

Mrs Richards
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OPEN COURT

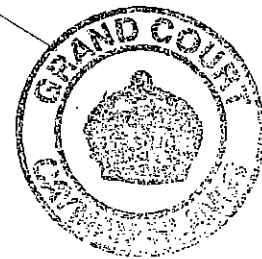
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
INDICTMENT 4/01 - *Capital*.

REGINA
V.
CLIVE DACRES

Appearances:

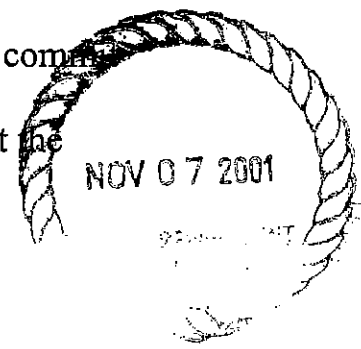
For the Accused: Mr. Lawrence Aoilfi
For the Crown: Miss Cheryl Richards

Before Graham, J.
Hearing: 22nd to 24th October, 2001



JUDGMENT

1.
The accused faced an indictment containing six counts. Counts 1 and 2 alleged the attempted murder of a husband and wife, Victor and Judy Taylor. Counts 3 and 4- the attempted infliction of grievous bodily harm on those individuals. Count 5 – possession of a firearm with intent to commit an offence namely assault, and finally in Count 6, an allegation that the



accused on the relevant day, the 22nd October 2000 was in possession of a firearm without a licence. It was established that no such licence had been issued by the authorities to him. The accused pleaded not guilty to all charges and elected to be tried by judge alone. At the close of the prosecution case I decided that although there was clear evidence of the discharge of a firearm at least in the direction of the Taylors, there was insufficient evidence to demonstrate that the gunman, whoever he was, had intended to murder the Taylors or either of them. I accordingly acquitted the accused of the two counts of attempted murder at that stage. The trial then continued on Counts 3,4,5& 6.

2.

The general background of this matter is that on the relevant date at about 7:00 a.m. in the morning the Taylors passed the house and yard of the accused in Melrose Lane, near to Pasadora Place, Smith Road in George Town, Grand Cayman. A dispute developed between the accused and Victor Taylor, when he claimed he was attacked by an unsecured large brown dog. Another dog had attempted to attack Mr. Taylor but was unable to do so as he was secured on a long chain. Victor Taylor then said that he picked up two stones or rocks and threw one at the brown dog. He claimed

that he had not thrown the second stone. The accused's account was that he remonstrated with Taylor for stoning his dog and was in turn spoken to by Taylor in obscene terms "go suck your mother". Taylor who then had a stone in one hand and a bottle in the other, threw the stone at him, narrowly missing him, and threw the bottle at his truck. The accused Clive Dacres, agrees that he armed himself with a machete after the obscene language had been used at which stage Taylor moved off. The Taylors maintained that Dacres followed them from his house in Melrose Lane along Aspen Lane onto Palm Road and when they crossed over Smith Road onto Pasadora Place he discharged two shots at them. The shots missed. Dacres in his evidence and his statement to the police maintains that despite his anger caused by the stoning of his dog the insults to him, and the fact that he armed himself with a mach, he did not follow the Taylors, nor fire the shots, but got in his truck and went straight to work at Atlantis Submarines in South Church Street. The critical issues before the court are therefore the identity of the alleged gunman and in respect of Counts 3 and 4 whether the prosecution can satisfy me so that I am sure of it that when the shot, or either of them, were discharged by the gunman he intended to cause either one of the Taylors or both of them a very serious bodily injury. If all he did was to attempt to frighten them by discharging a gunshot or gunshots in

their vicinity, then he would not be guilty of either of the counts of attempting to cause grievous bodily harm. He would have to be shown to have demonstrated that specific intent in respect of counts 3 and 4.

3.

To commit the offence of grievous bodily harm contrary to Section 201 of the Penal Code the intention to cause some bodily harm is sufficient, the fact that as a matter of evidence grievous bodily harm, i.e. a really serious bodily injury must be shown is not reflected in the degree of intent which the prosecution must establish. I respectfully agree with the conclusion of Sanderson, J. in *R v. Clayburn Evans Ind. 72/00 (unreported)* at pp. 4-6. *Section 201* therefore requires the proof of a basic rather than a specific intent. In this respect I adopt the distinction drawn by the House of Lords in the *DPP v. Majeswski [1977] A.C. 443*. A similar situation is to be found in the differing degrees of intent required to establish murder that is intent to cause grievous bodily harm and that of attempted murder where the prosecution have to establish a specific intent to kill.

