



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

3
4 **INDICTMENT Nos. 12/2021 & 13/2021**
5
6

7 **REGINA**
8 **V**
9 **KASNIQUE PATRICE AUSTIN-CUPID**
10 **&**
11 **RICHARD EDWARD NASH, Jr.**
12
13
14

15 **Appearances:** **Mr. Garcia Kelly for the Crown**
16 **Mr. Jonathan Hughes for Kasnique Cupid**
17 **Mr. Crister Brady for Richard Edward Nash, Jr.**
18
19 **Before:** **Honourable Justice McDonald-Bishop (Actg.)**
20
21 **Judge Alone Trial:** **27th October 2021 – 10th November 2021**
22 **Verdict Judgment Delivered:** **25th February 2022**
23
24

25 **HEADNOTE**

26 *Criminal Law – Robbery – Section 243(1)(b) of the Penal Code (2019*
27 *Revision) – Verdict following trial by Judge Alone.*
28

29
30 **VERDICT JUDGMENT**
31
32
33



- 34 1. The defendants, Kasnique Austin-Cupid and Richard Edward Nash Jr. are charged on
35 an indictment with the offence of Robbery, contrary to s.243(1)(b) of the *Penal Code*
36 (2019 Revision).
37
- 38 2. Defendant Kasnique Cupid goes by the name "Eve High Voltage" or "Eve", and
39 Defendant Richard Nash is also called "Sickka Dan", "Sikka", among other aliases.
40
- 41 3. The particulars of the offence for which they are charged are that on the 7th February
42 2020, at Tortuga Liquor Store, Lime Tree Bay Road, George Town, Grand Cayman,
43 Cayman Islands ("the liquor store"), they stole CI\$2,361.13 and US\$181.00 in cash
44 from Heigna Andrade, and immediately at the time of doing so, and in order to do so,
45 used force on her.
46
- 47 4. Both defendants pleaded not guilty and subsequently elected to be tried by Judge
48 Alone, pursuant to s.129 (1) of the *Criminal Procedure Code* (2010 Revision).
49
- 50 5. My task is to consider all the evidence adduced on behalf of the Prosecution, and the
51 Defence, and to determine whether the defendants are guilty of the charge laid against
52 them. As I am obliged by law to do, I have examined the evidence against and for
53 each of them separately to arrive at a verdict in respect of each.
54
- 55 6. An overview of the evidence adduced at the trial will first be outlined to provide the
56 necessary background for the decision to which I have arrived.

57
58 **OVERVIEW OF THE EVIDENCE**

59
60 **The Prosecution's case - The Robbery**

61
62 **Ms. Beverly Ebanks**

- 63
64 7. The evidence adduced from Ms Beverly Ebanks disclosed that at approximately
65 8:50p.m. on the 7th February 2020, she and Ms Heigna Andrade were the two
66 employees at the liquor store. It was approaching closing time, and Ms Andrade was
67 mopping the floor while Ms Ebanks was attending to her cash register. Two men
68 armed with knives entered the store. The first man, whom the prosecution referred to



- 69 as "Robber no.1", is alleged to be Defendant Richard Nash, and the second man,
70 referred to as "Robber no. 2", was never apprehended.
- 71
72 8. Ms Ebanks did not see who had entered the store, but she felt a hand on her back or
73 neck (she did not quite remember which), and the person pushed her and said, "get
74 down". She said it was a male voice, which "sounded like a Caymanian accent".
75 CCTV footage showed this man to be "Robber No 2".
- 76
77 9. Ms Ebanks was faced down on the ground and could not see Ms Andrade or the man
78 suspected to be Defendant Nash, but she could hear the slamming of the cash register
79 drawers and "a lot of rustling" as if someone was holding up Ms Andrade and pulling
80 her around.
- 81
82 10. Ms Ebanks then saw Ms Andrade on the ground. The man suspected to be Defendant
83 Nash then took Ms Andrade to an area inside the store where the money from daily
84 sales would be secured at night. She heard the man saying, "give me the money", and
85 Ms Andrade saying there was no money. At that time, Ms Ebanks was being held on
86 the floor by "Robber no. 2". He took a \$10.00 note from Ms Ebanks, grabbed her, and
87 put her where Ms Andrade was in the store. Ms Ebanks told them there was no
88 money, and they ran from the back of the store.
- 89
90 11. Ms Ebanks raised an alarm and went outside the liquor store. She saw two persons
91 coming from neighbouring Cost U Less and spoke to them. Those persons followed
92 behind the fleeing robbers on a motor vehicle, but the robbers were not caught. Ms
93 Ebanks contacted the police through their emergency number and made a report. She
94 also called her supervisor.
- 95
96 12. Ms Andrade sustained injuries during the attack, while Ms Ebanks, although not
97 injured, reportedly feared for her life.
- 98
99 13. There were three cameras in the store, one above each cash register and another that
100 gave a view of the entire store.
- 101



102 14. At the time of the robbery, Defendant Kasnique Cupid was an employee of Tortuga
103 Rum Company and worked on rotation at the liquor store. She knew about the day-to-
104 day operation of the store.

105
106 15. These additional facts regarding the robbery are agreed upon:

107
108 a. Ms Andrade is a Filipino national who relocated to the island about one year
109 before the incident.

110
111 b. She described the man who approached her (suspected to be Defendant Nash) as
112 about 5 feet 9 inches tall, skinny, spoke with a Cayman accent and had a “coffee
113 colour” around his eyes. She indicated that she was more focused on preserving
114 her life during the robbery.

115
116 **The police investigation**

117
118 **Detective Constables Ricardo Lauder and Tamar Thomas**

119
120 16. The statements of Detective Constables Ricardo Lauder and Tamar Thomas were read
121 into evidence as agreed.

122
123 17. They reported that at about 9:05p.m. on the 7th February 2020, they, along with a party
124 of police, went to the subject liquor store following the report of the robbery. They
125 were permitted to view CCTV camera footage of the liquor store. This footage showed
126 three males running to the liquor store at about 8:53p.m. from behind the containers at
127 the entrance/exit towards the Esterley Tibbetts Highway. The two men who entered
128 the store were dressed in dark clothing, long-sleeved shirts, and facial covering as a
129 disguise. Robber no. 1, suspected to be Defendant Nash, was dressed in light blue long
130 pants with distressed patterns; a black hooded long-sleeved top; a pair of black shoes;
131 blue underwear with black bird-like figures imprinted on it; a gold-coloured watch
132 with a black face; a black belt with a white-coloured centre and black-coloured gloves.
133 Robber no. 2 wore all black-coloured clothing. The third male, dressed in a red-
134 coloured shirt, stopped in the corridor near the store. He did not enter the store.

135



- 136 18. A few minutes later, the two men who entered the store, left.
137
138 19. DC Lauder and DC Thomas made checks around the premises and walked the route
139 they saw the persons took. DC Lauder observed a government CCTV camera mounted
140 at the roundabout at Governor's Square, which he brought to the attention of DC
141 Thomas. DC Lauder contacted 911 and spoke to a monitoring personnel who could
142 see the location. The monitoring personnel gave him certain information regarding a
143 minivan-type vehicle seen at the rear exit of Cost U Less around the same time as the
144 robbery.
145
146 20. DC Lauder and DC Thomas then went to the George Town Police Station, where they
147 viewed the government CCTV footage. They observed a white minivan, which later
148 was identified as a Toyota Noah, travelling on Esterley Tibbetts Highway and then
149 stopped at the entrance/exit of Cost U Less at 8:55p.m. Three persons exited the van
150 and ran into Governor's Square Plaza.
151
152 21. The Toyota Noah then turned onto Esterley Tibbetts Highway and travelled towards
153 George Town. It then turned left onto Safe Haven Road, where it appeared to have
154 stopped as the headlights stopped moving. The lights then went off. At about 9:00
155 p.m., DC Lauder observed a person, who seemed to have been the male standing in the
156 corridor of the liquor store dressed in the reddish shirt, walking across from the
157 Esterley Tibbetts Highway from the exit of Cost U Less. He walked towards the
158 roundabout and out of view of the camera. Within minutes, two persons dressed in
159 dark clothing were seen running from the same exit/entrance of Cost U Less. They
160 crossed Esterley Tibbetts Highway onto the soft shoulder and then out of the sight of
161 the camera as they exited the roundabout at Cost U Less. At about 9:02 p.m., lights
162 came on at the same place that the Toyota Noah had stopped at Safe Haven. Nothing
163 on the camera showed that the vehicle had travelled into George Town.
164
165 22. When DC Thomas opened all CCTV footage in the area, he noticed that the same
166 vehicle that had let off the men at Cost U Less, had travelled to Lime Tree Bay Road,
167 West Bay Road, and then on to Governor's Beach. Some features of the vehicle were
168 noted as it proceeded through the intersection of Lime Tree Road and West Bay Road,



169 including that the last three digits of the registration plate were observed to be 342.
170 DC Lauder captured a screenshot of the digits and subsequently communicated their
171 discovery to police control for a check of the vehicle plates.

172
173 23. Connected to the evidence of these officers is the formal admission during the trial
174 that, on the 8th February 2020, following the request of the police, Automatic Number
175 Plate Recognition data from national CCTV cameras being monitored by the National
176 CCTV System was retrieved and produced to the police. On the 8th February 2020, the
177 Department of Public Safety Communications (DPSC) received a request from the
178 police to run a search using the search parameters of last digits 342 and to look for a
179 white Toyota Noah. The initial investigation turned up two vehicles: a white Toyota
180 Noah and a silver Toyota Noah ending with 342. The plate number for the white
181 Toyota Noah was 186-342 and was seen to be registered by Vicky Britany McGaw.
182 This information was given to the police for further investigation.

183
184 24. It is also an admitted fact that a 2003 white Toyota Noah bearing registration number
185 186-342, registered in the name of Vicky Britany McGaw, was first licensed in the
186 records of the Department of Vehicle and Drivers Licensing (DVDL) on 3rd August
187 2018. Ms McGaw had been registered as the vehicle's only owner since August 2018.

188
189 DC Winston Harrison and DC Dave Barnett

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191 25. On the 8th February 2020, DC Winston Harrison of the Serious Crime Task Force was
192 assigned the case as the Investigating Officer. He embarked on further investigations
193 with assisting officer, DC Dave Barnett, also of the same task force. These officers
194 gave *viva voce* evidence and were cross-examined. For convenience, the main aspects
195 of their evidence are collated and summarised below.

196
197 26. DC Harrison testified to having spoken to Miss Ebanks and Ms Andrade concerning
198 what had transpired at the liquor store. It is formally admitted that the property
199 manager of Governor's Square received a request for CCTV footage from the RCIPS
200 from 8:30p.m. to 9:45p.m. on the 7th February 2020. The relevant cameras examined
201 showed:

202



- 203 a. The rear entrance to the liquor store and the parking lot in the area of Cost U Less;
204
205 b. West Bay Road and the entrance to Governors Beach;
206
207 c. West Bay Road and Lime Tree Bay Avenue;
208
209 d. The front entrance to the liquor store and the parking lot; and
210
211 e. The parking lot to the north of the compound.
- 212
213 27. Based on observations of CCTV footage regarding the activities of the white Toyota
214 Noah with registration number 186-342 ('the Toyota Noah") and the men in question,
215 DC Barnett viewed the government CCTV cameras to get an appreciation of whether
216 the Toyota Noah had gone on to the compound of the liquor store before the incident.
217 When he did his viewing, he observed that it did not go on the premises, but instead, it
218 had travelled from the junction of West Bay Road and Lime Tree Bay Road and then
219 turned on to Governor's Beach. This information was relevant to the investigation, and
220 he asked the property manager to download the footage to see what else he could
221 gather for the investigation.
- 222
223 28. DC Barnett further viewed the CCTV footage and determined that the Toyota Noah
224 went into the Pinehurst Road area to the left of the Esterley Tibbett Highway. It turned
225 into a dark open lot. The police searched the empty lot, but nothing of value to the
226 investigation was found.
- 227
228 29. Having received information that the Toyota Noah's registered owner was Ms McGaw,
229 both DC Harrison and DC Barnett eventually spoke to her. After receiving
230 information from her, they went to speak with Defendant Kasnique Cupid at the
231 Tortuga Rum Company's head office. There, Defendant Cupid gave the officers her
232 full name and confirmed that she was the owner of the Toyota Noah but had asked
233 Miss McGaw to license it for her.
- 234
235 30. DC Harrison informed Defendant Cupid that they were investigating the robbery at the
236 liquor store on the 7th February 2020 and that a white Toyota Noah motor vehicle was
237 seen at the rear of Cost U Less, letting off two men sometime before the robbery



238 occurred. DC Harrison told Defendant Cupid of the registration number 186-342. She
239 responded that she had no idea what he was talking about. She told him she was home
240 with her family after 6:00p.m. on the 7th February and did not leave her house. She
241 also told the constables that her vehicle was parked at her house all night.

