



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

3
4 INDICTMENT NO: 75 of 2021
5
6
7

8 THE QUEEN

9
10 V

11
12 MICHAEL LOPEZ WATLER
13
14
15

16 **Appearances:** Mr. Scott Wainwright for the Crown
17 Mr. Crister Brady of Brady Attorneys for the Defendant
18

19 **Before:** Justice Marlene I. Carter (Actg.)
20

21 **Judge Alone Trial:** 28th February and 1st March 2022
22

23 **Verdict:** 24th March 2022
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28 HEADNOTE
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30 *Criminal Law – Possession of an Unlicensed Firearm (Ammunition)*
31 *- Trial by Judge Alone*
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35 VERDICT JUDGMENT
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- 1 1. The Defendant is charged with Possession of an unlicensed firearm (ammunition) contrary to
2 section 15(1) and 15(5) of the Firearms Law (2008 Revision).
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4 2. The particulars of the offence are that on or before the 10th day of July 2021, in the Cayman
5 Islands, the Defendant had in his possession ten (10) rounds of 9mm ammunition, otherwise
6 than in accordance with a Firearms User's License.
7
8 3. The Defendant elected trial by Judge Alone pursuant to s.129 of the *Criminal Procedure Code*
9 (CPC) of the Cayman Islands.

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12 **THE LAW ON JUDGE ALONE TRIALS**

- 13 4. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a Judge
14 in a Judge Alone trial. In *K. Richards v R*¹ Rowe JA, stated:

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16 *“When a trial judge sitting alone has advised himself to the applicable*
17 *principles of law, and given himself any necessary warning, he must indicate*
18 *clearly in his judgment his reasons for acting as he did in order to demonstrate*
19 *that he has acted with the requisite degree of caution in mind and has therefore*
20 *heeded his own warning. No specific form of words is necessary for this*
21 *demonstration, what is necessary is that the Judge's mind upon the matter*
22 *should be clearly revealed.”*

- 23
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25 5. In *Randy Martin v R*² Mottley JA stated as follows:

26
27 *“A judge sitting in a criminal case without a jury, in rendering his decision and*
28 *giving his reasons for so concluding is not required to review every fact and*
29 *to detail each argument on which the prosecution and defence rely as if he*
30 *were summing up to a jury. The judge must set out the conclusion reached*
31 *and make clear the reasons for arriving at that conclusion. He is required to*
32 *have regard to any difficult or unusual points of law and to show how those*
33 *points of law has in any way impacted the conclusion that he has reached.”*

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36 6. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that the
37 Defendant is guilty of the offence for which he is charged on the Indictment. There is no burden
38 on a Defendant to prove that he is innocent. The Defendant has no obligation to prove that he
39 is not guilty, or to explain the evidence offered by the Prosecution.
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¹ 2001 CILR 496

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)



- 1 7. I will not review every single detail of the evidence, but I will address my mind to the important
2 or prominent aspects of the evidence in deciding the critical issues in this case. I will not decide
3 every single point that has been raised – only such matters that will enable me to determine
4 whether the charges on the indictment have been proved.
5
- 6 8. I will have regard to the whole of the evidence that has been presented at trial and form my own
7 judgment about that evidence. The questions of fact at issue on this trial are for me to determine.
8
- 9 9. I must consider all of the evidence in this case against this Defendant and, if after having done
10 so, I have any reasonable doubt as to whether the Defendant is guilty or not, I must resolve that
11 doubt in favour of the Defendant and find him not guilty of the offence for which he is charged.
12
- 13 10. On the other hand, if having considered the evidence I am satisfied so that there is no reasonable
14 doubt in my mind, and I am sure of the guilt of the Defendant, then it will be equally my duty
15 to find him guilty as charged.
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18 **The Evidence at Trial**

- 19
20 11. Section 34(1) of the *Evidence Law* (2019 Revision) allows for Proof by formal admission and
21 states:

22 *“Subject to this section, any fact of which oral evidence may be given in any*
23 *criminal proceedings may be admitted for the purpose of those proceedings by*
24 *or on behalf of the prosecutor or defendant, and the admission by any party of*
25 *such fact under this section is, as against that party, conclusive evidence in*
26 *those proceedings of the fact so admitted.”*
27

