

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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4 INDICTMENT NO: 0032/2017
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6
7 THE QUEEN
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9 v.
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11 RUEBEN HESMER HYDES
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15 **Appearances:**

Mr. Scott Wainwright for the Crown

16
17 Mr. Nicholas Dixey of Nelson & Co. for the
18 Defendant

19 **Before:**

Justice Marlene Carter (Actg.)

20 **Judge Alone Trial:**

24th – 26th, 30th and 31st January 2018.

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22 **Delivery of Decision:**

21st March 2018
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27 **HEADNOTE**

28 *Criminal Law – Possession of an Unlicensed Firearm and Ammunition – Trial*
29 *by Judge Alone – Confession in interview – Denial at trial – Medical expert*
30 *evidence – DNA evidence.*
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34 **VERDICT JUDGMENT**
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INDICTMENT

1. The Defendant is charged on an indictment containing two counts as follows:

i. Count 1: Possession of an unlicensed firearm, contrary to s.15(1) and 15(5) of the Firearms Law (2008 Revision). The particulars of this Count are that the Defendant, on the 15th day of November 2016, at Andy Drive, Windsor Park, George Town, Grand Cayman, Cayman Islands had in his possession a firearm, namely a High-Point Model JCP Handgun which was not under and in accordance with the terms of a Firearm User's (Restricted) License; and

ii. Count 2: Possession of an unlicensed firearm (ammunition) contrary to s.15(1) and s.15(5) of the Firearms Law (2008 Revision.). The particulars of this Count are that the Defendant, on the 15th day of November 2016, at Andy Drive, Windsor Park, George Town, Grand Cayman, Cayman Islands had in his possession ammunition, namely EIGHT (8) rounds of .40 calibre cartridges which were not under and in accordance with a Firearm User's (Restricted) License. These cartridges were found in the handgun described in the first Count on the same date and at the same place.

2. The Defendant pleaded not guilty and elected trial by Judge Alone pursuant to s.129 of the Criminal Procedure Code (CPC) of the Cayman Islands.



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THE LAW ON JUDGE ALONE TRIALS

3. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a Judge in a Judge Alone trial. In **K. Richards v R**¹ Rowe JA, stated:

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

4. In **Randy Martin v R**², Mottley JA stated as follows:

“A judge sitting in a criminal case without a jury, in rendering his decision and giving his reasons for so concluding is not required to review every fact and to detail each argument on which the prosecution and defence rely as if he were summing up to a jury. The judge must set out the conclusion reached and make clear the reasons for arriving at that conclusion. He is required to have regard to any difficult or unusual points of law and to show how those points of law have in any way impacted the conclusion that he has reached.”

5. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that the Defendant was in possession of the High-Point Model JCP Handgun and the eight .40 calibre cartridges.

6. There is no burden on the Defendant to prove that he is innocent. There is no responsibility on the Defendant to do so. There is no onus on the Defendant to prove anything at all. The Defendant has no obligation to prove that he is not guilty, or to explain the evidence offered by the Prosecution.

¹ 2001 CILR 496

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)



1 7. I will not review every single detail of the evidence, but I will address my mind to the
2 important or prominent aspects of the evidence in deciding the critical issues in this
3 case. I will not decide every single point that has been raised – only such matters that
4 will enable me to determine whether the charges on the indictment have been proved.

5 8. I remind myself that I am not to speculate about things or matters that are not covered
6 by the evidence. I must have regard only to the whole of the evidence that has been
7 presented at trial and form my own judgment about that evidence.

8 9. I must consider all of the evidence in this case and if after having done so, I have any
9 reasonable doubt as to whether the Defendant is guilty or not, I must resolve that doubt
10 in favour of the Defendant and find him not guilty of the offences for which he is
11 charged.

12 10. On the other hand, if having considered the evidence I am satisfied so that there is no
13 reasonable doubt in my mind, and I am sure of the guilt of the Defendant, then it will
14 be equally my duty in law to find him guilty as charged of possession of the firearm
15 and ammunition.



