

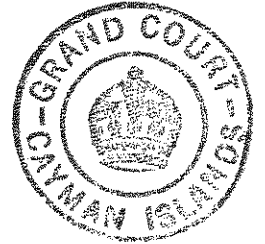
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0086/2012**
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7
8 **THE QUEEN**

9
10 **V**

11 **RAY KENNEDY SMITH**
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16 **Appearances:** **Ms. Candia James, Crown Counsel, on behalf of the**
17 **DPP**

18
19 **Ms. Prathna Boddan of Samson & McGrath on**
20 **behalf of the Defendant**

21 **Before:** **Honourable Mr. Justice Charles Quin**

22 **Heard:** **12th to the 15th November 2013**
23

24 **JUDGMENT**
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27 1. The Defendant pleaded not guilty to one count of possession of an unlicensed
28 firearm contrary to s.15 of the Firearms Law (2008 Revision).

29 2. The particulars of the offence are that the Defendant, on the 31st July 2011 at West
30 Bay, Grand Cayman, had in his possession a firearm that was not under and in
31 accordance with the terms of a Firearm User's (Restricted) Licence, namely a 9 mm
32 Smith & Wesson model 5906 pistol.
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3 **THE LAW**

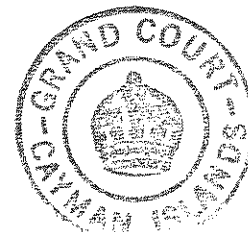
4 3. The Defendant elected to be tried by a Judge Alone, rather than a Judge and Jury,
5 pursuant to s.129 of the Criminal Procedure Code of the Cayman Islands.

6 4. Our Court of Appeal first dealt with the duties of a Judge in Judge Alone trials in its
7 judgment in **K. Richards v. R** 2001 CILR 496 when Justice Rowe stated:

8
9 *“When a trial judge sitting alone has advised himself to the applicable*
10 *principles of law, and given himself any necessary warning, he must indicate*
11 *clearly in his judgment his reasons for acting as he did, in order to demonstrate*
12 *that he has acted with the requisite degree of caution in mind and has therefore*
13 *heeded his own warning. No specific form of words is necessary for this*
14 *demonstration, what is necessary is that the Judge’s mind upon the matter*
15 *should be clearly revealed.”*

16
17 5. In **R v. Dave Kennedy Whittaker** Cr. App. R. No. 14 of 2006, the Court of Appeal
18 gave some guidelines regarding the duties of a Judge in Judge Alone trials. In the
19 Judgment of Mottley J.A. he adopted the Judgment of the former Lord Chief Justice
20 of Northern Ireland Lord Lowry in **R v. Thompson** [1977] NI 74 in which he stated
21 at page 83:

22 *“While on the subject I might say a word on the duty of the judge when giving*
23 *judgment in a trial under the 1973 Act. He has no jury to charge and therefore*
24 *will not err if he does not state every legal proposition and review every fact*
25 *and argument on either side. His duty is not as in a jury trial to instruct laymen*
26 *as to every relevant aspect of the law or to give a full and balanced picture of*
27 *the facts for decision by others. His task is to reach conclusions and to give*
28 *reasons to support his view and, preferably, to notice any difficult or unusual*
29 *points of law in order that if there is an Appeal, it may be seen how his view of*
30 *the law informed his approach to the facts.”*



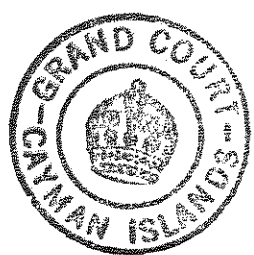
1 6. More recently our Court of Appeal in *Randy Martin v. R* Crim. App. R. 2 of 2010
2 delivered their reasons for dismissing the Appeal on the 7th December 2010. Mottley
3 J.A. again adopting *R v. Thompson* [1977] NI 24 also adopted *R v. Thain* [1985] NI
4 457 where Lowry LCJ said at page 478:

5 *“Where the trial is conducted and the factual conclusions are reached by the*
6 *same person, one need not expect every step in the reasoning to be spelled out*
7 *expressly, nor is the reasoning carried out in sealed compartments with no*
8 *inter-communication or overlapping, even if the need to arrange a judgment in*
9 *a logical order may give that impression. It can safely be inferred that, when*
10 *deliberating on a question of fact with many aspects, even more certainly than*
11 *when tackling a series of connected legal points, a judge who is himself the*
12 *tribunal of fact will (a) recognize the issues and (b) view in its entirety a case*
13 *where one issue is interwoven with another.”*

14
15 7. Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J.A. said in
16 *Randy Martin v. R*, at paragraph 31:

17 *“From these cases the following guidance may be discerned. A judge sitting in*
18 *a criminal case without a jury, in rendering his decision and giving his reasons*
19 *for so concluding, is not required to review every fact and to detail each*
20 *argument on which the prosecution and defence rely as if he were summing up*
21 *to a jury. The judge must set out the conclusion reached and make clear the*
22 *reasons for arriving at that conclusion. He is required to have regard to any*
23 *difficult or unusual points of law and to show how those points of law have in*
24 *anyway impacted the conclusion that he has reached.”*

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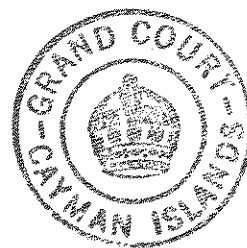


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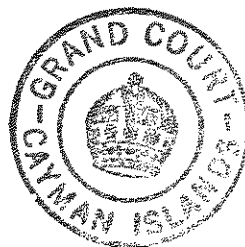
THE EVIDENCE

PC #354 ANTHONY STEWART

8. PC Stewart is a USG officer and an AFO (Authorised Firearms Officer) of the RCIPS. He told the Court that he was on patrol in the West Bay area with his colleagues – PS Richards and PC Smith. PC Stewart told the Court that they were travelling from Town Hall Road towards Watercourse Road – coming from the petrol station and past the Post Office and the Night Club. PC Smith was the driver. PC Stewart was sitting in the passenger seat, and, PS Richards was sitting in the back seat of a marked police SUV left-hand-drive vehicle.
9. PC Stewart told the Court that they turned into the driveway of the Night Club known as Memory Lane. He said the parking lot had only a few vehicles and even fewer persons and he immediately saw three men standing to the far right of the Memory Lane Night Club. PC Stewart said the club and the men were close to a dumpster, otherwise called a skip.
10. Using the photographs in Exhibit 6, and in particular photograph 31, PC Stewart said the police vehicle came into the parking lot from the direction of the root of the coconut tree.
11. He said he looked across and he saw the three men where there was a car and the three men were standing in front of the car. PC Stewart said there was a light pole at the corner of the Night Club building, and it was lit on the night of the 31st July 2011.