4.

The account given by Victor Taylor is that at about 7:00 a.m he was walking to his home with his wife and five year old child. He saw two dogs in what is agreed to be in the accused's yard, the dogs rushed at him and the unchained one got through the fence and attacked him. He picked up a stone and threw it at the dog. There was "a brown spanish looking guy" in the yard. That man said words to the effect of what are you doing to the dog and he replied that the dog had rushed him and he was trying to defend himself. He then picked up another stone and held it. When he was cross-examined he agreed that he had used strong language to the accused. It was put to him that he had used the phrase "go and suck your mother". He conceded that he might have said something of the sort. He denied that he flung a stone at the man himself and further denied that he threw a bottle which struck his truck. He said that the accused had armed himself with a machete and had moved in his direction.

5.

The version of the accused when he gave evidence was that although he had been stoned by Taylor that man did not attempt to enter his property and he could have retreated to his house. He had armed himself with a machete for

his own protection. Notwithstanding the fact that he was annoyed, he was certainly not angry enough to attack Taylor either with a machete or to arm himself with a gun and follow the Taylors and shoot at them. Mrs. Taylor's evidence, which I shall review in detail at a later stage is that she was trying to pull her husband away but he seemed to wish to continue the exchange with Dacres. The conclusion that I draw is that both men were angry and animated. Taylor then described to me how he was being followed by the same man. He heard someone behind him and turned round to see the man "two chains" (i.e. 44 yards) away. In particular it is agreed that it was a bright October morning and that the sun was up. The man told him to wait. He looked round and it was the same man with whom he had had the altercation minutes before. "I saw him put his hand to his waist and draw a gun, I pushed my wife to the ground. He pulled it out and blast it at me." Two shots were fired, he was then at the other side of Smith Road at Pasadora Place. "I had crossed over from Palm Road and was under the plaza" meaning that he was under the overhanging roof of the building. He marked exhibit 1, a sketch plan with an x showing his place at the material time. He was to indicate that he was at the end of the building nearest to the hospital. The witness appeared to me to some degree confused about his actual position at the time of the discharge of the gun. This is hardly

surprising, as in moments of great stress such as the one he was describing, it is likely as he was seeking to save himself and his wife and child in the matter which he described. He went on to describe that he pushed his wife and child to the ground and dived to the ground himself. He had heard the two shots before he threw himself to the ground. A splinter of glass hit his right arm at the time of one of the shots. I am reminded that there is no direct evidence of how far splinters would have travelled from the bullet hole which can be seen in the front of the shop, Absolutely Fabulous, but very little debris was found on the outside of the shop and that on the sill of the window. It accords with common sense that he could not have been very far from the bullet hole depicted in photographs numbers 1,2,3 &4 of exhibit 2. His placing of himself by the x mark on the plan he drew, exhibit 1 is unlikely to be precisely correct. What is critical is that he saw the gun and told the court that the gunman "blasted at me." He saw the gun drawn by the gunman from his waistband, saw it pointed at him and heard the shot. I am satisfied, so that I am sure of it, that the gunman, whoever he was, aimed and directed his pistol at Victor Taylor with the intention of putting a round into him and that Victor Taylor's account of that episode is true and reliable. If the gunman had merely wished to frighten or intimidate Mr. and Mrs. Taylor, all he had to do was to fire his gun into the ground or over their

heads. The bullet hole in the window of Absolutely Fabulous as shown in photograph 5 of exhibit 2 is sixty-five inches from the ground to which perhaps three inches can be added representing the height of the kerb. That shot was therefore directed at about 5ft. 8ins above the ground which means that the shot, if properly aimed would have struck Mr. Taylor or Mrs. Taylor at head or upper body height. Mrs. Taylor is six foot tall. I accordingly draw the irresistible inference that mere frightening or intimidating was not what the gunman had in mind. He was doing all he could to shoot the Taylors or either of them. I shall deal with the scientific evidence in respect of the nature of the recovered round in due course. The second discharged round was never recovered.

6.

