

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

4 INDICTMENT NO: 0093/2011
5

6
7 THE QUEEN

8
9 V

10 ROBERT AARON CRAWFORD
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14 **Appearances:**

For the Crown:

15 Ms. Tricia Hutchinson, Senior Crown Counsel, on
16 behalf of the DPP

17
18 **Defence Counsel:**

19 Mr. Nicholas Hoffman of Priestleys on behalf of the
20 Defendant

21 **Before:**

Honourable Mr. Justice Charles Quin

22 **Heard:**

1st -9th October 2012
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25 **Preamble**

26 *This Judgment is distributed with the strict understanding that, in any report of it, the*
27 *anonymity of the police officers must be strictly preserved, that is, the officers may not be*
28 *identified by name, badge number, rank or unit.*

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30 **JUDGMENT**
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1 1. The Defendant pleaded not guilty to one charge of possession of an unlicensed
2 firearm contrary to s.15(1) and s.15(5) of the Firearms Law (2008 Revision). The
3 particulars of the offence are that the Defendant, on Friday the 18th day of November
4 2011, at the Esterley Tibbetts highway, in the vicinity of the Island Heritage
5 Roundabout had, in his possession a firearm, namely a Stock German Luger
6 containing a magazine with six 9mm Luger rounds, except under and in accordance
7 with the terms and conditions of a Firearm User's Licence.

8
9 2. The Crown must prove beyond reasonable doubt that the Defendant was in
10 possession of a Stock German Luger handgun containing a magazine with six 9 mm
11 Luger rounds so that I, as the Tribunal of Fact, can be sure that the Defendant is
12 guilty of possession of the firearm and the ammunition.

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14 3. If after considering all the evidence, I am not sure to the requisite standard of proof,
15 I must find the Defendant not guilty.

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17 4. In order to prove possession the Crown must prove beyond all reasonable doubt that
18 the said Stock German Luger handgun containing a magazine with six 9mm Luger
19 rounds of ammunition was in the custody, or under the control, of the Defendant.

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1 *THE LAW*

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

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6 6. Our Court of Appeal first dealt with the duties of a Judge in Judge Alone trials in its
7 judgment in *K. Richards v. R* 2001 CILR 496 when Justice Rowe stated:

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

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17 7. In *R v. Dave Kennedy Whittaker* Cr. App. R. No. 14 of 2006, the Court of Appeal
18 gave some guidelines regarding the duties of a Judge in Judge Alone trials. In the
19 Judgment of Mottley J.A. he adopted the Judgment of the former Lord Chief Justice
20 of Northern Ireland Lord Lowry in *R v. Thompson* [1977] NI 74 in which he stated
21 at page 83:

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

1 8. More recently our Court of Appeal in **Randy Martin v. R** Crim. App. R. 2 of 2010
2 delivered their reasons for dismissing the Appeal on the 7th December 2010. Mottley
3 J.A. again adopting **R v. Thompson** [1977] NI 24 also adopted **R v. Thain** [1985] NI
4 457 where Lowry LCJ said at page 478:

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

14

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

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

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1 *EVIDENCE ON BEHALF OF THE CROWN*

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3 *PC #355 WADE GORDON IN CHIEF*

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5 10. On the evening of the 17th November 2011 PC Gordon was on duty with WPC
6 Minott at the car park in the Grand Pavillion complex, adjacent to Club 7.

7
8 11. PC Gordon said that two persons – namely Jermaine Rodney (“Mr. Rodney”) (also
9 known as “Six Killa”), and Howard Scott (“Mr. Scott”) – gave him some
10 information relating to the white Nissan motor vehicle which was parked at the end
11 of the car park. As result of this information PC Gordon said he drove in a marked
12 police service vehicle to the end of the car park and he “*partially blocked*” the
13 vehicle that was pointed out to him. PC Gordon said that when he alighted from the
14 police car he spoke to the driver of the Nissan, who was seated in the car. The driver
15 was the Defendant, Aaron Crawford.

16
17 12. PC Gordon asked the Defendant to turn off the engine and get out of the car, but the
18 Defendant remained seated behind the steering wheel.

19
20 13. At this point, Mr. Rodney and Mr. Scott came over to PC Gordon beside the Nissan,
21 and Mr. Rodney said,

22
23 *“Officer, that’s the man that pull the gun on me.”*

24
25 PC Gordon said that after Mr. Rodney said those words he, Mr. Rodney, punched at
26 the driver (i.e. the Defendant).

27
28 14. PC Gordon said he spun around to restrain Mr. Rodney and then the Defendant
29 drove off.

1 15. PC Gordon said he shouted to his partner, WPC Minott,

2
3 *“Get in the vehicle quick.”*

4
5 Whilst doing this a USG vehicle pulled into the car park and he shouted to the USG
6 officers

7 *“Catch that car. The driver has a gun.”*

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9 16. PC Gordon said he had not actually seen a gun. He said he passed on the information
10 he received from both Mr. Rodney and Mr. Scott about the driver having a gun.

11
12 ***CROSS EXAMINATION OF PC #355 WADE GORDON***

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14 17. Defence counsel said to PC Gordon that Mr. Rodney and Mr. Scott had told him that
15 there was a gun in the car and not that the gun was held by the driver, to which PC
16 Gordon said,

17 *“No Sir.”*

18
19 18. Defence counsel put to PC Gordon that it was only Mr. Rodney who told him that
20 there was a gun in the white car parked at the other end of the parking lot, and not
21 Mr. Scott as well and PC Gordon replied,

22 *“No Sir, They both said it.”*

23
24 PC Gordon acknowledged that when they had all moved over to the white Nissan at
25 the other end of the car park, and were standing at the car, it was only Mr. Rodney
26 who spoke again about the driver having a gun, and, at the same time, Mr. Rodney
27 said this whilst pointing to Aaron Crawford in the car.

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1 19. *Re the Defendant hearing what was said about the gun:* PC Gordon said that when
2 Mr. Rodney spoke about the gun by the car, Aaron Crawford could have heard.

3
4 Defence counsel asked PC Gordon if Aaron Crawford said anything when Mr.
5 Rodney spoke about him having a gun, and PC Gordon said that Aaron Crawford
6 said nothing.

7
8 Defence counsel put to PC Gordon that the Defendant did not hear what Mr. Rodney
9 said. In reply PC Gordon said that the Defendant

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11 *"...was not saying anything from I got to his car."*

12
13 PC Gordon was asked if there was a lot of activity or a rowdy atmosphere around
14 the car and PC Gordon said,

15 *"No Sir."*

16
17 PC Gordon was asked if, at the time, it was difficult to hear what was being said and
18 PC Gordon said,

19 *"No Sir."*

20
21 20. Asked about Mr. Rodney punching at the Defendant, PC Gordon said that Mr.
22 Rodney had to punch around him (PC Gordon) and he had turned and pulled Mr.
23 Rodney back almost immediately, so Mr. Rodney only

24
25 *"...put his hand briefly into the car."*

1 21. PC Gordon was asked if he could recall whether he saw the Defendant with a belt on
2 in the car and PC Gordon said he could not deny or confirm whether the Defendant
3 had a belt.

4
5 22. Defence counsel put to PC Gordon: *"You were relying wholly on what you were*
6 *told. You did not see any weapon in the car,"* to which PC Gordon agreed.

7
8 23. PC Gordon said he was satisfied that Mr. Rodney's punch was directed at the driver,
9 who was the Defendant. PC Gordon said he could not confirm whether the punch
10 connected with the Defendant, or exactly how close the punch went to landing on
11 the Defendant.

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PC #184 ALFRED BRADLEY IN CHIEF

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24. PC Bradley confirmed that he is now resident in the United States but in November 2011 he was resident in the Cayman Islands and employed to the Royal Cayman Islands Police Service (RCIPS) as a Uniformed Support Group (USG) Officer.

25. On the 17th November 2011 PC Bradley said he came on duty for the evening shift which began anywhere between 1800 hours to 2300 hours and he signed on for duty with PC #316 Rabess.

26. PC Bradley said they were on routine patrol in the area of Club 7 on West Bay Road. PC Bradley explained that when the clubs are closing

“We attend these locations sort of known to cause problems for us. So we show a strong police presence there.”

27. PC Bradley said on arrival at Club 7 his attention was drawn to the car park area of Grand Pavilion where he saw a marked police car in the parking lot next to Grand Pavilion and there appeared to be a disturbance.

PC Bradley said he saw Officers Gordon and Minott outside the police car and they were trying to gain control of a crowd involved in a disturbance.

28. PC Bradley said as he was approaching the two officers to assist them – that is, passing Club 7 on the left and turning right into the Grand Pavilion parking lot, the entrance to the Grand Pavilion was momentarily blocked by a vehicle leaving the parking lot. When that vehicle passed, the USG vehicle continued towards the marked police vehicle.

1 29. PC Bradley said he then exited the USG vehicle from the passenger side and that
2 was when he heard Officer Gordon shout:

3
4 *“Stop that vehicle.”*

5
6 PC Bradley said he did not see the occupants of the vehicle when the vehicle passed
7 because he more focused on the police officers in the loud crowd of people.

8
9 30. PC Bradley said that the next thing was that PC Rabess said something to him as a
10 result of which he, Bradley, got back into the USG patrol vehicle.

11
12 PC Bradley said that Officer Rabess, who was the driver, turned the vehicle around
13 and proceeded to follow the vehicle they were told to stop.

14
15 31. PC Bradley said that in the vehicle PC Rabess told him who they were following and
16 why and they followed the vehicle as it exited the entrance of the Grand Pavilion on
17 to the West Bay Road.

18
19 PC Bradley said the vehicle then accelerated at a high rate of speed, travelling
20 southbound on West Bay Road toward the Gecko Link roundabout.

21
22 Then the Nissan car made a left by Fidelity Bank and turned towards the Esterley
23 Tibbetts bypass and the USG vehicle did the same. PC Bradley said that when the
24 vehicle made the turn towards Esterley Tibbetts highway he could see it turn
25 northbound, that is, going back towards West Bay.

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PC Bradley said,

“Because the vehicle was travelling fast we [Bradley and Rabess] could not stay close to the vehicle.....but were close enough to maintain visual [of the vehicle] but not to maintain high-speed pursuit.”

32. PC Bradley said that as the vehicle turned on to the Esterley Tibbetts highway it

“accelerated towards the Island Heritage roundabout.”

PC Bradley said he saw that, just as the vehicle was entering that roundabout, the vehicle had crashed into the guard rail on the left-hand side.

33. PC Bradley said that he next noticed that the front seat passenger had exited the vehicle from the right door, and there was only one occupant in the vehicle, who was the driver.

PC Bradley said he noted that the vehicle was a left hand drive car and the driver’s door was pinned shut against the guard rail.

34. PC Bradley said he next saw the driver emerge from the passenger side of the vehicle. PC Bradley said,

“I began to focus on him [the driver] and he ran directly into the headlights of our vehicle.”

1 PC Bradley said that when the Defendant realised that he had run into the USG
2 vehicle he

3 *"...pushed [himself back] off the hood [of the vehicle] and began to run*
4 *northbound on Esterley Tibbetts."*

5

6 35. PC Bradley said when the Defendant ran into the USG vehicle with the headlights
7 on the Defendant,

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9 *"He [the Defendant] was directly in front of me and I could see it was Aaron*
10 *Crawford."*

11

12 36. PC Bradley said that after the Defendant pushed himself off the vehicle he turned
13 around and ran in the opposite direction. PC Bradley said,

14

15 *"Knowing it was Aaron Crawford I yelled out to him "Stop! Armed Police! Get*
16 *on the ground!" I knew it was him [Aaron Crawford] because I had met with*
17 *him and spoken with him for several minutes the day before."*

18

19 PC Bradley said the Defendant did not obey his commands to stop and he, the
20 Defendant, continued to run up Esterley Tibbetts highway. PC Bradley said,

21

22 *"I followed behind him giving him more commands."*

23

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1 37. PC Bradley said that, as a police officer he had been trained to watch the hands. PC
2 Bradley said,

3 *“As I was running I watched his hands..... I could see both of his hands came in*
4 *front of his body.”*

5

6 38. PC Bradley continued to give the Defendant verbal commands to stop, but the
7 Defendant kept on running.