242
243 31. Further, she informed DC Harrison that she had sold the vehicle on the 12th or 13th
244 February 2020 to Mr. Ricardo Campbell. She gave him a contact number for Mr
245 Campbell and his residential address at Bonsol Crescent, West Bay. The police visited
246 the area and found the house she described.

247
248 32. DC Harrison eventually met and spoke with Mr Campbell. He saw the Toyota Noah at
249 Mr. Campbell's workplace when he spoke with him.

250
251 33. On 20th February 2020, Detective Harrison went to the George Town Police Station to
252 view government CCTV cameras showing two main entry and exit points to Bonsol
253 Crescent on the 7th February 2020. DC Barnett also requested downloads of specific
254 cameras within the West Bay and George Town areas. Checks of the cameras at these
255 locations showed movements of the Toyota Noah from about 3:40p.m. on the 7th
256 February 2020 to 1:03 a.m. on the 8th February 2020.

257
258 34. In so far as is immediately material, the Toyota Noah was observed driving into the
259 parking lot of Foster's Republic at Willie Farrington Drive in West Bay at 8:23p.m. on
260 the 7th February. After, a female (proved and eventually admitted to being Defendant
261 Cupid) alighted from the vehicle and proceeded to the supermarket. She picked up
262 grocery items and, more specifically, two pairs of dark-coloured gloves that resembled
263 those later worn by the robbers at the time of the robbery. She then left inside the
264 supermarket and went back to the Toyota Noah. She drove from the supermarket and
265 turned toward Governor's Square and Kimpton Hotel. She then went in the direction
266 of the Esterley Tibbett Highway. This was the opposite direction to her home. There
267 was a point at which there was no CCTV opportunity, but the Toyota Noah was seen
268 approaching Cost U Less. It did not turn at West Bay Road; it stopped at the service
269 entrance of Governor's Square. There, three persons exited the vehicle and ran toward
270 Governor's Square.



- 271 35. One CCTV footage with a timestamp of 9:30p.m., which was after the robbery had
272 occurred, showed the Toyota Noah turning in to Governor's Beach. Shortly after, it
273 was seen exiting Governor's Beach and turning left in the general direction of West
274 Bay. The Toyota Noah did not go to the right of Kimpton Hotel. An aerial tour of the
275 route travelled by the Toyota Noah on the night in question, undertaken by DC Barnett,
276 showed that it travelled from Bonsol Crescent to Governor's Beach, stopping at the
277 service entrance of Cost U Less. The police searched the Governor's Beach area but
278 found nothing useful.
- 279
280 36. Based on a review of the CCTV footage, DC Harrison and DC Barnett visited Foster's
281 Republic. They were permitted to view CCTV footage of the inside of the supermarket
282 and a portion of the parking lot.
- 283
284 37. DC Harrison also received copies of receipts from two cash registers concerning the
285 purchases made by Defendant Cupid on the night of the robbery, which included
286 gloves. These receipts led the officers to conduct a second interview with Defendant
287 Cupid regarding, among other things, her initial assertion that she had not left her
288 home on the 7th February 2020. However, upon being confronted with the receipts and
289 details of the card she used at the supermarket, she then admitted that she had gone to
290 the supermarket and had driven the Toyota Noah there.
- 291
292 38. DC Harrison prepared a search warrant for the residential premises of Defendant
293 Cupid. On the 20th March 2020, she was arrested at her workplace as a suspect in the
294 robbery. She was taken to her home, where the search warrant was executed. DC
295 Harrison was the search leader and logbook keeper. During the search, DC Harrison at
296 no time observed dark-coloured or black-coloured gloves. After the search, he
297 transported Defendant Cupid to the Detention Centre at Fairbanks.
- 298
299 39. On the same day of the search, the police saw one, Mr. Wilbert Williamson, at the
300 premises. Upon seeing the police, Mr. Wilbert Williamson tried to run but was caught.
301 He gave his name to DC Barnett. Defendant Cupid was in the police car when DC
302 Barnett spoke to Mr. Williamson. Mr. Williamson was later handed over to the



303 Immigration Department and deported to Jamaica. This was before the police received
304 the call data record and analysis.

305
306 40. DC Harrison also conducted further investigations and recorded statements from other
307 persons, including Ms McGaw.

308
309 41. On the 9th July 2020, the police executed a search warrant at the residence of
310 Defendant Nash. DC Harrison was the team leader and the logbook keeper. Among
311 the items recovered from the home of Defendant Nash were one blue boxer with a
312 black bird pattern taken from the bottom drawer of a dresser in his bedroom; one gold
313 wristwatch with a black face, found on top of the dresser; and a pair of black suede
314 shoes found on the floor in the bedroom. These were items DC Harrison considered of
315 relevance to his investigations. Following the search, DC Harrison arrested and
316 cautioned Defendant Nash on suspicion of robbery. He made no statement upon being
317 cautioned.

318
319 42. After the arrest of Defendant Nash, the police seized his cellphones for investigative
320 purposes. During the police investigations, phone number 517-3209 was attributed to
321 him.

322
323 43. Subsequently, Mrs. Joanne Delaney, the Intelligence Analyst at the Royal Cayman
324 Islands Police Service (RCIPS), recovered photographs from the phone. From those
325 photographs, the police were able to make comparisons between certain items of
326 clothing seen in the photographs with those worn by Robber no.1, who the prosecution
327 alleges was Defendant Nash.

328
329 44. On the 28th July 2020, DC Harrison, in the presence of DC Barnett, recorded a further
330 statement from Ms McGaw regarding a phone call Defendant Cupid made to her on the
331 night of the robbery.

332
333 45. Defendant Cupid was interviewed by the police twice in the presence of her attorney-
334 at-law.

335



336 46. During the first interview, she denied any involvement in the commission of the crime.
337 She denied being in the area of Lime Tree Bay Road or Cost U Less on the night of the
338 incident. She provided an exculpatory prepared statement.

339
340 47. During the second interview, Defendant Cupid was presented with evidence of receipts
341 and details of the card used by the female seen on the CCTV footage inside Foster's
342 Republic on the night of the 7th February 2020. She then admitted to having left her
343 home on the night of the incident and driving the Toyota Noah to Foster's. She,
344 however, refused to say who was driving the van when it went to Cost U Less. She
345 was also presented with the call data evidence but denied knowing Defendant Nash and
346 having called him on the night of the robbery.

347
348 48. Defendant Nash was also interviewed under caution in the presence of his attorney-at-
349 law. He stated that he had no recollection of the 7th February 2020. More particularly,
350 he was unable to say where he was on the night of the robbery as he could not recall.
351 He, however, denied committing the robbery and denied knowing Defendant Cupid or
352 the name "Eve". He also did not distinctly admit in the interview to being the owner or
353 user of the phone with the number attributed to him. He said he could not remember if
354 that was his number.

355
356 49. On the 8th March 2021, Defendant Nash was formally charged with the offence of
357 robbery, and when cautioned, he replied: "*don't know wha gwaan.*"

358
359 50. On the 9th March 2021, Defendant Cupid was formally charged and made no statement
360 when cautioned.

361
362 Ricardo Campbell

363
364 51. Mr. Campbell is a tour bus driver. In or around February 2020, he met Defendant
365 Cupid by doing business with her. He had bought the Toyota Noah from her. The
366 registration number was 186-342. He contacted Defendant Cupid and met her to
367 inspect the vehicle. He recalled inspecting it somewhere between the 6th and 7th
368 February 2020. He drove the vehicle and found that it was in good working condition.
369 He had no problem with it. On the 12th February 2020, he paid for it and took



370 possession of it. He was cross-examined primarily about the nature of his relationship
371 with Defendant Cupid. He also indicated that he did not get in the back of the Toyota
372 Noah when inspecting it but agreed that one of the side doors could not open properly.

373
374 Vicky McGaw

375
376 52. Defendant Kasnique Cupid was married to Ms McGaw's cousin. She described
377 Defendant Cupid as a motivating and nice person and considered her now to be her
378 family. Ms McGaw's name was registered on the white Toyota Noah from August
379 2018 because Defendant Cupid could not register it in her name.

380
381 53. She accepted, as shown by the phone data record, that on the 11th March 2020, she had
382 a conversation on WhatsApp with Defendant Cupid in which Defendant Cupid sent her
383 a photograph of the person they called "Sikka" (Defendant Nash). She did not know
384 Defendant Nash, but she had seen him around.

385
386 54. Further, she agreed that she gave the police an account regarding a call she received
387 from Defendant Cupid on the 7th February 2020. She said she had received a "please
388 call me" text message from Defendant Cupid. She called Defendant Cupid, who told
389 her to call a person (who turned out to be Wilbert Williamson) to pick her up at Seven
390 Mile Beach. Ms. McGaw called the number, but no one answered. She reported this
391 to Defendant Cupid. Defendant Cupid called back and asked her to do a three-way call
392 to the same number. The person answered, it was a male. She left the conference call
393 and told Defendant Cupid when she was finished, she should hang up the phone. She
394 maintained this was the account she gave to the police in her statement and that she did
395 not say anything about Defendant Cupid telling her to ask the person to meet her at
396 Governor's Beach.

397
398 55. The police came to her house on the 28th July 2020 and recorded a second statement
399 which she signed. Upon refreshing her memory, from this statement she admitted that
400 there was a difference between what she told the court and what was in the statement
401 to the police regarding where Defendant Cupid told her Mr. Williamson should meet
402 her. She maintained, however, that what she said in court was what she told the police,

403 which is that Defendant Cupid told her to ask Mr. Williamson to pick her up on Seven
404 Mile Beach.

405
406 56. Her explanation for the inconsistency was that she could not remember if the statement
407 was read back to her, and she did not get an opportunity to review it because she was
408 babysitting three children at the time. She was adamant that she never told the police
409 that Defendant Cupid told her to ask Mr. Williamson to meet her at Governor's Beach.
410 The prosecution was permitted to impeach her credit on this point pursuant to s.4 and
411 s.33B(1)(b) of the *Evidence Act* (2019 Revision).

412 **The telephonic evidence**



413 **Formal admissions**

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415
416 57. The following facts are formally admitted pursuant to s.34 of the *Evidence Act* (2021
417 Revision):
418

419
420 i. When [Defendant] Cupid was arrested, a search was conducted of her
421 person, and a Samsung Note 9 was recovered from her back pants pocket.

