

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

3 INDICTMENT NO: 41/12

4  
5 THE QUEEN

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7 V

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9 DAVID REUBEN EBANKS



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12 **Appearances:**

**Mr. Michael Snape on behalf of the  
DPP for the Crown**

**Ms. Lucy Organ of Samson and  
McGrath for the Defendant**

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18 **Before:**

**Justice Carol Beswick (Actg.)**

19 **Heard:**

**13<sup>th</sup> and 14<sup>th</sup> August 2012**

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21 **RULING ON NO CASE TO ANSWER SUBMISSION**  
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- 24 1. The Defendant, Mr. David Reuben Ebanks, is charged with possession  
25 of an unlicensed firearm (ammunition) contrary to s.15(1) and s.15(5)  
26 of the Firearms Law (2008 Revision). The particulars of the offence  
27 are that the Defendant, on the 23<sup>rd</sup> day of February 2012 at #54A  
28 Cinder Lane, West Bay, Grand Cayman, Cayman Islands, had in his  
29 possession a firearm (ammunition), namely, three (3) 12-gauge shot  
30 shell rounds, except under and in accordance with the terms of a  
31 Firearms Users Licence.

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7. DNA analysis showed that the Defendant's DNA was on the interior and exterior of the foot of socks and also on the waistband and zipper of the jeans pants.

8. The DNA on the ammunition was too weak to allow for the expert witness to give a statement as to whether or not the DNA belonged to the Defendant.

***B. Circumstances Surrounding the Location of the Ammunition***

9. The jeans pants, within which the ammunition was found, was in a bedroom in the house, which it is presumed is the Defendant's bedroom and it is also presumed that he was living in that bedroom on the morning when the ammunition was found.

10. In the bedroom was also other clothing, among which the jeans pants had been found. No clothing identifiable as belonging to a female was in that bedroom. The Crown relies on a photograph which is an exhibit to show the absence of such clothing. The submission is that this supports the presumption that this is the Defendant's room.

***C. Location of the Defendant at the Start of the Search***

11. The Defendant emerged from the passageway of the house at about 6:05 in the morning, wearing underwear and no shirt. The room in which the ammunition was found is off that passageway. The Crown

1 argues that logic dictates that he was emerging from his bedroom  
2 where the ammunition was later to be found.

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*CROWN'S SUBMISSION*

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12. The Crown relies on circumstantial evidence and invites the Court to  
7 apply logic to the evidence in this case and to find that the Defendant,  
8 having been found in underwear and shirtless at about 6:05 in the  
9 morning at #54A Cinder Lane , lives there and spent the previous night  
10 there.

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13. Further, the Crown invites the Court to find, logically, that because the  
13 Defendant's DNA was on the foot of socks and the jeans pants in  
14 which the ammunition was found in the bedroom, he should be taken  
15 to have been in possession of the ammunition, and also, to have known  
16 what it was.

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14. I juxtapose this submission against that of the Defence.

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*DEFENCE'S SUBMISSION*

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15. The submission is that there is no evidence that the Defendant had  
23 physical custody and control or knowledge of the ammunition.

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***A. Location of Ammunition***

16. The evidence is that the Defendant’s DNA on the foot of socks could have arrived on the sock as a result of his simply having worn the sock. Further, the DNA analysis expert cannot state when that DNA could have been placed there. Indeed DNA can survive washings of an item in the laundry, if the item were frequently worn.

17. The Defendant’s DNA was on the waistband and zipper of the jeans. The expert’s evidence is that so too may have been DNA of someone else, though in small trace. No sample was taken of DNA in the pocket of the jeans pants in which the sock containing the ammunition was said to have been found. The evidence is that someone else could touch the sock and *not* leave his or her DNA on it.

18. The expert’s evidence is that the DNA on the swab from the shotgun was of such very poor quality, that she could only testify that there was at least one male contributor and that it could have been more than one.

***B. Circumstances Surrounding the Location of the Ammunition***

19. There is no evidence that the Defendant lives in the room in which the ammunition was found nor that the room was secured against others

1           having access to it. Indeed, there is no evidence as to whose bedroom  
2           it was, in which the ammunition was found.

3       20.    The photographs should be viewed as showing that this is a room in  
4           which the family's laundry is collected.

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***C. Location of the Defendant at the Start of the Search***

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21.    The Defence submits further that other persons had access to the house  
9           and bedroom. Indeed another named man was the last occupant to exit  
10          the house when the police were searching. This was after the accused  
11          had left the house, and would mean that at least that person would  
12          have had access to the house in the absence of the accused.

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***COURT'S CONCLUSIONS***

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***A. Location of Ammunition***

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22.    The Defendant's DNA is on the foot of socks in which the ammunition  
19          was found, and it could have been put there at any time, and indeed  
20          could have survived washing in the laundry.