8

9 39. PC Bradley said,

10

11 *“From my training ...individuals will conceal firearms for immediate access,*
12 *Realising he [the Defendant] could be reaching for something I gave more*
13 *commands.*

14

15 PC Bradley said:

16 *“He looked over his shoulder. I could see he lifted the front of his shirt.”*

17

18 40. ***First sight of and description of the alleged weapon:*** PC Bradley said he could see
19 that when the Defendant lifted his shirt he was reaching into the front of his waist
20 band with his right hand. PC Bradley saw the Defendant’s right hand re-emerge
21 from in front of his body and he could see that the Defendant was holding a silver
22 coloured handgun.

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Asked how was the Defendant holding the gun, PC Bradley said,

“Just as a track and field person would run with a baton. I could tell it was a handgun, silver in colour and was not pointed in my direction... and it, [the weapon] disappeared out of my sight momentarily... his body was between the weapon and my line of view.”

PC Bradley continued:

“At this point I placed my hand on my service weapon ...and continued to give more commands to stop. At this point we were nearing the end of the guard rails and the weapon re-emerged, still moving forward and back ...on the right hand side of his body.”

PC Bradley continued:

“Just past the guard rail he [the Defendant] entered the bush area on the west side of the highway. A few yards into the bush he [the Defendant] threw the gun with his right hand in a motion across his body towards the left....a motion that was about waist high.....I saw the silver-coloured handgun rotate horizontally through the air.”

PC Bradley said the gun was thrown in the area of the bush he, Bradley, had pointed out at the visit to the crime scene on the previous evening, that is, the 2nd October 2012.

1 41. PC Bradley said that after the Defendant threw the handgun,

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3 *“Despite more verbal commands he [the Defendant] continued to try to evade*
4 *arrest. He continued to run. I ran behind him another short distance and was*
5 *able to catch up to him and effect the arrest....I tackled him from behind....we*
6 *landed – both of us – face down in the grass. I was on top of him in a guard*
7 *position. I had both of his arms extended by his wrists. He requested to be*
8 *turned over.”*

9

10 42. PC Bradley said that the first words from the Defendant after he turned him over
11 was,

12

13 *“That guy had a gun.”*

14

15 43. PC Bradley said that at this point he called out to PC Rabess to indicate his location
16 in the bush. When PC Bradley reached to where he, Bradley, was with the
17 Defendant, the Defendant was handcuffed.

18 44. As they walked back to the roadside PC Bradley told the Defendant that he was
19 under arrest for suspicion of possession of an unlicensed firearm and the Defendant
20 gave no response.

21 45. PC Bradley said a marked police car arrived just when he and PC Rabess reached
22 the roadside with the Defendant and, *“within minutes”*, the Defendant was
23 transported away to the police station.

1 46. PC Bradley said that he remained at the scene and after the Defendant was taken
2 from the scene other police units arrived and,

3 *“I told officers that I saw Crawford with a silver-coloured handgun.”*

4 47. Asked which officers he had told about the gun, PC Bradley said it was PC Rabess,
5 PC Soto and others. PC Bradley said he told the officers where he had seen the
6 firearm land in the general bush area.

7 48. PC Bradley said he did not leave the vicinity and he, PC Soto and PC Rabess began
8 searching the bush area.

9 49. PC Bradley said it was PC Soto who was the first to find the weapon and when PC
10 Soto found the weapon he, Soto, said he had found the weapon. PC Bradley said he
11 walked over to where PC Soto found the weapon and identified it as the one the
12 Defendant had in his hand whilst running.

13 50. PC Bradley said that PC Soto took over the custodial portion of collecting and
14 exhibiting the weapon.

15 51. Asked, *“You said this happened at 3 a.m. How were you able to see all that you*
16 *saw?”* PC Bradley replied that the roundabout and the road were very well lit. He
17 said there were a number of streetlights illuminating the entire roundabout and the
18 surrounding area, and that is why he had no difficulty seeing the firearm in the
19 Defendant’s hand as he was chasing him.

20 52. Asked to describe the weapon, PC Bradley said it was an old World War II Model,
21 semi-automatic gun.

1 56. ***The incident:*** Asked by Defence counsel: “*When did you first see the white Nissan?*”
2 and PC Bradley’s response was,

3 “*When it was exiting on to the West Bay road.*”

4 57. Asked: “How far away was your car?” PC Bradley responded,

5 “*Twice the length of this courtroom...30 to 45 yards away....I was looking at it*
6 *from behind.*”

7 58. PC Bradley said that PC Rabess was still in the vehicle and he, Bradley, was out of
8 the vehicle, but holding on to the door, when he was alerted to stop the vehicle
9 leaving the car park.

10 59. PC Bradley agreed that he was aware of Aaron Crawford, the Defendant, prior to the
11 night in question and he said he was aware that the Defendant was on a long arm
12 authority. PC Bradley said that that meant he was under suspicion for possession of
13 a firearm.

14 60. PC Bradley said when the USG vehicle turned on to the West Bay Road to follow
15 the Nissan Sentra there were no other vehicles between his vehicle and the Nissan.

16 PC Bradley said, however, because the Nissan was going fast, his police vehicle
17 could not keep up with the Nissan, so the distance of approximately 30-45 yards
18 between the USG vehicle and the Nissan increased and they were further behind
19 than at the start.

20 PC Bradley said he momentarily lost sight of the Defendant’s car when it turned left
21 on to the Esterley Tibbetts Highway. Additionally, he accepted that there is curve on
22 the highway that blocks your line of sight momentarily.

1 PC Bradley said he did not see the Defendant lose control of the vehicle and when
2 he saw the Nissan, he was some 75 yards away and the vehicle had already crashed.

3 61. PC Bradley confirmed to Defence counsel that the Defendant exited the crashed
4 vehicle from the front passenger door.

5 PC Bradley confirmed that the Defendant ran into the police vehicle and pushed
6 himself off the bonnet of the police vehicle. He confirmed that the headlights of the
7 USG vehicle illuminated the Defendant in front of him and he knew it was Aaron
8 Crawford.

9 PC Bradley said that the Defendant did not fall or stumble, and he was on his feet
10 the entire time.

11 62. PC Bradley said that when he started to chase the Defendant there were lights all
12 around and he yelled at the Defendant to “Stop” but the Defendant just continued
13 running.

14 63. PC Bradley accepted that at first he did not see anything concealed on his person
15 when he, the Defendant, was up against the front of the police car. PC Bradley said
16 the Defendant was wearing a long red shirt with shorts.

17 64. PC Bradley agreed that when the Defendant was running and his hands were in front
18 of him, he could no longer see the Defendant’s hands, but he knew they were in
19 front of the Defendant’s body, because he could see the Defendant’s elbows – even
20 though he could not see the Defendant’s hands.

1 PC Bradley said that from his training and experience he saw the out-of-sight hands
2 as a “red flag” because the Defendant was reaching into his waistband where people
3 normally conceal firearms or some other weapon.

4 65. PC Bradley was asked whether he noticed if the Defendant was wearing a belt and
5 PC Bradley said he did not notice.

6 66. Asked whether the Defendant was stumbling or pulling at his clothing PC Bradley
7 said,

8 *“I would have caught him a lot quicker if he was being obstructed.”*

9 67. PC Bradley said the Defendant was not stumbling and he was running perfectly
10 normally. PC Bradley said the Defendant was

11 *“...moving pretty good.”*

12 PC Bradley said he could see that the Defendant lifted the front of his shirt and was
13 reaching into waistband whilst running.

14 It was put to PC Bradley that he was mistaken and that the Defendant was only
15 trying to pull up his trousers, and PC Bradley said,

16 *“No.”*

17 68. PC Bradley said that whilst the Defendant was running he partially turned his body.

18 Asked why did the Defendant need to turn around to get rid of a firearm, and PC
19 Bradley replied,

20 *“To see if I was still coming behind him.”*

1 69. PC Bradley said he was not breathing down the Defendant's neck during the on-foot
2 chase, but he, Bradley, was no more than 20 metres behind the Defendant. PC
3 Bradley was reminded that, at the crime scene visit, he said that he, Bradley, was 18
4 feet behind the Defendant and in his statement he said that he was 30 feet behind. In
5 response PC Bradley said these are rough estimates.

6 70. It was put to PC Bradley that he described what he saw in the Defendant's hand as a
7 silver handgun and he also used the word firearm, but he was not able to say
8 anything about the make or model of the firearm. PC Bradley said to Defence
9 counsel,

10 *"The make or model is a minute characteristic which can't be made out from a*
11 *distance and (while) running."*

12 71. It was put to PC Bradley that he was not sure the Defendant had a firearm in his
13 hand on the night in question and PC Bradley said he did not agree with that
14 suggestion.

15 It was put to PC Bradley that after he had caught the Defendant he told other officers
16 that there was "possibly" a firearm, and was asked, "Did you tell anyone it *might*
17 *have been* a firearm?" and PC Bradley said this was not so.

18 It was put to PC Bradley that the words he used to describe what he saw were the
19 words "resembling" and "an object" and he did not use the word "firearm", to which
20 PC Bradley said,

21 *"I said he just threw a gun"*

1 PC Bradley said the moment he caught the Defendant and PC Rabess came close
2 enough he whispered to PC Rabess,

3 *"He just threw a gun."*

4 PC Bradley said perhaps PC Rabess had not heard him, but he whispered that
5 because he did not want the Defendant to hear him.

6 PC Bradley said when they got out of the bush and back on to the road he told PC
7 Rabess again that the Defendant had a silver coloured handgun in his hand and he
8 threw it into the bush.

9 It was put again to PC Bradley that he was not sure that the Defendant had a gun,
10 and, in fact he was not sure what the Defendant had thrown and PC Bradley said that
11 was incorrect.

12 72. It was put to PC Bradley that in his statement he said the firearm travelled some 10
13 meters and he agreed that this was approximately 30 feet.

14 PC Bradley again said he saw the firearm come from the Defendant's right hand,
15 across his body, rotate through the air and land. PC Bradley said he did not see what
16 tree limb it hit and he did not see what bush it hit, he just knew it landed. PC Bradley
17 said he saw the area where it landed.

18 Asked why did he not mention this in his statement, PC Bradley replied that he saw
19 the general area. PC Bradley said he did not say that he saw where it landed,

20 *"I never said that. I said I saw it fall in an approximate area."*

1 PC Bradley said he did not see the firearm land on the ground, he saw it go into the
2 bush.

3 73. PC Bradley said he wanted to ensure that there were no cross contamination issues
4 and so he secured the area. He said he did not want to be the one to touch the
5 firearm. PC Bradley said he knew the area where it was, but he had not gone in to
6 pick it up. He said he knew the area where I suspected the firearm would be found.

7 74. PC Bradley said that he and PC Rabess were there at the scene and,

8 *“...after we secured the Defendant we attended to the scene and we secured the*
9 *scene.”*

10 75. PC Bradley said that after the Defendant was taken away from the scene he

11 *“...stayed on the shoulder [of the road] and waited for everyone to come....”*

12 Asked: *“Did you see anyone searching before the briefing took place?”* and PC
13 Bradley replied,

14 *“No.”*

15 76. PC Bradley confirmed that the search began just after PC Soto arrived and that the
16 gun was found at 4:30 a.m. and that it was PC Soto who found the gun with the help
17 of a metal detector.

18 77. PC Bradley said that the lighting that PC Rabess obtained helped to speed up the
19 search and make the search easier. PC Bradley said,

20 *“The lighting was nice to have but I didn’t call for it.”*

1 It was again suggested by the Defence to PC Bradley that he was not sure about the
2 gun, and that is why the lighting and the metal detector were needed and PC Bradley
3 replied,

4 *“No. I was sure. I knew exactly what I saw in his hand. I knew he had a silver*
5 *coloured firearm and I knew the area where it landed. We commenced a search*
6 *of that area. Someone brought in some extra lighting. It was helpful. That’s the*
7 *end of the story. The firearm was recovered from directly where I canvassed*
8 *and I told everybody to look for it.”*

9 78. PC Bradley confirmed that he identified the weapon. He said PC Soto was the
10 person who found the firearm and after it was found he went over and identified the
11 firearm as being the one carried by the Defendant earlier. PC Bradley said,

12 *“It looked like the one I saw in his hand.”*

13 79. Asked what was it about the gun, other than it was a handgun and it was silver, that
14 made you sure? PC Bradley said,

15 *“Because I saw it in his hand. I saw the area where Mr. Crawford threw it. It*
16 *was located in the same area where I saw it being thrown and it was silver in*
17 *colour, identical to the handgun that Mr. Crawford had in his hand and I had*
18 *not left the scene. The scene had been secured the entire time before the gun*
19 *was recovered.”*

20 80. It was suggested to PC Bradley that he had been told that Aaron Crawford had a
21 handgun and that he was someone who possessed a gun, and so he assumed the
22 Defendant must have had a gun. PC Bradley rejected this suggestion.