422
423 ii. Mr Alvan Boxwell, a Detective Constable employed to the RCIPS, has
424 certifications in Cellebrite Mobile Forensic Fundamentals, is a Cellebrite
425 Certified Logical Operator and has certifications in Encase Neutrino
426 Mobile Forensics. He downloaded the contents of [Defendant] Cupid's
427 phone and made additional extractions upon the request of Mrs Delaney.

428
429 iii. Mr Boxwell also carried out extraction on the black Samsung GSM
430 Galaxy J5 Prime phone recovered from [Defendant] Nash's home by DC
431 Harrison on 4th August 2020.

432
433 iv. The Regional Law Enforcement Liaison and Court Process Officer
434 employed to Cable and Wireless Jamaica Limited (now known as FLOW)
435 provided subscriber information for the cellphone number associated with
436 [Defendant] Cupid for the period 24th January 2020 to 20th March 2020.
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Evidence of Mrs. Joanne Delaney

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58. In addition to the formal admissions, Mrs. Delaney gave viva voce evidence in open court and was cross-examined.
59. She is employed with the RCIPS, as an Intelligence Analyst, and has been engaged in this area of specialisation since 2003. DC Barnett asked her to conduct handset, cell site and toll data analysis regarding cell phones recovered during the investigations. DC Barnett provided her with cellphones download exhibits, toll data exhibits and CCTV viewings relative to the robbery investigations. She also made requests of different service providers in respect of relevant toll data. She received cellphones with numbers 927-2277 attributed to Defendant Cupid; 517-2309 attributed to Defendant Nash; and 326-7824 attributed to Wilbert Williamson.
60. On examination, Mrs. Delaney found numbers stored in Defendant Cupid's phone for the following relevant persons: Defendant Nash as "Sikka"; Mr Williamson as "Wayne West Bay" (and a voice note referring to him as Wayne Wilbert); Ms McGaw's as "Cuz Vicky"; Mr Campbell as "Ricky"; and Marcella as "Marcella Cayman Mobile Cash".
61. Based on the telephone toll data, cellphones downloads and CCTV, she produced Exhibit JD/1A/1, the attribution of key telephone numbers. Where voice notes were identified within WhatsApp messages, she undertook the audio transcriptions and produced Exhibits, JD/IA/2 – JD/IA/I 6. These exhibits identified communication data among the phones of Defendant Cupid, Defendant Nash and Mr Williamson between 6:00p.m. on the 7th February 2020 and 10:00p.m. on the 8th February 2020. Mrs. Delaney also produced three maps of the cell sites used by the relevant cellphones; CCTV of the Toyota Noah; and key events and locations as detailed in the communication data of Defendant Cupid's phone between 8:22p.m. and 9:30p.m. on the 7th February 2020.
62. Mrs. Delaney used her exhibited maps to visually represent the cell masts and sectors utilised by the cellphones of interest. She explained her analysis and demonstrated how she arrived at her findings and conclusions. Mrs. Delaney was able to identify



471 from the toll data record the most sectors used by the phones of Defendant Cupid,
472 Defendant Nash and Mr. Williamson before, at the time of, and, after the robbery. She
473 observed that the cell sites used by Defendant Cupid's phone were located within the
474 geographical areas observed in the CCTV footage relating to the moving Toyota Noah.

475
476 63. She established that there was communication between the cellphones of Defendant
477 Cupid and Defendant Nash and Defendant Cupid and Mr Williamson within the
478 locality of the crime scene around the time of, and shortly after, the robbery. She
479 explained that at the first contact between the cellphones of Defendant Cupid and
480 Defendant Nash, the Toyota Noah was seen travelling through the West Bay camera.
481 Defendant Nash's cellphone was observed to have moved from using the Red Bay mast
482 at 8:36p.m. to utilising the Safe Haven mast 12 minutes later while on a call with
483 Defendant Cupid. As she explained, one may infer movement of the phone from a
484 change in mast, but it does not necessarily mean the phone has changed location. A
485 stationary phone could be shown within a neighbouring mast.

486
487 64. Additionally, from the review of the exhibits, Mrs Delaney was able to identify
488 communications between various accounts associated with Defendants Cupid and
489 Nash. Defendant Nash's telephone number was an identified WhatsApp contact under
490 the name "Sikka" on Defendant Cupid's phone. Defendant Nash was also an identified
491 *Facebook* and *Instagram* contact on Defendant Cupid's phone as "Sikka Dan". The
492 active *Facebook* contact between the two accounts started from December 2019 until
493 18th February 2020. There was an active single WhatsApp chat between the two
494 cellphones on 25th February 2020, with a message sent to Defendant Cupid from
495 Defendant Nash's phone.

496
497 65. Mrs. Delaney also produced evidence of WhatsApp conversations Defendant Cupid
498 had with Defendant Nash, Ms McGaw and someone named Marcella at different times
499 before, on the night of, and after, the alleged robbery. In one WhatsApp conversation
500 with Miss McGaw on the 11th March 2020, Defendant Cupid referred to Defendant
501 Nash as her friend and asked Ms McGaw to assist him with a temporary work permit.
502 During voice notes, Defendant Cupid gave Defendant Nash's name in full and sent two



503 images of Defendant Nash to Ms McGaw. In return, Ms McGaw referenced the person
504 in the image as "Sikka". And Defendant Cupid agreed he was Sikka.

505
506 66. From the WhatsApp record on Defendant Cupid's phone, it was seen that Defendant
507 Cupid was indebted to Marcella up to the 7th February 2020, and Marcella was
508 threatening her with repossession of a vehicle by the 8th February 2020. Marcella
509 demanded a minimum payment of C\$300.00. On the 6th February, Defendant Cupid
510 told Marcella that repayment by the 8th February was "impossible" at the time.
511 Thereafter, by the early morning of the 7th February, there was a conversation between
512 Marcella and Defendant Cupid in which Defendant Cupid indicated that she would
513 make full payment of \$828.00. She told Marcella to collect the money at the liquor
514 store on the afternoon of the 7th February as her boss was going to assist her in making
515 the payment. Defendant Cupid did not meet the person despite having told Marcella
516 she would make the payment. On the 8th February, Defendant Cupid called Marcella
517 by phone and told her that her boss had only given her \$714.00, and she had to "hustle
518 the rest", which she did "while she was at a party last night" (that being the 7th
519 February 2020, the night of the robbery).

520
521 67. Mrs. Delaney could not recover messages from Defendant Nash's cellphones.
522 However, some photographs were downloaded showing images of him wearing
523 multiple items of clothing, which were similar to the clothing worn by Robber no.1
524 during the robbery. These were provided to the police.

525
526 68. Mrs. Delaney, although cross-examined, was not discredited in any way, and the
527 methodology she employed in obtaining the telephonic evidence and the conclusions
528 she arrived at were not rendered unreliable under the searchlight of cross-examination.

529
530 **THE CASE FOR THE DEFENCE**

531
532 Defendant Cupid

533
534 69. Defendant Cupid gave sworn evidence on her own behalf. I am mindful that in doing
535 so, she has not assumed the duty to prove her innocence or anything at all. I know that
536 even if I do not believe her, I cannot convict her on that alone. I am obliged to return to



537 an examination of the evidence presented by the prosecution, and only if I am satisfied,
538 by that evidence, to the extent that I feel sure of her guilt, having taken into account the
539 evidence she has advanced in her defence, that I can conclude that she is guilty.

540
541 70. Defendant Cupid gave evidence of, among other things, her age, marital status, familial
542 relationships and employment history with the Tortuga Rum Company. She also
543 spoke about her duties at the liquor store around the time of the robbery. In so far as is
544 immediately relevant, she said she knew Defendant Nash in February 2020 as "Short
545 Boss" but not as "Richard Nash". According to her, the names "Sikka" and "Kilo", by
546 which Defendant Nash is also known, "did not mean anything" to her. She had seen
547 him around since 2018 and spoke to him before February 2020. She did not know him
548 personally, she said, but just as a "young youth around". She would describe
549 Defendant Nash as being known to her rather than knowing him. She knew his father,
550 who was her tailor. Defendant Nash had asked her for assistance in securing a work
551 permit because he was getting a divorce and needed a work permit. She helped him
552 because she is helpful and has a history of providing that kind of assistance.

553
554 71. Ms McGaw is her husband's cousin, and she had a friendly relationship with her. She
555 knew Mr. Campbell, with whom she had a business and social relationship. Mr.
556 Williamson was her neighbour in February 2020, and she was in telephone contact
557 with him at the material time. Marcella was her good friend. She had a long-standing
558 relationship with Marcella lending money to her. In February 2020, she owed
559 Marcella \$828.00, but she settled the debt with a payment of \$714.00 because she had
560 received her salary from Tortuga Rum Company on the 7th February 2020. She was
561 not sure what happened to the remaining \$114.00 she owed.

562
563 72. Regarding the 7th February 2020, the date of the robbery, she gave this account.

564
565 73. In the morning, after attending to her children for school, she went next door where her
566 neighbour was cooking for a party to be held at Seven Mile public beach later in the
567 day. On her way to the party, she stopped at Foster's Republic. By then, it was night.
568 She purchased items with an NAU card and two miscellaneous gloves for personal use.
569 She then returned to her bus and drove from the supermarket to the beach.



570 74. Whilst exiting the bus in the parking lot at the beach, Wilbert Williamson approached
571 her and asked for a ride to purchase cigarettes. She had no reason to doubt the reason
572 he gave for borrowing the bus, so she handed him the key. He left with the bus, and
573 she went and had a "good time" at the party. The vehicle was not returned to her in
574 time. Therefore, she tried calling Mr. Williamson to ask him where he was and to tell
575 him she needed to go home. He did not respond. She then called Ms McGaw and
576 asked her to contact Mr. Williamson to inform him to pick her up at Seven Mile Beach.
577 Ms McGaw eventually connected her to Mr. Williamson through a three-way
578 telephone call, and she told him she wanted to go. Mr. Williamson never returned to
579 the beach, and so she left for home with her neighbours as a passenger in their motor
580 vehicle. She was not sure of the time she left the beach.

581
582 75. Before leaving the beach, she had called Defendant Nash because they had spoken
583 about her collecting two work permit forms from him. She had told him to bring them
584 to the beach where she was, and he did as instructed. She called him again after he left
585 to ask him to get photographs that he should have also given with the forms because
586 none was in the envelope. He never came back.

587
588 76. After she got home, she borrowed her tenant's car and went to Windsor Park, where
589 she spent the rest of the night. She washed pots at that location and was paid \$500.00.
590 She then left for home.

591
592 77. The police eventually spoke with her, and she was arrested and interviewed. She did
593 not give the account she gave to the court to the police in March because she
594 "genuinely could not remember" what happened on the day in question. In March,
595 there was nothing significant about the 7th February 2020. She gave her "no comment"
596 responses in the interviews because of the advice from her lawyer. Also, she did not
597 comment because she knew nothing about Cost U Less.

598
599 78. She stated in evidence that she could remember details about the events of the 7th
600 February 2020 during the trial, because she learnt some things from the police and
601 other persons after her interviews.

602



603 79. In cross-examination, Defendant Cupid explained that her memory was mainly
604 refreshed when she saw the still photographs of Foster's Republic at Fairbanks. She
605 did not refresh her memory of the chain of events on the 7th February 2020, but after
606 March 2020, she managed to piece most things together. She could not identify herself
607 on the CCTV footage from Foster's because the photos were unclear. When the police
608 showed her the Fosters' receipts, it jogged her memory that she went there on the 7th
609 February 2020. She denied Crown Counsel's suggestion that her evidence was a recent
610 fabrication.

611
612 80. During cross-examination, Defendant Cupid could not show the road she used to get to
613 the Seven Mile Public Beach, where she said the party was being held. She was also
614 unable to say on which side of the beach at the Kimpton Hotel she attended the party.
615 She said she did not remember. She told Crown Counsel under cross-examination that
616 she could not assist him with the direction she took to the Seven Mile Beach on the
617 night in question, although she was shown the aerial footage. She accepted that she
618 had her phone on her person all night on the 7th February 2020.