- 1 12. PC Stewart observed that the men began to act in a fidgety manner. He said that
2 when they saw the police vehicle they began looking back and forth at the vehicle,
3 and then, immediately, one of the men walked away.
- 4 13. PC Stewart said the vehicle was still travelling down further into the parking lot of
5 the night club. He told the Court that he maintained visual on the three men and, just
6 before the police vehicle reached to the front of the night club, he saw that one of the
7 men had walked off to the side of the building, then returned and re-joined the other
8 two men.
- 9 14. Asked by Crown counsel how long was the person gone to the side of the building
10 he replied that it was only a matter of seconds. Asked to be more precise PC Stewart
11 said it could not have been more than a few seconds – it seemed to be a quick dash.
- 12 15. PC Stewart told the Court that he saw the men in the same position as where the
13 bottle is seen in photograph 34. PC Stewart said when the police vehicle first arrived
14 on the scene all three men were in that spot. The man who walked off went towards
15 the end of the building beside the white picket-like fence. PC Stewart told the Court
16 that the man had walked off between that space, and disappeared out of sight. PC
17 Stewart said that was the side of the building to which the man went.
- 18 16. He said when the man returned and joined the other two men, the police vehicle was
19 still driving towards the front of the club. PC Stewart said he told PC Smith to pull
20 up next to “those guys” because they needed to check them based on how fidgety
21 they were behaving, and the fact that one disappeared and reappeared in a few
22 seconds.



1 17. PC Stewart told the Court that he and the officers pulled up close to the men and
2 there was the strong smell of ganja in the air. He recalled PS Richards engaging
3 them by telling them that he smelled ganja and he therefore would request a search
4 of their persons under the Misuse of Drugs Law.

5 18. PC Stewart said the men identified themselves: Dwight Ebanks; the Defendant, Ray
6 Kennedy Smith; Paul Anglin Jr.

7 19. PC Stewart said he searched Dwight Ebanks. He asked him to put his hands up. PC
8 Stewart said he approached Ebanks from the rear. PC Stewart took control of one of
9 Ebanks' arms and he searched his waist area and his pocket area and he recovered a
10 cigarette box from one of his back pockets. PC Stewart checked the box and it
11 contained a cigarette and a ganja cigarette. He pointed out to PS Richards who was
12 taking notes of the persons and the details of what was recovered.

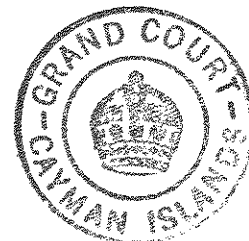
13 20. PC Stewart said Dwight Ebanks was the only person he searched.

14 21. PC Stewart said he observed the Defendant, Ray Smith and said to him, "*That was a*
15 *quick disappearing move.*" PC Stewart said the Defendant laughed and said,

16 "*Officer, I just went and take a piss.*"

17 22. PC Stewart said the Defendant was wearing a long-sleeved dark-coloured shirt and
18 dark-coloured camouflage pants.

19 23. PC Stewart said he did not see anybody else around. He however said that a fourth
20 person came around from the Night Club whilst the officers were speaking with the
21 three men and executing the search. He came from the sign/side that says "Memory
22 Lane" which is the entrance point into the Club.

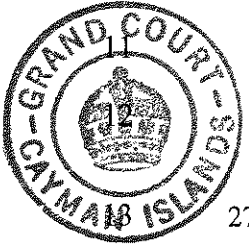


1 24. Officer Stewart was of the opinion that the Defendant wasn't away for sufficient
2 time to take a leak. Officer Stewart said in live evidence:

3 *"Based on his comment I know that was way too much of a short time for him*
4 *to do what he said he did."*

5 25. PC Stewart told the Court that based on this opinion regarding the time to take a
6 piss, the smell of ganja and the ganja cigarette found on Dwight Ebanks' person, he
7 walked around to the area where the Defendant had gone, in order to conduct a
8 ground search. He said he executed the search because he was of the opinion that
9 there was more illegal drugs and therefore went to look for them.

10 26. PC Stewart said photo 1 in the album produced by SOCO Marin shows where he
went to search, and there was quite a lot of bush there. He said he walked around the
side with his flashlight. PC Stewart said he was not wearing gloves.



11 27. PC Stewart said it was then that he discovered the firearm the ski mask and the
12 gloves. Photo 2 shows PC Stewart pointing to the firearm, ski mask and gloves
13 behind the air conditioning unit.

14 28. PC Stewart said he could partially see the ski mask as well as the burgundy pair of
15 gloves. He said the pistol grip of the firearm could be seen from the under the ski
16 mask.

17 29. PC Stewart said that from what he knew of firearms he could see, based on the
18 portion that was exposed, that it was a firearm and, consequently, he immediately
19 ran back to his colleagues and shouted "gun" as an indication of what he had seen.
20 PC Stewart said, at that time, he drew his pistol and ordered the men to go down on
21 the ground. PC Stewart said that whilst the men were on the ground he informed PS
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1 Richards of his finding. PC Stewart said PS Richards now knew of the discovery of
2 the firearm and, consequently, he handcuffed the three men.

3 30. PC Stewart said he did not touch the gun or the gloves or the ski mask or anything.
4 PC Stewart confirmed that he had no contact with the Defendant, Ray Kennedy
5 Smith. PC Stewart said that at the time that the men were being handcuffed the
6 Defendant was quiet. Officer Stewart told the Court that the other guys were
7 protesting their innocence, but the Defendant was quiet and not saying a word, and
8 he was sweating profusely. PC Stewart told Crown counsel that at that point the men
9 were arrested and cautioned by PS Richards. PC Stewart said he remained there until
10 the Scenes of Crime Office (SOCO Zoan Marin) arrived.

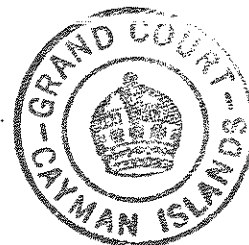
11 31. PC Stewart said PS Richards came around to where the gun was and had a look, but
12 no one else did until he erected the caution tape.

13 32. PS Stewart said SOCO Marin took photos of the area. She asked PC Stewart where
14 exactly he found the gun and she took the photo of PC Stewart pointing out the
15 location of the items which he said had not been disturbed from the position in
16 which he found them.

17 33. PC Stewart pointed to the gun, ski mask and burgundy gloves in the photos taken by
18 SOCO Marin. Whilst taking the photos PC Stewart put on a pair of latex gloves. He
19 then lifted the burgundy gloves and then the ski mask and finally the firearm –
20 which is photographed alone in photos 10 and 11.

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1 34. PC Stewart said he picked up the gun, cleared it and made it safe and photos 12 and
2 13 show that. He said the firearm was loaded with a magazine containing 5 rounds
3 of ammunition, but there was no round in the breach and it was not made ready to
4 fire.

5 35. PC Stewart cleared the firearm and made it safe. He said the ammunition and the
6 firearm were put in exhibit boxes and sealed. He said the ski mask and the two
7 gloves were put in separate bags. The first glove was signed AS1 which became
8 Exhibit 1. The second glove which was inside out, was AS 2 – Exhibit 2, and they
9 were packaged and sealed. The ski mask was AS 3 – Exhibit 3.

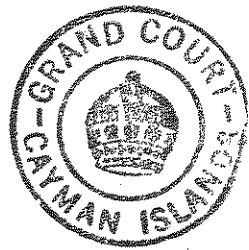
10 36. PC Stewart told the Court that PC Smith had no contact with the firearm, or with the
11 gloves or with the ski mask. PC Stewart said he remained with the firearm when the
12 three arrested men were taking to the police station.

13 37. PC Stewart said the Defendant was wearing long pants that seemed “baggy”. PC
14 Stewart said that nothing found on the Defendant was illegal.

