

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 0047/2018  
5  
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7  
8 THE QUEEN  
9

10 v.  
11

12 ELTON DAVID WEBSTER  
13  
14



15 **Appearances:**  
16

Mrs. Candia James-Malcolm for the Crown

17 Ms. Amelia Fosuhene of Brady Attorneys for  
18 Defendant  
19

20 **Before:**

Justice Marva McDonald-Bishop (Actg.)

21 **Trial by Judge Alone:**  
22

12<sup>th</sup> – 15<sup>th</sup> & 19<sup>th</sup> August 2019; 3<sup>rd</sup> – 6<sup>th</sup>  
23 September 2019.  
24  
25

26  
27 **HEADNOTE**

28 *Criminal Law – Possession of an unlicensed firearm and ammunition – Trial by*  
29 *Judge Alone - Section 3 of the Penal Code – Shared Accommodation – Adequacy*  
30 *of DNA evidence examined – DNA on packaging – No DNA on firearm.*  
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VERDICT JUDGMENT

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1. The Defendant, Elton David Webster, is charged on an indictment containing two counts. The first count charges him with the offence of Possession of an unlicensed firearm, and the second, with the offence of Possession of ammunition, both contrary to s.15 (1) and 15 (5) of the *Firearms Law*.
2. The combined particulars of both offences aver that on or about 11 April 2018 at an address at Elderberry Drive, Bodden Town, Grand Cayman, in the Cayman Islands, the defendant had in his possession a Glock 17-9 mm pistol and fifty-nine (59) rounds of firearm ammunition, which were not in accordance with the terms of a Firearms User's (Restricted) Licence.
3. To this indictment, the defendant pleaded not guilty and subsequently elected trial by judge alone.
4. The defendant is presumed by law to be innocent and so the burden rests on the prosecution to prove his guilt. The defendant has nothing, at all, to prove. So, even though he gave sworn evidence in his evident attempt to establish his innocence, he has assumed no legal burden to prove anything at all.
5. Before I may properly convict the defendant, the prosecution must prove, separately, all the elements of the offences for which he is charged to the extent that I am sure of his guilt in respect of each of them. I am duty bound to give to the defendant the benefit of any doubt I entertain on the evidence and to acquit him if I am not satisfied to the extent that I am sure of his guilt.



1       6.       The evidence in this case has been adduced by different means and in different forms.  
2       Each item and form of evidence is treated in the manner prescribed by law.

3       7.       In relation to the witnesses whose DNA reports were agreed, I have accepted them as  
4       expert witnesses and have treated them like every other witness in the case, subjecting  
5       their evidence to the same scrutiny as the rest of the evidence, whilst bearing in mind  
6       that I am not duty bound to accept the opinion they have expressed on any matter. I am  
7       also entitled to accept the opinion of one over the other. I have considered their  
8       evidence in the context of all the rest of the evidence in the case, including that of the  
9       defendant.

10      8.       I am mindful that they were not sworn, their evidence was not subject to cross-  
11      examination and their demeanour was not subject to the scrutiny of the court. So, in  
12      assessing the weight to be attached to their evidence, I have borne all these matters in  
13      mind and have accorded their evidence such weight as I think it deserves.

14      9.       I have paid due regard to all the admissible evidence adduced in this case and I have  
15      paid specific attention to those facts that are pertinent to my determination as to  
16      whether each charge laid against the defendant is made out by the prosecution to the  
17      extent that I am sure of his guilt.

18      10.     I have paid close attention to matters that not only go to show whether or not the  
19      offence is proved to have been committed as a matter of fact and law, but also those  
20      matters that go to the credibility and reliability of the evidence of each witness. These  
21      include, in the main, matters such as contradictions or conflicts in the form of  
22      inconsistencies and discrepancies, as well as omissions.

- 1 11. I have ignored matters that are not probative of the defendant's guilt, or otherwise  
2 prejudicial.
- 3 12. The demeanour of the live witnesses as well as of the defendant has been of critical  
4 importance to me. I have accorded to the defendant's evidence the same standard of  
5 fairness I have employed in treating with the evidence adduced by the prosecution. In  
6 considering the veracity of his evidence, the fact that he is the defendant is not used  
7 against him, in any way.
- 8 13. I am mindful that it is open to me to draw reasonable inferences from facts that have  
9 been proved to my satisfaction in order to assist me in coming to my decision, but I  
10 know that I am not permitted to speculate.
- 11 14. The prosecution is relying on circumstantial evidence to ground the element of  
12 possession in both offences. I have warned myself that circumstantial evidence must be  
13 examined with great care and that it is open to me to convict the defendant only if I am  
14 satisfied that the facts and circumstances being relied on by the prosecution, when  
15 taken together, are consistent with the conclusion that the defendant committed the  
16 offences, beyond a reasonable doubt and there is no other fact or circumstance  
17 inconsistent with his guilt.
- 18 15. The ingredients constituting the offences, for which the defendant is charged, are taken  
19 into account and so the law applicable to each offence is applied to the relevant  
20 evidence, in order to determine whether the prosecution have discharged the burden of  
21 proof cast upon them to satisfy me to the extent that I feel sure of the defendant's guilt  
22 on each count of the indictment.



1           16.     I have reviewed all the evidence that has been properly adduced but I have no intention  
2                   to detail minutely, every fact in demonstrating how I have arrived at my verdict. I do  
3                   so in accordance with the guidance on the duties of a Judge in a Judge Alone trial  
4                   provided by the Cayman Islands Court of Appeal (CICA) in *Randy Martin v R*<sup>1</sup>, in  
5                   which Mottley JA stated:

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



14  
15           17.     Therefore, only those facts that are germane to my conclusion as to whether the  
16                   defendant is guilty or innocent of the charges have been treated with in a detailed way,  
17                   for the purposes of my analysis.

18           18.     In arriving at my decision on the facts and the law, I have had due regard to the helpful  
19                   submissions of both counsel for the prosecution and for the defence and the authorities  
20                   they have relied on. I have considered everything they have urged on me, even if it is  
21                   not expressly indicated during the course of my analysis.

22     **THE PROSECUTION’S CASE**

23           19.     The case presented by the prosecution may be briefly outlined. On 11 April 2018, at  
24                   about 1:20 p.m., a joint team of police and customs officers (“the search party”) went  
25                   to residential premises at a disclosed address along Elderberry Drive to execute a  
26                   search warrant in relation to possession of an unlicensed firearm. Those premises, at

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<sup>1</sup> CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)

1 all material times, were owned and occupied by the defendant and his wife, Eliza  
2 Webster (Mrs. Webster). They were living with their minor children and, their helper,  
3 at the time, Miss Sonia Messam (Miss Messam), would be at the premises during the  
4 days and, occasionally, at nights.

