44. As the CACD said in Pommell at para 7:

*“In our judgment a person who has taken possession of a gun in circumstances where he has the defence of duress by circumstances must desist from committing the crime as soon as he reasonably can (the Court quoting from Smith and Hogan”).*

45. They went on (with reference to what was a delay of just a few hours after the acquisition of the firearm in that case):

*“The appellant has offered an explanation for that delay but it seems to us that the defence of duress of circumstances could not avail him once a reasonable person in his position would have known that the duress, in this case the need to obtain and retain the firearm had ceased. In the present case the judge said that the failure of the appellant to go immediately to the police robs him of a defence. We accept that in some cases a delay especially if unexplained may be such as to make it clear that any duress must have ceased to operate in which case the judge would be entitled to conclude that even on the defendant's own account of the facts, the defence was not open to him. There would then be no reason to leave the issue to the jury.”*





46. In that case the Court concluded that a delay of a few hours should not have robbed him of the defence. At para 39 (ii) of Brandford Gross LJ said:

*In our judgment the question is not whether the threat was directly or indirectly relayed which is of significance so much as its immediacy, imminence the possibility of taking evasive action.....*

47. In a case involving issues of necessity or duress of circumstances it is my conclusion that the law is clear and consistent - where the offence (as it is here) is a continuing offence then the defence must fail if, once the necessity to act ceases to exist, the defendant does not desist from committing the offence.
48. That is the proportionality that is referred to in the test set out above from Martin.

### **Public policy considerations**

49. It was said in *Southwark LBC v. Williams* [1971] Ch 734 at 746 that “necessity can very easily become simply a mask for anarchy”.
50. The authorities stress the need for great and imminent danger and require that the defendant’s response to the situation be judged by an objective standard of reasonableness and proportionality. Some authorities speak of the defendant's choice being overborne whereas others speak of an unwilling choice between two alternatives.
51. The defences which have evolved to deal with circumstances of necessity encompass such a wide range of circumstances that in some cases the reference to the overbearing of choice may be helpful whereas in other cases, it would be inappropriate.
52. But as the Civil Division of the English Court of Appeal has said: -

*“The defence is available on the basis that, if it is established, the relevant actors have in effect been compelled to act as they did by the pressure of the threats or other circumstances of imminent peril to which they were subject, and it was the impact of that pressure on their freedom to choose their course*



*of action that suffices to excuse them from criminal liability” [2001] Fam at 235–6 per Brooke LJ.*

53. I note that from the extract of Hansard provided by the Crown as to the debate held in the Cayman Islands Parliament in respect of Firearms legislation the following observations were made:

*Finally, I hardly need remind this country about the circumstances that have arisen for the need for hard-line by the Legislative Assembly to firearm offences. This place in 2005 was becoming like the Wild Wild West—there were guns everywhere. Law abiding people were under siege. So the Government of the day sought to take the fight to the criminals to bludgeon the proliferation of guns and gangs and its growing subculture..... They are still dangerous. And so we should not become too complacent simply because we might be experiencing the eye of a storm.*

54. The House of Lords in *R v Hasan* [2005] UKHL 22 make observations at para 20-21 about the need for strict controls and scrupulous limitations to be placed on the defence of duress. For obvious reasons of policy it is a defence that must be narrowly and carefully confined.
55. Further, as Lord Morris said in *DPP for NI v Lynch* [1975] AC 653:

*Duress must never be allowed to be the easy answer of those who can devise no other explanation for their conduct nor of those who readily could have avoided the dominance of threats nor of those who allow themselves to be at the disposal and under the sway of some gangster tyrant.*

## **Conclusion**

56. In this case I consider that the fact that the defendant had the firearm in his possession for a full five days to be relevant. Leaving aside whether the threats as he perceived them to be justified him taking it into his possession in the first instance, five days is simply too long a period to entitle him to rely on this defence especially in the context that he was well enough acquainted with certain police officers whom he trusted to have sat on their laps as a child (per Myles evidence to the jury) and to know the colour of their cars.

57. We heard from a number of police officers in this case (even called as defence witnesses) who said they had known him for many years, and it is clear to me that the defendant had more than the usual number of options open to him. He did not take them and, in my view, the defence of duress or necessity is not one to which he is entitled to avail himself since I do not consider that any jury properly directed could conclude that the defence is made out.
58. I will not therefore leave the defence to the jury. I accept that the circumstances in which a judge should remove a defence from consideration by the jury are, as I have already set out above, few and far between. But I am clear here that, had the firearm and ammunition been in his possession for just a few hours then, as with the case in Pommell, it would have been a matter for the jury to decide. But in my view no jury properly directed on the evidence they have heard in this case could find that possession for the duration of five days (which the defendant himself admits) and with the means and contacts available to this defendant can be justified by a claim to duress or necessity.
59. I note by way of a postscript that, having directed the jury in accordance with this ruling in summing up and having explained to them that the only issue in the case was that of possession (which the defendant admitted) and that otherwise he had no defence, the jury acquitted the defendant on both counts. Accordingly, this ruling has been redacted to remove the defendant's full name.

**Dated the 30<sup>th</sup> September 2025 (following postscript)**



**The Hon. Justice Emma Peters  
Judge of the Grand Court**