619
620 81. Defendant Cupid also testified that she sold the Toyota Noah in February 2020 because
621 it had problems. The engine was not working properly, and both side doors could not
622 open. She maintained that she gave no one the motor vehicle to drive to commit a
623 robbery. She denied the prosecution's case that she was part of a joint enterprise to rob
624 the liquor store.

625
626 Tevin Thomas

627
628 82. Defendant Cupid called her tenant, Mr. Tevin Thomas, to give evidence on her behalf.
629 The material aspects of his evidence may be summarised as follows. He rented a room
630 from Defendant Cupid at her residence in West Bay, where he lived for over six
631 months. At the time he lived there, Mr. Williamson lived at the premises. He did not
632 know Mr. Williamson "that good", but he would lend Mr. Williamson his car.
633 Whenever he lent Mr. Williamson his car, Mr. Williamson would delay returning it.
634 Sometimes, he had to call Mr. Williamson to return the car. He was not cross-
635 examined.



636 Defendant Nash

637

638 83. Defendant Nash chose to remain silent. He was content to rest on what he told the
639 police in his audio-recorded interview.

640

641 **ANALYSIS AND FINDINGS OF THE COURT**

642

643 84. In executing my task as the sole judge of law and fact, I have been guided by the
644 Cayman Islands Court of Appeal (CICA) pronouncements in ***K. Richards v R¹*** and
645 ***Randy Martin v R²***, regarding the approach that a judge sitting alone in a criminal trial
646 should take in determining the verdict. Therefore, I do not propose detailing all
647 principles of law and to expressly detail the evidence to which I have regard in coming
648 to my conclusion. Only those salient aspects of the case will be discussed during my
649 analysis of the case. I have been guided by the general law applicable to the
650 consideration of the case, critical aspects of which I will discuss.

651

652 85. I am mindful that the burden rests on the prosecution to prove the guilt of both
653 defendants to the extent that I am sure of their guilt; nothing less than that will do.

654

655 86. The evidence was adduced by different means: the *viva voce* evidence of witnesses
656 appearing in court and via video link, agreed statements and formal admissions.
657 Reliance is also placed on documentary, real and circumstantial evidence. Each item
658 and form of evidence has been considered in accordance with the applicable law.

659

660 87. Concerning those witnesses whose written statements were read into evidence, I am
661 mindful that although they all made declarations of truth attached to their statements,
662 they did not testify on oath and were not subject to cross-examination for their
663 accounts to be tested. It follows that they were not subjected to the scrutiny of the
664 court for their demeanour to be assessed in the same manner as those who attended and
665 gave sworn evidence. So, in evaluating the weight to be attached to their evidence, I
666 have borne all these matters in mind. I have considered their evidence in the context of
667 all the rest of the evidence in the case, including that of the Defendant Cupid, and her

¹ [2001 CILR 496], paragraph 32

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



668 witness, and have accorded the evidence of each witness such weight as I think it
669 deserves. However, in considering the weight to be attached to the evidence of each
670 witness, I have borne in mind that the evidence stands unchallenged.

671
672 88. The prosecution also relies on the evidence of Mrs Delaney, whom I have accepted as,
673 and regard as, an expert witness. Even though her evidence stands as uncontradicted, I
674 have, nevertheless, treated her like every other witness; that is to say, I have subjected
675 her evidence to the same scrutiny as the evidence of other witnesses in the case, whilst
676 bearing in mind that I am not duty-bound to accept the opinion she has expressed on
677 any matter.

678
679 89. I have also paid due regard to all the admissible evidence adduced, including the
680 evidence given by and on behalf of Defendant Cupid, that is pertinent to my
681 determination as to whether the offence is proved to the requisite standard against each
682 defendant.

683
684 90. I have paid close attention to matters that not only go to show whether the offence is
685 proved to have been committed as a matter of fact and law but also those matters that
686 go to the credibility, reliability, weight and cogency of the evidence of each witness,
687 particularly, those whose evidence is in dispute. These matters include, in the main,
688 inconsistencies, discrepancies and omissions.

689
690 91. In recognising that critical aspects of this case turn on the credibility and reliability of
691 some of the witnesses who gave *viva voce* evidence, including Defendant Cupid, their
692 demeanour was of critical importance to me, and so I have observed them with the
693 closest scrutiny.

694
695 92. In considering the evidence, I bore in mind that I can reject part or accept part of what
696 a witness said and that I can prefer the evidence of one witness to the evidence of
697 another who testified about the same fact or circumstance.

698
699 93. I am also mindful that it is open to me to draw reasonable and inescapable inferences
700 from facts, which have been proven to my satisfaction, to assist me in coming to my
701 decision, but I am not permitted to speculate. I have considered the evidence



702 objectively, that is, being uninfluenced by sympathy, prejudice and any extraneous
703 matter.

704
705 94. The prosecution has relied on several principles of law to ground the allegations that
706 the defendants are guilty of the crime charged. The defence has put forward the legal
707 principles on which they are relying. I have identified the matters listed below as
708 warranting special consideration and directions in the light of the case presented by the
709 prosecution and defence and taking into account the submissions of counsel:

- 710
711 a. Circumstantial evidence.
712
713 b. Joint enterprise.
714
715 c. Evidential value of police interview.
716
717 d. Lies as corroboration.
718
719 e. Adverse inference from defendant's silence at trial.
720
721 f. Failure to mention facts relied on at trial in police interview.
722
723 g. Good character.
724
725 h. Alibi defence.

726
727 95. When necessary, the consideration and resolution of the issues relating to each
728 principle of law will be demonstrated explicitly within the context of the analysis of
729 the evidence and aspects of the case to which they relate.

730
731 96. Finally, I have carefully considered the helpful submissions of counsel on both sides,
732 and have taken them into account - even though, during my analysis of the evidence, I
733 may not refer to all that they have urged on me in its entirety.

734
735 97. Three broad questions for the court's consideration in determining the ultimate
736 question of whether the defendants are guilty of the offence of robbery are:

737



- 738 a. Whether a robbery was committed at the liquor store;
739
740 b. Whether Defendant Cupid committed the robbery; and
741
742 c. Whether Defendant Nash committed the robbery.

743

744 **WHETHER A ROBBERY WAS COMMITTED AT THE LIQUOR STORE**

745

746 98. According to s.242(1) of the *Penal Code* (2019 Revision):

747

748 "242. (1) *A person commits robbery if he steals, and immediately*
749 *before or at the time of doing so, and to do so, he uses*
750 *force on any person or puts or seeks to put any person in*
751 *fear of being then and there subjected to force."*
752

753

754

755 99. There is no issue between the prosecution and the defence regarding the fact that a
756 robbery was committed at the Tortuga Liquor Store at Governor's Square on the 7th
757 February 2020, as alleged in the indictment. The robbery has been formally admitted
758 pursuant to s.34 of the *Evidence Act* (2021 Revision). This admission is, therefore,
759 conclusive evidence that the robbery occurred in fact and law.

759

760 100. The critical disputed question is who committed the offence.

761

762 101. The prosecution contends that Defendant Cupid orchestrated the robbery and aided and
763 abetted its commission by Defendant Nash and others as part of a joint criminal
764 enterprise to rob the store. On the other hand, Defendant Cupid and Defendant Nash
765 have vehemently denied the allegations and have put the prosecution to strict proof in
766 keeping with the incidence of the burden of proof.

767

768 102. I have examined the case against Defendant Cupid first. This, therefore, takes me to
769 the determination of the second issue, which relates to the culpability of Defendant
770 Cupid.

771

772

773

774

775



776 **WHETHER DEFENDANT CUPID COMMITTED THE ROBBERY**

777

778 103. The prosecution relies wholly on circumstantial evidence to prove its case against this
779 defendant. In keeping with the law relating to circumstantial evidence, the ultimate
780 question for me as the finder of fact is whether the evidence relied on by the
781 prosecution has satisfied me to the extent that I am sure she is guilty.

782

783 104. I take counsel from the authorities that circumstantial evidence must always be
784 narrowly examined because evidence of this kind may be fabricated to cast suspicion
785 on another. It is also necessary that before I may draw the inference of the defendant's
786 guilt from circumstantial evidence, I must be sure that there are no other co-existing
787 circumstances that would weaken or destroy the inference (See *Teper v R*³).

788

789 105. The prosecution seeks to prove separate events and circumstances, which it contends,
790 can only be explained rationally by the defendant's guilt. The circumstances include an
791 opportunity for her to commit the offence, proximity to the crime scene,
792 communications between the defendant and other participants suspected to have
793 committed the crime, and, motive. The prosecution also relies on the conduct of the
794 defendant after the commission of the offence as evidence of guilt, which Crown
795 Counsel contends are lies and her failure to provide relevant information to the police
796 during her interviews but which she sought to rely on at trial.

797

798 106. It is against this background that the various strands of evidence being relied on by the
799 prosecution to prove the allegations against this defendant's guilt have been examined.
800 The strands of evidence on which the prosecution relies have been conveniently
801 enumerated by Prosecution Counsel, Mr. Kelly, in his written closing submissions for
802 the court's consideration. I have considered them all, but to promote a clearer
803 appreciation of the route to verdict, I have placed each item of evidence that I have
804 deemed relevant and probative under the main planks on which the prosecution's case
805 against the defendant rests.

806

807

808

³ [1952] UKPC 15, page 3



809 Opportunity: Defendant Cupid's connection to and knowledge of the store

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Defendant Cupid's contact with the perpetrators: The use of the motor vehicle

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841

107. Defendant Cupid worked in most of the Tortuga Rum Company liquor stores in various capacities up to her arrest. At the time of the robbery, she worked at the Governor's Square liquor store. The men entered the liquor store just before closing and immediately proceeded to the cash register. Furthermore, in demanding money, they took the employees to the area where the safe was in the store where money was kept. Before taking the employees to the section of the store where the safe was, they asked none of the employees whether there was a safe. This points to prior knowledge on their part as to where the money from the day's sale would have been kept. I am satisfied that there is compelling evidence that suggests that Defendant Cupid had inside knowledge of the crime scene that would have been integral to the execution of the robbery and was relied on by the perpetrators. The prosecution's reliance on the evidence of her connection to and special knowledge of the Tortuga Rum Company is not misplaced. She had the opportunity to commit the offence.

108. Defendant Cupid was the owner of the white Toyota Noah, bearing registration number 186-342. The evidence disclosed that there were 59 white Toyota Noah vans in Grand Cayman at the material time. There were, however, only two Toyota Noah vans in the Cayman Islands with the last three digits ending 342; the other was silver-coloured. That leaves Defendant Cupid's vehicle as the only white Toyota Noah with the registration plates ending 342. The evidence of DC Lauder and DC Thomas, which stands unchallenged, is that on the night in question, they were able to capture a close-up view of the motor vehicle on camera at the West Bay Road and Lime Tree Bay intersection. DC Barnett was also able to do so from his observations of CCTV footage from the relevant cameras.

109. Defence counsel Mr. Hughes submitted that it is unclear whether the Noah was the vehicle that returned to Cost U Less after it had passed it on its way from West Bay. According to counsel, what we do know is that one of the island's 59 white Toyota Noah vehicles was involved in the robbery. In summary, counsel's contention is that



842 the CCTV footage, on which the police relied to see the partial registration number of
843 the vehicle they contend was Defendant Cupid's, is not enough to say that it was the
844 same motor vehicle that would have been involved in the robbery.