- 28
29 12. Pursuant to s.34(1) of the *Evidence Law* a document entitled “Admissions” was introduced into
30 evidence by the prosecution. Within the Admissions at paragraphs 1-21 is a chronology of
31 relevant facts commencing on the 10 July 2021.
32

- 33 13. The admissions:

34 **“Background**

- 35
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37 1. *At approximately 21.00hrs on the 10th of July 2021, officers from the Royal*
38 *Cayman Islands Police Service were called to a report of shots having*
39 *been fired in the vicinity of West Church Street, West Bay, Grand Cayman.*
40
41 2. *At approximately 21.30hrs whilst patrolling the locality in search of*
42 *persons possibly involved in the incident, the attention of the officers was*

1 drawn to a black Honda Accord motor vehicle registration # 163 175. The
2 vehicle was parked in the yard of #177 Birch Tree Hill Road, West Bay.

- 3
4 3. Two males, a Luka Bodden and a Dayne Wilson, were observed by officers
5 to be walking away from the vehicle in question.
6
7 4. Acting Police Sergeant Peter Maragh opened the right rear door of the
8 vehicle which was unlocked. He observed a black Air Jordan sneaker box.
9 He opened the box to discover a quantity of 9mm cartridges in a clear
10 ziplock bag. There was also a magazine and a black glove located within
11 the sneaker box. At no time did APS Maragh touch the items in question.
12

13 **Examination of scene**

- 14
15 5. Scenes of Crime Officer (SOCO) Sarah Hough attended the scene. She
16 seized the black box containing the magazine and ammunition which she
17 gave exhibit reference SH-1.
18
19 6. She photographed these items and exhibited the photographs as SH-1
20 photo 1 and photo 2. These photographs are at pages 49 and 50 of the
21 exhibits in the trial bundle.
22
23 7. Scenes of Crime Officer Lewis Reid also attended the scene. He took a
24 number of fingerprint lifts from the vehicle in question. Each of these
25 fingerprint lifts was given an exhibit reference with the prefix "LR".
26
27

28 **Examination of ammunition**

- 29
30 8. On the 13th of July 2021, RCIPS firearms officer Anthony Stewart took
31 possession of exhibit SH-1, the ammunition and magazine.
32
33 9. He test fired two of the 9mm rounds from within exhibit SH-1 using an
34 RCIPS glock pistol. Both rounds successfully discharged without issue.
35 The projectiles and spent casings were collected and exhibited as AS#1.
36
37 10. The ammunition contained within exhibit SH-1 meets the definition of a
38 firearm (ammunition) for the purposes of the Cayman Islands Firearms
39 Law.
40

41 **Interview under caution**

- 42
43 11. Mr. Lopez Watler was interviewed under caution at the Cayman Islands
44 detention centre on the 2nd of November 2021. He had the assistance of an
45 Attorney throughout the course of the interview.
46
47 12. He answered "no comment" to the vast majority of questions put to him.
48 Questions to which he gave "no comment" answers included the
49 following:
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51 i) His whereabouts on the evening of the 10th of July 2021;
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53 ii) Whether he knew Dayne Wilson;
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55 iii) Whether he knew Luka Bodden;



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- iv) *Whether he had any connection with a black Honda Accord motor vehicle, registration # 163175;*
- v) *Whether he had any connection with ammunition found in that vehicle;*
- vi) *Whether his DNA or fingerprints would be found in that vehicle;*
- vii) *Whether his DNA or fingerprints would be found on any item recovered from that vehicle;*
- viii) *Whether there was any reason his fingerprints should be found on the ziplock bag containing the ammunition;*

Firearms licence

13. *Michael Lopez Watler is not the holder of a firearms licence in the Cayman Islands*

DNA evidence

- 14. *The black glove discovered alongside the ammunition and magazine was examined for the purposes of determining if any individual could be linked to it by means of DNA analysis.*
- 15. *A “hit” was obtained between a DNA profile obtained from the black glove and an arrest DNA profile in the name Joshua Pars, DOB 16th of November 1991.*
- 16. *No comparison was ever made between an evidentiary known sample from Joshua Pars and the DNA sample obtained from the black glove. As a consequence, no probability calculation is available.*

