

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEALS 02/2019 & 023/2018

IND#18/2018

SC#06357/2017



(1) GERALD JALEEL BUSH
(2) RICO ROY WALTON

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

BEFORE

The Rt. Hon Sir John Goldring, President
The Hon John Martin Q.C., Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal

Appearances:

Mr Keith Myers of Premier Law for Gerald Bush
Mr. Oliver Grimwood of Richard Barton Law for Rico Walton
Mr. Patrick Moran (Office of the DPP) for Respondent

Date of Hearing:

30th April 2020

JUDGMENT

Transcript of oral judgment dated 30th April 2020 and Approved for Release 3rd June 2020

FIELD, JA

1. On the 14th of August 2018, after a trial by a jury in the Grand Court, presided over by Justice Belle, the applicant, Gerald Jaleel Bush, and the appellant, Rico Roy Walton, were each convicted of being in possession of three unlicensed firearms: A Trabzon

Carandai 9mm handgun, count 1; a Colt .45 calibre handgun, count 2; and 6 rounds of .45 calibre ammunition, count 3.

2. On 30th October 2018, Mr. Bush and Mr. Walton were each sentenced to 10 years' imprisonment on count 1, 10 years concurrent on count 2, and 5 years concurrent on count 5.
3. Both the appellant, Mr. Walton, and the applicant, Mr. Bush, challenge their convictions on all three counts. The appellant Mr. Walton, appeals as of right; the applicant, Mr. Bush, applies for leave to appeal out of time.
4. The Crown's case at trial was that shortly before midnight on Saturday 24 June 2017, officers from the RCIPS Air Support Unit were deployed in the police helicopter in the area of South Sound. At approximately 23:48 hours, whilst quite a distance away, they observed a small vessel outside the reef which was approaching the South Sound channel from the east. The vessel entered the channel and travelled towards the shore. Two persons were on board.
5. At approximately 00:25 hours, the vessel reached the shore and one person was seen to disembark on foot and walk onto South Sound Road, not far from the junction with Crewe Road. PC Banks was on duty in that area. It was common ground that the male in question was the applicant, Mr. Bush.
6. At approximately 00:39 hours, the vessel came ashore once again in the area of a distinctive tree known locally as the "*flip flop tree*". Thermal image footage from the helicopter camera captured the occupant of the vessel disembarking and then swiftly heading towards the area containing the flip flop tree where he bent down for five seconds and then returned to the vessel before heading back out into the bay. It was common ground that that person was the appellant, Mr. Walton.
7. PC Pollard testified that it was he who was in the helicopter looking at the images recorded on the camera and talking to the officers who were on the ground.

8. A selection of those images was included in the jury's bundle, along with Google maps of the shore and some photographs of the scene showing the flip flop tree. PC Pollard said that some of the images showed an individual going towards a tree who bends down for five seconds and then returns to the boat, but he could not pick out from the images the flip flop tree. PC Pollard accepted that it was difficult to compare the camera images to the maps of the area and to ascertain perspective from the view of the camera.
9. Deputy Police Commissioner Kurt Walton, who was one of the officers on the shore receiving PC Pollard's communications, undertook a search of the area of the flip flop tree and found amongst the roots of that tree a black sock containing the two handguns that were the subject of counts 1 and 2. The ammunition, the subject of count 3, was found loaded into the .45 colt.
10. At approximately 00:46 hours, the vessel came ashore for the third time at the South Sound dock where shortly afterwards Mr. Walton was arrested. Mr. Bush was detained by the police as he walked along South Sound Road.
11. Detective Constable Francis testified that Mr. Bush said that he'd been on a boat with his cousin Rico to catch fish but that he'd asked to be dropped off because he wanted to sleep. When giving evidence, Mr. Bush denied that this is what he told the officer.
12. The police found two mobile phones in the vessel, a black apple iPhone and a white apple iPhone.
13. Mr. Bush and Mr. Walton were taken to the detention centre where they were kept apart and interviewed on the evening of 26th June 2017. Mr. Walton said in interview that he'd been out on a boat fishing with his friend Jaleel Bush. They had launched the vessel from the South Sound dock where they had parked their truck. They had discovered that they had not got any bait on board, and so Mr. Bush disembarked near Hurley's roundabout in order to buy bait at a gas station. Mr. Walton said that he did not get off the boat after dropping Mr. Bush until he had returned to the South Sound dock.
14. Mr. Bush stated in interview that he had been in a boat fishing with his friend Rico Walton. They had launched the vessel from the South Sound dock where his truck was