1 It was put to PC Bradley that he did not actually see the gun in the Defendant's hand
2 and PC Bradley confirmed that he did see the firearm in the Defendant's hand.

3 It was put to PC Bradley that he told the other police officers that he was not sure he
4 had seen the gun and PC Bradley rejected this.

5 81. PC Bradley said the Defendant did not appear to be injured, nor did he complain of
6 any injuries.

7 It was put to PC Bradley that the Defendant was injured at the scene and PC Bradley
8 said,

9 *"No that is wrong."*

10 ***PC #184 ALFRED BRADLEY – RE-EXAMINATION***

11 82. PC Bradley was asked if there were any other silver looking objects or any other
12 firearms found at the scene and PC Bradley said,

13 *"No ma'am."*

14 83. PC Bradley confirmed that the lighting was adequate and the only difference at the
15 scene between night of the crime scene visit on the 2nd October 2012 and the night of
16 the November 2011 incident was that there was more foliage in the area.

17 84. Asked about the additional lighting PC Bradley said,

18 *"Those lights were positioned on the road and not down in the bush."*

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1 *PC #316 GABE RABESS IN CHIEF*

2 85. PC Rabesss said he is a member of the USG and he was a USG officer in November
3 2011.

4 86. On the 17th November 2011 he was on the night shift with PC Alfred Bradley.

5 87. PC Rabess said that on that night he was the driver and, as part of a regular routine
6 check on clubs where there are often problems requiring the police around closing
7 time, they had driven to Club 7 on the West Bay Road. PC Rabess said they would
8 normally patrol the area when the Club is closing to have a police presence in the
9 area.

10 88. PC Rabess said that on arrival at the Grand Pavilion car park his attention was drawn
11 to the area of the car park where a police unit was already on the scene attending to
12 an altercation.

13 PC Rabess said he noticed one uniformed male police officer and one uniformed
14 female police officer on the scene. PC Rabess said he knew the male officer to be
15 PC Gordon.

16 89. PC Rabess said he recalled PC Gordon calling them over, however, PC Rabess said,
17 he was unable to get over to PC Gordon because there was a vehicle blocking their
18 way.

19 PC Rabess said,

20 *“As soon as PC Bradley got out, [of the USG vehicle] the vehicle that was*
21 *blocking our path moved.”*

1 90. Then PC Rabess said he noticed a vehicle coming towards them and that was when
2 he heard PC Gordon shout,

3 *“Stop that vehicle!”*

4 And he then heard PC Gordon shout,

5 *“He has a gun!”*

6 91. PC Rabess said he noticed that this was a white Nissan Sentra. PC Rabess said he

7 *“had a visual of the driver not the passenger. The passenger seat had*
8 *reclined.”*

9 PC Rabess said the car was not tinted and the windows were down.

10 PC Rabess said he recognised the driver to be Aaron Crawford.

11 92. PC Rabess said he called PC Bradley back to the vehicle and proceeded to follow
12 the Nissan Sentra out of the car park.

13 PC Rabess said the USG vehicle was not in the best condition to catch up with or
14 make ground on the Nissan, so the Nissan gained ground on them and he lost sight
15 of the Nissan Sentra temporarily. PC Rabess said,

16 *“The vehicle continued through the car park, veering left to the front entrance*
17 *of the Grand Pavilion, on to West Bay Road. I followed the vehicle, activating*
18 *the blue lights, in the direction of George Town. On West Bay Road the white*
19 *Nissan Sentra had gained ground on us and turned left on to Gecko Link, which*
20 *is where I lost sight temporarily. I then veered left to the bypass then paused at*
21 *the bypass and came to a rolling stop.”*

1 93. PC Rabess said PC Bradley had given him the information that the white Nissan
2 went left towards the Island Heritage roundabout.

3 *“As Bradley indicated, I saw the rear light and proceeded in that direction.*
4 *....On approaching the roundabout I saw that the Nissan Sentra had crashed*
5 *into the crash barriers at the Island Heritage roundabout.*

6 *As we got closer a male, Aaron, was exiting the right side, the passenger side,*
7 *of the vehicle. The driver’s side was right up against the crash barriers.”*

8 94. PC Rabess said that Aaron Crawford ran towards them momentarily. PC Rabess
9 said,

10 *“Crawford ran in our direction momentarily and made contact with the police*
11 *vehicle. He then turned and made off away from the police vehicle towards*
12 *Cost U Less. PC Bradley immediately exited the vehicle and gave chase. I*
13 *exited my side [of the USG vehicle] and in doing so I slipped on the road*
14 *surface.”*

15 95. In relation to the passenger in the white Nissan Sentra which was driven by the
16 Defendant PC Rabess said,

17 *“The other male I observed in the middle of the roundabout. I knew him as*
18 *Jordan Ebanks. I identified myself as armed police and told him to stop, to*
19 *which he turned and fled.”*

20 PC Rabess added,

21 *“I had to make a decision between going after Ebanks or assisting Bradley. I*
22 *knew I could identify Ebanks later, so I went to assist Bradley.”*

1 96. PC Rabess said he continued Northward along the bypass. He said he saw PC
2 Bradley and the Defendant. He then observed PC Bradley and the Defendant veer
3 sharp left down into the bushy area where he temporarily lost sight of them.

4 97. PC Rabess said that as he approached the area he called out PC Bradley who
5 answered back,

6 *"And having answered back I could see exactly where he was. I went into the*
7 *grassy area to assist PC Bradley who by now had Aaron Crawford restrained."*

8 PC Rabess said the Defendant was lying face down and he assisted the Defendant to
9 his feet along with PC Bradley.

10 PC Rabess said the three of them made their way back to the roadside where PC
11 Bradley arrested Aaron Crawford. Aaron Crawford then sat down on the grass.

12 98. PC Rabess said PC Bradley then pulled him, Rabess, to the side and informed him
13 that he saw the Defendant,

14 *"...throw something into the bush, believing it was a firearm."*

15 99. PC Rabess said he then informed the Critical Incident Manager of the incident and
16 of the information from PC Bradley, as a result of which it was decided that a search
17 of the area would be conducted.

18 100. PC Rabess said he then called for additional units and two canine units responded –
19 PC #197 Soto and PC Jackson.

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1 101. PC Rabess then said,

2 *"I also requested additional lighting to assist us in a search of the area as best*
3 *and as efficiently as possible."*

4 Asked by Crown counsel: *"Why was it necessary to request light?"*

5 PC Rabess responded:

6 *"It's best to have as best light as you can."*

7 Asked by Crown counsel: *"Were you able to see the search area without the*
8 *additional light?"*

9 PC Rabess responded:

10 *"Oh yes."*

11 102. PC Rabess said that when the lighting arrived PC Soto and PC Jackson went to
12 search the area. PC Rabess said,

13 *"We searched the bushy area where PC Bradley believed the firearm had been*
14 *thrown."*

15 103. PC Rabess said he was not sure how long the search had gone on for before he,
16 Rabess, thought about requesting the metal detector. PC Rabess said,

17 *"I thought what else could we have to assist us and it was at that point that I*
18 *remembered the metal detector. I requested Soto and Jackson to collect it from*
19 *the George Town police station, which they did."*

1 104. PC Rabess said he and PC Bradley remained at the scene and he, Rabess, took
2 photos of the Nissan Sentra which had crashed. PC Rabess took photos of the
3 Defendant, Aaron Crawford and what he was wearing; and the area in which PC
4 Bradley had chased the Defendant. PC Rabess added that, “..later on “he also took
5 photos of where the firearm was located.

6 105. PC Rabess said that when PC Soto returned with the metal detector, officers went
7 back into the bushy area where a line search was conducted – with PC Soto using
8 the metal detector.

9 PC Rabess said that shortly after, PC Soto informed him that he had located
10 something resembling a firearm.

11 PC Rabess said he went down to the location which is more or less the area that PC
12 Bradley had indicated to him, and he secured the area. PC Rabess then took a photo
13 of the firearm which is Exhibit 3(10).

14 106. PC Rabess said a mobile “ZULU” unit subsequently came to the scene and took the
15 Defendant back to the station and the officers returned to the police station in order
16 to begin their statements.

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1 *PC #316 GABE RABESS – CROSS EXAMINATION*

2 107. PC Rabess said he reported for duty at 2245 on the evening of the 17th November
3 2011. He said he normally reports for duty 15 minutes prior to the shift commencing
4 at 11 p.m.

5 108. PC Rabess confirmed that he was able to identify the driver of the Nissan Sentra
6 when it was driving out of the car park.

7 PC Rabess confirmed that he did lose sight of the Nissan Sentra, and he relied on PC
8 Bradley's help to follow the Defendant's vehicle.

9 109. *After the Nissan crashed:* PC Rabess said he did not know whether Aaron Crawford
10 was first out of the vehicle.

11 PC Rabess agreed that Aaron Crawford ended up running into the USG police
12 vehicle.

13 110. In relation to the scene, PC Rabess said he was still on the roadway when he heard
14 PC Bradley calling for him. PC Rabess said PC Bradley called and he called back,
15 and he assisted PC Bradley by handcuffing the Defendant.

16 111. PC Rabess was asked about the Defendant's complaint of any injuries and PC
17 Rabess said he remembered asking the Defendant and the Defendant had said that he
18 was not injured. In fact PC Rabess recalled the Defendant saying,

19 *"I'm fine. I'm alright Mr. Gabe."*

1 Defence counsel suggested that the Defendant was injured to his foot and to his
2 hand, and the Defendant told Mr. Rabess about the injuries. PC Rabess responded
3 that the Defendant did not tell him that he was injured.

4 112. PC Rabess was cross examined on what PC Bradley told him after they apprehended
5 and arrested the Defendant.

6 113. PC Rabess's evidence was that PC Bradley told him that he saw the Defendant
7 throw something which he believed to be a firearm.

8 Under further cross examination about his notes, PC Rabess agreed that his notes
9 said "*something resembling a firearm.*"

10 PC Rabess explained that officers are told to use the word "resembling" until it is
11 actually proven whether it is a firearm or drugs.

12 PC Rabess was subject to further cross examination on this and then said,

13 "*Whether PC Bradley was sure, wasn't sure, it was enough for me to take the*
14 *decision to search the area and to make the checks.*"

15 114. Defence counsel put to PC Rabess that he, PC Rabess, did not think the chances of
16 finding a firearm were particularly high, and that is why he got the additional
17 lighting and PC Rabess did not agree with this suggestion and added that he thought
18 he would use the best resources available.

19 PC Rabess said the bush area was a difficult area to search particularly in the dark
20 and that is why he requested the additional lighting.

1 115. PC Rabess said he recalled PC Bradley giving him and PC Soto a briefing of where
2 he thought the Defendant threw the object.

3 116. PC Rabess stated that he recalled PC Bradley telling him and the other officers that
4 it was a silver handgun, but he, PC Bradley, did not give any additional features.

5 PC Rabess said he was looking for a firearm and not necessarily a silver-coloured
6 handgun. PC Rabess said the important word that PC Bradley used was "firearm."

7 117. PC Rabess said PC Soto was away for about 10-15 minutes and when he returned
8 they commenced a line search. PC Rabess said it was difficult because it was a bush
9 area, but PC Soto would go further ahead or drop behind us.

10 PC Rabess said that the area that PC Bradley had identified was about 15 to 20
11 metres square.

12 118. PC Rabess agreed that the firearm was found at 4:30 a.m. PC Rabess said nothing
13 was touched and nothing was done that would lead to any type of contamination.

14 119. PC Rabess agreed that they photographed the scene and secured the evidence.