Joshua Pars

- 17. *Joshua Pars stands charged with an offence of possession of an imitation firearm with intent to commit an offence, contrary to section 18(6) of the Firearms Act (2008 Revision).*
- 18. *The Crown’s case is that in the early hours of the morning on the 11th of October 2021, he was in the vicinity of the Cotton Club and Strand Plaza, West Bay Road and involved in a shooting incident.*
- 19. *An off-duty RCIPS officer saw him in possession of a black firearm with what appeared to be an extended magazine.*
- 20. *The item allegedly in his possession has never been recovered.*

Honda Accord motor vehicle

21. *Michael Lopez Watler acquired the black Honda Accord motor vehicle registration # 163176 from a Mickyle Bodden in August 2020.”*



1 14. Much of the factual evidence on which the prosecution relies is set out paragraph 13, the
2 admissions above. As a result, only 3 witnesses were called to give evidence at trial on behalf
3 of the prosecution.

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6 **The witnesses for the prosecution**

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8 15. **Sarah Hough** is a Crime Scene Investigator employed in the crime Scene Investigation Unit
9 of the Royal Cayman Islands Police Service. As detailed in the admissions above, on the 10
10 July 2021 she attended the scene at #177 Birch Tree Hill Road, West Bay. She seized the black
11 box containing the magazine and ammunition from the black Honda motor vehicle. She
12 confirmed that the magazine and ammunition was found in a clear Ziploc bag which was in the
13 black box on the seat of the vehicle. She also found a black glove in the shoebox.

14

15 16. On the Ziploc bag she noticed that there was an impression which she photographed. The
16 impression which she submitted to a fingerprint expert Ms. Noddings, was found at the seal of
17 the Ziploc bag on the outside in the top left corner of the bag. She also took lifts from the
18 magazine itself and from the shoebox. She found no viable prints or impressions on the live
19 ammunition rounds.

20

21 17. In cross examination Ms. Hough confirmed that all impressions found were submitted to the
22 fingerprint expert. She was unable to say how long the impressions found would have been on
23 the Ziploc bag nor could she say when, in relation to each other, the impressions found would
24 have made contact with the bag.

25

26 18. The second witness called by the prosecution was **Hayley Noddings**. Ms. Noddings is
27 employed by the Royal Cayman Islands Police Service as a fingerprint expert. She has been
28 involved in fingerprint analysis for 16 years. Ms. Noddings explained the process by which
29 fingerprints are compared and verified. On 12 July 2021 she received a number of lifts taken
30 from the scene in this matter. She verified that these were LR2-LR 10, LR 19-LR 21, SH1/M1
31 – SH1/M6, SH1/B1 – SH1-B9 and SH1Z1/Sh1/Z4. She related that she also received a
32 fingerprint form in the name of the Defendant that included the Defendant's finger and palm
33 prints.

34

35 19. Ms. Noddings made comparisons between the lifts recovered at the scene and the Defendant's
36 fingerprint form. Her findings were as follows:

37

38 *i.* **LR2 – a mark found on a panel above the driver's door of the vehicle in question.** Having compared it against the known prints of Mr. Watler she



1 determined that the mark found on LR 2 was identified to the fingerprints in
2 the name of defendant and his left palm specifically. She found that when the
3 bifurcations and ridge endings in the coincidence sequence found in LR2
4 compared to the left palm of the defendant, *“there was sufficient in agreement
5 and none in disagreement for me to determine they were made by the same
6 person”*.

7
8 Ms. Noddings evidence was: *“...within areas of friction ridge detail
9 depending on which part of the palm or finger they come from, they have
10 a flow to them that is specific to a particular area and in this case, the
11 ridge flow matched that type of area and then when I looked closer at the
12 second level detail, the characteristics, they were then determined to be
13 in the same type, in the same agreement with none in disagreement and
14 they were to be determined to be from the same person”*

15
16 She confirmed that regarding the mark LR 2 there were 30 individual
17 characteristics of the same type *“and they were more than 30 but I stopped
18 counting at thirty.”*

- 19
20 ii. **LR 10 – a mark taken from the exterior of the right door of the black**
21 **Honda motor vehicle.** Ms. Noddings explained that she went through the
22 same procedure with respect to comparisons with that mark against the
23 fingerprint form in the name of the defendant. She determined that the mark
24 found LR 10 could be identified to the ring finger on the fingerprint form in
25 the name of the defendant.