parked. He said that when they realised they had no bait, they returned to shore. He was dropped off near his truck. He said he owned a boat but not the vessel seized by the police. He agreed he was the owner of the black iPhone, which the police had taken from the vessel. He claimed to have nothing to do with guns.

15. The black iPhone belonging to Mr. Bush was found to contain numerous images of firearms. The phone had also been used to conduct Internet searches of "*kel tec 9mm*" and "*9x19 2 gen*" a few weeks earlier. One of the images found on the phone was that of a firearm very similar in appearance to the Trabzon Carandai 9mm handgun found under the flip flop tree.
16. The image was examined by an expert, Mr. Grant Fredericks, a certified forensic video analyst with experience in the recovery of recorded video and audio information, who testified that on the basis of a significant number of unique characteristics, the gun in the image on the phone was the Trabzon Carandai 9mm firearm found under the flip flop tree.
17. Data found on the black phone also indicated that two days before the guns were found, the phone had been used to be in contact with someone in Jamaica discussing the weather and how it might provide a "*narrow window*" at that time of year.
18. Data was also found showing that approximately 24 hours before the guns were found, the phone was used in contact with someone in the Cayman Islands asking if that person could supply him with "*45 teeth*" referring to "*the chrome one*" and something that will reach tomorrow. Mr. Bush accepted that these messages related to a plan to meet a vessel from Jamaica that weekend somewhere in Cayman waters but said that the planned meeting was to take delivery of car parts from Jamaica that never took place.
19. There was no DNA that connected either of the defendants to the firearms and ammunition.
20. In the course of presentation of the prosecution's case, counsel for the Crown, Mr. Moran, who appears in the appeal for the respondent, applied to the judge for an order permitting the jury to visit three sites on the shore which featured in the helicopter camera images,

South Sound dock, the open lot just before Crewe Road where the prosecution allege Mr. Bush was dropped off, and as close as possible to the flip flop tree.

21. This application was resisted by counsel for Mr. Walton, Mr. Grimwood, who appears for Mr. Walton in this appeal, but the judge granted it, and the next afternoon the jury, armed with a plan of the sites and their jury bundle, viewed each of the three locations in the company of counsel, the judge and the defendants.
22. In evidence, Mr. Bush denied having anything to do with the guns found in the sock at the base of the flip flop tree. He had known Mr. Walton for a number of years and had regularly gone fishing with him. Mr. Walton kept the bait in his freezer. The boat they were in on the night in question belonged to him. That night he had got off the boat to get bait from the garage, but he changed direction to head for his truck because he had forgotten his wallet. He accepted that he had not mentioned this when interviewed. He accepted that the messages on the phone were his and stated that the messages relating to Jamaica had been about a boat party he was trying to organise, and the other messages had been about buying car parts and feed for farm animals.
23. He also accepted that the searches for "*kel tec 9mm*" and "*9x19 2 gen*" were searches for guns. They were made to get information about a computer game called "*Modern Warfare*", whose specification he was checking out.
24. He admitted having pictures of guns on his phone, stating that when you're a member of a chat group, you do not know what's going to be sent to you. He said he did not have access to guns to take pictures of them.
25. Mr. Walton also denied being in possession of the firearms found by the police. He said that on the night in question he'd gone fishing with Mr. Bush. He would not have taken out the bait until they were ready to use it, and they discovered that they had not brought any bait when they got to Pedro Castle. They agreed to head back. They turned to the east rather than head west to the dock because you have to follow the lights and the markings. They dropped Mr. Bush off to get bait from the gas station. He got out of the boat. He, Mr. Walton, got out of the boat to hide some ganja that he had with him. He

put it under a rock where he could find it. This is what he was doing in the image of a man leaning down taken by the helicopter camera. He never went by South Sound dock, and when he saw an unmarked vehicle approaching, he laid down on the ground not wanting to resist. He admitted lying to the police when he told them that he did not get out of the boat until he returned to the South Sound dock. He said he lied because he was scared and experiencing something that he had never experienced before.