15 ***PC STEWART - CROSS EXAMINATION***

16 38. It was put to PC Stewart that the parking lot for the Night Club was relatively busy
17 and he said, “No Ma’am.”

18 39. He explained that he and his colleagues had driven in to the parking lot because they
19 check clubs and bars to maintain a police presence even if things are quiet. Asked if
20 he remembered other people standing on the left side and he said he did not recall
21 seeing anyone else in the immediate area. He was asked by Defence counsel, “*But*
22 *you can’t say they weren’t there*” and he replied, “*I didn’t see anyone.*” He said he
23 knew there was activity in the Club but there was no one else in the parking area.



1 40. PC Stewart said the distance from the entry into the parking lot at the coconut tree
2 up to the dumpster close to where the men were standing is approximately 180 feet.
3 PC Stewart said there were approximately 5 cars in the car park.

4 41. PC Stewart told Defence counsel that the photos were taken approximately an hour
5 after the event. Asked about his notes: PC Stewart said they had been removed from
6 a patrol vehicle approximately one week after the incident and he searched for them
7 but could not find them.

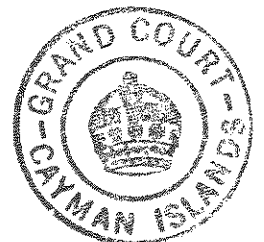
8 42. It was put by Defence counsel that PC Stewart did not actually see the Defendant go
9 round the corner and PC Stewart said, "*He disappeared to the edge of the building*
10 *and for a moment he was out of my sight.*"

11 43. He explained that, to the edge of the building meant to the corner of the building and
12 the 3 men were looking suspicious and one was found with ganja and he confirmed
13 that the Defendant was not found with ganja.

14 44. It was put to PC Stewart that the Defendant had told him instantly that he had gone
15 around the corner [of the building] to take a piss and PC Stewart responded that that
16 was after he [Officer Stewart] had engaged him in conversation. Defence counsel
17 put to PC Stewart that when he asked the Defendant "What's going on" the
18 Defendant replied that he had gone to take a piss.

19 45. PC Stewart said the distance from the corner of the building to the air conditioning
20 unit was 39 feet, and the distance from where the suspects were to the corner of the
21 building was 19 feet.

22 46. PC Stewart said the fourth person, Kenny Phillips, came out of the bar.



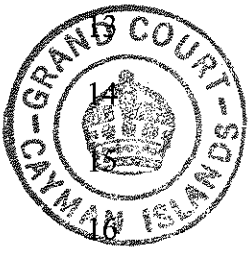
1 47. He agreed with Defence counsel that the men were sharing a bottle of drink and he
2 said it was the bottle on the ground in the photos in Exhibit 6. PC Stewart said he did
3 not recall the men passing the bottle around between themselves and drinking.

4 48. PC Stewart said the men were fairly calm and he confirmed that nobody ran away
5 during the search. He said one of the men did not shake his hand at the end of the
6 search.

7 49. PC Stewart confirmed that he searched Dwight Ebanks. He said PC Smith searched
8 Paul Anglin and PS Richards was taking notes.

9 50. PC Stewart confirmed that there was quite a lot of bush in the area behind the
10 building where the firearm was found and it looked like it did in the photograph.
11 Asked how long it took him to find the weapon he said a couple of minutes. He said
12 he walked through and he was shining his light. He said it was not a slow, detailed,
13 methodical search; he was just walking with a light when he saw the items on the
14 ground next to the air con unit, and then he went directly back to his colleagues.
15 Asked if he had moved anything to get a better view of the items and to check if it
16 was a gun, PC Stewart said, "No Ma'am". It was put to him that he could not really
17 see properly and he replied that the little he saw he was able to determine that it was
18 a firearm. PC Stewart said he did not move the gloves or anything at all. He said, "I
19 disturbed nothing until after the Scenes of Crime Officer started to do their thing.

20 51. It was put to PC Stewart that there was quite a lot of commotion in the parking lot
21 and he said, "No, he would not say there was a lot of commotion." He said he gave
22 the men instructions to get on the ground that that was enough to get their attention.
23 It was put to him that the men already had his attention and PC Stewart said, "No,
24 this is a new attention as to what was happening."



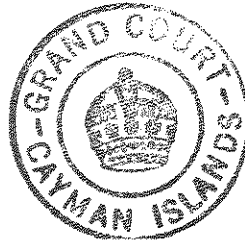
1 52. PC Stewart said it was the fourth person who came out of the bar who had been
2 ranting and raving about the police harassing innocent people, and his tune
3 immediately changed when he realised the seriousness of what was happening and,
4 his protest was that he was innocent of any gun at that time.

5 53. PC Stewart said he started out on the search of the grassed area expecting to find
6 ganja.

7 54. It was put to him that one could actually walk around the building he replied that he
8 was not sure of this. Asked how long he was he searching before he discovered the
9 firearm and he said, "*A couple of minutes....it was a short time... it was a minute or*
10 *less.*" He said it would probably a minute or less and it would probably take seconds
11 to get from the corner of the building to the air conditioning unit – probably 10
12 seconds.

13 55. In response to questions from the Court PC Stewart said that the Defendant was
14 quiet, but the other two men – Dwight Ebanks and Paul Anglin – protested their
15 innocence and they were clearly saying that they nothing to do with any gun.

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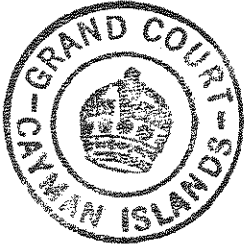
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STATEMENT OF ALAN GREENSPAN

56. Mr. Greenspan is a tyre mark and tool mark examiner and he received Exhibit AS 5 – a 9 mm Smith & Wesson Model 5906 #TCE 4654 with a magazine and five 9 mm cartridges.

57. Mr. Greenspan examined the Exhibit and he found it to be in operable condition and it was successfully test fired using ammunition supplied by the RCIPS armory. Mr. Greenspan confirmed that the firearm was made in Springfield Massachusetts and is capable of causing death or serious injury if discharged with a projectile striking an individual.

58. In addition he confirmed that the five 9 mm cartridges were viable and capable of causing death or serious injury if discharged at, and striking an individual.



CRYSTAL OECHSLE

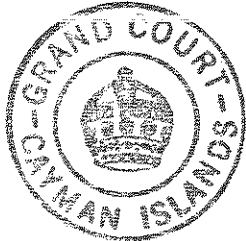
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59. Ms. Oechsle has a BSc. Degree – majoring in forensic chemistry and minoring in Biological sciences – with an M Sc. Degree in Biomedical Forensic Sciences. Ms. Oechsle had worked for four years at the Massachusetts State Police Crime Lab and for two years at the DNA Lab in Florida. She is accepted by the Crown and the Defence as an expert witness. Ms. Oechsle has been called as an expert on behalf of the prosecution. She is a forensic scientist with expertise outside of my experience and knowledge.

60. She has conducted an examination on certain items and, as an expert, is entitled to express an opinion in respect of her findings. However, I remind myself that I do not have to accept the evidence of Ms. Oechsle. She is a witness and I can accept what she says or reject what she says. This applies to all expert witnesses.

61. She is explained that DNA is genetic blueprint. A person gets half their DNA from their mother and half from their father, and no two individuals, save for identical twins will share the same DNA.