26
27 *“It's the same process so there was within the mark you could see a
28 pattern type, which, in this case was the same pattern type in the crime
29 scene mark as the right ring finger. The ridge flow -- so the way the
30 ridges flow across the finger and then 11 characteristics with this
31 specific case.”*

- 32
33 iii. **LR 19- these were four separate marks taken from the rearview mirror**
34 **of the vehicle.**

35
36 Ms. Noddings findings: *“I have compared mark three and found it to be
37 made by the same person who made the right palm impression on the
38 fingerprint form in the name of Michael Aaron Lopez Watler and mark
39 four, again, the right palm on the fingerprint form, in the name of Michael
40 Aaron Lopez Watler.”* Mark 3 involved ridge pattern, ridge flow in which
41 twenty characteristics were found and mark four, ridge pattern ridge low
42 and 16 characteristics.

- 43
44 iv. **SH1/Z3- this was a mark taken from the clear plastic Ziploc bag in which**
45 **the ammunition was recovered.**

46
47 *“So, I compared the mark in SH1/Z3 against fingerprints in the name
48 of Michael Aaron Lopez Watler and determined that the left thumb
49 impression was made by the same person or the mark in SH1/ Z3 was
50 made by the same person who made the left thumb impression on the
51 fingerprint form in the name of Michael Aaron Lopez Watler.”* This
52 finding was based on ridge pattern, ridge flow and 11 characteristics.
53



1 20. Ms. Noddings stated that: *fingerprints or friction ridge detail is deemed as practically infallible*
2 *which means that since they are being compared to each other for criminal purposes, which is*
3 *1897, no two areas of friction ridge detail have been found to be the same. She also stated: I*
4 *have no doubt in my matches made as described.*

5
6 21. Ms. Noddings explained that her findings were verified by sending all material, that is, the lifts
7 taken from the scene in this matter: LR2-LR 10, LR 19-LR 21, SH1/M1 – SH1/M6, SH1/B1 –
8 SH1-B9 and SH1Z1/Sh1/Z4 as well as the fingerprint form in the name of the defendant that
9 included the Defendant’s finger and palm prints, to an independent fingerprint expert in the
10 United Kingdom. This second fingerprint expert was required to check the marks herself and
11 made her own analysis comparison and evaluation and sent back a verification statement. Ms
12 Noddings confirmed that the second expert’s conclusions were the same as her own. No issue
13 was taken with the findings of the second fingerprint expert.

14
15 22. In cross examination Ms. Noddings confirmed that SH1/Z1, Z2 and Z4. *“those marks have been*
16 *checked against fingerprints in the name of Michael Aaron Lopez Watler and remain*
17 *unidentified. I was not able to identify them to that set of fingerprints.”*

18
19 23. She was asked if this statement was, *“the same as saying they belong to someone else?*

20
21 A: *Not necessarily. It means there is not enough detail in them that*
22 *matches or can be seen in the fingerprints on the fingerprint form.*

23 Q: *So, you are not able to say if they belong to someone else?*

24 A: *That is correct.*

25 Q: *Or to several other persons.*

26 A: *I cannot say”*

27
28
29 24. Ms. Noddings went on to say that the mark SH1/Z3 was clear enough for her to identify it to
30 be fingerprints in this case. She related that:

31
32 *“Each mark is completely different. Some of them are very clear and some of*
33 *them are more distorted. When it's an item similar to the ziplock bag that can*
34 *be manipulated so it can be scrunched or folded, then marks tend to sometimes*
35 *be more difficult to read or to analyze.”*

36
37 *“...when your sweat is deposited onto an item, it's not glued there, so if someone*
38 *wipes over it, or places another mark on top of it, it will distort it or move it. I*
39 *cannot say with a hundred percent certainty that no one else has touched that*
40 *area of the bag but in this case the mark was clear enough for me to identify*
41 *it.”*

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43 25. She was questioned further:



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“Q: Are you able to say whether or not all the marks that were observed on the zip lock bag were or came to be on that bag the same time or some time apart?”

A: I can't say at all for when those marks were placed onto the bag, that could only be told by someone who had first or eye witness knowledge to that bag.”

.....

“Q: To be clear, in respect to the zip lock bag, the only print that you were able to identify belonged to Mr. Lopez Watler?”

A: That is on the zip lock bag. Of the four areas of friction detail found, the friction ridge detail found in SH1/ Z3, I can identify to the fingerprints in the name of Michael Aaron Lopez Watler. The rest -- the two other marks that were insufficient for comparison remain unidentified.

Q: To be clear you say they were clear but not able to be identified?”

