

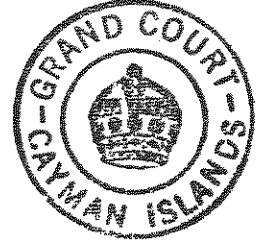
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0105/2014**

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7 **THE QUEEN**

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9 **V**

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11 **JAMES ROMANO WHITTAKER**



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14 **Appearances:**

For the Crown:

15 **Mrs. Tanya Lobban-Jackson, Senior Crown**
16 **Counsel, on behalf of the DPP**

17
18 **Defence Counsel:**

19 **Mr. Crister Brady of BRADY, Attorneys at law, on**
20 **behalf of the Defendant**

21 **Before:**

Honourable Mr. Justice Charles Quin Q.C.

22 **Heard:**

8th, 9th, 10th and 16th June 2015

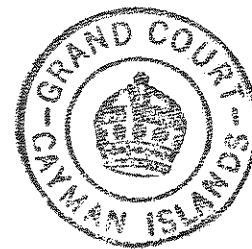
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24 **JUDGMENT**
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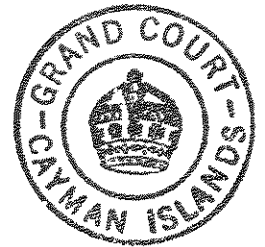
- 26 1. The Defendant pleaded not guilty to one count of Robbery contrary to s.242(1) of
27 the Penal Code (2013 Revision). The particulars of the offence are that the
28 Defendant on Saturday the 22nd November 2014 in North Church Street,
29 Georgetown, Grand Cayman stole a leather handbag and its contents and an iPhone
30 5S the property of MP and JA respectively and at the time of so doing and in order
31 to do so used force on the said JA.

THE CROWN'S CASE

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2. In summary, the Crown's case is that the Defendant, in the early hours of Saturday the 22nd November 2014 came upon the two Complainants who were sitting on the wall at the front of the Charles Building overlooking the sea. The Defendant approached the Complainants demanding money. The Complainants were taken by surprise and then the Defendant produced a knife and threatened JA. The Defendant proceeded to search MP's handbag and took the iPhone and the items.
3. The Defendant, who elected to be tried by Judge Alone rather than a judge and jury, denies the charge. The defendant said that he was not the assailant and that he never robbed MP and JA on the 22nd November 2014
4. The Crown's case relies upon the correctness of the identification at the Charles Building of the Defendant by JA and MP in the course of the events in the early hours of Saturday the 22nd of November 2014.





FIRST WITNESS – JA

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4 5. JA’s evidence is that he was sitting on the waterfront, engaged in conversation with
5 MP around about 1 o’clock in the morning. He had parked his Toyota Rav4 vehicle
6 in the last parking place of the Charles Building car park. JA and MP were sitting on
7 the concrete slab looking out to the sea. JA recalls MP getting up and suddenly her
8 body language changed. It is JA’s evidence that it was then that he saw a person – “a
9 guy with a blue hoodie which covered the majority of his face who suddenly stated:

10 *“Where is the money?”*”

11 JA’s evidence is that the assailant said this three, or four times.

12
13 6. JA states that whilst the robber asked for the money he was only 3 or 4 feet away
14 from him. JA said he told the robber that he had no money, whereupon the robber
15 put a knife to his neck. JA said the assailant’s hand faced outwards and the blade of
16 the knife was pressed against his neck. JA said the assailant and he were facing each
17 other with only an arm’s length between them. JA said that at that time:

18
19 *“I could faintly make out his face and could see his size and his complexion.”*

20
21 7. JA said the assailant proceeded to pat him down and check his pockets. The
22 assailant discovered that JA did not have any money on him and he then went into
23 JA’s car from the driver’s side which is a right-hand drive car. At that time JA said
24 he saw the back of the assailant’s head whilst he searched the car and he could partly
25 make out the outline of the assailant’s face.

1 8. JA's evidence was that the assailant took MP's handbag from the car and went to the
2 side of the building. There he opened the contents and rummaged through the bag.
3 JA said it was whilst the robber was doing this that he could see the assailant's face.
4 JA said he "could see everything." JA told the court that the assailant was silly
5 enough to let the hoodie drop. JA said it was at that time that he could see his face,
6 complexion and stubble beard.

7
8 9. JA said he watched the Defendant for approximately 20 to 30 seconds while he
9 rummaged through MP's bag. JA said there were streetlights and lights from the
10 Burger King building.

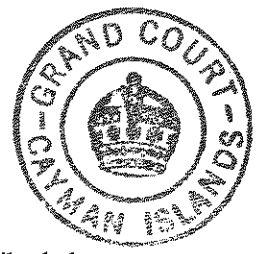
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12 10. JA said that when the man was searching the car he was 3 feet away, and when he
13 was searching the bag he was about 20 feet away.

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15 11. JA said he was very angry but he heeded MP's advice and got into the car to leave.
16 JA said he reversed the car and then drove forward and wound his window down
17 and, again, he could see the assailant. JA said he looked at the assailant and said:

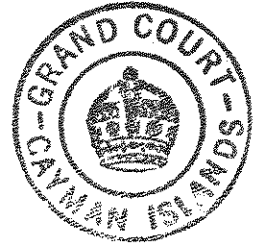
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19 *"When I see you again I'm going to fucking kill you."*

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21 12. JA said that the whole incident took some 2 to 3 minutes.

22
23 13. JA went directly to the police to make a report of the robbery and described the
24 assailant to the police. He said he told the RCIPS that the robber was a male between
25 30 to 35 years of age, brown complexion with a Caymanian accent. JA told the
26 police the robber was about his height and weighed about 150 lbs. JA said that he
27 knew the accent because he is also from Cayman and when the man said: "*Give me*
28 *the money, where is the money*" he recognized the accent as Caymanian.



1 14. JA said that the Defendant was the man he identified to the RCIPS, he was the same
2 man he identified at the ID parade held on 26th November 2014, and, he was also
3 sitting this courtroom.