62. Ms. Oechsle explained that DNA is found in fluids in the body such as the blood, saliva and other bodily fluids as well as in skin cells. Ms. Oechsle explained that DNA can be deposited by leaving behind a bodily fluid, or by touching an item and leaving behind skin cells.



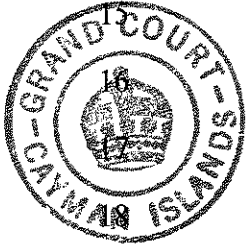
1 63. For testing, Ms. Oechsle explained that she will receive a known sample – that is a
2 sample from an identified person – and also a questioned sample. She explained that
3 the questioned sample is analysed first. All of the profile information is determined
4 and then the known sample is analysed. The question same is compared to the
5 evidential sample for inclusionary and exclusionary purposes.

6 64. After her examination of items Ms. Oechsle receives, she makes a report which is
7 similar to the table – Exhibit 4. The report has a series of numbers which represent
8 the number of times the DNA repeats at each of these locations, and the overall for
9 all the locations determines the DNA profile. Ms. Oechsle then compares the known
10 DNA profile to the questioned DNA profile and determines if the numbers match.
11 The table is an analysis of the questioned items compared to the standard items.

12 65. In her evidence she referred to AS 1- Exhibit 1 – the right hand of the burgundy
13 glove found at the scene on the night:

14 a. She confirmed that a partial DNA profile was obtained from the *exterior* of this
15 item and it indicated at least one male contributor. She said the partial DNA
16 was inconclusive for inclusionary purposes and no exclusionary statement
17 could be made regarding the Defendant as a contributor to the partial DNA
18 profile. Ms. Oechsle sid that Dwight Ebanks and Paul Anglin could be
19 excluded.

20 b. From the *interior* of AS 1 a partial DNA profile was obtained. She confirmed
21 that the partial DNA profile indicated at least one male contributor and Ray
22 Kennedy Smith could not be excluded as a contributor to that partial profile.
23 Ms. Oechsle stated that the chance that an unrelated person from the general
24 population could be included as a contributor to this partial DNA profile is 1 in



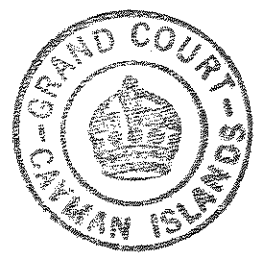
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approximately every 1.4 billion individuals. She stated that this means that all of those numbers in the Defendant’s known profile match the numbers in the partial DNA profile obtained from the interior of AS1 – Exhibit 1.

66. Moving on to AS 2 – Exhibit 2 – the other burgundy glove:

- a. She confirmed that a partial DNA profile was obtained from the *exterior* of this item and it indicated at least one male contributor. She said that the Defendant could not be excluded.

- b. From the *interior* of AS 2 there was a mixture of DNA from at least two individuals. She said Ray Kennedy Smith could not be excluded as a contributor to this partial profile. She stated that the chance that an unrelated person chosen at random from the general population could be included as a contributor to this partial DNA profile is 1 in approximately every 2 individuals.



PS CHRISTOPHER RICHARDS

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2 67. He is an AFO with the RCIPS USG and he said he was duty on the 31st July 2011
3 wearing the USG tactical blue uniform. On that evening he was on patrol with PC
4 Stewart and PC Smith and they were in a marked police Ford Explorer SUV. PC
5 Smith was the driver and PC Stewart was in the front seat and he was in the back
6 seat.

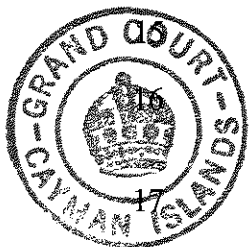
7 68. He said they were driving along Hell Road and turned left into the Memory Lane
8 Night Club. As they turned into the parking lot he saw three young men standing at
9 the far right corner of the Club. He said the parking lot had a few vehicles but not
10 many. The parking lot was brightly lit with street lamps and light from the building.

11 69. PS Richards said when they drove in he observed one of the three men, who was
12 dressed in camouflage pants and a black long-sleeved shirt, walk to the far corner of
13 the building and then go out of sight. PS Richards said there was nothing obstructing
14 his view and he kept his eye on the men as they were driving into the parking lot.

17 70. PS Richards said the police vehicle was approximately 75 to 80 metres from the men
when he saw the man in the camouflage pants go behind the building.

18 71. PS Richards said he did not see any other people around in the parking lot. He said
the three men were standing by the garbage dumpster in photo 28.

19 72. PS Richards said they slowly drove up towards the front of the building, past the
20 front of the building and up to the dumpster. He said that as they drove in front of
21 the building and approached the dumpster the young man returned. He estimated
22 that the man had been away for about 15 – 20 seconds. He recalled PC Stewart
23 saying “*we should make a check.*” PS Richards said that as he exited the vehicle he



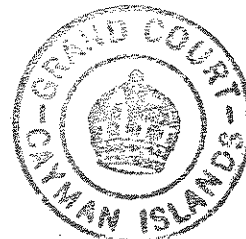
1 smelled marijuana in the air and so the officers approached the men and requested a
2 search under the Misuse of Drugs Law. PS Richards said they were all searched. He
3 did not recall searching them. He said he recalled PC Stewart searching Dwight
4 Ebanks and PC Smith searching Ray Kennedy Smith, the Defendant.

5 73. Whilst the men were being searched a fourth person – Mr. Kenny Phillips – came on
6 the scene. Mr. Phillips was rather noisy and he was saying the officers were
7 harassing the men and “*we should leave them alone.*”

8 74. PS Richards recalled asking them if they were smoking marijuana. Dwight Ebanks
9 said he was smoking and he smoked one a short while before. Paul Anglin Jr. said
10 he had smoked one earlier. PS Richards recalls that when Dwight Ebanks was
11 searched there was packet of Rothman’s cigarettes and inside the package was a
12 ganja cigarette. PS Richards said Dwight Ebanks said he forgot the marijuana was
13 there in the packet and he apologized. PS Richards said nothing illegal was found on
14 the Defendant Ray Kennedy Smith.

15 75. PS Richards said PC Stewart asked the Defendant why he disappeared around the
16 corner when the police vehicle was approaching and the Defendant replied that he
17 went around the corner to “*take a piss.*”

18 76. PS Richards said he wrote down their names and details in a notebook, and, at that
19 stage, PC Stewart walked around the corner behind the building. PS Richards said
20 that as he was in the process of taking the Defendant’s details, the Defendant asked
21 if it was okay for him to leave as he would like to go back into the club and get a
22 drink.



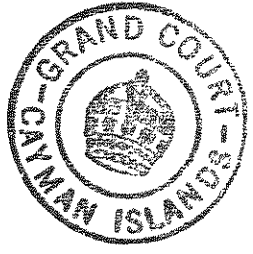
1 77. PS Richards said PC Stewart returned and shouted “Gun!” and ordered the men to
2 get down on the ground. PS Richards said he too ordered them to get down on the
3 ground and he handcuffed the four of them including Kenny Phillips.

4 78. After the men were handcuffed PC Stewart took PS Richards around the back of the
5 building. PS Richards said he saw the silver-coloured firearm with the black handle.
6 He saw a dark-coloured ski mask and a pair of burgundy gloves. PS Richards said he
7 did not handle any of the items.