15 120. PC Rabess recalled PC Soto calling them over to where he found the firearm.

16 121. PC Rabess said he took the photograph but he did not recall any bullet beside the
17 firearm.

18 PC Rabess said he is not a Scenes of Crime Officer, but he has no recollection of
19 seeing a bullet and there is no suggestion in his statement that he saw a bullet.

1 Defence counsel showed PC Rabess the Scenes of Crime photo – Exhibit 2(10) –
2 which shows a single bullet above the sliding mechanism of the firearm and PC
3 Rabess confirmed that he did see that in the photo.

4 PC Rabess was asked how he thought the bullet got there and PC Rabess said the
5 bullet could have fallen out of the slide, or it could have been obscured by some of
6 the bush or growth in his photo.

7 122. PC Rabess accepted that he could not see a bullet in his photograph, but there was a
8 bullet in the Scenes of Crime photograph.

9 123. PC Rabess was asked if a bullet had ever fallen out of the guns which he carries and
10 he replied that he had no knowledge of bullets falling out the guns the police officers
11 carry, but he acknowledged that he is not a firearms expert. PC Rabess said that if
12 there was a fault with the weapon due to its age, the bullet may have fallen out.

13 124. Defence counsel questioned PC Rabess on the colour of the gun and PC Rabess said
14 he was not sure, but he would say it looked silver to him from the side. PC Rabess
15 accepted that it was not a shiny silver new-looking gun.

16 ***PC #316 GABE RABESS – RE-EXAMINATION***

17 125. PC Rabess said that when the call was made to 911 the information he gave was that
18 a firearm might have been thrown and he accepted that those were the words that he
19 may have used.

20 Asked why he would have used the word “might” he said it was just protocol. He
21 compared it to saying someone is “passed” instead of saying “they are dead” even if
22 they are presumed to be dead.

1 *PC #197 FERNANDO SOTO – IN CHIEF*

2 126. PC Soto is another member of the USG of the RCIPS and he recalls attending the
3 scene with PC Jackson at approximately 3:45 a.m. on the 18th November 2011.

4 127. PC Soto said he began a search as a result of information given to him by PC
5 Bradley and PC Rabess.

6 128. PC Soto recalled commencing the search and searching the bush and the area
7 identified.

8 129. PC Soto said that after searching for about 10 minutes it was suggested by PC
9 Rabess that he go to get a metal detector, and to get the metal detector they had left
10 the scene for about 10 to 12 minutes and they returned they continued the search and
11 he, himself, used the metal detector.

12 130. PC Soto said they searched for about 25 minutes before locating a metal object
13 resembling a firearm. PC Soto said he located it.

14 131. When asked to describe what he found PC Soto said it had a black stock and the rest
15 of the firearm was like silver.

16 132. PC Soto said he also observed a live round close to the breach area of the weapon.
17 He said the breach area is in the top open area of the gun,

18 *“...and that is where you look to see if there are any rounds in the gun.”*

19 133. PC Soto said that after finding the firearm he told his colleagues – PC Rabess, PC
20 Bradley and PC Jackson – and they then called for the Scenes of Crime Officer.

1 134. PC Soto said it was at that time that he recalled PC Rabess taking a photograph of
2 the firearm.

3 135. PC Soto said when the Scenes of Crime Officer arrived he took pictures of the
4 firearm and where the firearm was located.

5 136. PC Soto said nobody touched the weapon between the time he discovered it and the
6 time that PC Taylor of Scenes of Crime arrived. PC Soto said nobody moved it and
7 nobody placed anything beside it and he, PC Soto, saw PC Taylor take photographs
8 of the firearm where it was located.

9 137. PC Soto then used gloves and took the firearm and proceeded to remove the
10 magazine. PC Soto said he showed the firearm to Scenes of Crime Officer Taylor.
11 PC Soto said he cleared the firearm and Officer Taylor continued to take
12 photographs.

13 138. PC Soto said the firearm (the object resembling a firearm) was put in bag. The
14 magazine was put in a bag and the live round was put in a bag.

15 139. PC Soto said he observed that there were 5 live rounds in the magazine.

16 140. PC Soto said the firearm was FS1; the rounds were FS2; and the magazine FS3.

17 ***PC #197 FERNANDO SOTO – CROSS EXAMINATION***

18 141. PC Soto was shown his statement, which stated that the firearm along with the
19 magazine and the six live rounds were booked into the police station as Exhibit FS1.
20 PC Soto accepted that there was no mention of FS2 or FS3.

- 1 PC Soto agreed that this was a mistake on his part and he accepted that it was very
2 sloppy procedure to have omitted the other two.
- 3 Defence counsel put it to PC Soto that the gun, the magazine and the bullets were all
4 bundled together, whilst he told the Court they were FS1, FS2 and FS3.
- 5 PC Soto said he assumed that Officer Taylor had put the gun, the bullets and the
6 magazine all in the same bag.
- 7 142. PC Soto could not tell which bullet was the one found outside the gun. PC Soto said
8 that before he gave them to Scenes of Crime Officer they were separated, that is the
9 live round was separated, but now, in Court, he would not be able to say which one
10 was the live round outside the gun.
- 11 143. PC Soto accepted that he arrived at the scene at 3:45 a.m. and was briefed by PC
12 Bradley and given the area for the search. Also the area where PC Bradley believed
13 the object to have been thrown was pointed out to him.
- 14 144. PC Soto said he recalled being told that PC Bradley had seen the Defendant reaching
15 into his waist and pulling at an object resembling a pistol.
- 16 145. PC Soto agreed with Defence counsel that he, Bradley, Rabess and Jackson were
17 searching the general area, and, after about 8 to 10 minutes they stopped because PC
18 Rabess suggested they go for the metal detector.
- 19 146. PC Soto said it was a difficult search in the circumstances and that it was dark. PC
20 Soto agreed that it was darker on the ground that it was at eye level.
- 21 147. PC Soto said his perception of the general area was that it was 30-40 sq. feet.

- 1 148. PC Soto said they did a gridline search which lasted approximately 25 minutes. PC
2 Soto recalled that some of the other Officers stopped and left him to do the searching
3 with the metal detector.
- 4 149. PC Soto confirmed that nobody touched the firearm and said that it was essential to
5 leave it untouched until the Scenes of Crime Officer arrived.
- 6 150. PC Soto agreed that Officers Rabess and Bradley came over and saw what
7 resembled a firearm.
- 8 151. PC Soto said he clearly saw a bullet above the breach, but he does not recall
9 mentioning the bullet to anybody else.
- 10 152. PC Soto was shown PC Rabess's photos and he agreed that the ground looked wet.
11 PC Soto accepted that the photograph PC Rabess took does not show any bullet.
- 12 153. PC Soto accepted that there were now six boxes all describing a 9mm Luger round
13 in exactly the same way, with nothing distinguishing one from the other.
- 14 154. *The bullet outside the weapon*: PC Soto accepted that he was not able to indicate
15 which bullet was the one he found outside the gun.
- 16 PC Soto was asked by Defence counsel why in Officer Rabess's photograph of the
17 weapon there is no bullet, whereas in the photo taken by the Scenes of Crime
18 Officer, PC Taylor, there is a bullet. PC Soto said he could not explain this.
- 19 PC Soto said he found the weapon and the first that caught his attention was the
20 bullet in the position it was in outside the weapon. PC Soto said,

1 *"I don't know this picture (the Rabess picture)... I can't explain it. I am just*
2 *saying what I saw."*

3 PC Soto said he doesn't have an explanation as to why PC Rabess's photo has no
4 bullet and PC Taylor's photo has a bullet. PC Soto said,

5 *"At the scene I saw a bullet...."*

6 PC Soto said he was on his own when he found the weapon and he stayed with the
7 weapon until the Scenes of Crime Officer, PC Taylor, arrived.

8 It was put to PC Soto that he is the only Officer who was with the gun throughout
9 and never left the scene from the time the gun was found until the time it was
10 photographed by PC Taylor.

11 PC Soto said,

12 *"No. Jackson was there with me at the scene."*

13 PC Soto said he did not place the bullet above the gun and he did not see anybody
14 placing the bullet.

15 In addition, PC Soto said he did not place the firearm there. He said he found the
16 firearm using a metal detector. PC Soto said,

17 *"When I found it they (the other officers) were on the shoulder of the road, at*
18 *least 10 metres away."*

19

1 155. PC Soto said he had knowledge that the Defendant was on a long arm authority for
2 possession of a firearm. PC Soto was therefore asked whether he would accept that,
3 from the Defendant's point of view, it would look like he, the Defendant, has been
4 set up, to which PC Soto said,

5 *"I don't agree."*

6 156. In response to questions from the Court PC Soto accepts that, after he saw the gun,
7 very shortly after that PC Rabess came along and PC Rabess, in order to preserve
8 the evidence, takes a picture and PC Rabess's photo clearly shows the firearm
9 without a bullet outside the gun, and PC Soto agreed to all this.

10 PC Soto said when he saw the weapon the first time he saw the bullet. PC Soto said
11 he saw PC Rabess take the photo and he does not know why his camera or his photo
12 does not show the bullet.

13 The Court suggested to PC Soto that someone had taken the bullet away when the
14 photograph was taken and then someone had replaced the bullet in position. PC Soto
15 replied,

16 *"I can attest that nobody touched the weapon or bullet."*

17 PC Soto said that he did not remove the bullet and place it back in position. He said
18 he did not touch any bullet and he did not place any bullet there.

19 157. It was agreed between the Crown and the Defence that PC Rabess took his photo a
20 few minutes after 4:30 a.m., and PC Taylor, the Scenes of Crime Officer, took his
21 photo at 5:11 a.m., so there were 41 minutes between the two photographs.

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PC #197 FERNANDO SOTO – RE-EXAMINATION

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158. PC Soto said that when he found the round beside the firearm he did not make any special note of the type of the round, but he thought that the colour of the round was slightly different (from the one he viewed in the Courtroom).

159. PC Soto confirmed that the gun was test fired after the event using one of the rounds.

160. In response to the Court, PC Soto said that the firearm holds 8 rounds of ammunition. He said that although he is not a firearms expert he is familiar with firearms, because of his work in the USG. He said that if a bullet is fired, the fired round is ejected.

1 *PC TOMMY TAYLOR – IN CHIEF*

2 161. PC Taylor has worked in Crime Scene Investigations for 7 years and was the Scenes
3 of Crime Officer attached to this case.

4 162. PC Taylor said that at 5:11 a.m. he arrived on the scene at the Esterley Tibbetts
5 Highway and he said that on arrival he

6 *“...observed a marked (police) unit and a generator on the side of the road.”*

7 163. PC Taylor said that he spoke to PC Soto and the only other officer there was PC
8 Jackson.

9 164. PC Taylor said the area in question had been pointed out to him and he put on gloves
10 and began taking photos with his digital camera.

11 165. PC Taylor said he went into the bush and he observed a weapon known to him as
12 German Luger.

13 He took the photo of the weapon and in the photograph there was what appears to be
14 a live round.

15 166. PC Taylor said that after he took the photo of the weapon he observed PC Soto
16 wearing a pair of gloves and making the weapon safe.

17 167. PC Taylor said he noticed that, aside from the round of ammunition being on top of
18 the gun or next to it, he observed that the breach was open. PC Taylor said the
19 breach was open when he first saw the weapon, PC Taylor said the breach was open
20 and the round was above the firearm and the grass was damp.

- 1 168. PC Taylor said that when PC Soto extracted the magazine and pulled the breach
2 back he took photographs and also took photographs as PC Soto was in the process
3 of making weapon safe.
- 4 169. PC Taylor said he packaged the weapon in a brown paper bag. The magazine was
5 placed in another paper bag. A single round was placed in a separate bag.
- 6 170. PC Taylor said that the weapon was FS1. He said the magazine and the live rounds
7 were FS2 and FS3, respectively.
- 8 171. PC Taylor produced his album of photographs. Photo 13 is the single round found at
9 the scene. Photo 14 is PC Soto pulling back on the breach. Photo 15 is PC Soto
10 holding the firearm.
- 11 172. PC Taylor said the rounds were swabbed for the purposes of DNA as was the
12 firearm and the magazine.
- 13 173. PC Taylor said the firearm was test fired and found to be a functional weapon. PC
14 Taylor said the swabs taken from the firearm and the rounds were sent to the DNA
15 laboratory in the United States.
- 16 174. PC Taylor also took some measurements. He said the distance from the edge of the
17 sidewalk to the firearm was 33 feet and 1 inch.