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7 **CROSS EXAMINATION**

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9 15. The Complainant, JA, re-stated under cross examination that he stopped the car and
10 told the Defendant:

11 *"Next time I see you I am going to fucking kill you".*
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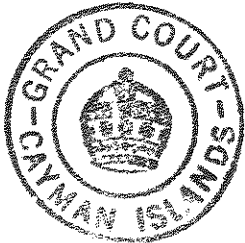
13 16. JA accepted that he may not have told the police that he had said that to the
14 Defendant when he reported the offence on the same day.

15
16 17. JA was clear that he saw the Defendant's face without the hoodie. JA said this there
17 was a light which hangs over the main road positioned at the front of the building
18 along the sidewalk. JA said there were lights in the Burger King property, lights in
19 front of Burger King and lights by the flags on the Burger King property. JA said
20 there was a light on the Charles Building and one in the property itself. JA said that
21 although it was dark there was light. JA described the scene as very frightening and
22 said he was concerned about MP's safety.

23
24 18. JA accepted that when the assailant arrived he was wearing a hoodie and the hoodie
25 was pulled down to try and cover the assailant's face.
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1 19. When it was pointed out to JA that the information that the hoodie dropped own was
2 absent from his statement JA said that if something was not in his statement it was
3 because he couldn't recollect everything at that time. He said his statement was
4 taken shortly after the robbery and may not be a hundred percent accurate.

5
6 20. JA recalled the 24th November 2014 when he was shown a number of photographs
7 by the police on that afternoon. JA said he picked out the man he had seen and the
8 man who was the assailant. The assailant was photograph number 12 which was a
9 photograph of the Defendant.



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12 **RE-EXAMINATION**

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14 21. JA said he was able to identify the Defendant and said he and the assailant were
15 looking at each other eye to eye. JA said when he was being patted down by the
16 assailant they were again looking at each other eye to eye. JA said the Defendant
17 "*was the man who attacked us*".

18
19 22. JA said there was nothing between Burger King and the Charles Building when he
20 saw the assailant with the knife. JA said the knife had a black handle and had,
21 approximately, a 6-inch blade. JA was shown Exhibit 2, which was the knife taken
22 from the Defendant's premises. JA said it vaguely resembled the blade he saw on the
23 night in question but he couldn't definitely say that Exhibit 2 was the knife that was
24 used in the robbery..

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SECOND WITNESS – MP

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23. MP recalled the morning in question when she was sitting on the sea wall next to the Charles Building next to Mr. Arthurs on North Church Street. MP said she was sitting on the same side as Burger King when she saw a man asking for money. She said she saw his face.

24. MP said the man passed her by and went straight to JA. MP said the man was about 3 feet away from her.

25. MP said the man suddenly put a knife to JA’s throat and said: “*Give me the money give me the money.*” MP said the assailant was about 4 to 5 feet away when this was happening and she saw his profile. MP said the assailant was wearing long denim jeans and a blue hoodie.

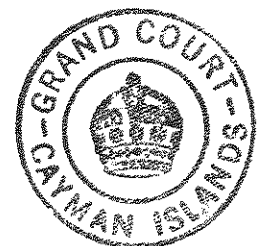
26. MP said there were lights that came from the Charles Building, there was a streetlight and there were the lights from the Burger King parking lot.

27. MP said that initially she thought it was a prank somebody was playing on JA. MP said she recalled JA saying: “*I don’t have any money. I don’t have anything.*”

28. MP said she started yelling at the assailant:

“We don’t have anything we don’t have anything!”

29. MP said the hoodie was on this head but not covering his face.



1 30. She said the assailant held the knife to JA's neck for a few minutes and then he went
2 to the driver's door of JA's vehicle. MP said she just saw the assailant's shadow as
3 he was looking in the car. MP recalled that he then came out of the car and she saw
4 his profile.

5
6 31. MP said that when the assailant was searching the vehicle, he was approximately 7
7 feet away. MP said the assailant next started to walk towards the street but he turned
8 round and came back to the side of the building "*and started to go through my bag*"
9 and, at that time, the assailant was about 4 feet away and she said she could see his
10 face.

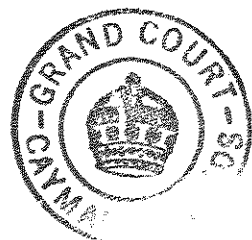
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12 32. MP's evidence to the court was that the assailant was going through her bag and the
13 assailant's face was not covered. MP said that there was a light on the Charles
14 Building and it was an outside light. MP's evidence is:

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16 *"I was still yelling at him to give us our stuff back. The man said if you don't*
17 *have money I will take what you have".*

18
19 33. MP told the court that she was terrified. She said that the robber had her phone, her
20 wallet, her credit cards, her insurance card, her glasses, her keys and other personal
21 items. MP said the whole incident lasted approximately 15 minutes.

22
23 34. MP said she could see the man's face for the majority of the time. When she later
24 got to the police station she drew a picture of the knife. The knife is Exhibit 2 and
25 MP's drawing of the knife she saw is Exhibit 3.

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1 35. When MP examined Exhibit 2 she said the knife she saw was a little longer than
2 Exhibit 2 and there was no red piece at the bottom of the knife. MP said the drawing
3 accurately represents what she saw.

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6 36. MP said that on the 24th November 2014 she was called to go to the police station
7 and there she was shown a number of photographs of men for her to see if she could
8 recall and identify the assailant. MP said she was shown 12 photographs and
9 identified photograph #8 as the man who robbed them. Photograph #8 was a
10 photograph of the Defendant.

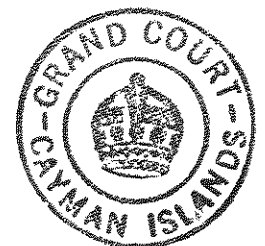
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12 *CROSS EXAMINATION*

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14 37. MP told the Court that she and JA were facing the sea when the man came from
15 behind the Charles Building behind them.