845
846 110. I find it difficult to accept Mr. Hughes' submissions. The prosecution has a sufficient
847 evidentiary basis to rely on an inference that the registration number seen on the
848 footage belonged to the same Toyota Noah owned by Defendant Cupid and which was
849 at the entrance of Cost U Less on the night in question. This conclusion can properly
850 be arrived at in the light of other evidence in the case on which the prosecution relies.

851
852 111. I now turn to other evidence regarding observations made from CCTV footage, which
853 is closely connected to this finding of the involvement of Defendant Cupid's vehicle.

854
855 112. The evidence of the police witnesses had established what the prosecution contends
856 were the movements of Defendant Cupid's vehicle on the night in question from
857 Bonsol Crescent in West Bay to when it left Governor's Beach and turned back in the
858 direction of West Bay. The court has seen this footage of the movements of the white
859 Toyota Noah and made certain crucial observations outlined below.

860
861 113. On its way from West Bay in the evening, the Toyota Noah stopped at Foster's
862 Republic. Defendant Cupid was the driver. No one else alighted from the vehicle, and
863 no one else joined her at that point in her journey. In the supermarket, she purchased,
864 among other things, two pairs of dark-coloured gloves similar to those worn by the
865 robbers. She resumed driving the vehicle from the car park at Foster's.

866
867 114. After leaving Foster's, she turned in the direction of George Town, which was opposite
868 her home. The vehicle then continued past Cost U Less. Her vehicle was later seen
869 driving back in the direction of Cost U Less and stopped at the rear of Cost U Less
870 (service entrance). Three persons alighted from the vehicle and ran onto the
871 Governor's Square compound. Two were in dark clothing and one in a reddish-
872 coloured shirt. The two men in the dark clothing and gloves were the ones who
873 eventually entered the store and robbed the employees.

874



875 115. After the men left the motor vehicle at Governor's Square, the vehicle left the area
876 where the men exited from it, drove a little way off, and then stopped at the dark
877 parking lot off Pine Hurst Road. There it waited with lights off. When the men left the
878 store after the robbery, they ran in the direction of the waiting vehicle. There was no
879 CCTV opportunity for viewing to establish that they had entered the vehicle.
880 However, shortly after, the men were seen running in the direction of where the vehicle
881 was parked in the dark open lot, the vehicle lights came on, and the vehicle left the
882 empty lot. It drove along the roadway and then eventually turned at Governor's Beach.
883 The registration plate number was partially visible as it went through the intersection
884 of Lime Tree Bay Road and West Bay Road. The vehicle parked at Governor's Beach
885 for a considerable time before it left and drove toward West Bay at about 9:30p.m.

886

887 116. The prosecution contends that Defendant Cupid was still the driver of her vehicle, and
888 she was the one who let the men off at Cost U Less to commit the robbery and waited
889 on them before proceeding to Governor's Beach. Counsel Mr Hughes' submission, on
890 behalf of Defendant Cupid, is that, on the evidence of DC Barnett, there was a 15-
891 minute break in the CCTV opportunities for viewing the Noah from it left Foster's and
892 when it returned to Cost U Less and let off the men. So, according to counsel, the
893 police would have lost sight of the vehicle at some point for 15 minutes, would not
894 have known where it went in those 15 minutes and would not have known who
895 interacted with it, that is to say, who got in and out. According to counsel, the police
896 did not uncover any concrete evidence that Defendant Cupid was still driving it when it
897 returned to Governor's Square on its way from West Bay. Put simply, the prosecution
898 cannot say with any degree of certainty who was driving the van when the men
899 alighted from it. This gap in the evidential chain, Mr Hughes submitted, is fatal to the
900 prosecution's reliance on circumstantial evidence in proving the case against Defendant
901 Cupid.

902

903 117. The question arises as to whether Defendant Cupid could have handed over the vehicle
904 to someone else along the way to support a finding that she was not in it when it
905 returned to Cost U Less with the men.

906



907 118. Having considered all the evidence, I am satisfied that the break in the CCTV viewing
908 of the vehicle does not break the continuity of Defendant Cupid's control over her
909 vehicle and her presence in it on the 7th February 2020, immediately before, during and
910 after the robbery. Whether she continued to drive it or not, which I believe she did
911 from all the evidence in the case, the evidence of Mrs. Delaney regarding the
912 movement of her phone supports the conclusion that wherever her vehicle went, her
913 cellphone went also.

914
915 119. Furthermore, the evidence relied on by the prosecution that she went to Governor's
916 Beach and the absence of credible evidence that she went to Seven Mile Beach or the
917 beach at Kimpton, where she claimed a changeover occurred with Mr. Williamson, is
918 strongly supportive of the prosecution's theory that at no time did she leave that vehicle
919 between Foster's (before the robbery) and the time it turned onto Governor's Beach
920 (after the robbery). There is strong evidence that satisfies me that Defendant Cupid's
921 van, to her certain knowledge and with her complicity, was used to assist the robbers in
922 executing the robbery. As will be demonstrated shortly, other evidence relied on by the
923 prosecution, especially the telephone evidence discussed below, also strengthens this
924 viewpoint.

925
926 Ms McGaw's evidence

927
928 120. Ms McGaw's written statement to the police in which she asserted that she received a
929 request from Defendant Cupid by telephone to ask someone to meet her at Governor's
930 Beach is also relied on by the prosecution to establish Defendant Cupid's movements
931 and whereabouts on the night in question. Mr. Hughes argued that the evidence is not
932 of any probative value as Ms McGaw had stated that she did not say anything to the
933 police about Governor's Beach. In court, she had said in evidence that Defendant
934 Cupid told her to tell someone to pick her up at "Seven Mile", which is in keeping with
935 Defendant Cupid's account of the events. There is no question that her evidence in
936 court had proved unfavourable or adverse to the prosecution.

937
938 121. The question therefore arises as to how Ms McGaw's witness statement and *viva voce*
939 evidence should be treated, she having been cross-examined by the prosecution who



940 had called her. The first point of departure in treating with Ms McGaw's testimony on
941 this issue are s.4(1) and s.33B(1)(b) of the *Evidence Act* (2021 Revision) on which
942 Prosecution Counsel Mr. Kelly relied.

943
944 122. Ms McGaw has proved adverse not only because her evidence would have been more
945 consistent with Defendant Cupid's case than the prosecution's, regarding where
946 Defendant Cupid went immediately after the robbery, but also because she has cast an
947 aspersion on the credibility and honesty of DC Harrison and DC Barnett concerning
948 what she told them about that conversation. Therefore, the credibility of Ms. McGaw
949 and the police witnesses arose as an issue to be resolved on this point.

950
951 123. Having considered the evidence and taking account of the demeanour of the witnesses,
952 I am driven to accept the police witnesses as witnesses of truth. Therefore, I reject Ms
953 McGaw's explanation for the inconsistency between her statement and the evidence
954 she gave in court.

955
956 124. I note that Ms McGaw's previous inconsistent statement (that Ms Cupid asked her to
957 tell the person to meet her at Governor's Beach) would have been given at a time when
958 the incident would have been fresher in her mind and memory.

959
960 125. That evidence also accords more with the evidence of the movement of the Toyota
961 Noah on the night in question, as seen in the CCTV footage.

962
963 126. Defendant Cupid, when asked in cross-examination to point out, in court, the road she
964 would have taken to Seven Mile Beach or the beach at Kimpton, where she claimed a
965 change-over of driver occurred, was not able to do so. She was utterly discredited
966 under cross-examination on this point.

967
968 127. There is, therefore, no credible evidence that the Toyota Noah went to Seven Mile
969 Public Beach or the beach at Kimpton on the night in question at any time
970 contemporaneous or closely contemporaneous with the robbery. I firmly believe that
971 Ms McGaw's adjustment to her police statement and refusal to admit what is in the
972 statement, was borne solely out of a belated desire to assist Defendant Cupid.

973



974 128. It has not escaped attention that Ms McGaw's evidence in court now aligns perfectly
975 with Defendant Cupid's evidence regarding where she was on the night in question and
976 what she said to Ms McGaw. This is not at all surprising given their familial
977 relationship.

978

979 129. This now takes me to the law regarding the weight to be applied to the evidence of Ms
980 McGaw, who has proved unfavourable or hostile.

981

982 130. I have had regard to *Blackstone's 2020 edition paras F6.54-F6.55*. Having directed
983 myself on the law applicable to Ms McGaw's position as an adverse witness, I am
984 persuaded to the view that although her credibility has been eroded, the totality of the
985 circumstances and the rest of the evidence in the case have rendered the Governor's
986 Beach account given in her statement more plausible, credible and reliable than her
987 evidence in court. The evidence regarding Governor's Beach is supported by the
988 CCTV evidence of the vehicle's movements after the robbery.

989

990 131. I, therefore, reject Ms McGaw's Seven Mile Beach account given in court and find as a
991 fact that Defendant Cupid asked her to tell Mr. Williamson to meet her at Governor's
992 Beach. Whether Defendant Cupid was the driver or not at that point is not material
993 (although I have no reason to doubt she was) because not only would she have been
994 present with the perpetrators in the vehicle when they were let off to commit the
995 robbery, but she would have made her van available to be used for their unlawful
996 enterprise with the knowledge of what they were going to do and the clear intention to
997 assist them in their illicit activity.

998

999

The telephone and expert evidence of Mrs. Delaney

1000

1001 132. I go now to the expert evidence of toll data and cell site analysis that is intricately
1002 bound up with the movement of the motor vehicle and the interaction between
1003 Defendant Cupid and the persons alleged to be her co-conspirators.

1004

1005 133. The phone evidence shows that Defendant Cupid's phone was also in contact with
1006 numbers associated with Defendant Nash (suspected to be Robber no. 1) and Mr.



1007 Williamson, who she asked Ms McGaw to tell to meet her at Governor's Beach.
1008 Defendant Cupid's own evidence in seeking to explain the evidence regarding the
1009 interaction of her phone with Defendant Nash and Mr. Williamson has established that
1010 she was not only in phone contact with them but that she saw and spoke with them on
1011 the night of the robbery. Mr. Williamson, she said, spoke with her and borrowed her
1012 van, and Defendant Nash met her to drop off his work permit forms. According to her,
1013 therefore, both men spoke when she was at Seven Mile Beach. Defendant Cupid was
1014 never cross-examined by counsel for Defendant Nash, and Defendant Nash gave no
1015 evidence to contradict her. Therefore, he can be taken to have adopted her evidence
1016 that they met on the night in question, at least, somewhere close to the crime scene.
1017 Defendant Cupid's evidence that she met with Defendant Nash on the night of the
1018 robbery is used against her. Therefore, Defendant Cupid's direct evidence of
1019 communication with Defendant Nash serves in lending credence to the prosecution's
1020 case that she saw and spoke to him on the night in question.

1021
1022 134. Therefore, the question for the court in these circumstances is whether they met at the
1023 place and for the reasons stated by Defendant Cupid or whether they met at some other
1024 place and in the execution of the joint enterprise to rob the store. The resolution of this
1025 question does not turn solely on the reliability of the telephonic evidence from Mrs.
1026 Delaney but, partly, on the strength and probative value of the inferences that can
1027 reasonably and inescapably be drawn from other evidence in the case.

1028
1029 135. Having considered all the evidence, I do not accept her evidence that it was while at
1030 the party at Seven Mile Beach that she met Defendant Nash and that it was solely for
1031 collecting a work permit form from him. I did not find her a witness of truth in this
1032 regard.

1033
1034 Proximity to the crime scene

1035
1036 136. Mrs. Delaney's evidence was that the areas at which the Toyota Noah was sighted on
1037 the CCTV footage and the movement of Defendant Cupid's phone were all within the
1038 same locality as the crime scene. I accept that evidence.