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23.    The DNA on the jeans pants was not exclusive to the Defendant, and  
23          no DNA of the Defendant was identified on the particular pocket in  
24          which the ammunition was said to have been found.

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24.    There is no evidence that the Defendant ever had contact with the  
27          ammunition found in the sock, or that his DNA was on it.

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***B. Circumstances Surrounding the Location of  
Ammunition within the House***

25. The presumption that the Defendant lived in the room is readily rebuttable by the absence of evidence that he had exclusive control of the bedroom. The unchallenged evidence is that the house is an open house and that many people have access to it. There is no evidence as to the ownership of the clothing among which the jeans pants were located in the bedroom.

26. The absence of high heeled shoes or clothing which may be regarded as being obviously female may in fact logically lead to the conclusion that a female did not live in that room. That in itself does not strengthen the Crown's submission that the Defendant lived in that room because it is undisputed that several men were also taken from the house on that early morning and, therefore, it may not be excluded that another man or men lived in that room.

***C. Location of the Defendant at the Start of the Search***

27. There is an absence of evidence of the Defendant being in exclusive control of the bedroom and of the jeans pants in which the ammunition was found. Whether the Defendant slept at that location on the night before the search, or whether he was emerging from his bedroom, are therefore immaterial in this case.

1 *SUMMARY OF THE EVIDENCE*

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3 28. The Defendant was one of several persons, including males, who were  
4 at #54A Cinder Lane in the early morning of February 23, 2012, when  
5 the police arrived to search the premises.

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7 29. At that time, ammunition was found in a foot of socks which had the  
8 DNA of the Defendant and the DNA could have been placed on the  
9 sock on any earlier date.

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11 30. The ammunition does not bear the Defendant's DNA.

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13 31. Further, it is agreed that no items found during the search were  
14 processed for fingerprint development or analysis.

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16 32. There is no evidence, direct or inferential, of the Defendant having  
17 knowledge of the ammunition.

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19 *THE LAW*

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21 33. The law concerning the determination as to whether there is a case for  
22 an accused person to answer is summarised by the English Court of  
23 Appeal in *R v. Galbraith*<sup>1</sup> per Lord Lane CJ, where it is stated *inter*  
24 *alia*:

25 “2 (a) Where the Judge comes to the conclusion that the  
26 prosecution evidence, taken at its highest, is such that a jury  
27 properly directed could not properly convict upon it, it is his duty,  
28 upon a submission being made, to stop the case.”

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<sup>1</sup> *R v. Galbraith* [1981]1WLR 1039 at p.1062

1 Defence counsel relies on this in support of her submission.

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3 34. I am further guided in the approach to this submission by the Northern  
4 Ireland Court of Appeal decision in *Chief Constable v. Lo*<sup>2</sup>. There the Court  
5 was concerned with a submission that there was no case to answer in a matter  
6 being heard by a Judge sitting without a Jury. The then Lord Chief Justice,  
7 Lord Kerr, opined:

8 *“The proper approach of a judge or magistrate sitting without a jury*  
9 *does not, therefore, involve the application of a different test from that of*  
10 *the second limb in Galbraith<sup>3</sup>.”*

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12 He continued to describe the proper approach a Judge sitting alone should  
13 take and said:

14 *“The question that he should ask is whether he is convinced that there*  
15 *are no circumstances in which he could properly convict. Where*  
16 *evidence of the offence charged has been given, the judge could only*  
17 *reach that conclusion where the evidence was so weak or so discredited*  
18 *that it could not conceivably support a guilty verdict.”*

19 35. The offence in this case concerns possession. Section 3 of the Penal  
20 Code (2010 Revision) defines possession as:

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22 *“...not only having in one’s own personal possession, but*  
23 *knowingly having anything in the actual possession or custody of*  
24 *any other person, or having anything in any place (whether*  
25 *belonging to or occupied by oneself or not) for the use or benefit of*  
26 *oneself.....”*

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29 36. The prosecution evidence falls short of proof that this Defendant had  
30 the ammunition in his personal possession or knowingly had custody

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<sup>2</sup> *Chief Constable v. Lo* [2006] NICA 3

<sup>3</sup> At par. 14

1 of ammunition. The prosecution evidence, taken at its highest, is such  
2 that a jury properly directed could not properly convict upon it.

3 37. It is my view that the evidence for the Crown is so weak that there are  
4 no circumstances in which I, sitting alone, could properly convict. The  
5 evidence could not conceivably support a guilty verdict.

6 38. I therefore must discharge my duty, according to the law as I  
7 understand it, to stop the case.

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9 39. I will not call upon the Defendant to answer the charge and  
10 consequently I enter a verdict of Not Guilty on this Indictment which  
11 contains one count of possession of an unlicensed firearm.

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15 **Dated this the 15<sup>th</sup> August 2012**

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*CA Beswick*



20 **Madam Justice Carol Beswick (Actg.)**  
21 **Judge of the Grand Court**