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17 38. MP said there is a light at the entrance in front of the Charles Building, there was a
18 light outside the main entrance to the building, and, there was also the light at the
19 back of the building. MP said that Burger King was approximately 300 feet away
20 and there were two lights at Burger King – one at the back over the sea and one
21 “over the garbage bin.”

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23 39. MP recalled yelling at the robber while he was searching the vehicle. She said
24 during that that time she saw his profile because she was at an angle and the hoodie
25 was not covering his face.

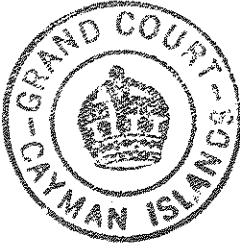
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1 40. MP said when she was shown the photographs she was given a few minutes to look
2 at them. Defence counsel put to her that photograph #8 was somewhat elongated.
3 MP said she didn't think there was anything wrong with the photo. She explained
4 that on the night in question she was not wearing glasses but she was wearing her
5 contacts.

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7 41. MP confirmed that initially she thought that what was happening was a joke until the
8 assailant produced the knife and that's when she took him seriously, however,
9 throughout the whole incident she didn't take her eyes off the assailant.

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1 *THIRD WITNESS - PS DAVID MCKAY*

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3 42. PS McKay was with the Uniformed Support Group (the USG) of the Royal Cayman
4 Islands Police Service (RCIPS) at the time. On Sunday, 23rd November 2014 he and
5 PC Haye were operating in the Eastern Avenue-Shedden Road area. PS McKay
6 recalls receiving notification of an Electronic Monitoring Device Tag (EMDT)
7 violation and they were asked to go to 60 Kennedy Drive – the home of the
8 Defendant James Romano Whitaker. PS McKay said they were walking down the
9 alleyway which leads to the Defendant's residence when he saw the Defendant just
10 inside his door and observed him tampering with his EMDT. PS McKay saw him
11 removing aluminum foil from the EMDT and throwing it to the right-hand side of a
12 small wooden table.

13
14 *FOURTH WITNESS - DC MARCIA CODNER*

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16 43. DC Codner produced the photograph spreads. Photo spread MSC1 became Exhibit
17 #4. There were 12 different photographs and the Defendant was photograph #8.

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19 44. MSC3 became Exhibit 1. Again, here, there were 12 different photographs and the
20 Defendant was photograph #12. DC Codner told the court that the photographs were
21 selected of persons who looked similar to the Defendant.

22
23 *Cross Examination*

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25 45. DC Codner told defence counsel that the pictures were taken over a period of time
26 and they were selected because of the similarities in appearance and complexion to
27 the Defendant. DC Codner accepted that there was no input from the Defendant in
28 the selection of the photographs.

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3 *INSPECTOR SCHOFIELD*

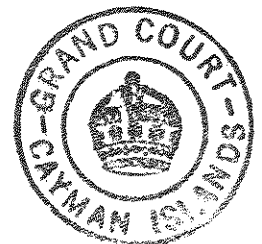
4 46. On the 26th of November 2014 Inspector Schofield spoke to the Defendant and told
5 him that it was proposed to hold an ID parade. Initially Insp. Schofield selected a
6 number of men for an ID Line-up Parade. The Defendant objected to person #6 and
7 person #4 and then the Defendant objected to everybody in the proposed line-up.
8 The Defendant stated that none resembled him and, consequently, the numbers were
9 removed from the people.

10 47. Inspector Schofield told the Court that the selection of the persons for the line-up
11 was done by CID officers from members of the public and not by Insp. Schofield.
12 The Inspector recalls there were 10 people in the line-up and the Defendant.

13
14 *Cross Examination*

15 48. Under cross-examination Insp. Schofield said he couldn't recall whether the
16 Defendant was wearing a blue shirt during the ID parade and Inspector Schofield
17 said he was not aware of the colour of the shirt of the assailant.
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19
20 49. Insp. Schofield said he had conducted ID parades since 2009 and he was satisfied
21 about how the ID parade in this case was conducted. He recalled that there were 10
22 persons and the Defendant in the room. He said the 10 persons and the Defendant
23 were moving around in the room.



1 50. The Inspector said that one of the Complainants, JA, identified the Defendant James
2 Romano Whitaker as he was moving around in the room and the Defendant was
3 identified by JA as he was came to the window and then moved away. Insp.
4 Schofield told the Court that the parade was a dynamic environment and the
5 Defendant and the 10 people were moving across the room and in front of the glass
6 they didn't have to stand in a line.

7
8 51. Inspector Schofield accepted that the Defendant objected to the lineup and
9 everybody in the line-up. The Inspector couldn't recall if any of the persons in the
10 room were wearing a hoodie but said they were all in varied types of attire.

11
12 52. Inspector Schofield said that JA confirmed that the assailant was in the room and he
13 identified the assailant as "*the man with a blue shirt and facial hair.*" This man was
14 the Defendant. When Inspector Schofield asked JA "*Are you positive?*" JA
15 answered "*one hundred percent.*" Exhibit 7 also listed the 10 men who attended the
16 identification parade which became "*A group identification*".

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DC PETER SUGDEN

53. Officer Sugden's statement dated the 24th November 2014 was read into evidence. On the 24th of November 2014 he, with DC Hayden, executed a search warrant at 60 Kennedy Drive. Officer Sugden said that while searching the bed area they found a black-handled knife, approximately 6 inches long, under the mattress, and this was secured and taken into custody.

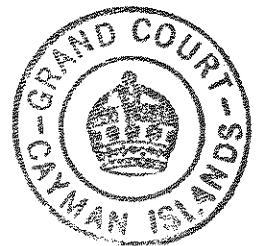
TREVOR JAMES

54. Mr. James is an EMDT officer and he confirmed that the Defendant was tagged with an EMDT on the 22nd of October 2014.