5 20. Upon the arrival of the search party at the residence on the day in question, Miss  
6 Messam was present with the Websters' youngest child. Upon being contacted by the  
7 police, Mrs. Webster arrived and the defendant who had been informed of the presence  
8 of the search party followed her shortly after.

9 21. During the search of the premises, Customs Officer (CO) Trevor Tummings, whilst  
10 conducting a search of the kitchen of the house, found a clear Ziploc bag containing an  
11 object, which was later examined and found to be a Glock pistol, wrapped in a yellow  
12 towel inside a Ziploc bag and hidden behind the microwave on a wooden ledge. In  
13 order to access the rear of the microwave from which the firearm was taken, the stove  
14 beneath it had to be moved out of the way. CO Tummings was wearing gloves during  
15 the search.

16 22. Following the discovery of the firearm, the search was suspended until the arrival of  
17 Scenes of Crime Officer (SOCO), Sarah Hough (SOCO Hough). Upon her arrival, she  
18 photographed the item in situ and also processed the area around the microwave for  
19 fingerprints. None were found.

20 23. Firearm Officer, Police Constable (PC) Brian Marshall removed the Ziploc bag and  
21 opened the yellow towel to reveal the pistol. He cleared it and made it safe. The  
22 magazine found in that firearm was loaded with ammunition. A small box wrapped in  
23 black electrical tape was also recovered next to the firearm by PC Marshall. This box  
24 was later found to contain ammunition. PC Marshall was wearing two pairs of latex



1 gloves while handling the items. All items recovered were handed over to SOCO  
2 Hough for processing for DNA and fingerprints. SOCO Hough also wore gloves  
3 during processing the scene and handling the exhibits.

4 24. Mrs. Webster and Miss Messam were interviewed under caution on 12 April 2018 in  
5 the presence of their attorneys-at-law. Nothing incriminatory emanated from those  
6 interviews.

7 25. The defendant was also interviewed under caution on 12 April 2018 in the presence of  
8 his attorney-at-law. He denied knowledge and control of the firearm.

9 26. Buccal swabs were obtained from the defendant, Mrs. Webster and Miss Messam for  
10 DNA comparison and analysis.

11 27. Following the search, several items were swabbed, sealed, labeled and taken to the  
12 George Town Police Station by SOCO Hough.

13 28. On 20 April 2018, SOCO Hough submitted the following items to the Cayman Islands  
14 Forensic Laboratory for DNA analysis:

15 i. swab of the wood edge near Ziploc bag (SH-2);

16 ii. the Ziploc bag (SH-3);

17 iii. yellow towel (SH-4);

18 iv. swab of grip of firearm (SH-5swab1);

19 v. swab of sights and textured area of firearm (SH-5swab3);

20 vi. swab of magazine opening/insert area (SH-5swab4)





1           vii. buccal swab of Elton Webster (RF5);

2           viii. buccal swab of Sonia Messam (LGW3); and

3           ix. buccal swab of Eliza Webster (LGW5).

4       29.    Angella Tanzillo-Swarts, a Forensic DNA Specialist and the prosecution's DNA  
5           expert, conducted DNA analysis on the exhibits set out above and prepared a report  
6           (court exhibit nine) detailing her findings and opinion along with a subsequent  
7           explanatory statement. The major findings, for present purposes, were:

8                   (a) DNA matching that of the defendant and Mrs. Webster was found on the  
9                   wooden edge near the Ziploc bag;

10                   (b) DNA matching the defendant's DNA profile was found on one side of the  
11                   yellow towel and on the interior of the Ziploc bag;

12                   (c) No DNA matching the defendant's DNA profile or Mrs. Webster was  
13                   found on the firearm and the magazine; and

14                   (d) there was no DNA matching Miss Messam's profile on any of the items  
15                   examined.

16       30.    No DNA analysis was conducted in relation to the ammunition.

17       31.    There were no identifiable fingerprints recovered from any of the exhibits.

18       32.    The defendant and Mrs. Webster were charged with illegal possession of firearm and  
19           ammunition. Miss Messam was never charged. Mrs. Webster was later discharged at  
20           the committal proceedings in the Summary Court on the basis that the Crown had no  
21           evidence to connect her to the prohibited articles.

1     **THE DEFENDANT’S CASE**

2           33.     The defendant gave evidence at the trial. He denied any knowledge of the firearm and  
3                   ammunition being in his home. He gave evidence of, among other things, having lost  
4                   things from his house and that a lock to one of his doors, which allows access to his  
5                   back porch, had malfunctioned and so the door could not be locked. He also gave an  
6                   account of persons who would visit his premises, which included, his relatives and  
7                   those of Mrs. Webster, his co-workers and childhood friends. He highlighted,  
8                   specifically, a male friend, Robert Terry, whom he did not mention in his interview to  
9                   the police. Robert Terry, he said, had been convicted and sentenced to a term of  
10                  imprisonment for possession of an unlicensed firearm. At one point before the firearm  
11                  and ammunition were recovered at his home, he had been assisting Robert Terry to  
12                  “get back on his feet” and so Robert Terry would visit the premises, from time to time,  
13                  and would sometimes stay overnight at the house. He knew of one occasion when  
14                  Robert Terry visited his house in his absence. The relationship between him and  
15                  Robert Terry, after a while, was no longer close.

16          34.     He could not say who would have been in and out of his house at any time because he  
17                  was working away from home and he would sometimes be gone for long hours  
18                  extending into the night.

19          35.     The defendant relies on the DNA report (court exhibit 10) and a subsequent  
20                  explanatory statement of James Clery, a Senior Forensic Scientist (the defendant’s  
21                  expert)).



1    **THE ISSUE(S)**

2       36.    There is no dispute that the defendant lives at the premises where the firearm and  
3               ammunition were found.

4       37.    There is no dispute that the objects are firearm and ammunition, within the provisions  
5               of the *Firearms Law* and are prohibited objects, if possessed by a person without a  
6               Firearm User’s (Restricted) Licence.

7       38.    It is not disputed that the defendant is not the holder of a Firearm User’s Licence and  
8               so would be in unlawful possession of the firearm and ammunition if he had them in  
9               his possession.

10      39.    The issue in dispute and which, therefore, falls for the resolution of the court is  
11             whether the defendant had the firearm and ammunition in his possession.

12    **DISCUSSION AND FINDINGS**

13      40.    In order to prove their case against the defendant, the prosecution must prove, to the  
14             extent that I am sure, that on 11 April 2018, the defendant was in possession of the  
15             firearm and ammunition that were found on his premises.