The challenges made by Mr Walton and Mr Bush to the safety of their convictions

26. Both Mr. Walton and Mr. Bush challenge the safety of their convictions. In Mr. Walton's case, the grounds of his appeal are that the judge erred:
- (i) in allowing the Crown's application for the jury to view the three locations to which they were taken;
 - (ii) in failing to give directions prior to the site visit when they were required;
 - (iii) in providing the direction on the evidence gained from the view at too late a stage in the trial to have any meaningful effect; and
 - (iv) in any event, in failing to provide appropriate directions on the issue of the view that was central in Mr. Walton's case.
27. In Mr. Bush's case, his ground of appeal is that the judge erred in allowing the prosecution to adduce photographs found on Mr. Bush's phone of Mr. Bush holding other firearms and to be cross-examined on them.

Mr. Walton's appeal

28. When applying for an order for a view, the prosecution submitted that a view would assist the jury in:

- (i) giving them a visual view of the distances involved from the South Sound channel to the dock and from the dock to Crewe Road where one of the individuals in the boat had come ashore;
- (ii) seeing the flip flop tree in the plot of land covered in woodland next to the apartment block between two empty lots, the flip flop tree having been obscured from the camera's view by other trees in the area;
- (iii) ascertaining the perspective from the view of the camera; and
- (iv) showing the distances between the three lamp posts identified by PC Pollard were greater than appeared from the camera footage in conjunction with the location of the flip flop tree and the location of the building.

29. The prosecution's application was vigorously resisted by Mr. Walton's counsel, Mr. Grimwood on behalf of Mr. Walton. He submitted that a view was not needed because there were photographs of the dock where Mr. Walton was arrested and the location where Mr. Bush was dropped off, and those photographs had been taken much closer in time to the events of 24, 25 August 2017 than any site visit now. In addition, many of the trees along the shore had since been taken down on account of the boardwalk that had been constructed, so that only the flip flop tree remained, which would be the sole focus of the jury on the view. There was, therefore, no certainty that the trees relied upon by PC Pollard as points of reference were still standing and the view would be in daylight, whereas the relevant events occurred at night. Reference had been made by PC Pollard to certain posts, not lamp posts, along the road, and it would be fraught with danger to try to guess which post the camera was looking at because of the difference in the angle of view. The prosecution was asking the jury to speculate that the post they will see on the view were the same posts you can see on the footage.

30. The judge granted the application for a view for a number of reasons, primarily on the ground that the actual locations captured in the camera images were real places and were the best evidence of the scene where the events captured in the images took place. The changes to the scene as it was on the night in question could be explained to the jury, who

would be reminded that they viewed the scene in daylight, whereas the events seen in the footage occurred at night.

