



**Neutral Citation Number: [2025] CICA (Crim) 13**

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

**CICA CRIMINAL APPEAL No. 0017 of 2023  
(formerly IND 0095 of 2022)  
(formerly SC 0179 of 2022)**

**LUISTO EUSEBIO HERNANDEZ**

Appellant

-and-

**HIS MAJESTY THE KING**

Respondent

**BEFORE**

**The Rt Hon Sir John Goldring, President  
The Hon Sir Michael Birt, Justice of Appeal  
The Rt Hon Sir Jack Beatson, Justice of Appeal**

**Appearances**

**Mr Michael Jordon of Kelly Law for the Appellant  
Ms Nicole Petit of ODPP for the Respondent**

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**JUDGMENT**

Transcript of oral judgment dated 15 May 2025 and approved for Release 26 February 2026

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## JUDGMENT

### **Golding JA, President**

1. On 8 June 2023, after a trial in the Grand Court before Justice Chapple, the Applicant, Luisto Eusebio Hernandez, was convicted of attempted murder and possession of an unlicensed firearm. In the light of his conviction for attempted murder, no verdict was taken in respect of the lesser alternative of unlawful wounding with intent. The applicant was sentenced to 21 years' imprisonment. He now seeks leave to appeal against conviction.

### **The Facts**

2. The facts were not complicated. On 20 April 2022, there had been a disagreement between the complainant, Nigel Campbell, and the applicant during which Mr Campbell threw a bottle at the applicant, which shattered and possibly injured the applicant's daughter. It was the Crown's case that the applicant left and returned a short time later with the firearm with which he shot Mr Campbell twice. The evidence in chief going to the identification of the applicant as the gunman was summarised by the judge in the following way:

*“Towards the end of his evidence, in an effort to help you, ladies and gentlemen, I asked Mr Campbell to do the best he could as to the sequence of events as he remembered them. He said, as soon as I saw the defendant, I crouched down. I was shot through the wall. As a result, I was down on the ground lying on the ground. After I was hit through the wall, I heard the second shot. The hand came through the door after I was on the ground. It was his hand. I know it was his. We all live in the same house, and I know his body features and build. And he confirmed that in April of last year, he had no problems with anyone else.*  
(see page 43 para 16 of the summing up)

3. In cross-examination, he added that when the applicant came back, someone shouted “*Luisto*,” which, of course, is the applicant's first name. “*When I heard someone shout “Luisto” I turned and saw the defendant with a gun and crouched down...*”. He said it all happened very fast. He said

there his brother-in-law, Gary Whittaker, was standing near the door blocking him and telling him, no, no, no. Gary Whittaker did not give evidence.

4. The defence case was that Mr Campbell was lying. Mr Campbell vigorously maintained he was not. The defence referred to a number of inconsistencies in what he had said about the events, in particular, that he had not previously said he had been fired at through a wall.
5. The applicant answered no questions when the police interviewed him. He did not give evidence.

### **The Judge's Identification Direction**

6. The judge said this:

*“[If Mr Campbell] said Mr Hernandez was the gunman, knowing full well that he wasn't, then you'll have no difficulty whatever in finding Mr Hernandez not guilty of all three counts of the indictment. As to the suggestion that Mr Campbell is mistaken when he says that Mr Hernandez was the gunman, you should, of course, consider that with care. You've all heard the expression 'it's a case of mistaken identity.' And there have been such cases in the past, miscarriages of justice. The experience of the courts has shown that the witness who has identified a person can be mistaken, even when the witness is honest and sure that he's right. Such a witness may seem convincing but may be wrong. That's true even where a witness knows a person well and says that he recognised that person. That witness could still be mistaken. You could only rely on the identification evidence if you're sure that it's accurate and correct. You need to consider carefully all the circumstances in which Mr Campbell made his identification of Mr Hernandez. Bear in mind that this incident was fast moving and happened very quickly. When Mr Campbell said he recognised Mr Hernandez in the yard with a gun, there was a considerable distance between them, you may think. Mr Campbell said a distance further than from between the witness stand and the far doors of the court, a spot somewhere out in the foyer, he said; although the gunman was running towards him, so the distance between them was, of course, closing. Bear in mind that Mr Campbell was looking, he told you, through mesh, the mesh window inside the shop. Mr Hughes spoke of layers of mesh in the course of his closing address. That*