55. Mr. James explained that when the EMDT is not picking up a GPS signal it means that the location of the EMDT and the Defendant cannot be known. Mr. James told the court that the no-GPS signal means that the EMDT has been de-sensitised.

56. Mr. James explained that at 1:18 a.m. on 22nd November 2014 a no-GPS signal occurred and the no-signal remained until it was eventually cleared at 1:44 a.m.

57. Mr. James said that placing silver foil around the EMDT would block the signal. He said that at 05 a.m. the EMDT was in the curfew zone and at 1.44 a.m. it was in the curfew zone. Mr. James said that from the time he was alerted until 1:44 a.m.no signal was picked up from the EMDT assigned to this Defendant.



Cross Examination

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58. Mr. James explained that the software will show the last place the EMDT was at, but one cannot account for the whereabouts of the EMDT or the person wearing the EMDT when there is no signal.

59. In his later¹ evidence Mr. James told the court that the Defendant was informed of what is expected of him in relation to the EMDT and he signed the Agreement to abide by the rules attached to wearing the EMDT. The Defendant understood that the EMDT must be charged at all times. Mr. James explained that at various times during the 21st November 2014 a no-GPS signal was recorded but not for a particularly long period of time and often for short periods such as 3 to 4 minutes. Mr. James explained that that can happen when the person wearing the EMDT goes into the bathroom.

60. Mr. James also explained that on the 21st November 2014 there was a no GPS signal from 23.00 to 23.05, and then on the 22nd November 2014 from 00.51 until 1.44 a.m. – which is a period of 53 minutes. During this period at 1.08 there was a no-GPS violation and at 1.18 a full violation was recorded.

61. Mr. James explained that when there is a violation one of the officers normally allow a five-minute grace period. But when there is a full violation, RCIPS officers normally respond/act.

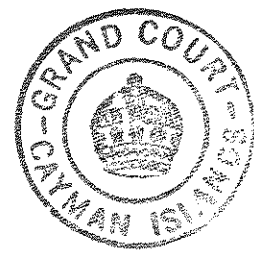


¹ As there was some uncertainty in relation to the times and the movement of the EMDT it was agreed that Mr. James would take a break from giving evidence to do a 24-hour review of the movements of the EMDT assigned to the Defendant on the 22nd of November 2014.

1 62. Mr. James explained that when there is a no-GPS signal he can only confirm the last
2 known location of the EMDT before the no-signal period begins. He explained the
3 EMDT officers cannot say where the EMDT or the person wearing the EMDT is
4 during that no signal period of time.

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7 63. Under cross-examination Mr. James explained that when there is a no GPS signal
8 “we don’t know where the client is, only the last known location of the EMDT can be
9 known”. Mr. James also told the court that silver foil prevents the signal and makes
10 the EMDT non-operational.

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2 *DC STACY ANNE STEWART*

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4 64. DC Stewart confirmed that DC Codner gave her the photo spreads and she informed
5 JA that she was going to show him a number of photographs - Exhibit 1 MSC3. JA
6 was shown the spread of 12 photographs and he identified photo 12 as the assailant.
7 Photograph 12 was a photo of the Defendant, James Romano Whittaker.

8
9 65. DC Stewart said that she took MP separately and showed her another spread of 12
10 photographs - that is, not the same spread that had been shown to JA.

11
12 66. DC Stewart confirmed that MP identified the man in photograph #8 as the assailant.
13 Photo 8 was a photograph of the Defendant.

14
15 *Cross Examination*

16
17 67. Under cross examination DC Stewart said that the two witnesses, JA and MP, were
18 not together in the same room at the same time.

19
20 68. Defence counsel asked DC Stewart how it was that the statements of JA and MP
21 indicate that Officer Stewart showed each of them the photo spread at 4:30 p.m. and
22 the identification was made at 4:31 p.m. In response, DC Stewart said that would
23 definitely be her error and not the witnesses' errors. DC Stewart said JA and MP
24 were not shown on the photographs at the same time.



THE DEFENDANT'S INTERVIEW

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69. The CD disc of the Defendant's interview under caution of the 24th of November 2014, carried out by Det. Constable Stewart, was exhibited as Exhibit 8a and the transcript of the interview was Exhibit 8b.

70. In the course of his interview the Defendant said he was not in the vicinity of Burger King shortly after midnight on Friday night early Saturday morning.

71. The Defendant admitted that he was not supposed to be on the road during his curfew but that he was on the road and not at home during his curfew.

72. The Defendant said that at the time the robbery occurred he was somewhere down in Rock Hole. He said he didn't know exactly where he was but it was towards the end of School Road where people hang out and play music and drink beers. The Defendant said he was with other people, mostly Jamaicans.

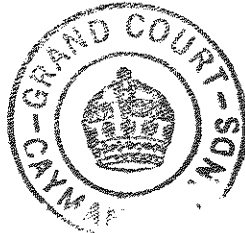
73. When he was asked by the police how could they test his alibi, the Defendant said:

"See these people there now, I don't know, I don't know their names."

74. The Defendant said he didn't recall for how long or at what time he was there in Rock Hole; but he estimated 15 or 20 minutes.

75. In his interview the Defendant said after 15 to 20 minute he went back to "Central" and then he went back home.

76. The Defendant told the police that his EMDT was definitely charged.



1 77. When the RCIPS asked the Defendant how did he manage to leave the premises
2 without his EMDT registering as a violation he said:

3
4 *“No comment.”*

5
6 78. The Defendant also said he was in the Martin Drive-Shedden Road-Funky Tang
7 area.

8
9 79. When asked by the RCIPS about the knife, the Defendant, in reply, asked if it is a
10 crime for him to have a knife under his mattress.