16      41.    The concept of “possession”, as defined by s.3 of the *Penal Code 2017*,



17             “... includes not only having in one’s own personal possession, but knowingly  
18             having anything in the actual possession or custody of any other person, or having  
19             anything in any place (whether belonging to or occupied by oneself or not) for the  
20             use or benefit of oneself or any other person, and if there are two or more persons  
21             and any one of them or more of them with the knowledge and consent of the rest  
22             has or have anything in his or their custody or possession, it shall be deemed and  
23             taken to be in the custody and possession of each and all of them.”

24

1       42.     This statutory definition reflects the principles that have long been settled by case law  
2             that a person can be in possession of a firearm at a place other than that at which the  
3             firearm is physically found. That is to say that possession does not necessarily equate  
4             to physical custody but covers persons who have the object under their control at their  
5             behest, even though for some reason or another it may be kept elsewhere. See  
6             *Sullivan v Caithness (Earl of)*<sup>2</sup>; *Hall v Cotton*<sup>3</sup>; and *Walter Jordon McLaughlin and*  
7             *Keith Rohan Montaque v R*<sup>4</sup>.

8       43.     There is, therefore, no need for the prosecution to prove that the defendant had the  
9             firearm and ammunition with him, on him or in close proximity to him at the material  
10            time in order to establish the knowledge and control required in proof of the offences.

11      44.     The critical question is whether the defendant knew that the firearm was in his house  
12             on 11 April 2018, securely tucked away behind the microwave, and had it under his  
13             control, that is, at his behest, for the benefit of himself or another.

14      45.     The prosecution rely on several strands of evidence to establish possession in the  
15             defendant; these are:

- 16            i.    The defendant's ownership and occupation of the house at the material time;
- 17            ii.   The place in the house from where the firearm and ammunition were recovered,  
18                which was a secret compartment behind the microwave with restricted access;
- 19            iii.  The defendant's DNA was found on the packaging in which the firearm was found  
20                (inside the Ziploc bag and on one side of the yellow towel in which the firearm  
21                was wrapped).

<sup>2</sup> (1976) 62 Cr. App. R. 105

<sup>3</sup> (1986) 83 Cr. App R 257

<sup>4</sup> CICA Criminal Appeal 22/15, delivered 23 August 2016

1 46. The prosecution's contention is that these circumstances give rise to the obvious and  
2 inescapable inference that it was the defendant who put the items behind the  
3 microwave and, at all material times, was in unlawful possession of them.

4 47. The defence strongly refutes the prosecution's arguments that there is sufficient  
5 evidence to ground possession. Their main contention is that:

6 (a) there are significant amounts of probabilities and possibilities that arise for  
7 the defendant to be convicted;

8 (b) the prosecution cannot prove his guilt beyond a reasonable doubt with the  
9 competing possibilities, none of which can be excluded by the prosecution;  
10 and

11 (c) the prosecution must prove knowledge on the part of the defendant and  
12 that he must have been the only person to have put the objects behind the  
13 microwave. That cannot be established because the defendant did not have  
14 exclusive use of the house; his wife, Miss Messam or anyone else who had  
15 access to the house could have put placed the prohibited articles in the  
16 kitchen.



17 48. Each major strand of evidence being relied on by the prosecution has been examined  
18 within the context of the applicable law, those are:

19 (a) ownership and occupation of the house;

20 (b) location from which the firearm and ammunition were recovered; and

21 (c) the DNA evidence.



1        **Ownership and occupation of the house**

2        49.     The house was shared accommodation with adults and minors but three adults were  
3            exercising general control over it. The defendant and his wife are the owners. They  
4            usually worked away from home during the days. The helper was usually at home  
5            during the work days and on the day in question, she was there alone with the couple's  
6            youngest child.

7        50.     There was, therefore, no exclusive occupation and control of the premises by the  
8            defendant. Accordingly, nothing turns on the fact of his ownership and occupation of  
9            the premises, standing alone.

10       **Location where firearm/ammunition found**

11       51.     There can be no dispute that the firearm and ammunition were found at what may be  
12            described as a secret compartment behind the microwave in the kitchen. It was not  
13            somewhere to which persons unconnected to the house would have had ready and easy  
14            access or of which they would have had immediate knowledge upon visiting the house.  
15            The placement in, and retrieval of the objects from, that location, would have involved  
16            the removal of the stove below the microwave and would have required someone  
17            reaching up behind the microwave. It would have taken some effort to place the objects  
18            there and as such, one would have had to have reasonably sufficient time and  
19            opportunity to put them there as well as to remove them.

20       52.     There is no doubt in my mind that someone in the house knew the firearm and  
21            ammunition were there and could have retrieved them or could have permitted others  
22            to retrieve them, thus having the requisite knowledge and control of them in  
23            accordance with the law. The place from which they were recovered gives rise to such

1 a finding. This location where the articles were found, and the way access could be  
2 gained to it, would rule out the involvement of a visitor to the premises, acting without  
3 the knowledge and concurrence of, at least, one of the occupants of the house. Anyone  
4 who would have been involved in placing the articles behind the microwave would  
5 have known that they could retrieve them without difficulty, when needed.

6 53. However, the location, by itself, or when coupled with the elements of ownership and  
7 occupation, is not enough to ground possession in the defendant. The critical question  
8 is whether he knew and had control of the firearm and ammunition, as required by law,  
9 even if another person in the house may have known and also had control of them. It is  
10 accepted that more than one person can be in possession of an object. The crucial  
11 question to be determined is not whether someone in the house was in possession of  
12 the firearm but rather who was the person. The prosecution are alleging that it is the  
13 defendant and no one else.

14 *The DNA evidence*

15 54. The only evidence that differentiates the defendant from the other occupants of the  
16 premises, and on which the strands of the prosecution's case against him  
17 fundamentally rests, is the DNA evidence, which will now be examined.

18 55. No DNA matching the profile of any of the occupants in the house was found on the  
19 firearm and on the magazine taken from it. The analysis revealed the presence of a  
20 multiple-source mixture of the DNA of other persons. There is no evidence that DNA  
21 was found on the ammunition or the box in which they were packaged. Therefore,  
22 there is nothing obtained from the firearm and ammunition themselves that could lead  
23 to a finding that the defendant directly or indirectly handled them.



1 56. It is undisputed that no DNA profile, matching any of the occupants in the house, was  
2 found on the firearm or magazine. The analysis revealed the presence of a multiple-  
3 source DNA profile of more than one person, which excluded the defendant, Mrs.  
4 Webster and Miss Messam.

5 57. There is no evidence that DNA was found on the ammunition or the box in which they  
6 were found.

7 58. Therefore, there is nothing obtained from the firearm and ammunition themselves that  
8 could give rise to a finding that the defendant, directly or indirectly, handled them.