THE EVIDENCE FOR THE CROWN

11. The parties submitted Admissions relating to items of agreed evidence as follows:

i. Reuben Hesmer³ Hydes is not the holder of a firearm user restricted licence in the Cayman Islands.

ii. The firearm and ammunition in question were tested and constitute a lethally barrelled firearm and ammunition for the purpose of s.15 of the Firearms Law.

iii. No issue is taken in relation to the continuity of any exhibits in this case.

iv. Leon Hydes has a previous conviction for possession of an unlicensed firearm for which he received a sentence of eight years' imprisonment. He also has convictions for offences under the misuse of drugs law.”⁴

12. It is also accepted that the ammunition in question was in the firearm at the time that it was found.

13. The parties agreed that the evidence which was called on the *voir dire* should be incorporated and form part of the evidence of those witnesses on the main trial. The evidence of the following witnesses will be dealt with in that manner:

i. Senior Detective Constable (SDC) Gregory Banks;

ii. Detective Constable (DC) Louise Daniels,

iii. Dr. Clement Von Kirchenheim; and

³ Also Hezimer

⁴ Admissions 1-4





1 iv. Dr. Arline McGill.

2 14. The Crown led the evidence of five witnesses.

3 ***Witness #1: SDC Gregory Banks***

4 15. Officer Banks was the senior Detective who led the search of the premises at Andy
5 Drive on the 15th of November 2016. He explained that the search was ordered under
6 the Misuse of Drugs Law. He described the layout of the premises at Andy Drive –
7 that there were three buildings within the compound. He stated that upon arriving at
8 the premises he encountered Jason Hydes who admitted to possessing ganja: Officer
9 Banks said:

10 *“Jason Hydes was around the back of the main house when I first encountered him*
11 *and he said: ‘Mr. Banks I have 30-35 lbs of ganja in the first room where you*
12 *found me.”*

13 16. Officer Banks said that he found him in the area of Building 2 on the compound.

14 17. Jason Hydes led the officers to various areas within the compound where ganja was
15 found.

16 18. Officer Banks described a search of the room in which a firearm was found. He
17 described that the door to the second bedroom on Building 2 had to be forced open and
18 that a female, Katrina Bodden was found in the room.

19 19. Officer Banks stated that he was not present when the officers who found the firearm
20 entered the bedroom nor did he enter it. He was only made aware that a firearm was
21 found, and he saw it after the Scenes of Crime Officer (SOCO) had made it safe. At
22 that point, it was on top of the dresser and laid on top of a handkerchief.

1 20. Officer Banks stated that 2 passports of Rueben Hydes were found in Bedroom 2 of
2 Building 2. The Defendant Rueben Hydes was not present during the search as he was
3 not at the premises.

4 21. Officer Banks stated that the Defendant could not be located and that a “wanted”
5 poster was put out for him.

6 22. Rueben Hydes surrendered to custody at the George Town Police Station on the 17th of
7 November 2016. He was taken for interview at 12:55 on that day.

8 23. In cross examination, Officer Banks agreed that Jason Hydes also took responsibility
9 for the ganja found in Building 3 on the compound in due course.

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Witness #2: PC Dwayne Simpson

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2 24. Officer Dwayne Simpson stated in evidence in chief that he attended at the premises at
3 Andy Drive on the 15th of November 2016 with other officers in order to execute a
4 search.

5 25. His evidence was that when he arrived he encountered and spoke to Jason Hydes, the
6 brother of the Defendant. He described going to a building at the rear of the premises
7 which housed two bedrooms a bathroom and a short hallway. He related that Jason
8 Hydes used a knife to pull the door to his bedroom where he pointed out a suitcase
9 which contained a large quantity of ganja. He described other items found in Jason
10 Hydes' bedroom including 2 other suitcases containing ganja.

11 26. Officer Simpson stated in evidence that after searching Jason Hydes' bedroom he
12 decided to search the second bedroom in that building. He tried the door to the 2nd
13 bedroom and found it locked. He described that he twisted the handle and braced
14 against the door and the door opened. Inside he saw a shape of someone in the bed and
15 shouted out.

16 27. When Officer Simpson entered he realized that a female was the only occupant of the
17 bedroom and he therefore sought the assistance of a female police officer, Officer
18 Lexine Welcome to assist. He left the female, later identified as Katrina Bodden, with
19 the female officer to get dressed.

20 28. When Officer Simpson re-entered the bedroom with Detective Constable Winston
21 Harrison he commenced his search. Officer Simpson stated that he saw a chest of
22 drawees on the left as he entered the bedroom. DC Harrison searched the chest of
23 drawers while he, Officer Simpson, went to search the right side of the room.