31. The following day, before the jury set out to conduct the view, prosecuting counsel showed them some of the footage that related to each of the locations they were going to see: the South Sound dock, the open lot just before Crewe Road where the prosecution allege Mr. Bush was dropped off, and as close as possible to the flip flop tree.
32. After each location had been commented on by the prosecution, defence counsel pointed out certain matters for the jury's attention. When addressing the jury on the third location where the flip flop tree was located, Mr. Moran pointed out that now there were a lot less trees on the coastal side of the road that are shown in the camera footage. He also asked the jury to keep in mind buildings, fencing, lamp posts and trees.
33. The judge then asked defence counsel if they had any submissions, to which Mr. Grimwood, for Mr. Walton, replied that there were no specific points. He said he was aware that the court was going to give the more general guidance as to the scene and its status now as opposed to then and would not repeat what the court was going to say. The judge then said that he did not plan to say anything more at that stage but would do so at the relevant time, and he proceeded to tell the jury there would be no discussion and questions at the scene itself. It was for them to take a look and come to their conclusions.
34. At a stage in the summing up, when it was envisaged that, in the absence of the jury, counsel would invite the judge to consider particular directions on various matters, Mr. Grimwood adverted to the agreement with the bar that there would be a direction in relation to the potential limitations of the site visit: no evidence as to whether the posts are in the same place, trees had been removed, houses may have gone up or come down, the trees may not be the same shape, the boardwalk was now there. Subsequently, the judge directed the jury on the site visit as follows:

"We went on a site visit, as you will recall. And I just want to reiterate that there may have been certain limitations or potential limitations to the site visit. It is accepted by the prosecution and the defence that a number of

the trees on the site have been -- that were on the site at the time of the alleged offence, had been removed, or trimmed, that the landscape in the area is different. There is now a boardwalk. It is possible that lights in the area may have changed position. It is also possible that buildings, new buildings, have been erected in the area. So that the location has a different appearance, and in terms of lighting and what you are able to see and so on, than it would have at the time of the alleged offence.

So please take this into account as you reconsider the site visit. And, of course, it's not just in relation to the flip flop tree, but in all of the areas, you can take into account whether there might have been any changes or any differences, but specifically in relation to the area of the flip flop tree, you know and accept that there have been certain changes to that area. So please take those things into account.

In relation to the whole issue about the position of the lights in relation to the flip flop tree and other trees, and the position in relation to where the person who was seen on land coming ashore, who Mr. Walton has said that is him, where that individual was, you must remember that it's not just an issue of -- you can't guess, neither should it be, well, what you think is likely. You have to feel sure. If you are going to use that information to support a conviction, you have to feel sure that the tree that Mr. Walton went to was indeed the flip flop tree. So you have to be sure of that. You cannot be just uncertain and maybe you feel that it could be so, you decide it could be. You have to feel sure. Otherwise, if you're not sure, you have to basically determine that he did not go to the flip flop tree and, therefore, he would not be guilty because he would not have placed those, based on the evidence, firearms in the sock under the flip flop tree. Certainly based on the footage that you have seen."

35. It is submitted on behalf of Mr. Walton that the judge erred in granting the application for a view because the alteration at the scene since the night of the alleged offence meant that

the jury could not meaningfully undertake the comparison they were asked to make at the scene between what they saw on the view and what was captured in the footage by reference to the flip flop tree as the base point and to the lamp post seen in the footage. There was, therefore, a real risk that the jury could have been misled by what they saw, and, thus, there was a real risk that they would take into account irrelevant evidence in coming to their verdicts. It followed that the conviction of Mr Walton on all three counts cannot be said to be safe.

36. Citing part 1: 2-18 to 2-20 of *The Judicial College Crown Court Compendium* (June 2018) and the observations of Leveson LJ in *M v DPP* [2009] EWHC 752 (Admin), Mr Grimwood submitted that it was clear that evidence in the form of a view must be tightly regulated. In *M v DPP*, Leveson LJ said:

"What is critical before any court embarks upon any view is that there is absolute clarity about precisely what is to happen on such a view, about who is to stand in what position, about what (if any) objects should be placed in a specific position and about who will do what. None of this should happen at the scene of a view, which should be conducted without discussion for the very reasons identified in this case, namely that otherwise not all involved can participate. If a misunderstanding arose as to what the purpose of this visit to the site was to be that is indeed unfortunate."

37. Part 1: 2-5 4 of *The Judicial College Compendium* states that:

- (a) the judge should produce ground rules detailing what the jury will be shown and in what order and who, if anyone, will be permitted to speak, what will be said and a provision must be made for the jury to ask a question and receive the response from the judge; and
- (b) the view should be conducted without discussion unless necessary.

