

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

4 INDICTMENT NO: 0070/2010
5

6
7 THE QUEEN
8

9 V
10

11 DEVON JERMAINE ANGLIN
12
13



14 **Appearances:**

15 Mr. Andrew Radcliffe Q.C. with Ms. Elisabeth
16 Lees, Snr. Crown Counsel for the Crown

17 Mr. David Fisher Q.C. and Ms. Lucy Organ
18 instructed by Samson & McGrath for the
19 Defendant
20

21 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

22 **Trial dates:**

23 23rd - 27th and 30th November; 4th, 7th - 10th
24 December 2015

25 **VERDICT JUDGMENT**
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INDICTMENT

1. The Indictment for this Re-trial is dated the 25th November 2014 and sets out three counts as follows:

i. MURDER: Contrary to s.181 of the Penal Code (2007 Revision). The particulars of the offence are that the Defendant, on (Monday) the 15th day of February 2010, at Hell Gas Station, West Bay, Grand Cayman, murdered Jeremiah Andy Barnes;

ii. ATTEMPTED MURDER: Contrary to s.194 of the Penal Code (2007 Revision). The particulars of the offence are that the Defendant, on the 15th day of February 2010, at Hell Gas Station, West Bay, Grand Cayman, attempted to murder Andy Barnes; and

iii. POSSESSION OF AN UNLICENCED FIREARM: Contrary to s.15(1) and (5) of the Firearms Law 2008 Revision. The particulars of the offence are that the Defendant, on the 15th day of February 2010, at Hell Gas Station, West Bay, Grand Cayman, had in his possession a firearm except under and in accordance with the terms of a firearm user's licence.

2. Section 181 of the Penal Code reads:

“181. A person who, of malice aforethought express[ed] or implied, causes the death of another person by an unlawful act or omission commits the offence of murder.”



1 3. Section 184 of the Penal Code sets out the law on malice aforethought and reads:

2 “184. *Malice aforethought, which may be express or implied from the conduct of*
3 *a person charged, shall be deemed to be established by evidence proving*
4 *either of the following circumstances -*

5 (a) *an intention to cause the death of or to do grievous bodily*
6 *harm to any person, whether such person is the person*
7 *actually killed or not; or*

8 (b) *knowledge that the act or omission causing death will*
9 *probably cause the death of or grievous bodily harm to*
10 *some person, whether or not such person is the person*
11 *actually killed, although such knowledge is accompanied*
12 *by indifference whether death or grievous bodily harm is*
13 *caused or not, or by a wish that it may not be caused.”*
14



15 4. It is common ground that Jeremiah Barnes was not the intended victim of the attack
16 but the principle of “transferred malice” applies where a person kills someone other
17 than the person he intended to attack. In this case it is common ground that the gunman
18 intended to kill or cause grievous bodily harm to Andy Barnes, and, in pulling the
19 trigger, shot and murdered Jeremiah Barnes.

20 5. No issue arises in this case which could provide the gunman with a defence to the
21 charge of murder or any partial defence which could reduce the offence to that of
22 manslaughter.

23 6. The three counts on the Indictment relate to the same incident on the 15th February
24 2010 at the Hell Gas Station, West Bay and the essential issue in this case is: Who
25 murdered Jeremiah Barnes at Hell Gas Station, West Bay, on the 15th February 2010.

26 7. Section 149 of the Police Law 2010 which addresses the effect of the Accused’s
27 silence at trial and the issue of whether or not this Court can draw an adverse inference
28 reads:
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“149. (6) This section applies -

- (a) in relation to proceedings on indictment for an offence, only if the person charged with the offence is arraigned on or after the commencement of this section; and
- (b)”

8. The Police Law was gazetted and came into force on the 22nd November 2010 – some nine months after the offence. The Crown is uncertain as to when the Defendant was arraigned. Therefore, this uncertainty, coupled with the fact that the shooting incident took place prior to the passage of the Police Law, the Crown concedes that no adverse inference can be drawn from the Defendant’s failure to give evidence.



DIRECTIONS

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9. As with a jury, I do not need to decide each and every point raised. I need only address such matters as will enable me to say whether the charges on this Indictment have been proved. I must do that by having regard to the whole of the evidence and by forming my judgment about the witnesses and about which evidence is reliable and which is not.

10. I will take into account the speeches I have heard from leading counsel but I am not bound to accept them. I must concentrate on the evidence I have heard from the witness box, the agreed statements, the exhibits, the view of the locus during the trial and the formal admissions agreed between the prosecution and the defence.

11. I must remind myself that I must not speculate about what evidence there might have been or allow myself to be drawn into speculation. In addition, I have ignored any media coverage of this case.

12. Like the jury, I must return a true verdict according to the evidence and in doing so I must cast aside any feelings of sympathy for the Barnes family in relation to the loss of their young son or any feelings of sympathy or prejudice whatsoever.

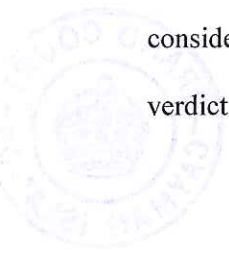
13. I record that I have been fortunate to have leading counsel Mr. Andrew Radcliffe Q.C. along with Senior Crown counsel Ms. Elisabeth Lees, on behalf of the DPP, and leading counsel Mr. David Fisher Q.C. instructed by Ms. Lucy Organ on behalf of the Defendant. All counsel have clearly demonstrated that they understand their respective roles. Mr. Radcliffe's role was to present the case for the Prosecution.



1 14. What is often forgotten but is worth emphasizing at this stage, is that there are well
2 established rules that make it clear that it is not the duty of prosecuting Counsel to
3 obtain a conviction by all means at his command. Prosecution counsel must lay before
4 me fairly and impartially, all of the facts that comprise the case for the prosecution.
5 Counsel for the Defendant must present the case for the Defendant by testing the
6 Crown's witnesses under cross examination and by arguing the case on behalf of the
7 Defendant. The duty of Defence counsel, within the limits of practice and propriety, is
8 to do the best for his client, the Defendant, in accordance with the Defendant's
9 instructions.

10 15. I record my thanks to all four counsel for their hard work in preparing the various
11 skeleton arguments and authorities on the issues that arose during the trial along with
12 their closing addresses.

13 16. I remind myself that the burden of proof is always on the prosecution. The prosecution
14 must prove that the Defendant is guilty. The Defendant does not have to prove his
15 innocence. In a criminal trial in the Cayman Islands the burden of proving the guilt of
16 the Defendant is on the prosecution. This is a cardinal principle under our law. But
17 how does the prosecution succeed in proving that the Defendant is guilty? The
18 Prosecution must prove the case against the Defendant beyond all reasonable doubt,
19 that is, the prosecution must prove the case to make me sure that the Defendant is
20 guilty of the charges on this Indictment. Nothing less than that will do. If after
21 considering all the evidence I am sure that the Defendant is guilty, I must return a
22 verdict of guilty. If I am not sure, my verdict must be not guilty.



1 **THE LAW**

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3 17. The Defendant elected to be tried by a Judge Alone, rather than a Judge and Jury,
4 pursuant to s.129 of the Criminal Procedure Code of the Cayman Islands.

5
6 18. Our Court of Appeal first dealt with the duties of a Judge in Judge Alone trials in its
7 judgment in *K. Richards v. R*¹ when Justice Rowe stated:

8
9 *“When a trial judge sitting alone has advised himself to the applicable principles*
10 *of law, and given himself any necessary warning, he must indicate clearly in his*
11 *judgment his reasons for acting as he did, in order to demonstrate that he has*
12 *acted with the requisite degree of caution in mind and has therefore heeded his*
13 *own warning. No specific form of words is necessary for this demonstration, what*
14 *is necessary is that the Judge’s mind upon the matter should be clearly revealed.”*

15
16 19. In *R v. Dave Kennedy Whittaker*², the Court of Appeal gave some guidelines regarding
17 the duties of a Judge in Judge Alone trials. In the Judgment of Mottley J.A. he adopted
18 the Judgment of the former Lord Chief Justice of Northern Ireland Lord Lowry in *R v.*
19 *Thompson*³ in which he stated at page 83:

20 *“While on the subject I might say a word on the duty of the judge when giving*
21 *judgment in a trial under the 1973 Act. He has no jury to charge and therefore will*
22 *not err if he does not state every legal proposition and review every fact and*
23 *argument on either side. His duty is not as in a jury trial to instruct laymen as to*
24 *every relevant aspect of the law or to give a full and balanced picture of the facts*
25 *for decision by others. His task is to reach conclusions and to give reasons to*
26 *support his view and, preferably, to notice any difficult or unusual points of law in*
27 *order that if there is an Appeal, it may be seen how his view of the law informed*
28 *his approach to the facts.”*



¹ 2001 CILR 496

² Cr. App. R. No. 14 of 2006

³ [1977] NI 74

1 20. Our Court of Appeal in *Randy Martin v. R*⁴ delivered their reasons for dismissing the
2 Appeal on the 7th December 2010. Mottley J.A. again adopting *R v. Thompson*⁵ also
3 adopted *R v. Thain*⁶ where Lowry LCJ said at page 478:

4 *“Where the trial is conducted and the factual conclusions are reached by the same*
5 *person, one need not expect every step in the reasoning to be spelled out expressly,*
6 *nor is the reasoning carried out in sealed compartments with no inter-*
7 *communication or overlapping, even if the need to arrange a judgment in a logical*
8 *order may give that impression. It can safely be inferred that, when deliberating on*
9 *a question of fact with many aspects, even more certainly than when tackling a*
10 *series of connected legal points, a judge who is himself the tribunal of fact will (a)*
11 *recognize the issues and (b) view in its entirety a case where one issue is*
12 *interwoven with another.”*

13
14 21. Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J.A. said in *Randy*
15 *Martin v. R*, at paragraph 31:

16 *“From these cases the following guidance may be discerned. A judge sitting in a*
17 *criminal case without a jury, in rendering his decision and giving his reasons for*
18 *so concluding, is not required to review every fact and to detail each argument on*
19 *which the prosecution and defence rely as if he were summing up to a jury. The*
20 *judge must set out the conclusion reached and make clear the reasons for arriving*
21 *at that conclusion. He is required to have regard to any difficult or unusual points*
22 *of law and to show how those points of law have in anyway impacted the*
23 *conclusion that he has reached.”*



4 Crim. App. R. 2 of 2010

5 *supra*

6 [1985] NI 457



THE CASE FOR THE PROSECUTION

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3 The Crown's case rests upon the eye witness identification by two separate eye
4 witnesses Andy Barnes and Dorlisa Barnes of the gunman. Both Andy Barnes and his
5 wife Dorlisa Barnes separately and positively identified the gunman as Devon Anglin –
6 a man each knew well – as the gunman at the scene. The Crown maintains that their
7 identifications are emphatic, and spontaneous as was demonstrated by Andy Barnes
8 when he went to West Bay police station and shouted that Devon Anglin had shot his
9 son.

