

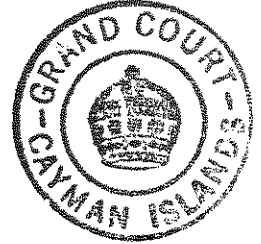
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 0020/2012**

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7 **THE QUEEN**

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9 **V**

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11 **LEIGHTON RANKINE**



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14 **Appearances:** **DPP, Ms. Cheryll Richards Q.C. and Ms Jenesha**
15 **Bhoorasingh Simpson for the Crown**

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17 **Mr. Alastair Malcolm Q.C. and Mr. Clyde Allen for**
18 **the Defendant**

19 **Before:** **Honourable Madam Justice McDonald-Bishop**
20 **(Actg.)**

21 **Heard:** **27th May – 4th & 11th June 2013**
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24 **JUDGMENT**

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26 1. The defendant, Leighton Rankine, stands charged on an indictment containing
27 seven counts.

28 2. These counts charge him for offences all allegedly committed on 22 February 2012
29 at the car park of Club 7, West Bay Road, Grand Cayman.

30 3. He is charged on counts 1 and 3 with the offence of Attempted Murder contrary to
31 s.194 of the Penal Code (2007 Revision). The particulars of the offence on those
32 counts are that he attempted unlawfully to cause the death of Mitchell Anthony
33 Wright and Joylon Frederick, respectively.

1 4. Counts 2 and 4 each charges him with the offence of Wounding with Intent
2 contrary to s.203 of the Penal Code (2010 Revision) and the particulars are that he
3 unlawfully and maliciously wounded Mitchell Anthony Wright and Joylon
4 Frederick, respectively, with intent to do them grievous bodily harm.

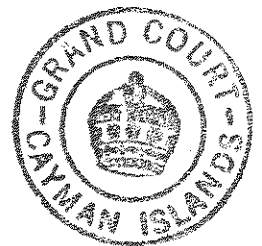
5 5. Count 5 charges him with the offence of Possession of an Unlicensed Firearm
6 contrary to sections 15(1) and (5) of the Firearms Law, (2008 Revision). The
7 particulars of that offence are that he had in his possession a firearm, namely a .38
8 Smith & Wesson Revolver, not being under and in accordance with the terms of a
9 Firearms User's Licence.

10 6. Count 6 charges him with the offence of Unlawful Use of a Firearm contrary to
11 s.208 of the Penal Code (2010 Revision). The particulars of that offence are that he
12 unlawfully discharged a .38 Smith and Wesson Revolver at Mitchell Anthony
13 Wright and Joylon Frederick.

14 7. Count 7 charges him with Assault contrary to s.215 of the Penal Code, (2010
15 Revision) and the particulars of that offence are that he unlawfully assaulted Jordon
16 McLean.

17 8. The charges are thus properly joined in one indictment as founded on the same facts
18 pursuant to s.161(1) of the Criminal Procedure Code (2010 Revision).

19 9. To this indictment the defendant pleaded not guilty.
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1 10. Following on his arraignment on 18 May 2012, and in keeping with the Order of
2 Henderson, J for him to make an election in writing as to his preferred mode of
3 trial, the defendant elected trial by judge alone pursuant to s.129(1) of the Criminal
4 Procedure Code, (2010 Revision) - hence these proceedings before me.

5 11. Now, it is my sole task, having heard all the evidence adduced on behalf of both the
6 prosecution and the defence, to act as judge of the law as well as of the facts and to
7 apply the relevant law and my common sense to the evidence I have heard in order
8 to determine the guilt or innocence of the defendant.

9 12. In executing my task, I am mindful of my dual role as both judge of the law and of
10 the facts and that it is, therefore, incumbent on me, acting as such, to demonstrate
11 how I have arrived at my decision by revealing my application of the applicable law
12 to the facts as well as by demonstrating how I treat with the material facts in
13 coming to my findings.

14 13. The defendant is presumed by law to be innocent of all these charges and the
15 burden rests on the prosecution to satisfy me to the extent that I feel sure that he had
16 committed each and every charge as laid in each count of the indictment. The
17 prosecution bear the burden of proof on all issues necessary to the proof of each
18 offence as charged throughout this entire trial and that burden never shifts.

19 14. I have approached my task being fully cognizant that the defendant has nothing
20 whatsoever to prove and that although he took the witness box and gave evidence, I
21 know he has not assumed any duty to prove his innocence or, indeed, anything at
22 all.



1 15. Although the defendant has no burden to prove anything, I, nevertheless, have to
2 accord to his evidence the same standard of fairness and treatment as I would the
3 evidence of the prosecution witnesses. Accordingly, I have done what is required of
4 me. I have weighed his evidence on the same scale and have accorded it the same
5 degree of respect as all other evidence in the case. I have not ignored or rejected
6 anything he said on the basis that he is the defendant.

7 16. I must point out too from the outset that I have listened quite keenly to the helpful
8 and intellectually stimulating submissions of both Queen's Counsel, Ms. Richards
9 Q.C., for the prosecution, and Mr. Malcolm Q.C., for the defendant. I have
10 considered everything they have urged on me to consider on varying aspects of the
11 evidence. Their insightful comments have guided my deliberations and have greatly
12 assisted my analysis of the evidence in coming to my decision. Therefore, I mean
13 no disrespect whatsoever to any of them for my evident failure to set out in detail
14 all aspects of their submissions. I am constrained by time to do so.

15 17. I have made an attempt to summarize the evidence adduced on behalf of the both
16 the prosecution and the defence, as best as I can, just to provide an insight into the
17 factual framework within which my analysis and findings have taken place.

18 18. I have not repeated every item of evidence verbatim. I must indicate, however, that
19 I have read all the evidence and have paid due regard to all the relevant and
20 properly admitted evidence adduced before me from both the prosecution and the
21 defence.

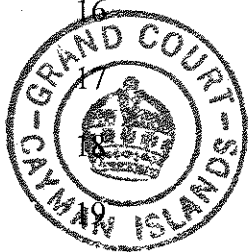
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1 19. I have treated with such evidence within the ambit of the law. I have paid close
2 attention to matters that not only go to show whether or not the offences have been
3 proved, as a matter of fact and law, but also to those matters that go to the
4 credibility, reliability, weight and cogency of the evidence of each witness. These
5 include; in the main, matters such as contradictions or conflicts in the form of
6 inconsistencies and discrepancies, as well as omissions. I have also paid attention to
7 matters that ought to be ignored as being irrelevant and/or more prejudicial to the
8 defendant than probative of this guilt and have treated them according to law.

9 20. In addition to bearing in mind those matters that touch on credibility and reliability,
10 I have also borne in mind that this case turns on the credibility of the purported eye
11 witnesses and so their demeanour has been of critical importance to me. I have
12 listened carefully to them and have closely scrutinized them in my quest to see
13 wherein the truth lies and to see whether the prosecution have satisfied me to the
14 requisite standard on each count of the indictment.

15 21. I am mindful too that in coming to my conclusion as to the guilt or innocence of the
16 defendant, I must examine the evidence for and against him on each count
17 separately and independently of each other. I have done just that. The ingredients
18 constituting each offence are borne in mind and so the facts are examined to
19 determine whether the prosecution have discharged the burden of proof in respect
20 to each count separately.



21 22. I am duty bound to give the defendant the benefit of any doubt I entertain on the
22 evidence and to acquit him if I am not satisfied or I am left in reasonable doubt that
23 the prosecution have proved their case against him in respect of each charge.

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1 **THE PROSECUTION'S CASE**

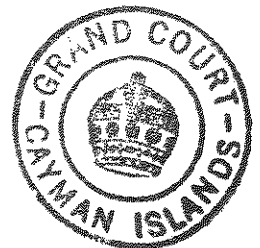
2 23. The prosecution have relied on the evidence of over 25 witnesses whose evidence
3 was adduced in differing forms: *viva voce* evidence (live and by video link);
4 agreed statements that were read; as well as through formal admissions made.

5 24. These formal admissions are accepted as conclusive evidence of the facts so
6 admitted therein as provided for under s.34 of the Evidence Law (2011
7 Revision). The facts as contained in those admissions are all taken into account in
8 coming to my findings even if I do not expressly repeat them verbatim for present
9 purposes.

10 25. In relation to those witnesses whose statements were read into evidence, I am
11 mindful that they have not been subject to the scrutiny of the court and to have had
12 their evidence tested by cross-examination. So, in assessing the weight to be
13 attached to their evidence, I have borne all these matters in mind. The audio-visual
14 presentation of the evidence is not seen in any way as being prejudicial to the
15 defendant. Those witnesses who gave evidence by that method were subject to the
16 same assessment as any witness appearing in person and treated according to law.

17 26. The prosecution also relied on the evidence of persons accepted as experts in their
18 respective fields. I have treated with their evidence in accordance with the
19 principles applicable to expert witnesses. Fundamentally, I have treated them like
20 every other witness, subjecting their evidence to the same scrutiny and knowing
21 that I am not duty bound to accept the opinion they express on any matter.

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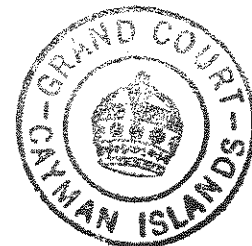


1 27. The fundamental question on which the proof of the offences as charged hinges is
2 whether the defendant was present at the Club 7 car park on 22 February 2012, and
3 armed with a firearm, namely a .38 Smith & Wesson revolver he used to assault
4 Jordon McLean and fired at Mitchell Wright and Jolygon Frederick causing injuries
5 to them.

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7 28. I accept that the location which is alleged as the scene of the commission of the
8 offences is, indeed, the car park of Club 7, West Bay Road, Grand Cayman. Its
9 location, layout and configuration on or around the time of the alleged incident are
10 accepted as being accurately and clearly depicted in photographs, drawings and
11 sketches of witnesses which have been tendered by the prosecution and admitted
12 into evidence, without objection. I have placed particular reliance, in this regard, on
13 the formally admitted aerial photographs of the area taken by DC Gustavo
14 Rodriguez (Exhibit 2) and the photographs and sketch with measurements of the
15 location prepared by Zoan Marin, Civilian Scene of Crime Investigator of the Royal
16 Cayman Islands Police Services (RCIPS) (Exhibits 6 and 8).

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18 29. The prosecution's case as to the alleged incident occurring at that location that has
19 given rise to the charges in the indictment against the defendant is embodied,
20 primarily and substantially, in the evidence of three civilian witnesses, namely,
21 Mitchell Wright, Jordon McLean, and Jolygon Frederick (the complainants).

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1 30. Given the central role these witnesses play in the prosecution's case, I have
2 provided a more detailed summary of their evidence for present purposes than that
3 of the other witnesses. As indicated before, all the evidence of each witness has
4 been duly taken into account but only salient aspects germane to my determination
5 as to the proof of the case and the reliability of the witnesses have been distilled for
6 present purposes.

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8 31. During my analysis, I have highlighted in greater detail some aspects worthy of
9 special attention in determining whether the defendant is guilty or not of the
10 offences with which he is charged.

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12 32. I should indicate too that in an effort to present a coherent picture of the case for the
13 prosecution, in its totality, I have reviewed the evidence of the witnesses not in the
14 order in which they were called but more based on the chronology of events and
15 the witnesses' involvement in those events.

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1 37. He turned back and he saw Joylon and the defendant, whom he knew then as Cookie,
2 walking towards a BMW motor car parked in the Club 7 parking lot. That car he knew
3 to belong to a girl he knows as Sophia who once dated his brother. He was about 20-
4 25ft away from them at that time. That was when he realized that it was the defendant
5 to whom Jordon was referring when he said the guy said he was going to shoot him.

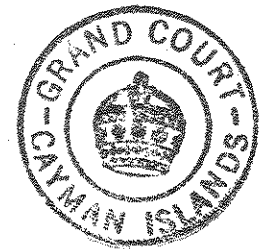
6 38. At that point, the defendant and Joylon were between two cars and Joylon was making
7 hand gestures with hands outstretched (demonstrated) as if to calm down the defendant.
8 The defendant was looking in the direction of Jordon who was standing where he was
9 talking earlier to Joylon in the vicinity of the exit of Club 7 parking lot. Joylon was
10 between two cars trying not to let the defendant cross.

11 39. He continued to walk over to Joylon and the defendant to see what was the issue. He
12 had nothing in his hands. His purpose, in going over to them, was to calm down the
13 situation. On approaching the men, the defendant had his right hand to his side so he
14 could not see what was in his hand but he was pointing in Jordon's direction. He then
15 saw the defendant with a gun that he placed over one of Joylon's shoulders and was
16 pointing in the direction of Jordon. Joylon had his arms outstretched facing the
17 defendant. The defendant was at the time at the driver's door of the BMW. He was able
18 to see what was happening from a nearby street light (which is noted in some of the
19 photographs of Exhibit 2).

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1 40. At the time he saw the gun over Joylon's shoulder, he reacted. He ran over to where
2 they were and he remembered trying to reach over to get the gun from the defendant.
3 He was on Joylon's back with his hand in the air trying to get over to the defendant. His
4 right hand was raised and swinging downwards. He had nothing in his hand. He
5 remembered hearing a pop but not like a gunshot. He did not see Joylon after he heard
6 the popping sound.

7 41. Up to that point, he said nothing and the defendant said nothing. They looked at each
8 other for a second, like a stand off for a brief moment, and he saw that the defendant
9 still had the gun in his hand. He ran towards the defendant and grabbed his forearm.
10 When he grabbed the defendant's hand, the defendant pointed the gun in the direction
11 of his stomach. The gun was in cocked position.

12 42. When the gun was pointed at his stomach, he had a rush of emotions at that point. He
13 jumped out of the way, moving to the side, because he thought the defendant would
14 have fired. The defendant did not do anything else with the gun.

15 43. He jumped behind the defendant to try to get away from the direction of the firearm and
16 tried to apprehend him. He put a sleeper hold on the defendant with his right arm
17 around and under the defendant's neck (demonstrated). He said he held both hands
18 down. The defendant tried to fight back, moving his hands trying to wriggle his way out
19 but he maintained his hold on the defendant until they both fell to the ground. They
20 were still wrestling when the defendant told him to let him go because the police were
21 coming. He did not let him go.

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1 44. Two officers approached them with firearms pointing in their direction. He still held
2 the defendant. The police, with guns pointed, told the defendant to drop the gun. They
3 kept repeating the order to drop the gun. The defendant then tossed the gun in nearby
4 bushes to the left side of where they were in the parking lot. He was still holding the
5 defendant in the same position as before when the defendant tossed the gun. They were
6 still on the ground and the officers tried to put handcuffs on him.

7 45. It was then that he realized he was shot in his right hand. When the officer grabbed his
8 arm, it felt swollen. He then reacted violently towards the defendant who was still on
9 the ground by kicking him in the face with his construction steel boots. He kicked the
10 defendant out of anger because he was shot and he did not know what a shot could do.

11 46. While he was being held by the police he was attacked by a friend of the defendant,
12 Louis Verona, and he started to fight with him. He found that his right arm was useless.
13 The police deployed pepper spray to break up that confrontation. He waited for the
14 ambulance with the pepper spray. He remained at the scene until he was taken to the
15 George Town Hospital at the emergency section.

16 47. He sustained injuries to his right wrist by the gunshot. The bullet was lodged in the side
17 aspect of his right elbow. He was bleeding from the arm and he was admitted for three
18 or so days at the hospital. A week later, he underwent surgery to remove the bullet. His
19 hand took one month to get better. During that time, he could not lift things and it was
20 swollen for a few weeks.

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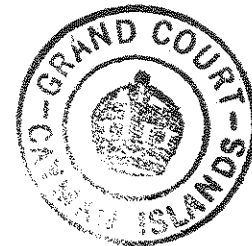


1 48. He was subject to swabbing while in hospital for gun powder residue (GSR) on the
2 same morning of the incident and he gave his shoes and items of clothing he was
3 wearing at the time of the incident to the police for testing. He also eventually gave a
4 statement and a sketch of the area to the police. In the sketch, he indicated a layout of
5 the scene of the confrontation with the defendant (Exhibit 1).

6 49. He knew the defendant for over five years before the incident. He knew the defendant's
7 sister as Mellissa Rankine as she worked with him before. He would see the defendant
8 once a month when he would drop things off for this sister at work. The defendant was
9 not someone he would talk to. He might have seen him months prior to the incident.

10 50. Prior to the incident, he had seen the defendant outside earlier walking around in the
11 parking lot. He was able to see the defendant in the club when he saw him with Sophia
12 with the aid of the flashing lights. When he was outside in the car park at the time of the
13 incident, he was able to see the defendant by the street light close to the car park and
14 based on the fact that he had no eye issues. He saw him clearly. In terms of distance, the
15 defendant came very close to him to the extent that they were arm in arm and they were
16 face to face at some point.

17 51. The gun that the defendant had was a revolver. He knew it to be a .38, because he knew
18 guns from video games. It was a regular handgun, black in colour with a revolving
19 chamber. The chamber is where the bullets are stored and it was in the middle. It could
20 fit in the palm of his hand (estimated length agreed at 6 inches).



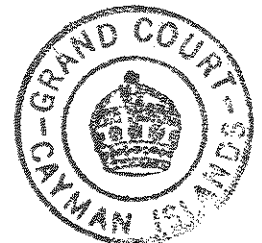
1 52. Mr. Wright was cross-examined and re-examined. I will highlight, however, certain
2 salient parts of his evidence that were elicited on cross-examination and re-examination
3 that would be more materially relevant to the facts in issue as well as to his credibility
4 which is a collateral issue to be determined.

5 53. In cross-examination, he was questioned as to his activities for the evening prior to
6 going to Club 7. In particular, he was questioned about what he had to drink prior to the
7 incident. He was asked whether he drank Jack Daniels and Coke while at Calico Jacks.
8 His response was that he would usually have that drink but he had none that night; then
9 he said, he could not recall having any. He did not have a couple of those drinks with
10 beers. This is relevant in so far as Jordon McLean had said that he (Mr. Wright) had
11 two of that drink and so is a question that goes to his credibility.

12 54. He said that although he used the word “partied” in his statement to the police with
13 reference to what he did at Club 7 when he got there, he was not dancing and he had
14 only a Red Bull to drink. He liked to keep his composure and he was not impaired in
15 any way.