9 59. The crucial question is whether, in the light of the absence of such evidence, it can  
10 properly be concluded, on the basis of the DNA evidence and all the circumstances of  
11 the case, that there is no real possibility that any of the other occupants in the house  
12 could have packaged and placed the firearm behind the microwave along with the box  
13 of ammunition or could have allowed a third party to do so without the knowledge and  
14 concurrence of the defendant.

15 *Wood edge near Ziploc bag*

16 60. The DNA result with respect to the wood edge near the Ziploc bag shows an  
17 inseparable mixture of, at least, two individuals, which did not exclude the defendant  
18 or Mrs. Webster. Miss Messam was, however, excluded as a potential contributor to  
19 that mixture.

20 61. Having examined the evidence of both experts, against the background of other  
21 evidence in the case, I am led to the conclusion that the defendant's DNA and that of  
22 his wife was found on the wood edge near the Ziploc bag. The defendant's expert  
23 stated that the DNA found at this area was a very low level mixture and that there was



1 no clear major or more prominent contributor present, that is, the DNA was at similar  
2 levels to each other. So, there is an equal chance that not only the defendant but also  
3 his wife could have come in contact with that area.

4 62. The prosecution, seemingly, are not relying too heavily on the evidence of the presence  
5 of the defendant's DNA on the wood edge near the Ziploc bag. This is understandable  
6 because the presence of Mrs. Webster's DNA, at or near the place from which the  
7 objects were recovered, has the effect of negating any inference that the defendant is  
8 the only person in the house who may have known about that area behind the  
9 microwave and had been in contact with it. There is evidence that could reasonably  
10 support a conclusion that Mrs. Webster also may have known of that area and had  
11 physically come in contact with it.

12 63. Miss Messam's DNA was not found on the wood edge and so there is nothing from  
13 which an inference can reasonably be drawn that she came in contact with the area. It  
14 is borne in mind, however, that the absence of DNA does not necessarily mean that  
15 she, or any other person, for that matter, did not know of the area or may not have  
16 come in physical contact with it. It is accepted on the expert evidence that a person can  
17 touch a surface without leaving any trace of their DNA behind.

18 64. There is no evidence of exclusive access by the defendant to the area at which the  
19 firearm and ammunition were found. Therefore, the finding of the defendant's DNA on  
20 the wood edge does nothing to assist the prosecution in establishing the critical  
21 element of possession, necessary to ground the charges.



1        *The Ziploc bag*

2        65.      From the exterior of the bag, a partial multiple-source DNA profile was obtained,  
3                    which consists of an inseparable mixture from at least 4 individuals, at least one, which  
4                    is a male. The prosecution's expert explained that it was not possible to make a  
5                    meaningful comparison between this partial multi-source mixture and the DNA  
6                    profiles of the defendant, Mrs. Webster and Miss Messam, due to the complexity of the  
7                    mixture.

8        66.      The defendant's expert, for his part, explained that this was a very low mixture from, at  
9                    least, four persons and that there is no clear major or more prominent contributor in it.  
10                   He opined that if either the defendant or Mrs. Webster had contributed to the DNA,  
11                   there was DNA of, at least, one other person present in the mixture that could not have  
12                   come from them.

13       67.      This evidence suggests that the Ziploc bag may have been handled by, at least, three  
14                   persons, directly, or there was secondary transfer of the DNA of some or all these  
15                   persons onto the exterior of the bag. There is, therefore, nothing connecting the  
16                   defendant to the exterior of the bag, over and above the other adult occupants of the  
17                   house.

18       68.      A partial DNA profile was obtained from the interior of the bag. This partial DNA  
19                   profile was said by the prosecution's expert to have originated from at least one male  
20                   individual and that the defendant could not be excluded as a possible contributor to it.  
21                   Mrs. Webster and Miss Messam are excluded as possible contributors to this DNA  
22                   profile on her analysis.



1 69. The defendant's expert, similarly, indicates that a very low mixture from at least one  
2 person was obtained from the interior of the bag. The DNA from one male was present.  
3 According to him, there were 11 components, 10 matching the defendant's DNA. He  
4 opined that if the defendant had contributed to this mixture, then there was DNA  
5 present from at least one other person that could not have come from him. He  
6 expressed the view that if two persons had contributed their DNA to this mixture,  
7 which must be the case if the defendant had contributed to it, the statistical value  
8 obtained is "on the lower end of the scale for potential inclusions, indicating the low  
9 level of matching DNA components present".

10 70. The defendant is not in a position to say definitively how his DNA may have been  
11 deposited on the interior of the Ziploc bag. He stated categorically, however, that it  
12 was not by virtue of him being in physical custody of the firearm and placing it in the  
13 bag.

14 71. I accept on the evidence of both experts, having had regard to other evidence in the  
15 case, that the partial DNA profile found in the interior of the bag included the  
16 defendant's DNA. It is difficult, however, to determine how his DNA had come to be  
17 on the interior of the bag and when it was deposited there. There is nothing to indicate  
18 direct, as distinct from indirect, transfer and the age of the DNA.

19 72. This evidence of the presence of the DNA of, at least, four persons on the exterior of  
20 the Ziploc bag serves to establish that there is no factual basis on which it may be said  
21 conclusively or with any degree of conviction that only the defendant had handled the  
22 Ziploc bag or that there is no real possibility that other persons may have had direct  
23 physical contact with the bag. The evidence does not support either an exclusive or  
24 direct handing of the Ziploc bag in which the firearm was found by the defendant to



1 support the ultimate finding that he handled the firearm or that he knew it was in his  
2 kitchen and at his behest.

3 73. Several possibilities arise for consideration as to how the Defendant's DNA may have  
4 come in contact with the interior of the Ziploc bag but, while some are consistent with  
5 guilt, there are others equally consistent with innocence. Accordingly, the  
6 prosecution's case is not made any stronger by this evidence, either standing alone or  
7 with the other evidence examined thus far.



8 *The yellow towel*

9 74. The DNA findings in relation to the towel are critical to the prosecution's case, in the  
10 light of the other items of evidence considered above, which, thus far, have not served  
11 to establish the element of possession required to establish the guilt of the defendant.

12 75. Both sides of the yellow towel in which the pistol was wrapped were swabbed for  
13 DNA. The sides are differentiated by a tag, which was on the towel - one side with a  
14 tag, the other side without the tag. There is no indication, which side of the towel was  
15 closer to the gun or the interior of the Ziploc bag.

16 76. The prosecution's expert reported that a multiple-source DNA profile was obtained  
17 from the tagged side of the yellow towel. It consisted of an inseparable mixture from,  
18 at least, three individuals, at least one, which is a male. She opined that the defendant  
19 could not be excluded as a possible contributor to that profile. She further explained  
20 that assuming that there were three contributors, and based on the population of the  
21 Cayman Islands, it was estimated to be 13 million times more likely for the defendant  
22 to have contributed to this sample than an unknown individual. Mrs. Webster and  
23 Miss Messam are excluded as possible contributors.

