

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**
3

4 **Neutral Citation Number: [2025] CIGC (Crim) 64**
5 **INDICTMENT NO: 17 of 2025**
6

7
8 **R**



9
10 **V.**
11

12
13 **TF**
14

15 **Appearances:** **Mr. Brian Treadwell, Senior Crown Counsel, Office of the Director**
16 **of Public Prosecutions for the Prosecution**

17
18 **Mr. Jonathon Hughes of Samson Law for the Defence**
19

20 **Before:** **Justice Cheryll Richards KC**

21 **Submissions Heard:** **14th October 2025**

22 **Ruling:** **14th October 2025**
23
24

25 ***Criminal Law – Ruling, Issue of DNA evidence, sole evidence in proof of Possession of an Unlicensed***
26 ***Firearm contrary to section 15 (1) and (5) of the Firearms Act (2008 Revision), Whether sufficiency of***
27 ***evidence to be left for the consideration of a jury.***
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RULING

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3 1. This is an application that there is no case to answer on the single count of the Indictment of
4 Possession of an Unlicensed Firearm contrary to section 15 (1) and (5) of the *Firearms Act*
5 (2008 Revision). The particulars are that the defendant, on or before the first day of June 2022,
6 within the Cayman Islands, had in his possession a firearm namely a Springfield Armoury XD
7 semi-automatic pistol, which was not under and in accordance with the terms and conditions
8 of a Firearm User's licence.
9
- 10 2. The defences' application is based on both limbs one and two of the seminal and applicable
11 case of *R v Galbraith*¹.
12
- 13 3. The only evidence in the case which is capable of establishing possession is the evidence of
14 expert witness Christian Taylor. Mr. Taylor is a Forensic Scientist. He examined the firearm
15 which was recovered by the police and found that it had on it a mixed DNA profile. Within that
16 mixed DNA profile was a major contributor, which he labelled as male profile one. That DNA,
17 when compared with the known DNA of the defendant, caused Mr. Taylor, to reach the
18 conclusion that the defendant could not be excluded to the statistical ratio of 72 sextillion in
19 relation to TT 3 A, and 28 quintillion in relation to TT 3 B. These are swabs taken in the first
20 instance before fuming and in the second instance after fuming. The calculation is described
21 by Mr. Taylor as overwhelming support that the DNA on the firearm came from the defendant.
22 There are limitations to the DNA evidence. It cannot tell how or when that DNA was deposited
23 on the firearm.
24
- 25 4. The defendant in interview with the police said that he had never touched the firearm and does
26 not know of it.
27
- 28 5. Defence Counsel makes three points. Firstly, that on the evidence, the prosecution cannot
29 exclude all reasonable possibilities consistent with innocence. In effect, that the prosecution
30 cannot exclude the possibility of indirect transfer or some other innocent explanation for the
31 deposit of DNA on the firearm.

¹ [1981] 73 Cr. App. R. 124
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2 6. The second point is that DNA by itself is incapable of proving possession in the sense of
3 knowledge, custody or control. The third point is that the firearm may have been imported into
4 the Cayman Islands. Counsel submits that given the background to this case, the prosecution
5 cannot prove that possession by the defendant took place in the jurisdiction of the Cayman
6 Islands.

7
8 7. The second point is the primary point raised by the defence. In respect of this reliance is placed
9 on the Grand Court cases of *R v Osborne Douglas*² in February 2013 and *R v Philip Sciamonte*
10 *and others*³ in December 2009. Counsel also places significant reliance on the English case of
11 *R v Matthew Walsh*⁴.

12
13 8. In the first case referenced, which is the case of *Douglas*, Henderson J. identified the question
14 to be whether the jury could be sure that Douglas had actual physical possession of the firearm
15 at some time shortly before the car was stopped. The Court's conclusion was that the presence
16 of DNA did not by itself prove actual physical possession to any standard at all. The learned
17 Judge considered alternative scenarios which arose on the facts of that case, which included
18 that the firearm in question had fallen from the pants leg of one Roger Moore. The learned
19 Judge, said this:

20
21 “Mr. Douglas' DNA could have been placed on the gun in a number of different ways: by
22 his handling it while it was in his possession, a circumstance which would be consistent
23 with guilt; by his touching it momentarily without taking it into his possession at all, a
24 circumstance which is consistent with innocence; by his having transferred his DNA to
25 Roger Moore, who then touched the gun and transferred the DNA again to the gun itself, a
26 circumstance consistent with innocence; or by his having transferred his DNA to some
27 object like a cloth, which Moore then used to wipe the gun, thereby transferring it again to
28 the gun, a circumstance consistent with innocence. In addition Mr. Douglas's DNA could
29 have been placed upon the gun at any time, as the experts cannot tell how long the DNA
30 has been there.”

