

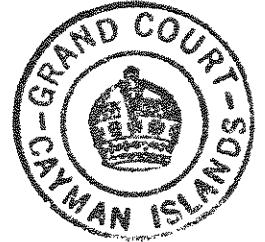
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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4

5 INDICTMENT NO: 0082/2013
6

7
8 THE QUEEN
9

10 V

11 JOSEPH ST. AUBRYN HILL
12
13



14
15 **Appearances:**

Ms. Nicole Petit for the Crown

16
17 **Mr. John Furniss for the Defendant**
18

19 **Before:**

The Hon. Mr. Justice Charles Quin

20 **Trial:**

7th to 9th May 2014

21 **No case submission:**

The afternoon of Friday 9th May 2014

22 **Ruling delivered:**

23 **20th May 2014** *as, from Monday the 12th May*
24 *to Friday the 16th May, the Court had to make*
25 *way for the continuation of another trial by*
26 *Jury which had previously been suspended for*
varying reasons.

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28 **RULING ON NO CASE SUBMISSION**
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30 1. At the close of the Crown case counsel on behalf the Defendant made a no-case-to-
31 answer submission.

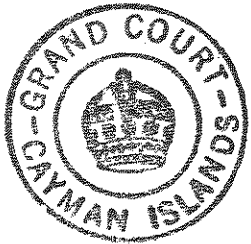
32 2. Mr. Furniss relies on the second limb of the English Court of Appeal decision in *R*
33 *v. Galbraith*¹ where Lord Lane stated:

¹ 73 Cr. App R. 124 or [1981] 1 WLR 1039

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- “1. If there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty – the Judge will stop the case.
- 2. The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
 - a. Where the Judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.
 - b. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’ reliability, or other matters which are, generally speaking within the province of the jury, and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the Defendant is guilty, then the Judge should allow the matter to be tried by the jury.”

3. In addition to the classic principles set out by Lord Lane in *Galbraith*, s.137 of the Criminal Procedure Code 2010 reads:



“When the evidence of the prosecution witnesses has been concluded the Court may before or after considering any statement or hearing any evidence of the accused, invite first the prosecution and thereafter (at its discretion) the Defence to address it upon the question of whether there is sufficient evidence before the Court to warrant conviction of the accused or any or more of several accused of the offence charged or any relevant offence and if either before or after hearing the address by the Defendants, it considers there is no such evidence, it shall discharge the accused concerned and enter a verdict of not guilty with respect to such accused.”

4. In this case, the Defendant is charged on the first count with Possession of an Unlicensed Firearm contrary to s.15(1) and s.15(5) of the Firearms Law (2008 Revision) in that he, on the 24th August 2013 at 106 Powell Smith Drive, West Bay, Grand Cayman together with another person had in his possession a firearm, namely a .38 pistol except under and in accordance with the terms and conditions of a Firearms Users’ Licence.

1 5. The second count is Wounding with Intent, contrary to s.203 of the Penal Code
2 (2013 Revision) in that the Defendant, on the 24th August 2013 at 106 Powell Smith
3 Drive, West Bay, Grand Cayman together with another person unlawfully wounded
4 Charles Michael Kenton Ebanks with intent to do him serious bodily harm.

5 6. The Crown is not alleging that the Defendant had physical custody care and control
6 of the firearm, but alleges that, on the day in question, the Defendant was in a joint
7 enterprise with another person, namely JR, who had physical custody and control of
8 the gun. Furthermore, in relation to the charge of Wounding with Intent, the Crown
9 accepts the Defendant did not fire the gun but, rather, it was the person with whom
10 he had the joint enterprise in committing the offence, who actually fired the gun.

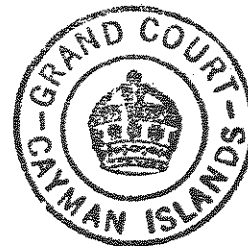
11 7. The Crown relies upon s.19 of the Penal Code which reads as follows:

12 *“When two or more persons form a common intention to prosecute an unlawful*
13 *purpose in conjunction with one another, and in the prosecution of such*
14 *purpose an offence is committed of such a nature that its commission was a*
15 *probable consequence of the prosecution of such purpose, each of them is*
16 *deemed to have committed the offence.”*

17

18 8. Mr. Furniss makes two submissions. First, Mr. Furniss states that there is no
19 evidence of joint enterprise, that is, there is no evidence before the Court to support
20 the intention of a joint enterprise. Second, Mr. Furniss states that there is no case
21 against the Defendant because he was operating under duress in relation to both
22 counts 1 and 2 and the only reason that the Defendant participated in any way was
23 because he was acting under duress.