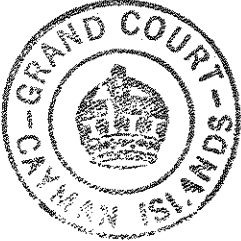
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12 80. When asked : “Where was the EMDT?”, the Defendant replied:

13
14 *“I don’t know you people should know.”*

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16 81. When asked how did the EMDT get off his foot he said:

17
18 *“I don’t know who picked up the monitor but they had me sitting down there for*
19 *the longest while and I got fed up and popped it off with my hand to go round*
20 *the back...I just took it off...should have done that a long time ago”.*

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DEFENCE CASE

JAMES ROMANO WHITTAKER – DEFENDANT

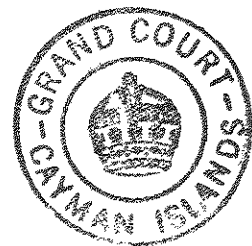
82. The Defendant went into the witness box and gave evidence.

83. The Defendant told the Court he wasn't there at the Charles Building on 22nd November 2014 and that between 1 a.m. and 2 a.m. Saturday, 22nd November 2014 he was at home "*where he was supposed to be*".

84. The Defendant said it was the first time he had been wearing an EMDT. He said the police had checked him on several occasions even before he tampered with the EMDT.

85. The Defendant said he had never seen either JA or MP in his life and he said he did not take the handbag or the items in the handbag or the cell phone. The Defendant said that [the offence he is accused of] did not happen and, furthermore, the items were not found at his house at 60 Kennedy Drive.

86. The Defendant also stated that the witnesses didn't describe the scars on his nose.



Cross Examination

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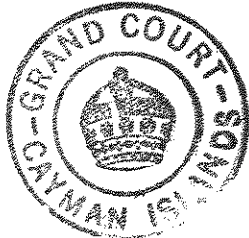
87. Under cross-examination the Defendant accepted that he told the police that he was at Rock Hole between 1 a.m. and 2 a.m. on Saturday the 22nd November 2014. The Defendant said he can't recall the exact time but he went to the "Central" area after 6 p.m. The Defendant acknowledged to the Court that this was during his curfew time. The Defendant stated that he was in the "Central" area between 7 p.m. and 10 p.m. and he also acknowledged that this was during his curfew hours.

88. The Defendant couldn't remember how long he stayed at Rock Hole. He spoke with people there and when asked if he spoke to anyone in particular he said "*Not really.*" The Defendant said he hung out with some friends "doing drugs" as he went there to buy drugs and met up with other associates.

The Defendant said he did not want to give the police names of persons who could verify his whereabouts because he didn't want to be thought of as an "informer". Asked by Crown counsel if he would rather get into trouble than make an effort to verify where he was, the Defendant said:

"[That] is nothing for me to be in trouble other than being out beyond my curfew time."

89. The Defendant said the EMDT doesn't beep, he said "*it lights up, the lights start blinking and it vibrates.*" The Defendant said that when that happened he started heading back home.



1 90. The Defendant said he has a single room and lives there by himself at Kennedy
2 Drive and he was at home between 1 a.m. and 2 a.m. on the 22nd November 2014.
3 The Defendant said the EMDT was fine. The Defendant said its battery was charged
4 and he couldn't account for the 53 minute period when there was no GPS signal on
5 the EMDT he was wearing.

6
7 91. Asked about the information he gave the police that he was on the road when he
8 shouldn't have been the Defendant said:

9 *"I must have been confused as I was coming off cocaine and still using drugs."*

10

11 92. The Defendant admitted wrapping foil around the EMDT and he said,

12 *"That is when the police came and find me taking the foil paper off [the*
13 *monitor]."*

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15 The Defendant said that the 22nd November was the first time he did that. The
16 Defendant however confirmed that he received the EMDT card and he signed a
17 contract about the use and care of the EMDT.

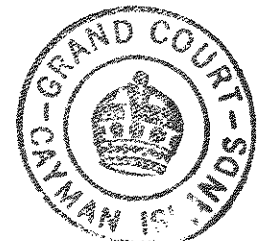
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19 93. In relation to the identification parade held on 26th November 2014 the Defendant
20 said he objected at the commencement of the ID parade. The Defendant said he
21 spoke to his then attorney, John Furniss, who advised the police that if two or three
22 people don't resemble the Defendant they should not go ahead with the ID parade.
23 The Defendant said he saw some Jamaicans in the parade and objected.

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1 94. The Defendant said he doesn't know where the Charles Building is but he knows
2 where Burger King is. The Defendant told the court that at the time JA and MP were
3 being attacked he was at home and not at the Charles Building. The Defendant said
4 that he was not the assailant.

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6 95. The Defendant denied asking JA and MP for money and denied searching JA's car
7 and MP's handbag.

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9 *Cross Examination*

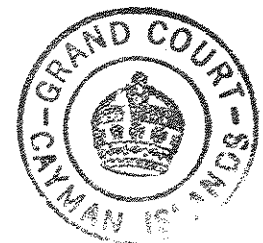
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11 96. When it was put to the Defendant that he had held a knife to JA and demanded
12 money and, further, that he patted JA's pockets, the Defendant replied by saying:

13 *"There is no DNA. Why was no DNA not found?"*

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15 97. The Defendant denied searching the car and the handbag and pointed out that neither
16 JA nor MP mentioned the scars on his nose. The defendant said I did not take the
17 handbag.

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19 *Re-Examination*

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21 98. The Defendant said the knife that the police found was his Auntie's knife and he
22 used it to cut coconuts for her.





DEFENCE SUBMISSIONS

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99. The defence maintains that the Crown has not established that the Defendant was identified as the assailant in the early hours of Saturday, 22nd November 2014 beyond all reasonable doubt. The defence highlights the fact that it was dark. The street light was approximately 125 feet away from the back of the Charles Building and the Burger King lights were 300 feet away. Furthermore the defence highlights the fact that the assailant came from behind the Complainants. The defence also reminded the court that although JA said that he was one hundred percent certain that the man he identified in the group identification was the Defendant, mistakes can easily be made when witnesses state they are certain.