16 55. He was asked whether he had reached Troy’s car when he went to Grand Pavilion car
17 park and he heard Jordon spoke. He said that he had not reached the car but was 10ft
18 from it when he turned around and heard Jordon. This, of course, is inconsistent with
19 what he said in examination- in- chief that he had got to the car. When it was put to him
20 that he had said in his police statement that he got to the car, he stated that that was as a
21 result of bad grammar because he did not make it to the car.

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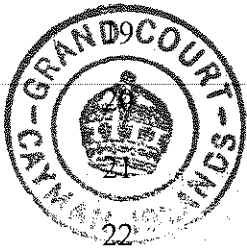
1 56. He maintained that he managed to hear what Jordon had said about someone wanting to
2 shoot him although persons were in the car park talking and laughing. Upon being re-
3 examined on this point, he said there was noise but he still heard Jordon's voice over
4 the others. According to him, the noise level was calm.

5 57. Jordon had said the words in question while he was standing where he was with Joylon
6 talking earlier which was near to the Club 7 exit (indicated on his sketch). Jordon was
7 on his own facing the defendant and Joylon who were both standing by the BMW at the
8 tiem. Joylon was trying to calm down the defendant. He is sure the words were spoken
9 by Jordon and he accurately heard them.

10 58. He accepted that the men were not 20-25 ft. (or 25-30 ft.) from him when he heard
11 Jordon spoke and he looked around as he had said in examination-in chief. Upon being
12 reminded of what he told the police in his witness statement. He conceded that they
13 were 40-50ft from him as he had told the police.

14 59. When he got to where the defendant and Joylon were, he did not know where Jordon
15 had gone. He was not looking for him. He only saw the defendant and Joylon. Troy was
16 left in the Grand Pavilion car park.

17 60. He could see the defendant with the gun in his hand pointing over Joylon's shoulder
18 pointing in Jordon's direction. He saw the nozzle and revolving part at that point. He
could not recall hearing the defendant saying anything. He hastily tried to get over to
the defendant. He went on Joylon's back to get to the defendant. It was a forceful push
he made on Joylon's back. He had both his hands over Joylon's shoulder trying to get to
the defendant. He got to 3-5 ft from the defendant who was standing in the same place
and Joylon was between them. After he heard the popping sound he did not know where
23 Joylon was.
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1 61. Upon re-examination, he further explained the point in time that he had last seen
2 Joylon. He said that when he heard the pop, Joylon was in front of him and the
3 defendant. When he went on Joylon's back, Joylon changed position and so he could
4 not say how he was positioned at the time he heard the pop. After the pop, he last saw
5 Joylon in front of him.

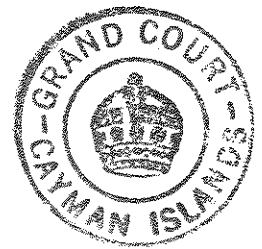
6 62. In cross-examination, he also stated that he had both arms pressed against the
7 defendant's hand when they were struggling. He was holding him with the same right
8 hand but did not realize he was shot in that hand until the police held him. He did not
9 tell the police he was shot prior to him being held by the police. It was after the police
10 tried to handcuff him that he realized he was shot.

11 63. He agreed that he was holding the defendant's forearm with the gun when the gun came
12 up and leveled with his stomach pointing at it and he moved to one side. He agreed that
13 it was after the defendant threw the gun that the defendant fainted because he was
14 holding his throat.

15 64. In relation to his fight with Verona, he tried to put a neck hold on Verona but he found
16 his hand was useless and so he bit him and kicked at him. Although it is in his witness
17 statement that he had said that he tried to fist fight, he was not in a fist fight with
18 Verona.

19 65. He had no gun. None of his friends had any gun or anything in their hands. Joylon had
20 no gun and nothing in his hand. He said it could not be that there was a fight and one of
21 his friends had the gun and the defendant had disarmed one of them.

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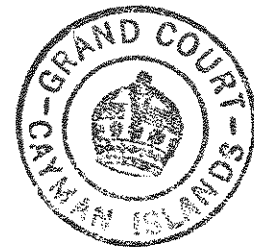
1 66. The first time he saw the gun was when the defendant placed it on Joylon's shoulder. At
2 the pre-trial conference in September, he had said that he saw the defendant concealing
3 the gun when he was 15 ft. from him. He explained that by saying that, he meant that
4 when he was walking across from the Grand Pavilion parking lot, he saw the defendant
5 concealing something but he did not know what it was at the time. He eventually saw
6 that it was the gun when he was 10 ft. away and the defendant put it on Joylon's
7 shoulder. Before that, he could not see the defendant's right hand because it was
8 positioned downwards.

9 67. In re-examination, he said that he was coherent at the time of the incident.

10 JORDON MCLEAN

11 68. Jordon McLean is the complainant named in count 7 of the indictment. His evidence
12 was to the following effect in so far as is relevant to the facts in issue and the issue of
13 credibility. He went with Mitchell and Troy to Calico Jacks and then to Club 7. At
14 closing time at Club 7, he led the way out of the club and proceeded with the other two
15 to the parking lot.

16 69. Outside the club, he saw Joylon, his cousin. Joylon was in the middle of the parking lot
17 at Club 7. They spoke as they had not seen each other for a long time. Troy and
18 Mitchell continued walking to Troy's car. Whilst talking to Joylon, the defendant,
19 whom he did not know before, came up in an aggressive manner behind Joylon.



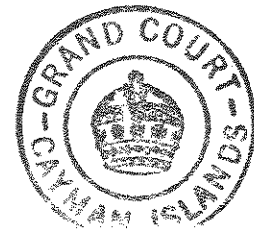
1 70. The defendant asked what the problem was. He told the defendant he had no problem.
2 He said he told the defendant to 'stop being weird'. The defendant then said, "you
3 calling me retarded now" He responded to the defendant by saying, "no. I just said stop
4 being weird". The defendant then said he was going to show him something in an
5 aggressive manner and went to a grey BMW car that was backed up in the parking lot.

6 71. The defendant went to the right back door of the BMW from where he took a gun. The
7 defendant pointed the gun at his chest and said, "who is retarded now?" He was in fear
8 of his life and he froze up. They were about 20 ft. apart. He was able to see the
9 defendant clearly because the parking lot was well illuminated by the light on the pole
10 that was there. The defendant was standing about 15 ft from the light.

11 72. Joylon was there with the defendant. Joylon had gone over to him telling him to just
12 calm down and that there was no problem. He saw Joylon's body language as if he was
13 trying to control the situation.

14 73. Mitchell Wright ran over from the Grand Pavilion car park where Troy's car was
15 parked and he said someone trying to shoot him. He was referring to the defendant.

16 74. The defendant turned and pointed the gun at Mitchell's chest. Mitchell was in front of
17 the defendant and Joylon. He saw Mitchell put his right hand up (indicated elbow bent
18 across his chest). Joylon was to the left of Mitchell. Joylon's hands were down. That
19 was when the shot was fired. He was seeing the back view of Joylon and Mitchell but
20 could not see the specifics to their motions. He could see Mitchell's elbow at an angle
21 but could not see exactly what was being done. He did not see Joylon with anything in
22 his hands. Mitchell had nothing in his hands.



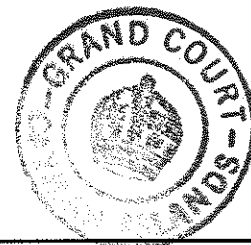
1 75. He heard the sound of the gunshot. The sound came from the gun the defendant had in
2 his hand. When the shot was fired, the defendant, Joylon and Mitchell were at the right
3 side of the car where they were initially. Joylon disappeared after that.

4 76. After the shot was fired, Mitchell grabbed the defendant and they were wrestling in
5 front of the BMW. During the struggle, Mitchell had the defendant in a head -lock
6 position and the defendant still had the gun in his hand. Mitchell was trying to hold the
7 gun and the defendant was trying to point the gun up towards Mitchell. They were
8 wrestling but he cannot say specifically what they were doing.

9 77. The defendant and Mitchell were there wrestling until the police came pointing the
10 guns at them. It was then that the defendant threw the gun in the bushes to the side of
11 the parking lot. After the gun was thrown, Mitchell and the defendant continued
12 fighting and the officers then came and detained them. The defendant was on his side
13 on the ground from the wrestling and that was when Mitchell kicked him in his head.

14 78. He did not change position from where he was in the parking lot. He did not move until
15 after the police handcuffed Mitchell and the defendant. He saw Mitchell's hand getting
16 swollen and that was when he saw that the bullet had lodged in Mitchell's hand. He
17 spoke to an officer at the scene. The ambulance came and took the defendant and
18 Mitchell separately.

19 79. He went to Troy's car where he saw Troy standing and then they went to the hospital to
20 check on Mitchell. He saw Joylon at the hospital. Joylon had a cut to his bicep but he
21 was not sure which hand.



1 80. He subsequently, during the course of that morning, gave a statement to the police and
2 drew a sketch of the area showing, among other things, where he was at the time of the
3 incident (Exhibit 4).

4 81. The gun he saw in the hand of the defendant was a black handgun with a barrel. He saw
5 how the defendant was holding it. He heard the loud noise that he said was a gunshot.
6 He was able to recognize it as a gunshot because he had been to gun ranges two or three
7 times prior to that morning and he had heard gunshots before.

8 82. Under cross examination, he stated that at Calico Jacks, he had cranberry and vodka and
9 that Mitchell had two Jack Daniels and Coke. As already noted, this is in conflict with
10 what Mitchell Wright had said and is viewed as a discrepancy which will be addressed
11 shortly. He said Troy did not drink because he was the designated driver.

12 83. He had seen Joylon in the club but did not get to catch up with him in there until they
13 met up outside. He was in conversation with Joylon for about 2-3 minutes. He did not
14 check his watch for the exact time but they spoke for a brief time before the defendant
15 approached them from the direction of the club. This bit of evidence, as will be seen,
16 was contradicted by Joylon and arises as a discrepancy between them. How this is
17 viewed is the subject of my assessment of the witnesses' credibility.

18 84. He said that when he asked the defendant why was he acting weird, the defendant went
19 to the car and it was at that stage that Joylon went over to him at the car. When the
20 defendant opened the rear door, Joylon was over by the car. Mitchell and Troy were
21 walking over to the Grand Pavilion car park. When the defendant pointed the gun at
22 him and he saw the gun, Joylon was still over by the car.

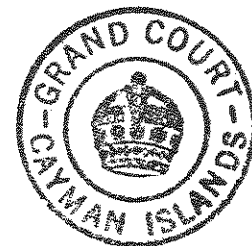


1 85. It was asked of him why he did not mention that he had uttered the words that someone
2 wanted to shoot him when he gave his statement to the police or to the prosecution
3 when he had two pre-trial conferences. He said it was important to do so but due to fear
4 and exhaustion at the time he was giving his statement, he missed it out. He said he
5 made a mistake in not mentioning it. When he saw his witness statement at the pre-trial
6 conferences, he only ensured core points were there. All the little details would have
7 been misplaced. It was, however, not a detail that Mitchell Wright had told him about in
8 discussing the case between them.

9 86. He said that when Joylon went up to the defendant by the car, Mitchell and Troy were
10 over by the Grand Pavilion car park and they were not very close. They were about 15-
11 20 ft. away. He would call very close to be 2-5 ft. and they were not so close. It was put
12 to him that in his police statement he had said that Troy and Mitchell were in very close
13 proximity at the time. He agreed that he had said that to the police but that at the time
14 he was giving evidence he would say it was not so close or very close. This again, is an
15 inconsistency for which the witness has offered an explanation and it goes to the issue
16 as to whether I can accept him overall as a credible witness.

17 87. He said that when the defendant went into the car, Joylon was 2-3 ft. away from the
18 defendant. He could not specifically state where Mitchell was at that time as he was
19 paying attention to Joylon and the defendant. The last time he had seen Mitchell before
20 the defendant came up to him was when Mitchell was walking to the Grand Pavilion car
21 park and the next time he saw him was when he was going across Joylon and the
22 defendant. He did not see Troy until the whole incident was over.

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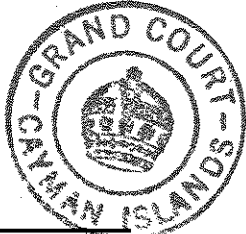
1 88. He was questioned about the movements of the defendant and Mitchell during the
2 struggle but he said there were points when he could not see what was happening
3 because they were turning. It was only at some points that they faced him and that was
4 when he could clearly see what was happening. When their backs were to him, it was
5 impossible for him to see what was happening between them.

6 89. He saw when the defendant was trying to point the gun at Mitchell but Mitchell was
7 holding him in a head-lock position and the gun was pointing downwards. He did not
8 see Mitchell holding the defendant's two hands while he had him in a head-lock
9 position when they were facing him. He agreed that he had also said in his witness
10 statement that he saw Mitchell used both hands to grab hold of the defendant's right
11 hand with the gun and that was correct.

12 90. When the police came, Mitchell and the defendant were still on the ground wrestling
13 before they stopped. Mitchell had kicked the defendant in the head before the police
14 handcuffed him.

15 91. At first, he could not remember whether he had seen any punching of the defendant by
16 Mitchell but he knew for sure Mitchell kicked the defendant. When reminded of his
17 pre-trial conference of 14 May 2013 where he said that Mitchell was punching the
18 defendant when the police came, he explained that when his back was turned there were
19 some punches but that when the police came there was some kicking at that point. He
20 then agreed that Mitchell was punching the defendant at some stage. He could not
21 remember the specifics when Mitchell punched the defendant but he punched him
22 before and after the police came.

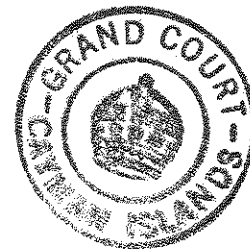
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1 92. Upon being re-examined on this aspect, he indicated in this regard that when Mitchell
2 was punching the defendant, Mitchell's back was to him and he was only able to see the
3 hand motion going back and forth. It was based on that action that he said Mitchell was
4 punching. He only saw the struggle when he was facing the men.

5 93. He saw Joylon's brother there that night outside the club but he could not remember the
6 specifics about him. He did not see where Joylon went after the incident. When the men
7 started wrestling, Joylon disappeared. Joylon had no gun with him. He had no gun and
8 none of his friends had any gun.

9 94. He was also asked in cross-examination whether he had discussed the incident with
10 Mitchell Wright. His response was that he had discussed what had happened but not
11 recently. In re-examination on the point, he explained that at the time he gave his
12 witness statement and his sketch to the police, he had not discussed the case with
13 Mitchell. He had spoken to Mitchell about 2-3 days after the incident occurred and they
14 did not go into any specifics or any details of the incident based on the advice of the
15 detectives.



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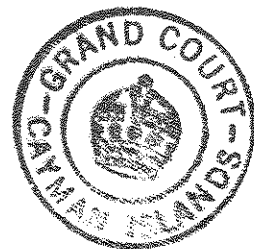
1 *JOYLON FREDERICK*

2 95. Joylon Frederick is the other complainant named in the indictment and he forms the
3 subject of counts 3, 4 and 6. The main planks of his version of the events are distilled
4 and summarized as follows. On 21 February at about 9:00 p.m., he went to Club 7 with
5 his brother Kemani Frederick. Before that, he was at Buttonwood Bar where he drank
6 Appleton VX. While at Club 7, he had a bottle of Hennessey to drink. He remained
7 there until closing time. He was intoxicated by the time he was leaving Club 7 at
8 closing time.

9 96. On exiting the club, he went downstairs to get to his brother's car and while proceeding
10 to the car, he stopped to speak to Jordon McLean, his cousin, who he met up with near
11 the exit of the car park.

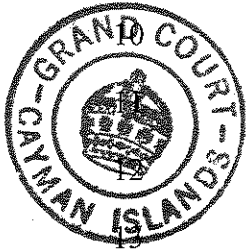
12 97. Whilst talking to Jordon, the defendant, who is also his cousin, came there. He has
13 known the defendant for all his life. The defendant said to Jordon if he thought he
14 (Jordon) was a bad guy. Jordon's response was that he did not know what all that was
15 for. He cannot recall what the defendant said but the defendant went to a BMW.

16 98. Jordon continued walking towards the next parking lot to get to his car. This, of course,
17 contradicts what Jordon had said that he had remained standing where he was. It is a
18 noted discrepancy which is addressed later.



1 99. He went to the defendant to tell him all this was not necessary and that he did not have
2 to go on like that. The defendant was standing beside the driver's door of the BMW
3 when he approached him. The defendant was shouting and pointing his finger over the
4 parking lot but he did not see who he was pointing at. Later on his testimony, he then
5 said he saw the defendant pointing towards the next parking lot towards Jordon and
6 shouting. The defendant seemed angry but he did not know what he was angry about.
7 The defendant appeared to have had a few drinks.

8 100. He stopped at the front of the car and was trying to calm down the defendant. He
9 remembered telling the defendant that he did not have to go on like that because they
were all family but the defendant did not answer him. He cannot remember all that the
defendant was saying. The defendant was pointing with his right hand and the other
hand was down on his side and so he could not see that hand. He cannot recall how far
the defendant was from him.



14 101. The defendant started to calm down for a bit and then started up shouting again. He
15 continued calming the defendant and during the course of that he felt the presence
16 behind him. He turned his body around slightly with both hands up to see who it was
17 (demonstrated). He did not complete the turn when he heard a noise that sounded like
18 fire rocket or fire cracker and he felt the pain in his hand. The noise came from in front
19 of him but not directly in front.

20 102. When that happened, he did not see the defendant and he did not see him after. The last
21 time he saw the defendant, the defendant was still in front of him by the driver's door.
22 After he felt the pain to his hand, he did not get to see who it was that had come behind
23 him.

1 103. At the time he walked over to the defendant, he had nothing in his hands and Jordon
2 had nothing in his hand when the defendant walked off.

3 104. After he felt the pain in his arm, he just walked to the far end of the car park closest to
4 the bypass (the Esterley Tibbetts Bypass). He said he was probably scared why he left.
5 He was scared of the noise and the pain he felt. He hitched a ride because when he
6 reached the car park, he did not see his brother's car. He did not know the person from
7 whom he got the ride.

8 105. The stranger dropped him off at his friend's house where he noticed his hand was
9 swollen. His friend later took him to the hospital where he was treated and sent home.
10 At no time that morning did he see what caused the injury to his arm.