1039 137. The evidence of the movement of Defendant Cupid's vehicle and her cellphone has
1040 established that she was within the locality of, or within proximity to, the liquor store
1041 just before, during, and immediately after the robbery.

1042
1043 138. In summary, the telephonic evidence has not been undermined, in any way, in linking
1044 Defendant Cupid to the Toyota Noah van, the suspected perpetrators of the robbery
1045 and the locality of the liquor store.

1046
1047 Motive

1048
1049 139. The analysis does not end at Proximity. The phone evidence also revealed another
1050 critical aspect of the case mounted against Defendant Cupid by the prosecution: Her
1051 possible or likely motive for the commission of the offence. It is to a consideration of
1052 the question of motive that I will now turn.

1053
1054 140. The phone evidence has disclosed that Defendant Cupid owed Marcella \$828.00.
1055 Marcella intended to repossess a vehicle owned by Defendant Cupid. Marcella said she
1056 would repossess the vehicle on the 8th February 2020. However, Marcella was
1057 promised payment by Defendant Cupid on the 7th February 2020, the same date as the
1058 robbery.

1059
1060 141. It has not escaped attention that Defendant Cupid had indicated to Marcella on the 6th
1061 February that payment on the 8th February was impossible. No payment was made on
1062 the 7th February, when Marcella sent someone to collect the money from Defendant
1063 Cupid at the liquor store. Having failed to make payment at her workplace, as
1064 promised, Defendant Cupid did not contact Marcella on the evening of the 7th
1065 February, although she had promised to make the payment that day. She also failed to
1066 take Marcella's call or reply to her messages. She, however, contacted Marcella on the
1067 8th February 2020, the morning following the robbery, informing her that she had the
1068 money to pay the loan balance in full.

1069
1070 142. Defendant Cupid, in her evidence, accepted that she owed Marcella and paid her on the
1071 8th February 2020. She stated she got paid at work and earned money washing pots on
1072 the night of 7th February 2020. The fact that she was indebted and under threat of the



1073 repossession of her vehicle just around the time of the robbery and was able to make
1074 payment immediately following the robbery provides strong evidence from which a
1075 reasonable inference may be drawn as to her motive for her involvement in the
1076 robbery.

1077
1078 143. I find that her need to get money to prevent the repossession of her vehicle on the 8th
1079 February 2020 was the motive or reason for her involvement in the robbery. This is
1080 even more evident from the evidence of her message to Marcella, one day before the
1081 night of the robbery, that payment on the 8th February was impossible. Yet, she was
1082 able to make the impossible possible within a day or two. I am satisfied, to the extent,
1083 I am sure she was only able to do so because of her involvement in the robbery.

1084
1085 Conduct of Defendant Cupid after the commission of the offence: **Lies told by**
1086 **Defendant Cupid in her police interviews.**

1087
1088 144. The prosecution highlighted several aspects of Defendant Cupid's police interviews
1089 that they contend disclose lies told by her, which they seek to rely on in partially
1090 proving the case against her. Prosecution Counsel Mr. Kelly directed the court's
1091 attention to the following:

1092
1093 i. On the 19th February 2020, she told DC Harrison and DC Barnett that she
1094 was at home all night and her car was parked outside all night. This is
1095 proved to be a lie by the evidence of her having gone to Foster's Republic
1096 on the night of the incident just before the robbery and her ultimate
1097 acceptance in court that she went there.

1098
1099 ii. She told the police in her interview on the 23rd July 2020 that she went
1100 home after shopping at Foster's. However, CCTV footage shows clearly
1101 that she went in the direction of the Yacht Club Roundabout and up
1102 Esterly Tibbetts Highway in the direction of George Town. Furthermore,
1103 saying in her interview on the 23rd July 2020 that she went home after
1104 shopping at Foster's is proved to be a lie by her evidence that she did not
1105 go home immediately after leaving Foster's but instead went to a party at
1106 the public beach.



1107 iii. In her interview on the 23rd July 2020, she told the police that she did not
1108 know anyone called Sikka. This is proved to be a lie by the evidence of
1109 *Facebook Chats* between her as Eve High Voltage and Defendant Nash as
1110 Sikka Dan. Also, there is phone evidence that in March 2020, she asked
1111 Ms McGaw to apply for a work permit for this Sikka, who she described,
1112 among other things, as her friend. Furthermore, her knowledge of and
1113 acquaintance with Defendant Nash was, ultimately, borne out in her
1114 evidence at trial.

1115 iv. She also told the police that she did not know how Defendant Nash's
1116 number would have been in her phone, yet the number was found stored in
1117 her phone under the name Sikka. There were also conversations between
1118 them through different media on the same device.

1119 v. In her interview on the 20th March 2020, Defendant Cupid was
1120 unequivocal in her assertions that she did not lend or give anyone her
1121 vehicle to drive on the 7th February 2020. However, she testified at trial
1122 that she lent it to Mr. Williamson to buy cigarettes on the night of the
1123 robbery.

1124 145. It is clear from the preceding paragraphs that Defendant Cupid lied to the police in her
1125 interview.
1126

1127 146. In treating, with the proven and admitted lies she told the police, I have given myself
1128 the directions prescribed by the United Kingdom Appellate Court in *R v Lucas*⁴ and
1129 also by the Cayman Islands Appellate Court in *Ebanks and B.R. Powell v R*⁵.
1130 Therefore, I must consider why she lied because I have borne in mind that a defendant
1131 who tells a lie is not necessarily guilty. Sometimes a defendant who is not guilty may
1132 lie for some other reason unconnected to guilt.
1133
1134
1135
1136

⁴ [1981] 2 All ER 1008; QB 720 (1981)

⁵ [2002] CILR 197



1137 147. Defendant Cupid has explained that she told the police she did not know Defendant
1138 Nash because her view of knowing someone is different from what the police may
1139 consider it to be. She maintained that her “knowing” someone is different from when
1140 someone is known to her. So, in her understanding of what it is to know someone, she
1141 did not know Defendant Nash. I find this hard to accept, so I reject it as a credible
1142 explanation for what she told the police. She knew Defendant Nash well enough to
1143 associate with him for the commission of the robbery.

1144
1145 148. In respect of the other proven lies, especially regarding whether she left her home on
1146 the 7th February 2020 and lent her vehicle to anyone, she had no explanation or a
1147 satisfactory explanation for those lies. I am sure that Defendant Cupid did not have
1148 any good and excusable reason for lying to the police, and so I find her lies, on critical
1149 aspects of her case, to be such as to lend some support to the prosecution's case against
1150 her.

1151
1152 149. However, I am mindful that I cannot convict her either wholly or mainly because she
1153 lied. I have only considered her lies as additional support for the prosecution's case in
1154 deciding whether her evidence about the facts she seeks to rely on to establish her
1155 defence, is true.

1156
1157 *Conduct of Defendant Cupid after the commission of the offence: Failure to mention*
1158 *'facts' in police interviews ('no comment' responses)*

1159
1160 150. Closely connected to the lies Defendant Cupid told is that when she was pressed in her
1161 interviews on several matters about which it would have been expected that she would
1162 provide an explanation, she was content to say "no comment". Though she was
1163 cautioned that failing to mention something in the interview about which she was
1164 asked, could harm her defence at trial if she should seek to give evidence about such
1165 matter, she failed to mention some critical facts she sought to rely on at trial. Indeed,
1166 she gave detailed evidence on matters she refused to answer during her interviews.

1167
1168 151. As part of her defence, she has relied upon matters she did not mention when
1169 questioned by the police. For instance, she did not mention the crucial fact that she had
1170 lent her motor vehicle to Mr Williamson on the night of the robbery. Also, she did not



1171 mention an equally significant fact that she was at a party on the beach that night and
1172 left for her home with her neighbours.

1173
1174 152. I find that when she was interviewed, she would reasonably have been expected to
1175 mention the facts on which she now seeks to rely in establishing her defence. The only
1176 sensible explanation for her failure to mention those facts is that she has no answer at
1177 the time or none that would stand up to scrutiny. I also find that apart from her failure
1178 to mention those facts, the prosecution's case, as was put to her at the interviews, was
1179 so strong, that it clearly called for an answer from her.

1180
1181 153. I also note her evidence that she did not answer some questions on the advice of her
1182 lawyer. I accept that she might have received the advice of her lawyer as to what
1183 questions to answer. But she had the choice of whether to accept or reject the advice.
1184 In fact, she was answering some questions and refusing to answer some. From the
1185 start of the first interview, she was warned that failing to mention facts, on which she
1186 would seek to rely at trial, might harm her defence. Given her age, maturity, and level
1187 of intelligence, the facts on which she sought to rely at trial concern simple matters that
1188 she could easily have addressed in her interviews to explain her position regarding the
1189 night in question. As Counsel for the Prosecution Mr. Kelly argued, she suddenly
1190 provided an alibi notice at the commencement of the trial, having answered "no
1191 comment" to various questions during the police interviews that could have established
1192 where she was and who she was with on the night of the incident. She could
1193 reasonably have been expected to mention the facts on which she now relies, touching
1194 and concerning her activities, whereabouts, and interaction with Defendant Nash and
1195 Mr. Williamson on the 7th February 2020.

1196
1197 154. I do not believe Defendant Cupid genuinely relied on legal advice to remain silent on
1198 those matters. I watched her keenly as she responded to the police during the video-
1199 recorded interview. I believe she remained silent because she had no satisfactory
1200 answer to give and merely latched onto the legal advice.

1201
1202



1203 155. Even though I have arrived at this conclusion, I know I cannot convict her wholly or
1204 mainly on the strength of it. But, as in the case of my conclusion regarding the lies she
1205 told, I have taken it into account as some additional support for the prosecution's case
1206 in deciding whether her evidence about the facts on which she seeks to rely in
1207 establishing her defence is true.

1208
1209 156. I conclude that her strategy in deploying her defence seriously undermines her
1210 credibility.

1211
1212 *Conduct of Defendant Cupid after the commission of the offence: Defendant Cupid's*
1213 *evidence in court*

1214
1215 157. The prosecution has also presented for the court's consideration Defendant Cupid's
1216 evidence regarding what she said she remembered of the occurrences of the 7th
1217 February 2020, the night of the robbery. Crown Counsel Mr. Kelly pointed out several
1218 times when Defendant Cupid indicated, during her interview with the police, that she
1219 could not recall some basic information. Yet, she would have the court believe that she
1220 has had a "perfect recall" of the night and its events while giving evidence. Within this
1221 context, Mr. Kelly raised these specific points for consideration in support of his
1222 contention that her defence is incredible and a recent fabrication:

1223
1224 i. On the 19th February 2020 – 12 days after the incident – she was home
1225 with her family and her car was parked outside.

1226
1227 ii. On the 20th March 2020 – 42 days after the incident – she recalls nothing
1228 significant about the day.

1229
1230 iii. On the 23rd July 2020 – 167 days after the incident – she could not recall
1231 details of the night.

1232
1233 iv. On the 4th November 2021 – 636 days after the incident (at trial) – she
1234 could recall details of the night, including the menu at the beach party.

1235
1236 v. During cross-examination, she told the court she has a faulty memory.

1237



1238 vi. She says that photographs of wipes she bought at Foster's Republic made
1239 her recall that she was at the supermarket rather than the images of herself
1240 walking into the supermarket.

1241
1242 158. Crown Counsel Mr. Kelly further pointed to several aspects of Defendant Cupid's
1243 evidence, apart from the lies already identified above, that he regarded as "salient
1244 points" in her evidence that have rendered her account even more incredible and her
1245 alibi unacceptable. He focused on the following matters:

1246
1247 i. Knowledge of Defendant Nash: Defendant Cupid indicated that she does
1248 not know Defendant Nash and that she told the police that whilst he is
1249 known to her, she does not know him. There were instances in cross-
1250 examination in which the names Richard Nash and Sikka were put to
1251 Defendant Cupid, and she said that she did not know those names.