It is the case of the accused that he was the person involved in the altercation between himself and Victor Taylor about five minutes before the shooting but disputes that he was the gunman. Accordingly, the quality of the evidence of identification has loomed large in the conduct of the trial and I must now deal with it. I give myself the direction as to how identification is to be considered as set out in *R. v. Turnbull [1976] 63 C.A.R. 132* namely:

"This is a trial where the case against the defendant depends wholly or to a large extent on the correctness of one or more identification which the defence alleges to be mistaken. I must therefore warn myself of the special need for caution before convicting the defendant in reliance on the evidence of identification, because it is possible for honest witness to make a mistaken identification. There have been wrong convictions in the past as a result of such mistakes, and an apparently convincing witnesses can be mistaken. So can a number of apparently convincing witnesses."

I should therefore carefully examine the circumstances in which identification by each witness was made. How long was the defendant under observation? At what distance? In what light? Did anything interfere with the observation? Has the witness ever seen the person before? If so, how often? If only occasionally, what are the details? Had he or she any special reason for remembering him? How long was it between the original observation and the identification to the police? Is there any marked

difference between the description given by the witness to the police when he was first seen by them and the appearance of the defendant, and I must remind myself of any specific weaknesses which appeared in the identification evidence. I particularly have to mind the danger of what was termed by Lord Widgery in *R. v. Oakwell* [1978] 1 All.E.R. 1223 of the "ghastly risk" in cases of fleeting encounters.

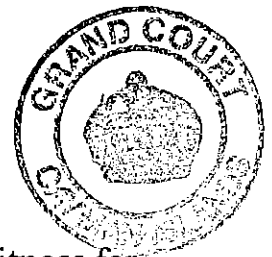
7.

Victor Taylor described a man wearing half-pants (shorts) and a khaki-looking shirt. On examination of the clothing in question exhibits 8 and 9, the shorts are in fact dark grey denim and the shirt is of a "camouflage" design on a white base. The man was a "brown skinned spanish looking" man with "low brown hair" and about five foot in height. In his witness statement, made shortly after the incident, he described the man as having no shirt on at the house but later wearing a "whitish" looking T-shirt but "I couldn't see if any prints or markings were on it". He described the defendant as about 5ft. 10 to 6ft. tall, brown in complexion and had "straight Indian (pretty) looking hair". The accused is in fact about six feet tall, as I observed him, and apart from the description of him as five feet in his evidence his description tallys in the most precise manner with the

photograph of the accused taken after his arrest – exhibit number 13. His hair is rather shorter today than it was that day. No mention is made by any witness of the small goatee beard which he can be seen to have been wearing in that photograph. There can be no doubt, as the accused concedes that he was the man at the house, but was that man the same man as the gunman as Taylor claims? The following are the potential weaknesses in his testimony from the point of view of the Turnbull guidelines.

- a. There was no identification parade held in respect of any of the witnesses. This was a significant failure by the police in carrying out elementary and well established procedures. There can be no excuses for egregious failures of this kind.
- b. He had not seen the accused before the date of the incident.
- c. In view of the circumstances which occurred at the house, he must have been agitated and angry and to some extent in fear of the dogs and perhaps the machete.
- d. At the time of the shooting itself he must have been anxious and concerned for his own safety.
- e. He was reluctant to face up to passages in his written statement which varied from his evidence in court.

- f. When the shooting took place he must have been concerned not only with his own safety but that of his wife and child.
- g. When shown a photograph of Wilmer Cruz he said he looked like the man who shot him. He also said that the man in the photograph looked like the man at the house with whom he had had the altercation. He was not asked about the height of Cruz as opposed to his face. Cruz is 5ft. 4ins. tall. It is clear that there is a strong similarity facially between Dacres and Cruz.
- In overall terms there is no similarity at all.



8.

I did not find Victor Taylor to be a completely satisfactory witness for the reasons indicated above. He is, if I may say so, of limited intellect and had great difficulty in dealing with plans and photographs. He is illiterate. He was reluctant to make concessions as to his own behaviour when at the house. Having warned myself of the dangers of accepting evidence in the circumstances set out herein, I nevertheless find that he saw that man at the house and had reason to look at him and to remember him. It was quite a lengthy altercation as such things go. He cannot have been more than six to ten feet