1       77.     The defendant’s expert has not challenged that finding. He went further to explain, in  
2             more detail, that it is not possible to determine the sex of the remainder of the  
3             contributors but that there is an indication of DNA from a female “due to the peak  
4             height imbalance at the amelogenin locus”. He pointed out that there was no clear  
5             major contributor present but the DNA components present in the DNA profile of the  
6             defendant were generally more prominent than the remainder.

7       78.     The expert evidence reveals that on the side without the tag, a multiple-source partial  
8             DNA profile was found. It consisted of an inseparable mixture from at least three  
9             individuals, at least one, which was a male. The defendant, Mrs. Webster and Miss  
10            Messam, are excluded as possible contributors to that profile.

11      79.     I accept that the defendant’s DNA was on the tagged side of the yellow towel and, so,  
12             he was the only occupant of the house whose DNA was found on the towel.

13     **ANALYSIS OF THE DNA EVIDENCE**

14      80.     In order for the DNA evidence to assist the prosecution, especially in relation to the  
15             yellow towel and Ziploc bag, it must be proved beyond a reasonable doubt that not  
16             only was it the defendant’s DNA that was on these objects, which I have concluded,  
17             but that:

18                   (a) the DNA was deposited directly by the defendant and not by secondary or  
19                   indirect transfer; and

20                   (b) that his DNA was deposited by him during the commission of the offence,  
21                   that is, while he handled the firearm and placed it in the microwave, where  
22                   it was found on 11 April 2018, the date charged in the indictment.



1 81. In an effort to bolster their case to make the point that the DNA evidence in this case is  
2 sufficient to connect the defendant to the firearm, the prosecution referenced such  
3 English cases as *R v Denis Adams*<sup>5</sup>; *R v Denis Adams*<sup>6</sup>; *R v Alan James Doheny: R. v.*  
4 *Gary Adams*<sup>7</sup>; *R v Albert Sampson, Mason Kelly*<sup>8</sup>; *Regina v FNC*<sup>9</sup>; and the local case  
5 of *R v. Walter Jordon McLaughlin & Keith Rohan Montaque*<sup>10</sup>.

6 82. Mrs. James-Malcolm, counsel for the prosecution, contended that the defendant's DNA  
7 that was found on the tagged side of the yellow towel and on the interior of the Ziploc  
8 bag was deposited during the course of the commission of the offences for which he is  
9 charged, when he was seeking to hide the items. This, she said, is a question of fact,  
10 which is open to the court to find by looking at all the circumstances of the case.  
11 According to her, it is not plausible for someone to have left a firearm and so many  
12 rounds of ammunition in someone else's house. It would, she said, require  
13 undetectable ways to remove it or to put it back surreptitiously. The alternative  
14 scenarios, regarding how the firearm and ammunition may have been placed in the  
15 house, are implausible, she contended.

16 83. While accepting that there is no DNA on the firearm, Mrs. James-Malcolm further  
17 posited that one possible and obvious inference is that the firearm could have been  
18 cleaned or handled with gloves or the towel was used as an intermediary.

19 84. The crux of Mrs. James-Malcolm's submissions is that the fact that the firearm was  
20 found in the defendant's home, wrapped in packaging that had his DNA on it, leads to  
21 the logical presumption that the firearm is his, unless there is a plausible explanation to

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<sup>5</sup> (No 1) [1996] 2 Cr. App. R. 467  
<sup>6</sup> (No. 2) [1998] 1 Cr. App. R. 377  
<sup>7</sup> [1997] 1 Cr. App. R. 369  
<sup>8</sup> [2014] EWCA Crim 1968  
<sup>9</sup> [2015] EWCA Crim 1732  
<sup>10</sup> *Supra*





1 the contrary. There is no such plausible explanation, she argued, and so the  
2 presumption is not rebutted. She argued that taking all the evidence into consideration,  
3 including the conduct of the search party during the search, the recovery of the items  
4 and the processing of the crime scene, there was no room for cross-contamination and,  
5 therefore, no room for secondary transfer of the defendant's DNA onto the items.

6 85. Counsel Miss Fosuhene, submitting on behalf of the defendant in response, contended  
7 that the DNA evidence "does not do what the Crown says it does". According to her,  
8 the evidence, for various reasons, is insufficient to ground a finding that the defendant  
9 had the firearm in his possession. The evidence, she said, does not exclude the  
10 possibility of any third party placing the firearm behind the microwave. The fact that  
11 the DNA evidence shows that Mrs. Webster was also a contributor to the DNA profile  
12 on the wood edge has to be factored into consideration.

13 86. Miss Fosuhene also pointed out that the circumstances of this case fall within the  
14 category of cases, such as *R v. Grant*<sup>11</sup> and *R. v. Ogden*<sup>12</sup>, as the items on which DNA  
15 matching his profile was found are movable items which are not specific to the  
16 defendant. These cases established the principle that DNA evidence, found on a  
17 movable item left at a crime scene was not, of itself sufficient to link the defendant to  
18 the commission of the offence for which he was charged. It is not suggested, she said,  
19 that in some instances, DNA evidence might not be enough, but what serves to  
20 distinguish this case from other cases (some of which have been cited by the  
21 prosecution), in which DNA on an object was found to have been sufficient evidence  
22 to link a defendant to the commission of a crime, is the fact that DNA was not found  
23 on the firearm and there was no examination of the ammunition for DNA.

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<sup>11</sup> [2008] EWCA Crim. 1890

<sup>12</sup> [2013] EWCA Crim. 1294



1 87. Miss Fosuhene submitted that the DNA evidence does not point to guilt in this case,  
2 where both expert witnesses agree that secondary transfer cannot be excluded in  
3 relation to the yellow towel and the Ziploc bag and where there is no specific DNA  
4 evidence with regards to the firearm. She maintained that, importantly, the DNA  
5 evidence does not allow for an inference to be drawn in the absence of evidence as to  
6 when and how the DNA got onto the yellow towel and the Ziploc bag. Counsel argued  
7 that the DNA evidence is not capable of proving possession of the firearm and  
8 ammunition, but, at the highest, only possession of the yellow towel. It does not  
9 support the proposition, she said, that the defendant had physical contact with the  
10 Ziploc bag because he is excluded from the DNA found on the exterior of the bag and  
11 the low DNA profile taken from the interior of the bag cannot exclude secondary  
12 transfer from the towel as the defendant's expert has explained. In the circumstances,  
13 counsel argued, there is no evidence of custody, control and actual knowledge of the  
14 firearm and ammunition on the part of the defendant.