1252
1253 ii. During examination-in-chief, she told her counsel, Mr. Hughes, that on the
1254 7th February 2020, when she spoke to Defendant Nash by telephone, she
1255 was collecting the filled-in forms for his work permit application and had
1256 only called him back about passport pictures. Defendant Cupid even
1257 volunteered that she is still in possession of the form. However, in cross-
1258 examination, she told the court that the forms were blank.

1259
1260 iii. Under cross-examination, Defendant Cupid suggested that her car might
1261 have been used in the commission of the offence but by Mr. Williamson
1262 without her knowledge. However, this account is rendered implausible
1263 when one examines Mrs. Delaney's evidence regarding Defendant Cupid's
1264 cellphones and the movement of the Toyota Noah, as shown by the CCTV
1265 evidence. In this regard, the phone evidence and the aerial footage of the
1266 distance of travel of Defendant Cupid's van on the night of the robbery
1267 become relevant.

1268
1269 iv. After living in the Cayman Islands for 13 years, Defendant Cupid could
1270 not tell the court the direction she travelled to get to the party she said she
1271 attended. It is more likely that she travelled from the Yacht Club



1272 roundabout directly to the Cost U Less Roundabout than that her vehicle
1273 was used in the commission of the offence after she stopped at Kimpton
1274 Beach and Mr. Williamson borrowed it from her.

1275
1276 159. Furthermore, Prosecution Counsel, Mr. Kelly, pointed to aspects of Defendant Cupid's
1277 evidence that were never suggested to the witnesses but were eventually relied on by
1278 her. These relate to problems she said were affecting the motor vehicle when Mr.
1279 Campbell bought it, including engine problems and the two side doors could not open.
1280 The failure of Defendant Cupid to confront Mr. Campbell with this evidence means
1281 that I will have to determine what weight I attached to her assertions in this regard.

1282

1283 *The Court's Considerations*

1284

1285 160. Having assessed the reliability of her evidence, I conclude that her evidence that the
1286 van doors were not working properly does not take away from the fact that at least, one
1287 of them opened on the night in question to allow the men to alight at Cost U Less.

1288

1289 161. As is often said, "a picture is worth a thousand words". I have seen the CCTV footage
1290 of her vehicle, and persons were able to exit her vehicle from the side at Cost U Less.
1291 Therefore, even if she had put what she said in her evidence to Mr. Campbell, and he
1292 had agreed with her that the vehicle had problems, that would not have undermined the
1293 prosecution's case in this regard.

1294

1295 162. Additionally, in considering the evidence of Defendant Cupid and the evidence against
1296 her, I took into account her good character, which has been agreed. While her good
1297 character is not a defence, I am obliged to take it into account. Therefore, I have
1298 considered her good character on the two established limbs – credibility and
1299 propensity. Thus, in assessing whether to believe her, I have considered her good
1300 character and directed myself that a person of good character is more likely to be more
1301 truthful than one of bad character. I also bear in mind that given her good character,
1302 she is less likely, than otherwise would have been the case, to have committed the
1303 offence for which she is charged.

1304



1305 163. In the light of her good character, I have subjected the prosecution's case to the closest
1306 scrutiny. In so doing, I have borne in mind the burden and standard of proof and the
1307 shortcomings in the circumstantial evidence that Defence counsel for Defendant Cupid,
1308 Mr. Hughes, was at pains to highlight. I can only properly find her guilty in the face of
1309 evidence consistent with her guilt beyond a reasonable doubt, with there being nothing
1310 on the evidence that would weaken this inference of guilt.

1311

1312 164. I have examined her evidence and have accorded to it the same standard of fairness and
1313 respect I have applied to the case for the prosecution, having borne in mind that she is
1314 a person of good character.

1315

1316 165. The prosecution has asked me to reject her evidence regarding where she was and what
1317 she did between 8:00 p.m. and 9:30 p.m. on the 7th February 2020, as a falsehood, and I
1318 am moved to do so. I have found, however, that Defendant Cupid has spun a tale for
1319 this court that is not only a recent fabrication but is wholly incredulous. I note the
1320 evidence of her witness, who she called to establish that Mr. Williamson would usually
1321 drive his vehicle from time to time and sometimes take a long time to return it. I have
1322 no reason to doubt the witness' credibility, but it was of no help to Defendant Cupid's
1323 case in the light of the overwhelming evidence against her pointing to her involvement
1324 in the commission of the offence.

1325

1326 166. I am satisfied, on the evidence presented by the prosecution, that at the time the
1327 robbery occurred, Defendant Cupid was the driver of her vehicle or, at the very least,
1328 was present in it when the robbers were transported to the crime scene. She was
1329 present in it when it was parked at the dark open lot off Pine Hurst Road, evidently
1330 waiting on the return of the robbers, and she was in it when it left for Governor's Beach
1331 after the robbery occurred.

1332

1333 167. While acknowledging that the burden of proof is not on her to prove her alibi but on
1334 the prosecution to negate it, I reject her defence that she was at a party on the beach at
1335 the Kimpton Hotel or Seven Mile at the time of the robbery. In rejecting her defence, I
1336 am convinced of her falsehood not only by the evidence led by the prosecution but by



1337 the fact that she could not point to or describe the route she took to get to that beach.
1338 She was also unable to say at which section of the beach the party was held.

1339
1340 168. In examining her defence, I am mindful that even though the prosecution has proved
1341 that her alibi is false, that does not, in itself, mean that she is guilty.

1342
1343 169. I have borne in mind that sometimes an innocent person, who fears that the truth will
1344 not be believed, may instead invent an alibi. So, persons may present a false alibi for
1345 various reasons even when they are innocent, and so I have warned myself of that
1346 possibility in considering Ms Cupid's evidence. However, on the totality of the
1347 evidence and having assessed her demeanour, I felt sure that she was not speaking the
1348 truth when she said she was at a party on the beach.

1349
1350 170. I am quite mindful that I cannot properly convict her based on the incredulity of her
1351 evidence, but having considered her evidence, including that of her witness and the
1352 agreed and admitted facts favourable to her, I went back to examine the case presented
1353 by the prosecution in its totality. Having done so, and having taken into account the
1354 evidence she presented, while at the same time, having due regard to her good
1355 character, I am convinced of her guilt beyond a reasonable doubt or to the extent that I
1356 am sure of it.

1357
1358 171. I find, as a fact, that she was in the company of the robbers; she assisted them by
1359 providing gloves used in the robbery and transportation to the scene of the crime. She
1360 also intended to assist and encourage them in the commission of the offence that they,
1361 in fact, committed. Indeed, even if she did not aid and abet the actual commission of
1362 the offence in the manner indicated above, there is also ample evidence that would
1363 support a finding that she counselled and procured the commission of the crime by
1364 virtue of her connection to the store, her inside knowledge of its operations and where
1365 the money was kept, her taking of photographs or making of videos of the cash register
1366 areas in the stores she worked and her need for money to address Marcella's demand
1367 for repayment of her loan that was past due.

1368



1369 172. Accordingly, on any view of the case, as I have accepted it to be, she is liable as an
1370 accessory/secondary party to the robbery. This is so because whatever transpired in
1371 that store was within the scope of the joint enterprise.

1372
1373 173. In other words, the offence of robbery for which she is charged falls squarely within
1374 the scope of the unlawful joint enterprise in which she participated with a clear
1375 intention to encourage and assist the principal offenders. The evidence has established,
1376 beyond a reasonable doubt, that she was an active and critical figure in an unlawful
1377 joint enterprise to rob the liquor store.

1378
1379 174. Accordingly, the verdict is guilty.

1380
1381 **WHETHER DEFENDANT NASH COMMITTED THE ROBBERY**

1382
1383 175. The prosecution says that Defendant Nash was one of the three men Defendant Cupid
1384 transported to Cost U Less. It is alleged that he was the man who first entered the
1385 liquor store and held up Ms Andrade (Robber no. 1). He wore a head covering and a
1386 mask, and so his facial features and ethnicity were not apparent. In seeking to prove
1387 the case against him, the prosecution relies on these strands of evidence:

1388
1389 i. His phone number is confirmed through formal admissions to be 517-
1390 3209.

1391
1392 ii. During a search of his home in July 2020, a phone was recovered from
1393 him, which was found to have been linked to the 517-3209 number
1394 between the period 6th January 2020 and 20th March 2020 (the day of
1395 Defendant Cupid's first interview and the seizure of her phone).

1396
1397 iii. The expert witness places his phone in the area where the robbery was
1398 committed and also to have been in contact with Defendant Cupid's phone
1399 moments before the robbery took place.

1400
1401



- 1402 iv. CCTV footage showing his attire and a watch worn at the time of the
1403 robbery was recovered. Also recovered were photographs from his phone
1404 which showed him in similar attire and wearing a similar watch on a date
1405 prior to the robbery. These also matched items taken by the police from his
1406 residence.
- 1407 v. The similarities in the physical description of Robber no.1 and
1408 photographs recovered from his phone show his build and appearance at
1409 the time.
1410
- 1411 176. The prosecution also relies on several assertions of Defendant Nash in his police
1412 interview, which, the Prosecution contends, were proven to be lies or showed he was
1413 less than forthright. These include, in particular, the following matters:
1414
- 1415 i. He denied knowing Defendant Cupid apart from seeing her on the internet
1416 and at his father's tailor shop. He heard about her as "Eve".
1417
- 1418 ii. He denied that he had ever been out with Defendant Cupid or knew her
1419 phone number. However, there is telephonic evidence of Defendant Cupid
1420 helping to get a work permit for him and the *Facebook* Chats – showing,
1421 among other things, that they were to "link up" at the Waterfront. There
1422 were other items of communication between them by phone.
1423
- 1424 iii. He could not remember the phone number 517-3209, and he was not in a
1425 position to say to the police whether it was his number. However, this
1426 number was proved to be his that he had provided to the Department of
1427 Family Services and formally admitted during the trial.
1428
- 1429 iv. He said there were only two aliases that he would answer to: "Short Boss"
1430 and "National". He disassociates himself from the names "Sikka" and
1431 "Sikka Dan", by which he is also called, and which appear in Defendant
1432 Cupid's phone contact details.
1433
1434



1435 v. He initially denied that he wore underpants, yet when shown the
1436 underpants worn by Robber no. 1, he said they looked like the underpants
1437 taken from his house.

1438
1439 vi. He denied being within the locality of the liquor store on the night of the
1440 7th February 2020 as illustrated in his response to the police: "*Wah mi a*
1441 *goh dem place dey go do, ah whey a Town I live yah nah*". However, the
1442 phone evidence placed him outside the area where he lived and within the
1443 locality of the liquor store.

1444
1445 vii. There is also Defendant Cupid's evidence that they met and spoke that
1446 night, albeit in different circumstances from those alleged by the
1447 prosecution. He did not challenge that evidence on cross-examination,
1448 which he could have done. Therefore, he may be taken to have adopted
1449 Defendant Cupid's evidence that they met and spoke not only by phone but
1450 also face to face within the geographical location of the crime scene on the
1451 7th February 2020.

1452
1453 177. Mr. Crister Brady, counsel on behalf of Defendant Nash, contended that the
1454 circumstantial evidence the prosecution relies on to prove the case against Defendant
1455 Nash is weak. He maintained that a fatal blow to the prosecution's case is the evidence
1456 of the witnesses who were in the store that the robber, suspected to be Defendant Nash,
1457 had a Caymanian accent. According to him, Crown Counsel has suggested that the
1458 witnesses may have been mistaken due to the fear and trauma they had experienced at
1459 the time of the robbery. However, Mr. Brady submitted, in response, that for both
1460 witnesses to have been mistaken about an observation they made at the same time,
1461 during the same incident, but somehow come to the same mutually mistaken
1462 conclusion, "would be nothing less than remarkable". This evidence of the accent of
1463 the robber believed to be Defendant Nash is exculpatory and significant, he said.