9 23. The CCTV shows that the gunman first appeared on the CCTV screen at 19.59.48 and
10 that he was last seen at 19.59.56 which is a period of 8 seconds.

11 24. The Crown concedes that it might appear that the opportunity for Andy Barnes and
12 Dorlisa Barnes to observe the gunman would end at the moment the car passed the
13 gunman at 19.59.52 – thereby leaving the opportunity for Andy Barnes and Dorlisa
14 Barnes to observe the gunman – by the times shown on the CCTV clock – at 19.59.52
15 which is no more than 5 seconds, because, after that, the gunman was behind the
16 Chevy Malibu. However the Crown submits that the opportunity to observe the
17 gunman would begin before 19.59.48 as the gunman would be in their view before the
18 CCTV picks up the gunman.

19 25. The Crown concedes that although Dorlisa Barnes had a slightly wider-angled view of
20 the corner around which the gunman came, she did not see the whole incident as she
21 ducked before the first shot was fired. The Crown submits that Dorlisa Barnes'
22 opportunity to view and identify the gunman took place before the gunman appeared
23 on the CCTV at 19.59.48.

1 26. On any view, the Crown concedes that the whole incident lasted seconds rather than
2 any lengthier period of time and it must have been a terrifying experience for Andy
3 Barnes and Dorlisa Barnes.

4 27. The Crown submits that the Gas Station was well lit and therefore visibility was
5 excellent. There are 9 lights in the roof of the structure above the pumps (over the
6 forecourt) and 6 of these lights cover the relevant area where the shooting took place.

7 28. The Crown submits that both Andy and Dorlisa Barnes had an unobstructed view of
8 the gunman through the windshield of the Chevy Malibu.

9 29. The Crown submits that the distance between the gunman and Andy and Dorlisa
10 Barnes was a matter of feet. At one stage the gunman would have been a yard from
11 Andy Barnes. The Crown suggests that whatever the state of the gunman's mask, the
12 witnesses Andy and Dorlisa Barnes both say they saw Devon Anglin's eyes.

13 30. The Crown relies on the fact that this is not a case of purported identification of a
14 stranger but it is a case of recognition by Andy and Dorlisa Barnes who both knew
15 Devon Anglin very well.

16 31. The Crown's case is that there are no fewer than eight separate pieces of evidence
17 which, to varying degrees, are capable of providing the support to the correctness of
18 the eye witness identification given by Andy and Dorlisa Barnes. In addition, the
19 Crown submits that the eye witness evidence of Andy Barnes supports the eye witness
20 evidence of Dorlisa Barnes and vice versa.

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CASE FOR THE DEFENCE

- 32. The Defendant has pleaded Not Guilty to all three counts and says he was not the gunman.

- 33. The Defence submits that the Court has to answer two questions:
 - i. Is the Court sure that the purported recognition of Devon Anglin by Andy Barnes is correct – taking into account such supporting evidence that there is?;

 - ii. Is the Court sure that the purported recognition of Devon Anglin by Dorlisa Barnes is correct – taking into account such supporting evidence that there is?

- 34. The Defence submits that the case is demonstrably rife with assumptions held by both Andy and Dorlisa Barnes about the identity of the gunman based on a fleeting glance with inadequate supporting evidence.





EVIDENCE

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35. It is common ground that on Monday the 15th February 2010 at almost exactly 8 p.m. 4-year old Jeremiah Barnes was murdered by a gunman at Hell Gas Station West Bay with a firearm while in the backseat of his mother's left-hand drive Chevy Malibu vehicle.

36. How young Jeremiah Barnes was murdered while in the backseat of the Chevy Malibu vehicle is similarly not in dispute as the totality of the evidence relating to this crime – which is graphically caught by the CCTV footage from Hell Gas Station – makes clear.

37. The gunman, dressed in a green hoodie with the distinctive motifs and with something covering his face, appeared on the forecourt of the Hell Gas Station and fired at least two shots at the white Chevy Malibu registration number 134 598.

38. The path of the fatal shot had been identified in the photographs of the Chevy Malibu. The single bullet passed through the open driver's window of the left-hand drive Chevy Malibu sedan, missed Andy Barnes who was in the driver's seat, and went through the driver's headrest to strike Jeremiah Barnes in the head.

39. The bullet entered through the side of Jeremiah Barnes' right eye, traversed his brain and exited through the rear of the skull. Jeremiah Barnes either died immediately upon bullet's impact or within a very short while after being shot in the head.

40. A second bullet struck the right front passenger door, just below the wing mirror, and was subsequently found resting in the inside of the door. It is common ground that this bullet could only have struck the Chevy Malibu as it turned right out of the Gas Station or when it was already on Hell Road, because this was the only time during the whole incident that the right side was exposed to the gunman.

1 *ANDY BARNES*

2 *Andy Barnes - In Chief*

3 41. The Court now reviews some of the evidence of the eye witnesses to the shooting,
4 namely Andy Barnes, Dorlisa Barnes and Carlos Ebanks.

5 42. In his evidence in chief Andy Barnes told the Court that at around 7p.m. on Monday
6 the 15th February 2010, after Dorlisa Barnes had come home from work, he and
7 Dorlisa were at his mother's house in Miss Daisy Lane in West Bay. Before leaving
8 that house they had ordered pizza from Domino's Pizza – located in Birch Tree Hill by
9 the Ed Bush football field. However, as they were extremely low on petrol they
10 decided to go to Hell Gas Station.

11 43. Andy Barnes told the Court that he had not told anybody that he was going to Hell Gas
12 Station.

13 44. Andy Barnes drove the left-hand drive Chevy Malibu. Dorlisa Barnes was in the right
14 front passenger seat. The deceased Jeremiah Barnes was seated behind the driver, his
15 father, Andy Barnes. Jamal Barnes, brother of Jeremiah Barnes, was seated behind his
16 mother in the right rear seat.

17 45. Andy Barnes told the Court that he drove the car in through the designated entrance to
18 the Hell Gas Station and he pulled up beside pump #1 – which can be seen clearly in
19 Album #1 photograph #5 – which is the pump on the inside of the forecourt which is
20 next to the retail section of the Gas Station.



1 46. Andy Barnes recalls getting out of the car and putting petrol into the Chevy Malibu. He
2 recalls paying for the petrol and that the Gas Station owner, Mr. Aston Parsons, came
3 and took the money from him. After that, Andy Barnes said he went into the retail
4 section of the Gas Station to try to get some credit for his telephone. Dorlisa Barnes
5 and the children stayed in the car.

6 47. At some point Andy Barnes was aware of seeing a grey Honda Accord going along
7 Hell Road at high speed – going towards Ms. Daisy Lane. He said he knew that it was
8 DJ's car. He said he was alerted to it by the speed at which it was travelling, and, also,
9 he had seen the car earlier that day.

10 48. Andy Barnes told the Court that he could not see who the driver of the Honda was.
11 However, when asked by leading counsel for the prosecution, he said he could see the
12 forms/figures of two persons – the driver and another person and he saw that the
13 person in the Honda had a hood over his/her head. He said he recalled the car had a tint
14 and there were two figures in the front and the driver was the one without the hood.

15 49. Andy. Barnes recalls two other cars in the forecourt – one at pump 3 in front of the
16 Chevy he drove, and another to the side.

17 50. Andy Barnes recalls getting back into the white Chevy Malibu and that's when he says
18 he saw Devon Anglin come from the corner of the building by the ice machine – which
19 is featured in the photographs in Album #1.

20 51. Andy Barnes said Devon Anglin came round the corner of the Gas Station building.
21 Andy Barnes said he had a clear view and he recalls that the nine lights over the
22 forecourt were all on. Andy Barnes told the Court that there was nothing obstructing
23 his eyesight or his line of vision to Devon Anglin.

1 52. Andy Barnes said he saw Devon Anglin through the windscreen of the car and there
2 was nothing obstructing his view.

3 53. Andy Barnes described the gunman. Andy Barnes said the gunman had a bandana tied
4 across his head in different ways – sideways and “*up top*”. He said the hood was open
5 and the bandana was “*tied up*”. He said the gunman must have had two bandanas tied
6 on his face – “*one up top and one down bottom.*” Andy Barnes also said that the hood
7 was “*thrown up*”. When asked how much of the gunman’s face could he see Andy
8 Barnes said “*from his mouth-part up*”. Andy Barnes said:

9 “*I could see his face. I could see his eyes. Because I know Devon from his bad eye*
10 *his right eye*”

11 He said again that he could see the gunman “*from the mouth up*” – and he
12 demonstrated from just below the bottom lip.

13 54. Andy Barnes said that after the gunman finished pulling up the bandana it was just
14 above his nose. Andy Barnes said that he could clearly see the gunman’s eyes.

15 55. Andy Barnes said he recognized the gunman and he noticed that he had a handgun and
16 that he was moving towards him. He said he noticed the bad eye which he knew Devon
17 Anglin had from when he was younger. He described the eye as having “*a different*
18 *look from how I would look. He has a squint.*” He said he saw the shooter’s face from
19 the bottom lip upwards. Andy Barnes said he saw the shooter’s eyes because he was
20 looking at him.