24



1 9. It is common ground that the Defendant was an illegal immigrant who arrived on
2 Grand Cayman under suspicious circumstances and been staying with a “Mr.
3 Biggs” for approximately two days. It is accepted that the Defendant is a foreigner
4 and there is no record that he has ever resided in the Cayman Islands.

5 10. What is particularly unusual about this case is that the Crown’s case relies wholly
6 on purported admissions made by the Defendant in four (4) interviews with
7 Detective Sgt. Morrison and other detectives of the Royal Cayman Islands Police
8 Service (RCIPS). These four interviews have been exhibited as Exhibits 1a, 1b, 1c,
9 and 1d and are as follows:

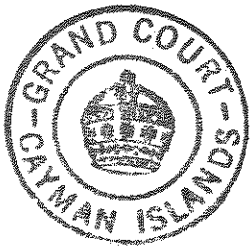


EXHIBIT	TYPE	DATES	TIME
1a	Interview	27 th August 2013	From 12:50 p.m. to 2:03 p.m.
1b	Interview	3 rd September 2013	From 6:12 p.m. to 6:44 p.m.
1c	Interview	3 rd September 2013	From 6:52 p.m. to 7:26 p.m.
1c	Interview continued	3 rd September 2013	From 7:49 p.m. to 8:18 p.m.
1d	Interview	5 th September 2013	From 10:03 a.m. to NO TIME.

10

11 11. In the first two interviews the Defendant is reasonably cooperative but does not
12 provide DS Morrison with any evidence regarding the shooting which took place on
13 the 24th August 2013. However, the Defendant admits that he is an illegal
14 immigrant and admits being involved with dealing with ganja.

15 12. It is in the third interview – Exhibit 1c which began at 6:52 p.m. on the 3rd
16 September 2013 – that the Defendant begins to give the police some relevant
17 information on what took place on the evening of the 24th August 2013 at 106
18 Powell Smith Drive West Bay. The evidence discloses that “another person”, who
19 is somebody called JR, arrives that evening. The Defendant describes JR but there
20 is no evidence that the Defendant had ever seen JR or met JR before that night. The

1 Defendant is told by Mr. Biggs to go with JR. JR arrives and tells the Defendant to
2 follow him. The Defendant says he is scared. The Defendant tells Sgt. Morrison
3 that he went with JR because he was afraid that he would be killed.

4 13. There is no evidence that the Defendant knew that JR had a gun until he realised
5 that JR had something inside his shirt and was told by JR that if he keeps his mouth
6 shut, he will live. The evidence unfolds in the interview that JR is the "shooter" and
7 JR tells the Defendant not to say anything or he will die. The Defendant said he was
8 told by JR,

9 *"You never see me and you keep your mouth shut or else you die on this island*
10 *and dash away."*

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12 14. The evidence the Defendant discloses to the police is that JR told him to go and
13 knock on the door of 106 Powell Smith Drive and the next thing the Defendant
14 recalled were gunshots.

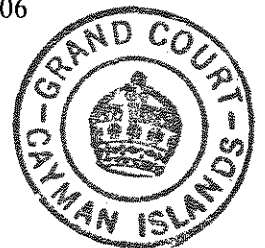
15 15. The gunman had directed the Defendant across the road, the Defendant knocked,
16 and the Defendant said that at one stage the gunman JR said,

17 *"If you don't get out of the way I will shoot you too."*

18 16. The Defendant left with JR whom he says just dropped him off on the side of a
19 road.

20 17. The Defendant said that prior to the incident he had been drinking alcohol and, as it
21 was very dark, he did not know where he was. However, after the shooting at 106
22 Powell Smith Drive, the Defendant recalls JR saying,

23 *"You keep your mouth shut or you die on this island."*



1 18. The Defendant describes JR as a young, slim, brown-skin Caymanian, and said that,
2 at the time, JR also put on a mask. The Defendant told Sgt. Morrison that JR was
3 the shooter on the night in question.