11 106. He cannot remember speaking to any officer while at the hospital and he cannot
12 remember subsequently giving a statement to the police.

13 107. Upon being asked to point out in a photograph where the BMW was in the car park, he
14 indicated an area and then later admitted that he does not remember the exact location
15 as he was intoxicated on the morning in question.

16 108. Upon being cross-examined, Mr. Frederick could not remember whether he told the
17 police that the BMW was parked one car down from his brother's car.

18 109. He indicated that he had a long conversation with Jordon lasting between 10-20 minutes
19 contrary to what Jordon had said that it was a brief conversation for 2-3 minutes.

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1 110. He said Jordon was facing him with his back to the club and it was then that the
2 defendant came up to them. He got the impression that the defendant was drinking. The
3 defendant said something like, "what's going on?" but it was not directed at him but at
4 Jordon. He agreed telling the police that the defendant was speaking in a loud noise as
5 if he was drinking but that he was not really aggressive.

6 111. He saw nothing in the defendant's hands at any stage that night. Upon being re-
7 examined on this point, he indicated that at the point he was by the BMW, he could
8 only see one hand of the defendant and so when he said he saw nothing in his hand, he
9 could only speak to one hand.

10 112. He did not feel anyone reaching over his shoulder touching him or anything like that.

11 113. When he heard the noise and felt the pain in his arm, he was by the BMW. He was not
12 talking to Jordon at that time. He admitted speaking to a lady officer (DC McQuade)
13 whilst in the hospital but he does not remember saying at the hospital that as he stood
14 outside talking to Jordon he heard a gunshot noise and felt a sting in his arm. He said
15 that if he had said that it would not have been correct because he was not talking to
16 Jordon when he felt the sting.

17 114. He had nothing in his hand. He had a bottle of Hennessy inside the club but he left it
18 there inside. He did not bring it out with him. He then indicated after showing the route
19 he took from the car park to get the ride, that he cannot remember if he had the
20 Hennessey bottle and left it outside at the place where he got the lift.

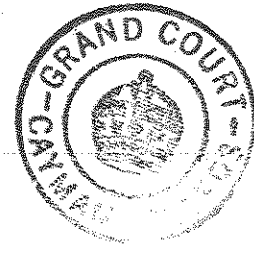
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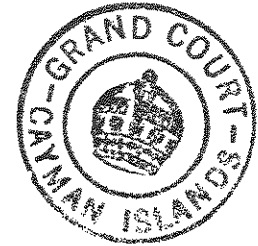


1 115. He saw nobody with a gun that night. He had none and his brother had none. He did not
2 see the defendant with a car key. He was sure the door was open when he got there. He
3 saw it open when the defendant was at the car at the driver's door.

4 116. In terms of the position of Jordon at the time he was going to the BMW, he said that
5 when he went behind the defendant, he saw Jordon going towards the Grand Pavilion
6 parking lot. He did not see him cross the road and go over the car park. Then he said
7 that the last time he saw Jordon, Jordon was going through the Club 7 exit. He was ½ a
8 basketball court from Jordon (estimated at about 40 ft). The defendant was still shouting
9 and Jordon was still making his way to the car park. He said Jordon had moved some
10 way from where they were talking earlier.

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1 *POLICE WITNESSES*

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3 117. The prosecution also relied on the evidence of persons who were purportedly not eye
4 witnesses as the three complainants they presented but who they have put forward as
5 supporting varying aspects of their case. It is to the evidence of these witnesses that I
6 now turn.

7 *PC Derron Campbell*

8 118. PC 146 Derron Campbell of the Uniform Support Group (USG) of the RCIPS stated
9 that he went to Club 7 parking lot during the early morning of 22 February 2012 as part
10 of his mobile patrol duties. He was in the company of PC 342 Jeremy Smith. He was
11 the designated driver of an armed response vehicle. He is an Authorized Firearms
12 Officer and, therefore, trained in the use of firearms. He was armed on that morning.

13 119. At approximately 3:06 a.m., they arrived at the Grand Pavilion car park to make checks
14 on vehicles in the parking lot. He heard a single gun shot sound fired from the direction
15 of Club 7 parking lot. He and PC Smith went to the parking lot to investigate. He
16 informed 911 of the incident by radio transmission. He self-authorized to use his pistol

17 120. He went across to Club 7 parking lot where he saw the defendant, whom he knew
18 before, and Mitchell Wright, whom he did not know at the time, struggling with each
19 other. The defendant was being held from behind by Mitchell Wright in a bear-hugging
20 manner. He was then about 10 ft from them. He identified himself as an armed police
21 officer and challenged both men to stop the fighting and to let him see their hands.
22 None of them complied after he repeated it a number of times.

1 121. As he moved tactically towards the men, Mitchell Wright shouted out to him that he
2 was shot by the defendant and that the defendant had a gun. He saw the defendant with
3 a short dark-coloured gun in his hand placed in front of him and pointing downwards
4 (which he demonstrated).

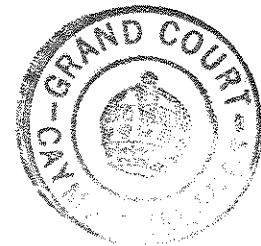
5 122. At about a distance of between 5 and 10 ft. from the men, he ordered the defendant to
6 put the gun down. The men continued to struggle and during that struggle, the
7 defendant threw the firearm with his right hand to the bush hedging of the parking lot.

8 123. The defendant and Mitchell Wright fell to the ground fighting and struggling with each
9 other. He held Mitchell Wright by the arm and pulled him away and off the ground.
10 Mitchell Wright indicated that he was shot in the right arm by the defendant who was
11 lying on the ground. He saw blood on Mitchell's right arm. As he was pulling Mitchell
12 from the ground, Mitchell kicked the defendant in his face. There was blood coming
13 from the defendant's face after the kicks.

14 124. He pulled Mitchell Wright to the corner of the Club 7 parking lot and informed 911 and
15 requested for other police personnel and an ambulance to come.

16 125. While waiting for the ambulance, some persons started behaving aggressively and
17 disorderly towards Mitchell Wright, including Louis Verona, who engaged Mitchell
18 Wright in a fight. In the face of the confrontation and conduct of the patrons, he
19 deployed pepper spray whereupon Verona left the scene.

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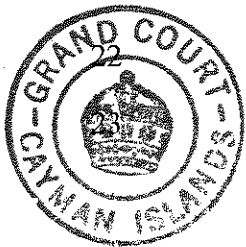
1 126. He decontaminated Mitchell Wright to his face with a bottle of water he got from
2 another police vehicle that had arrived on the scene. Under cross-examination, he
3 indicated that Mitchell Wright was the one who washed his face. He handed over the
4 defendant to PC Hunter for transportation to the hospital for medical attention. Mitchell
5 Wright was handed over to medical personnel from the ambulance.

6 127. After that, he carried out a search of the area where he had seen the defendant throw the
7 gun. After using machete from a police unit to chop away a portion of the bushes, he
8 found the firearm. It was a brown handle .38 revolver. He did not touch it or take it up.
9 He informed 911 of his find and requested Scenes of Crime personnel to attend the
10 scene.

11 128. Scene of crime investigator, Zoan Marin, later attended the scene. Until her arrival, he
12 stood where the firearm was found. He said that area was visible to him from the time
13 the firearm was thrown and no one went into the area before it was found. He gave
14 SOCO Marin a summary of what transpired and she started processing the scene and
15 taking photographs of the area.

16 129. At the end of the processing and photographing, he was given two pairs of latex gloves
17 by SOCO Marin and he made his way to where the firearm was seen. He observed two
18 rounds in the barrel of the revolver while it was on the ground and that the hammer was
19 cocked, that is to say, the hammer was pulled way back in a ready position to fire.

20 130. He put on the gloves and carefully cleared the revolver. He took what he saw as two
21 live rounds, two spent shell casings, and there was a live round stuck in the barrel. He
could not remove it. He made the weapon safe and then handed it and the rounds taken
from it over to Officer Marin with the gloves.



1 131. He identified the gun shown to him in court as the gun he retrieved from the bushes
2 after he saw the defendant threw the gun he had in his hand. The gun was admitted as
3 Exhibit 5.

4 132. He saw nothing in Mitchell Wright's hand when he was struggling with the defendant
5 and he only saw a gun in the defendant's hand.

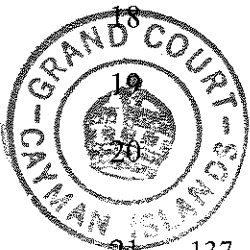
6 133. At the time he saw the defendant with the gun, he was able to see his entire body from a
7 frontal perspective. There was a light to his right in the parking lot that aided his ability
8 to see and that light was approximately 20 ft. from the defendant. He indicated by use
9 of photographs contained in Exhibit 6 where the incident took place, where the men
10 were, and where he recovered the firearm, among other things.

11 134. He knew the defendant for 6 years prior to 22 February.

12 135. On cross-examination he stated further, in so far as is material for present purposes.
13 When he got to Club 7 parking lot only the defendant and Mitchell Wright who were
14 fighting were there. Persons were in the general car park but not where the fight was.
15 They were nearer to the club itself.

16 136. He indicated that Mitchell Wright was holding the defendant somewhere in the region
17 of the elbow and upper arm. (I acknowledge that the position he demonstrated was
different from the head lock previously shown by Mitchell Wright.) They were not
exactly facing him when he got there and it was later when he challenged them that they
faced him. The gun was held downwards by the defendant at that time in both hands.

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21 137. He reiterated that before he got to Mitchell Wright, Mr. Wright had said that he was
22 shot and that was before any contact had been made with him.



1 138. He told the defendant to drop the gun more than once and he agreed that the defendant
2 threw it sufficiently far away that neither he (the defendant) nor Mitchell Wright could
3 get it. When the gun was thrown away, the fight continued, in that, the men were
4 wrestling and throwing punches at each other. He saw the defendant on the ground.

5 139. He pulled Mitchell Wright to the edge of the parking area and he at no time tried to put
6 handcuffs on him at any stage (this is contrary to what Wright had said).

7 140. When he sprayed Mitchell Wright with the pepper spray, he attempted to decontaminate
8 him (Wright said otherwise). He did not go back to his car to decontaminate Wright. He
9 got the water from a police vehicle parked on Snug Harbour Drive.

10 141. During the time he went for the water, he still had a clear view of the area where the
11 gun was thrown and at the time when his back was turned to get the water, it was just
12 for a matter of seconds and, in any event, PC Smith was securing the area. On re-
13 examination, he stated that no civilian was standing in the vicinity where PC Smith was.

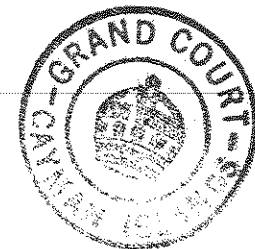
14 142. He also indicated that when he pulled Mitchell Wright by his right hand from the
15 ground, Wright indicated to him that he was injured. That was the second time Mitchell
16 Wright had indicated that he was shot in the right hand by the defendant. He also saw
17 blood on the shirt.

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PC Jeremy Smith

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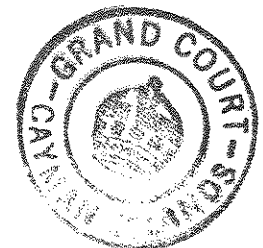
143. PC 342 Jeremy Smith is, and was, at the material time, attached to the USG and was also an Authorized Firearms Officer. He was in the company of PC Campbell when they went to the Club 7 parking lot after hearing the gunshot. He was armed and upon hearing the shot, he self-authorized the use of his firearm.

144. He saw the defendant (whom he knew before) and Mitchell Wright (whom he did not know before) in a struggle in the parking lot. The defendant was being held from behind by Mitchell Wright and was struggling to get away.

145. He heard Mitchell Wright shouted that the defendant had a gun and that he had just shot him. This is in keeping with PC Campbell's account but vary from what Mitchell Wright had said. As such, it is a noted discrepancy in the Crown's case.

146. He noticed a dark- coloured handgun in the defendant's hand. Mitchell Wright's hands were clasped across the defendant's chest area and across his elbows (noted not to be in a head-lock position).

147. PC Campbell gave verbal command telling the defendant to put the gun down. He heard him said it once (another discrepancy noted as PC Campbell said he had repeated that command; PC Campbell is supported on this by Mitchell Wright). The defendant threw the gun away over his shoulder into nearby bushes where he heard it made an impact with a solid object.



1 148. He held the defendant after the men fell to the ground during the course of the struggle.
2 He cautioned the defendant regarding the firearm seen in his possession and placed
3 handcuffs on him. He saw a bit of blood coming from the defendant's nose. He saw
4 Mitchell Wright kicked the defendant a few times in the face. The defendant was
5 conscious. He handed over the defendant for transportation to the hospital to PC Hunter
6 who arrived on the scene.

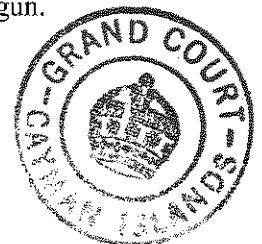
7 149. Mitchell Wright was still in the custody of PC Campbell and he observed a gun shot
8 entry wound to his wrist. He stood to guard the area where the firearm was thrown. He
9 remained in that position and nobody went in that area while he was guarding it.

10 PC Campbell, after he had deployed the pepper spray, decontaminated Mitchell Wright
11 on the scene with water.

12 150. After the ambulance left with Mitchell Wright, he assisted in the search for the firearm
13 when it was found by PC Campbell. He was present and observed the retrieval of the
14 gun, the removal of the bullets and the processing of the scene by the Scenes of Crime
15 officer. He described the gun found as a .38 Smith & Wesson Revolver with brown
16 handle and the rounds were also .38 rounds.

17 151. Upon being cross-examined, PC Smith said that he saw Mitchell Wright holding the
18 elbow of the defendant and they were facing him. He did not see a head-lock hold with
19 arms around the defendant's throat. The defendant was struggling to get off Mitchell
20 Wright. The defendant did not have full control of his right hand when he was held in
21 that position. The defendant was struggling even more after he threw away the gun.

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1 152. Mitchell Wright was not taken back to his vehicle for decontamination of the pepper
2 spray. He was taken to another police car parked along Snug Harbour Drive.

3 153. At no time did the defendant appear unconscious.

4 PC Creig Hunter

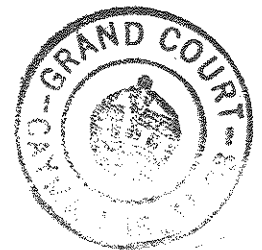
5 154. PC Creig Hunter was at the material time attached to the George Town Police Station
6 and assigned patrol duties in the George Town area with special attention being paid to
7 night clubs and social events. He was by himself in a marked police vehicle. At 3.06
8 a.m., he was at Calico Jacks when he heard a police radio transmission of a shooting at
9 Club 7. He responded to the call by proceeding to the location.

10 155. He arrived at the parking lot at 3:08 a.m. where he spoke to PC Derron Campbell.
11 There he saw PC Smith and the defendant lying on the ground with handcuffs. He also
12 saw Mitchell Wright with what appeared to be a gun shot wound to his arm. He secured
13 the defendant and placed him in the back of his service vehicle. He noticed the
14 defendant was bleeding from the face. Based on his situation, he saw it fit to take him to
15 the hospital. A lady was with the defendant and he escorted the defendant to the George
16 Town Hospital escorted by PC Shaw. He got there at about 4:00 that morning.

17 156. At the hospital, he took the defendant to the emergency section where, upon opening
18 the rear door of the service vehicle, the defendant fell out on to the ground. The
19 defendant was assisted by medical personnel who came out to receive him.

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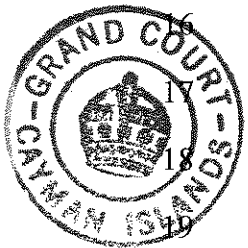
1 157. After receiving further information, he secured the defendant as an accused person by
2 obtaining shackles and he secured his clothing which was on a table in the casualty
3 room. He did not know how the clothes got there because the clothes were on him when
4 he took him to the hospital. Using gloves, he took them from the casualty table, placed
5 them in an envelope and put them in the trunk of the service vehicle.

6 158. Whilst at the hospital, he also saw Mitchell Wright from whom he took items of
7 clothing, boots and other articles using the same process as he did with the defendant's
8 belongings. These items were also secured by him in the vehicle.

9 159. He returned and remained at the hospital securing the defendant until he was officially
10 relieved from duty. After he was relieved from duty, he brought the bags with the items
11 to the station where he sealed and labeled them and then handed them over to his
12 supervisor.

13 160. With respect to any prior knowledge of the defendant, he said he did not know the
14 defendant before except for seeing him earlier at between 12:00-1:00 that morning. It
15 was at the hospital that he learnt his name from the lady who was with him. In terms of
his earlier sighting of the defendant that morning, he said he was seated in his service
vehicle at the Club 7 parking lot when he saw the defendant in a BMW car with a lady
in the front passenger seat. He saw his face with the aid of his service vehicle headlights
and the fact that the car window was down. He saw his face for about 5 seconds from a
distance of 10 ft. The defendant parked the BMW in Club 7 car park.

21 161. PC Hunter was subjected to cross-examination the main thrust of which was to test his
22 evidence about seeing the defendant earlier in the morning and as to whether he was
23 given the keys for the BMW.



1 162. As to his previous identification of the defendant that morning, he admitted that the
2 defendant was then a complete stranger to him. The BMW was not the only car that
3 drove in the parking lot that night and there was nothing unusual about it. There was
4 nothing coming from the car that attracted his attention and it did not attract attention
5 more than any other vehicle. He was observing persons coming in the car park,
6 generally.

7 163. He maintained that the defendant was the same person he saw coming in that evening.
8 He said in re-examination that at the time, the defendant's face was not covered in
9 blood so he was able to recognize him as the person he had seen earlier driving in.

10 164. He also spoke to seeing the defendant unconscious with tubes in his mouth while at the
11 hospital because his breathing was affected.

12 165. He was also asked about whether he was aware that the police were asking for keys for
13 the BMW to remove it from the Club 7 parking lot to which he answered in the
14 affirmative. He said, however, that he could not recall taking BMW keys from anyone
15 and he could not recall producing keys to anyone.