away from him at the material time. When he appreciated that he was being followed he turned round and saw the gunman at a distance of the width of a road plus about 20 feet, with no intervening traffic. When the gun was produced and presented he had another shorter opportunity to see the gunman again. He was then looking at a man he had seen merely minutes before, when as I have indicated, he had a good reason to remember him and the opportunity of seeing him properly. Such an event, I am satisfied left an imprint on his consciousness and he had, despite the relative brevity of that moment, sufficient opportunity to see that the man on the other side of the road was the same man with whom he had had an altercation a few minutes before. The light was excellent. There were no interruptions of his line of sight. When that gun was pointing at him he was not only looking at the gun but the whole of the man behind it. Despite the potential difficulty in coming to a reliable identification in such circumstances, having looked at this witness and examined his evidence very critically, I am convinced that he was a truthful, accurate and reliable witness when he told me that the gunman was the man with whom he had had that altercation and I so find. The varying description of the height of the accused I regard without

significance. What is critical is that he got the height right when he made his witness statement just after the event. He is correct in the general description of the shorts and the T shirt. I note that the camouflage pattern is upon a white base and in his original statement he made it clear that he could not see if there were any prints or markings on it. Such a reservation is the hallmark of a careful witness. I further regard the distinction between dark grey and khaki as without evidential significance. Inevitably he was going to look at the man rather more than the clothing. His description of the man as five feet tall is to be considered in the context that he is of that height himself and in his statement to the police made shortly after the event he put the man's height at 5ft. 10ins to 6 ft.

9.

The account given by Judy Taylor was that she accompanied her husband and child down Melrose Lane between 6:30 and 7:30 a.m. She saw the dog who turned out to be chained, jump up and the brown dog rushing out. She grabbed her child. Her husband went to pick up a rock, the man in the yard said something to him. She described him as a slim, brown-skinned man with "Indian-looking" hair. She said he

was six foot tall, her own height, and was wearing a shirt and khaki shorts. She had seen him two or three times before when she passed the house and yard. There were no other persons in the yard except the man, something which both her husband and the accused agreed. She walked on, leaving her husband still talking to the man. He then caught up with her in Aspen Lane and the gunman caught up with both of them on Aspen Lane. They then crossed over at the point where Palm Road meets Smith Road. Then she saw the gunman. "It was the same guy I saw in the yard. I crossed the road as I did not want trouble". He was about 20 feet away from me at that stage and the sun was up. He was coming and he was angry". "He spoke to my husband he said "stop you pussy hole, why don't you stop". "I was not exactly looking at his face at that stage. I hurried on cause I wanted to cross the street, I crossed over to Pasadora Place. On the cement walkway I heard a shot just as I got there. It had come from behind me. I went to the side of the building and looked round for my husband and heard another shot. When I look round I saw a guy and he had this dark object in his hand. He was standing at the other side of the road near the Honduran ticket office".

She then demonstrated by tucking her thumb in and extending her arm in depiction of a man holding a pistol. She went on to say “to me he looked like as if he was pointing it my way”. “I would say not to miss but in my direction.” She described herself as being scared and nervous at that moment. After the second shot she felt what she thought was a splinter hitting her right shoulder. Again it is noteworthy that both Victor and Judy Taylor were hit by splinters on the upper portion of their bodies. She was to mark a photograph, exhibit number 5, with red and black ink showing the two points she occupied before and after the shot. That demonstrates that she was near the front of Absolutely Fabulous during the shooting. From the height of the bullet hole in the window, 64 inches, it is simple to estimate the entire front of Absolutely Fabulous as about 13 feet.

10.

I simply regard her attempt to mark the place where she was, as her best effort to recollect where she now feels she must have been. Again it must be noted that she cannot have been far from where the bullet penetrated the window of Absolutely Fabulous as shown in photographs 1 – 5 in exhibit 2. Despite the lack of evidence as to the

area in which debris may scatter from the impact of the bullet going through the glass and striking an object within the shop itself, it is an irresistible conclusion that she must have been relatively close to the bullet hole when the shot was fired. When she was cross-examined it was pointed out to her that in her written statement, taken about the same time as that of her husband, she had failed to mention ever seeing the accused during the altercation at his house and yard. She had said in her statement that when she saw the dog coming she grabbed her daughter hard and pulled away from the fence, her husband picked up a stone but she kept walking away. She continued to claim that she had seen the accused that morning at the house. It is clear that she had seen that man at that house in the past.. She had passed his house on a number of occasions and seen him in the yard. The accused concedes that he saw her standing beside her husband at the stage when the conversation begun between them. I conclude that she must then have seen a man she knew. When she saw the man before she crossed the road and then from her view point at Pasadora Place she again saw a man she knew, in good light and without interruption of her line of sight. Her description in her written statement was “ 18 to 19, about my height, six foot with a whitish