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1 *PC TOMMY TAYLOR – CROSS EXAMINATION*

2 175. PC Taylor said FS1 was the firearm and, in fact, the magazine was FS3 and the
3 single bullet was FS2.

4 PC Taylor said he recalled the firearm being in bag, the single round in a bag and the
5 magazine in a bag.

6 176. Defence counsel referred to PC Taylor's statement which showed FS1 was the
7 Luger, FS2 was the six live Luger rounds and FS3 the magazine.

8 177. PC Taylor said he agreed that he put all the rounds together.

9 178. PC Taylor agreed that he had not secured the items separately and he had not
10 accurately recorded what he had packaged, PC Taylor accepted that he had made an
11 error. PC Taylor accepted that he did not realise that all the bullets were not the
12 same, so he placed them all in one exhibit bag together.

13 179. Defence counsel asked PC Taylor if he had marked on any of the boxes the one live
14 round found outside the gun and PC Taylor said he did not.

15 180. PC Taylor admitted that he would not be able to identify the round found outside the
16 gun. PC Taylor said when he observed the firearm on the scene with the breach
17 open, it would suggest to him that the round of ammunition fell from the weapon.
18 He said the bullet outside the weapon was "together" with the weapon, so both were
19 treated as one item.

20

1 181. PC Taylor, in answer to the Court, said that when he observed the weapon he
2 assumed the round had fallen from the weapon.

3 PC Taylor elaborated and said that when he observed the weapon in the rest
4 position, the breach was open and the round was right in front of the breach, and that
5 is why the round itself and the ones in the magazine were treated as one.

6 In response to Mr. Hoffman PC Taylor said that that was his assessment of the scene
7 – although he accepted that he did not actually see any bullet fall from the breach,
8 nor was he told that it had fallen from the breach.

9 182. PC Taylor said he was trained in using a firearm and cleaning a firearm. He was a
10 member of the police force in Jamaica for nine years and he was with the RCIPS for
11 two years. PC Taylor said he was trained how to use a firearm, how to pull down a
12 weapon, how to clean the weapon and how to load it.

13 183. PC Taylor said he is not a firearms expert and he did not know whether the weapon
14 found at the scene was a WWII Luger firearm.

15 184. PC Taylor said he would accept that he does not know how ammunition may escape
16 from this type of weapon and he accepted that he is not able identify the round found
17 outside the weapon.

18 185. Defence counsel put to PC Taylor that what happens when the weapon is fired is that
19 the “arm” goes up and pushes the projectile out of the barrel and the arm goes back
20 into the resting position, so one would need to pull the breach back – and PC Taylor
21 said he could not agree with that. PC Taylor said, from his experience, if the breach
22 catch is back, that would mean that the round would be exposed, and for that

1 weapon to fire, the breach catch should in fact be active in taking that round and
2 sending the breach forward.

3 PC Taylor agreed with Defence counsel that when you fire the trigger the arm goes
4 down and the projectile is sent out of the weapon and, in the process between the
5 firing and the re-loading the cartridge escapes out of the top.

6 Defence counsel put it to PC Taylor that the bullet cannot escape from the breach
7 because the jacket is made not to escape, otherwise it could not be fired and this
8 would cause the bullet to fall out as it is being fired: PC Taylor said he did not
9 accept that. PC Taylor said that, looking at photo 15, the firearm is at its ready
10 position to be fired. When the trigger is pulled the breach catch would go back and
11 release the spent casing and then pick up another from the magazine, then send the
12 breach forward so it is secure and ready to fire again.

13 186. PC Taylor said he did not know whether this weapon had to be recharged manually.

14 187. PC Taylor said he did have the gun tested for fingerprints, but the results were
15 negative. PC Taylor said he omitted to put that in his statement, which must have
16 been an oversight.

17 188. In conclusion, PC Taylor accepted that the results from the fingerprint examinations
18 were negative.

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INSPECTOR IAN BRELLISFORD – IN CHIEF

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189. Inspector Brellisford's statement was read in with the agreement of the Defence.

190. He is a national police firearms instructor and he initially qualified as an authorized firearms officer in 1993. He is the chief firearms instructor for the RCIPS.

191. On the 18th November 2011 Inspector Brellisford took possession of the firearm SF1 from PC Taylor. Inspector Brellisford said it had the appearance of a Luger style handgun capable of discharging 9 mm ammunition.

192. Inspector Brellisford said that although the firearm was rusty in appearance it was apparent that the working parts were all in order. He was able to select and de-select the safety catch situated at the rear of the weapon below hammer. He said he was able to cycle the slide and "*dry fire*" the weapon.

193. During his examination he test-fired the weapon in the presence of Officer Taylor. Inspector Brellisford said the working parts were all in good order. He loaded the magazine with a RCIPS operational round – 9mm in calibre. Replacing the magazine (round) in the magazine well, and seeking to engage the same, it was apparent that the magazine would not sit properly. It kept slipping out of the well – by about a ¼" and this prevented the weapon from cycling the round into the chamber.

Inspector Brellisford explained that in order to prevent this happening, he held the magazine in place across the base of the magazine well (the bottom of the handle grip) and the round then cycled into the chamber.

1 Inspector Brellisford then placed the weapon muzzle on the designated bullet catcher
2 and fired one round.

3 Inspector Brellisford confirmed that the weapon is a lethal barrelled weapon and the
4 ammunition is capable of being discharged from this weapon within the definitions
5 of the appropriate firearms legislation.

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ALLEN GREENSPAN

8 194. He is a firearms tool mark examiner.

9 195. The German Luger model P08 pistol #459 with one magazine and the six 9mm
10 cartridges were sent for examination.

11 196. Mr. Greenspan confirmed that this pistol was examined and found to be in operable
12 condition, and was test fired using one of the submitted 9 mm cartridges – one that
13 was picked at random. He confirmed that the firearm is capable of causing death or
14 serious injury if discharged.

15 197. He further confirmed that the six cartridges are viable and capable of causing death
16 or serious injury if discharged.

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1 *WOMAN DETECTIVE SGT. DAUESA SCOTT – IN CHIEF*

2 198. On the 18th November 2011 at 8:35 a.m. she attended the scene near the Island
3 Heritage roundabout. A further search of the area was carried out and nothing was
4 found.

5 199. WDS Scott also attended the area near Club 7 and enquired about any CCTV
6 footage, but none was ever received.

7 200. WDS Scott submitted a request for certain items to be examined for DNA and
8 fingerprints, and also she submitted a request for the phone records of the cell phone
9 taken from Mr. Jordan Bush, who was the passenger in the car driven by the
10 Defendant in this case.

11 201. WDS Scott said a fingerprint examination was done on the Nissan Sentra but there
12 were no prints matching the Defendant.

13 202. WDS Scott also submitted a request for GSR from the clothing and the hands of the
14 Defendant and Mr. Bush however, these swabs were never sent off for examination.
15 WDS Scott said this was possibly because there was no evidence that the firearm
16 had discharged a bullet.

17 203. On the 21st November 2011 WDS Scott conducted an interview with the Defendant.
18 The interview was recorded on DVD disc. After the interview she formally charged
19 the Defendant with the offence of possession of an unlicensed firearm, to which the
20 Defendant said he did not know

21 *“... the hell why they charge me for.”*

22

1 *WOMAN DETECTIVE SGT. DAUESA SCOTT – CROSS EXAMINATION*

2 204. WDS Scott identified the disclosure for the Defendant which was given to his then
3 attorney, Ms. Facey-Clarke. WDS Scott confirmed that, in the disclosure document,
4 the disclosure record stated that,

5 *“Aaron Crawford was seen to take a silver Luger 9mm automatic pistol from*
6 *his waistband whilst running from the police, and throw the weapon into the*
7 *bush.”*

8 205. Defence counsel showed WDS Scott an incident report which recorded, “Mike 2”
9 requested lighting to conduct a search as the suspect might have thrown a firearm in
10 the bush area of Island Heritage roundabout off Esterley Tibbetts highway.

11 206. WDS Scott was shown two custody records. One was handwritten and the other,
12 typed. She confirmed that the Defendant was arrested on suspicion of possession of
13 an unlicensed firearm and driving under the influence.

14 WDS Scott also said this report said that the Defendant received bruises on his right
15 foot, and that he complained of pain to the body.

16 The custody report showed that one belt was taken, and further, there was no
17 mention of any gloves.

18 207. WDS Scott agreed that the handwritten custody report and the typed custody report
19 should have matched, but there were differences.

20 208. WDS Scott accepted that the Defendant had been subject to an intoxilyzer reading of
21 .91% and, further, that the Defendant had visited hospital and was seen by

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physicians and had been seen for an X-ray. It was also confirmed that the Defendant had been given pain killers.

1 *THE ADMISSIONS – DATED THE 9TH OCTOBER 2010*

2 209. The following facts are agreed as between the prosecution and defence.

3 *SCIENTIFIC EVIDENCE*

4 210. On Friday 18th September [November] 2011 police constable Ronald Best processed
5 motor vehicle, registration number 98 969 a white Nissan Sentra. During this search
6 he found a partial palm print on the left rear window frame. This was not found to be
7 capable of attribution as no one fitting the profile of this palm print was found to be
8 present on the fingerprint bureau's database.

9 211. On the same day, Officer Best swabbed the steering wheel and handbrake. These
10 swabs were not sent for analysis.

11 212. Clothing seized from Robert Aaron Crawford and GSR swabs taken from his hands
12 on 18th November 2011 at George Town Police Station were not sent for gunshot
13 residue analysis.

14 213. Exhibit FS1 (German Lugar) and FS2 (six live 9mm rounds of ammunition) were
15 analysed for fingerprints and none were found but this was not disclosed by the
16 SOCO officer prior to giving his evidence.

17 214. On 20th December 2011 Crystal Oechsle of DNA Labs International, Florida, USA
18 prepared a report in which she analysed exhibits (swabs) TT2 – TT7 against a
19 standard DNA profile of Robert Aaron Crawford. She was able to conclude with
20 respect to TT2- TT5 that partial DNA profiles obtained from those swabs indicated a
21 mixture of at least two individuals with at least one male contributor and that Robert
22 Aaron Crawford could be excluded as a contributor to the mixed DNA profile

- 1 219. Checks made of the Firearms Registry of the RCIPs revealed that no firearm permit
2 had ever been granted to Robert Aaron Crawford.
- 3 220. On being booked into custody and processed included among the personal property
4 taken from Aaron Crawford was a black belt.
- 5 221. Police Constables Rabess and Bradley have been asked to confirm whether they
6 observed Robert Aaron Crawford in the early hours of 18th November 2011 wearing
7 gloves. Both officers have confirmed that they did not.
- 8 222. The custody record of Robert Aaron Crawford, following his arrest for the
9 possession of an unlicensed firearm on 18th November 2011, does not show any
10 indication that gloves were recovered from him on his arrest or at all.
- 11 223. PC Soto has been disciplined by the Royal Cayman Islands Police for the late
12 submission of a file which resulted in it being Statute barred.
- 13 224. Checks made of the Legal Case Management System for the Cayman Islands reveal
14 that no charges were ever laid against Shane Bodden in respect of this alleged
15 shooting incident. [There is nothing in the possession of the police to suggest that a
16 firearm/the firearm associated with this incident was ever recovered.]
- 17 225. On the 21st of November 2011 between 8:35 and 9:02 am, the accused was
18 interviewed by DC Bryan and DS Scott and given a special warning under the
19 provisions of the Police Law 2010. He was asked a number of questions about the
20 chase both by foot and by car and the firearm. The questions in respect of the
21 firearm included:
- 22 a. Whether he had been in Possession of it.
23 b. Had a permit for it; and
24 c. Why he threw it into the bush.

25 He was also shown photographs of the firearm. He answered no comment in
26 response to all the questions asked save and except for when asked if he had ever
27 seen the firearm before and shown a photo of same he responded; 'No Sir.'