4 19. In his evidence the Defendant said he was scared for his life and he only did what
5 he did out of fear. It was put to the Defendant that he could have refused to go, the
6 Defendant replied:

7 "No. I was even quicker to go."

8 20. Asked: "Why" and the Defendant replied,

9 "Because it's my life. I see a man with a pistol so, you know that got me
10 scared."

11 21. The Defendant also said:

12 "The only reason I went across the road was because the man had the gun and
13 he said move before I shoot you in your head too"

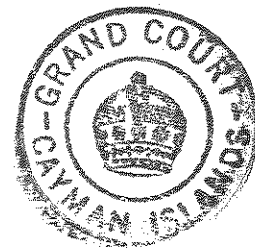
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15 The Defendant said he heard the shots immediately after JR said that.

16 22. This Court has to look at the questions of joint enterprise and duress separately, but
17 also, there is an inevitable link between the two.

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1 23. Before this Court can find that there is a joint enterprise between the Defendant and
2 JR, the prosecution must prove participation by the Defendant with a common
3 purpose. While participation with a common purpose implies an agreement to act
4 together (joint enterprise), formality is not necessarily required. The agreement can
5 be made tacitly and spontaneously and may be inferred from the Defendant's
6 actions.

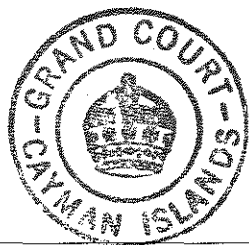
7 24. On the evidence before me I cannot find that the Defendant entered into any
8 agreement – either orally, or impliedly – with JR. Although no formality is
9 necessary to prove an agreement, there is no evidence that the Defendant even knew
10 or ever met JR or had any conversation with him about the gun and the use of the
11 gun by JR.

12 25. Furthermore, there is no evidence that the Defendant knew that JR had a gun until
13 JR showed it to him in his shirt. At that stage, the Defendant's evidence is that he
14 only acted on the basis of duress.

15 26. On the evidence before me, I find that there is an absence of evidence to show that
16 there was a common intention and agreement over the gun and the use of the gun.
17 The evidence discloses that JR always had the gun under his custody, care and
18 control and there is no evidence that the Defendant knew about the gun until he was
19 confronted by JR with the gun.

20 27. There is no evidence that the Defendant knew who JR was going to shoot, and, in
21 any event, the evidence is that the Defendant's participation was not voluntary.

22



1 28. In addition the Defendant has raised a sufficient case of duress and accordingly I
2 find that the burden of disproving duress to the criminal standard rests upon the
3 prosecution.

4 29. In the House of Lords decision of *DPP for NI v. Lynch*² Lord Wilberforce stated at
5 page 680 at letter F:

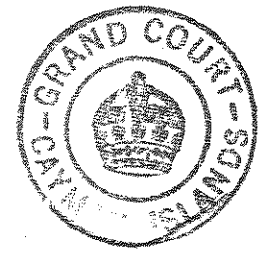
6 *“If the proposition is correct at all that duress prevents what would otherwise*
7 *constitute a crime for attracting criminal responsibility, then that should be*
8 *correct whatever the crime.”*

9
10 30. In the later House of Lords decision of *R v. Z*³ Lord Bingham sets out the
11 requirement of the defence of duress at paragraph 21 of his Judgment and I
12 summarise his guidelines as follows:

- 13 *i. The threat relied upon was a threat of serious injury or death;*
- 14 *ii. The harm threatened was directed at the defendant, a member of his immediate*
15 *family, someone close to the defendant, or someone for whose safety the*
16 *defendant reasonably regarded himself as responsible;*
- 17 *iii. The defendant genuinely and reasonably believed that the threat, but for his*
18 *compliance, would be carried out immediately or almost immediately;*
- 19 *iv. The threat, or the defendant’s reasonable belief in the threat, was a direct*
20 *cause of the defendant’s actions;*
- 21 *v. A reasonable person in the defendant’s situation would have been given to act*
22 *as the defendant did. A reasonable person is to be treated as sober, of ordinary*
23 *firmness, of the same age and gender, and otherwise sharing the defendant’s*
24 *relevant characteristics;*
- 25 *vi. There is no action to evade the effects of the threat which the Defendant would*
26 *reasonably have taken in the circumstances;*