8 79. After the items by the AC unit were shown to him, PS Richards said he went back
9 around the corner to where men were. He recalled PC Smith asking who the firearm
10 belonged to. PS Richards said Kenny Phillips, Paul Anglin and Dwight Ebanks all
11 protested their innocence saying they knew nothing about the gun, but the Defendant
12 became quiet.

13 80. PS Richards said that, at that stage, he and PC Stewart had a conference and
14 decided to release Kenny Phillips as he was not at the scene prior to their arrival.
15 They then cautioned and arrested the three men for possession of a firearm and
16 possession of ammunition and possession of vegetable matter. PS Richards said the
17 Defendant did not say anything and they just shook their heads.

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PS RICHARDS – CROSS EXAMINATION

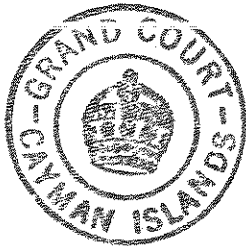
81. Asked whether the Defendant walked to the far corner out of sight or he went to the end of the building and went left, or whether he went around the building. PS Richards said it was all the same. To clarify he said the Defendant went to the far end of the building around the corner out of his sight. He said, *“The Defendant went round the corner and I could not see him after that. He turned left and went out of my sight.”*

82. PS Richards said when he first saw the Defendant and the other two men they were approximately 75 to 80 metres away from them. He said it took about 15 – 20 seconds from the time they saw the three men to when they parked the car.

83. PS Richards said there were not many people around. It was a slow night and there were about 4 or 5 cars in the car park.

84. PS Richards said he only saw three persons. Asked if he was sure there were no other persons around and he said he was sure nobody else was in the parking lot.

85. PS Richards said the men were all cooperative but he recalled the Defendant sweating heavily. PS Richards accepted that none of them tried to run away. PS Richards said the only one who seemed anxious to get back was the Defendant; after PC Stewart had gone around the corner the Defendant said he would like to go back inside and get another drink.

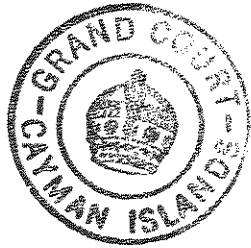


1 86. PS Richards said he did not recall either Dwight Ebanks or Paul Anglin shake his
2 hand.

3 87. Asked how was able to identify the gun. He said the photo does not clearly show the
4 firearm, but when he went around there he did see the firearm. Asked if he moved
5 the ski mask PS Richards said he did not move anything. Asked if he was sure it was
6 a gun and he replied, "*It was a gun I saw the black handle and it was silver coloured
7 and I know it to be a Smith & Wesson semi-automatic. I could see parts of the black
8 handle, but I did not move anything.*"

9 88. PS Richards accepted that he cannot see the firearm from the photo in the album, but
10 from where he was standing on the night he saw the pistol, the gloves were on top of
11 the ski mask, and the pistol was visible.

12 89. He said the glove was on the ski mask and the ski mask was over the pistol, but he
13 could see part of the pistol and he recognised the firearm. He said the photo is a bad
14 angle. He said he looked over and he could see the firearm. He could see the grip
15 and the butt and he knew it was Smith & Wesson semi-automatic. He said he did not
16 remove anything from the firearm to get a better look. He said he could not identify
17 the model.



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CCTV FOOTAGE

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90. At 9:39:40 on the Sunday the 31st July 2011 there were nine cars in the car park. The video had a restricted view, but at times one could see all three men – although it was difficult to identify their faces from the video. PS Richards said Paul Anglin was the man with the hat.

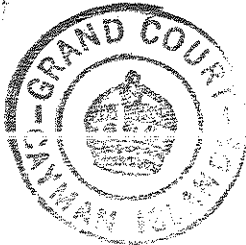
91. At 9:54:55 the fourth person, Kenny Phillips came out and joined the three men and the three policemen.

92. At 9:55:31 the Defendant is talking to PC Stewart.

93. At 9:58:44 PC Stewart walked off into an area not covered by the camera.

94. PS Richards said he did not see PC Stewart move anything and again he said he could see the butt-stop of the gun. He said the ski mask partially covered the firearm but he could see the grip. He recalls that thereafter SOCO Zoan Marin arrived.

95. Looking at the TV screen PC Richards said it may be that at 9:51:51 there were eight cars in the carpark. Again he said the glove was partially on top of the ski mask and the ski mask partially on top of the gun but he could see the butt.



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PC JEREMY SMITH

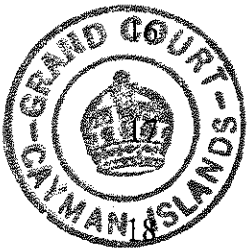
2 96. He recalls being on mobile patrol with PS Richards and PC Stewart. He said that
3 when they drove into the parking lot he saw two men over to the far right hand side
4 of the Memory Lane Club. He said that as they drove in and came up to the Club he
5 saw someone there having a drink and a third man appeared from behind the right
6 corner, and that was the Defendant Ray Kennedy Smith. PC Smith said all three men
7 were there as they drove up to them.

8 97. PC Smith said he searched the Defendant Ray Smith who was wearing a black shirt
9 and camouflage pants with pockets on the side of the legs and the thigh. He said he
10 found nothing illegal on the Defendant.

11 98. PC Smith said PC Stewart searched Dwight Ebanks and got some ganja.

12 99. He recalled PC Stewart going behind the building and some seconds after he heard
13 PC Stewart shout "Gun! Everybody down!" The men were then all arrested and
14 handcuffed by Sgt. Richards and Kenny Phillips was released.

15 100. PC Smith said he never handled the gun or any of the exhibits and he did not recall
going around the side of the building.



PC JEREMY SMITH – CROSS EXAMINATION

19 101. He said he was not wearing gloves and he did recall searching the Defendant and
Kenny Phillips.

20 102. He said that when PC Stewart ordered the men to get down on the ground they all
21 did so immediately. PC Smith said he was not present when the gun was made safe.

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SOCO ZOAN MARIN

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103. Ms. Marin said she arrived on Sunday the 31st July 2011 at 10:50 p.m. at Memory Lane Bar and Lounge in connection with a firearm offence. She went to the location at the right side of the building by the air conditioning unit. She said the scene had been cordoned off and PC Stewart was guarding the scene.

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104. She saw what appeared to be a black ski mask, two burgundy gloves and a firearm with the Smith & Wesson engraved to the side. She said she did not touch any item and no item was touched in her presence. Officer Stewart then put on some gloves and he removed the items which were photographed – removing the gloves first, then the ski mask and then the firearm. Ms. Marin took photos before the items were removed and after the items were removed.

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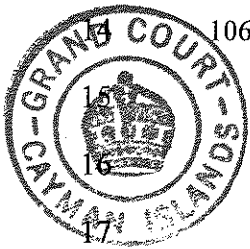
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105. Ms. Marin said that the firearm and the five 9 mm rounds were examined for finger print impressions, with a negative result.

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106. Ms. Marin recovered the five live rounds, the magazine and took swabs from the live rounds, the magazine, the handle of the gun, the slide, the lock and the hammer and the trigger and the trigger guard, and sent them all off to the DNA Lab for examination.