1 29. Officer Simpson states that they had been in the room for between 2-3 minutes when
2 DC Harrison brought the firearm to his attention. At the time the firearm was just
3 brought to his attention it was inside the drawer and wrapped in a purple handkerchief.
4 Officer Simpson says he first saw it out of the handkerchief when it was placed on top
5 of the chest of drawers.

6 30. Officer Simpson described that after the firearm was found the firearms officer, Brian
7 Marshall was called in.

8 31. Officer Simpson said that he was present when Officer Marshall made the firearm safe.

9 32. Officer Simpson also described that he found 2 passports in the name of Rueben Hydes
10 in that bedroom. As well there was a driver's licence in that name on top of the
11 dresser. This was the same dresser from which the firearm was recovered.

12 33. Under cross examination by defence counsel, Officer Simpson described being led to
13 the building by Jason Hydes.

14 34. Officer Simpson stated that when Detective Harrison first brought the firearm to his
15 attention it was because he had formed a view of what it was, and that DC Harrison
16 communicated that view to him. He demonstrated and explained that he, Officer
17 Simpson, touched it in the drawer and once he had done so he did not go any further
18 but called to the SOCO. He said:



19 *"I touched it and saw it had the shape of a firearm. I touched the object and the*
20 *clothes that surrounded it."*
21

22 35. Officer Simpson did not agree with the suggestion of defence counsel that the firearm
23 was unwrapped and then put back in the drawer before the photographs were taken.

1 *Witness #3: WPC Lexine Welcome*

2 36. Officer Lexine Welcome was also present at the search of the premises at Andy Drive.
3 She described being called to the building by Officer Simpson because there was a
4 female in the room. She recalled that when she entered the room, that the female was
5 not fully dressed. The officer recalled that:

6 *"I found ganja and a driver's licence in the name of Rueben Hydes. I also*
7 *recovered her cell phone as she was trying to make a call. I kept her in sight. She*
8 *appeared nervous and when she opened the drawer she attempted to move stuff.*
9 *She did not get a chance to move anything. I said stop. The laptop was on top,*
10 *more to the left side...I can't say she touched anything apart from taking up the*
11 *laptop."*

12 37. Officer Welcome stated further:

13 *"When I first saw the firearm, it was on the handkerchief in the drawer. It was still*
14 *in the drawer and I could see the handkerchief and the firearm. I can't recall*
15 *seeing when it was moved."*

16 38. Officer Welcome also states that she also saw the firearm when it was on top of the
17 dresser.

18 39. Under cross examination Officer Welcome stated:

19 *"Katrina Bodden took the laptop out of the second drawer. She said she was*
20 *looking for clothes but there were no female clothes in the drawer."*

21 40. She stated that Katrina Bodden appeared nervous to her.



1 *Witness #4: Detective Constable Louise Daniels*

2 41. Officer Louise Daniels was the officer who interviewed the Defendant on the 17th of
3 November 2016. She was not part of the search party that went to Andy Drive on the
4 15th of November. She described that the interview was recorded and that she spoke to
5 Mrs. Prathna Bodden, attorney for the Defendant by telephone before the interview
6 commenced. DC Daniels stated:

7 *"I ascertained that she was unavailable. He [the defendant] was aware he was*
8 *entitled to ask for advice."*

9 42. Under cross examination Officer Daniels stated that she had interviewed Jason Hydes
10 and Katrina Bodden before she commenced the interview with the Defendant.

11 43. DC Daniels states that she had arrested Jason Hydes for possession of an unlicensed
12 firearm. She states that at that time:

13 *"I know that you can only arrest on reasonable suspicion. I thought I had*
14 *reasonable suspicion because of the details of the matter. I believe that this was*
15 *because of or in relation to where the firearm was found. They were all arrested*
16 *on suspicion because it was in a place accessible to all at the time of arrest."*

17 44. In answer to defence counsel's questions about whether knowledge of the Defendant's
18 cognitive ability placed him in a low to average range and whether these would have
19 concerned her the officer stated:



1 *"I had no concerns with his ability to understand my questions at that time. He*
2 *was lucid. I have called stops before because I recognized certain symptoms or*
3 *behaviours. Had I been aware I would have taken those into account with*
4 *consideration had I known then which I didn't because these things were not*
5 *evident and did not appear to have any negative implications on the questions I*
6 *was asking. Nothing communicated to me that there was a problem."*

7 45. The interview of the Defendant by Officer Daniels recorded and later transcribed. I
8 have heard the recorded interview. The more salient aspects of the interview were as
9 follows:

10 i. LD: *I just wanted to make clear with you that's the reason why police*
11 *want to speak to you today, so in relation to that I'm just gonna firstly say*
12 *here to you what can you tell me about the firearm and the drugs that were*
13 *found at 23 Andy Drive.*

14 ii. RH: *It was in my room*

15 iii. LD: *Sorry this door is*

16 iv. RH: *It was in my room*

17 v. LD: *Okay*

18 vi. RH: *And I am taking full responsibility for that and the drugs them too,*
19 *you know.*



1 vii. LD: *Okay. So you're saying the gun was in your room, the drugs were*
2 *in your room, you're taking full responsibility for that. I want to ask you*
3 *some further questions about this, okay, so when did the gun come to be in*
4 *your room*

5 viii. RH: *Well I really don't, no comment, I don't want to answer that*

6 ix. LD: *Okay, Where did it come from*

7 x. RH: *No comment*

8 46. Further on, the questions and responses were as follows:

9 i. LD: *Who else knew you had the gun with you*

10 ii. RH: *No comment*

11 iii. LD: *Who else knew you had the drugs in your room*

12 iv. RH: *No comment*

13 v. LD: *When you say that the drugs, can you just clarify for me what*
14 *drugs were in your room*

15 vi. RH: [long pause], *cocaine and weed*

16 47. At another point, the questions and responses were as follows:

17 i. RH: *Umm, no comment {long pause}, umm, what I want to say right*

18 ii. LD: *Yeah*

19 iii. RH: *Can, can you pause that...*



- 1 iv. LD: *I can't say anything with you off tape, if you want to speak to our*
2 *lawyer*
- 3 v. RH: *No, I just want own up*
- 4 vi. LD: *Uh huh*
- 5 vii. RH: *for whatever*
- 6 viii. LD: *Yeah*
- 7 ix. RH: *They find in my room*
- 8 x. LD: *Uh huh*
- 9 xi. RH: *So*
- 10 xii. LD: *Please I'm asking the questions*
- 11 xiii. RH: *So*
- 12 xiv. LD: *About what's in your room at the moment*
- 13 xv. RH: *Yeah, so whatever they find in my room*
- 14 xvi. LD: *Yeah*
- 15 xvii. RH: *I want own up to it, whatever, whatever drugs*
- 16 xviii. LD: *Okay*
- 17 xix. RH: *That they found*

18 48. Again, further on in the interview the questions and responses were:

1 i. LD: *Why did you have possession of the gun*

2 ii. RH *My own protection*

3 iii. LD: *Are you a licensed firearm holder*

4 iv. RH: *No*



5 49. Other questions and responses were:

6 i. LD: *Okay. So you collect Katrina early hours of the morning on*
7 *Tuesday. Then tell me about where you go then for the rest of Tuesday*

8 ii. RH: *Wah you mean*

9 iii. LD: *So she explains that you picked her up, or she was picked up, went*
10 *to the house, you two go to your room, she goes to sleep and then you go*
11 *out, do you agree with that, you left her in*

12 iv. RH: *Yeah*

13 v. LD: *Bed at the address, is that right, okay, and from there where do*
14 *you go*

15 vi. RH *I went go get light bulbs*

16 50. Further on, responses to questions were:

17 i. LD *Okay. What belongings or property of Katrina's is at your place at*
18 *Andy Drive*

19 ii. RH: *She only brought her bag some clothes*

- 1 iii. LD: *Describe to me the bag that she brought*
- 2 iv. RH: *I nah too sure wah colour the bag was or whatever, I know say she*
- 3 *brought a bag*
- 4 v. LD: *Okay. So probably to make this a bit easier there's her clothing in*
- 5 *the bag, your stuff, is there anyone else's stuff in your room*
- 6 vi. RH: *No*

7 51. Further on, the interview read:



- 8 i. LD: *Does Katrina use drugs*
- 9 ii. RH: *No*
- 10 iii. LD: *With property that look like a woman's property so with a*
- 11 *woman's bag inside the bag there was ganja, what can you tell me about*
- 12 *that*
- 13 iv. RH: *that's mine*
- 14 v. LD: *So any ganja or cocaine located in that room would you say is*
- 15 *yours*
- 16 vi. RH: *Yeah*
- 17 vii. LD: *Was Katrina aware of the gun and the drugs in your room*
- 18 viii. RH *No*

19 52. Another section of the interview read as follows:

- 1 i. LD: *Does anyone else has access to your room*
- 2 ii. RH: *No comment*
- 3 iii. LD: *Did you*
- 4 iv. RH: *I'll be honest with you, nobody dun have access to my room*
- 5 v. LD: *Nobody has access*
- 6 vi. RH: *No*
- 7 vii. LD: *Does your room lock*
- 8 viii. RH: *Yeah*
- 9 ix. LD: *You have a key for it?*
- 10 x. RH: *Yeah*
- 11 xi. LD: *Does anyone else*
- 12 xii. RH: *No*



53. Other responses to the Officer's questions were:

- 14 i. RH *I'll be honest with you ma'am*
- 15 ii. LD: *Yeah*
- 16 iii. RH: *You're nah going turn around and you use Katrina*
- 17 iv. LD: *Sorry?*

1 v. RH: *You is not going to use Katrina now for getting me to answer that,*
2 *I understanding you*

3 vi. LD: *Uh huh*

4 vii. RH: *What was in my room*

5 viii. LD: *Yeah*

6 ix. RH *That was mine*

7 x. LD: *Okay*

8 xi. RH: *For that and what was in, in the back room*

9 xii. LD: *Okay*⁵



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Portions of the interview



DNA

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2 54. The Crown, through the witness Dr. Cheri Langston, produced a DNA report. Dr.
3 Langston's evidence was introduced as expert evidence. She examined a number of
4 items received by the Cayman Islands Forensic Science Laboratory relating to the
5 Defendant Rueben Hydes as well as Jason Hydes, Katrina Bodden and Odain Ebanks.

6 55. As far as is material, Dr. Langston examined a swab which was taken from the trigger
7 of the firearm recovered from the bedroom of the Defendant. The swab revealed a
8 multiple source DNA profile which concluded that the Defendant could not be
9 excluded as a contributor to the multiple source DNA profile obtained from the wet
10 swab of the trigger. It was estimated to be 4.9 thousand to 12 thousand times more
11 likely to observe this multiple-source DNA profile if the Defendant and two unknown
12 unrelated individuals were the contributors than if three unknown unrelated individuals
13 were the contributors. Katarina Bodden and Odain Ebanks were excluded as possible
14 contributors. In relation to Jason Hydes it was not possible to make a meaningful
15 comparison.

16 56. As far as the purple scarf in which the firearm was found is concerned Dr. Langston
17 concluded that Katrina Bodden could not be excluded as a possible contributor to what
18 was a multiple source DNA profile. This result was based on the population of the
19 Cayman Islands. Dr. Langston stated that it is 240 times more likely to observe this
20 profile if Katrina Bodden and three unknown unrelated individuals were the
21 contributors than if four unknown unrelated individuals were the contributors. Jason
22 Hydes and Odain Ebanks were excluded as possible contributors and no meaningful
23 comparison could be made between the multiple source DNA profile and the
24 Defendant.

1 57. That was the extent of the prosecution evidence.

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THE DEFENCE CASE

THE DEFENDANT

58. The defendant gave evidence on his own behalf and his evidence was:

"I was not there when the police were at the premises. My car had problem and I went to West Bay."

59. The Defendant states that he had a call from his sister about midday and that it was at this time that he found out that Katrina Bodden and Jason had been arrested.

60. The Defendant states that he gave himself in two days later because he did not want his family and girlfriend to get in trouble.

61. The Defendant stated in evidence that he first heard about a gun when the police read out what he was being charged for and he recounted to the court:

"I say in my mind I don't know nothing about that but I never really answer him."

62. He stated that during the course of the interview:

"...I took full responsibility. I owned up because I was frighten to hear the charges there were putting to me and [Katrina Bodden] was locked down and I did not want her to get in no trouble."

63. The Defendant also stated, in relation to his brother, Jason Hydes, that he:

1 *“...never want him get no trouble neither. Jason had been in trouble*
2 *before. I thought he would probably get sent back to prison.” and “no one*
3 *explained how serious these allegations were. I never knew it was a*
4 *lengthy prison sentence of at least 7 years. I was just frighten.”*

5 64. When the Defendant gave further evidence on the main trial he stated as follows:

6 *“When I spoke to the court last week I did not exactly tell the court*
7 *everything. If I had a gun I would have it for my own protection. I did not*
8 *tell them that I know about the gun. I took responsibility for everything in*
9 *my room.”*

10 65. The Defendant stated that what he had said in the interview was not the truth.