16 166. As an aside relevant to this aspect of his evidence, I have noted that it was part of the
17 formal admissions that on 22 February PC Cornelius Pompey spoke to a female who
18 identified herself as Sophia Rojas who indicated she was in possession of the keys for
19 the BMW and that the keys were handed to PC Hunter. So there is evidence that PC
20 Hunter got the keys. His evidence that he was unable to recall getting the keys does not
21 adversely affect his credibility in the light of this admission, however.

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PC Stephen Shaw

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167. PC 124 Stephen Shaw was attached to the George Town Police Station, Uniform Branch D Shift, at the material time. He was on duty at around 3:06 a.m. when he received a report in relation to Club 7. He went there alone where he saw PC Hunter.

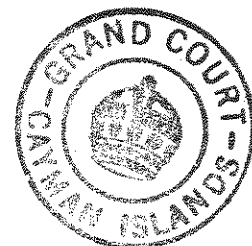
168. He assisted PC Hunter to escort the defendant to the hospital. He saw the defendant fall from the vehicle and had to be assisted by medical personnel who took him on a stretcher inside the hospital. He went with the defendant to the emergency room.

169. He swabbed the defendant's hands for GSR while he was with him at the hospital. He admitted under cross-examination that this was done when the defendant was unconscious.

170. At approximately 5:05 a.m., after swabbing the defendant's hands for GSR, he dealt with Joylon Frederick. He observed what appeared to be gunshot wounds to his arm. He took shoes and items of clothing from him to include a light blue shirt which was admitted as Exhibit 10 during cross-examination and which he confirmed had no physical damage to it.

171. He also saw Mitchell Wright at the hospital and he took information from him.

172. He properly collected and sealed all exhibits taken by him and handed them over to the exhibit custodian.



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PS Daniel Cowan

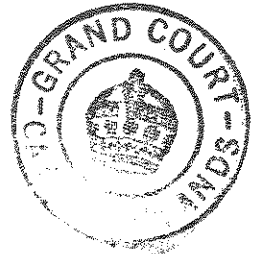
173. Police Sergeant 192 (formerly PC at time of incident) is attached to the Operational Support Unit of the George Town Police Station. At 3:00 a.m. on 22 February, 2012, he was Duty Supervisor for the D Shift and was at the police station. He heard a radio transmission from PC Campbell.

174. He left for Club 7 arriving there at 3:24 a.m. He was present when PC Campbell indicated that he found a gun. He went to where PC Campbell was and observed a .38 revolver with hammer cocked in single action position.

175. Having seen that, he proceeded to have the area cordoned off. While establishing the cordon, an unknown male approached him with a request to remove the BMW that was parked closest to where he saw the gun. He refused the request and called in the registration plates numbered 129417. He was advised it was registered to a Sophia Rojas.

176. He gave PC Hunter certain information regarding the BMW. After he gave these instructions, Officer Pompey called on the police radio indicating that he was with the female at the hospital who had the keys for the said vehicle.

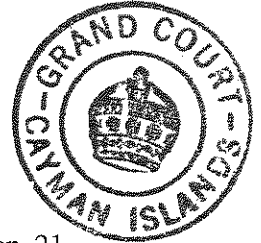
177. He remained at the scene. Later two females who gave their names as Sophia Rojas and Elorine approached him with a request to get in the car to collect some house keys. He did not allow them to do so because the crime scene officer had not yet processed the vehicle.



1 178. After he was relieved from duty at the scene by PC Pompey and PC Ebanks, he went
2 back to the George Town Police Station to book in the exhibits relating to the case that
3 were handed in by other police personnel.

4 179. In cross-examination, he could not recall if PC Hunter had given him a set of BMW
5 keys as exhibits. When he got to the car park, the BMW was there and a black Honda
6 parked next to it. There were no other cars.

7 DC Kenval Bryan



8 180. DC Kenval Bryan is stationed at the George Town Police Station CID and on 21
9 February was scheduled to perform on-call duties. At about 3:50 a.m. on the morning of
10 22 February, after receiving certain information and instructions, he went to the George
11 Town Hospital. There he spoke to PC Hunter.

12 181. He saw and spoke briefly to Mitchell Wright and observed bandages to his right arm.
13 He eventually saw and spoke to Jordon McLean in the parking lot of the hospital. He
14 subsequently, same morning, escorted Mr. McLean to the police station where he
15 recorded a statement and obtained a sketch of the Club 7 scene from him (Exhibit 4).
16 He also swabbed his hands, face and head for GSR. He prepared exhibits and labeled
17 them.

18 182. He also saw the defendant in the Critical Care Unit being supervised by PC Shaw and
19 he instructed PC Shaw to swab his hands for GSR.

20 183. He saw Joylon Frederick at the hospital that morning being attended to by a doctor and
21 he observed injury to him. Joylon Frederick did not appear intoxicated to him.

1 184. He also took statement from Sophia Rojas at her home concerning her vehicle and her
2 being with the defendant that evening. He also took statement from Elorine Brown
3 concerning the Honda motor car observed in Club 7 car park on the morning of the
4 incident and which was seized by the police. He returned non- vehicle related keys to
5 Ms. Rojas on 23 February.

6 185. On 26 February, he charged the defendant and cautioned him but he cannot recall if
7 there was any response from the defendant.

8 186. On cross-examination with respect to Joylon Frederick, he said that when he saw him at
9 the hospital, he was in the process of receiving treatment in the company of his brother.

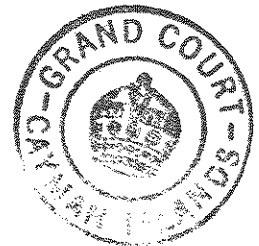
10 187. Sophia Rojas had her house keys returned to her on 23 February 2012.

11 **SOCO Zoan Marin**

12 188. SOCO Zoan Marin was the crime scene investigator attached to the RCIPS who
13 attended Club 7 on the early morning of 22 February. Upon request, she attended the
14 Club 7 parking lot at 3:45 a.m. She saw police personnel at the scene to include PC
15 Derron Campbell. She was briefed at the scene and she processed the scene.

16 189. She made several preliminary observations. She saw, among other things, what
17 appeared to be blood on the sidewalk and on an area of the asphalt in the parking lot.
18 She observed also the firearm found by PC Campbell (Exhibit 5) with the hammer
19 pulled back. She also saw the BMW and Honda motor cars in the parking lot. She
20 photographed the scene as she saw it then.

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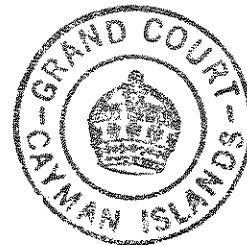
1 190. Later, during the course of the morning, she returned and took daylight photographs of
2 the scene. She subsequently prepared a booklet comprising 36 photographs admitted
3 without objection into evidence as Exhibit 6. She explained all the photographs for the
4 court and so I need not recite in detail the state of the scene as captured. It has all been
5 taken into account.

6 191. After the scene was processed, she caused the BMW and the black Honda found on the
7 scene to be towed to the George Town Police Station where she secured them.

8 192. The firearm, ammunition and all other exhibits were taken by her to the police station
9 where she secured them pending further investigations.

10 193. On 23 February, she examined the items that were sealed and labeled by her. She
11 dusted the firearm and ammunition for finger prints and swabbed them for DNA
12 analysis. The firearm and ammunition were negative for prints. With respect to the
13 ammunition, she had thought at the scene that one of the rounds (Exhibit 7B) was
14 expended but upon examination at the police station, she realized that it was, in fact, a
15 live round. She acknowledged that to have been a mistake. I accept that to have been so.
16 I would point out here that the same mistake was obviously made by PC Campbell and I
17 do accept that that was due to the appearance of the bullet.

18 194. So, in actuality, there were three live rounds and an empty casing removed from the
19 firearm and one live round left stuck in it. She sealed the ammunition removed from the
20 firearm (admitted as Exhibits 7A- 7D) and submitted them with the firearm with a
21 request for Mr. Allen Greenspan, the Firearms & Tool Mark Examiner, to examine
22 them.



1 195. The swabs she took of the firearm and ammunition were submitted by her for DNA
2 analysis.

3 196. On 6 September 2012, she returned to the scene where she drew a sketch of the area and
4 took measurements (Exhibit 8).

5 197. She was cross-examined and the answers she gave are duly noted but will not be recited
6 in detail. She was asked about whether she had gone in the BMW and if she knew about
7 the keys. Her response was that she did not go in the BMW and she did not know of
8 the keys. It was locked. Upon re-examination, however, she said that she did not check
9 if it was locked.

10 *SOCO Camile Haughton*

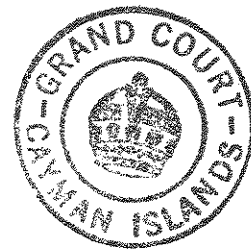


11 198. SOCO Camile Haughton of the Scientific Support Branch of the RCIPS testified that on
12 22 February, she received an assignment to process a motor car at the police station in
13 relation to the shooting incident at Club 7. Relative to that assignment, at about 9:30
14 a.m. she saw and spoke to SOCO Zoan Marin.

15 199. She took photographs of the BMW which she used to compile a booklet of 76
16 photographs (exhibit 11) which have all been examined by me.

17 200. She also processed the car by taking swabs for testing for GSR and collecting samples
18 for DNA analysis. She did so also on 26 February during which she took samples from
19 two additional areas of the car. The items she collected were prepared and labeled as
20 exhibits and subsequently sent for testing.

21 She was cross-examined but nothing turns on her response that is of much import
22 to the issues to be determined. That aspect of her evidence is, nevertheless, duly noted.



SDC Adrian Neblett

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2 201. SDC Adrian Neblett was on duty at George Town Police Station on 22 February at 7:00
3 a.m. when he was asked to assist in the investigation of the incident. He proceeded to
4 the George Town Hospital, accompanied by DC Karen McQuade. He arrived there at
5 7:55 a.m. and he swabbed the hands, hair, face and waistline of Mitchell Wright for
6 GSR. He secured these exhibits after sealing and labeling.

7 202. At 12:45 p.m., he went to Club 7 where he saw Scenes of Crime personnel there with
8 other uniformed officers. He checked the area but nothing of evidential value was
9 found. Having made checks and found nothing, the cordons were removed and the area
10 released.

11 203. On 23 February, he collected a statement from Mitchell Wright as well as a drawing
12 from him of the area (Exhibit 1).

13 204. On 29 February, he returned to the George Town Hospital to the operating theatre
14 where he observed the surgeon removed a bullet from Mr. Wright's right arm. The
15 doctor gave this bullet to him in a container which he took possession of. He sealed and
16 labeled it and kept it in police custody. This bullet, admitted as Exhibit 9, without
17 objection, was eventually sent to Mr. Allen Greenspan for testing.

18 205. He explained in cross-examination, among other things, the absence of evidence from
19 CCTV camera which covered the Club 7 car park. His explanation was that by the time
20 they went to the club on 28 February, the system had written over itself, given that it
21 was over 72 hours and that was too late for the information to be retrieved.

22



1 DC Karen McQuade

2 206. DC Karen McQuade of the George Town Police Station confirmed accompanying DC
3 Neblett to the George Town Hospital about 8:00 a.m. on 22 February. There, she spoke
4 to Joylon Frederick while he was receiving treatment in the Accident and Emergency
5 Department.

6 207. He was intoxicated. She only obtained written notes from him because he was too
7 drunk to give a statement. He told her that he was very drunk because he had consumed
8 Hennessy and that he had limited recall upon leaving the club.

9 208. She swabbed his hands, hair and waistband for GSR. She sealed those as exhibits.

10 On 23 February, she collected a formal statement from him at the police station and he
11 seemed sober then.

12 209. In cross- examination, she agreed that when she spoke to Mr. Frederick on 22 February,
13 he told her that he was talking to Jordon when he heard a gun shot noise and felt a sting
14 in his arm. Mr. Frederick, of course, had said that that would not have been correct if he
15 had said it to the police.

16 PC Kingsley Mitchell

17 210. PC Kingsley Mitchell of the USG of the George Town Police Station was on patrol in
18 the Industrial Park area at about 3: 10 a.m. on 22 February when he responded to PC
19 Campbell's call for assistance. He went to Club 7 where he assisted in searching the
20 area for the firearm. He did not find it where he had searched. It was found by PC
21 Campbell. He saw the firearm which he described as a dark handgun with a wooden
22 handle.

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PC Anderson Taylor

211. PC Anderson Taylor was not called as a witness. His statement was read into evidence by consent. He stated that on 22 February, he assisted in the investigations of the shooting at Club 7 parking lot. He went to the Critical Care Unit where he collected gun shot residue samples from the face, hair, and waist area of the defendant. He also took items of jewellery belonging to the defendant. He prepared them as exhibits by sealing and labeling them.

PC Cornelius Pompey

212. PC Cornelius Pompey was another witness who did not give evidence live. His statement was also read into evidence. He indicated that on 22 February, he was attached to the George Town Police Station and was on mobile patrol when he became aware of a report concerning a shooting incident at Club 7 parking lot. He went there and cordoned off a part of the scene in the vicinity of the Esterley Tibbetts Highway.

213. He later proceeded to the hospital on the request of PC Hunter. When he was about to leave, Sophia Rojas informed him that she had the key for her BMW that was parked in the parking lot at Club 7 and that she wanted to go to the scene to have it removed. He informed PC Cowan. Sophia Rojas handed over the keys to PC Hunter. He then proceeded at the request of PC Cowan to return to Club 7 to guard the scene.



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DI Joseph Wright

214. In February 2012, Detective Inspector Joseph Wright was a Detective Sergeant assigned to the George Town Police Station CID Unit. He was assigned to act as Senior Officer in charge of the investigations of this case.

215. During the course of the investigation, he spoke with Sophia Rojas in the company of DC Kenval Bryan who took a statement from her. He spoke to Elorine Wood from whom he received statement. He spoke to other persons but he received no statement.

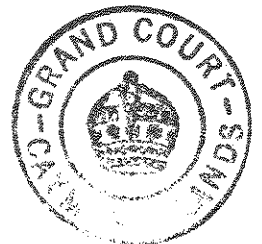
216. He carried out certain enquiries on the health condition of the defendant to see if he was fit to remain in police custody. Having done so, he formed the view that he was fit to remain in custody.

217. On 24 February, he gave instructions to DS Sean Bryan for the defendant to be interviewed. He conducted investigations and charged the defendant.

DS Sean Bryan

218. On the request of DI Joseph Wright, DS Sean Bryan conducted a recorded caution interview with the defendant on Friday, 24 February 2012 at the George Town Police Station. Present on the defendant's behalf was his Attorney, Mr. John Furniss.

219. At the time, the defendant had obvious injuries but he expressed no concerns about the interview. He gave the interview voluntarily. The transcript of the interview is in evidence as Exhibit 12 and I have dutifully studied all its contents.



1 *THE DEFENDANT'S INTERVIEW*

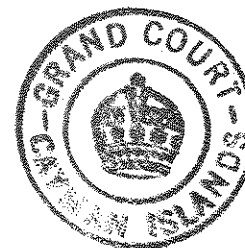
2 220. For immediate purposes, I will just highlight that in that interview, the defendant
3 indicated that he had no knowledge of going to Club 7 that morning and doing the
4 things alleged by the prosecution. The last memory he had was going to Buttonwood
5 Bar the Tuesday night of 21 February and waking up in hospital the following Thursday
6 morning. He could not remember who he was with at Buttonwood Bar or when he left
7 there.

8 221. He said he never owned a firearm; he has no licence for any as he does not need one
9 and it was not to his knowledge that he had fired any recently. He could not say why he
10 could not remember anything.

11 222. In the end, there was no admission from him of having committed any of the offences
12 for which he is charged.



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1 *EXPERT EVIDENCE*

2 *Medical*

3 223. The prosecution provided medical evidence in proof of its case through two medical
4 practitioners, Dr. Nigel Boothe and Dr. Victor Lizarraga, who both treated Mitchell
5 Wright and Jolyon Frederick. They have been accepted as expert witnesses and thereby
6 permitted to express their opinion on certain matters.

7 *Dr. Nigel Boothe*

8 224. Dr. Nigel Boothe specializes in emergency medicine and is attached to the Cayman
9 Islands' Health Services. On 22 February, he treated Mitchell Wright at about 4:46 a.m.
10 He found a wound to the volar aspect of his right forearm (inner aspect of the wrist)
11 which was caused by a projectile object such as a gun shot cartridge. The wound was in
12 proximity to a major artery for the forearm and hand which is the ulna artery.

13 225. Mitchell Wright was unable to extend his fingers because the forearm was tense due to
14 bleeding which resulted in a tense pressure to it. He did not feel the ulna artery which
15 could suggest injury to it. He noticed a mass to the subcutaneous tissue of the lateral
16 aspect of the right elbow.

17 226. Mr. Wright was treated and referred to the general surgeon who took over his treatment.
18 He was not able to give an opinion as to whether Mr. Wright's injuries were serious.

19 227. He also saw Jolyon Frederick at around 7:00 a.m. that same morning. His significant
20 findings were 2 oval wounds approximately 5cm apart on the medial aspect of the left
21 arm which would mean between the bicep and tricep. These wounds were most likely
22 caused by a projectile object such as a gunshot.

1 228. The wounds were in the region of a major blood vessel but ultrasound examination
2 revealed no injury done to that blood vessel. Mr. Frederick was sent home with
3 medication after surgical consultation.

4 229. He stated that if there had been an impact to any of the major blood vessels, it would
5 have been limb threatening, or, if significant bleeding was not controlled in a timely
6 manner, then that could have led to death.

7 230. The injuries to Mr. Frederick were not, in his view, serious. He said they were minor,
8 being soft tissue injuries.

9 *Dr. Victor Lizarraga*

10 231. Dr. Lizarraga was the surgeon to whom the two complainants were referred at the
11 George Town Hospital. He examined Mitchell Wright at about 10:57 p.m. on 22
12 February. He identified, as an entry wound, the wound to the right wrist as described by
13 Dr. Boothe and other witnesses in the case. There was no exit wound and the bullet was
14 palpable in the lateral side of the forearm. This was in keeping with Dr. Boothe's
15 finding of a mass beneath the surface of the skin in that area.