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1 56. Andy Barnes said when he saw the gunman he tried to start the Chevy Malibu. He said
2 the car actually started and then shut off because they had actually run the car so low
3 on petrol. Andy Barnes said he was not able to start immediately but he remembered
4 starting the car and at the same time he tried to get his kids down by pushing them
5 down. Andy Barnes said he turned his back and then he started the car. Andy Barnes
6 said while the gunman was firing he was pushing his kids down in the backseat.

7 57. Andy Barnes knew there was a car in front of him at PUMP 3 so he had to manoeuvre
8 his way out. Andy Barnes recalled that the gunman began firing and the more the
9 gunman fired, the closer he got to the car. Andy Barnes said:

10 *"The more he fired after me is the more he was walking towards the car firing and*
11 *firing and I drove right across him."*

12 Andy Barnes described the gunman as firing and holding the gun with two hands.
13 Andy Barnes said he heard:

14 *"a lot of shots went off, more than five shots."* He said *"I know it was more than*
15 *five shots went off."*

16 Andy Barnes added that while the gunman was firing he was looking at the gunman
17 and they were in close proximity to each other. Andy Barnes said his wife Dorlisa was
18 screaming.

19 58. Andy Barnes drove the car past the gunman and he drove out the exit and he turned
20 right toward Reverend Blackman Road and toward West Bay Police Station.

21 Andy Barnes said that while he was driving out of the gas station the shooting did not
22 stop and he heard the shot that hit the Chevy Malibu he was driving. He said:



1 67. Andy Barnes said that on the night in question after the shooting – the 15th February
2 2010 – he was under considerable stress. Though he agreed that he told the police he
3 was fit to make a statement he accepted in Court that he could not recognize the people
4 in the grey Honda, whilst in his statement he said he could see Devon Anglin in the
5 grey Honda.

6 68. Andy Barnes told the Court he could not identify the people in the Honda. Andy
7 Barnes conceded that in his statement he had said that the person in the Hoodie in the
8 Honda was Devon Anglin and that he saw him looking towards him and he saw his
9 face when I was inside my car. In his statement he said:

10 *“I could see his face because of the way they were driving in, and the lights under*
11 *the Gas Station were bright and even though the car had a tint it was not that*
12 *dark.”*

13 69. However Andy Barnes accepted in Court that he could not recognize the man in the car
14 and it was only after he (Devon) was “out of the car” that he recognized him. Andy
15 Barnes accepted that in a second Statement dated the 17th February 2010, he said that
16 he saw two people in the car but he could not say who they were.

17 70. Andy Barnes also accepted that in his evidence under oath to the Magistrate on the 21st
18 September 2010 – he said not only had he the opportunity to recognize Devon Anglin
19 but he said he did recognize him and he said he identified him while he (Devon
20 Anglin) was actually in the car.

21 71. Andy Barnes before this Court accepted that he could not see the people in the car
22 because they were too far away and, in addition, there was a tint on the windows of the
23 Grey Honda. Andy Barnes told this Court in response to defence counsel:





1 *"I know what I seen. I seen the figure, I know the car. I seen the person came in*
2 *here at that point and I seen the figure of the person with a hood on. I made the*
3 *assumption that it was him, yes, but to when that point he came out of the car I*
4 *seen it was him."*

5 72. Andy Barnes continued:

6 *"There was no mistake and it was no fleeting glance. That was who I saw, it was*
7 *simple."*

8 73. Andy Barnes accepted that although he told the police that he could see Devon Anglin
9 in the Honda car he accepts that he could not see him. Asked why he said he could
10 identify people in the car when he couldn't he said that he had no answer to that
11 question and added that he would just keep that to himself. Asked by the Court why he
12 told the police that he could see the Defendant in the car and whether that was an
13 assumption, Andy Barnes said he could not remember but *"something like that."*

14 74. It was shown to Andy Barnes that on the 15th February 2010 in his statement to the
15 police he had said that Devon Anglin was wearing a black tam on his head: Andy
16 Barnes said:

17 *"It was something like that. If I made a mistake with his colours that was a*
18 *mistake."*

19 75. It was put to Andy Barnes that there was no reference in his statement dated the 15th
20 February 2010 to the police that there was any type of bandana or any mask on his
21 (Devon Anglin's face). Asked why he had failed to mention a mask or a bandana Andy
22 Barnes said, *"I can't remember"* But Andy Barnes said he had thought he had said it in
23 one of his statements that he (Devon) had a bandana over his face.

1 76. Now before this Court Andy Barnes accepted that the bandana came right up to the
2 bridge of the shooter's nose and covered the lower part of the shooter's face. Asked
3 why he did not mention that in his first statement he said,

4 *"Things were popping up in my head."*

5 77. Andy Barnes said he thought he said it another statement and there a lot of things
6 going on his head at that time which caused *"a lot of confusion and a lot of chaos."*

7 78. Andy Barnes was shown his second statement of the 17th of February 2010 in which he
8 described the gunman as:

9 *"5' 10", slim built, black long jeans pants, black long-sleeved jacket with a red*
10 *stripe on the sleeve and a tam – other than a hoodie on his head there was*
11 *something like a red and black bandana tied up over his mouth."*

12 79. Asked why he did not mention the fact of the pushing up of the bandana in his 2nd
13 witness statement, Andy Barnes said:

14 *"a lot of things were running through my head and a lot of things still trying to*
15 *come back but I may have made a mistake, we are all human, but I did not make a*
16 *mistake about who I seen."*

17 Andy Barnes admitted that he might not have recalled that the gunman was moving the
18 bandana up his face.

19 80. Andy Barnes said that the gunman had a bandana around the lower part of his face and
20 he pushed it up onto the bridge of his nose so that the lower part of his face was
21 covered.



1 81. Andy Barnes told the Court that the gunman had two bandanas – one on top and one
2 on the bottom. Andy Barnes said that aside from the two bandanas he could see the
3 defendant’s eyes. Andy Barnes was asked why was this the first time – either in a
4 statement, deposition or in evidence – that he had ever suggested two bandanas. Andy.
5 Barnes said “I don’t know.” He said he mentioned a lot of things to the police.

6 82. Andy Barnes accepted that the events of the 15th February 2010 were very unexpected,
7 very sudden and happened very quickly. Andy Barnes said it was very frightening for
8 him and his family. Andy Barnes said he did not duck but he tried to secure his kids
9 and “*get the hell out of there.*”

10 Andy Barnes said he was “*moving*” because he was not going to sit still and allow
11 himself to be shot. And at the same time he was trying to push his children down so
12 that they would be out of the way. It was put to Andy Barnes that had he not moved he
13 would have been shot. Andy Barnes said “*I don’t agree with nothing.*” Andy Barnes
14 accepted that he had manoeuvred himself in the car to avoid being shot. Andy Barnes
15 was shown photo #20 which showed the path of the bullet through the window on to
16 the headrest. It was suggested to Andy Barnes that he therefore only got a glimpse of
17 the gunman. Andy Barnes said:

18 “*I did not get a glimpse. Like I said before I seen who shot after me, who killed my*
19 *son it was no fleeting glance.*”



1 83. Andy Barnes accepted that he knows the difference between a revolver and an
2 automatic. When asked what type of gun it was he said he could not remember other
3 than it was a big handgun. Andy Barnes was shown his previous statement when he
4 told the police that the gun was an automatic. Andy Barnes said he could not recall.
5 Andy Barnes now in his evidence to this court said it was a revolver. It was suggested
6 to Andy Barnes that he changed his evidence from the gun being an automatic to a
7 revolver because of what he saw on the CCTV footage and Andy Barnes said no.

8 84. Andy Barnes was asked about his description of the gunman wearing a black jeans
9 pants and black jacket with a red stripe on the sleeve: He accepted that that was in his
10 statement of the 15th February 2010. He also accepted that in his second statement of
11 the 17th February 2010 he also described the gunman as wearing black long jeans pants
12 and black long-sleeved jacket with red stripes on the sleeve – which is a very similar to
13 his first statement of the 15th February 2010. Again in his deposition to the Magistrate
14 in September 2010 he described the gunman as wearing long black pants and a dark
15 shirt. He was in full black. Finally, in the previous trial Andy Barnes had told the Court
16 that it was a black hoodie Jacket and long black pants and red stripe down the sleeves
17 of the jacket. Andy. Barnes accepted that that was his description of the gunman at that
18 time.

19 85. Andy Barnes said that he had seen Devon Anglin earlier on the 15th February 2010 and
20 those were the clothes he was wearing. Andy Barnes accepted that he may have made a
21 mistake about the colours of the clothes but he did not make a mistake about who shot
22 his son. Andy Barnes was reminded that in his previous witness statements, his
23 depositions and in his evidence before another Court that he described the gunman as
24 wearing black.



1 86. It was pointed out to Andy Barnes that the CCTV footage showed that it was clear that
2 the gunman was wearing a green jacket with large and obvious motifs or patterns on
3 the sleeves, and, instead of black jeans they were clearly blue jeans, and therefore the
4 gunman was certainly not wearing a black jacket with red stripes or black pants.

5 It was put to Andy Barnes that he had put the clothing that he had seen Devon Anglin
6 wearing earlier in the day on the gunman because he was assuming or presuming the
7 gunman was Devon Anglin. Andy Barnes denied this.

8 87. It was put to Andy Barnes that he told the police that the gunman was wearing boxers
9 with chicks on them because when the gunman held out his hand the shirt lifted up and
10 that's what he told the Magistrate.

11 88. Andy Barnes also said that the gunman had flown round the corner in such haste, and it
12 was Devon Anglin – *“he could not be man enough to wait until I got out of the car to*
13 *shoot me.”*

14 Andy Barnes said he told the officers at West Bay Police Station that Devon Anglin
15 shot his baby and that he had no doubt about that.

16 *Andy Barnes - Re-Examination*

17 89. In re-examination Andy Barnes said he could clearly see the shooter's eyes and he
18 could see he had a bad eye and he could see the skin colour around his eyes.