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1 *SUMMARY OF THE CROWN'S CASE*

2 226. The Defendant takes off as soon as Mr. Rodney said, "*That is the man who pulled*
3 *the gun on me,*" and then tried to punch the Defendant. Once the Defendant heard
4 this he drove off and immediately PC Rabess summoned PC Bradley back into the
5 USG vehicle and chased the Defendant, who was driving the white Nissan Sentra –
6 turning on the blue lights.

7 227. There was no other car between the Nissan and the USG vehicle at any time.

8 228. The Crown therefore asks the questions:

9 a. Why did the Defendant drive off as soon as these words were spoken – leading
10 PC Gordon to say "*Stop that car. He has a gun!*"

11 b. Why did the Defendant drive at such a high speed down the West Bay Road,
12 round the Gecko Link and back on to the Esterley Tibbetts highway? The
13 Crown says the Defendant was driving so fast to evade the police that he
14 crashed his car into the guard rails at the Island Heritage roundabout on the
15 Esterley Tibbetts highway.

16 229. The Crown submits that this all leads to an inference of guilty knowledge of what he
17 had in his possession, and hence his extreme efforts to avoid the police finding the
18 firearm.

19 230. Once out of the car the Defendant was told repeatedly to stop and the Crown submits
20 that it is because the Defendant had a gun in his possession that he ran off down the
21 Esterley Tibbetts Highway.

1 231. The Defence made much of the fact that PC Bradley's evidence was that the
2 Defendant partially turned around whilst running. The Crown submits that this was a
3 normal reaction as the Defendant knew it was the police chasing him and he was
4 trying to evade the police and therefore it is normal for the Defendant to turn around
5 to see how far he is away from the police and to see if he can make good his escape.

6 232. The Crown points to the fact that PC Bradley saw the Defendant pull the Luger out
7 of his waistband and the Crown rejects the suggestion that the Defendant was
8 pulling up his shorts, because Bradley's evidence is that he saw the gun come out.
9 PC Bradley described the gun as a silver handgun between 6" to 8" in length, and
10 said that the Defendant was holding the gun by its handle with his right hand.

11 233. In relation to the criticism by the Defence of the lack of description of the firearm,
12 the Crown submits that PC Bradley did not identify the make or the model of the
13 gun, but this goes to show that he was giving his best description without any
14 embroidery.

15 234. The Crown submits that PC Bradley focused on the Defendant's hand and knew
16 exactly what he saw. PC Bradley saw the handgun in the possession of the
17 Defendant, and then saw the Defendant run into the bush. PC Bradley then saw the
18 Defendant throw the gun into the bush in an attempt to get rid of the evidence.

19 235. PC Bradley's evidence is that, when he tackled the Defendant and pulled him to the
20 ground, the Defendant said, "*That guy had a gun.*" The Crown therefore submits that
21 the Defendant knew that PC Bradley had seen the gun and therefore the Defendant
22 was attempting to point the finger elsewhere. The Crown also relies on the fact that
23 these words from the Defendant have not been challenged by the Defence.

1 236. The Crown further relies on the fact that PC Bradley told the other police officers –
2 PC Rabess and PC Soto – where he saw the Defendant throw the gun.

3 237. The Crown contends that the Defence makes much of PC Bradley’s apparent
4 uncertainty, because the notes of Rabess and the call to 911 record words like, “*An*
5 *object was thrown which resembled a gun,*” or “*might possibly be a gun.*” The
6 Crown contends that these are words used by Officers, merely out of caution, before
7 any object is actually recovered and identified.

8 238. The Crown submits that the strongest corroboration is that the Luger handgun
9 matching the description given by PC Bradley was found in the area where PC
10 Bradley said he saw the Defendant throw the object.

11 239. In relation to the suggestion that the gun could have been there for some time, and
12 owned by somebody else, the Crown submits this is not credible because the gun
13 was clearly operable, the rounds were in very good condition and there was no
14 evidence of soil or vegetation on the gun.

15 240. The Crown submits that it was never put to PC Bradley that he had written anything
16 else other than a handgun or a silver handgun.

17 241. In relation to the two photographs the Crown submits PC Taylor had a Scenes of
18 Crime photograph which he took with a camera that had an external flash, which
19 produced a clearer and more critical image.

20 The Crown also submits that the photos are taken from different angles. PC Taylor’s
21 photograph – Exhibit 2(10) – is unimpeded by shrub and foliage.

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1 242. The Crown accepts that PC Rabess said he did not see the round outside the gun,
2 whereas PC Soto saw the round. The Crown points to the fact that PC Soto
3 acknowledged that this difference between the photos “didn’t look good”, but he
4 could not give any explanation for this.

5 On this point the Crown relies on the fact that PC Taylor said that when he saw the
6 gun the breach was open and therefore the bullet could fall out – which the Crown
7 submits is no more speculative than the suggestion that the bullet was planted. The
8 Crown adds that a suggestion is not evidence and there is no evidence to support the
9 “plant” allegation.

10 243. Furthermore PC Soto was briefed to search and look for an object which resembled
11 a gun. PC Soto was never told what type of gun or what type of ammunition or even
12 whether any ammunition was present. In the absence of this type of information it
13 would be absolutely remarkable if PC Soto just happened to have a 9 mm round in
14 his possession, which he then planted beside the Luger.

15 In conclusion on this point the Crown submits that the presence of the round outside
16 the gun does not make any difference to the offence with which the Defendant is
17 charged.

18 244. Senior Crown counsel states that whilst mistakes cannot be brushed aside, the
19 Officers readily admitted their mistakes and, in any event, these do not go to the
20 issue as to whether the Defendant was in possession of the Luger or not.

21 245. In relation to DNA the Crown submits that it is not every case that DNA will be left
22 behind. DNA does not always attach to objects, and also there is the possible
23 shedding of DNA.

1 The third party in relation to the DNA has been identified as a contributor to a mixed
2 profile, which is at least two people. However, the Crown submits there is no
3 statistical interpretation for this and Crown counsel submits that this does not take
4 the Defendant out of the hot seat.

5 246. In conclusion, the Crown submits that PC Bradley was a truthful and reliable
6 witness, and the Court can rely upon his clear evidence that the Defendant was in
7 possession of the firearm on the 18th November 2011.

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DEFENCE CASE

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247. The Court established through counsel for the Defendant that the Defendant was aware that the stage had been reached at which evidence could be given for the Defence, and if he chose not to give evidence, without good cause, it would be permissible for the Court or the Jury to draw such inference as may appear proper from his failure to give evidence. Defence counsel stated that the Defendant was exercising his right to remain silent was not going to give evidence.

DIRECTION: FAILURE TO GIVE EVIDENCE

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248. The Defendant can give evidence from the witness box or alternatively he can choose not to give evidence. I remind myself that the Defendant has a perfect right to remain where he is and to require the Crown to prove its case against him. I must not jump to the conclusion that his silence proves the case against him, it does not. The burden remains on the prosecution to prove its case against the Defendant. That obligation means that the prosecution must prove, so that I am sure, that the Defendant did possess an unlicensed firearm on the 18th November 2011 at the Esterley Tibbetts Highway in the vicinity of the Island Heritage roundabout.

249. I remind myself that the Defendant is entitled to remain silent. That is his right and that is his choice. I cannot assume that he is guilty because he has not given evidence. The fact that he has not given evidence proves nothing one way or the other. It does nothing to establish his guilt.

250. A jury, or in this case, myself as the Tribunal, must be satisfied that the Prosecution has established a case to answer before drawing any inferences from the Defendant's silence. Otherwise stated, I have to ask myself the question: Has the Crown established a case that is sufficiently strong as to call for an answer from the Defendant?.

251. It is my view that, having regard to all the evidence put before me, the case laid out by the prosecution is sufficiently strong to require an answer from the Defendant.

252. Having considered the evidence and the submissions of Defence counsel, the only explanation I can give for the Defendant's silence is his awareness that he has no

1 answer, or none that would stand up to cross examination by the Crown and
2 therefore I am entitled to draw an adverse inference.

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REASONS FOR RUNNING AWAY

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253. Counsel for the Defendant counteracts the Crown case which alleges that the Defendant was running away from the police because he had a gun in his possession, by suggesting that there were many other reasons why the Defendant would run away from the police.

254. First, the Defendant knew that he was driving whilst under a period of disqualification.

255. Second, the Defendant had been drinking, and this was borne out by the .91% intoxilyzer reading.

256. Third, the Defendant had obviously driven dangerously at a high speed and crashed the car and did not want to be apprehended.

257. Accordingly, Defence counsel submits that, in light of all these possible scenarios, the Court cannot find that, just because the Defendant ran from the police, that is evidence to support the allegation that he had a gun in his possession.

1 *DEFENDANT TOSSING SOMETHING IN THE BUSH*

2 258. The Defence case is that Officer Bradley's view at the point where it is alleged that
3 the Defendant threw the weapon away was poor due to the fact that it was night and
4 they were no longer at the roundabout or on the Esterley Tibbetts Highway.

5 259. The Defence submits that PC Bradley was not sure that what he saw was a gun and
6 that is why there are the varying accounts to 911 and reports from other officers
7 which included:

8 *"Bradley informed Rabess that he saw Crawford toss what appeared to be a*
9 *firearm into the bushes."*

10 *"The Defendant threw what possibly might be a firearm into the bushes."*

11 *"The Defendant threw an object resembling a firearm into the bushes."*

12 The submission by the Defence is that these varying accounts indicate that PC
13 Bradley was not sure that he had seen a gun – which supports the contention made
14 by the Defence that PC Bradley assumed the Defendant had a gun. The Defence
15 submits that PC Bradley was mistaken.

THE WEAPON

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260. The Defence submits that the gun is an old gun and therefore it is possibly somebody else's gun, and, there is no proof that it is the Defendant's gun.

261. The Defence relies upon the fact that there was no DNA of the Defendant or fingerprints on the gun. The Defence also submits that there was no GSR to link the Defendant with the firearm.

In this regard, the Defence point to the fact that there were no gloves found on the Defendant, which could have given a reason for the absence of the Defendant's fingerprints and DNA.

262. The scientific evidence from the DNA expert included that there was a partial DNA profile with respect to TT 2 - TT5 – the trigger and the trigger guard on the weapon. The DNA report concluded that there was a mixture of at least two individuals with at least one male contributor, but it confirmed that the Defendant could be excluded as a contributor to the mixed DNA profile. However, there was positive evidence to suggest that a third party could be a contributor to the DNA found on the trigger and the trigger guard.

263. This, the Defence submits, supports its contention that this particular weapon could have been in the bush for some time, and could have been the weapon belonging to the third party. The evidence shows that the third party had previous convictions and indeed there was an allegation against the third party in relation to possible possession of a firearm in 2007.

1 264. Defence counsel relies upon the case of *R v. Mitchell* 2004 Times Law Reports 8th
2 July and submitted that non-matched DNA profile was powerful evidence in the
3 accused's favour, which the jury could consider and weigh in the scale of the
4 prosecution evidence.

5 ***PC BRADLEY'S IDENTIFICATION OF THE LUGER***

6 265. The Defence submits that the finding of the weapon made PC Bradley sure about,
7 not what he saw prior to the finding of the gun, but what he assumed he saw. The
8 aforementioned expressions of doubt raise the spectre of a reasonable doubt that
9 what PC Bradley saw was in his own mind. Again, the Defence submits that PC
10 Bradley was mistaken in his identification of the gun in the Defendant's hand.

11 266. The Defence submits that PC Bradley assumed from the outset that the Defendant
12 had a gun because:

- 13 i. PC Gordon shouted that the driver of the Nissan had a gun;
- 14 ii. PC Bradley knew that the Defendant was on a long arm authority and
15 was therefore suspected to have a gun; and
- 16 iii. PC Bradley found an old gun in the bush at the scene of the incident.

17 267. Defence counsel asked the Court to consider how long PC Bradley had the purported
18 firearm in his sight and states that it would have to be a maximum of one minute.

19 268. In addition, PC Bradley accepts that he was chasing the Defendant before the
20 purported gun is pulled out and observed.