100. The defence highlights the fact that JA, at one point, said that he could only faintly make out the assailant and further that he followed the assailant as he moved towards the vehicle and would, therefore, have been looking at the assailant's back. The defence submits the assailant was in the car searching and therefore the Defendant's face could not be seen by either JA or MP.

101. The defence submits that when the assailant was searching MP's handbag he was on the ground looking into the bag and therefore it would not have been easy for either JA or MP to see his face. The Defence highlights the fact that the assailant was wearing a hoodie and the assailant's face could not be seen. The Defence points out that MP said she only saw a profile. Furthermore the defence relies upon the fact that both JA and MP would have been in fear as a result of the attack and this would affect their abilities to identify the person they saw and to recall the incident.

1 102. In relation to identification the defence submits that when one applies the guidelines
2 in *R v. Turnbull*² the identification of JA and MP is just not good enough. The
3 defence submits that there is considerable doubt about the correctness of their
4 eyewitness identification at this dark location in the early hours of 22nd of November
5 2014.

6
7 103. The defence highlights the discrepancy between the Complainants, in that, JA said
8 that the attack lasted 2 to 3 minutes whilst MP said it was somewhere between 10
9 and 15 minutes. Defence counsel says that the longer time was exaggerated to try
10 and bolster the Crown's case.

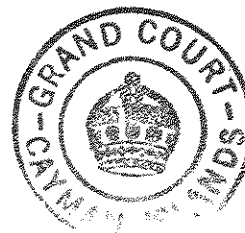
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12 104. Defence counsel submits that there were several difficulties with the EMDT and its
13 reliability has to be called into question. In any event the defence contends that the
14 EMDT was at 60 Kennedy Drive at the time of the attack on JA and MP.

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16 105. The defence submits that the identification process on the 26th of November 2014
17 was faulty, in that, the Defendant had objected to the group identification and the
18 fact that the other men in the group were Jamaican – thus making it prejudicial to the
19 Defendant. Furthermore the fact that the defendant was put in the blue shirt was also
20 prejudicial to him because the assailant was seen wearing a blue hoodie.

21
22 106. The defence submit that the Crown have not discharged the burden of proving that
23 the Defendant was the assailant to the required standard of proof and therefore the
24 verdict should be one of not guilty.

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² 1977 Q.B. 224



1 **THE LAW**

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3 107. 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
6 108. 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**³ when Justice Rowe stated:

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

16
17 109. In **R v. Dave Kennedy Whittaker**⁴, the Court of Appeal gave some guidelines
18 regarding the duties of a Judge in Judge Alone trials. In the Judgment of Mottley
19 J.A. he adopted the Judgment of the former Lord Chief Justice of Northern Ireland
20 Lord Lowry in **R v. Thompson**⁵ in which he stated at page 83:

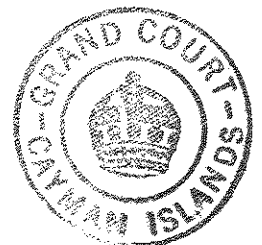
21 *“While on the subject I might say a word on the duty of the judge when giving*
22 *judgment in a trial under the 1973 Act. He has no jury to charge and therefore*
23 *will not err if he does not state every legal proposition and review every fact*
24 *and argument on either side. His duty is not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

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³ 2001 CILR 496

⁴ Cr. App. R. No. 14 of 2006

⁵ [1977] NI 74

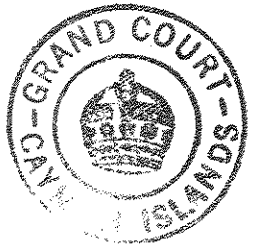


1 110. Our Court of Appeal in **Randy Martin v. R**⁶ delivered their reasons for dismissing
2 the Appeal on the 7th December 2010. Mottley J.A. again adopting **R v. Thompson**⁷
3 also adopted **R v. Thain**⁸ where Lowry LCJ said at page 478:

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

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

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



⁶ Crim. App. R. 2 of 2010
⁷ *supra*
⁸ [1985] NI 457

1 **ANALYSIS AND CONCLUSION**

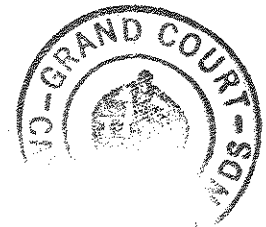
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3 112. The Defendant is charged with Robbery, in that, on the 22nd of November 2014 at
4 the Charles Building he stole a leather handbag and its contents and an iPhone 5S
5 the property of MP and JA and, at the time of so doing and in order to do so used
6 force on the said JA.

7
8 113. Section 242(1) reads:

9 *“242. (1) A person commits robbery if he steals, and immediately before*
10 *or at the time of doing so, and in order to do so, he uses force*
11 *on any person or puts or seeks to put any person in fear of*
12 *being then and there subjected to force.”*

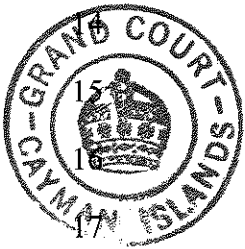
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15 114. I have no difficulty finding that the assailant stole the leather handbag, its contents
16 and the iPhone 5S, the property of MP and JA, on Saturday, 22nd November 2014 at
17 the Charles Building. I have no difficulty in finding that the said assailant put a knife
18 to JA’s neck whilst demanding money from JA. Both JA and MP were victims of a
19 violent robbery.

20
21 115. The sole question for me as a tribunal of fact is whether the assailant was the
22 Defendant; that is: Did the Defendant, James Romano Whittaker, rob JA and MP or
23 was the Defendant at home at 60 Kennedy Drive when this robbery took place?



1 116. I remind myself that the burden of proving the case rests upon the prosecution. The
2 Defendant bears no burden of proving anything and it is not his task to prove his
3 innocence. The fact that the Defendant has given evidence does not imply any
4 burden upon him to prove his innocence. I will however need to reach a decision
5 about what reliance I can place on the Defendant's evidence. When deciding upon
6 the truth, reliability and accuracy of the evidence I must adopt the same fair
7 approach to every witness. The prosecution must prove its case beyond all
8 reasonable doubt – to put it another way, until I am sure that the Defendant is guilty.
9 If after considering all the evidence put before me I am not sure, then I must find the
10 Defendant not guilty.