15 88. Defence counsel not only sought to distinguish the cases relied on by the prosecution  
16 but she sought to rely on other additional cases such as *R v. Charles Michael Ebanks*  
17 *& Frederick Augustus Boothe*<sup>13</sup>; *R v. David Ashton Whorms*<sup>14</sup> (and *R. v. Sciamonte*  
18 cited therein); *Regina v Michael David Bryon*<sup>15</sup>; *R .v. Tsekiri and Barry Jonathan*  
19 *Campbell v Her Majesty's Advocate*<sup>16</sup>.

20 89. I have carefully examined all the authorities relied on by the prosecution and the  
21 defence. I have been guided by the principles extrapolated from them and have applied

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<sup>13</sup> Indictment Nos. 50/11 & 3/12  
<sup>14</sup> Criminal Appeal No. 19 of 2008  
<sup>15</sup> [2015] EWCA Crim 997  
<sup>16</sup> 2008 HCJ AC 50



1           them to the facts of this case in an effort to determine whether the defendant can be  
2           held liable on the basis of the DNA evidence.

3           90.     The prosecution has established a case, which reveals no likelihood of any cross-  
4           contamination of the objects in question by the search party or any police personnel.  
5           Despite the discrepancies in certain aspects of the evidence of the witnesses for the  
6           prosecution, I find that they were credible witnesses who did not compromise the  
7           crime scene or the objects in question. Therefore, as Miss Fosuhene noted, if there is  
8           no likelihood of cross-contamination by the search party and other police personnel, as  
9           the prosecution are contending, then it leaves open the question as to which other  
10          person or persons had been in contact with the objects. The prosecution, she said, is yet  
11          to explain the DNA from at least three other persons found on each area of the firearm  
12          which was examined as well as the DNA of other persons found on the Ziploc bag and  
13          the yellow towel. I agree with those submissions.

14          91.     The prosecution are saying that it was the defendant, and no one else, who placed the  
15          firearm and ammunition behind the microwave. They did not charge Miss Messam and  
16          they caused Mrs. Webster, who was charged with the defendant, to be discharged in  
17          the Summary Court. The fact that Mrs. Webster and Miss Messam are not charged  
18          before this court does not mean that the court must use that as a basis to say that the  
19          defendant is guilty.

20          92.     In *R v David Ashton Whorms*<sup>17</sup>, the CICA reasoned at paragraph 26 of the judgment:

21                   *“In our view the judge needed to direct the jury that they could not conclude from*  
22                   *the fact that Mr Esteban was not on trial for possession of the firearm, that there*  
23                   *was no real possibility that he was, in fact, in possession of the firearm on the*  
24                   *night of 1 January 2008. They had to put out of their mind the fact that Mr Esteban*  
25                   *was not on trial for the offence with which Mr Whorms was charged; and they had*

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<sup>17</sup> *Supra*

1                   to ask themselves whether, on the facts which had been put in evidence before  
2                   them, they were satisfied that there was no real possibility that Mr Esteban was the  
3                   person in possession of the weapon on the night in question. Unless they were  
4                   satisfied of that, they could not be sure that it was Mr Whorms who was in  
5                   possession of the weapon at the time; and if they could not be sure of that, they  
6                   could not convict him.”

7  
8           93.       The Court held that the failure of the trial judge to direct the jury in those terms was a  
9                   misdirection, which rendered the verdict of the jury unsafe.

10          94.       Following on the lead of the CICA, I am required to put it out of my mind that other  
11                   occupants of the house are not on trial for the offences for which the defendant is  
12                   charged and consider the question whether I am satisfied that there is no real  
13                   possibility that any other person, including Mrs. Webster and Miss Messam, had  
14                   placed the firearm and ammunition behind the microwave.

15          95.       In considering this question, I have found the Scottish case of *Barry Jonathan*  
16                   *Campbell v Her Majesty’s Advocate*<sup>18</sup>, relied on by the defence, to be, particularly,  
17                   instructive. A brief outline of the pertinent facts and reasoning of the court could prove  
18                   quite useful. They are as follows:

19           i.       The appellant was charged with unlawful possession of a rifle. The rifle was found  
20                   concealed in a cupboard behind a water tank in a house, which was occupied by  
21                   the appellant’s girlfriend. There was evidence at the trial that reportedly gave rise  
22                   to the inference that the appellant had been living at the flat from time to time for  
23                   three months up to the date of the search of the flat by the police. From his state of  
24                   undress when he answered the door for the police, an inference could also have  
25                   been drawn that he had stayed overnight at the house on the day before the firearm  
26                   was found. The rifle was wrapped in black plastic bags, on one of which there



<sup>18</sup> *Supra*



1 were finger and palm prints of the appellant. There were also a number of  
2 unidentified fingerprints on the bag that were not referable to the appellant or his  
3 co-accused. There were other items found at the place where the bags with the rifle  
4 were found. There was no evidence as to when those prints got onto the bag and  
5 there was evidence that the house was frequented by a number of persons. The  
6 appellant was convicted. On appeal, his conviction was quashed.

7 96. After considering the particular circumstances of that case, the court proceeded to hold  
8 that the evidence was insufficient to entitle a jury to draw the inference, beyond a  
9 reasonable doubt, that the appellant had control and knowledge of the rifle concealed  
10 in the cupboard. The jury, it opined, was entitled to infer that the appellant had, indeed,  
11 come in contact, at some time with the black plastic bag (a moveable item), which had  
12 been used by someone to wrap the concealed rifle. The court observed that contact by  
13 the appellant with the bag might be thought unsurprising, given that he was a visitor to  
14 the flat and that he might have come in contact with items and surfaces (both moveable  
15 and fixed) within or brought to the flat.

16 97. The court further opined that additional evidence was necessary before an inference  
17 could be properly drawn, beyond a reasonable doubt, that the appellant had been  
18 involved in handling or concealing the rifle and thus that he had the requisite  
19 knowledge of and control over the rifle. The court concluded that the evidence in the  
20 case did not reach the stage or attain the level at which a jury would be entitled in law  
21 to consider competing interpretations, including one of guilt on the part of the  
22 appellant in relation to the offence in question. It was determined that the trial judge  
23 ought not to have called upon the appellant to answer at the end of the case for the  
24 prosecution.

1 98. In coming to that conclusion, the court reasoned, in so far as is immediately relevant,  
2 that there were two matters that were of particular significance when assessing whether  
3 a jury would be entitled to draw an inference beyond a reasonable doubt that the  
4 appellant had knowledge of and control over the rifle. It noted that the evidence  
5 established that the appellant was not the sole occupant or user of the flat. He had  
6 connection with it because his girlfriend was an occupant and he had been a visitor to  
7 the flat and on occasions stayed overnight. The evidence, it said, also disclosed that  
8 other people used the flat during what may be the relevant period, either as home or  
9 place to visit, or as mail drop. Several other persons, excluding the appellant, had keys  
10 to the flat. The hall cupboard where the rifle was found was accessible to all these  
11 persons.