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ZOAN MARIN – CROSS EXAMINATION

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107. Ms. Marin said the items were photographed as she found them. She said the magazine was removed in her presence by Officer Stewart. Asked where she was when she took the photos she said she had a zoom lens. Asked if she was close she said for photo 8 she was on top of it. Photo 10 was a photo of the gun after the

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1 gloves and ski mask had been taken away. Photo 11 is after the bush had been
2 cleared.

3 ***DC DEVON BAILEY***

4 108. He confirmed that tests were carried out on the motorcar near the dumpster truck –
5 Registration 100 866, but nothing of evidential value was found. DC Bailey also
6 confirmed that nothing was found at the Defendant’s house.

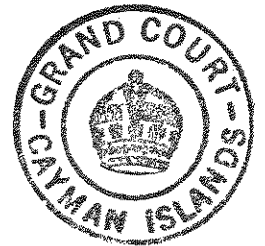
7 109. On the 3rd August 2011 DC Bailey said he conducted a question and answer
8 interview with the Defendant and the defendant denied any knowledge of the
9 firearm, the ski mask or the gloves recovered at Memory Lane. The Defendant
10 denied ever having gloves in his possession. The Defendant did not deny going
11 behind the back of building. He said he went there to “take a leak.”

12 ***DC BAILEY – CROSS EXAMINATION***

13 110. He confirmed that the Defendant had no previous convictions

14 111. He also confirmed and that there was no GSR discovered from the vehicle or
15 anywhere else.

16 112. DC Bailey said that during this interview the Defendant did not have an attorney.
17 DC Bailey said the Defendant told him how he got to Memory Lane. He told DC
18 Bailey how long they had been there and what they were doing. The Defendant told
19 DC Bailey that he did not see when the police arrived. DC Bailey said the Defendant
20 answered all the questions asked. DC Bailey said the Defendant again confirmed
21 ever having the firearm or ever having a firearm. He denied ever having gloves of
22 any sort He said he only went around to the corner of the building to take a leak.

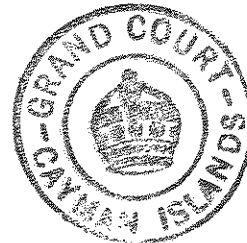


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ADMISSIONS

113. The Crown closed its case with the following admissions, pursuant to s.34(1) of the Evidence Law:

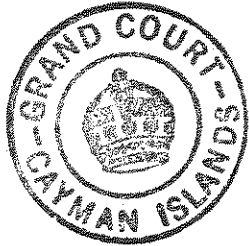
- i. The Firearm recovered by PC Stewart was packaged, labelled and exhibited as AS 5.
- ii. AS 5 was submitted to Alan Greenspan, Firearm and Toolmark examiner and found to be a 9 mm Smith & Wesson firearm in operable condition.
- iii. The Defendant Ray Kennedy Smith is not the holder of a Firearm User's Licence.
- iv. Detective Sergeant Dave Morrison obtained a buccal swab from Ray Kennedy Smith and exhibited said swab as DM#1RKS.
- v. AS1, AS2 were sent to DNA Labs International for DNA examination and analysis to be conducted. AS1 and AS2 were received by DNA Labs on the 30th August 2011.
- vi. On the 1st August 2011, DC Turner obtained exhibit NJT/CCTV/MK1 which is CCTV footage obtained from Memory Lane, West Bay, from the night of the 31st July 2011.



1 114. At the close of the prosecution case the Court read s.149(2) of the Police Law 2010
2 to explain the effect on the accused if he chose not to give evidence. The Court must
3 satisfy itself that the accused is aware that the stage had been reached at which
4 evidence can be given for the Defence and that he can, if he wishes, give evidence.
5 The Court informed the Defendant and his attorney that, if he chooses not to give
6 evidence it would be permissible for the Court to draw such inferences as appear
7 proper from his failure to give evidence.

8 115. The Defendant chose not to give evidence or call any witnesses on his behalf.

9 *SUMMARY OF DEFENCE CASE*



10 116. The Defendant has pleaded not guilty.

11 117. The Defence put the Crown to proof that the Defendant is guilty beyond all
12 reasonable doubt and reminds the Court that there is no burden on him to prove his
13 innocence.

14 118. The Defence relies upon the fact that nobody saw the Defendant go around or
15 behind the building nor did any police officer see how far he went. The Defendant
16 was there for less than 30 seconds.

17 119. The Defence relies upon the fact that, both at the scene, and in his interview, he told
18 the police that he went to urinate.

19 120. The Defence points out that the Defendant was never seen with the gun or seen
20 wearing the ski mask or the gloves.

21 121. Furthermore, the Defence relies upon the fact that there is no evidence that the
22 Defendant saw the police.

1 122. The Defence also submits that the air conditioning unit is 39 feet away from the
2 corner and, to walk back there, put the items down as they were found and to come
3 again to the front in 30 seconds is implausible.

4 123. The Defence relies upon the fact that the Defendant came back from urinating and
5 he was cool and calm and complacent and not acting suspiciously.

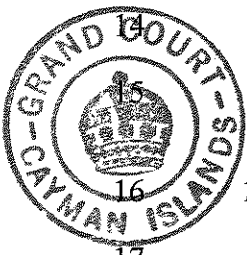
6 124. The Defence says there are inconsistencies in the evidence from the police such as:
7 PC Stewart saying there were less than five cars in the parking lot when the CCTV
8 shows there are 8 or 9 cars in the car park.

9 125. The Defence relies upon the fact that PS Richards could not have seen the gun – and
10 particularly relies upon the fact that SOCO Zoan Marin’s photographs would make
11 it impossible to see what sort of gun it was. The Defence says there is no way that
12 PS Richards could see the name and it is not possible to identify the gun.

13 126. The Defence relies on the fact that there are no fingerprints on the gun or on any of
14 the other items and there is no GSR. Furthermore, there is no identifiable DNA on
15 the gun.

16 127. In relation to the DNA, the Defence raises the possibility of a transfer of DNA.
17 Furthermore, the Defence relies upon the fact that the Crown cannot prove how long
18 the DNA was on the glove and the Crown cannot prove that the Defendant ever held
19 the gun.

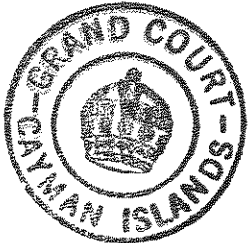
20 128. The Defence submits that the Crown has not been able to prove knowledge, custody
21 and control, and there is not enough evidence to satisfy the Court that the Defendant
22 is guilty beyond all reasonable doubt.



1 129. The Defence relies upon the case of *R v. Frederick Augustus Boothe* Indictment
2 No. 50/2011 and the English Court of Appeal decision of *R v. Jacobs* [2002] EWCA
3 Crim. 610 and submits that because the Defendant may have been present does not
4 demonstrate that he ever had the gun in his custody or control – mere presence and
5 access is not enough.

6 130. Finally the defence submits that the fact there was DNA on the glove, does not mean
7 that you can be sure that the Defendant had possession of the firearm, and therefore
8 the Court cannot convict.

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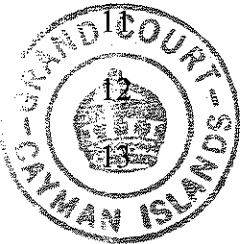


1 *ANALYSIS AND CONCLUSION*

2 131. Section 15(1) of the Firearms Law (2008 Revision) provides that, subject to certain
3 named exceptions, no person shall be in possession of any firearm except under and
4 in accordance with the terms of a Firearm User’s (Restricted) Licence.