A: The mark identified was clear enough for me to identify it, the other marks didn't hold sufficient information that was consistent with Mr. Watler's fingerprints and so they remain unidentified”

26. Both Ms. Hough and Ms. Noddings gave evidence as experts at trial. As the finder of fact, I can accept or reject any part or all of the expert evidence. Their evidence was not contradicted or challenged. After assessing their evidence as outlined above, I am sure of and accept all of the evidence and findings of the experts.

27. **DS Ronald Francis** was the third prosecution witness. Officer Francis was the investigating officer in this matter. His evidence was concerned to a large extent with the investigation concerning the individual Joshua Pars.

The Crown's Submissions

28. At the close of the Crown's case, Crown Counsel submitted that on the evidence presented by the Crown there is a strong circumstantial case against the Defendant. There is no direct evidence that the Defendant committed the crime with which he is charged, such as evidence from an eyewitness who saw the Defendant in the car with the ammunition on the day in question.

29. The prosecution submits however that there are pieces of evidence relating to different circumstances, none of which on their own directly proves that Defendant is guilty but which, when taken together leave no doubt that the Defendant is guilty.

30. The first of these is the evidence of the Defendant's fingerprints being found on the driver's door, the exterior of the rear right door of the vehicle and also on the rearview mirror of the



1 vehicle. These the Crown submits show that the Defendant is linked to the vehicle and is
2 sufficient for the Court to infer that he used the vehicle and had ready access to it. The presence
3 of the prints on the rearview mirror in particular point to the Defendant having regular use of
4 the vehicle to drive.

5
6 31. The second thread is the fingerprint found on the clear Ziploc bag in which the ammunition was
7 recovered. The Crown's position is that this bag found in the Defendant's vehicle, a vehicle
8 which on the crown's case the Court should infer that the Defendant was a regular user, point
9 to his being in possession of the bag and the ammunition. The position of the print also points
10 to it being placed there as the bag was opened or sealed.

11
12 32. The Crown states that the presence of a glove in the same box in which the ammunition was
13 recovered and the fact that there was a hit for another person's DNA [Fact 15 of the
14 Admissions: "*A "hit" was obtained between a DNA profile obtained from the black glove and
15 an arrest DNA profile in the name Joshua Pars, DOB 16th of November 1991.* "], does not take
16 away from the case against this Defendant and does not weaken the inference of this
17 Defendant's possession as the person identified the DNA "hit", Joshua Pars, was not linked to
18 the Ziploc bag or the ammunition found within it. The Crown submits that the fact Pars was
19 arrested four months later in relation to an allegation, as yet unproved, of possession of firearm
20 and ammunition is irrelevant. In any event the prosecution submit that Pars' involvement is
21 not a defence to the possession of ammunition by this Defendant.

22
23 33. The Crown also ask the court to have in mind that this Defendant has given no account in
24 relation to the issues before the court. The court should consider that this is so because he had
25 no account to give.

26
27 **Court's Analysis and Conclusions**

28
29 34. Section 3 of the Penal Code defines "possession" as follows:

30
31 *"possession" includes not only having in one's own personal possession, but*
32 *knowingly having anything in the actual possession or custody of any other*
33 *person, or having anything in any place (whether belonging to or occupied by*
34 *oneself or not) for the use or benefit of oneself or any other person, and if there*
35 *are two or more persons and any one of them or more of them with the*
36 *knowledge and consent of the rest has or have anything in his or their custody*
37 *or possession, it shall be deemed and taken to be in the custody and possession*
38 *of each and all of them;"*
39
40



1 35. In this case the factors going toward possession as highlighted by the Crown must be closely
2 examined. Paragraph 21 of the Admissions states: “21. *Michael Lopez Watler acquired the*
3 *black Honda Accord motor vehicle registration # 163176 from a Mickyle Bodden in August*
4 *2020.*”. The ammunition in this case was discovered on 10 July 2021. No evidence has been
5 presented that this Defendant is still the registered owner of the vehicle. The vehicle was not
6 found at the Defendant’s address and there is no evidence that the address at which the vehicle
7 was found is in any way associated with this Defendant or indeed in some proximity to the
8 Defendant’s address. The fact therefore that the Defendant acquired the vehicle in August
9 2020 does not lead to a single reasonable inference that he was in the vehicle on the night in
10 question.