16 232. The forearm was slightly swollen and there was some weakening of motion and
17 extension of the fingers but there was good pulse and no sensory deficit. He was
18 admitted in the surgical ward and discharged the following day for follow up in the
19 clinic. He was never seen in the clinic for follow up.

20 233. In his opinion, the injury was consistent with infliction by gunshot. It was serious and
21 likely to be permanent.



1 234. He also examined Joylon Frederick and found gunshot wounds to the left arm
2 consistent with the finding of Dr. Boothe and other evidence in the case. He was,
3 however, able to indicate that the entry wound was to the medial side of the arm with
4 the exit wound being the one closer to the arm pit (seen in the photographs). The track
5 of the wound was downward and subcutaneous to exit proximate to the entry wound.

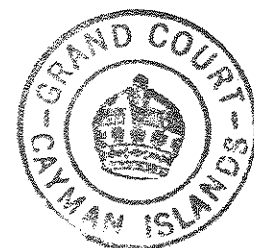
6 235. In his opinion, the injuries were consistent with infliction by gunshot and were serious
7 and likely to be permanent. His opinion conflicts with that of Dr. Boothe on the
8 seriousness of these injuries.

9 236. Much effort was spent by the prosecution and the defence to obtain the doctor's view as
10 to the likely positioning of the complainants in relation to the firearm at the time they
11 were shot. In the end, Dr. Lizarraga, after much explanation, which I will not attempt to
12 reproduce, opined that the victims were shot from the front.

13 237. He posited the view, upon being cross-examined, that if the hand was bent and held up
14 (as Frederick had indicated with elbows bent and his hands going upwards), then the
15 shot would have to come from above based on the location of the wounds. He, however,
16 stated that the hand was away from the body at the time the complainant was shot based
17 on the location of the wound and he maintained that he would have been fired at from
18 the front.

19 238. I have seen and have paid due regard to the photographs of the injuries to the
20 complainants as taken by SOCO Orlando Williams while they were in the hospital and
21 compiled in an album (Exhibit 3).

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1 *FORENSIC/ BALLISTICS EVIDENCE*

2 *DNA Analysis*

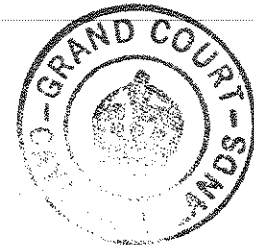
3 239. The formal admissions established that DNA analysis was done by Tiffany Roy at DNA
4 Labs International, Deerfield Beach, Florida concerning exhibits submitted in relation
5 to this case.

6 240. The results do not point to any fact that could assist either the prosecution or the
7 defence as nothing incriminatory or exculpatory was found in relation to anyone. I do
8 not see the need, therefore, to detail the findings of the analyst for present purposes.

9 *GSR Analysis*

10 241. It was also formally admitted that examination of the exhibits submitted for GSR
11 analysis was done by Michael V. Martinez of the Bexar County Criminal Investigation
12 Laboratory. These were the exhibits relating to the defendant and the three
13 complainants.

14 242. The examination of all the items revealed no GSR. It was indeterminate as to whether
15 any of them had discharged a firearm, handled, or was in close proximity to a
16 discharged firearm. Those findings, therefore, reveal nothing that could assist the
17 prosecution's case.



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BALLISTICS

Allen Greenspan

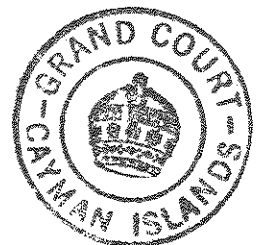
243. The crown called Mr. Allen Greenspan to whom the firearm and ammunition found at the scene along with ammunition taken from the arm of Mitchell Wright were sent for testing.

244. Mr. Greenspan is a Firearms and Tool Examiner attached to the Broward County Sheriff's Office. He is a firearms consultant for the Cayman Islands, the Turks and Caicos Islands and Bermuda.

245. His formally agreed curriculum vitae discloses his experience and qualification which qualifies him as an expert and so was one of the witnesses permitted to state his opinion on certain issues relative to firearm science including GSR.

246. He gave a detailed and clear explanation on the science of firearm to include the mechanics involved in the making and discharge of firearm, the composition, emission, deposit and retention of GSR and the comparison and identification of bullets.

247. The main planks of his evidence relied on by the prosecution may be outlined as follows: He received for testing the firearm (Exhibit 5) which was a .38 calibre Rossi Spl. Model M68 5 shot revolver with serial # D554104. He also received one casing and three cartridges (which were exhibited by SOCO Marin) along with the bullet Exhibit 9 (removed from arm of Mitchell Wright and exhibited by DC Neblett).



1 248. On his examination of the firearm, he found it to be in good condition and operable
2 having test fired it by using one of the cartridges sent with it to him for testing (Exhibit
3 7D). It was capable of causing death or serious injury should it be fired at an
4 individual. He considers it to be a lethal barreled weapon.

5 249. The rounds of ammunition he examined were .38 special cartridges manufactured by
6 Winchester and used in .38 special revolvers like the firearm in question.

7 250. The bullet he received in the hospital cup (Exhibit 9 identified) he examined and
8 compared with the standard bullet he had fired and retrieved in the earlier examination.
9 In his opinion, it was a .38 calibre class total metal jacketed bullet which was fired from
10 the same questioned firearm (Exhibit 5).

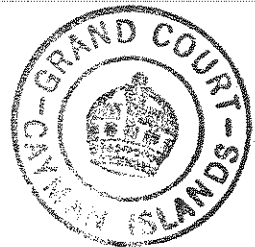
11 251. Mr. Greenspan also has certification in gun shot residue examinations and he gave
12 evidence concerning GSR science and the weaknesses of GSR. His evidence on this
13 came against the background of the absence of finding of GSR.

14 252. With respect to GSR, he said for positive results, swabbing has to be done very soon
15 after discharge of the firearm because the particles contained in GSR do not stick to
16 hands for any length of time. Within a minute, a lot can disappear because the particles
17 do disappear rapidly.

18 253. The particles could disappear by moving one's hands and if swabbing is not done soon
19 after firing of the firearm, then the results would be negative.

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1 254. In terms of GSR on clothing, he explained that just taking clothes off would cause the
2 particles to disappear. The absence of GSR is not unexpected and so just because it is
3 not present does not necessarily mean that the questioned person did not fire the gun,
4 or, alternatively, that the presence of it means the person did fire a gun. It is this
5 weakness that has led many major laboratories to cease testing for GSR.

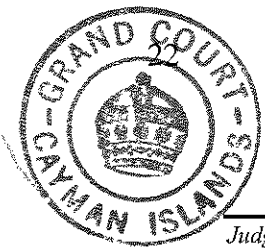
6 255. GSR would be expected to be emitted from the .38 revolver in this case through gaps in
7 the back and sides of it and so be deposited on a person's hands, clothing and face.
8 However, the quantity of GSR emitted, deposited and remaining would depend on a
9 number of variables which he explained and to which I have paid due regard in my
10 consideration of the case. I will not detail all of them for present purposes.

11 256. He said, however, that if a person washes his hands or face with water after the firing of
12 a gun, then that could remove the residue. Weather also plays a role as wind and rain
13 can affect particles deposited.

14 257. He also posited the view that in a scenario of three persons being in close proximity to a
15 discharging firearm, GSR could be deposited on them but they would have had to be
16 very, very close.

17 258. It is highly unlikely to find mercury in primer at this point in time which could be a
18 factor to account for absence of GSR.

19 259. In cross-examination, he explained further that the firearm, the .38 revolver, operates on
20 both single and double action. He explained what that meant. It was not necessary to
21 cock it between shots since it can also operate on double action. It only takes a few
pounds of pressure on the hammer to cock it and there was no safety on the gun.



1 260. There was a flaw in the firearm, in that, it was not aligning properly but that did not
2 affect its operability.

3 Angela Shaw

4 261. Ms. Angela Shaw, Forensic Scientist, was presented by the prosecution as an expert
5 witness and she is accepted by this court as such. She gave evidence through video link.
6 Like Mr. Greenspan, she was permitted to give her opinion on certain aspects of the
7 case, particularly as it relates to the science of GSR.

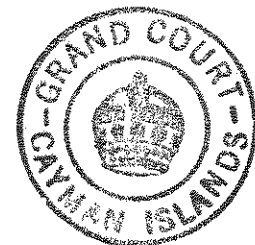
8 262. Her primary role was to give an expert explanation for the absence of GSR in the
9 circumstances of the case which was disclosed to her for her opinion.

10 263. She pointed to several possibilities (7 main ones) that could have accounted for the
11 absence of GSR on the samples submitted in relation to the defendant and the three
12 complainants. With respect to the absence of GSR on any sample concerning the
13 defendant, she explained that one possibility, which I consider a rather important one to
14 bear in mind, is that he did not fire a firearm.

15 264. The other possibilities that could lead to a negative result for GSR are in nutshell
16 outlined as follows:

17 (i) The ammunition fired contained an unusual residue type such as mercury,
18 which could not be detected using the analytical device used. Mercury does not
19 leave GSR.

20 (ii) The analytical equipment used to analyze the sample might not have been
21 sensitive enough to detect particles of GSR.



- 1 (iii) It depends on surface area of clothing, for instance, with a vest there would not
2 be much material covering the arm and so no surface area of clothing for
3 residue to be deposited.

- 4 (iv) If there were a fight, depending on length of it, then all residue could be lost. It
5 would entirely depend on the contact between the two individuals as body to
6 body contact and just moving arms would result in removal of residue. A fall to
7 the ground could also do so.

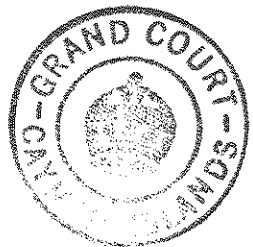
- 8 (v) If sample used to remove GSR from clothing has a sticky surface it would
9 remove GSR. Coins can also do so. If clothing blood stained, or dirty that could
10 mask GSR. Also dust would do so.

- 11 (vi) If a gun is discharged within a bag or any receptacle, GSR would not be
12 deposited on hands.

13 265. She spoke to possible explanations for the absence of GSR from items belonging to the
14 complainants. She opined that the same variables discussed in relation to the defendant
15 would apply. In addition, distance from the firearm during firing influences the deposit
16 of GSR. Deposit is unlikely beyond 3 meters of the barrel of the gun. Also, the type of
17 clothing and the interval between the time of swabbing and the shooting could have
18 accounted for the negative results.

19 266. In the end, like Mr. Greenspan, she pointed to a number of variables that could affect
20 the deposit and longevity of GSR.

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CASE FOR THE DEFENCE

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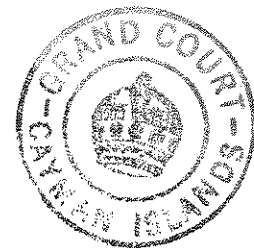
2 267. The defendant gave sworn evidence as it is his lawful right so to do. He called no
3 witnesses which I accept he is not obliged to do. One thing I will reiterate is that I am
4 mindful he has not assumed any duty to prove his innocence or anything at all by going
5 in the witness box. I cannot ignore his evidence because he is the defendant and I have
6 not done so.

7 268. I have given all his evidence due consideration as all the other evidence in this case but
8 I do not propose to recite every single detail except those that are considered as having
9 some bearing on the facts in issue, on his credibility as well as on the credibility of the
10 prosecution's witnesses.

11 269. In summary, this is what he said: He partially remembers the morning and afternoon of
12 21 February 2012. After Drug Court, he went to Sophia Rojas' house and started to
13 drink. After drinks, he went out and the last place he remembered being at was
14 Buttonwood Bar. He got there in Sophia's car. He could not remember if he was the
15 driver. He remembered just waking up in hospital (which would have been the
16 Thursday) and the last thing he clearly remembered he was doing before waking up in
17 the hospital was that he was dancing with someone.

18 270. On 21 February, when he went out, he had no gun. He does not own a gun; he has no
19 knowledge of any gun. When he was interviewed by the police, he told the truth about
20 what happened as far as he could remember.

21 271. He is right handed.



1 272. In cross-examination, he admitted that he has a sister with the name given by Mitchell
2 Wright who was working at the place Mr. Wright gave in his evidence. He stated that
3 he would sometimes go to that place, again, in keeping with what Mr. Wright said.

4 273. He did not know Mitchell Wright before seeing him in court. He has never seen him at
5 his sister's work place. He knew of Jordon McLean prior to the incident as him being a
6 cousin of his but he has never seen him face to face to talk to him. Joylon Frederick is
7 his second cousin and he agreed that Joylon has known him all his life. He was on good
8 terms with Joylon.

9 274. He had no problems with any of the complainants and he does not know of them having
10 any problems with him.

11 275. Louis Verona is his friend and it would not surprise him if Louis Verona acted on his
12 behalf.

13 276. He accepted that the BMW in the photographs exhibited was owned by Sophia Rojas
14 and that it was the motor car in which he went to Buttonwood Bar.

15 277. At that club, he drank white rum and water along with other beverages he cannot recall.
16 He cannot say if he had passed out while he was at Buttonwood. He was just 'happy,
17 feeling well and ok and in a joyful mood dancing' and so on and the next thing he
18 knew, he woke up in hospital.

19 278. He does not know why he cannot remember anything else. What he does know is that
20 he did not shoot anyone because he did not have a gun; he does not own a gun; he has
21 no access to a gun; and he is not that type of person.

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1 279. In the end, the defendant's response as to anything transpiring at Club 7 on 22 February
2 was that he had no knowledge of such occurrences as contended by the prosecution.

3 280. It is observed that his answers in relation to what the prosecution is alleging as
4 occurring at Club 7 were consistent with the responses he gave in his police interview.

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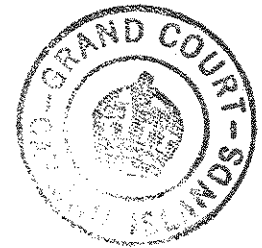
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ANALYSIS AND FINDINGS OF FACTS

281. Having heard all the evidence adduced in this case, I think it is safe to say from the very outset that the defendant has not admitted any aspect of the prosecution’s case in so far as the commission of the offences is concerned and so the prosecution bear the burden to prove every issue pertinent to the proof of them.

282. In the light of the nature of the defendant’s case, the core question for determination is whether the shooting incident at Club 7 parking lot on 22 February 2012 that led to the injuries to Mitchell Wright and Joylon Frederick involved the defendant, and if so, the nature and extent of his involvement.

283. There is, as Mr. Malcolm Q.C. has indicated, no independent evidence that is in support of the prosecution’s case, That is to say no evidence of DNA or GSR findings implicating the defendant; no incriminating CCTV footage of the car park; and no independent eye witness account. It means the fortune of the prosecution’s case rests, principally, on the evidence of the three complainants.

284. As such, the resolution of the issues for determination, ultimately, depends on the view I take as to the credibility of the prosecution’s witnesses, in particular, bearing in mind on whom the burden lies. This is not to say, however, that the credibility of the defendant is not also in issue because if I believe him that he had no firearm in his possession that morning or if what he says serves to cast doubt on the prosecution’s case that he was armed with a firearm and used in the manner alleged, then I am duty bound to acquit him.



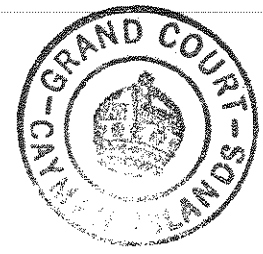
1 285. I know too that if I do not believe him, I cannot convict him simply because I do not
2 believe him. It is incumbent on me to go back and look at the prosecution's case and I
3 can only convict him if, after a consideration of all the evidence, including his own, I
4 am satisfied to the extent that I feel sure of his guilt.

5 286. Having recognized that the credibility and reliability of the prosecution's purported eye
6 witnesses are of pivotal importance in the resolution of the core issues in this case, I
7 have taken into account all matters relevant to the issue of credibility and reliability of a
8 witness. I bear in mind the law as to how the evidence of witnesses should be treated.

9 287. In demonstrating my analysis of the case, I have decided, for the sake of expediency,
10 not to highlight all those aspects of the parties' cases that are not disputed. So, the
11 formal admissions as read entail all those aspects of the evidence that I accept as
12 evidence in the case. The agreed exhibits and all the contents thereof stand before me as
13 unchallenged evidence for my scrutiny and for me to attach such weight as I see fit in
14 relation to each of them when all the evidence is considered.

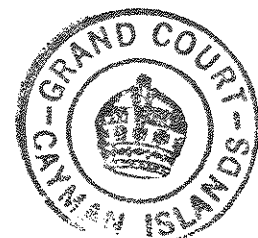
15 288. I will just note at this juncture, in distilling the critical issues as to the alleged incident
16 at the Club 7 car park on the date alleged, that I accept several core facts that arose on
17 the prosecution's case as having been proved to my satisfaction. They remain,
18 primarily, undisputed and do not stand out as facts in dispute for any mature
19 consideration.

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- 1 • An incident involving the possession and discharge of a firearm did occur at
2 Club 7 car park, West Bay Road, Grand Cayman, on 22 February 2012.
- 3 • One single gun shot was fired.
- 4 • The shot was fired from a .38 Smith & Wesson Revolver recovered by police in
5 bushes adjacent to the car park.
- 6 • The firearm contained three live rounds that were removed, one live round
7 stuck in the chambers and one empty casing.
- 8 • That firearm was in good and operable condition and is a lethal barreled
9 weapon. That firearm is admitted as exhibit 5
- 10 • Mitchell Wright and Joylon Frederick received injuries as a result of that
11 discharge of a single bullet which exited the left arm of Frederick, entered the
12 right wrist area of Mitchell Wright and lodged close to his elbow.
- 13 • The two complainants were treated for the injuries at the George Town
14 Hospital, Grand Cayman, during the course of which Mitchell Wright received
15 surgery for removal of the bullet on a subsequent date.
- 16 • The bullet recovered from the arm of Mitchell Wright was fired from the said
17 .38 revolver, recovered from the bushes at the Club 7 car park.
- 18 • Police arrived at the scene after the shot was fired and apprehended Mitchell
19 Wright and the defendant who were engaged in a struggle.
- 20 • The defendant had the same .38 revolver in his hand that he threw in nearby
21 bushes from where it was recovered.
- 22 • The defendant was injured and taken by police from the Club 7 car park to the
23 George Town Hospital where he was hospitalized and held in police custody
24 since then.