38. In the submission of Mr. Grimwood, when the observations of Leveson LJ are applied to this case, immediate guidance should have been given to the approach to be adopted to the view. However, when the judge was given the opportunity to give guidance as to the alteration of the scene before the jury left to visit the site, the judge erred in deciding to do so later at the relevant time and not then. This meant that the jury was being presented with certain constants that could form a safe basis for the comparison they were being asked to undertake, which was not the case.
39. Mr. Grimwood pointed out in his written submissions that it was 12 days after the view that the judge directed the jury on the potential limitations of the site visit. In the meantime, Mr. Walton had given evidence and been cross-examined by the Crown about his movements on the shore with the positioning of landmarks, particularly posts, being used to demonstrate that he was lying about where he disembarked and which tree he approached. In Mr. Grimwood's submission, the direction as to the view coming at the late stage that it did, the jury could not be expected to retroactively apply it to any assessment or conclusion already made or drawn. It was further submitted by Mr. Grimwood that the judge's direction on the limitations of the view did not provide sufficiently clear and cogent assistance on the possible limitations of this evidence. Nor did it present the competing arguments on the issue.
40. It is clear to this Court that the judge had a discretion whether to grant the application for a view, and we do not accept the argument that he erroneously exercised that discretion in granting the application. The camera footage plainly had its limitations in that it recorded events at night from a far distance, at a considerable altitude, at locations an inspection of which could assist the jury in assessing the footage.
41. As to any changes at the scene since the night in question, the judge was entitled to find that these could be drawn to the jury's attention, and they could be directed not to speculate in coming to their conclusions based on the view.
42. We are also of the view that the preparation for the view was in accordance with Leveson LJ's observations in *M v DPP* and, save in two immaterial particulars, with the Judicial College guidance. Thus, it was explained to the jury that they would be taken to the three

locations to see them for themselves with the aid of a plan and the jury bundle containing the footage and photographs taken on the ground. They were also instructed that there was to be no discussion and questions at the scene itself, and they were not to talk about the case to or in the earshot of the drivers of the transportation for the visit.

43. The two instances of non-compliance with the Judicial College guidance was a failure to make provision for the jury to ask questions and to receive a response from the judge and no shorthand writer/logger attended to record communications between the judge, the advocates and the jury. In our judgment, these instances are immaterial given the direction that there was to be no discussion and questions at the scene and because they are not relied on in support for Mr. Walton's appeal.
44. Turning to the judge's decision not to instruct the jury on possible changes to the scene before they undertook the site visit, whilst we think it would have been better if the judge had alerted the jury to the possibility of such changes before the site visit, we do not think this failure renders Mr. Walton's convictions unsafe. For reasons that the court will shortly come to, we are of the view that the direction the judge gave the jury when summing up was sufficient to alert them to the possible changes to the scene. We note too that there was no evidence that any lamp posts or posts had been moved after the night in question, and that many of the possible changes adverted to in the judge's direction would have been obvious to the jury on the visit, such as the presence of new buildings, the new boardwalk and the disappearance of many of the trees along the shoreline, this latter subject being something that was pointed out to the jury by prosecuting counsel before the visit.
45. We are also bound to observe that Mr. Grimwood's submission that it was vital for the judge to have instructed the jury on possible changes to the site before the visit was undertaken sits uncomfortably with his failure to ask the judge to reconsider his decision to postpone such a direction to the relevant time.
46. In our opinion, the judge's direction on the view was more than sufficient in the circumstances of this case. He told the jury there may have been limitations or potential limitations to the site view they had been on and referred to the removal of trees, the

boardwalk and the possibility that new buildings might have been erected in the area and the position of lights might have changed. He went on to direct them to take these matters into account as they consider the site visit in relation not just to the flip flop tree but all of the areas. He also correctly directed them in relation to the position of the lights in relation to the flip flop tree and other trees and the position where Mr Walton was seen to come onshore, not to guess (in other words not to speculate whether it was the flip flop tree Mr Walton went to. Instead they had to be sure this was so on the evidence.