11
12 36. There is no evidence putting the Defendant in the vehicle on the night in question or in the
13 vicinity of the vehicle on the night in question. In this case there is an association of the
14 Defendant with the vehicle and this is one of the factors that the Court can look to in determining
15 whether he was in possession of the firearm (ammunition).

16
17 37. The evidence presented by the prosecution is that when Acting Police Sergeant Peter Maragh
18 opened the right rear door of the vehicle: “*it was unlocked. He observed a black Air Jordan*
19 *sneaker box. He opened the box to discover a quantity of 9mm cartridges in a clear ziplock*
20 *bag. There was also a magazine and a black glove located within the sneaker box.*” The fact
21 that the vehicle was unlocked is a significant factor as it implies that other persons could have
22 had access to the vehicle on the 10th of July 2021.

23
24 38. The presence of a black glove within the sneaker box which registered a hit for another person’s
25 DNA gives further weight to the possibility that another person may have had access to the
26 vehicle and to the box sometime before it was discovered by the police. The Defendant’s
27 fingerprint was not identified on the box itself or on any of the other items in the box. I am
28 mindful of the Admissions and fact #3: “*Two males, a Luka Bodden and a Dayne Wilson were*
29 *observed by the officers to be walking away from the vehicle in question.*” There were other
30 persons at the scene at #177 Birch Tree Hill Road] at the relevant time.

31
32 39. The fact that the Defendant’s fingerprint was found on three areas of the vehicle does not lead
33 to a single reasonable inference that he was present and driving the vehicle *on the night in*
34 *question.* It is evidence that he had had contact with the vehicle but the inability of the
35 prosecution to present evidence of when these prints may have been left on the vehicle weakens
36 the Crown’s case.

37



1 40. Similarly, the presence of the Defendant's print on the Ziploc bag also cannot confirm when
2 that print was placed on the bag. There are no prints on the ammunition which match those of
3 the Defendant. Ms. Hough's evidence is that she is unable to say how long the impressions
4 found on the Ziploc bag would have been on that bag nor could she say when, in relation to
5 each other, the impressions found, including the Defendant's print, would have made contact
6 with the bag.

7

8 41. Ms. Noddings positively identified the Defendant's print as matching a print found on the
9 outside of the Ziploc bag but she could not say, apart from this identification of that single print,
10 whether all the marks that were observed on the zip lock bag were or came to be on that bag at
11 the same time. Her evidence is that she could not say at all for when those marks were placed
12 onto the bag, that could only be told by someone who had first or eyewitness knowledge to that
13 bag.

14

15 42. Further, Ms. Noddings noted that she could not say whether other unidentified marks not
16 matching the Defendant belonged to someone else or even to several other persons. The fact
17 of the fingerprint on the Ziploc bag does not lead to a single reasonable inference that the
18 Defendant was the only person who touched the Ziploc bag nor that it was placed there by the
19 Defendant on the night in question.

20

21 **Adverse inference warning**

22

23 (i) *Failure to give an account at interview*

24

25 43. The Crown has submitted that this court should draw an adverse inference from the Defendant's
26 failure to give an account at interview. As reflected in the admissions the Defendant was
27 interviewed in the presence of his counsel but did not answer any questions surrounding the
28 incident during which the ammunition now the subject of the instant offence is concerned.

29

30 44. Section 148 of the Police Law states:

31

*"148. (1) Where, in any proceedings against a person for an offence, evidence is
32 given that the accused—*

33

34 (a) *at any time before he was charged with the offence, on being
35 questioned by a police officer trying to discover whether or by
36 whom the offence had been committed, failed to mention any fact
37 relied on in his defence in those proceedings; or*

38

39 (b) *on being charged with the offence or officially informed that he
40 might be prosecuted for it, failed to mention any such fact; or*

41



1 (c) at any time after being charged with the offence, on being
2 questioned under the Terrorism Law (2017Revision), failed to
3 mention any such fact ,
4

5 being a fact which in the circumstances existing at the time the accused
6 could reasonably have been expected to mention when so questioned,
7 charged or informed, as the case may be, subsection (2) shall apply.
8

9 (2) A-

10 (a) Court in determining whether there is a case to answer; or
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12 (b) court or jury, in determining whether the accused is guilty of the
13 offence charged,
14