11
12 117. As tribunal of fact I have to assess reliability, truthfulness and the importance and
13 weight of the evidence. I must not speculate about evidence which has not been
14 given. I must ask myself if there is any room for mistake or if any witness has been
15 lying to the Court. Just as for a jury, it is not necessary for me to decide every
16 disputed issue of fact. My task as tribunal of the fact is to decide whether the
17 prosecution has proved the elements of the offence charged.



18
19 118. The charge against the Defendant that he robbed JA and MP depends upon the
20 correctness of the identification of the Defendant made by JA and MP. Where
21 identification is the substantial issue there is a special need for caution when the case
22 against the Defendant depends upon the correctness of such visual identification as
23 provided by JA and MP. The reason for caution is the experience that a witness who
24 is genuinely convinced of the correctness of his or her identification may be
25 impressive but nevertheless mistaken. This may be so even when more than one
26 witness may make the same identification.

27

1 119. I must remind myself to examine closely the circumstances in which the
2 identification by each witness came to be made and I must ask myself the following
3 questions:

- 4
- 5 a. How long did the witness have the accused under observation? At what
6 distance? In what light?
- 7 b. Was the observation impeded in any way, for example, by passing traffic or a
8 press of people?
- 9 c. Had the witness ever seen the accused before?
- 10 d. How long a period of time elapsed between the original observation and the
11 subsequent identification to the police?
- 12 e. Was there any material discrepancy between the description of the accused
13 given to the police by the witness when first seen by them and his actual
14 appearance?

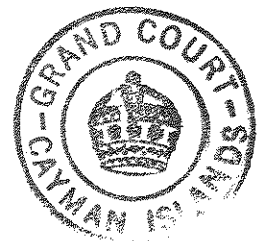
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16 120. Having reviewed the evidence of JA it can be divided up into five separate moments
17 in time.

18 a. First: The assailant came upon them with a hoodie and asked “*where is the*
19 *money*” 3 or 4 times. At that time JA said he was 3 to 5 feet away but his
20 hoodie covered his face.

21

22 b. Second: When the assailant put the knife to JA’s neck they were facing each
23 other and JA said at one stage they were looking eye to eye. JA said he was
24 about one arms’ length away but he could faintly make out his face.

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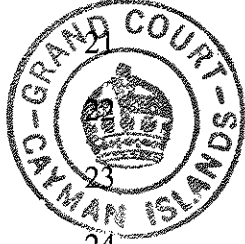


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- c. Third: The third moment in time was when the assailant went to search the car and JA said he could partially make out the outline of his face.
- d. Fourth: The fourth occasion was when the assailant started to search MP's handbag. JA told the Court that the assailant's hoodie fell off his head and he could "see everything". JA said he could see the robber's face, his complexion and the stubble beard. JA said he spent about 20 to 30 seconds watching the assailant rummage through the bag.
- e. Fifth: The fifth occasion was when JA was driving out. He said he was angry but he heeded MP's advice to leave. JA said he stopped the car. JA said that the assailant was still going through the bag. JA told the court that he said to the assailant "*When I see you again I am going to forking kill you*". JA told the court that the robbery lasted from 2 to 3 minutes but that he had the Defendant in his sight for 20 to 30 seconds.

121. I reviewed JA's evidence in relation to identification of the Defendant:

- a. JA said that when he left the Charles Building he went straight to Georgetown police station and reported the robbery. This report was made within hours of the robbery, if not minutes. JA described the assailant to the police. He described the assailant as a male 30 to 35 years of age, brown complexion, about the same height as JA and weighing lbs150. In addition JA said he recognised the assailant as being a man with a Caymanian accent as the assailant had said in a Caymanian accent "*Give me the money. I know you have it.*"



- 1 b. As a result of JA's report to the police the Defendant was picked up and
2 arrested on the following day, namely 23rd November 2014, by the RCIPS;
3
4 c. The court notes that JA identified the Defendant in photograph 12 of the photo
5 spread he was shown at Georgetown police station on 24th November 2014.
6 Two days later on 26th November 2014 JA was able to particularly identify the
7 assailant in a group identification as being the robber who attacked and stole
8 the items from himself and MP.

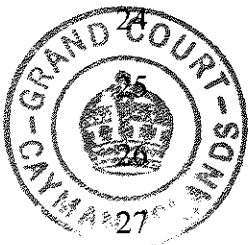
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10 122. The Court finds there was nothing to impede JA's observation of the assailant. JA
11 told the Court there was a light the front of the Charles Building along the sidewalk.
12 There were lights on the Burger King property in front of Burger King and also by
13 the Burger King flags. JA said that there was one light in the property itself.

14
15 123. The court finds that JA looked at the Defendant when he was wearing the hoodie but
16 also observed the Defendant when the hoodie dropped from his head so that all the
17 Defendant's face was visible because the hoodie had fallen down.

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19 124. I also reviewed MP's evidence in relation to identification of the Defendant:

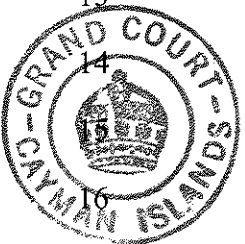
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21 a. MP said she first saw the Defendant's face when he came towards her and
22 passed her and went to JA. At that point he was only 3 feet away from her.