5 132. It is accepted that the Defendant has no licence for a firearm and it is also accepted
6 that the firearm that was recovered is an operable, lethal-barrelled weapon, capable
7 of causing either death or serious injury. It therefore falls within the meaning of a
8 firearm within the Firearms law.

9 133. Therefore, the sole question before this Court relates to the issue of possession of the
10 firearm. On the 31st day of July 2011 at Memory Lane in West Bay, Grand Cayman,
was the Defendant in possession of a 9 mm Smith & Wesson model 5609 pistol, not
under and in accordance with the terms of the Firearm User’s Restricted Licence?
That is the sole question before the Court.



14 134. Section 3 of the Penal Code (2010 Revision) defines possession and reads:

15 *“possession “ includes not only having in one’s own personal possession, but*
16 *knowingly having anything in the actual possession or custody of any other*
17 *person or having in any place (whether belonging to or occupied by oneself or*
18 *not) for the use or benefit of oneself*
19

20 135. Under common law, in order to establish possession in the Defendant, the
21 prosecution must prove that he had some actual control or custody of the firearm.

22 Mr. Justice Collins (as he then was) stated in *Jacobs* at paragraph 10:

23 *“The reality, of course, is that there must be some actual control in order to*
24 *render a person guilty of being in possession of an object. It need not be*
25 *exclusive control. ..”*
26

1 136. The Defendant is a young man who has never been convicted of a criminal offence.
2 I must remind myself that, although good character is not a defence to the charge,
3 his good character is a positive feature which I take into account. The fact that the
4 Defendant has no criminal convictions may make it more likely that he was telling
5 the police the truth and less likely that he acted as is now alleged against him.

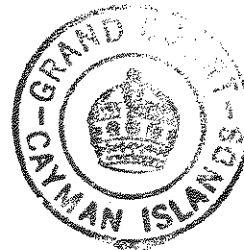
6 137. The evidence from the Crown is that as the police officers drove into parking lot of
7 Memory Lane Night Club, they saw the three men at the extreme right of the
8 building. The officers' evidence is that the men appeared to be acting suspiciously
9 and one officer described them as acting in a "fidgety" manner, and that is why they
10 drove further into the parking lot close to the dumpster or skip where the men were
11 standing.

12 138. Very shortly after the police car entered into the car park, the Defendant, Ray
13 Kennedy Smith, went around to the back or the side of the building and out of sight.
14 The evidence presented by the Crown is that he disappeared from view for a very
15 short time – possibly 15 to 20 seconds. The Defendant then returned to the spot and
16 re-joined his two companions.

17 139. The police drove the police SUV up to where the three men were standing. The
18 police officers said they saw no one else around in the immediate vicinity of the
19 dumpster.

20 140. The police officers gave evidence that there was the strong smell of ganja and
21 consequently they proceeded to search the three men. Ganja was subsequently found
22 on Dwight Ebanks who also admitted to having recently smoked marijuana.

23



1 141. After searching the men and being suspicious as to why the Defendant had
2 disappeared behind the building for a short time, PC Stewart went round the same
3 corner from where the Defendant had recently returned. PC Stewart said he had
4 gone to look for marijuana but shortly after going around to the area came upon two
5 burgundy gloves, which were on top of a black ski mask containing three holes,
6 which was itself on top of a 9 mm Smith & Wesson pistol. According to PC Stewart
7 these items were altogether beside an AC unit.

8 142. PC Stewart said he did not touch these items because he realised there was a gun
9 underneath the gloves and the ski mask. PC Stewart immediately went back around
10 the corner, shouted "Gun!" lifted his own revolver from its holster and ordered the
11 three men on to the ground.

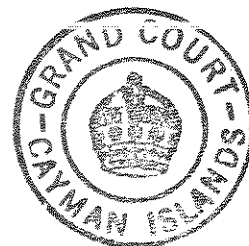
12 143. It was during PC Stewart's visit behind the building to search for illegal drugs that
13 the Defendant asked PS Richards and PC Smith if he could go back into the bar. He
14 was the only one of the three who requested to get away. The Defendant's request
15 was denied.

16 144. PS Richards said he also went around and he also saw the gun partially covered by
17 the ski mask and the two gloves on top of the ski mask.

18 145. The early SOCO photographs show where the gun, ski mask and gloves were
19 located, and also show that the gun was below the ski mask and the ski mask was
20 below the burgundy gloves.

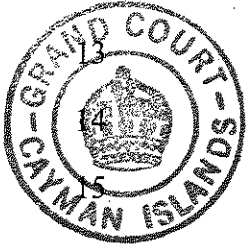
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1 146. Exhibit 1 – formerly AS 1 – was found with the gun, the ski mask and the other
2 burgundy glove. Ms. Oechsle said that a partial DNA profile was obtained from the
3 exterior part of the glove – indicating at least one male contributor. Ms. Oechsle told
4 the Court that no exclusionary statement could be made regarding the Defendant,
5 but, his companions, Dwight Ebanks and Paul Anglin could be excluded.

6 147. Ms. Oechsle’s examination of the interior of Exhibit 1 found a partial DNA profile
7 with a match for the Defendant, Ray Kennedy Smith. Ms. Oechsle said that the
8 chance that an unrelated person chosen at random from the general population
9 matching this DNA profile is approximately 1 in every 1.4 billion individuals. This
10 is what is known as the random occurrence ratio or match probability, which is the
11 statistical frequency with which the match in profile between the crime scene sample
12 and someone unrelated to the Defendant would be found in in the general
13 population. The probability of one in 1.4 billion is so low, that barring the
14 involvement of a close relative, the possibility that someone other than the
15 Defendant was a donor to the crime scene sample is effectively eliminated.



16 148. Ms. Oechsle also examined Exhibit 2 – the other burgundy glove. She found a
17 partial DNA profile on the exterior and said the data was inconclusive for match
18 purposes. However, Ms. Oechsle said that no exclusionary statement could be made
19 regarding the Defendant, but his companions, Dwight Ebanks and Paul Anglin,
20 could be excluded as possible contributors to the partial DNA profile.

21 149. Ms. Oechsle examined the interior of Exhibit 2 and she found that the DNA profile
22 obtained from the sample indicated a mixture of at least two individuals. Ms.
23 Oechsle said that the Defendant could not be excluded as a contributor, and said that
24 the chances that an unrelated person, chosen at random from the general population

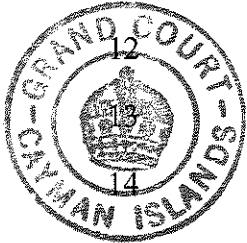
1 matching this DNA profile was approximately 1 in every 2. She said that Dwight
2 Ebanks and Paul Anglin could be excluded as contributors to this sample.

3 150. The Defendant's DNA on the interior of the glove, Exhibit 1, cannot alone establish
4 that he is guilty of possession of the illegal firearm. However, it is a very significant
5 fact which I must take into consideration when determining whether the Defendant
6 is guilty or not guilty of the charge he is facing.

7 151. I take into account the fact that the gun, the ski mask with three holes and the two
8 gloves were found together, hidden behind the air conditioning unit. This can be
9 seen from the photographs contained in the exhibited album produced by SOCO
10 Marin.