15 may draw such inferences from the failure as appears proper. ”
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19 45. I am satisfied that before his interview the Defendant was cautioned. He was first told that he
20 need not say anything. It was therefore his right to remain silent. However, he was also told
21 that it might harm his defence if he did not mention when questioned something which he later
22 relied on in court; and that anything he did say might be given in evidence.
23

24 1. Mr. Lopez Watler was interviewed under caution at the Cayman Islands detention
25 centre on the 2nd of November 2021. He had the assistance of an Attorney
26 throughout the course of the interview.
27

28 2. He answered “no comment” to the vast majority of questions put to him. Questions
29 to which he gave “no comment” answers included the following:
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31 ix) His whereabouts on the evening of the 10th of July 2021;

32 x) Whether he knew Dayne Wilson;

33 xi) Whether he knew Luka Bodden;

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37 xii) Whether he had any connection with a black Honda Accord motor
38 vehicle, registration # 163175;

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40 xiii) Whether he had any connection with ammunition found in that vehicle;

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42 xiv) Whether his DNA or fingerprints would be found in that vehicle;

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44 xv) Whether his DNA or fingerprints would be found on any item
45 recovered from that vehicle;

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47 xvi) Whether there was any reason his fingerprints should be found on the
48 ziplock bag containing the ammunition;
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1 46. However where, as in this case the Defendant does not give or call evidence at trial and does
2 not advance a positive case but merely puts the prosecution to proof, the court cannot for the
3 purposes of Section 148 of the Police Law draw any inferences from this failure. In the instant
4 case counsel for the Defendant did not advance a positive case nor suggest it to any of the
5 Crown's witnesses. This taken together with the fact that the Defendant did not give evidence
6 himself leads this Court to the conclusion that there is no fact that the Defendant *failed to*
7 *mention [in his interview] upon which he now seeks to rely in his defence in these proceedings*
8 *which could lead the court to draw an inference adverse to the defendant from such failure.*
9

10 (ii) *The defendant's failure to give evidence at trial*
11

12 47. The facts presented on the prosecution case were not effectively disputed at all. There was no
13 dispute as to the actual events, that the ammunition was found in a shoebox in the back of the
14 car which was registered to the Defendant at an address at #177 Birch Tree Hill in West Bay.
15 There was no dispute that the Defendant's fingerprint was found on the bag in which the
16 ammunition was recovered. The issue for this court is whether in those circumstances there
17 was any issue which called for a factual explanation or answer from this Defendant.
18

19 48. The Defendant in common with any other Defendant in a criminal trial has no obligation to
20 prove that he is not guilty, or to explain the evidence offered by the Prosecution. Even if I do
21 find that the Defendant could have given an account to throw light on the main issue in this
22 case, of how his fingerprint came to be on the Ziplock bag and that an adverse inference should
23 be drawn from this failure, such an inference could not be the only factor to justify his
24 conviction. Such an inference could however bolster the prosecution's case and the court must
25 look to find whether the prosecution on the totality of the evidence presented has proved its
26 case to the requisite standard.
27

28 49. The prosecution has presented a case based on circumstantial evidence. The prosecution has
29 asked the court to consider the following facts (1) that the car in which the ammunition was
30 found was registered to the Defendant; (2) that the box in which the ammunition was recovered
31 was found in the back seat of that vehicle (3) that the Defendant's single fingerprint was found
32 on a Ziploc bag in which the ammunition was recovered (4) that there were other fingerprints
33 on the car which were identified as being that of the Defendant. The Prosecution submitted that
34 all of these pieces of circumstantial evidence, used together, raise the irresistible inference that
35 it was the Defendant who was in possession of the ammunition on the night of the 10th of July
36 2021.
37



1 50. I have listened and considered all of the evidence presented on the salient issues in this case.
2 After considering the circumstantial evidence on the Prosecution's case, I must ask myself –
3 Does the circumstantial evidence taken together lead to the irresistible conclusion to make me
4 sure that the Defendant was in possession of the ammunition on the night in question.

5

- 6 • If I am **not sure**, then I must find the Defendant **not guilty**.
- 7 • If I am **sure** then the verdict is **guilty**.

8

9 51. I find that I am not satisfied to the requisite standard, I am **not sure** that the Defendant had
10 possession of the firearm(ammunition) on the 10th of July 2021. The Court's verdict is that this
11 Defendant is not guilty.

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Hon Mrs. Justice Marlene Carter
Acting Judge of the Grand Court