12 99. The court further noted that the evidence established that the rifle was well concealed  
13 behind a water tank in the hall cupboard and would not have been seen from the  
14 hallway. There was no evidence, it said, that the appellant had ever been seen with the  
15 rifle. Also, there was no evidence that the appellant's prints were found on any part of  
16 the cupboard itself, on the water tank or on any nearby surfaces, which might have  
17 suggested his presence at some stage in the vicinity of the place where the rifle had  
18 been concealed. Furthermore, the rifle itself did not carry the appellant's prints and  
19 there was no evidence assisting with the date on which, or the circumstances in which,  
20 the appellant's prints came to be on the plastic bag wrapped around the rifle. The court  
21 pointed out that there was, for example, no expert evidence tending to suggest that the  
22 rifle must have been in the plastic bag when the appellant's hand came in contact with  
23 the bag. Nor was there any evidence, which could assist in ascertaining the date on  
24 which the rifle had been concealed. All that the evidence could establish, in the view of  
25 the court, was that one of two black plastic rubbish bags, wrapped round the concealed



1 rifle, carried the appellant's fingerprints and palm print together with seven  
2 unidentified prints unrelated to either the appellant or to his co-accused (including his  
3 girlfriend).

4 100. The court also observed the nature of the items (the black plastic bag) on which the  
5 finger and palm prints were found. It noted that the black plastic bag was an  
6 impersonal and neutral item, that is to say, it was nothing personal to the appellant.  
7 Citing the case of *Maguire v Her Majesty's Advocate*<sup>19</sup>, among others, the court  
8 reaffirmed Lord Hamilton's dictum, expressed at paragraph 18 of that judgment, that:

9 *"There have, of course, also been cases where fingerprint or similar*  
10 *circumstantial evidence has been held to be insufficient in law to allow a judge or*  
11 *jury to draw the inference that the accused was the criminal... Much will depend*  
12 *on the nature of the item on which the fingerprint or other identifying link was*  
13 *found and its association in time and in place with the crime. The readiness with*  
14 *which the defendant may innocently have come to be in contact with such an item*  
15 *may be such that, even in the absence of an explanation from him, no inference of*  
16 *sufficient association between him and the crime can legitimately be drawn."*

17  
18 101. I have paid due regard to the foregoing dicta of the court in *Barry Jonathan Campbell*  
19 *v Her Majesty's Advocate* and all the matters that the court took into account in  
20 evaluating the circumstantial evidence that was being relied on by the prosecution to  
21 link the appellant to the offence. It becomes even clearer in the instant case that for the  
22 prosecution to succeed on the strength of the DNA evidence, they must prove beyond a  
23 reasonable doubt that the defendant's DNA on the yellow towel and on the Ziploc bag  
24 was directly deposited by him during the course of or at the time of the commission of  
25 the offences.

26 102. A most significant matter that substantially serves to weaken the prosecution's case, in  
27 this regard, is the absence of any DNA or other scientific evidence, directly linking the

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<sup>19</sup> APPEAL COURT, HIGH COURT OF JUSTICIARY - Appeal No: XC589/03

1 defendant to the firearm and ammunition. This distinguishes the case from such cases  
2 as *Walter Jordon McLaughlin & Keith Rohan Montaque*<sup>20</sup>.

3 103. There is nothing to say that the defendant had handled the firearm directly but, equally  
4 so, there is nothing to prove conclusively that he had not done so because the absence  
5 of DNA on the firearm itself is not evidence that he had not handled it. I do accept that  
6 he could have used an intermediary, like a glove or the yellow towel itself, to handle  
7 the firearm, which could result in a negative finding of his DNA on the firearm but, the  
8 same may be said of any other person who may have come into contact with the  
9 firearm in the house. There is much debate between the experts as to whether the  
10 firearm may have been cleaned, thus accounting for the absence of the defendant's  
11 DNA on it. This debate, which takes us in the realm of speculation, does not help the  
12 court, one way or the other, because there is no evidence to support an inference that  
13 the firearm may or may not have been cleaned. Furthermore, in the same way that the  
14 defendant could have cleaned the firearm to erase evidence of his touching, any other  
15 occupant of the house or anyone else could have done the same. I find that anything  
16 that goes for the defendant, in relation to possible methods of handling the firearm in a  
17 manner to prevent detection of his DNA, would equally apply to any other person.

18 104. It is also noted that although the defendant's DNA was found on a surface near to  
19 which the firearm was found (the wood edge), and could suggest his presence there, at  
20 some stage, this, as his expert puts it, "is unsurprising" as it is the home in which he  
21 was residing. Furthermore, it was mixed with the DNA of his wife, with whom he  
22 shared the house at the material time. This equally suggests that his wife may have  
23 come in physical contact with that area.

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<sup>20</sup> *Supra*

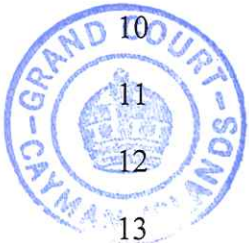
1 105. The presence of the defendant's DNA on the wood edge also does not necessarily  
2 mean that he had come in direct contact with it. His expert pointed to the possibility of  
3 a transfer of DNA from another surface inside the house to the wood edge, which  
4 could have been done by another person. This is not refuted by the prosecution's  
5 expert.

6 106. In relation to the yellow towel and the Ziploc bag, which are easily movable items, and  
7 which could have been found in the defendant's house in the ordinary course of things,  
8 there is nothing surprising about his DNA being on them. As was observed by the  
9 court in *Barrington Jonathan Campbell*<sup>21</sup>, there is no evidence in the instant case that  
10 has established the date on which, or the circumstances in which the defendant's DNA  
11 came to be on the yellow towel and the Ziploc bag. The defendant could have  
12 innocently come into contact with the Ziploc bag and/or the yellow towel, resulting in  
13 direct deposit of his DNA on them prior to the placing of the firearm in them, because  
14 he lived in the house.

15 107. On the other hand, and, once again contrary to the prosecution's hypothesis, he may  
16 not have come in direct contact with those items because it is established by both  
17 experts that secondary transfer of his DNA from another surface, or from another  
18 person, to those items, was possible and so cannot be ruled out. Furthermore, there  
19 could have been a transfer of his DNA from the towel to the bag (and vice versa) when  
20 the two objects were brought into contact with each other. The defendant's expert  
21 opined in this regard that "*the scientific findings are well within [his] range of*  
22 *expectations of secondary transfer to the inside of the Ziploc bag from the yellow cloth*  
23 *as they were stored together*". This is not challenged by the prosecution.