11 66. The Defendant stated that he did not know there was a gun in his room and that he only
12 knew about the drugs which he had for personal use. He said:

13 *“I did not know about the gun but I know about ganja and cocaine.”*

14 67. The Defendant states that he told those lies because he did not want his brother and
15 girlfriend to get into trouble.

16 68. Upon being shown the photographs in Exhibit 1 the Defendant maintained:

17 *“I see the photograph of the gun. I have never seen it before in real life. I*
18 *did not know it was there no one told me a gun was there... I did not have*
19 *a gun for my own protection.”*



1 69. In cross examination the Defendant gave the following evidence:



2 *"I have slept in that bedroom for about 2 years probably even more. I*
3 *have been with [Katrina Bodden] for about a year before August 2016.*
4 *She sometimes slept in that bedroom. The Bedroom door had a lock on it*
5 *and I had a key to get in and out. [KB] did not have a key...No one else*
6 *had a key."*

7 70. The Defendant stated in relation to the drawer in which the firearm was found:

8 *"I kept clothes in there. ...The last time I opened that drawer I am not too*
9 *sure, it's been a while."*

10 71. The Defendant went on to explain that the clothes in the drawer were items that he
11 would wear to go out so he would not wear these on a daily basis. He also said in
12 cross examination:

13 *"At the time of the police search, I am not sure, only me and my girlfriend*
14 *had access to the room."*

15 72. The Defendant said that he had never seen his girlfriend with a firearm. However, he
16 offered that it could have been Katrina Bodden or Jason Hydes who could have opened
17 his room and put the firearm there.

18 73. The Defendant denied that he kept documents on top of the chest of drawers and
19 denied that he would have left his passport out in the open on top of the chest of
20 drawers.

21 74. The Defendant states that he was not telling the police the truth in the interview.

1 75. The Defendant agreed that he understood the questions that were asked in the
2 interview.

3 76. The Defendant's evidence was:

4 *"I don't know why I didn't [deny it] maybe because I was just frighten and*
5 *they were asking questions. I don't know why I did not just say I don't*
6 *know anything about it. I don't know I was getting into more trouble. I*
7 *don't know it is illegal to have a gun. I don't know nothing about the gun.*
8 *It was not my gun."*

9 77. I remind myself that I will treat the Defendant's evidence as I would any of the other
10 witness at trial in seeking to assess its credibility, truthfulness or reliability. If after
11 hearing the evidence of the Defendant I am left in a state of reasonable doubt as to the
12 prosecution's case, then I must find the Defendant not guilty and resolve that doubt in
13 the Defendant's favour. If however I am not convinced of the credibility or
14 truthfulness of the Defendant's account I must still go back to consider the evidence
15 led by the Prosecution to determine whether, on the strength of the prosecution's
16 evidence, I am sure of the Defendant's guilt or not.



1 *EXPERT MEDICAL EVIDENCE ON BEHALF OF THE DEFENDANT*

2 78. Apart from the Defendant, two doctors were called for the defence. The reports of
3 both doctors were tendered into evidence at the trial and both were accepted as expert
4 witnesses.

5 *DR. CLEMENT VON KIRCHENHEIM*

6 79. Dr. Clement Von Kirchenheim, a clinical psychologist, produced a psychological
7 report relating to the Defendant. This report revealed that the Defendant was illiterate
8 and that his cognitive ability was in the low average range. The Doctor concluded that
9 it was more likely than not that this was as a result of significant learning disabilities.
10 The assessment revealed various traits. The doctor noted that:

11 *“Although he is typically able to function adequately, periods of marked*
12 *emotional, cognitive or behavioural dysfunction are likely.”*



13 *“He may be guarded and indifferent emotionally to help deaden his excess*
14 *sensitivity, but this only results in deep feelings of loneliness, isolation,*
15 *and a disturbing mixture of anxiety, sadness, anger and guilty. Except for*
16 *the occasional impulsive outburst, he is conciliatory, placating,*
17 *ingratiating and self-sacrificing.”*

18 80. The doctor's opinion was that the Defendant's traits suggested the presence of a major
19 depressive disorder as well as a prominent generalized anxiety disorder.