27

² [1975] AC 653 House of Lords
³ [2005] 2A.C. 467 House of Lords



1 vii. *But if a person voluntarily becomes or remains associated with others engaged*
2 *in criminal activity in a situation where he knows or has reason to know that he*
3 *may the subject of compulsion by them or their associates, he cannot rely on*
4 *the defence of duress to excuse any criminal act which he is thereafter*
5 *compelled to commit by them.*

6
7 31. Based on the evidence given by the Defendant to Sgt. Morrison I find that, in the
8 circumstances that prevailed at 106 Powell Smith Drive on the 24th August 2013
9 there was a real threat of serious injury or death to the Defendant. The harm
10 threatened was directed at the Defendant and, from the evidence before this Court
11 the Defendant genuinely and reasonably believed that the threat, but for his
12 compliance, would be carried out immediately. The threat was the direct cause of
13 the Defendant's action to knock on the door and act as a watchman for JR pursuant
14 to JR's instructions.

15 32. I find that a reasonable person in the Defendant's situation would have been given
16 to act as the Defendant did.

17 33. I find there was no opportunity for the Defendant to evade the effects of the threat.
18 The man (JR) appeared from nowhere. There is no evidence that the Defendant
19 knew that the man known as JR was coming or that the man would have a gun.

20 34. Although the Defendant was in Cayman illegally there is no evidence to suggest
21 that his activities for the short time he was in Cayman would lead to him knowing
22 or foreseeing that he may become the subject of compulsion by JR. There is no
23 evidence to suggest that the Defendant should have known that JR would arrive
24 suddenly and force him to participate in the shooting at 106 Powell Smith Drive.



1 35. Accordingly, given the circumstances that acted on the Defendant's mind, I find
2 that he has raised a sufficient case of duress. I also find that on the evidence before
3 me, the Crown has been unable to disprove duress in this case.

4 36. Accordingly, I accede to the submission made by the Defence that the prosecution
5 evidence is such that, at its highest, a jury properly directly could not properly
6 convict upon it.

7 37. As the Defendant has elected trial by Judge Alone rather than trial by Judge and
8 Jury, I adopt the dicta of Lord Lowry in *R v Hassan & Ors*⁴ which is cited in *Chief*
9 *Constable v. Lo*⁵ :

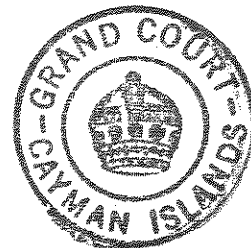
10 *"My own impression is therefore important which would not be relevant in a*
11 *trial held with a jury: if I am clear (as I am in this case) that in no*
12 *circumstances could I entertain the possibility of my being convinced beyond*
13 *reasonable doubt, or indeed to any accepted standard, by the evidence given*
14 *for the prosecution there can be no justification for allowing the trial to*
15 *continue."*

16
17 These words by Lord Lowry could be applied to this case.

18 38. To put it another way, as Lord Kerr said at paragraph 13 of *Lo*:

19 *"Where there is evidence against the accused, the only basis on which a judge*
20 *could stop the trial at the direction stage is where he had concluded that the*
21 *evidence was so discredited or so intrinsically weak that it could not properly*
22 *support a conviction. It is confined to those exceptional cases where the Judge*
23 *can say, as did Lord Lowry in **Hassan**, that there was no possibility of his being*
24 *convinced to the requisite standard by the evidence given for the prosecution."*

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⁴ [1973] NIJB
⁵ [2006] NICA 3

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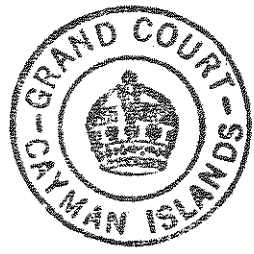
Lord Kerr went on to state at paragraph 14:

“The proper approach of a judge or a magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise the Judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the Judge should not ask himself the question, at the close of the prosecution case, “Do I have a reasonable doubt?” The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the Judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict.”