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<sup>21</sup> *Supra*



1 108. The prosecution's expert also expressly concurred with the conclusion of the  
2 defendant's expert that:

3 *"[T]here is no way to differentiate between the two competing propositions that*  
4 *which is more likely - whether Elton Webster had handled the firearm (with a*  
5 *barrier such as the yellow cloth) and none of the DNA was deposited or that he did*  
6 *not directly handle the firearm and his DNA was deposited to the inside of the*  
7 *Ziploc bag and to the yellow cloth, either by direct or indirect means which could*  
8 *be independent/ prior to the introduction of the firearm."*

9 109. This joint conclusion of the experts, in effect, has diluted the potency of the  
10 prosecution's assertion that the defendant's DNA was deposited during the course of  
11 the commission of the offences, that is, during the course of packaging the firearm and  
12 placing it and the box of ammunition behind the microwave where it was found on 11  
13 April 2018.

14 110. I accept the defendant's argument that the DNA evidence in relation to the yellow  
15 towel being relied on by the prosecution to ground possession, can only prove, at best,  
16 that at some time the defendant may have had possession of the yellow towel or had  
17 come in direct contact with it. Even if that is so, and secondary transfer can be ruled  
18 out, there is still the evidence of the presence of other persons' DNA on the towel  
19 (excluding the other two occupants of the house), which has not been explained away  
20 by the prosecution. Therefore, the evidence of the DNA on the towel, and the  
21 likelihood of the defendant being in possession of the towel, are not capable of proving  
22 possession of the firearm, without more.



1 111. The fact that the defendant's DNA was found on highly movable, neutral and  
2 impersonal articles, in a place in relation to which he had substantial and innocent  
3 connection – his home – coupled with the fact that they bore the DNA of other  
4 unidentifiable persons, has served to render the prosecution's reliance on the DNA  
5 evidence rather tenuous.

6 112. In *R v Bryon*<sup>22</sup>, LJ Jackson stated:

7 *“What then do the authorities establish? It is clear from the authorities that where*  
8 *a movable item is left at the crime scene with mixed DNA profiles, one of which*  
9 *matches the defendant's profile that on its own is not sufficient to support a*  
10 *conviction. Indeed, the proposition may possibly be true if the DNA profile is not*  
11 *mixed because people can handle an object without depositing DNA, therefore*  
12 *even if the only DNA on an object is that of the defendant, it does not inexorably*  
13 *follow that no one else will have touched that object.*

14 *On the other hand, the authorities also establish that the DNA evidence in*  
15 *conjunction with other evidence pointing against the defendant can be very*  
16 *compelling...”*

17  
18 113. When the DNA evidence is considered against the background of all the circumstances  
19 of the case and the relevant legal principles, I find that there is no evidence from which  
20 it can be comfortably concluded, to the extent that I am sure, that the defendant had  
21 touched the firearm with or without a barrier and had knowledge of its presence behind  
22 the microwave in his house on 11 April 2018.

23 **CONCLUSION**

24 114. I must state, before disposing of the matter, that I entertain no doubt about the  
25 professionalism, integrity and credibility of the officers who conducted the search at  
26 the defendant's residence on the day in question as well as those who processed the  
27 scene and the exhibits. I have no reason to reject their evidence concerning their

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<sup>22</sup> [2015] EWCA Crim. 997

1 recovery of the firearm and ammunition, their handling of the exhibits and their  
2 treatment of the defendant at the premises, despite what I have observed to be minor  
3 inconsistencies/discrepancies in their testimonies or signs of lapse of memory. I am  
4 satisfied that there was no collusion among them to implicate the defendant, in any  
5 way, in the offences charged.

6 115. I have concluded, however, that not only the defendant, but also any other occupant of  
7 the house with knowledge of, and access to, the secret compartment behind the  
8 microwave could have placed the firearm and ammunition where they were found on  
9 11 April 2018. They could have done so for their own personal use or for the benefit of  
10 another. A third party, acting in collusion with someone in the house, could also have  
11 done so. That could be done without any such persons directly touching the firearm or  
12 the packaging with the firearm. Just as the defendant could have used an intermediary  
13 item as a barrier (as posited by the prosecution), any other person could also have done  
14 so. These are competing possibilities, which are plausible, and which have not been  
15 dispelled by the prosecution.

16 116. The defendant's effort at weaving some explanation into his evidence as to how the  
17 firearm may have come to be in his house has not passed unnoticed, but it takes him  
18 nowhere. Some of his utterances are rejected as being incredulous, especially as it  
19 relates to the access to his house by Robert Terry and by trespassers, all of whom, he  
20 alleges, have been stealing from his premises. That is not determinative of the  
21 question of whether he is guilty of the charges, however. I am mindful that I cannot use  
22 what I may regard as his lies or falsehood to convict him. I have borne in mind that  
23 persons may tell lies for many and varied reasons not connected to guilt. In fact, they  
24 may foolishly lie in an effort to bolster what is already a very legitimate defence.



1 117. So, even though I have rejected the defendant's evidence on some matters, I cannot  
2 convict him because of that. The burden of proof is not on him. It is my duty, having  
3 considered his case, to go back and examine the prosecution's case to see whether on  
4 the evidence presented by the prosecution, having borne in mind the evidence  
5 presented by the defendant, including the expert evidence as well as that of his hitherto  
6 good character, I am satisfied to the extent that I am sure of his guilt. That I have done,  
7 and having done so, I find that the prosecution have failed to discharge the ultimate  
8 burden cast upon them by law to prove the case they have brought against the  
9 defendant.

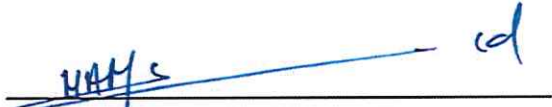
10 118. I have formed the view that it is highly probable and, perhaps, more probable than not  
11 that the defendant knew about the firearm and ammunition and had placed them at the  
12 place they were found. Unfortunately for the prosecution, that is not the standard of  
13 proof in this case. Despite what may be a strong suspicion of the defendant's  
14 complicity in the offences charged, I am duty bound by law to give him the benefit of  
15 any doubt I entertain. The court must be satisfied to the extent that it is sure and,  
16 regrettably, the evidence has not reached that standard.

17 119. Accordingly, the court has no other option but to return a verdict of not guilty on each  
18 count of the indictment.

19 120. The defendant is discharged on both counts.

20  
21 **Dated this the 11<sup>th</sup> December 2019**



22  
23   
24 **McDonald-Bishop J**  
**Acting Judge of the Grand Court**