- 1 269. Defence counsel submits that PC Bradley's view is always from behind and that the
2 Defendant represents a significant obstruction to PC Bradley's view of the purported
3 firearm.
- 4 270. Defence counsel submits that it is night and therefore more difficult to observe any
5 firearm.
- 6 271. Defence counsel submits that the object (the firearm) is small – some 6 to 8 inches.
- 7 272. Defence submits that on PC Bradley's own evidence the distance changes from 30
8 metres to 18 feet. If anything, the evidence of PC Bradley – both at the visit to the
9 crime scene and in Court – reduces this distance, therefore making his evidence
10 more unreliable.
- 11 273. Defence counsel highlights the fact that whilst PC Bradley says that he sees the
12 Defendant, and then sees the firearm, at the same time, he is distracted by the fact
13 that he is watching the ground in front of him, watching the direction in which the
14 (other) suspect is running, and, he has to keep his mind on the other suspect and on
15 PC Rabess. The Defence submits that these distractions undermine PC Bradley's
16 evidence.
- 17 274. Defence counsel submits that PC Bradley could not see what was in front of the
18 Defendant and also the Defendant would not turn around to show the police officer
19 chasing him a gun, if he had one in his possession.
- 20 275. The Defence suggests that rather than retrieving any firearm from the front of his
21 waistband, the Defendant was merely pulling up his trousers and therefore PC
22 Bradley is mistaken.

1 276. Defence counsel submits that all these difficult circumstances demonstrate to the
2 Court that whilst PC Bradley may be an honest witness, he is a mistaken witness.

3 277. The Defence also submits that there is a significant lack of evidence corroborating
4 PC Bradley's testimony. Counsel for the Defence submits that PC Bradley, whilst he
5 is not lying, is very mistaken, and understandably so, considering what is operating
6 on his mind when the chase begins.

7 ***THE BULLET AND THE LUGER AS FOUND***

8 278. Defence counsel submitted that this was the most unfortunate part of the Crown's
9 case.

10 279. The Defence submits that PC Rabess's photo – Exhibit #3 (10) – does not show any
11 bullet, but merely the gun. In addition, the Defence relies upon the fact that neither
12 PC Rabess nor PC Bradley say they saw a bullet.

13 280. PC Soto says he saw a bullet with the gun and 41 minutes later the Scenes of Crime
14 Officer, Tommy Taylor, takes a photograph (Exhibit #2 (10) which shows a bullet
15 above the breach of the firearm.

16 281. The Defence says that the bullet must have got there somehow and asks: *Did Soto*
17 *place it there? Did Taylor place it there?*

18 282. Despite all the denials the Defence submits that somebody must have moved the gun
19 or placed the bullet beside the gun. The Defence suggests that it is a set up.

20 283. The Defence submits that one cannot say which Officer touched the gun/the bullet,
21 but one of the Officers touched the gun/the bullet, picked it up and moved it back.
22 Defence counsel states there is no sensible explanation for this discrepancy.

1 Something must have happened which involved the handling of the gun, and the
2 bullet dislodged or placed there.

3 284. The Defence submits that, consequently, the Court cannot be sure about the integrity
4 of the Officers and the Court should not rely on their evidence.

5 285. Defence counsel describes the Scenes of Crime Officer, PC Taylor, as an
6 unmitigated disaster. He failed to label the bullet found outside the gun, so all the
7 bullets were put together and it was impossible to identify the bullet that PC Soto
8 saw beside the gun.

9 In addition PC Taylor did not realise that all the bullets were not the same until
10 giving evidence to the Court.

11 Furthermore PC Taylor only revealed to the Court that a fingerprint test had been
12 done. This was not disclosed to the Crown or the Defence, and it begs the question:
13 What else was done or what else was not done?

14 286. Counsel for the Defendant says this all leads to the compelling conclusion that the
15 Court cannot be sure of the reliability of what they have been told by these officers.
16 The Court cannot be sure of the circumstances of the retrieval or analysis of the
17 bullet or the labeling or the disclosure.

18 287. The Defence rhetorically asks: How do we know a bullet can fall out of the breach?
19 Defence counsel states that PC Taylor is not a firearms expert.

20 288. Defence counsel asks: Why is grass covering the weapon right after it has been
21 thrown and has landed? The ground is wet. The rust on the weapon is an indication

1 of exposure to the elements, which suggests that the gun may have been there for
2 some time and therefore it was not the object thrown by the Defendant.

3 289. Defence submits that PC Bradley may have been honest, but asks the questions: Was
4 he reliable and was his evidence undermined by this episode?

5 290. The Defence case is that the Defendant had never seen that particular gun, nor did he
6 have it and the six rounds of ammunition in his possession.

7 291. Defence counsel submits that he has rarely encountered more failures and omissions
8 by separate police officers in the same investigation, as he has encountered in this
9 one and consequently, there is no doubt that there is a reasonable doubt, and asks for
10 an acquittal.

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1 *ANALYSIS AND CONCLUSION*

2 292. I must remind myself that the Defendant is innocent and that the burden of proving
3 the Defendant guilty beyond all reasonable doubt lies with the Crown throughout the
4 entire case.

5 *ABSENCE OF DNA AND FINGERPRINTS*

6 293. In this case it is accepted that the Laboratory found partial DNA profiles, but the
7 Court notes that the Defendant could be excluded as a contributor to the mixed DNA
8 profiles obtained.

9 294. I take into account that the DNA Lab obtained a positive match in the mixed DNA
10 profile against a third party.

11 295. There is no evidence that a person who handles a gun necessarily leaves some DNA
12 which is amenable to analysis by expert examination. Furthermore, the gun, when
13 handled by two or more people, can leave a partial profile indicating at least two
14 contributors. In this case, the DNA examination indicates a match with a third party
15 as a contributor, but with no occurrence ratio or match probability.

16 296. The absence of fingerprints and DNA is evidence that supports the Defendant's case.
17 I take it into account, and also note that there is no evidence that the Defendant was
18 wearing gloves on the 18th November 2011.

19 297. Unfortunately, it is not always possible in every case for Scenes of Crime Officers to
20 be able to lift fingerprints from important items, nor is it always possible for them to
21 find expert evidence of quantifiable DNA on the items in question. Indeed, it has to

1 be accepted that the presence or absence of both DNA and fingerprints is not
2 determinative of the guilt or innocence of any Defendant.

3 *DEFENDANT'S EFFORTS TO GET AWAY*

4 298. One has to ask oneself why did the Defendant go to such extreme and dangerous
5 efforts to evade the police.

6 The Defence suggests that the Defendant knew he could be arrested for drunken
7 driving – justified by the reading of .91%. Another suggestion is that the Defendant
8 knew he was driving whilst disqualified and therefore wanted to evade the police.
9 Yet another reason for the Defendant's efforts to flee from the police, according to
10 Defence counsel, is that the Defendant had driven dangerously and at a very high
11 speed.

12 299. When I examine the evidence, the Defendant refused to turn off the engine and get
13 out of the Nissan car when asked by PC Gordon to do so. The Defendant did not
14 answer any questions put to him by PC Gordon. There is evidence that the
15 Defendant heard Mr. Rodney say that he, the Defendant pulled a gun on him and
16 further, there is evidence that, at that time, or very shortly after making that
17 statement Mr. Rodney attempted to punch the Defendant. It was at that point that the
18 Defendant sped off in the white Nissan Sentra. Even if he did not hear PC Gordon
19 shouting "*Stop that car! He has a gun,*" the Defendant was aware that the Police
20 would have heard Mr. Rodney saying, "*He pulled a gun on me.*" It is reasonable to
21 assume that the Defendant would also have been aware of the blue lights from the
22 police car and aware of the police chasing him down the West Bay Road and back
23 on to the Esterley Tibbetts Highway.

1 300. The Defendant drove so fast in his efforts to escape from the police that he ended up
2 crashing the white Nissan in to the Island Heritage roundabout.

3 301. The USG vehicle in pursuit of the Nissan arrived on the scene of the crashed car
4 almost immediately after the crash and even before the Defendant got out of the
5 Nissan. When the Defendant got out of the front passenger seat he ran into the USG
6 vehicle and he then turned and ran North, along the Esterley Tibbetts Highway. The
7 Defendant would have been aware of PC Bradley giving chase and ordering him to
8 stop. The Defendant continued to run and to try and avoid being apprehended by the
9 police – running along the highway before veering off into the bush.

10 302. The Defendant did everything he possibly could to escape the police and avoid being
11 detained by them. The Crown submits that this is a wild overreaction if the
12 Defendant were only trying to escape a DUI charge or a charge of driving without a
13 licence.

14 303. It is the Crown's submissions that these actions by the Defendant demonstrate the
15 Defendant's guilty knowledge of what he had in his possession. The Crown
16 contends that it is this guilty knowledge that caused the Defendant to employ such
17 extreme measures to avoid the discovery of the firearm in his possession.

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EVIDENCE FROM THE SCENES OF CRIME OFFICER

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304. The Defence submits that there are too many unanswered questions and errors relating to the gun that was found in the bush, such as, the photos of the weapon and whether there was a bullet outside of it or not; the absence of the Defendant's fingerprints and DNA on the weapon; the inability of the officers who found the weapon to identify which bullet was outside the weapon, and the failure to discover that the six bullets are not all the same.

I accept, and indeed the police officers themselves accepted, that they had made a number of errors in relation to securing and recording the evidence against the Defendant.

PC Taylor and PC Soto accepted that the gun, the magazine and the bullets had all been labelled incorrectly.

The bullet seen by PC Soto outside the firearm when it was found – which was purportedly the same bullet seen in the photo taken by PC Taylor – could not be identified or differentiated from the other bullets by either PC Soto or PC Taylor during live evidence in Court.

PC Soto can give no firm or clear explanation as to why PC Taylor's photo (Exhibit 2(10)) shows a bullet and PC Rabess's photo (Exhibit 3(11)) – which was taken some 41 minutes earlier – does not appear to show a bullet.

305. PC Taylor's photograph is taken with a specific Scenes of Crime camera, whilst the evidence is that PC Rabess's photo is taken with an inferior camera from his unit.

1 When I compare the two photographs I see a number of differences in relation to the
2 foliage around the gun. Exhibit 3(11) shows the ground as wet, with grass covering
3 the gun, while Exhibit 2(10) does not show the moisture or the same grass coverage.
4 But, it is fair to say that the gun looks as if it is the same gun, and further, the arm
5 attached to the breach of the gun appears to be pulled back in both photographs.

6 PC Rabess confirms that he did not see anyone touch the gun. PC Soto confirms that
7 he was with the gun at all times and that nobody moved the gun. PC Soto candidly
8 admits that he cannot provide an explanation for the absence of the bullet in Exhibit
9 3(11).

10 PC Rabess and PC Taylor admit that although they have been trained to use
11 firearms, they are not firearms experts. PC Rabess suggests that the round outside
12 the gun may have fallen out of the slide. PC Rabess also suggested that the bullet
13 could have been obscured by the bush or growth in photo Exhibit 3(10), or, there
14 was a fault with the gun due to its age and the bullet may have fallen out.

15 PC Taylor also suggests that with the arm of the breach in the position in which it
16 was photographed, the breach would be open, and the bullet may have fallen out.

17 306. As a result of PC Soto's evidence, and the difference between the two Exhibits, the
18 Defence suggests that somebody tampered with the gun or, alternatively, placed the
19 one 9 mm round on top of the gun.

20 307. From my review of the Exhibits there is no evidence that the firearm had any soil or
21 vegetation attached to it to suggest that the firearm had been in the bush for some
22 time. The evidence of the Chief Firearms Officer – Inspector Brellisford – is that the
23 working parts were all in order, and he was able to select and then de-select the

1 safety catch situated at the rear of the weapon below the hammer. Inspector
2 Brellisford said that when he loaded the magazine with an operational 9 mm calibre
3 round, he said it was apparent that the magazine would not sit properly. Inspector
4 Brellisford said the magazine kept slipping out of the well, and this prevented the
5 weapon from cycling the round into the chamber. Inspector Brellisford said that if
6 one were to hold the magazine in place across the base of the magazine well, the
7 round then would cycle into the chamber and it could be fired.

8 308. I agree with Senior Crown counsel when she states that none of the police officers
9 would have known that the firearm was a Luger with 9 mm Luger rounds, and
10 therefore it would be impossible for anybody wishing to plant a bullet to have any
11 prior knowledge that it would have to be a 9 mm round to match the Luger firearm.
12 Furthermore, the bullet above the gun in Exhibit 2(10) does not, in my view,
13 strengthen the case for the Crown.