² Grand Court Unreported Judgment Ind. 81 of 2012, dated 5th February 2013

³ Grand Court Unreported judgment December 2009

⁴ [2022] EWCA Crim 806

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3 9. The Court concluded that like the situation in the case of *Sciamonte*, possession is one way in
4 which DNA could have been placed on the gun, but there were other reasonable possibilities
5 and nothing in the evidence suggested that one possibility was more likely than another.
6
7 10. This Court notes that the facts of the instant case are clearly distinguishable from the facts in
8 the case of *Douglas*.
9
10 11. *Walsh* was a case where the charge was conspiracy to supply cocaine. This is of significance.
11 The English Court of Appeal stated that the essence of the prosecutions' case was that it could
12 be inferred from the presence of the appellant's DNA on both packages that he had either
13 wrapped the drugs or had handled the packages after they had been put together by someone
14 else. If either was right, then, said the prosecution, it could safely further be inferred that the
15 appellant was part of the conspiracy⁵. The Court said that the reality was that indirect transfer
16 carried the prosecution case nowhere in the absence of any other evidence linking the appellant
17 with the conspirators, and there was none.⁶
18
19 12. The Court concluded that where indirect transfer was a distinct, not theoretical possibility, in
20 that case where the defendant was an admitted drug addict, that the DNA evidence standing
21 alone was insufficient to prove direct handling by the appellant of the packages.
22
23 13. The Court reviewed a number of cases, including *R v Belhaj-Farhat*⁷, which involved the
24 finding of a cigarette butt left at the scene of a burglary where there was no realistic suggestion
25 that it could have been left there by anyone other than the person involved in the crime.
26
27 14. The case of *R v Tsekiri*⁸ concerned DNA found on the door handle of a car which had been
28 used to open the door, and immediately attack its occupants. The circumstances were such that
29 the person whose DNA it was had a case to answer, because there was no plausible explanation

⁵ [2022] EWCA Crim 806, paragraph 13

⁶ [2022] EWCA Crim 806, paragraph 14

⁷ [2022] EWCA Crim 115

⁸ [2017] EWCA Crim 40

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1 for the presence of the DNA. By contrast, in *R v Jones*⁹, the presence of the defendant's DNA
2 on a hand grenade was insufficient to prove conspiracy to possess explosives for an unlawful
3 purpose because indirect transfer of that DNA was a plausible explanation.
4

5 15. The Court said that each case turns on its own facts.
6

7 16. The prosecution in response to the defence submissions in the instant case, has referred the
8 Court to a number of cases from the Cayman Islands Court of Appeal including *R v Ray*
9 *Kennedy Smith*¹⁰, *Okeno Nicholas Solomon v R*¹¹ and *Madeinys Ebanks-Pol and Adrian*
10 *Adela Gea v R*¹². Counsel submits that these cases suggest that the absence of a satisfactory
11 explanation can lead to the conclusion that DNA evidence is capable of being relied on by a
12 tribunal of fact. Relied on in the sense of it being the singular evidence in the case. In the case
13 of *Ray Kennedy Smith* the Appellate Court approved the approach of the trial judge that DNA
14 evidence as to a partial DNA profile on a glove found next to a firearm amounted to a significant
15 factor to be taken into account. This was in circumstances where the defendant could not be
16 excluded from the DNA to a random occurrence ratio of one in every 1.4 billion. The Court
17 noted that the appellant had elected not to call any evidence and thus had not availed himself
18 of the opportunity to present any reasons for his DNA matching that found on the glove. There
19 was no explanation given of his movements and the Judge had been satisfied that his case in
20 cross-examination of the police officers as to indirect transfer was to be rejected. The trial Judge
21 had been careful to consider all the evidence in the case.
22

23 17. Prosecuting Counsel has also referred the Court to *Blackstone's Criminal Practice* 2024,
24 paragraph F19.31 onwards, and in particular to the case which is referenced therein of *R v*
25 *Sampson and Kelly*¹³. The Court notes that this case does not appear to have been referred to
26 in the Grand Court cases of *Osborne Douglas* or *Philip Sciamonte*. Indeed, it is after those
27 cases were decided.
28

29 18. In the case of *Sampson and Kelly*, the English Court of Appeal said this: -