shirt, short sleeves and khaki-looking shorts and Indianish hair. She did not mention the goatee beard but she did make it clear that she had passed the yard on several occasions. "I always see this young guy who pointed the object at us but I have never spoken to him before." Again I note the description of the shorts as khaki rather than black denim and the T Shirt as being whitish rather than white with a pattern. When she uses the word "whitish" I take it to mean that it was not exclusively white. In general, as I have said before, witnesses concentrate on the whole man in front of him rather than the clothing and there is nothing in her description of clothing as opposed to the clothing recovered from the accused which is inconsistent one with the other.

11.

The possible weaknesses in her identification are:

- a. Her initial view of the man at the house was limited in time as she decided to take her child and walk off.
- b. When she purported to identify him at Pasadora Place it was an occasion of great stress and danger for herself and her child.

- c. Matters took place very quickly. It must have been a very intense and disturbing experience.
- d. There was no identification parade, this is of less importance in respect of this witness as she had seen the man before.

On the other hand I noted that she was very calm and deliberate in demeanor and seemed an intelligent and impressive witness. She carefully considered and answered every question that was put to her. If anybody were to be calm in a moment of crisis this is such a person. I find that not only was she was trying to tell me truth in respect of the vital identifications at Pasadora Place and before she crossed Smith Road but she was correct in her identification and reliable as well.

12.

Again I specifically remind myself of the Turnbull guidelines but nevertheless conclude so that I am sure of it, that she is correct when she says that Dacres fired the second shot and by inference must have fired the first one as well. He aimed it at her and did his best to shoot her. A further feature of her observation and identification were demonstrated when she was asked to look at the photograph of Wilmer Cruz who later gave

evidence. He is depicted in exhibit number 4 and is a man who can be seen of the same general facial appearance as the accused even to the extent of his goatee beard. He is a very small man of about 5ft 4ins. When the photograph was shown to her she said she had seen the man before in the yard but not to speak to him, adding that she never saw the man up close to recognise his face or anything like that.

13.

There were two independent witnesses to the events of the morning of the 22nd October 2000. The McPherson's bothers, natives of Jamaica are masons and were finishing off a building opposite Pasadora Place. They got to work at about 7:30 in the morning. Donovan McPherson heard a sound like stones being thrown. The sounds had come from behind the building where he was working and from where Dacres' house is. He then saw a "dark skinned" lady and a "dark skinned" man with a child walking towards Smith Road. They were on the bypass road (Palm Road). Two minutes later he saw a brown skinned man going in the same direction they had gone. Two minutes after that, he heard two explosions which he took to be shots. He then saw the brown skinned man coming back down the same street. He described him as wearing no shirt and being "a bit short", "not too

slim and not too fat". He was seen on the little road behind the building going back in the way he had come. He was then about 30 feet from the point of observation, the light was good. I accept the entirety of that witness' evidence.

His brother Errol McPherson, works on the same building . He saw a young dark man with two stones in his hand on the road behind Smith Road. He acted as he was arguing with somebody although he could not see with whom. He then saw a woman and a child and heard her say "come on, come on". He was 30 to 40 feet away and later he heard "an explosion". He took it to be a gunshot. Again I accept the evidence of Errol McPherson as an honest an reliable witness.

14.

The evidence of Mrs. McLean-High, the owner of Absolutely Fabulous can be dealt with shortly. She was called to inspect her shop after the incident had been reported and found what turned out to be a gunshot hole in the window of her shop. A ceramic pot on top of a dresser within the shop was shattered and a piece of lead found on the floor. Mr. Love, the firearms expert, was later to examine the lead object and the broken ceramic pot

16.

The accused's T shirt and shorts were taken to Texas and put before Mr. Martinez, a chemist. He found one microscopic particle possibly indicative of gunshot residue consisting of lead and barium on the front lower right side of the shirt. In addition another microscopic particle containing lead and barium on the lower front left side of the same shirt. That was possibly indicative of the T shirt being in contact with a discharged firearm or in close proximity to a discharged firearm. He found another microscopic item indicative of gunshot residue on the front right pocket on the denim shorts. That was consistent with there being in possible contact with a discharged firearm or in close proximity to it. He conceded that if a nail gun were to be discharged wearing that clothing and not washed it could well produce the results that he found. Unless they were to be produced evidence which explained the presence of the matter found by Mr. Martinez or casting doubt on it then I would have to conclude that that evidence offered considerable support to the allegation that Dacres had indeed fired a shot or shots from a gun. As will be seen the explanation in fact put forward was untrue. I accordingly find that the evidence of Mr. Martinez does in fact support the Crown's case in this respect.