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DORLISA BARNES

Dorlisa Barnes – In Chief

90. Mrs. Barnes said she was sitting in the front passenger seat and the boys were in the back. Jamal was behind her and Jeremiah was behind Andy (Barnes).

91. She said she possibly recalls seeing a car speeding across the forecourt.

92. She recalls that when Andy came back into the car Devon came round the corner and opened fire and that's when she lost her 4-year old baby.

93. She said she saw the gunman with handgun.

94. Asked if she could see the gunman's face or was it masked she said *"I saw his face. He was using his left hand to bring something up and he had the gun in his right hand. He had a hoodie sweater on."*

95. Dorlisa Barnes said the hood was over his head. She said she got a clear view of the gunman. She said there was nothing obstructing her view of the gunman, and she said recognized him immediately as Devon Anglin. She said,

"When he came round the corner he looked straight at me and I looked straight at him, and I screamed, I might have screamed his name, I am not sure."

Dorlisa Barnes said Devon Anglin has "a cockeye" and she had seen the gunman's full face and the feature of his cockeye.

96. Dorlisa Barnes said:



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“After I screamed I basically continued to scream and I ducked. I closed my eyes and ducked beneath the dashboard.”

Dorlisa Barnes said she ducked below the dashboard before the shooting. She said she continued to hear shots.

97. She said Andy was basically trying to get his family to safety. “We were just trying to get out of the line of fire and get out of the gas station. It was all over in a short period of time.”

98. Dorlisa Barnes said she had known Devon Anglin for over twenty-two years. They had gone to primary school together.



Dorlisa Barnes – Cross Examination

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99. Dorlisa Barnes said as far as she can remember Devon always had the “wonky cockeye.”

100. Dorlisa Barnes was asked about her statement of the 15th February 2010 in which she told the police that she has seen Devon Anglin get out of the grey Honda from the front passenger side. Dorlisa Barnes said she does not recall saying that.

101. Dorlisa Barnes was then shown her second statement of the 19th February 2010 in which she told the police that she was in the car and she saw Devon Anglin walking from the ice machine.

“He was walking fast. He had on a hoodie jacket and a gun in his right hand.”

102. However in this statement she said she could not see who was in the Honda car she could only see a figure.

103. In her statement she had said after she saw the man holding the gun she closed her eyes and hoped and prayed for the best and ducked beneath the dashboard and that’s when she heard the gunshots.

104. In her statement Dorlisa Barnes said,

“I closed my eyes after seeing Devon raising the gun.”

105. Dorlisa Barnes accepted that the gunman first had the hood up when she first saw him.



1 106. Dorlisa Barnes was asked about her deposition when she said she saw the gunman's
2 full face and, that again, in her evidence before the Court she said she saw his full face
3 and she was familiar with the appearance of his entire face, and that during the entire
4 incident she was able to see his entire face.

5 107. Ms. Barnes said in her previous evidence said there was nothing to obstruct her from
6 seeing his entire face and that he was not doing anything to conceal or hide his face.
7 She said

8 *"he had nothing on his face and I could see his face clearly."*

9 108. When it was pointed out to her that at the previous trial she was asked: Was the face
10 concealed by a mask or a handkerchief? She said she would disagree.

11 109. Asked why had she not told the police that she saw the shooter pulling up a mask and
12 that his gun was in the other hand while doing this: She responded: *"Well something is
13 wrong. We all know something is wrong with the system."*

14 110. Ms. Barnes could not explain why her evidence is different, she said,

15 *"I know what I said I know nothing has changed. The dynamics of this is that he
16 killed my baby and at the end of the day anything else does not matter to me."*

17 Taken through her deposition she said,

18 *"What the CCTV camera caught and what any other person caught is different
19 from what I saw. I am not going to tell you that I have seen something over his face
20 when I did not. I know Devon. It don't take me long to say who he is. I could look
21 at him for one second and know it's him."*



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Dorlisa Barnes Re-Examination

111. Dorlisa Barnes said she ducked down before the shooting and before bandana was pulled up. She said after seeing his bare face, seeing that he had a gun in his hand, I only knew that something bad was going to happen. She said:

“I saw Devon first I am the one who alerted him [Andy].”

112. She said the hood was to the top of his head – to his forehead – *“but I could see from his chin to his head. I had a clear view of his face.”*



CARLOS EBANKS

1

2 113. Carlos Ebanks said he has been working at the Hell Gas Station for about 5 years. He
3 felt he had a good recollection of what took place on that day – the 15th February 2010.
4 He said that at about 8 p.m. he was serving a customer at pump 3 and he saw Andy
5 Barnes drive into the station via the entrance and park by pump 1. He said he saw
6 Andy get out of the car to operate the pump to put petrol in his vehicle. Carlos Ebanks
7 then recalled Andy going into the gas station shop. He was not in there for long – just a
8 couple of minutes. He recalls Andy coming and he recalls saying “*What you saying*
9 *Andy*” and he replied “*Cool man.*”



10 114. Carlos Ebanks recalls finishing business with the customer at Pump 3 who wanted
11 \$5.00 petrol and he had been given a \$10.00 bill.

12 115. Carlos Ebanks said that as he was finishing at that pump he saw a person walking from
13 the right hand side of the Gas Station. He said he was coming from the general
14 direction of the Devil’s gift shop on the right hand side of the building.

15 116. Carlos Ebanks said he saw the person wearing what appeared to be a Halloween mask
16 of some kind. Carlos Ebanks said the person was wearing a hoodie-type jacket which
17 he described as light green in colour and dark trousers. As the person got closer he saw
18 the man go towards pump 1 and he saw him pull a gun out from his side and start
19 firing at Andy and the car.

20 117. Carlos Ebanks said he kept looking at the shooter. He said he was concerned for
21 himself but he wanted to keep track of what was happening in front of him. Carlos
22 Ebanks said it all happened very quickly. He said the gunman was shooting when the
23 car Andy was driving moved away very fast.

1 118. He said the gunman went after the car and fired the gun and it was no less than 2 shots
2 and perhaps one when the Chevy Malibu was on Hell Road. He said things transpired
3 very rapidly. He said he could be off by one shot but to the best of his knowledge it
4 was 2 shots.

5 119. Carlos Ebanks confirmed that that evening he was never asked or asked by anyone to
6 view the CCTV footage. However, there came a time when the CCTV footage was
7 viewed and he saw a section of the CCTV for about 3 to 4 seconds.

8 120. Asked whether the CCTV footage affected his statement to the police he said
9 “absolutely not.”

10 121. Asked when did he first see the gunman: Carlos Ebanks said the gunman was probably
11 25 feet away. He was on the right hand side of the building and he was walking
12 towards the corner of the building near to where we see the ice machine.

13 122. Carlos Ebanks said he could not see whether the person walking was male or female.
14 Hs said:

15 *“From what I could see it seemed to be a male person.”*

16 He said: *“It looked more like a male person but I am not a physicist in any respect, you*
17 *know, to be sure.”*

18 123. Asked if he was able to see any aspect of the shooter’s face Carlos Ebanks said
19 *“Not at all, Sir – maybe partially at the side but not enough for me to define who*
20 *the shooter would have been.”*



21

1 124. Carlos Ebanks described the mask as a kind of bluish green in colour. He said it was a
2 Halloween Mask and he could not make out any features of the person's face at all.
3 Asked if he could see any feature of the front of the person's face he said no. He said
4 "the side" was not fully covered by the mask but the mask prohibited him from seeing
5 the face of the shooter.

6 125. Carlos Ebanks said the shooter was initially walking towards him and he continued to
7 walk past the corner where the ice machine is and go to pump 1. He said the hood (of
8 the hoodie) was up and that was also obscuring the person's head. He said he did not
9 recall anything happening to the hood.



10 126. Carlos Ebanks said he just thought someone was coming round with a prank just to
11 scare somebody with a Halloween mask. He said it did not dawn on him that it would
12 turn out to be such a horrible incident.

13 127. Carlos Ebanks said when the shooter got to the door of the retail section that was when
14 the first shot was fired. Carlos Ebanks could not recall in which hand the gun was
15 being held and to the best of his recollection the hood stayed up.

16 128. Carlos Ebanks recalled a car (the Honda) moving very quickly away after the shooting
17 – it was a car that had not bought gas.

18 129. Carlos Ebanks was shown the CCTV footage. He accepted that towards the end of the
19 incident the hood may have come off but he said what he sees on the CCTV footage is
20 the Halloween mask that he saw on the evening and as far as his recollection was
21 concerned it covered the entire face. It covered from the bottom up to the hairline or
22 from the hairline down to below the chin. Mr. Ebanks said it was the mask that he
23 remembers most. He said the gun must have come from the waistline.

1 *THE CROWN'S SUBMISSIONS ON EVIDENCE CAPABLE OF SUPPORTING THE EYE*

2 *WITNESS IDENTIFICATIONS OF ANDY BARNES AND DORLISA BARNES*

3 130. The Crown's case is that there are no fewer than eight separate pieces of evidence
4 which, to varying degrees, are capable of providing such support.

5
6 *(i) Animus and motive*

7
8 131. The previous close friendship between Andy Barnes and the Defendant had soured and
9 there was bad blood between them. The Crown submits that this was not simply the
10 consequence of the long standing hostilities between young men from the Birch Tree
11 Hill area of West Bay and those from Logwoods but rather there was a very specific
12 motive for the Defendant to want to cause Andy Barnes, manifestly the target of this
13 attack, serious harm.

14 132. On the evidence adduced, Devon Anglin had murdered Andy Barnes' best friend,
15 Carlo Webster. So far from this having led to a mistaken identification by an angry
16 Andy Barnes, assuming that his attacker was the Defendant, the Crown submits that
17 this provides the clear motive for the Defendant to try kill Andy Barnes; knowing the
18 sort of man Andy Barnes was, the Defendant feared that he would come looking for
19 him to take revenge. Accordingly, the Crown contends that rather than wait, the
20 Defendant decided to strike first and remove the perceived threat to himself once and
21 for all by murdering him.