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WHETHER THE DEFENDANT WAS AT CLUB 7 PARKING LOT
- Credibility/ reliability of prosecution witnesses

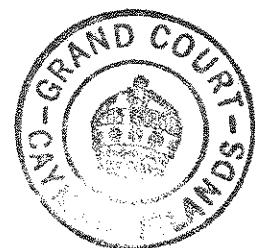
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289. From those facts, it becomes evident that one of the core issues that stands out for detailed consideration is whether the defendant was present at Club 7 on the night in question prior to and at the time of the shooting.

290. The presence of the defendant at the material time is an issue because of his asserted lack of knowledge and recollection of having been there at all and taking part in any shooting.

291. The evidence going to the identification of the defendant as the person armed with the firearm that night came predominantly from the three complainants. As such, matters that could affect the credibility and cogency of their evidence have been examined closely and taken into account in determining, firstly, whether I can believe them when they said they saw the defendant that morning of 22 February doing what is alleged by the prosecution.

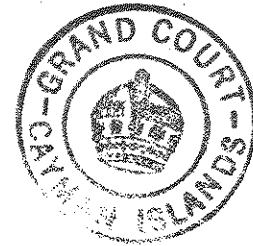
292. In determining whether, and the extent to which, I can rely on the evidence of each witness as being truthful, I have taken into account conflicts in their evidence, that is to say, internal contradictions within each witness' testimony (inconsistencies) as well as conflicts among them (discrepancies). I have also looked at proven omissions, that is, facts spoken to by the witness in court but which were never told to the police or disclosed at the pre-trial conferences.



1 293. There are several of these that I have noted during the course of my review, some more
2 significant than others. I have noted them all but have not necessarily highlighted them
3 in my review and will not speak to all of them in my analysis.

4 294. The ones not specially highlighted and given special attention, I have considered to be
5 slight and of no materiality to the issues to be decided. They have not been seen as
6 touching adversely on the credibility of the witness or witnesses concerned. In this
7 regard, I am guided by the points raised on cross-examination and emphasized by Mr.
8 Malcolm in his closing arguments.

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Inconsistencies/omissions/discrepancies

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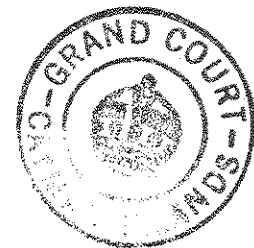
2 295. *Mitchell Wright*: Mr. Wright's testimony was not without any internal inconsistency.
3 Of particular note is whether he had reached Troy's car before he heard the commotion
4 (as stated in evidence –in- chief and in his police statement) or whether he had not yet
5 reached it but was some 10 ft. or so away from it as stated in cross-examination. In
6 explaining what is contained in his police statement, he stated that it was a matter of
7 bad grammar or improper use of words. I find that whether he had reached the car, or
8 not, is not material to the central issue to be decided and so this inconsistency is slight,
9 not serious, or material and does not affect his credibility in any fundamental respect.

10 296. His evidence on cross- examination that he had no Jack Daniel and Coke at Calico
11 Jacks or that he could not remember having any which was contradicted by Jordon
12 McLean, I find as being of no materiality to affect his credibility. His evidence was that
13 he was coherent that night, not impaired in any way. Nothing contradicts that. This
14 discrepancy does not detract from his credibility and reliability.

15 297. He was also contradicted by PC Campbell and PC Smith as to whether he knew and had
16 indicated that he was shot before he was held by the police. The police witnesses said
17 he had called out to them to say he was shot as they arrived on the scene. He denied it. I
18 find that even if he did, saying that he did not do so is not viewed by me as a lie on his
19 part, the most it would be is faulty recollection and it would be on a matter which has
20 no bearing on the central issue to be decided.

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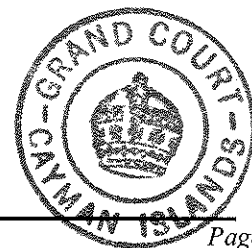
1 298. He was also contradicted by the same police witnesses concerning whether an attempt
2 was made at the scene to decontaminate him with water or whether he remained with
3 the effects of the pepper spray until he arrived at the hospital without any attempt made
4 at decontaminating him.

5 299. Also, they spoke to seeing him holding the defendant in a different manner from how he
6 said he was doing during the course of the struggle. I believe there was a point when the
7 witness would have been holding the defendant in order to restrain his hand. I find that
8 the different positions are plausible and could relate to different points in time.

9 300. In any event, the struggle and the decontamination process spoken to by the police
10 witnesses that conflicted with Mr. Wright's testimony would have happened after the
11 alleged offences would have already been committed. Whatever happened then has no
12 bearing on the key issues to be determined. I conclude that these matters do not
13 adversely affect the credibility of Mitchell Wright.

14 301. *Jordon McLean:* Mr. McLean, too, did not present a perfect and uncontradicted
15 account of the incident. It was borne out on his cross-examination that he did not tell
16 the police or the prosecuting team at the pre-trial conferences that he had said that
17 someone (or this guy) is trying to shoot me or (words to that effect) as indicated by him
18 in examination-in-chief.

19 302. I am mindful that it can be a sign of recent fabrication on his part in that the story is just
20 being told, or that it could be as a result of collusion with another witness. He, however,
21 gave his explanation which I have taken into account to see whether it is satisfactory as
22 I am obliged to do before finding him discredited.



1 303. In assessing Mr. McLean, I am satisfied that it was not a fabrication on his part or as a
2 result of collusion with Mitchell Wright, as the defence, seemingly, would wish to
3 suggest. I find his credibility not affected by that omission. I accept his explanation
4 given for not mentioning it on the previous occasions.

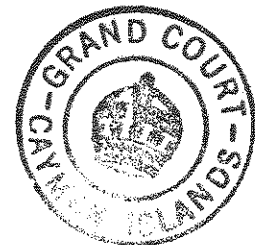
5 304. It was also put to him that in describing how far away from him Troy and Mitchell were
6 when Joylon went up to the defendant, he had told the police they were very close but
7 in court he is saying they were close but not very close. Again, the witness gave an
8 explanation that I accept and so I do not see that inconsistency as serious or material
9 and as one going adversely to his credit.

10 305. He was contradicted in his testimony by Joylon Frederick as to how long they were
11 speaking before he saw the defendant. He said 2-3 minutes (a short time). Joylon said
12 10-20 minutes a longer time. No one checked a watch for the time as both he and
13 Joylon admitted. Furthermore, Joylon was admittedly intoxicated at the time. The
14 reliability of Joylon's evidence in this regard is dubious. I am minded to believe Mr.
15 McLean but I find, in any event, that even if Joylon is correct and Mr. McLean is
16 wrong, it is not a deliberate lie. Furthermore, nothing really turns on the duration of the
17 conversation. The discrepancy is on a point on which no material issue in this case
18 turns. The conflict between them on this does not impair Mr. McLean's credibility in a
19 way that I should reject him entirely.

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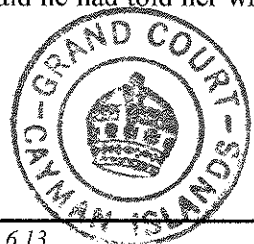


1 306. Mr. McLean was also contradicted on his evidence by the evidence of Mitchell Wright
2 as to when it was that he had uttered the words that someone said he was going to shoot
3 him (or whatever variance of those words). I find in this regard that I accept that the
4 words were spoken. Therefore, whether it was before Mitchell Wright had gone up to
5 him, or after, does not affect his credibility to the extent that he should be disbelieved
6 and viewed as an untruthful witness.

7 307. I find that whether the words were spoken or not is not of any relevance to the central
8 issue in the case which is whether the defendant had a gun that he used to assault
9 Jordon McLean and injure the other two complainants. This discrepancy between the
10 witnesses is not considered to be in any way substantial as to go to the heart of the
11 crown's case, destroying it.

12 308. *Joylon Frederick*: Joylon Frederick, for his part, failed to mention some things stated
13 by the other witnesses that would go directly to proof of some key aspects of the case
14 especially as it relates to whether the defendant had a gun. I find that this is not as a
15 result of anyone lying but it seems to be rather as a result of differences in positioning,
16 focus and recollection.

17 309. There is a clear conflict in his evidence as to where he was when he was shot and what
18 he told the police on the night of the incident. His evidence was to the effect that at the
19 time he was shot, he was by the BMW with the defendant trying to calm him down, as
20 it were. When his statement made to DC McQuade was put to him in cross-
21 examination, he denied that what is contained therein was what he said because at the
22 time of the shooting he was talking to Jordon. DC McQuade said he had told her what
23 is contained in his statement.



1 310. It is the evidence of the witness in court that is the evidence in the case for my
2 consideration. The prior conflicting statement is relevant only to the extent of it
3 showing that he has contradicted himself and so I must take it into account in deciding
4 on his credibility.

5 311. I believe his evidence given in court that at the time he was shot he was not where
6 Jordon was. The conflict between his evidence and what he told the police could be
7 more attributable to faulty recollection due to his state on the night rather than due to an
8 intention to deliberately lie or to mislead the court. The inconsistency is regarded as
9 slight and not serious

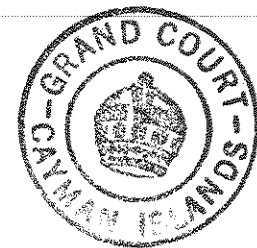
10 312. Mr. Frederick was intoxicated that morning. This is supported by the evidence of PC
11 McQuade who said she was not able to take a proper witness statement from him on the
12 night of 22 February. I believe that his memory of the events might have been
13 compromised in some way due to his impaired state on the night in question. So, his
14 evidence must be considered in that light.

15 313. I have not been moved to form the view that he is an untruthful witness. He is the
16 witness who least implicates the defendant because according to him he saw no gun that
17 night. If his motive was to incriminate the defendant, he could have easily said he saw
18 him with a gun. I detect no ulterior motive on his part that would act as a reason for him
19 deliberately making up a story to build a case against the defendant.

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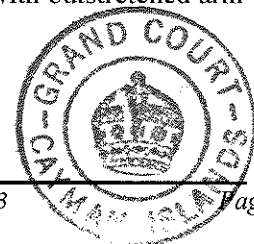
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1 314. In looking at the evidence of all of the complainants in totality, I find, however, areas
2 on which they have contradicted each other that demanded close scrutiny of their
3 evidence. These relate, in particular, to how they were positioned immediately prior to
4 and at the time the defendant allegedly brandished the firearm and the shot went off and
5 their specific actions and movements at the time.

6 315. Mitchell Wright, as the records show, stated that he went over to where the defendant
7 and Joylon were standing by the BMW and he went behind Joylon who was standing in
8 front of the defendant. At that point, he saw the defendant with the firearm on Joylon's
9 shoulder pointing in the direction of where Jordon was in the car park. He said that he
10 tried to reach over to the defendant's right hand with his right hand by jumping over
11 Joylon to do so. It was during that time that he heard a pop which did not sound like
12 gunshot to him. He then grabbed the defendant and the struggle ensued that lasted until
13 the police arrived.

14 316. Jordon McLean's version of the occurrences at that time differed from Mitchell
15 Wright's. He stated that the defendant moved to the car and removed the firearm and
16 then pointed it at him. Joylon moved to where the defendant was trying to calm him
17 down (based on hand movements). Mitchell came across and he uttered the words that
18 someone trying to shoot him. Mitchell went to where the two men were by the car.
19 Mitchell, he said, was in front of the defendant and Joylon was to the left of Mitchell.
20 Then the defendant turned and pointed the gun at Mitchell's chest. He saw Mitchell put
21 up his right hand. Joylon's hands were down. That was when the shot was fired. Then
22 he said he was seeing the back view of Mitchell and Joylon and could not see specifics
23 to their motions. He has described no scene with Mitchell Wright with outstretched arm
24 going over the back of Joylon.



1 317. Joylon Frederick's account, in turn, differs from that of both the previous complainants.
2 He said that when the defendant walked to the BMW, Jordon continued walking
3 towards the next parking lot from the Club 7 exit to get to his car. This contradicts
4 Jordon that he had remained where he was at the Club 7 exit. He said that just before
5 the shooting, the defendant was pointing and still shouting at Jordon who was making
6 his way to the car park. The defendant was pointing with his right hand with the other
7 hand by his side. He could not see that hand. He tried to calm down the defendant and
8 in the course of doing so, he felt the presence of someone behind him. It was when he
9 turned to see who it was that he heard the gunshot noise and felt the sting to his hand.
10 He indicated his hands held upward bent at the elbow at the time. (Jordon McLean had
11 said the hands were down.) He never saw who was behind him. The defendant was
12 before him just before he turned. No one else was there.

13 318. It is evident that in relation to the positioning and the mechanics of the movements at
14 the time, the witnesses are not on all fours. I am mindful that disparities in evidence
15 might occur not only because of falsehood but due to faulty recollection or differences
16 in the way persons observe things, focus on things, remember things and express
17 themselves. Furthermore, the incident happened some time ago, it was a dynamic
18 situation, not static or occurring in slow motion for every minute detail to be recorded
19 and replayed for accuracy.

20 319. Having assessed the three civilian witnesses, taking into account specific matters that
21 touch on their credibility, I do not believe that they are witnesses who would
deliberately lie to implicate the defendant. I discern no evidence of collusion among
them; no evidence of there being any fabrication, conspiracy or wicked invention on
their part or any of them that could account for such conflicts on the evidence.



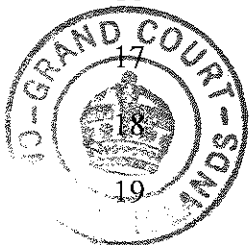
1 320. All these things I have taken into account in assessing the credibility/ reliability of the
2 witnesses in the light of the differences in account. In the end, it is really a matter as to
3 what and whom I accept as being more reliable and accurate in their accounts rather
4 than a question as to who is lying. I bear in mind that I can accept one witness over
5 another.

6 321. Similar assessment is carried out with respect to all other conflicts in the evidence of
7 PC Campbell, PC Smith and other witnesses that have been noted. I find those
8 inconsistencies or discrepancies, not specifically addressed during the course of this
9 aspect of my analysis, to be slight and immaterial. As such, they do not affect, in any
10 way, the issues that I have to decide in determining whether the defendant is guilty or
11 not of these charges laid against him. They have not served to affect the prosecution's
12 case in any material respects. For those reasons, I will not allow any other conflicts in
13 the evidence of the witnesses to detain my attention for present purposes.

14 *Whether Witnesses Mistaken*

15 322. Having concluded that the witnesses in question are not lying witnesses, I still bear in
16 mind that the prosecution must prove the correctness of the purported identification of
17 the defendant and so I must be satisfied that the witnesses, although truthful, were,
18 secondly, not mistaken. This becomes necessary in the light of the defendant's
19 assertions that he has no knowledge or recollection of the incident alleged.

20 323. The correctness of the visual identification of the defendant and the circumstances
21 surrounding this purported identification, also have implication for another critical issue
22 as to whether he was properly and accurately seen with a gun that it is alleged he had
23 used at the time.



1 324. I am mindful that although the witnesses are viewed as honest witnesses, it is clear that
2 they are prone to make mistakes or suffer from faulty recollection as manifested by the
3 conflicts in their evidence. I am mindful too that several witnesses can make a mistake
4 about the same identification. I have also borne in mind that an honest mistaken witness
5 can, nevertheless, be convincing about his purported identification of the perpetrator of
6 a crime. I have reminded myself too that even in cases of the recognition of close
7 relatives and friends, mistaken identification can be made.

8 325. It is for all these reasons that I have warned myself and have borne in mind, throughout,
9 the dangers of mistaken identification and the ghastly risk of wrongful convictions
10 based on it. It is for that reason that I seek to ensure that the witnesses were not at all
11 mistaken, apart from them not lying, when they said the defendant was at Club 7 that
12 morning.

13 326. I have given due consideration to the circumstances in which the identification of the
14 defendant was purportedly made by each of the complainants. Of the three of them,
15 Jordon McLean knew him the least. In fact, he was a stranger to him. I do accept,
16 however, after a consideration of all the evidence, as indicated below, that he was not at
17 all mistaken in his identification of the defendant. He finds support in the evidence of
18 Mitchell Wright and Joylon Frederick as well as from other circumstances of the case.

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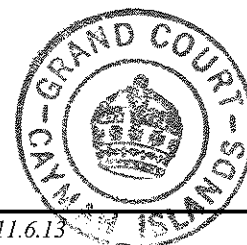
1 327. I am satisfied that Mitchell Wright knew the defendant before that morning for over
2 five years even though the defendant claimed he did not know him before. The
3 defendant's evidence as to the name of his sister and where she works strengthens Mr.
4 Wright's evidence of his prior knowledge of him. Joylon Fredrick has known the
5 defendant for all his life, which the defendant accepts. Those two witnesses, especially
6 Joylon Frederick, would have known him sufficiently well to be able to accurately
7 recognize him that morning once the conditions were conducive to a proper recognition
8 being made.

9 328. I am satisfied, on the evidence of the eye witnesses, the photographs, sketches and
10 measurements of the scene that all the conditions that prevailed, then, were conducive
11 to a correct identification of the defendant at the material time of the shooting. The fact
12 that it was night and the, perhaps, frightening nature of the occurrences do not detract
13 from those favourable circumstances that existed.