1464
1465
1466
1467



- 1468 178. Mr. Brady also pointed out that Ms. Andrade had said that Robber no.1 had a “coffee
1469 colour around his eyes”. It is unclear, he said, whether that description was intended to
1470 convey the "colour of coffee with milk or black coffee". According to counsel, either
1471 scenario is unhelpful for identification or comparative purposes.
- 1472
1473 179. In respect of the items of clothing relied on by the prosecution, Mr. Brady stated that
1474 there is nothing to show that they were the same as those worn or owned by the
1475 defendant, and the evidence was generally unreliable and weak to ground a conviction.
- 1476
1477
1478 180. Mr. Brady also criticised the cell site analysis evidence as unhelpful as it only provides
1479 the possibility that the defendant may have been in one of two very general locations.
1480 He maintained that the cell site evidence is not of significant weight and is insufficient
1481 to lead to an inference of Defendant Nash's presence with Defendant Cupid for
1482 purposes of committing a crime.
- 1483
1484 181. In seeking to explain Defendant Nash's inability to give an account of his whereabouts
1485 on the night of the robbery, Mr. Brady pointed out that Defendant Nash was
1486 interviewed when the likelihood of him being able to recall his exact whereabouts,
1487 "may well have been low". Further, he submitted that there is an absence of messages
1488 between Defendant Cupid and Defendant Nash, which would suggest any involvement
1489 in the robbery.
- 1490
1491 182. In challenging the prosecution's reliance on lies it is contending were told by
1492 Defendant Nash, Mr. Brady also argued that it is unclear whether Defendant Nash told
1493 any lies. The court, Mr. Brady said, would have to consider the relevant law in *R v*
1494 *Luca's* as to how to treat any perceived lies and whether those lies, if any, point to
1495 guilt rather than any other motive.
- 1496
1497 183. Finally, counsel submitted that even if the court found a case to be answered by
1498 Defendant Nash, and he failed to do so, it still would have to examine the prosecution's
1499 case to satisfy itself that the offence for which he is charged is proved against him to
1500 the requisite standard. Mr. Brady contended that the prosecution has failed to prove

⁶ *Supra*



1501 the case against Defendant Nash beyond a reasonable doubt, and so, in the
1502 circumstances, the "proper and safest verdict must be one of not guilty".=

1503

1504 *The Court's Considerations*

1505

1506 184. I have considered the evidence relied on by the prosecution in respect of Defendant
1507 Nash, the relevant law, especially the law relating to lies and silence of the defendant at
1508 trial, and, the submissions of Mr. Brady, Counsel for Defendant Nash.

1509

1510 185. Regarding the evidence, I start with the striking similarities between the clothing and
1511 watch worn by Robber no. 1 in the CCTV footage and those in the photographs taken
1512 of Defendant Nash and from his home.

1513

1514 186. The similarities are too profound to be dismissed as merely coincidental, especially
1515 when considered in conjunction with other evidence in the case.

1516

1517 187. This takes me to the evidence of his prior knowledge of, and interaction with,
1518 Defendant Cupid before and on the night of the incident. They were on the telephone
1519 and other social media communication with each other, on friendlier terms than
1520 Defendant Nash would want the court to believe. They were seemingly more than just
1521 passing acquaintances, as proved by other evidence in the case. Yet, he denied having
1522 any interaction with Defendant Cupid, even though the evidence would have
1523 established to the contrary.

1524

1525 188. Furthermore, he was not at all forthright in his interview when he claimed not to have
1526 recalled crucial facts, such as his phone number, which he later admitted at trial.

1527

1528 189. His denial of any close contact or association with Defendant Cupid was a lie, and it
1529 raises the question of his motive for lying on this matter. Why, too, was he not
1530 forthright about his phone number? The question arises as to his reason for lying about
1531 the extent to which, and the circumstances in which, he knew Defendant Cupid. If the
1532 association was innocent and had nothing to do with the robbery, why conceal their
1533 association, especially having regard to his answer that they did not have an intimate
1534 relationship?



1535 190. The need to hide this relationship must have been borne from a desire to conceal his
1536 involvement with her in the illegal activity. I can find no other rational explanation for
1537 his motive to lie in this regard.

1538

1539 191. Furthermore, he disassociated himself from being within *the locality of the liquor*
1540 *store*, maintaining that he lived in "town" and had no reason to be in the area in
1541 question. Yet, the telephone evidence, which I accept as reliable, incontrovertible, and
1542 highly probative, places his phone in or around the same area as the crime scene.
1543 However, rather than proffering a likely explanation for this in his police interview, he
1544 claimed he did not remember the phone number attributed to him, which would have
1545 placed him within the vicinity of the liquor store.

1546

1547 192. Also, Defendant Cupid gave sworn evidence in his presence that he was at Seven Mile
1548 Beach or, at least, within the same locality of the liquor store. *He never challenged*
1549 *this evidence*, which he could have done through cross-examination of Defendant
1550 Cupid. Again, the question arises, why did he deny all these matters if he had nothing
1551 to hide, and his movements, communication, and association with others on the night
1552 of the robbery were innocent?

1553

1554 193. He also tried to disassociate himself from wearing the subject underpants. If there was
1555 nothing of significance about those blue underpants, why not admit from the outset that
1556 he wore underpants? He tried to disassociate himself from even wearing underpants
1557 until he had no choice but to change his mouth about that.

1558

1559 194. I have pondered this question: Is it out of a guilty mind or for some other motive,
1560 unrelated to the events for which he is charged, that led to the lies and what appeared
1561 to be convenient lapses in memory?

1562

1563 195. I have considered all the questions raised in relation to Defendant Nash within the
1564 framework of the law as expounded in *R v Lucas*⁷; *R v Burge and Pegg*⁸.

1565

⁷ QB 720 (1981)

⁸ [1996] 1 Cr App Rep. 163



- 1566 196. I have given myself the appropriate warning that a lie, on its own, does not necessarily
1567 prove guilt and that persons may lie for reasons other than that they are guilty.
- 1568
1569 197. However, I have formed the view that the motive for the lies told by Defendant Nash
1570 emanated from the knowledge of his involvement in the robbery with Defendant Cupid
1571 and for no other innocent and rational reason. He has lied to cover his guilt.
- 1572
1573 198. I have noted Mr. Brady's submissions regarding the witnesses' description of the
1574 robbers' accent being Caymanian. There are many possible explanations for this. The
1575 robbers could have faked an accent and given that they wore masks and did not utter
1576 many words or talk for any prolonged period, it would have been an insufficient
1577 opportunity for an accurate accent recognition. Furthermore, Ms Ebanks said she was
1578 frightened, and Ms Andrade was physically attacked and more focused on preserving
1579 her life (an agreed fact). The terrifying circumstances could have affected their ability
1580 to correctly identify the accent of the perpetrators.
- 1581
1582 199. So, while I accept that the evidence about the accent of the robbers is a potential
1583 weakness in the case for the prosecution, which remains unexplained on the evidence,
1584 it is not of overwhelming weight to displace the cogency of the other evidence that
1585 points to the involvement of Defendant Nash in the robbery on the night of the 7th
1586 February 2020. It has done nothing to undermine the other evidence relied on by the
1587 prosecution to prove the case against Defendant Nash.
- 1588
1589 200. This strength of the prosecution's case derives some support from the failure of the
1590 defendant to give evidence at trial, which is closely connected to the lies he told in his
1591 interview. Although called upon to answer and was given the statutory direction
1592 pursuant to s.29(1) of the *Police Act*, Defendant Nash chose to remain silent. The
1593 court fully advised him that his refusal to give evidence would entitle the court to draw
1594 such inferences as appear proper from his silence.
- 1595
1596 201. Of course, I am mindful that Defendant Nash had an absolute right not to give
1597 evidence because the burden of proving the case against him rests throughout on the
1598 prosecution.
1599



1600 202. However, the fact that he did not give evidence means that there is no evidence from
1601 him to rebut, contradict, or explain the evidence of the prosecution witnesses or
1602 circumstances pointing to his involvement in the robbery. Nor did he contradict or
1603 explain aspects of Defendant Cupid's evidence that, at most, placed him within the
1604 locality of the crime scene and not in George Town, where he lived at the time.
1605 Defendant Nash gave an account to the police, which his counsel said he would stand
1606 by. That interview is part of the evidence to which I have had regard, whilst bearing in
1607 mind that it was not given on oath and tested by cross-examination. Nevertheless, I
1608 have accorded it such weight as I think it deserves, having considered all the other
1609 evidence in the case.

1610
1611 203. In considering the defendant's silence at trial, I am guided by the law that an adverse
1612 inference is open to the court if the defendant's guilt is in issue; his physical or mental
1613 condition is not such that it is undesirable for him to give evidence; and he, having
1614 been given the statutory warning at the time when he could have given evidence,
1615 declined without good cause to do so⁹. Accordingly, I am satisfied that it is open to me
1616 to draw an adverse inference from his failure to give evidence. In my view, the
1617 prosecution's case advanced against Defendant Nash is sufficiently strong to call for an
1618 answer.

1619
1620 204. Accordingly, I conclude that there is no sensible reason for him not to have given
1621 evidence other than that he has no response to the prosecution's case or none that
1622 would stand up to cross-examination. In this regard, I conclude that the fact that he did
1623 not give evidence lends some support to the prosecution's case against him. I have
1624 warned myself, however, that the inference drawn from the fact that he did not give
1625 evidence cannot, by itself, prove his guilt. Like in the case of lies told by him, it is just
1626 added support for the prosecution's case against him, so I cannot use his failure to give
1627 evidence wholly or mainly as evidence on which he can be convicted.

1628
1629
1630

⁹ See the Crown Court Compendium Part 1, August 2021, Chapter 17 – 5, paragraph 24.

1631 205. Therefore, I have not convicted him merely because he lied or failed to give evidence.
1632 Nor have I convicted him on anything said by Defendant Cupid, because I have
1633 rejected Defendant Cupid regarding the circumstances under which she said she met
1634 him. He did not challenge her on the solitary probative fact that could be used against
1635 him: that they saw and spoke to each other on the night in question. I need not attach
1636 any weight to that evidence, however, because there is still enough evidence, without
1637 that, to connect him with Defendant Cupid on the night of the robbery, including the
1638 fact that he alighted from the Toyota Noah she was in and entered the liquor store. I
1639 have used nothing prejudicial against him that could have arisen from Defendant
1640 Cupid's evidence in court. I have convicted him, having examined all the strands of
1641 evidence presented by the prosecution against him and drawing them together as a
1642 composite whole.

1643
1644 206. I find that the inferences drawn from proven facts, when viewed against the
1645 background of the applicable law, have led to the conclusion that he is guilty of
1646 robbery of the liquor store as a principal offender.

1647
1648 207. Accordingly, the verdict in relation to him is guilty.

1649

1650 **THE VERDICT**

1651

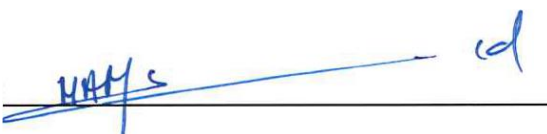
1652 208. The Defendant Kasnique Austin-Cupid: Guilty.

1653

1654 209. The Defendant Richard Nash, Jr: Guilty

1655

1656 **Dated this the 25th February 2022**

1657 

1658 **MCDONALD-BISHOP J**
1659 **ACTING JUDGE OF THE GRAND COURT**