17.

I have mentioned the evidence of Wilmer Cruz. He was the person depicted in photograph number 4 and at one stage it appeared to be the defense suggestion that he might be the true author of the events at Pasadora Place. He was called by the prosecution and denied ever being in the yard at the time in question or having anything to do with the shooting. Neither assertion was challenged by the defence. I believe him. This was a total red herring introduced by the defence. The Crown's case ended with production of a written statement made on the day of the defendant's arrest together with an interview record under caution made three days later. I will deal with the contents of those matters when I deal with the defence case.



18.

The defendant chose to give evidence. Prior to that I had, at the request of the defence, ruled that he was to be treated as a man of previous good character despite a blemish which is now of no significance. I therefore remind myself that his evidence is entitled to be considered as that of a man of 23 of good reputation. This is to be considered not only as to his likelihood to commit the offences charged or any of them, but also as to the credibility to be attached to his sworn evidence for example, in the event of

any matter of fact hanging in the balance, his good character would be decisive in deciding that matter of fact in his favour if he had given evidence on that matter. It supports his credibility in the manner indicated. He is entitled to point to his good character when the court is asked to decide whether the prosecution has proved his guilt or not. That would apply to the consideration of all the remaining counts on the indictment. I note however that a good character cannot of itself operate as a defence.

19.

Clive Dacres told me that on the morning in question he got up and went to work on a truck in his yard. He heard the dogs rush at somebody and when he looked up he saw a man and woman standing there. The woman was holding a child and the man was looking down at the ground for something. The man said he was going to pick up a rock and lick the dog in his blood cloth. He then said to him "pussy go suck your mother" and reached for a rock. He then told the man "oh you must be a bad man" and walked to the truck to get his machete", so he reached to pick up the rock like he was going to lick me". The he started pelting rocks at me. That was later modified to throwing a rock at him which missed and throwing a bottle which hit his truck (this was in accord with what he had told the police in his

caution statement). The man disappeared and he went to work clocking in at 7:00 a.m. He did not produce the clock-in card in support of that claim. I do not attach any significance to that as all times given by the witness are approximate. He had bought the nail gun "recently". By recently he meant a month or two before. As to the .22 blank rounds required to fire the nail gun he had "got them from a friend" about two weeks before the incident. He had test fired the nail gun on the Friday evening (the 20th) the "shots" had been obtained from a friend named Allen Hurlstone. When he was cross-examined he was asked why he went for the machete and in reply he said that as the man was going to pick up the stones and had already told him to go suck his mother, he did so. That was to an extent at variance to what he has said before and consistent with a wish to punish Victor Taylor for what had happened in respect of the insult to his mother and stoning his dog. Dacres however maintained that the machete was picked up to protect himself. More crucial to the outcome of the case was the passage in which he was questioned as to his acquisition of the nail gun and the "shots". He had told the court that until his previous counsel had told him that the prosecution would have his clothes examined and that gunshot residue might show up on his clothing, he did not know that that might happen. He told that gentleman that he was confident that any residue found would come

from the test firing of the nail gun. His previous counsel, Mr. John Furniss was not called to rebut the suspicion of recent invention. Again I draw no adverse conclusions from that. He did not know where his friend Allen Hurlstone was so that he could derive no support from calling him as a witness. I remind myself that there is no duty on any defendant to call anybody but Hurlstone was not available to assist the court. I draw no inference from that. He had had "the shots" from Hurlstone two weeks before the incident but did not try out the nail gun until two days before it being used. He had not done so as he had seen the nail gun working on a building site when he bought it. The man who had used it on the building site was Allen Hurlstone and he had bought the gun from him. He then said that that was a mistake that he had bought it from a "Jamaican guy" whose name he did not know. He was to say that he knew it worked as Allen Hurlstone had used it at work . He then said that he had made a mistake.

Miss Richards:

Q – I had asked you why you waited approximately two weeks to test it out when you had now have the shots which you say you had gotten from Allen Hurlstone and your answer was "I saw Mr. Allen using the nail gun so I figured it was working, you have now said you made a mistake.

Witness:

A - It wasn't Mr. Allen using it.