14 329. I draw support for this conclusion, primarily, from the following items of evidence:

- 15 • the presence and sufficiency of lighting, as described by the witnesses and as
16 depicted in photographs exhibited;
- 17 • the close proximity of the complainants to the defendant at different points in
18 time with him coming within touching distance or at close proximity to all of
19 them, especially Mitchell Wright and Joylon Frederick, who knew him
20 sufficiently well;
- 21 • his face- to -face positioning relative to each of them at varying points in time
22 which allowed each of them, and, particularly, the two who had prior
23 knowledge of him, to see his face;

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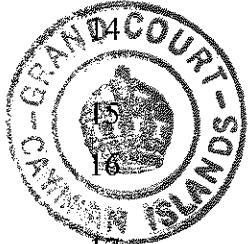
1 • the length of time they would have had him under observation which was by
2 no means fleeting and which was long enough to allow ample time for a
3 positive recognition of him by those who knew him before as well as by
4 McLean to whom he was a stranger then;

5 • there is no evidence of any obstruction to the viewing of the key witnesses at
6 material points in time to impede a proper identification of him. There were no
7 unrelated persons to that side of the car park at the material time;

8 • he was immediately held by Mitchell Wright following the shooting and
9 detained until he was taken into custody by the police;

10 • he was never out of sight; that is to say, there was no break in the viewing of
11 him by at least one of the witnesses from the time he confronted Jordon
12 McLean to the time the police came and apprehended him;

13 • PC Campbell and PC Smith arrived on the scene and saw his movement
restrained by Mitchell Wright. He was also known to those officers before;



14 • He received injuries at Club 7 parking lot at the instance of Mitchell Wright;
15 and

16 • he was taken into police custody at Club 7 car park, taken to the hospital and
17 then released into the custody of the police where remained until his
18 appearance in court.
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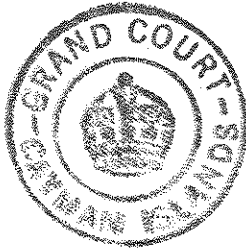
20 330. In addition to the compelling evidence of the three complainants and the police
21 personnel who responded first to the shooting, there is the defendant's own evidence
22 that he was out with Sophia Rojas, at least up to Buttonwood Club Bar, in that same
23 BMW that was taken from Club 7 by the police. He also indicated that Elorine Brown
24 was at Sophia's house earlier in the evening before they went out. Her black Honda was
25 also in the car park at the material time and taken away by the police. It was Sophia
26 Rojas who was with him at the hospital and who handed over the keys for the car to the
27 police.

1 331. The reasonable and inescapable inference from all this was that he was with these same
2 persons, particularly Sophia Rojas, who was his companion for the night, at Club 7
3 where he was ultimately injured and apprehended by the police. The fact that he was
4 not seen with keys for the BMW on that night does not destroy that inference.

5 332. In the light of all this, the identification evidence of PC Hunter that he had seen the
6 defendant driving into the club parking lot on the night before he saw him again injured
7 later in the morning, with which the defendant, through Mr. Malcolm Q.C., has taken
8 issue, is corroborated. His evidence is not, however, necessary in the scheme of things.
9 While I do not believe PC Hunter is lying or was mistaken, I have been sufficiently
10 satisfied that the defendant had been properly identified by persons who knew him
11 before to render as unnecessary my reliance on PC Hunter's identification of him.

12 333. I am satisfied to the extent that I am sure on ample, clear and credible evidence that the
13 defendant was present at Club 7 at the time a firearm was brought into play and utilized
14 even though he might have no knowledge or recollection of it.

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1 *WAS THE DEFENDANT THE POSSESSOR AND USER OF A FIREARM*

2 334. The next critical question, in the light of the defendant's response to the prosecution's
3 case, is whether he was in possession of the .38 revolver that he used to commit
4 offences against the three civilian witnesses as is alleged. He has vehemently denied
5 this aspect of the prosecution's case.

6 335. The defendant has said that he is not such a person to have a firearm. I have taken this
7 to mean that he is asking me to view him as a person who does not have the propensity
8 to use a firearm to do what the prosecution is alleging and that I should believe him
9 when he said he had no firearm that night and used it in the manner alleged. I have paid
10 due consideration to his word that he is not a person who deals with firearms and have
11 taken it into account in assessing his credibility and in determining whether the
12 prosecution have satisfied me to the requisite standard that he was armed that night and
13 used the firearm in question.

14 336. I must indicate too within this context that in coming to my decision I have paid no
15 regard to his evidence that he was coming from the Drug Court as there is no evidence
16 as to his reason and purpose for doing so. I viewed it as being totally irrelevant to
17 anything I have to decide here. It is not used in anyway prejudicial to him and is only
18 viewed as part of his narrative as to his movements on the evening prior to the alleged
19 incident.

20 337. As already found, as an undisputed fact, the police saw the .38 revolver in the hands of
21 the defendant when they arrived. It is also already accepted as a material undisputed
22 fact that he threw it away and that it was the same gun retrieved by PC Campbell. That
23 gun was examined by Mr. Greenspan and found to be in good working condition
24 capable of discharging deadly missiles from the barrel.



1 338. I have already accepted as an undisputed fact that that gun was fired on the morning of
2 22 February. The one empty casing found in it is consistent with the evidence of the
3 discharge from it of a single bullet. That single bullet was recovered from the arm of
4 Mitchell Wright it having exited the arm of Joylon Frederick who both, indisputably,
5 sustained their injuries in the parking lot of Club 7.

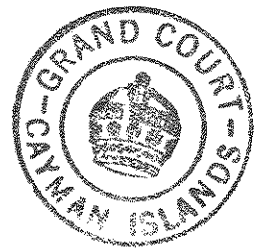
6 339. I find, after taking into account all the evidence including the inconsistencies and
7 discrepancies, that the complainants spoke the truth when they said that none of them
8 had a gun. I believe them that none of their friends had a gun. I accept Jordon McLean
9 and Mitchell Wright, who are the ones who said they saw the gun in the hand of the
10 defendant, as witnesses of truth.

11 340. The gun they saw matched the description of Exhibit 5 and I find that that gun
12 recovered by PC Campbell was what these two civilian witnesses saw that night. They
13 have no proven or suggested motive to lie and I was impressed by their demeanour as
14 sincere witnesses. I find that they were not mistaken or confused about who they saw
15 with the gun that night.

16 341. In the case of Joylon Frederick, he said he did not see a gun in the hand of the defendant
17 but his evidence does lead to a reasonable inference that the shot was fired by the
18 defendant that caught him. On the point of how the shooting occurred, Mr. Frederick, as
19 drunk as he might have been, spoke to a positioning of someone behind him and the
20 defendant as the only person in front of him.

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1 342. I conclude that at the material time, that is just prior to the shooting, no one else was
2 acting aggressively other than the defendant. The subject of his mood was Jordon
3 McLean who he wanted to show something. Despite Mr. Malcolm's Q.C. best effort to
4 present Mr. Mitchell as the aggressor that night, I reject that argument. The injuries to
5 Mitchell Wright and Joylon Frederick are consistent with their hands being away from
6 their torso in some way when the bullet hit as Dr. Lizarraga opined also. They were
7 facing the direction of only one person who I accept on the evidence to be the
8 defendant.

9 343. I am satisfied to the extent that I am sure that the defendant was the person who had
10 that firearm prior to and at the time of the shooting and that he continued to retain his
11 exclusive control over it until the police arrived on the scene. There was ample lighting
12 and sufficient proximity between the main witnesses and him for him to have been
13 correctly identified with that object in his hand.



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The Forensic Evidence

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344. I have not ignored, at all, the evidence concerning the absence of GSR and the indeterminate DNA results as pointing to the possibility that the defendant might not have handled or fired a firearm. Mr. Greenspan and Ms. Shaw have both assisted me in my consideration of this aspect of the evidence but their evidence has to be viewed against the backdrop of all the other evidence in the case which I have done.

345. Having looked at the science surrounding GSR and the nature of GSR itself, I accept that it would have been expected to be deposited on the hand of the defendant if he had fired that particular firearm. I accept also that it is not the deposit of GSR that is critical *per se* for the purposes of GSR analysis but rather whether it remained on the surface on which it was deposited long enough to be detected. I accept that there are a number of variables that could account for the removal of any trace of GSR thereby accounting for a negative finding upon examination as explained by the experts.

346. Having listened to the evidence of Mr. Greenspan and Ms. Shaw, I find that some pertinent variables pointed out by them as likely to affect GSR retention do exist in the circumstances of this case that could explain the absence of GSR on the defendant other than that he did not fire the firearm.

347. Against the background of the expert evidence, I have seen that in this case on the evidence which is unchallenged, that there was a struggle between the defendant and Mitchell Wright which resulted into some form of movement for a while and some degree of body to body contact.



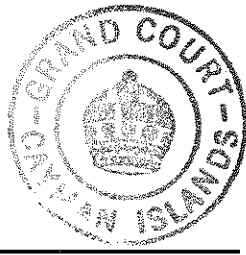
1 348. The defendant had fallen to the ground in the car park before he was moved by the
2 police. He was lifted and put in a vehicle for the hospital. No one knows the condition
3 of that vehicle and what happened while he was seated in the back as to his movements
4 and activities or the conditions to which he was exposed during the journey. At the
5 hospital, he fell again. He was assisted by medical personnel and placed on a stretcher
6 which, like falling to the ground, would involve some movements and some degree of
7 friction between his body and the surface of the stretcher.

8 349. He was subject to immediate medical attention and treatment by personnel which must
9 have involved some handling of his person. His clothing was removed and placed on a
10 table in the room all before any swabbing of his relevant body parts was done around
11 two hours after the shooting. By the time his clothes were secured for testing, they were
12 handled and removed by persons and placed on other surfaces.

13 350. In sum, the defendant was not swabbed immediately upon the shooting occurring or
14 within a reasonably short time thereafter. The passage of time, according to the experts,
15 does affect the retention of GSR deposit. Apart from the lapse of time itself, there were
16 between the shooting and the testing, such activities involving him that could have had
17 an adverse effect on the retention of GSR as explained by the expert witnesses.

18 351 The absence of positive findings of GSR and DNA, in all the circumstances, proves
19 unhelpful to the defence. I find that while it does give rise to the possibility that the
20 defendant did not fire the firearm, I am convinced on the credible and unmistakable eye
21 witness account, presented by the prosecution, that he was armed with the firearm in the
22 parking lot and that he discharged it.

23



1 352. I will go further to add, as matters going to the plausibility of the witnesses' account on
2 this issue as to who fired the gun, that it was the defendant whom Mitchell Wright held
3 immediately upon the shooting occurring with the firearm still in his hand which he
4 only disposed of when the police arrived. Also, I conclude that he became the object of
5 Mitchell Wright's wrath, resulting in the injuries he sustained, because he was the
6 shooter and the person Mitchell Wright held solely accountable for his injury.

7 353. All suggestions and arguments of the defence hinting at the possibility of the defendant
8 disarming someone during the course of a struggle and ending up with the firearm lack
9 evidential base to support them.

10 354. For all the foregoing reasons, I am satisfied to the extent that I am sure that the
11 defendant was armed with the .38 revolver exhibited in this case that he discharged in
12 the Club 7 parking lot that morning.

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1 *FINDINGS OF LAW*

2 *Application of the law to the facts*

3 355. Having found on these facts in issue against the defendant, the question now is whether
4 he has committed the offences for which he is charged as a matter of law. For
5 convenience, I have conducted my analysis under this head not in keeping with the
6 order the offences are set out in the indictment but rather in keeping with the logical
7 sequence of the events.

8 *Possession of Unlicensed Firearm*

9 356. The defendant is charged pursuant to sections 15 (1) and (5) of the Firearms Law (2008
10 Revision) which outlaw the possession of a firearm not under and in accordance with
11 the terms of a Firearms User's Licence. I found that that the defendant, at the time,
12 knowingly had that .38 revolver (exhibit 5) exclusively in his custody and under his
13 control making it in his possession while he was in the Club 7 parking lot on 22
14 February 2013 prior to him throwing it in bushes.

15 357. I am satisfied on all the evidence, especially that of Mr. Greenspan and the fact of
16 gunshot injury to two of the complainants as supported by the medical and other
17 evidence, that the .38 revolver is, in fact and in law, a firearm as defined in s.2 of the
18 Firearms Law (2008 Revision.)

19 358. It is a formally admitted fact that the defendant had no Firearm User's Licence for this
20 firearm based on the statement of DC Colin Pryce that a check of the RCIPS Security
21 and Firearms Unit revealed that no record was found of the defendant holding a
22 firearms licence at any time. The defendant, himself, had indicated in his interview and
23 under cross-examination that he has no licence for carrying a firearm.

1 359. The prosecution have satisfied me to the extent that I feel sure that the defendant is
2 guilty of being in possession of a firearm not under and in accordance with the terms of
3 a Firearm User's Licence. Accordingly, he is guilty of that offence.

4 *Unlawful Use of a Firearm*

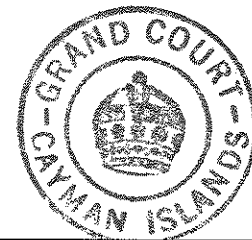
5 360. The defendant is charged on count 6 for Unlawful Use of a Firearm under s.208 of the
6 Penal Code (2010 Revision). This section provides in part, in so far as is immediately
7 relevant, that a person who unlawfully discharges any firearm at a person commits an
8 offence. The section also stipulates that liability for this offence is in addition to any
9 other liability for any other offence that might have been committed with the use of the
10 said firearm.

11 361. I have already found, as a fact, that the defendant was the person who was in possession
12 of the unlicensed .38 revolver that he discharged in the Club 7 parking lot in the
13 circumstances he did, injuring Mitchell Wright and Joylon Frederick. I find that these
14 persons were in close proximity to him when he discharged the firearm and that he did
15 so at them without lawful justification or excuse.

16 362. The fact is he knew he was discharging the firearm, he intended to do so, he did so
17 deliberately and consciously, not accidentally, and he had no legal justification for
18 doing so. This is sufficient, in my view, to ground the charge.

19 363. I find as a matter of law that the prosecution have made out this offence of unlawful use
20 of firearm against the defendant to the extent that I feel sure of it. He is guilty of that
21 offence.

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Assault

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364. Count 7 charges him with assaulting Jordon McLean contrary to s.215 of the Penal Code (2010 Revision). It is trite law that an assault is committed when a person unlawfully and intentionally or recklessly does an act which causes another person to apprehend the immediate application to him of bodily force.

365. The evidence in support of this charge came primarily from Mr. McLean. Albeit that I am aware of the inconsistencies in his evidence and that he has been contradicted on some aspects of his evidence by other witnesses, I find that those matters do not affect his credibility and reliability on this aspect of the prosecution's case. He gave evidence that after he said to the defendant that he must stop being weird, the defendant walked away to the BMW motor car from where he observed him pull the firearm. The defendant, he said, pointed the firearm at him and he was in fear of his life and he 'froze up'. Mr. McLean was within the range of proximity to the defendant to apprehend bodily harm from a projectile.

366. I accept that this complainant was put not only in fear of immediate violence against his person by the action of the defendant in pointing the gun but also by the words the defendant uttered and his aggressive demeanour at the time.

367. The defendant intended to evoke that fear in Mr. McLean which I do find he managed to successfully do. But even if he did not have the intention to do so, he would have clearly been reckless as to whether his actions would have had that effect on the complainant. On that alternative analysis, he would still have had the requisite mental element.

1 368. I do accept that Jordon McLean was put in fear by the conduct of the defendant being
2 armed with a gun and that the defendant possessed the requisite mental element that
3 rendered him liable in law for committing an assault. I conclude that the prosecution
4 has proved this offence to the requisite standard and so he is guilty of it.

5 *Attempted Murder*

6 369. The defendant is charged on two counts for the offence of Attempted Murder pursuant
7 to s.194 of the Penal Code (2007 Revision) in that he attempted to cause the death of
8 Mitchell Wright and Joylon Frederick when he discharged that firearm. The provision
9 simply states that a person who unlawfully attempts to cause the death of another
10 person commits an offence. It does not define what constitutes an attempt for the
11 purposes of the section.

12 370. It is s.318 (1) of the Penal Code (2007 Revision) that has shed some light on what is
13 meant by an attempt to commit an offence. It states:

14 *“When a person intending to commit an offence begins to put his intention into*
15 *execution by means adapted to its fulfillment and manifest his intention by some*
16 *overt act but does not fulfill his intention to such an extent as to commit the*
17 *offence, he is deemed to attempt to commit the offence.”*

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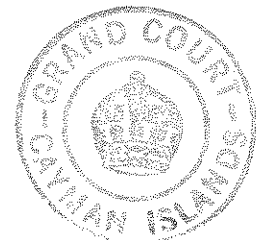
19 Section 318 (2) goes on to provide:

20 *“It is immaterial, except so far as regards punishment, whether the offender*
21 *does all that is necessary on his part for completing the commission of the*
22 *offence, or whether the fulfillment of his intention is prevented by*
23 *circumstances independent of his will, or whether he desists of his own volition*
24 *from the further prosecution of his intention.”*

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1 371. In considering the question whether the defendant is guilty of Attempted Murder, I have
2 been guided by the wording of those provisions as well as by the various principles
3 gleaned from numerous authorities on the subject. What is abundantly clear is that it is
4 what constitutes attempt within the meaning of the statute that should be the starting
5 point for any analysis. One must begin with the natural and ordinary meaning of the
6 statutory words¹.

7 372. From the wording of sections 194 and 318, it must be proved that the defendant,
8 intending to kill the complainants in question, did an overt act to bring that consequence
9 about. One of the crucial questions to be resolved, if not the most crucial one, is
10 whether the defendant had an intention to commit murder. To know whether he
11 intended that offence, then, consideration must be given to what constitutes that
12 offence, both in terms of *mens rea* and *actus reus*.

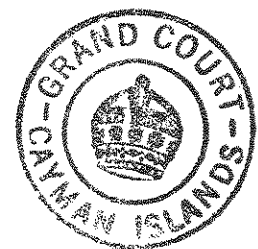
13 373. The learned authors of Smith and Hogan: Criminal Law 12th edition at page 381,
14 usefully explain that the starting point is the substantive offence which it is alleged the
15 defendant attempted or intended to commit and then it is a question of assessing the
16 defendant's conduct and *mens rea*.

17 374. The authorities are clear that whether a particular act amounts to an attempt to commit
18 an offence will depend on the intention with which that act was done.

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¹ *R. v. Jones* [1990] 3 All E.R. 886

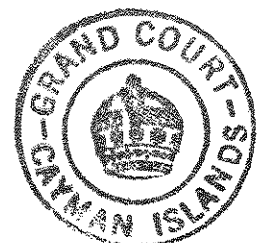
1 375. The question for me here is whether the defendant intended to cause the death of
2 Mitchell Wright and Joylon Frederick and did take an overt step towards that end. Ms.
3 Richards Q.C. had said that the intent to do so can be inferred from the fact that he
4 pointed a loaded gun, which is a lethal weapon, pulled the trigger and fired in the
5 circumstances he did. In her view, that is enough to give rise to the inference of the
6 requisite intention for the offence of Attempted Murder in this case.