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24 b. MP recalls the assailant putting a knife to JA's throat and demanding "*Give me
25 the money give me the money.*" At that point the assailant was 4 to 5 feet away
26 and MP said she saw his profile;



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- c. In addition, MP told the court clearly that the robber wore long denim jeans and a blue hoodie;
- d. MP recalls the light from the Burger King parking lot, the streetlight as well as a light on the Charles Building. MP said there was a light near to the back corner light which was also an outside light.
- e. MP told the court that she started yelling at the assailant, saying that they didn't have anything. MP said that the assailant had the hoodie on his head but it was not covering his face.
- f. MP said that after he took the bag from the car he turned to walk away and then came back. When he came back he was about 4 feet away. MP told the court that she could see his face as he kneeled down. MP said the assailant's face was not covered though he still had the hoodie on. MP said she could see his face in the light from the Charles Building;
- g. MP said that in total the incident lasted 15 minutes and that she could see the assailant's face for the majority of that time. She said she also saw the knife and drew a picture of the knife, which she gave to the police.
- h. MP said it was not dark and there was light illuminating the area in which they were standing. MP said that because he had a knife MP said she didn't take her eyes off him.
- i. Two days later, on the 24th November 2014 MP said she was shown a spread of 12 different photographs. She looked at the photographs and she was asked if she could identify the assailant. MP picked out photograph #8 was a photograph of the Defendant.





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CONCLUSION

125. *The Defendant's location at the time of the Robbery:*

- a. On 23rd November 2014 the Defendant told the RCIPS that at the time this robbery took place at the Charles Building he was down in Rock Hole with persons whose names he didn't know or wasn't prepared to provide because he would be thought of as an informer.
- b. Defendant then changed his story and in his sworn evidence before the court he stated that at the time the robbery was committed he was at home asleep at 60 Kennedy Drive.

126. *The EMDT:*

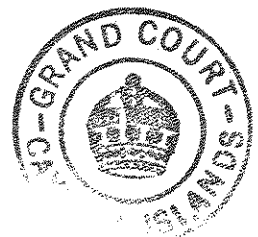
- a. We know that his EMDT was not operating at the time the robbery was committed.
- b. We know that the Defendant deliberately puts tin foil on his EMDT which renders it non-operational. One has to ask the question: For what reason does he put foil on his EMDT other than to conceal his movements?
- c. Whilst his EMDT is nonoperational, we have no means of knowing where the Defendant can be located. All we can say with any certainty is where the EMDT was located when it was last operating and where it was located when it re-started. As Mr. James stated: We have no means of knowing where the Defendant or the EMDT were between those two times.

1 127. The Curfew: We know that the curfew makes no difference to the Defendant
2 as, by his own evidence, he leaves his home premises as and when he wishes
3 – regardless of the terms of his bail conditions and, specifically, the curfew
4 times.

5
6 128. The identification by JA and MP of the Defendant: The Defendant's main
7 point is that they didn't describe the scars on his nose. Sitting as I am as the
8 tribunal of fact I have to also state that when the Defendant was in the
9 witness box I could not see any scars on his nose.

10
11 129. I am not impressed by the Defendant's evidence or by the manner in which
12 he answered questions. I find the Defendant evasive when being subjected to
13 cross-examination and generally unreliable in his testimony.

14
15 130. I considered the evidence of JA and MP and I found that both these witnesses
16 gave their evidence in a calm, unshaken and clear manner. I note that they did
17 not say they could see the Defendant when they couldn't see him. For
18 example JA said at the beginning of the robbery he could only faintly make
19 out the Defendant's face. When MP saw the Defendant searching the car she
20 said she could only see his profile. Neither witness made any attempt to
21 embellish their evidence.



1 131. There are discrepancies in the evidence presented by the Crown. For example, I take
2 into account that JA said that on the fourth occasion when he observed the assailant
3 – whilst he was rummaging through MP’s bag – that was for 20-30 seconds.
4 However, on another occasion, JA said that the whole time he observed the assailant
5 during the robbery was some 30 seconds.

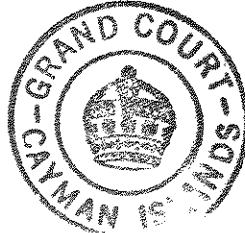
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7 132. Another discrepancy was that JA said that the robbery lasted some 2 to 3
8 minutes whilst MP said it lasted some 15 minutes.

9
10 133. When one is the victim of a violent robbery with a knife, there is little or no
11 time to look at one’s watch and give a precise estimate of the duration of the
12 robbery. It would be wholly unreasonable and unfair to the witnesses to
13 expect them to recall such events with clockwork accuracy and precision.
14 This discrepancy does not mean that either witness is lying.

15
16 134. I take into account that JA found the robbery “very frightening” and that he
17 was concerned for MP’s safety. MP told the Court that she was “terrified.” It
18 is therefore understandable that their estimates of time could be different –
19 given the terror of the robbery they experienced.

20
21 135. The probability is that the robbery was shorter than 15 minutes but longer
22 than three minutes. However both witnesses are clear that they saw the
23 Defendant and identified him as the robber at the Charles Building on
24 Saturday, 22nd November 2014.

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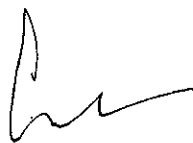
1 136. JA and MP both picked out the Defendant as the robber in two separate
2 photograph spreads where the Defendant's photograph was in a different
3 position and with a different number. In addition JA identified the Defendant
4 in the group identification which took place on the 26th November 2014.

5
6 137. Having considered the evidence of JA and MP and observed their demeanour
7 in the witness box I find that the witnesses are witnesses of truth and that the
8 evidence is reliable. I find that there is no doubt that the witnesses correctly
9 identified the Defendant as the man who robbed them on Saturday, 22nd
10 November 2014.

11
12 138. Having considered the submissions of both counsel and having reviewed the
13 evidence of both the Crown and the Defence, I am satisfied beyond all
14 reasonable doubt that the Defendant robbed JA and MP on the 22nd
15 November 2014 and, at the time of so doing, put a knife to JA's neck thereby
16 using force at the time of the robbery.

17
18 139. For these reasons I am sure the Defendant is guilty of Robbery as charged on
19 this Indictment.

20
21 **Dated this the 30th day of June 2015**

22 

23 **Honourable Mr. Justice Charles Quin Q.C.**
24 **Judge of the Grand Court**