47. We do not accept that this direction having been given there was such a risk that the jury would hold to conclusions they had previously come to based on the view that did not take account of alterations to the site that Mr. Walton's conviction on the three counts he faced must be regarded as unsafe. For these reasons, we dismiss Mr. Walton's appeal.

Mr. Bush's application for leave to appeal

48. As already stated, Mr. Bush's proposed ground of appeal is that the judge erred in allowing the prosecution to adduce photographs found on the phone of Mr. Bush showing other firearms and to be cross-examined on them.
49. In the course of his evidence in chief, Mr. Bush testified that he carried out the search on the phone into "9x19 2gen" and "how many bullets does a tec 9 hold" because he was doing research into computer games in which these guns are used. His counsel Mr. Hughes asked him whether he had an interest in guns, to which he replied, "*Not illegal mentality.*"
50. Mr. Bush was then asked whether he was a person who had some interest in guns, to which he replied that he fired assault rifles in the Cadet Corps. And when asked about other occasions when he was not in the Cadet Corps, he said: "*Probably like if family go hunting in Cayman, like for birds, rabbits.*" Later he was asked in chief if he had ever fired guns on any occasions other than the two he had mentioned, in the Cadet Corps and hunting in Cayman, and he said he'd done so in Jamaica on vacation.

51. He was also asked if he had seen before the photograph (“the handgun photograph”), found in his phone of a gun which the prosecution alleged was the Trabzon Carandai 9mm handgun found under the flip flop tree. He replied that he had not, but he accepted that he had deleted it. And when asked by his counsel, *"How can you be the person who deleted it if you've never seen it before?"* he replied, *"I got plenty gun pictures on my phone, sir. So, I mean, if I did delete a picture, I didn't necessarily see it to delete it from my phone to remember it."*
52. He was also asked by his counsel if he knew how the handgun picture got onto his phone, to which he replied, *"Well, me and my friends in a group chat on WhatsApp from playing game, so probably, I don't know, could've got on my phone from a WhatsApp message. I don't know."* And when asked if he'd taken the photograph, that is the handgun photograph, he replied, *"No, sir. I don't -- I don't have any access to any guns to take a picture."*
53. Before beginning to cross-examine Mr. Bush, prosecuting counsel submitted to the judge that the jury should see pictures of guns found on Mr. Bush's phone that were not in the jury bundle in reference to Mr. Bush's denial that he had taken the handgun photograph when he said that he didn't have any access to any guns to take a picture. It was submitted that this evidence was knowingly false and had been given with a view to fortifying Mr. Bush's evidence that he had not taken the handgun photograph.
54. Mr. Bush's counsel opposed the prosecution's application on the ground that the photographs the Crown wanted to put to Mr. Bush were bad character evidence that was inadmissible by virtue of section 18 of the *Evidence Law* and excluded under section 40 of the *Evidence Law*.
55. He also argued that looked at in the context of Mr. Bush's evidence overall about his interest in guns, when Mr. Bush stated that he did not have any access to any guns to take a picture, he was to be taken to have meant that he did not have access in the Cayman Islands to any guns to photograph.