7 376. The firing of a loaded gun, of course, is an overt act that could cause death and could
8 well be a manifestation of an intention to bring about that result, but it is not necessarily
9 so in all cases. I believe that whether there was intention to cause death or to kill
10 accompanying the discharge of a loaded gun must depend on all the circumstances of a
11 given case.

12 377. This consideration as to what is the type of intention required to constitute an attempt to
13 commit an offence assumes even more critical significance when attempt to commit
14 murder is charged. This is so because while for the substantive offence, an intention to
15 cause grievous bodily harm will suffice as a sufficient *mens rea*, only an intention to
16 kill is enough for the charge of attempt to commit the offence. Nothing less than an
17 intention to kill will do².

18 378. So, given that the firing of a loaded gun could be done without, necessarily, an
19 intention to kill, it is for that reason that the direct intention to kill must be proved to
20 have existed at the material time of the alleged acts. There must be shown either an
21 express intention to kill or an implied intention to do so, as may, reasonably and
22 inescapably, be inferred from all the circumstances.

² *Morrison* [2003] 3 All ER (D) 28

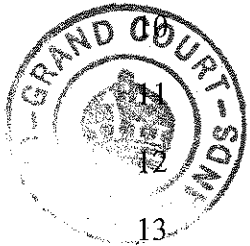


1 379. It follows that it must be proved to the extent that I am sure of it that the defendant had
2 an intention to kill the relevant complainants, as distinct from, and over and above, an
3 intention to cause really serious bodily harm to them.

4 380. Mr. Malcolm Q.C. raised several points about the evidence presented for my
5 consideration on this point which I have paid due regard to as being not totally devoid
6 of merit. He pointed to such matters to include the following: There being no verbal
7 threat to kill or injury; the defendant would have done no more than pointing the gun at
8 Jordon McLean and saying "*who is the retard now*"; the wounds are not in particularly
9 vulnerable parts of the body; if the shooting was with an intention to kill, the bullet
would not have gone where it did especially at close range; only a single shot was fired
and there was nothing stopping him from firing more shots especially when one
considers the evidence of Mr. Greenspan as to how the gun operates; there was no feud
between the complainants who were shot and the defendant; and finally, that there is no
13 evidence that the defendant, in pointing the gun, even if it is accepted that he did so
14 deliberately, did so with an intention to kill anyone.
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16 381. In looking at the Crown's case against the background of the submissions made by both
17 sides, it is clear to me that the defendant had nothing against Mitchell Wright or Joylon
18 Frederick up to the point the firearm was brandished and pointed at Jordon McLean. He
19 uttered no words that could be said to convey an intention to kill any of them.

20 382. As to what actually happened during and around the point at which the firearm was
21 actually fired and the two complainants in question were injured, the prosecution's case
22 lacks precision and clarity. This is the aspect of the case that the discrepancies between
23 the witnesses as to their positioning and movements assume some materiality in my
24 view.



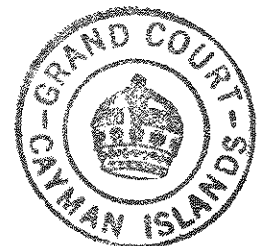
1 383. Jordon McLean said that at the point the firearm was discharged, the defendant had just
2 before that, pointed the gun at Mitchell's chest, then he saw Mitchell put up his right
3 hand. At that time, Joylon was to the left of Mitchell. Joylon's hands were down when
4 the shot was fired.

5 384. His account, as already shown, under the discrepancies noted, was contradicted by the
6 other two complainants. On the evidence of both complainants who were shot, there is
7 nothing from them to say that the defendant aimed the gun directly at them and did so
8 to any vulnerable parts of their body which could convey an intention to kill. The
9 manner in which the wounds were inflicted and how they were injured cannot be
10 ignored within this context. Joylon Frederick was the person shot first and the evidence
11 as accepted is that the single bullet exited Joylon's arm and hit Mitchell who was
12 behind him, in his arm. Their arms were away from their bodies at the critical time.

13 385. There is nothing, too, to say that the defendant prior to or during the shooting conveyed
14 an intention to kill towards them. The defendant, seemingly misguided as he might have
15 been, was not confrontational towards either Joylon Frederick or Mitchell Wright prior
16 to the shooting.

17 386. When all the foregoing matters are duly considered, I find that the prosecution have
18 failed to prove on clear, consistent and cogent evidence, an express or implied intention
19 on the part of the defendant to kill Mitchell Wright and Joylon Frederick. The
20 circumstances do not give rise to an inference of a direct intention to kill these two
21 complainants and nothing less.

22



1 387. The only other way the prosecution could, otherwise, successfully establish an intention
2 to kill those two complainants would be to satisfy me that there was transferred malice
3 or transferred intention. For transferred malice to apply, in this case, it would have to be
4 proved to my satisfaction, beyond a reasonable doubt, that the intention was to kill
5 Jordon McLean and not merely to do him grievous bodily harm.

6 388. In the confusing state of the prosecution's case as to what exactly was happening when
7 the shot went off, I find it difficult to find that an intention to kill Jordon McLean is
8 established. I have borne in mind the same discrepancies I have already discussed on
9 this question of positioning and movements of the defendant relative to the witnesses. If
10 the defendant had an intention to kill Jordon McLean, he seemed to have had the
11 opportunity to do so when, on Jordon's account, he assaulted him.

12 389. Mitchell Wright, for his part, who said he saw a gun pointing in Jordon's direction
13 could not say anything more about Jordon. What we do know from the measurements
14 of the scene is that Jordon would not have been within such a close range of the
15 shooting so that only an intention to kill could be inferred from the distance between the
16 defendant and him. He would have been, based on his sketch and the measurement of
17 SOCO Marin, at least, 40 ft. away. So, even if the defendant pointed the gun in his
18 direction, it was not within sufficiently close a range to say he must have intended only
19 to kill him.

20 390. The Crown's case as to what exactly took place at the time the gun actually went off is
21 not endowed with much clarity and precision. This could well be on account of
22 positioning and differences in focus of the witnesses as well as the whole dynamics of
23 the events. It could also be as a result of fading memory.



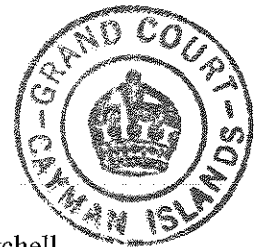
1 391. I am minded to believe Mitchell Wright's account, although it has its difficulties, as the
2 most reliable account as to what transpired at the time just before the gun was fired.
3 Mitchell Wright was more intimately involved in the occurrences at that time than
4 Jordon McLean who was some distance away and, on his own words, not able to see the
5 specific motions of the other three men. Furthermore, Mitchell Wright was not impaired
6 as Joylon Frederick was. Joylon Frederick was intoxicated and so his evidence does not
7 serve to illuminate this aspect of the prosecution's case in any material way. However,
8 on Mitchell Wright's account, I am not satisfied that there was a clear and distinct
9 intention to kill Jordon when the shot was fired.

10 392. In all the circumstances, I am not satisfied to the extent that I feel sure that the
11 defendant had an intention to kill any of the complainants either directly or by way of
12 transferred malice. Accordingly, the prosecution have failed to discharge the burden of
13 proof to satisfy me to the requisite standard of the guilt of the defendant for Attempted
14 Murder with which he is charged on counts 1 and 3.

15 *Wounding with Intent*

16 393. The defendant is charged, in the alternative, for the wounding with intent of Mitchell
17 Wright and Joylon Frederick. There is no dispute that the men received injuries that
18 satisfied the definition of a wound as a matter of law. It is unchallenged that one single
19 shot resulted in these wounds.

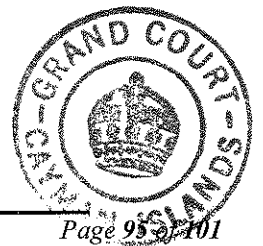
20 394. As to whether they were 'very' or 'really' serious wounds to be ranked as grievous as a
21 matter of law, that is a matter of fact to be determined objectively by the standard of
22 ordinary usage. It is also an area in which the opinion of experts can be, particularly,
23 useful and regard must also be had to the effect of the injury on the particular
24 complainant.



1 395. In relation to Joylon Frederick, Dr. Boothe said that in his opinion those wounds were
2 not serious but Dr. Lizarraga viewed them as serious and likely to be permanent. With
3 respect to Mitchell Wright, Dr. Boothe expressed no opinion on the seriousness or
4 otherwise of his injuries deferring to the opinion of Dr. Lizarraga to whom he was
5 referred. Dr. Lizarraga opined that Mitchell Wright's injury was also serious, in his
6 opinion, and likely to be permanent. Dr. Lizarraga is a surgeon with years of experience
7 in treating gunshot injuries that he has seen in societies like Jamaica and Belize and I
8 accept his opinion on this issue.

9 396. It is said that grievous bodily harm need not be permanent or even dangerous or even
10 require treatment. I have looked at the effects on the victims and I find that although
11 Joylon Frederick's injuries might have been serious, I do not consider them to have
12 been very or really serious to classify it as grievous. In the case of Mitchell Wright, to
13 the extent that he required surgery, and the effect it had on him, I would find his injury
14 to be more serious than Mr. Frederick's, and could be classified as really serious, albeit
15 not grave.

16 397. The fact, though, is that on a charge of Wounding with Intent, it is not so material that
17 grievous bodily harm actually resulted as would be required in an offence like Inflicting
18 Grievous Bodily Harm or Causing Grievous Bodily Harm with intent. Once the
19 prosecution proves that the wounding was unlawfully and maliciously caused, then,
20 what must be proved is the specific intent with which it was done as being one to do
21 grievous bodily harm. The intention to do grievous bodily harm can, of course, be
22 inferred from the nature and gravity of the wound itself but it can also be inferred from
23 other circumstances such as the type of object used to inflict the wounds.

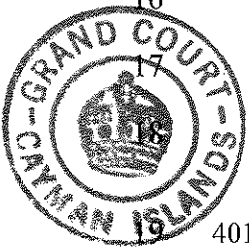


1 398. I find in this case that the wounds caused in respect of both complainants were inflicted
2 without lawful justification on the part of the defendant. They resulted from his
3 deliberate and conscious act in firing the gun. He either had the basic intention to bring
4 about the kind of harm that actually resulted or he was at least reckless as to whether
5 such injury would occur with the two complainants standing in close proximity to him.
6 He, therefore, “unlawfully and maliciously” wounded Mitchell Wright and Joylon
7 Frederick within the meaning of the terms set out in the first limb of the statutory
8 provision.

9 399. The ultimate question is whether he had the ulterior or specific intent to do them
10 grievous bodily harm as is further required for the completion of the offence. In
11 determining this question, I had cast my mind to consider whether there is anything
12 arising from the defence’s case or on the prosecution’s case that could affect this
13 question as a matter of law.

14 400. The only thing I see worthy of some attention in this regard is the possible defence of
15 intoxication arising. It is established law that while intoxication is not a general
16 defence, it can be such as to negative the specific intent needed for the commission of
17 some offences (Wounding with Intent being one of them) thereby rendering a defendant
not guilty of a specific intent crime.

18 401. I have raised this issue for consideration for two reasons. The first is that the defendant
19 gave evidence as to drinking alcoholic beverages during the evening and night of 21
20 February. He then said he cannot remember anything else after Buttonwood Bar. This is
21 not to say he has provided intoxication as a reason for his lack of memory or as the
22 reason for doing anything at Club 7 alleged by the prosecution. It is only relevant
23 because he said he was drinking.
24



1 402. Also, there is the evidence on the prosecution's case to suggest that he might have been
2 acting weird based on what Jordon McLean had said to him and that he seemed to have
3 been drunk or had been drinking according to Joylon Frederick.

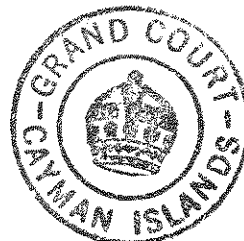
4 403. The second reason I have taken these matters into account is one of law and that is
5 subsection 11 (4) of the Penal Code (2010 Revision) which provides:

6 *"Intoxication shall be taken into account for the purposes of determining*
7 *whether the defendant charged had or formed the intention, specific or*
8 *otherwise, in the absence of which he could not be guilty of the offence."*

9

10 404. In the Eastern Caribbean Court of Appeal case of *James JNBaptiste v. the Queen*³ that
11 provision was helpfully discussed by Byron, JA (as he then was). His Lordship stated
12 that this provision does not make intoxication a defence but that it only operates to
13 require a jury to consider whether the evidence of drinking could throw doubt upon
14 whether the defendant formed the specific intent to cause death (or to do grievous
15 bodily harm as the case may be.)

16 405. It is against that background that I have examined whether there is evidence of
17 intoxication or drinking that could have affected the intention of the defendant and so
18 cast doubt as to whether he was capable of forming a specific intent. It is noted that the
19 defendant has not himself raised any positive and distinct defence in this regard. The
20 last thing he remembered was being happy and okay at Buttonwood Bar. This is not to
21 say he bears any legal burden to do so and to prove anything. The burden rests on the
22 prosecution to prove the case against him and so to negative all possible defences
23 arising in his favour.



³ [1996] ECLR 99

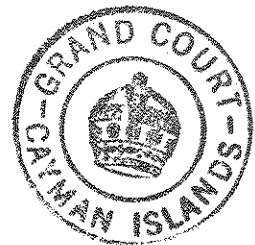
1 406. Having considered the case in its totality, I find that there is insufficient evidence before
2 me from which I can conclude that the defendant's conduct was as a result of
3 intoxication or drinking or due to any external cause, for that matter. His conduct, as I
4 have accepted it to be, showed that he was conscious enough to do the things he did and
5 was deliberate in executing them. There is nothing on the evidence that he was affected
6 in any way in his reasoning and intent. I find that he had the capacity to form the
7 specific intent to do grievous bodily harm, in the absence of evidence to the contrary.

8 407. The material question remaining in the light of all that is whether he had such an intent
9 to do grievous bodily harm to Mitchell Wright and Joylon Frederick. On this point, I
10 have adopted the same line of reasoning with respect to the failure of the prosecution to
11 establish clear evidence of a direct intention to kill these complainants. There is nothing
12 in the circumstances I believe that points to him having a specific intention to do
13 grievous bodily harm to them.

14 408. I find, however, that he formed the specific intention to do grievous bodily harm to
15 Jordon McLean. I have no doubt that he intended to do some harm to Jordon McLean
16 beyond a slight one because when he approached Jordon first, if he had merely wanted
17 to teach him respect, he could have boxed him or kicked him or hit him with some other
18 object. What he did was to proceed to a car, opened the door, and pulled a firearm. Mr.
19 Malcolm Q.C. has raised questions about the keys and whether the car was open or
20 closed or which door was open or closed. I have considered all those matters and I am
21 satisfied that the defendant went to the car for the gun.

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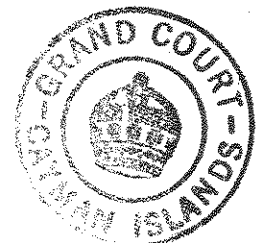
1 409. This was a fully loaded gun in good working condition which, by its very nature, was a
2 lethal weapon. Although there were bottles in the car based on the photographs I have
3 seen, he chose nothing else to show Jordon McLean something but a gun. This is where
4 I would agree with the submissions of Ms. Richards Q.C. that the intention to do
5 grievous bodily harm can be inferred from the nature and characteristics of the weapon
6 of choice. I find that by going for a loaded gun, the defendant formed an intention to do
7 really serious bodily harm to Jordon McLean.

8 410. This intention was converted into an overt act when he pointed the gun in the direction
9 of Jordon McLean and fired it within striking range. The witnesses who were closest to
10 him both said they saw him pointing in the direction of Jordon and shouting. Mitchell
11 Wright saw the gun pointed in that direction. Even if based on his positioning, Mitchell
12 could not see Jordon then the last time he saw Jordon, Jordon was still where he was
13 talking to Joylon Frederick earlier. Jordon said he had remained same place watching
14 the men by the car. I believe that the defendant's focus was on Jordon and when he
15 pointed the gun and fired it, it was aimed at hitting Jordon. The other complainants
16 were in the line of fire and it caught them before it could reach Jordon.

17 411. The measurements of SOCO Marin serve to show that Jordon would still have been
18 within a close range to be hit by a bullet aimed at him. He would not have been as far as
19 a chain away (which is the length of a cricket pitch on which balls are thrown and
20 expected to be hit and are usually hit). The defendant, himself, must have regarded him
21 as being in striking distance why he aimed in that direction and fired.

22

23



1 412. By discharging a fully loaded gun in the direction of Jordon McLean within that
2 distance and within the context of his verbal utterances and conduct, the defendant had
3 the specific intention to do him grievous bodily harm. This intention existed at the time
4 the gun was discharged, wounding the other two complainants. Even if they were not
5 his targets, he achieved the same *actus reus* he intended which involved serious injury
6 to a person. The intention was thus transferred from Jordon McLean to Mitchell Wright
7 and Joylon Frederick. As such, he had the specific intention required to constitute the
8 offence of Wounding with Intent.

9 413. I am satisfied beyond a reasonable doubt that he committed the offence of Wounding
10 with Intent in relation to Mitchell Wright and Joylon Frederick.

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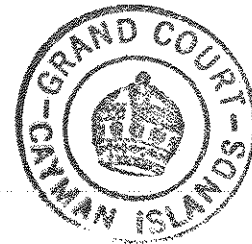
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1

VERDICT

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414. Accordingly, the verdicts are as follows:

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Count 1: Attempted Murder of Mitchell Wright – **Not Guilty**

4

Count 2: Wounding with Intent of Mitchell Wright – **Guilty**

5

Count 3: Attempted Murder of Joylon Frederick – **Not Guilty**

6

Count 4: Wounding with Intent of Joylon Frederick – **Guilty**

7

Count 5: Possession of an Unlicensed Firearm – **Guilty**

8

Count 6: Unlawful Use of Firearm – **Guilty**

9

Count 7: Assault of Jordon McLean – **Guilty**

10

11

The Defendant is discharged on counts 1 and 3.

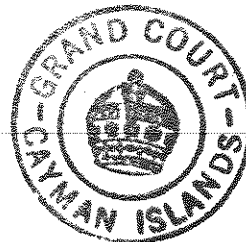
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Dated this the 11th day of June 2013

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17

Honourable Madam Justice McDonald-Bishop (Actg.)

18

Acting Judge of the Grand Court