Q - It was who then?

A - The man I bought it from.

Q - Is it that you now remember that it was not Allen but another guy you bought it from, is that right?

A - Yes sir.

Miss Richards:

Q - Where was it you saw the guy using it?

A - On a construction site.

Q- On a construction site, where?

A - You know the hotel. Next to the Sleep Inn.

That was said to be ten months before the incident. Asked why he decided to try out the gun when he had the "shots" for two weeks. He said he was going to try it out "eventually". It was just a coincidence that he actually tried it out two days before the incident. He had not washed his clothes from the alleged test firing until his arrest, still wearing those clothes.

I observed and recorded that passage of the evidence with the greatest care. It was clear to me that he was telling me lies on this most critical aspect of the defence. I make allowance for the fact that he must have been under strain when giving evidence on his own behalf on such a grave matter. I remind myself of the direction I have given myself on character.

Nevertheless I am satisfied so that I am sure of it that they alleged test firing never took place and that he has invented that part of his evidence in an attempt to escape the consequences of the scientific evidence and to mislead the court. I give myself the direction in *R. v. Lucas* 73 CAR 159. As I have decided that what he said to me was in fact a deliberate lie. I am also satisfied that he has not lied to bolster a true defence or out of panic or confusion. That being so, and being sure that he did not lie for an “innocent” reason that the lie is judged by me as supporting the prosecution case. His account in the caution statement and the later question and answer interview dealt with the events in the yard and the fact that he had taken no part in the shooting and had gone to work that was confirmed by the evidence he gave to the court and was essentially consistent with what he had said before. This was the route which the Taylor family and the brown skinned man had taken prior to the shooting. Errol McPherson had seen the

dark skinned man with stones in both his hands at a place adjacent to Dacres house. It is an affront to common sense to conclude that some other mythical brown skinned man, who happened to have an axe to grind against the Taylors, and was armed should come up on the scene minutes after the altercation in Melrose Lane and walk back the same way, as the evidence of the McPhersons, taken together suggests. In cases of circumstantial evidence of this kind I have to ask myself what other rational inference is available. There is none and I draw the inference that the brown skinned man was in fact Clive Dacres.

I now make the following formal findings of fact:-

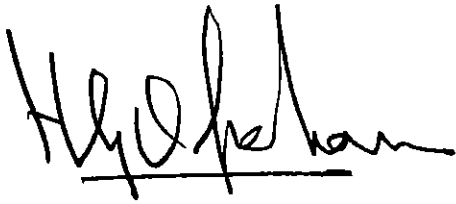
1. As a result of what had transpired at his house, Dacres wished to revenge himself on the Taylors and Victor Taylor in particular.
2. He put down the machete and armed himself instead with a hand gun which was loaded with at least two rounds of ammunition.
3. He followed the Taylors from Melrose Lane into Aspen Lane and thence to Palm Road close to the Honduran ticket office.
4. He told Victor Taylor to wait when he was about 20 yards from him in or about the junction of Palm Road and Smith Road.

5. The Taylor family crossed from that position over to Pasadora Place.
6. He discharged two shots at the Taylors who were then in the vicinity of the shop Absolutely Fabulous. He was then within gun shot range and capable of directing the projectile which struck the window adjacent to where they were.
7. When he discharged those shots he aimed them at the Taylors intending to cause them grievous bodily harm, they being close together.

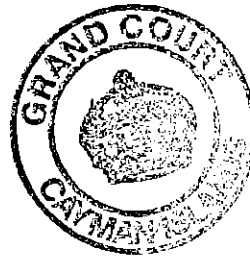
It is not possible to say which person each shot was aimed at. Each witness describes the gun being pointed at them. Even if he aimed at one and hit the other he would still be guilty of the offence of causing grievous bodily harm. Their closeness together is demonstrated by the critical fact that on the firing of the second shot each of the Taylors was close enough to the point where the bullet struck the glass for splinters to hit each of them on the upper body.

I accordingly convict Clive Dacres of counts 3 and 4. As to count 5, even if he had presented the pistol in their direction and not fired it, it would have been an assault. The fact that he fired it simply underlines the point. I

accordingly convict of him count 5. As to count 6 as it is agreed that he possessed no firearm certificate and in view of my findings on counts 3,4 and 5 I accordingly convict him of count 6 as well.



H.G.D. Graham
Judge of the Grand Court



Dated 2nd November, 2001