56. The judge ruled that in light of the pictures on Mr. Bush's phone that showed that he did have access to guns to take a picture of them, Mr. Bush's evidence that he did not have access to take a picture of any gun was capable of being misleading and allowed the prosecution to put to Mr. Bush some photographs found on the phone that pictured guns that tended to show that Mr. Bush had photographed them.
57. When the photographs were put to Mr. Bush when it was put to him in cross examination that his evidence that he did not have any access to any guns to take a picture was not true, Mr. Bush said that he had taken those particular pictures in Jamaica in a vehicle belonging to a friend of a friend called "Omar" and in other instances in a farm house. He added, *"All right, let me rephrase my statement. I don't have any access to firearms in the Cayman Islands to take pictures."*
58. Mr. Myers, on behalf of Mr. Bush referred us to the note at 8-213 of *Archbold* that states that *"questions put in cross examination must be either relevant and pertinent to the matter in issue, or calculated to attack the witness's title to credit"* and submitted that the cross examination of Mr. Bush where the photographs were put to him went neither to a relevant matter in issue nor to his credit. The central matter in issue was whether Mr. Bush was in possession of the firearms the subject of the indictment and not whether Mr. Bush had previously used firearms, although he had freely admitted to doing so. The prosecution was inviting the jury to infer that Mr. Bush had an interest in firearms that went beyond their legitimate uses.
59. Mr. Myers also cited *R v Funderburk* [1990] 1 WLR 587, where the Court of Appeal (Criminal Division) of England and Wales held that the test in deciding whether a witness should have been cross examined as to credit was whether the witness's answers to those questions might have reduced his or her standing as a witness so that the jury would have wished to reappraise his or her evidence in chief.
60. In Mr. Myers' submission, given the context in which Mr. Bush's answer that he had not had any access to any guns to photograph them was made, he was saying that he had not had any access to guns in the Cayman Islands to photograph, and the cross examination

on that answer with reference to the photographs would not leave the jury wishing to reappraise his evidence to his interest in guns.

61. It was further submitted that the judge in failing to articulate the evidence he weighed in deciding not to exclude the cross examination on grounds of unfairness and should, in any event, have excluded the cross-examination and the admission of the photographs under section 40 of the Evidence Law.
62. It was yet further argued in Mr. Myers' written submissions that by virtue of section 18(2) of the *Grand Court Law*, section 78 of the UK Police and Criminal Evidence Act 1984 (PACE) is applicable to this appeal notwithstanding the decision to the contrary by this court in *Minzett v R* [2011] (2) CILR 236.
63. In our view, the judge did not err when giving the prosecution leave to cross-examine Mr. Bush by reference to the photographs. Mr. Bush's statement that he had not had any access to any guns to take a picture was made as part of his denial that he had taken the handgun photograph. That photograph was powerful evidence against him, especially in light of the expert testimony that the gun in question was the self-same gun that was the subject of count 1.
64. In our judgment, it is highly likely that the jury would have understood the statement to mean that Mr. Bush did not have any sort of access to guns to take a picture, and, accordingly, there were good grounds to contend that Mr. Bush had knowingly given false evidence when making the statement. The cross-examination on the basis of the photographs, therefore, went to credit and served to show the extent to which Mr. Bush had knowingly given false evidence. The photographs were potentially capable of adding to the prejudice flowing from Mr. Bush's freely made prior admission that he had lots of pictures of guns on his phones and could, arguably, have tended to show that he was of bad character within section 18(d) of the *Evidence Law*. But in his summing up, the judge explained to the jury that the photographs had been "*...introduced for the purpose of challenging [Mr Bush's] credibility in that answer that he gave, and for no other reason than to challenge his credibility. They were not introduced at that time to prove ... illegal unlawful possession of the firearm at the time when the picture was taken. ...*

He says they were taken in Jamaica. So there is no prosecution of him having [been] in possession of a firearm in Jamaica. What the pictures were produced to state is that he had access ... to firearms to take pictures. ... So the challenge was to his credibility."

65. In our judgment, this direction was sufficient to avoid the potential prejudice to which the admission of the photographs could possibly have given rise to. For these reasons, we find that the judge was justified in permitting the cross examination as to credit with the use of the photographs, and we are satisfied that, in light of the direction the judge gave in respect of this part of the evidence, the cross examination does not render unsafe the conviction of Mr. Bush on the three counts he faced.
66. For good measure, we would add that section 18(2) of the *Court Law* applies only to matters of practice and procedure in the *Grand Court*, and section 78 of PACE is not a matter of practice or procedure but is a statement of substantive law. Section 18(2) therefore affords no basis for the application of section 78 in criminal trials held in these islands.

Conclusion

67. For the reasons we have given, Mr. Walton's appeal against conviction is dismissed, and Mr. Bush's application for leave to appeal conviction is also dismissed.