1 *(ii) The Grey Honda, Registration # 130 733*

2
3 133. The Crown contends that the clear and overwhelming inference is that the gunman
4 arrived and left the scene in a grey Honda Accord of recent manufacture. Andy and
5 Dorlisa Barnes' identification of the Grey Honda apart, all other Honda Accord
6 vehicles of a similar model, class and colour on the Island – apart from DJ's car,
7 Registration Number 130 733 – can be excluded. The video image expert, Grant
8 Fredericks, compared the vehicle seen leaving the Gas Station at 20:00:30 on the
9 CCTV with the reconstruction carried out using Darrell Evans' car and could find no
10 distinctions between the two images and only similarities.

11
12 134. The Crown submits that, as the car was not stolen that night, the gunman must have
13 some direct or indirect connection to DJ to have been in the vehicle. The Crown
14 submits that Beto Anglin regularly drove DJ's car and the Defendant is Beto's cousin.

15
16 *(iii) The Defendant's presence in the Grey Honda*

17
18 135. The Crown's case is that shortly before, or, shortly after the shooting, the Defendant
19 was seen by Anisha Montemayor and Eugenia Myles, shirtless, in the Grey Honda, on
20 Bankers Road. The Crown submits that the fact that Devon Anglin was shirtless is
21 consistent with the Crown's submission that he disposed of his top clothing following
22 the shooting. The Crown submits that the defendant going shirtless at that time cannot
23 be passed off as some form of fashion statement as the evidence is that he was about to
24 presently to borrow a polo shirt from his cousin, Beto.



1 (iv) GSR

2 136. Following his arrest, the Defendant's clothes were seized, as was DJ's grey Honda.
3 Both were tested for the presence of GSR and moderate characteristic quantities of it,
4 as categorised by the expert evidence (i.e. 4-12 particles) were found each time.
5

6 137. The Crown's expert, Dr Christopher Moynahan, made the following findings:

7
8 i. Devon Anglin's clothes, seized on 15th February 2010 between 1030pm and
9 10.36pm:

10 (a) EM/1 (belt) - 1 particle;

11 (b) EM/3 (jeans) - 3 particles (one on the front, one inside the
12 waistband, one inside the front left pocket);

13 (c) EM/4 (left shoe) 1 particle;

14 (d) EM/5 (right shoe) 1 particle

15 The Crown relies on the fact that the only item of the Defendant's outer clothing on
16 which no GSR was found was the polo shirt which, if he were the gunman, he could
17 not have been wearing at the time of the shooting because it was not borrowed from
18 Beto until after that time.

19 :
20 ii. Grey Honda

21 (a) LT/24: 2 particles on the inside of the driver's front door and 2 particles on
22 the driver's seat cushion;

23 (b) LT/27: 1 particle from the front passenger dash area
24
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1 Further, when the issue of possible innocent contamination of the Defendant's clothing
2 by, for example, the arresting USG officers is considered, the defence hypothesis that
3 the GSR may have been transferred onto the clothing by one or more of them has to be
4 viewed in the context of the fact that the polo shirt alone was not contaminated

5
6
7 **(v) Showering at 42, Marl Crest Road**

8
9 138. Within a short period of time following the shooting, the evidence of Maria Anglin is
10 that the Defendant was showering at Beto's address and borrowing a shirt to wear,
11 even though he lived close nearby. Accordingly, the Crown states that his actions here
12 are consistent with a deliberate attempt to remove GSR particles from his body.

13
14 **(vi) Defendant's drunkenness**

15
16 139. At 9.20pm, when arrested, the evidence from the RCIPS officers is that the Defendant
17 was so drunk that he was staggering and stumbling. The gunman fired at least two
18 shots at the Malibu when it was on the forecourt and possibly three. Although the
19 CCTV shows this as occurring from a close distance, the gunman's aim was either so
20 hopeless that only one shot even struck the car (let alone its target), or his aim was
21 impaired, for example by intoxication.

22
23 **(vii) Left handedness**

24
25 140. When first seen on CCTV footage, the gunman is holding the gun in his left hand.
26 When holding it in both hands, the uncontested expert evidence of Grant Fredericks
27 was that he was controlling the gun with his left hand. The Crown submits that the
28 evidence suggests that the Defendant is left handed, signing the seals of the tapes of his
29 interviews on two occasions with his left hand.

(viii) *Photographic video comparison*

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3 141. The final area of the evidence capable of supporting the correctness of the
4 identifications is the expert evidence of Grant Fredericks, who analysed and compared
5 the CCTV of the crime scene both with CCTV taken earlier in the day showing the
6 Defendant at the Court House and with items of clothing seized from him.

7
8 142. Mr. Fredericks' conclusions as to the fact that the gunman initially held the gun in his
9 left hand and thereafter controlled it in two hands in a manner consistent with a left
10 handed shooter, plus his comparison of the car leaving the Gas Station at 20:00:30 with
11 the reconstruction using DJ's car a few days later, when only similarities and no
12 differences in appearance were found, have already been dealt with. As to the
13 remainder of his findings, taken individually they might be capable of being of modest
14 support only. However, to use Mr. Fredericks' terminology, it is *'the ensemble'* of
15 factors which the Crown suggests results in compelling support being found for the
16 identifications. Taken in turn:

- 17
18 i. *The mask*: It is the Crown's case that contrary to the evidence of Carlos Ebanks
19 who described the gunman as wearing a full face Halloween mask as might seem
20 to appear from the CCTV footage, in fact, this is the result of distortion caused by
21 the MPEG compression. The Crown contends that the mask or the face covering or
22 bandana was confined to the area from the gunman's chin to the bridge of his nose.
23 The Crown suggest that the gunman's eyes would be free from any covering and
24 both Andy and Dorlisa Barnes noticed the distinctive misalignment of his eyes in
25 identifying the Defendant as the man who shot and killed their son.



1 ii. Hairline: From the still photographs taken of the Defendant after his arrest, it can
2 be seen that he has short dark hair with a tuft on the upper side of his left forehead,
3 near the hairline. On the CCTV at the Gas Station, after the gunman's hood falls
4 back from his head, a dark feature can be seen at the top of his forehead near the
5 hairline. Mr. Fredericks' opinion is that that the Defendant's hair is consistent with
6 the gunman's. The Defendant's hairline and the gunman's are indistinguishable
7 from each other.

8
9 iii. Jeans: Mr. Fredericks' evidence is that when the Court House CCTV showing the
10 Defendant on the morning of 15th February 2010 is compared to the CCTV of the
11 gunman, both figures are wearing jeans. Crease patterns on both are located in the
12 same position and appear to be the same dimensions and run in the same direction.
13 Both pairs of jeans are too long for their wearers and the cuff areas at the bottom
14 both bunch. Mr Fredericks' opinion is that the gunman's jeans cannot be
15 eliminated from being those worn by Devon Anglin. There are no points of
16 distinction in the colour of the jeans, the cuff or bottom, the crease patterns, crease
17 length, shape or direction.

18
19 iv. Shoes: Mr. Fredericks maintains that the shoes seized from the Defendant are of
20 the same colour and class as the gunman's and both have a small reflective feature
21 or object on their top. The Crown contends that the shoes seized from Devon
22 Anglin are indistinguishable from those he was wearing that morning at Court and
23 both are indistinguishable from those worn by the gunman.



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v. Undergarment: As the gunman held the gun in both hands in front of himself at 19:59:54 on the CCTV timer, his hooded top rode up and an under garment with a design involving vertical black and white lines can be seen. Photographed in his cell at George Town Police Station, Devon Anglin is wearing boxer shorts with a similar pattern that cannot be distinguished from the gunman's undergarment. Mr Fredericks considers that the gunman's garment cannot be eliminated from being Devon Anglin's boxer shorts and he is of the opinion that they are indistinguishable.





1 *DEFENCE CASE*

2 *(i) Animus and motive*

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4 143. The Defence accept that Andy Barnes has several criminal convictions and has
5 admitted being a drug dealer. The defence submits that the main relevance of this is
6 that it demonstrates that there may be many others in the Cayman Islands who had a
7 motive to kill Andy Barnes other than the Defendant.

8
9 144. The Defence submits that it is widely known and accepted by the Prosecution that
10 there are ongoing hostilities between the gangs in the Logwoods area of West Bay and
11 the Birch Tree Hill area of West Bay. It has been established that Andy Barnes moved
12 from the Birch Tree Hill area of West Bay to the Logwoods area and thereafter began
13 to associate himself with people who lived in the Logwoods area.

14
15 145. Andy Barnes accepted that he was a drug dealer and there is evidence that he was at
16 risk of serious harm and therefore the Defence contends that in light of the information
17 in the possession of the police, Andy Barnes has a large number of enemies who would
18 wish him harm including but not limited to those who are allied with the Birch Tree
19 Hill gang. Accordingly, the Defence says that Andy Barnes was a danger to others, but,
20 more importantly, he was at risk of attack and assault from others.

21
22
23 146. The Defence asks the Court to be very cautious because of what they describe as a
24 deeply held expectation that the Defendant would harm Andy Barnes and the
25 assumption that if Andy Barnes were to be harmed the defendant would be the one
26 who would be responsible.

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147. This became heightened after the shooting and murder of Carlo Webster. Carlo Webster was Andy Barnes' best friend and the evidence demonstrated that Andy Barnes believed that the Defendant was responsible and also Dorlisa Barnes believed that Devon Anglin was responsible for the murder of Carlo Webster.

148. Also there is "the incident at Batabano Plaza" and the evidence that Andy Barnes is adamant that he had told PC Barnes and other officers who were there at the time that the defendant had been armed with a firearm. The Defence highlights the fact that Constable Barnes said that that was not so and we have a conflict of the evidence.

149. However, the defence submits that Andy Barnes had an expectation of harm and an assumption that if harmed it would be Devon Anglin who harmed him.

150. The Defence submits that the murder of Carlo Webster, the incident at Batabano Plaza and the conflict back and forth between the two men and the two gangs led Andy Barnes to believe that he was going to be killed by Devon Anglin and that Devon Anglin was seeking to harm him or Devon Anglin is the most likely person to be the gunman on the 15th February 2010 at the Hell Gas Station.