⁹ [2020] EWCA Crim 1021

¹⁰ CICA Unreported Judgment, CICA (Crim) 02 of 2014 dated 16th July 2015

¹¹ CICA Unreported Judgment, Criminal Appeal 22 of 2018 dated 29th November 2019

¹² CICA Unreported Judgment, Criminal Appeal 19 and 20 of 2018 dated 3rd February 2021

¹³ [2014] EWCA Crim 1968

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2 “39. By the time of *Grant* and *Ogden*, analytical techniques had advanced considerably,
3 and here the evidence was that there was one in a billion chance of the DNA matching
4 someone else. However, the difficulty in those cases was that the expert evidence could not
5 age the DNA. It was not possible to show that the DNA was placed on the balaclava in
6 *Grant*, or on the scarf in *Ogden* at the time of the offence. Once again, it is possible to see
7 immediately why in the absence of any other evidence, there was insufficient evidence on
8 which a jury could convict.

9
10 40. However, we consider that these decisions are distinguishable. The present case differs
11 from all of these cases. The presence of DNA is not relied on as evidence of the presence
12 of the defendant at a particular place at a particular time. Rather, the essence of the offence
13 is possession of the article, so there is a much closer connection in this case between the
14 DNA evidence and the commission of the offence. The presence of DNA on the article or
15 the muzzle of a gun in this case is capable of being evidence of possession of the article at
16 some point before 15th of August, as alleged in the indictment.”

17
18 19. As to the fact that indirect transfer was a possibility, the Court said in effect, that this was a
19 matter for the jury. The Court said this: -

20
21 “41. The question which arises here is a different one. It relates to the possibility of indirect
22 transfer. The expert evidence before the court was that the presence of Kelly's DNA on the
23 muzzle was consistent with direct transfer, and that it was also consistent with indirect
24 transfer. The jury had to consider whether, in fact it was possible that indirect transfer had
25 occurred.

26
27 42. At the close of the prosecution case, in the absence of any other evidence, it would have
28 been open to the jury to reject that possibility. There was evidence capable of supporting
29 the conclusion that Kelly had handled the firearm. At that stage his suggestion in interview
30 in relation to leaving the body warmer at Wheelan's house, and in relation to the lost glove
31 was entirely exculpatory and was untested. In any event, the jury might not accept the truth
32 of what Kelly had said in interview.



1 43. The possibility of indirect transfer was a matter for the jury to address, on the basis of
2 all of the evidence in the case. If they concluded that, it might be the case, that it was
3 indirectly transferred in some way, then they would, of course, have to acquit. But that
4 was not a necessary conclusion, and the matter was properly left to them, provided that
5 they were correctly directed as to the burden and the standard of proof.”
6

7 20. In this case, the finding is of a major profile. Evidence of the witness Mr. Taylor about this
8 included the following: - “If I am handling the item regularly (and he was referring to the coffee
9 cup,) my expectation is that I will become the major DNA profile” and also that “typically the
10 major profile of a handled item is the regular owner or user, or the last person to handle it.”
11

12 21. In this case, as it stands, there is no evidence at this stage to ground, the alternative scenarios
13 put by defence Counsel. The issue of indirect transfer placed against the evidence of the fact of
14 the major profile and the evidence given about it, is in my view, properly one for the jury. This
15 Court relies on what was said in the case of *Sampson*.
16

17 22. With respect to the issue of possession within the jurisdiction, the reply of the prosecution,
18 which I accept is firstly that there is no evidence that the defendant who is resident in the
19 jurisdiction ever left it and that the co-defendant’s plea of possession, relates to possession
20 within the jurisdiction of the Cayman Islands.
21

22 23. As to whether direct transfer can establish the elements of possession, it seems to me that if
23 there is proven to be direct transfer, and that is a matter for the jury, there is also a reasonable
24 inference arising from that, as the prosecution submitted, that the holder or person who has that
25 item in his hand, who is directly transferring DNA onto it, also has knowledge of what is being
26 held and physical custody of it. This appears to be the conclusion of the Court in the case of
27 *Sampson*.
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1 24. For all these reasons the submission of no case to answer made by the defence is refused. I find
2 that there is a case to answer.

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4 **POSTSCRIPT**

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6 25. This ruling has been redacted to remove the defendant’s full name; the case having been left
7 to the jury which rendered a verdict of acquittal upon its conclusion.

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9 **Dated this the 14th day of October 2025**

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12 **The Hon. Justice Cheryll Richards KC**
13 **Judge of the Grand Court**

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