39. On the evidence before me I cannot find that there is any common intention between the Defendant and JR nor was there any agreement to possess a gun to wound Mr. Ebanks with intent.

40. Furthermore, I find that, at all material times the Defendant acted on duress and the Crown has been unable to disprove the duress that he has raised.

41. Accordingly, I find that the evidence is so intrinsically weak and so discredited that it could not conceivably support a guilty verdict. Therefore, pursuant to s.137 of the Penal Code I record that this Court considers that there is not sufficient evidence before this Court to warrant conviction of the accused. Therefore, I now discharge the accused, Joseph St. Aubryn Hill, and enter a verdict of not guilty with respect to the accused.



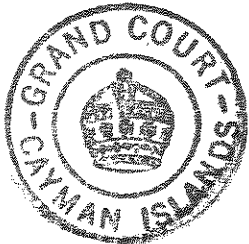
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Observations

42. Importantly, I note the following to the Defendant: Mr. Hill, stand up please, Mr. Hill, the evidence before this Court is that there is no official record of your presence in the Cayman Islands. Additionally, this Court finds that your arrival in the Cayman Islands was closely linked to drugs and drug offences – to which you have pleaded guilty in the Summary Court. Also based on the evidence before this Court, in fact, your own evidence, you live a life where you end up sleeping in the homes of persons you seem to know only by alias names or code names and some of the other persons whom you know or have met on these Islands you know only by a first name or by no name or names whatsoever. By your own evidence, you find yourself driving around in cars, in a state of drunken stupor, in a country which, by your own evidence, is strange to you, with persons whom you do not know or know only by code names. Mr. Hill, your stated reasons for coming to Cayman and your conduct, as an illegal immigrant, over the two days in question, are all extremely suspicious. You should consider yourself fortunate not to be spending a longer time in prison. Based on this, this Court herein recommends to the appropriate authorities that you be deported immediately from these islands.

43. I also add the following comments:

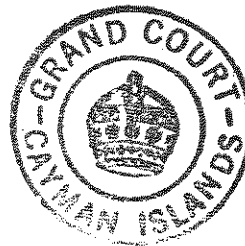
i. I accept that this Defendant, unlike so many other people in his position, did cooperate with the police and provide the officers with some significant information.



1 ii. It is my view that DS Morrison along with DC Bailey and DC Morgan
2 conducted a thorough investigation and, by their intense work, received some
3 very important intelligence about a gunman known as JR.

4 iii. In addition, Crown counsel, Ms. Petit, has presented the Crown's case in a very
5 professional manner but her prosecution of the Crown's case has been
6 frustrated by the unwillingness of potential Crown witnesses to come forward
7 and give evidence in these proceedings. The fact that these persons have not
8 come forward is deeply regrettable.

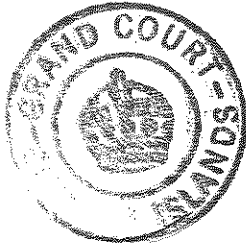
9 iv. However, I note that there are seven (7) civilian witnesses named on the back of
10 the Indictment – only two of whom have provided statements. This means that
11 there are at least five other witnesses who know something about the events on
12 the evening of the 24th August 2013 at 106 Powell Smith Drive, West Bay, and
13 about the identity of the man known as the shooter. The Court has been told
14 that the other witnesses are too frightened to come forward to give evidence
15 about this shooting and, consequently, the shooter is not apprehended.



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v. The Courts have some sympathy for witnesses who have been intimidated but people must have the courage to come forward with information about criminal activity. Somebody knows about the shooter and about the gun he used and it is absolutely vital that those knowing anything about this incident come forward and provide the police with this vital information to enable the police to apprehend the person or persons responsible for a very serious crime. The entire community must support the police to rid this country of the menace and danger of illegal firearms. Illegal firearms are a persistent problem, which, if continued unabated, will bring further fear and harm to the lives of law-abiding citizens who only wish for the return to peace for Grand Cayman.

Dated this the 20th May 2014



A handwritten signature in black ink, appearing to be "Charles Quin", written over a horizontal line.

Honourable Mr. Justice Charles Quin
Judge of the Grand Court