1 157. In relation to the evidence of Ms. Montemayor, the Defence showed to her her
2 statements in which she said that they went for a walk around 7:30 p.m. on Banker's
3 Road and that they had been walking for about 15 minutes when they saw the
4 Defendant.

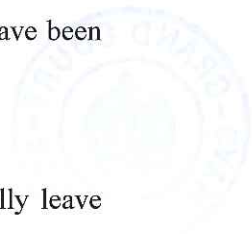
5
6 158. The Defence point to the fact that in cross examination Ms. Montemayor had no
7 recollection of what time they went for a walk. She thought it might have been dark but
8 she was not a hundred percent sure and she said that she and Eugenia walked for about
9 3 minutes before they came across the Defendant. She agreed that it could have been
10 around 7:30 p.m. when they set off.

11
12 159. Briana McTyson said Anisha Montemayor and Eugenia Myles would usually leave
13 her house and go for a walk at around 7:30 p.m. and that it was during the time that she
14 watched Ghost Whisperers that the girls went out.

15
16 160. Ms. McTyson does recall going outside and seeing the girls sitting on the rock and she
17 said that it was around 7:30 p.m. they went for the walk because they knew they had to
18 be back at around 8 p.m. She said she thought it was around 8:10 p.m. that she saw
19 them on the rock because that was the time on her Blackberry.

20
21 161. Overall the defence submits that the evidence points to the girls seeing Devon Anglin
22 sometime before the shooting. And, further, the fact that he was topless was not
23 remarkable for a young man driving around in a vehicle.

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(iv) GSR

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4 162. The Defence submits that there is an extensive risk of contamination which the court
5 heard about from the evidence of the Police officers cross examined by Ms. Organ and
6 in the Admissions which justify the use of the expression “an extensive risk of
7 contamination.” This is the submission of the defence.

8
9 163. Defence rely upon the evidence that there is an armory at the George Town Police
10 Station and there was the possibility of GSR contamination of the Grey Honda. In
11 addition, the bags containing the Defendant’s Polo shirt and jeans – EM1 and EM2 –
12 were tested for GSR and GSR was found to be present on the Exhibit bags after they
13 had been “wiped” showing a background presence of GSR.

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15 164. The defence submits, on this point, that, because of the evidence from the arresting
16 officers who were USG (Uniformed Support Group/Armed) officers, and because of
17 the clear evidence of the GSR within the Custody area at George Town Police Station,
18 there **was** the risk of innocence GSR contamination to the Defendant’s clothing.

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20 165. The Defence relies upon the fact that the Crown expert and the Defence expert agree
21 that *“overall, there is not a sufficient concentration of GSR to indicate how it might*
22 *have been deposited, and there is a significant chance that some or all of the GSR on*
23 *Devon Anglin’s clothing and in the Grey Honda is not from the shooting on the 15th*
24 *February 2010” – and the defence emphasizes the words “significant chance.”*



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(v) Defendant Showering at 42 Marl Crest Road

166. Maria Anglin said it was not unusual for Devon Anglin to visit her and Beto Anglin and it was not unusual for Devon Anglin to shower at their home. She said it happened regularly.-The Defence submits that this is not an extraordinary coincidence as it was something Devon Anglin did on many occasions.

(vi) The Defendant's Drunkenness

167. The Defence concedes that the Defendant was drunk at the time of his arrest.

168. The defence reject the contention by the Prosecution that because the gunman missed his target from a close range he most have been totally drunk, and, because the defendant was drunk when he was arrested, that supports the correctness of the eyewitness identification.

169. First of all, the defence counsel submits that it would be wrong to say that a sober gunman never misses his target. Secondly, there is no independent evidence to indicate that the gunman was drunk at the time of the shooting. And, thirdly, and of considerable importance, the gunman's aim on at least two occasions was good. The evidence suggests that Andy Barnes would have been shot in the head or the neck had he not moved to his right and further, one of the bullets also hit the door of the car when it had already driven out of the gas station and had reached out onto the road.

170. Accordingly the defence submits that it would be dangerous for the court to treat the drunken state of Devon Anglin at the time of his arrest as supporting evidence of the eye witness account.



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(vii) Left handedness of the gunman

171. The Defence highlight's Mr. Fredrick's evidence in which he stated that the gunman is controlling the weapon in a manner consistent with a left-handed shooter and not consistent with a right-handed shooter and that, importantly, he has not formed an opinion as to whether the shooter is actually left-handed or right handed – only that the operation of the gun by the suspect is left-handed.

172. The defence submits that this is an important distinction and one cannot come to the conclusion without strong corroborative evidence that the gunman was left handed.

173. In the Admissions, it was raised that in the 2nd interview Devon Anglin was asked if he was left-handed and he stated "both". DCI Kennett stated that he signed his witness statement with his left hand, but the defendant said he can write with both hands. Again, the defence submits that it would be unwise and dangerous for the Court to rely upon this evidence as giving support to the eye witness identification.



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(viii) Photographic Video Comparison

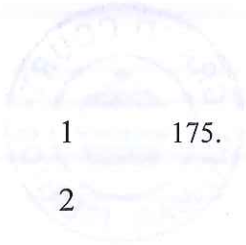
Mask: The Defence highlights the fact that Mr. Fredericks stated that there is some support that the mask extends beyond the bottom of the face. Mr. Fredericks said that he could see that the mask came around the nose down to the chin and there was some support that it might go to the back of the head but not above the nose.

Mr. Fredericks said that the frontal part of the mask appeared to be bluish-greenish in colour, but it was difficult to determine the colour of the sides and the rear if the mask extended there. Mr. Fredericks agreed that the colour of the side and the rear may be different in colour from the front of the mask.

Mr. Fredericks said he used the word bandana in his evidence to describe what was on the CCTV but that is not to say that it was a bandana. Mr. Fredericks said he cannot be absolutely precise about the size and the extent of the mask. Mr. Fredericks was unable to provide any evidence in relation to the height of the gunman or the length of the arm which held the gun.

174. Hairline: Defence submits that Mr. Fredericks' opinions and conclusions should be examined with great care and it is the defence view that Mr. Fredericks' evidence in relation to the hairline is confined to him forming the opinion that the defendant's hair is consistent with the shooter's hair. The defence submits that this carries little weight – bearing in mind the low resolution i.e. the poor quality of the CCTV image from the Gas Station.





1 175. Jeans: The Defence relies upon Mr. Fredericks' view when he stated that he formed
2 the opinion that the shooter's jeans cannot be eliminated as the jeans worn by the
3 defendant (earlier that day at the courthouse.) In other words – they might be or they
4 might not be the same jeans.

5 176. Shoes: Again the defence highlights the fact that the expert, Mr. Fredericks, formed the
6 view that the suspect's shoes cannot be eliminated as being the Defendant's shoes so,
7 again, he stated that they might be or they might not be the same shoes.

8 177. Undergarment: Again the defence relies upon the view of the expert, Mr. Fredericks,
9 that he formed the opinion that the shooter's belt and boxer shorts are similar to the
10 Defendant's and cannot be eliminated as being the Defendant's boxer shorts, but again
11 he agreed that they might be and they might not be the same boxer shorts.

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1 ANALYSIS

2 VISUAL IDENTIFICATION AND THE TURNBULL GUIDELINES

3 178. In 1977 the then Lord Chief Justice of England and Wales, Lord Widgery, in *R v.*
4 *Turnbull*⁷ set out the classic guidelines on eye witness identification evidence which
5 have been followed by all the Courts of the Cayman Islands and in particular in the
6 recent decision of the Court of Appeal in *R v. Devon Anglin*⁸. Lord Widgery set out
7 the guidelines which may be found on page 228 at letter B as follows:

8 *“First, whenever the case against an accused depends wholly or substantially on*
9 *the correctness of one or more identifications of the accused which the defence*
10 *alleges to be mistaken, the judge should warn the jury of the special need for*
11 *caution before convicting the accused in reliance on the correctness of the*
12 *identification or identifications. In addition he should instruct them as to the*
13 *reason for the need for such a warning and should make some reference to the*
14 *possibility that a mistaken witness can be a convincing one and that a number of*
15 *such witnesses can all be mistaken. Provided this is done in clear terms the judge*
16 *need not use any particular form of words.*

17 *Secondly, the judge should direct the jury to examine closely the circumstances in*
18 *which the identification by each witness came to be made. How long did the*
19 *witness have the accused under observation? At what distance? In what light? Was*
20 *the observation impeded in any way, as for example by passing traffic or a press of*
21 *people? Had the witness ever seen the accused before? How often? If only*
22 *occasionally, had he any special reason for remembering the accused? How long*
23 *elapsed between the original observation and the subsequent identification to the*
24 *police? Was there any material discrepancy between the description of the accused*
25 *given to the police by the witness when first seen by them and his actual*
26 *appearance? If in any case, whether it is being dealt with summarily or on*
27 *indictment, the prosecution have reason to believe that there is such a material*
28 *discrepancy they should supply the accused or his legal advisers with particulars*
29 *of the description the police were first given...*

30 *Finally, he should remind the jury of any specific weaknesses which had appeared*
31 *in the identification evidence.*

32 *Recognition may be more reliable than identification of a stranger; but even when*
33 *the witness is purporting to recognise someone whom he knows, the jury should be*
34 *reminded that mistakes in recognition of close relatives and friends are sometimes*
35 *made.*

36 *All these matters go to the quality of the identification evidence. If the quality is*
37 *good and remains good at the close of the accused's case, the danger of a mistaken*
38 *identification is lessened; but the poorer the quality, the greater the danger.*

⁷ [1977] Q.B. 224 at 228-231

⁸ dated the 6th November 2014 CICA Criminal Appeal #17, 2011

1 *In our judgment when the quality is good, as for example when the identification is*
2 *made after a long period of observation, or in satisfactory conditions by a relative,*
3 *a neighbour, a close friend, a workmate and the like, the jury can safely be left to*
4 *assess the value of the identifying evidence even though there is no other evidence*
5 *to support it: provided always, however, that an adequate warning has been given*
6 *about the special need for caution.*