14 309. I also agree with Senior Crown counsel that the issue of the bullet does not relate
15 directly to whether the Defendant had the Stock German Luger handgun in his
16 possession or not. The sole issue for my consideration is whether the Defendant is
17 guilty or not guilty of having the Luger handgun in his possession. That is the sole
18 issue that the Court must determine.

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PC BRADLEY'S EVIDENCE

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310. One has to look at all the evidence against the Defendant and, in this case, the evidence against the Defendant really stands or falls on the evidence of PC Bradley.

311. If the Court is satisfied beyond all reasonable doubt that PC Bradley saw the Defendant with a gun in his hand, that PC Bradley saw the Defendant stop and throw the gun into the bush just before he was apprehended, and that PC Bradley is truthful and reliable with his evidence, then the Defendant is guilty. If the Court has any doubt that PC Bradley saw the gun, and that rather, he mistakenly assumed that he saw the Defendant with the gun, then the Defendant must be found not guilty.

312. The Crown's case against the Defendant depends to a large extent, if not wholly, on the correctness of PC Bradley's identification of the Stock German Luger in the Defendant's right hand and therefore in his possession and under his control.

313. The Defence submits that PC Bradley is mistaken and he is understandably mistaken because the Defendant is on a long arm authority, and PC Bradley was told by PC Gordon that the driver, namely the Defendant, had a gun – information that PC Gordon acknowledges was based solely on what he was told by Mr. Rodney and Mr. Scott, and not based on him, (PC Gordon), having seen the Defendant with the firearm for himself.

314. To avoid the risk of any injustice in this case, I must warn myself of the special need for caution before relying on the evidence of identification.

In this case, it is not the identification of the Defendant but the identification of the handgun which PC Bradley said in his evidence he saw in the Defendant's hand.

1 I must remind myself that a witness such as PC Bradley who is convinced in his own
2 mind may, as a result, be a convincing witness, but may nevertheless be mistaken.

3 Therefore, I must examine the circumstances in which the identification by PC
4 Bradley of the firearm in the Defendant's hand took place and I must ask myself the
5 following questions:

6 How long PC Bradley had the firearm under observation?: This, based on the
7 evidence before me would have to be a matter of some 30 to 40 seconds and
8 probably not as long as the maximum the Defence have suggested of 60
9 seconds.

10 What was the distance from which (at what distance) PC Bradley had the
11 firearm under observation?: PC Bradley said that these distances he described
12 (which varied) were only estimates, but his estimates at different times were
13 somewhere between 18 feet and 30 metres.

14 What was the lighting like during the time PC Bradley saw the firearm in the
15 Defendant's hand?: Having visited the locus on the evening of the 2nd October
16 2012, the light at the roundabout and on the Esterley Tibbetts highway could be
17 properly described as bright. PC Bradley's evidence in Court also described the
18 lighting on the highway as good. It is accepted that the lighting deteriorates
19 once the Defendant runs into the bush.

20 Was the observation impeded in any and, if so, what way?: The Defendant's
21 own body, and his arms and shoulders would impede the observation of
22 anything in his hand.

1 Had PC Bradley ever seen the Defendant before?: The answer is yes, and
2 shortly before this incident.

3 315. PC Bradley issued several commands for the Defendant to stop running away. PC
4 Bradley told the Court that he had been trained to pay particular attention to the
5 hands of suspects as they are trying to evade police detection or capture.

6 316. In his evidence PC Bradley said he saw the Defendant's hands in front of his body.
7 Obviously, PC Bradley could not see the hands whilst they were in front of the
8 Defendant, but he told the Court that the location of the elbows would indicate that
9 his hand was there. PC Bradley told the Court that he saw the hand re-emerge, and
10 the Defendant was holding what he described as a silver-coloured handgun.

11 317. It is clear from PC Bradley that the Defendant was a good athlete - as he ran quickly.
12 I reject the Defence's suggestion that the Defendant was pulling up his trousers and
13 not reaching for something out of his waistband. I also reject the Defence's
14 suggestion that because the Defendant was pulling up his trousers he could not run
15 freely. There is no evidence that the Defendant's trousers were loose and there is
16 positive evidence that on the 18th November 2011 the Defendant was wearing a belt.

17 318. PC Bradley conceded that the firearm disappeared out of his view, momentarily.
18 However, at that point, having seen the handgun again, PC Bradley was nervous
19 enough to place his hand on his service weapon whilst continuing to give more
20 commands for the Defendant to stop. The Defendant did not stop and continued to
21 run, and PC Bradley told the Court he saw the gun, and when the Defendant ran into
22 the bush area PC Bradley said he saw the Defendant throw the gun with his right
23 hand in a motion across his body towards the left.

1 PC Bradley said he saw the silver-coloured handgun rotating horizontally through
2 the air.

3 319. I have carefully reviewed PC Bradley's evidence in the face of extensive, skilful and
4 proper cross examination by Defence counsel.

5 320. PC Bradley conceded that he was not breathing down the Defendant's neck during
6 the foot chase, but he was no more than 20 metres behind the Defendant. When
7 reminded about the 18 feet and 30 metres distances he formerly referred to, PC
8 Bradley said these are all rough estimates.

9 321. PC Bradley said he could only describe the firearm as a silver handgun, and was
10 unable to decipher its make or model, or any other identifying features.

11 322. When it was put to PC Bradley that he had used words which conveyed uncertainty
12 about seeing a firearm when he was reporting the incident to other officers, he said
13 he was sure and he denied saying that it was "*possibly*" a firearm or it "*might have*
14 *been*" a firearm. When it was put to him that he had used words like "resembling" or
15 "an object resembling" a firearm, he responded that what he had said was

16 *"the Defendant just threw a gun."*

17 323. PC Bradley's evidence is that he sees the Defendant holding a silver handgun in
18 very good light from the streetlights, and, also from the lights of the police car and
19 the lights of the Nissan car that the Defendant got out of. It cannot be described as a
20 fleeting glance.

21 PC Bradley sees the gun in the Defendant's hand for some time. He then sees the
22 Defendant throw the firearm in the air and he says he sees the gun rotate in the air.

1 324. Shortly afterwards, PC Bradley apprehends the Defendant and the first and only
2 words that the Defendant said were:

3 *“That guy had a gun.”*

4 325. PC Bradley said he did not see the firearm land, but he told the other officers the
5 general area in the bush where he saw the Defendant throw the firearm.

6 326. When it was suggested to PC Bradley that the additional lighting and the metal
7 detector were required because he was uncertain about the firearm he said,

8 *“No, I was sure, I knew exactly what I saw in his hand. I knew he had a silver-
9 coloured firearm and I knew the area where it landed.”*

10 327. In addition PC Bradley said that when PC Soto found the gun, PC Bradley said,

11 *“It looked like the one I saw in his hand.”*

12 328. On being further cross examined as to how he could say it was the gun he saw in the
13 Defendant’s hand, apart from the weapon being a handgun that was silver, PC
14 Bradley replied:

15 *“Because I saw it in his hand. I saw the area where Mr. Crawford threw it. It
16 was located in the same area where I saw it being thrown and it was silver in
17 colour, identical to the gun that Mr. Crawford had in his hand.”*

18 Additionally, PC Bradley said he had not left the scene.

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1 *CORROBORATION*

2 329. In light of the special need for caution in cases of identification I must also consider
3 if there is any evidence which supports PC Bradley's positive identification of the
4 gun in the Defendant's possession.

5 *WPC #293 MINOTT AND PC GORDON*

6 330. WPC Keisha Minott's statement stated that Mr. Rodney and Mr. Scott said that there
7 was a gun in the white car.

8 331. PC Gordon said that both Mr. Rodney and Mr. Scott referred to the gun at the car
9 park and, in particular, Mr. Rodney said that the Defendant pulled a gun on him. The
10 evidence of PC Gordon is that, it was after Mr. Rodney tried to punch the Defendant
11 that, as a consequence of the information he, PC Gordon, received about the gun,
12 that he shouted to PC Rabess and PC Bradley,

13 *"Stop that car. He has a gun."*

14 *DEFENDANT'S STATEMENT*

15 332. One must ask the question why did the Defendant say to PC Bradley,

16 *"That guy had a gun."*

17 The inescapable inference is that he is referring to Jordan Bush, and that he knew
18 that the police were likely to find the gun that he had thrown into the bush a few
19 seconds earlier.

20 333. At this stage there is no evidence from PC Bradley that he, Bradley, had ever
21 mentioned any gun, and it is the Defendant who first utters these words regarding a

1 gun – using words to indicate that it was the passenger in his car, Jordan Bush, who
2 had a gun, and, consequently, not him.

3 334. The inescapable inference to be drawn from the Defendant’s statement is that he was
4 trying to deflect the blame that he anticipated would immediately be attached to him
5 when the gun was found less than one hour later.

6 *ARREST FOR POSSESSION OF FIREARM*

7 335. I also take note of the evidence shortly after the Defendant is apprehended, and
8 before the Luger handgun is found, that PC Bradley arrested the Defendant for
9 possession of an unlicensed firearm. This, I find is evidence to contradict the
10 submission by the Defence that PC Bradley was uncertain as to whether he actually
11 saw the Defendant throw a silver-coloured handgun into the bush.

12 *FINDING THE GUN*

13 336. At approximately 3:45 a.m. the police began the search. After approximately 10
14 minutes they stopped the search to get the additional lighting, and for PC Soto and
15 PC Jackson to go back to the police station to retrieve the metal detector. The
16 officers returned with the metal detector and they began a gridline search. After
17 approximately 25 minutes PC Soto located the Luger handgun in the very location in
18 which PC Bradley said the Defendant threw it.

19 337. I find that the physical finding of the gun, which met with PC Bradley’s description
20 and where PC Bradley says he saw the Defendant throw it, is very strong
21 corroborative evidence that PC Bradley saw the gun in the possession of the
22 Defendant as he ran away from the police and into the bush.

1 338. The Defence submits that PC Bradley was mistaken, in that, he assumed he saw the
2 gun in the Defendant's hand, because of what he had been told by PC Gordon, and
3 because of what he knew of the Defendant. I can find no reliable evidence to support
4 this submission.

5 339. The Court also observes that it is the Defendant's choice not to give evidence, which
6 means that there is no evidence from the Defence to undermine, contradict or
7 explain the evidence against the Defendant by the sworn testimony of PC Bradley.

8 340. In light of all the factors and the circumstances I have outlined above, I do not
9 believe that PC Bradley was mistaken. I find PC Bradley's evidence to be clear and
10 unequivocal.

11 341. I observed PC Bradley give his evidence in chief and under extensive cross
12 examination and he was calm, unshaken and clear. Consequently, I have no
13 hesitation in believing his account of the facts on the 18th November 2011.

14 342. PC Bradley sees the Luger emerge from the Defendant's waistband. He sees the
15 Defendant bring out the Luger in his right hand from his waistband. He sees the
16 Defendant running with the gun in his right hand and described it as similar to an
17 athlete holding a relay baton. The gun momentarily disappears from his sight, but he
18 sees it again in the Defendant's possession and then sees the Defendant throw it into
19 the bush. PC Bradley's evidence is that he also sees the gun in the air before it lands
20 in the bush.

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1 343. When I consider PC Bradley's evidence, and the evidence which supports his
2 identification of the gun in the Defendant's possession, of PC Gordon regarding the
3 information that the Defendant had earlier pulled a gun on Mr. Rodney, of the
4 Defendant's unchallenged statement to PC Bradley when apprehended, "*That guy*
5 *had a gun!*", and, of the finding of the gun shortly afterwards – a handgun that
6 matched PC Bradley's description and the area in which he reported that he saw the
7 Defendant throw the gun – I am sure that the Defendant is guilty as charged.

8 344. Accordingly, I am satisfied beyond all reasonable doubt that the Defendant is guilty
9 of possession of an unlicensed firearm, and that he did have in his possession a
10 Stock German Luger containing a magazine with six Luger rounds at the Esterley
11 Tibbetts highway in the vicinity of the Island Heritage Roundabout on the early
12 morning of Friday the 18th November 2011.

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15 **Dated this the 31st October 2012**

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20 **Honourable Mr. Justice Charles Quin**
21 **Judge of the Grand Court**