11 152. People generally wear ski masks, such as the one found in this case, to keep cold
12 wind away from their face. People wear gloves, such as the ones found with the ski
13 mask and the gun, to keep their hands warm in cold climates. Both these items
14 would not be required clothing for either residents or tourists in the Cayman Islands.

15 153. Policemen and scenes of crime officers wear gloves so that there is no contamination
16 on items found at the crime scene and to eliminate the possibility of DNA being
17 transferred. Criminals wear gloves so that fingerprints and DNA don't find their way
18 on to an illegal firearm or other incriminating items. The gun in this case was hidden
19 behind the AC unit, with the ski mask on top of it and the gloves on top of the ski
20 mask. I find that it is not a coincidence that the gloves, ski mask and firearm were
21 found together. Not only were the items found together, but, it is common for these
22 items to be used together for an unlawful purpose. We know that gloves are worn to
23 prevent fingerprints and DNA being left on an illegal firearm. We also know that ski
24 masks of the type found by PC Stewart are worn to conceal the identity of the person



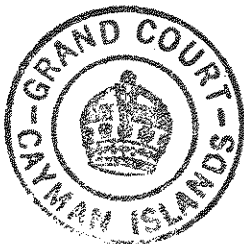
1 wearing it. I find that the gun, mask and gloves are all inextricably linked, and the
2 only commonsense inference is that they are used together in the furtherance of
3 criminal activity.

4 154. There is no direct evidence in this case that the Defendant had the gun in his hand or
5 had knowledge of the gun. There is no CCTV footage to show the Defendant
6 wearing the mask and the gloves and holding the gun.

7 155. However, it is often the case that where direct evidence of a crime is not available
8 as, in this case, and the Crown must rely upon circumstantial evidence to prove guilt.
9 That simply means that the prosecution is relying upon evidence of various
10 circumstances relating to the allegation, and the Defendant, which they say, when
11 taken together, will lead to the sure conclusion that it was the Defendant who
12 committed the crime. In this case the Crown relies on this circumstantial evidence.

13 156. I remind myself that the burden is always on the prosecution to prove its case and to
14 satisfy myself as the tribunal of fact that the Defendant is guilty beyond all
15 reasonable doubt.

16 157. I find that the circumstantial evidence in this case is powerful evidence. However, it
17 is important that I examine it with care, and consider whether the evidence upon
18 which the prosecution relies in proof of its case is reliable and whether it does prove
19 guilt. Furthermore, before convicting on circumstantial evidence, I should consider
20 whether it reveals any other circumstances which are or may be of sufficient
21 reliability and strength to weaken or destroy the prosecution case.



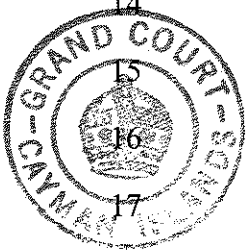
1 158. The Defence has elected to call no evidence and I can find no evidence which
2 reveals circumstances which are of sufficient reliability and strength to weaken or
3 destroy the prosecution case.

4 159. I must also be careful to distinguish between arriving at conclusions based on
5 reliable circumstantial evidence, and mere speculation. Speculating in a case
6 amounts to no more than guessing, or making up theories without good evidence to
7 support them and I must not descend into speculation.

8 160. At the close of the prosecution case I informed the accused that the stage had been
9 reached at which evidence could be given on his behalf, and that he could give
10 evidence and indeed call evidence, and, that if he did not give evidence it would be
11 permissible for the Court to draw such inference as may appear proper from his
12 failure to give evidence.

13 161. The Defendant has elected not to give evidence or call any witnesses and in this way
14 he has not availed himself of the opportunity to present any reasons for his DNA
15 matching the DNA found on the interior of Exhibit 1 – the burgundy glove.
16 Additionally, the Defendant has not availed himself of the opportunity to explain his
17 movements.

18 162. I remind myself that the Defendant has a right not to give evidence and to require
19 the prosecution to prove its case. I cannot jump to the conclusion that the
20 Defendant's failure to give evidence proves the case against him. It does not. The
21 burden of proving the case remains with the prosecution to prove its case against the
22 Defendant beyond all reasonable doubt.



1 163. In my view, the Crown has presented a prima facie case for the Defendant to answer.
2 The Defendant's failure to give evidence and to call evidence means that there is no
3 evidence before me capable of contradicting, undermining, or explaining the
4 evidence for the prosecution against the Defendant. By not giving evidence, it is
5 open to me to reach a conclusion adverse to the Defendant's case. I have to ask
6 myself whether that would be a fair and proper conclusion to reach in all the
7 circumstances of this case.

8 164. Given all the evidence presented by the prosecution in this case I find that the only
9 sensible explanation for the Defendant's failure to give evidence is that he had no
10 answer to give, or none that would stand up to cross examination and scrutiny. I can
11 find no other sensible explanation for the Defendant's failure to give evidence or call
12 evidence on his behalf. Accordingly, I find that the Defendant's failure to give
13 evidence does add weight and support to the Crown's case.

14 165. I have carefully observed RICPS Officers Stewart, Richards and Smith give their
15 evidence in the witness box and be subject to vigorous but fair cross examination
16 and I find them to be truthful and reliable witnesses.

17 166. I find as a matter of fact that as soon as the marked police SUV entered the car park,
18 the Defendant immediately left his two companions and went round to the back or to
19 the side of the building. The Defendant's explanation, when later asked, was that he
20 went to "take a piss". Officer Stewart was of the opinion that the Defendant wasn't
21 away for sufficient time to urinate and then return to his companions.

22



1 167. I note that the Defendant was the only one of the three men who tried to leave the
2 scene very shortly after PC Stewart went to search the area he, the Defendant, had
3 just come from. The compelling inference that can be drawn is that the Defendant
4 knew that PC Stewart would discover the firearm, ski mask and gloves, because he
5 had left them there, and that is why he wanted to get away.

6 168. There is no question that it is the Defendant's DNA which is found on the inside of
7 Exhibit 1. The gloves were found on top of the ski mask, which was on top of the
8 firearm. The Court finds that the Defendant went behind the building as soon as the
9 police entered the car park – minutes before the gun was discovered. The Court
10 finds, as a fact, that the Defendant requested to leave the scene when PC Stewart
11 went to search for ganja behind the building. The Court finds that when the three
12 men were questioned about the ownership of the firearm, PC Stewart discovered, the
13 other two men vigorously denied ownership of the firearm, whilst the Defendant
14 remained silent and was observed by the police officers to be sweating profusely.

15 169. I agree with Crown counsel that the foregoing facts, taken in concert with the
16 Defendant's failure to give evidence, lead to the inescapable conclusion that it was
17 the Defendant who placed the gun, ski mask and the gloves behind the air
18 conditioning unit at the side of the building. When the Defendant saw the police
19 coming into the car park, he went and hid the items together and, in doing so, was in
20 possession of the firearm.

21

22



1 170. When I examine all the evidence before me I am satisfied beyond all reasonable
2 doubt that the Defendant is guilty, and accordingly, I find the Defendant guilty of
3 the single charge on this Indictment.

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6 **Dated this the 28th November 2013**

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13 **Honourable Mr. Justice Charles Quin**
14 **Judge of the Grand Court**