7 At page 229, letter H Lord Widgery continued:

8 *When, in the judgment of the trial judge, the quality of the identifying evidence is*
9 *poor, as for example when it depends solely on a fleeting glance or on a longer*
10 *observation made in difficult conditions, the situation is very different. The judge*
11 *should then withdraw the case from the jury and direct an acquittal unless there is*
12 *other evidence which goes to support the correctness of the identification. This*
13 *may be corroboration in the sense lawyers use that word; but it need not be so if*
14 *its effect is to make the jury sure that there has been no mistaken identification: for*
15 *example, X sees the accused snatch a woman's handbag; he gets only a fleeting*
16 *glance of the thief's face as he runs off but he does see him entering a nearby*
17 *house. Later he picks out the accused on an identity parade. If there was no more*
18 *evidence than this, the poor quality of the identification would require the judge to*
19 *withdraw the case from the jury; but this would not be so if there was evidence that*
20 *the house into which the accused was alleged by X to have run was his father's...*

21 And at page 230, letter E Lord Widgery stated:

22 *The trial judge should identify to the jury the evidence which he adjudges is*
23 *capable of supporting the evidence of identification. If there is any evidence or*
24 *circumstances which the jury might think was supporting when it did not have this*
25 *quality, the judge should say so...*

26 And at letter G Lord Widgery continued:

27 *Care should be taken by the judge when directing the jury about the support for an*
28 *identification which may be derived from the fact that they have rejected an alibi.*
29 *False alibis may be put forward for many reasons: an accused, for example, who*
30 *has only his own truthful evidence to rely on may stupidly fabricate an alibi and*
31 *get lying witnesses to support it out of fear that his own evidence will not be*
32 *enough."*



1 179. For the sake of completeness I remind myself that the Court of Appeal at
2 paragraph 42 in *DPP v. Devon Anglin* added:

3 *“It is submitted on behalf of the Director that the following (amongst other)*
4 *propositions can be derived from those observations:*

5 *“1. That, where the case for the prosecution depends wholly or*
6 *substantially on the correctness of one or more visual (or audio)*
7 *identifications of the accused -which are said by the accused to be*
8 *mistaken – there is a special need for caution before convicting on*
9 *the basis of that evidence.*

10 *2. That, in such a case, it is necessary to examine closely the*
11 *circumstances in which each identification came to be made; in*
12 *order to form a view as to the quality of the identification evidence.*

13 *3. That, in cases where the quality of the identification evidence is*
14 *good, it may be safe to convict on that evidence alone; that is to say,*
15 *notwithstanding the absence of any supporting evidence.*

16 *4. That, in cases where the quality of the identification evidence is*
17 *poor, it will not be safe to convict on that evidence alone: unless*
18 *there is other evidence which is capable of supporting the*
19 *correctness of the identification, the accused is entitled to be*
20 *acquitted.”*

21

22 180. The case against the Defendant depends wholly on the eye witness identification of the
23 Defendant as the gunman by Andy Barnes and his wife Dorlisa Barnes.

24 181. I must remind myself of the special need for caution and carefully review the
25 weaknesses and dangers of identification evidence in general and as related to
26 the circumstances of this case.

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Analysis -The Prosecution

182. The Crown accepts that it was a horrendous and terrifying experience for both Andy and Dorlisa Barnes. However, the Crown highlights that the gunman came close to the Chevy Malibu in which Andy Barnes and Dorlisa Barnes were when the gunman opened fire in the forecourt of Hell Gas Station. The Crown's case is that because the lighting was good and there was nothing between the Chevy windscreen and the gunman to obscure the view of the gunman from Andy and Dorlisa Barnes as he came around the corner towards Pump 1, the identification is trustworthy.

183. The Crown submits that this is a case of recognition as both Andy and Dorlisa Barnes had known the Defendant all their lives. Both witnesses are certain that the gunman was Devon Anglin. Both say that the gunman had a misaligned eye; and it is accepted by the Defence that the gunman has a misaligned eye.



Analysis – The Defence

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184. The Defence accepts that Andy and Dorlisa Barnes knew Devon Anglin and they say that the gunman was Devon Anglin. Andy and Dorlisa Barnes both say that they saw Devon Anglin’s face and that he held the gun that shot and killed Jeremiah Barnes.

185. The Defence has highlighted 15 specific and separate weaknesses. The Defence submits that there may be a degree of overlap and some of the 15 weaknesses in the eye witness identification evidence presented by the Crown may have a greater significance than others:

- i. Character of Andy Barnes attracts violence;
- ii. Andy Barnes’ deeply held expectation that Devon Anglin wanted to kill him or cause him grievous bodily harm and, therefore, the assumption was that the gunman was Devon Anglin;
- iii. Andy Barnes’ identifying Devon Anglin in the Grey Honda as it entered the Gas Station;
- iv. The suddenness of the shooting event;
- v. The speed of the shooting event;
- vi. The clothes worn by the gunman according to Andy Barnes’ description;
- vii. Andy Barnes’ description of the gunman’s boxer shorts;
- viii. The colour of the handgun used by the gunman;
- ix. In which hand did the gunman hold the gun;



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- x. Was the gun and automatic or a revolver;
- xi. The evidence of Carlos Ebanks;
- xii. The eye witness evidence of Andy Barnes that the gunman wore two bandanas;
- xiii. Dorlisa Barnes' initial belief that she had got out of the Chevy Malibu car at the Gas Station;
- xiv. Dorlisa Barnes' initial evidence that the car at Pump #3 as dark coloured;
- xv. Dorlisa Barnes now saying that she saw Devon Anglin pushing something up to cover his face.

The Defence submits that these fifteen specific weaknesses are real flaws which undermine the prosecution case so much that the defendant could not be found guilty on the evidence presented to this Court.



REVIEW OF ID EVIDENCE

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186. I will now carefully examine the eye witness identification evidence:

- i. Where the case depends wholly or substantially on eye witness identification I must warn myself of the special need for caution before I can convict the Defendant of the three counts on the Indictment.
- ii. I must examine closely the circumstances of the eye witness identification made by Andy Barnes of the gunman, and, separately, the eye witness identification made by Dorlisa Barnes of the gunman.
- iii. I must remind myself of any specific weaknesses in the eye witness identification made, first by Andy Barnes, and, secondly, by Dorlisa Barnes.
- iv. I must remind myself that a mistaken witness can be a convincing witness, and that a number of witnesses can be mistaken.
- v. I must remind myself that mistaken identification can occur even of close relatives and friends.
- vi. I must remind myself as I would if a jury were present, of any specific weaknesses in the eye witness identification evidence of Andy and Dorlisa Barnes.
- vii. I must look at all the evidence presented by the Crown but, in particular, I must consider the evidence capable of supporting the correctness of the eye witness identification evidence of Andy and Dorlisa Barnes.



1 187. Andy Barnes' seeing Devon Anglin in the Grey Honda:

2 i. In his first statement taken on the night of the murder Andy Barnes said he saw
3 Devon Anglin in the Honda Accord. This was later found to be incorrect.

4 ii. In Andy Barnes' first statement there was no mention of anything covering the
5 gunman's face.

6 iii. In a second statement Andy Barnes said he could not see who was in the Grey
7 Honda.

8 iv. Additionally, Andy Barnes said he saw Devon Anglin with a red and black
9 bandana over his mouth.

10 v. At the PI hearing Andy Barnes told the Court that he saw Devon Anglin's face in
11 the car. Andy Barnes said he looked at him for 10 or 15 seconds and he could see
12 his face while he sat in the Honda. This evidence proved to be incorrect.

13 vi. At the trial before the Grand Court Andy Barnes said he could not recognize the
14 men in the Grey Honda.



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188. Andy Barnes's description of the gunman's clothing:

- i. In his statements and at the PI Andy Barnes consistently said that the gunman was wearing black pants and a black Hoodie with red stripes on the sleeves.
- ii. When one viewed the CCTV footage Andy Barnes' eye witness account of the gunman's clothes was found to be incorrect and plainly wrong. The CCTV footage clearly reveals that the gunman wore blue jeans and a green Hoodie with distinctive motifs. The gunman was not wearing a black Hoodie or a black jacket with red stripes on the sleeves.
- iii. What is interesting is that Andy Barnes' evidence was that earlier that day he had seen Devon Anglin wearing all black – black pants and black Hoodie with red stripes on the sleeves.
- iv. The defence therefore submits with some force that Andy Barnes merely clothed the gunman in the clothes he had seen Devon Anglin wearing earlier in the day on the 15th February 2010 in order to implicate him.



1 189. Andy Barnes said he saw Devon Anglin's face:

2 i. Andy Barnes said he saw Devon Anglin's face although he had two bandanas –
3 one above his eyes and one below his eyes.

4 ii. Andy Barnes never mentioned two bandanas to the police or at the PI hearing or at
5 the first trial. The defence therefore submits again, with some force, that this has
6 come about because the CCTV footage shows the gunman's face covered and
7 Andy Barnes is now tailoring his evidence to correspond with the CCTV footage.

8 iii. When the gunman comes around the corner Andy Barnes is trying to start the
9 Chevy Malibu and get out of the Gas Station as quickly as possible. The gunman
10 appears on the CCTV footage at 19.59.48 seconds and by 19.59.53 seconds the
11 gunman is behind the Chevy Malibu with Andy Barnes driving forward and away
12 from the Gas Station. So even allowing for a few seconds before the CCTV
13 footage captures the gunman it could only be possibly a total of between 4 to
14 possibly 7 seconds.

15 iv. During that time Andy Barnes was starting the Chevy Malibu, manoeuvring the
16 Chevy Malibu away from Pump 1, moving in his seat and turning around to try
17 and push his two children down in their seats.

18 v. It seems highly likely that the shot which killed Jeremiah Barnes was fired while
19 Andy Barnes had his back to the gunman.

20 vi. The opportunity for Andy Barnes to observe the gunman was very short and there
21 is some force in the defence submission that his view of the gunman could only
22 have been a fleeting glance.