*wasn't evidence, but simply a mesh window. Did that affect his ability to recognize Mr Hernandez, he fact that it was through mesh? As against that, it's, of course right that this is a case, according to Mr Campbell, of recognition of someone he'd been interacting with some ten minutes earlier, someone whom he's been living at the same address as part of the family for over six years. You'll remember that Mr Campbell said that he recognised the hand holding the gun that came round the corner of the door as that of Mr Hernandez and said, well, I recognise that. We live in the same house. I know his body features and his build. And there's evidence of Mr Campbell that what made him turn and see the man with the gun, who he recognised as Mr Hernandez, was that another person was shouting the name 'Luisto'. If you're sure that Mr Campbell is right when he says that someone else as shouting the name "Luisto", that's a piece of evidence which is capable of supporting the correctness of Mr Campbell's identification because it sounds like someone else recognised the defendant too. Of course bearing in mind what I've already said, that other person may also be mistaken in his recognition of Luisto. It is possible for more than one person to make the same mistake about the identity of someone they see. But it's for you to decide whether that piece of evidence helps you. So, ladies and gentlemen, bear in mind the need for caution, as I have explained it to you, when considering whether Mr Campbell may be mistaken in his recognition of defendant. But if you're sure that his recognition of he defendant is correct, then of course act upon it."* (See page 21 paragraph 1).

7. Mr Hughes, who was then representing the applicant, submitted that the before the jury could rely upon the evidence that someone shouted out "Luisto" as going to the correctness of the identification, they should have been given the full res gestae warning as set out in the Crown Court Compendium: that before they could rely on that evidence they had to be sure it was accurately reported, spontaneous and genuine and not made as a result of a mistake as to the circumstances. Mr Hughes submitted it was second-hand hearsay which required a careful direction.
8. The judge's response was unsurprising. He said:

*"... it is impossible to imagine a situation of fabrication. In the particular circumstances of this case, if Mr Campbell is right that a gunman arrives and someone says, Luisto, I think it a direction which is frankly laughable to say to the jury, well, you need to consider*

*whether that is fabrication on the part of the third person who said Luisto.”* (See page 54 paragraph 13)

## **The Grounds of Appeal**

9. By Ground 1, it is submitted that the judge should have given the full compendium direction. The failure to do so amounted to an improper encroachment upon the jury’s role and affected the fairness of the trial. It amounted to a grave judicial error.
10. We do not agree. As the judge said, a direction should be tailored to fit the case. The judge was perfectly entitled, for the reasons he gave, to deal with this aspect of the evidence in the way he did.
11. By Ground 2, it is submitted that the identification direction was inadequate in that it failed to distinguish between identification and recognition. That seems to us wholly unarguable. This was plainly a recognition case. The real issue was whether Mr Campbell was lying in identifying the applicant, not whether he may have been mistaken. The judge’s direction was sufficiently broad to encompass, in a straightforward and understandable way, the possible dangers of relying on the evidence of identification.
12. Finally, it is submitted it was in the circumstances also wrong for the judge to permit the jury to rely upon the evidence of someone shouting out “Luisto” as support for the identification. In the absence of the full Compendium direction, the judge should not, in the submission, have permitted the jury to rely on it. However, that is to ignore the careful direction given by the judge in that regard. Firstly, he said the jury had to be sure Mr Campbell was correct that someone shouted out the name Luisto. Secondly, he said the jury should bear in mind that that person may have been mistaken. Moreover, the reality of the position, as we have said, is whether Mr Campbell was lying about these events. Unless the jury was sure that his evidence was truthful, whether about what he said was shouted out or about his identification, they could not convict, as the judge made plain.
13. In short, there is no merit in these grounds of appeal, and the application for leave to appeal is refused.