1 vii. The defence submits that this is not only a fleeting glance, but it is a fleeting
2 glance interrupted by Andy Barnes driving away, pushing his children down and
3 moving his own body/head out of the way of the gunfire.

4 190. Dorlisa Barnes' ID evidence:

5 i. Dorlisa Barnes said that when she saw the gunman her immediate reaction was to
6 scream, close her eyes and duck below the dashboard.

7 ii. She said she ducked below the dashboard before the first shot was fired.

8 iii. In her statement to the police Dorlisa Barnes said Devon Anglin had nothing on his
9 face. Dorlisa Barnes told the police that she could see the gunman's face clearly
10 and that it was Devon Anglin.

11 iv. In her second statement she said Devon Anglin was 15 feet away and she could see
12 his face.

13 v. In previous evidence she said she could see the gunman's face, and, in this trial she
14 said she could see the gunman's bare face. She said, "*I am not going to say I saw
15 something over his face when I didn't.*" She also said, "*I had a clear view of his
16 face.*"



1 191. Carlos Ebanks' Evidence:

2 i. The only other eye witness to the shooting was the petrol attendant, Carlos Ebanks.
3 He had worked at Hell Gas Station for about five years and he was working at
4 pumps 3 and 4 when the gunman came from round the side of the Gas Station.

5 ii. Carlos Ebanks recalls seeing and speaking briefly with Andy Barnes. As he was
6 finishing with the customer at Pump #3, he saw a person walking from the right
7 hand side of the Gas Station – from the general direction of the Devil's Gift Shop.

8 iii. So it is clear that Carlos Ebanks had the opportunity and was in a better position to
9 see the gunman sometime before Dorlisa Barnes and Andy Barnes would have
10 seen him.

11 iv. Carlos Ebanks described the green Hoodie jacket with the distinctive motifs which
12 the gunman was wearing and said that the gunman was wearing a Halloween mask
13 which covered his entire face.

14 v. Carlos Ebanks said he saw the gunman pull the gun out of his pocket or out of his
15 side.

16 vi. Carlos Ebanks said he saw the whole incident and he kept looking at the shooter.

17 vii. Carlos Ebanks said he could not see the shooter's face. He said the mask was
18 bluish-green in colour and the mask prevented him from seeing any features at all.
19 Mr. Ebanks said he could not even say if the person was a man or a woman, but
20 from what he could see of the person in the green Hoodie, it seemed to be a male.

21 viii. Mr. Ebanks said at first he thought it was a prank because of Halloween mask.



1 ix. Carlos Ebanks, (like Andy Barnes and Dorlisa Barnes) was also shown the CCTV
2 footage.

3 x. He accepted that the Hoodie may have/had fallen back (off the gunman's head)
4 towards the end of the incident, but he saw the same Halloween mask, and, as far
5 as his recollection is concerned, it covered the entire face of the gunman.

6 192. I have watched and reviewed the CCTV footage showing the gunman with a Hoodie
7 over his head and a gun in his left hand. The CCTV footage shows what looks like a
8 mask over the gunman's face and the viewer of the CCTV footage cannot see any face
9 or any features.

10 193. The expert, Grant Fredericks, confirms that when he was asked to examine the CCTV
11 footage it was purported that the gunman's facial covering was described as a full-
12 faced mask and that is what it looks like to the naked eye. Mr. Fredericks said that to
13 the lay person it would appear that the gunman had a mask that was perfect in shape
14 and covers from above the eyes down to below the jaw. Mr. Fredericks concluded that
15 the covering was a bandana-style covering, that is, a fabric of some kind that was
16 covering the nose, mouth and chin area and that it was bluish-purple in colour – with
17 some light fabric design. Mr. Fredericks said it covered just above the bridge of the
18 nose below the eyes. Mr. Fredericks said there is some support that the mask extends
19 from beyond the bottom of the face towards the back of the head. It is bluish-green – but
20 it is more difficult to detect its colour at the sides and the rear, if it exists. Mr.
21 Fredericks said it covers around the nose to the chin and there is some support for
22 saying that it extended to the back of the gunman's head.

23



1 194. When I carefully examine the circumstances surrounding the eye witness identification
2 evidence put before the court there is a sharp conflict of evidence between the three
3 separate eye witness accounts of Andy Barnes, Dorlisa Barnes and Carlos Ebanks. The
4 evidence of Carlos Ebanks is supported by the CCTV footage and, to some extent, by
5 Mr. Grant Fredericks' expert evidence.

6 195. Andy and Dorlisa Barnes say that they are certain that they can see Devon Anglin's
7 face and therefore they can recognize that the gunman is Devon Anglin and they say
8 that it is him.

9 196. Carlos Ebanks cannot see any features of the gunman because he says the mask covers
10 the gunman's entire face. Carlos Ebanks could not even say if the gunman was a man
11 or a woman.

12 197. When one looks at the CCTV the mask covers the gunman's entire face.

13 198. Finally the video expert, Mr. Fredericks, says the mask, bandana or covering, covers
14 from the chin to the bridge of the nose.

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GSR

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199. I now examine what could be potentially strong evidence, which could be capable of supporting the correctness of the Crown's eye witness identification evidence.

200. Normally when GSR evidence is found on a person's clothes or on items associated with a person there are three possibilities:

- (a) The wearer of the clothes is the gunman;
- (b) The wearer was within 3 metres of the gunman;
- (c) There has been innocent contamination.



201. The Defence submits that because there is clear evidence that some of the arresting officers were USG officers who used firearms. In addition the Defence submits that there is evidence that the police station custody area and other areas where items of evidence were packaged had GSR present. Finally the Defence submits that the risk of contaminating the defendant's clothing with GSR is high and therefore the Court cannot rely on this GSR evidence.

202. I find on the evidence before me that there was possible innocent GSR contamination in the area where the Grey Honda was searched and there is some risk of innocent GSR contamination in relation to the defendant's clothes.

203. We have two eminent GSR experts – one for the Crown and one for the Defence and their joint conclusion is “*overall there is a significant chance that some or all of the GSR on Devon Anglin's clothing and in the Honda Accord (the grey Honda) is not from the shooting on the 15th February 2010.*”

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The Girls who saw Devon Anglin in the Grey Honda

210. The girls cannot say whether they saw Devon Anglin in the Grey Honda on Banker's Road before or after 8 p.m. on the 15th February 2010. These witnesses have provided many different times as to when they saw Devon Anglin – the majority of which were all before the shooting took place. Therefore it cannot be said with any certainty that the girls saw Devon Anglin after the shooting took place Thus Devon Anglin being shirtless when he is seen before the shooting in the Grey Honda is of little significance.

211. Overall I find the evidence from Anisha Montemayor and Eugenia Myles to be tenuous, inherently weak and not capable of supporting the eye witness evidence of Andy Barnes and Dorlisa Barnes.

212. The evidence of possible animus, the defendant's shower in his cousin's home, being drunk and possibly left handed does not increase the reliability of the eye witnesses' identification evidence, nor is it capable of supporting the correctness of the identification evidence of the Crown witnesses.



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CONCLUSION

213. I have considered the eye witness identification evidence of the shooting that took place at Hell Gas Station on the 15th February 2010 which resulted in the tragic death of a young, innocent 4-year old boy. I have watched and carefully reviewed the CCTV footage of the shooting. I have considered the eight separate pieces of evidence which the Crown submits supports the eye witness accounts of Andy and Dorlisa Barnes. I have considered the 15 separate specific weaknesses highlighted by the Defence. I have reminded myself, as I am bound to do, of the special need for caution when considering eye witness identification evidence.

214. Having taken all the aforesaid evidence into account, I find that the case presented by the Crown does not prove beyond all reasonable doubt that the Defendant is guilty of any of the three counts on the Indictment.

215. I now set out the following reasons for my conclusion:

- i. Andy Barnes has given too many inconsistent accounts of what he saw on the 15th February 2010.
- ii. On different occasions Andy Barnes has given the same incorrect description of what the gunman was wearing which is plainly wrong and unreliable.
- iii. Andy Barnes says that he saw that the gunman was wearing two bandanas. Dorlisa Barnes says that she saw Devon Anglin's full, bare face. Dorlisa Barnes' description of the gunman does not support Andy Barnes' description, and, Andy Barnes's description does not support Dorlisa Barnes' description.



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iv. Although Andy and Dorlisa Barnes state that they are certain that the gunman was Devon Anglin, their eye witness identification evidence of the gunman is very poor. Consequently, I cannot be sure their purported recognition of Devon Anglin as the gunman is correct.

v. Dorlisa Barnes only saw the gunman for a matter of 1 or 2 seconds and she stated that there was nothing covering his face. This is plainly wrong. The CCTV footage clearly shows that the gunman was wearing a hoodie and a mask, so Dorlisa Barnes could not have seen the gunman's face.

vi. The video image expert, Mr. Grant Fredericks, accepts that the gunman had a mask or some covering up to the bridge of his nose. The CCTV footage shows the gunman wearing a mask or something covering his face. Carlos Ebanks says that the gunman's face was covered with a Halloween mask.

vii. The officers investigating the murder must have accepted Mr. Ebanks' evidence, corroborated by the CCTV footage – because they never even put the Defendant on an ID parade. Carlos Ebanks said he could not even say if the gunman was a man or a woman.

viii. For the aforesaid reasons I find that the Crown's eye witness identification evidence of the Defendant is tenuous, inherently weak and unreliable.

216. For these reasons I find the Defendant not guilty of the three counts on the Indictment.



1 217. The parents and family of Jeremiah Barnes have endured untold and unimaginable
2 anguish, suffering and grief because of the untimely and tragic death of this young,
3 innocent, 4-year old boy. I do recognize that they, and many others throughout these
4 Islands, will be deeply disappointed that Jeremiah's killer has not yet been brought to
5 justice. However, the rule of law, and the memory of young Jeremiah, would be ill-
6 served by this Court if it failed to observe and apply the high standards of the burden
7 and standard of proof which are demanded of the Courts of the Cayman Islands.

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9 **Dated this the 19th January 2016**

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11 **Honourable Mr. Justice Charles Quin Q.C.**
12 **Judge of the Grand Court**