20 81. Extended periods of drug abuse were also indicated which the doctor suggested were
21 *“likely employed to moderate the anxieties and personal inadequacies he feels in his*
22 *social relationships.”*

1 82. The doctor concluded that the Defendant would have difficulties with sequencing and
2 understanding the court proceedings, but given adequate time, explanations and
3 language was kept at a basic level he was fit to plead.

4 83. Dr. Von Kirchenheim gave his opinion that a number of the traits that he identified in
5 the Defendant may be associated with persons who make false confessions, but he
6 could not state that this was a causative effect, definitively leading to such a conclusion
7 in the Defendant's case.

8 84. While the doctor agreed that the Defendant presented a complex picture of someone
9 below average intelligence and cognitive ability, coupled with his disorders and
10 personality traits, he did not conclude that these represented such a significant
11 difference from the norm such that they would render the Defendant's confession
12 unreliable or a false confession.

13 85. In answer to counsel for the Crown he agreed that after interviewing the Defendant and
14 also having seen the transcript of the interview the Defendant is able to answer
15 straightforward questions with straightforward answers.



DR. ARLINE MCGILL

86. The psychiatrist Dr. Arlene McGill was also called as an expert witness by the defence.

87. Dr. McGill reported that the Defendant's screening forms suggested prominent features of Attention Deficit Hyperactivity Disorder (ADHD), Dyslexia, major depressive symptoms with prominent anxiety and mild free floating suicidal ideation. She also reported that he had difficulty with abstract reasoning but that his practical reasoning skills were within normal limits.

88. Dr. McGill therefore concluded that the Defendant demonstrated a mild to moderate depressive disorder with moderate anxiety disorder with panic. She noted that these may be sequelae to a post traumatic syndrome from childhood which is self-medicated with cannabis. Dr. McGill offered that cannabis was effective at eliminating some of the symptoms associated with the Defendant's disorders that she had identified.



1 *THE REPORT OF DR. SUSAN POPE*

2 89. Dr. Susan Pope's DNA report was introduced for the defence and was unchallenged by
3 the Crown.

4 90. Dr. Pope agreed with Dr. Langston's assessment of the DNA results produced upon
5 examination of the items recovered from the premises at Andy Drive that were sent for
6 testing and had been examined by Dr. Langston.

7 91. However, Dr. Pope went further to state that the statistical evaluation provided did not
8 consider the mechanism, either direct or indirect, by which any DNA found on these
9 items was deposited, nor the time at which it may have been deposited upon the items
10 where relevant DNA was identified.

11 92. Dr. Pope went further than Dr. Langston and opined that Jason Hydes could be
12 eliminated as a possible contributor to the mixed DNA profile swab which was taken
13 from the trigger of the firearm recovered from the bedroom of the Defendant.

14 93. Dr. Pope agreed with Dr. Langston's conclusions with regard to Katrina Bodden and
15 the purple scarf found in the same drawer of the dresser in which the firearm was
16 found.

17 *"This result was inconclusive in respect of whether or not Rueben Hesmer*
18 *Hydes, the Defendant, could be a contributor and so no conclusion could*
19 *be drawn on this."*



1 94. Dr. Pope's evidence on the issue of secondary transfer is relevant. Her report was to
2 the effect that:

3 *"If clothing regularly worn by Rueben Hydes was stored in a drawer then*
4 *traces of his DNA would be expected to be on the clothing even after*
5 *washing. This could potentially be transferred onto the firearm in*
6 *sufficient quantity to give the type of weak result seen on the trigger....The*
7 *DNA profile would give the same result however it was deposited..."*

8 95. Dr. Pope concluded that, in the absence of experimental data, there is no scientific
9 basis for assigning a weight of evidence to possible direct or indirect (secondary)
10 transfer in this case. Dr. Pope quite helpfully set out that even if it were to be accepted
11 that DNA from Rueben Hydes is present on the trigger of the firearm, then the DNA
12 result does not assist in determining:

13 i. "Whether Rueben Hesmer Hydes was the last person to touch the trigger
14 before it was recovered;

15 ii. How long ago the DNA from Rueben Hesmer Hydes was deposited on the
16 trigger;

17 iii. The mechanism by which the DNA from Rueben Hesmer Hydes was
18 deposited on the trigger, including whether it was left directly (primary
19 transfer) or indirectly via an intermediary (secondary transfer);

20 iv. Who the other donor(s) of DNA on the trigger were."⁶

21 96. That was the extent of the evidence led at trial.

⁶ a-d of page 23 of Dr. Pope's report

1 *CLOSING SUBMISSIONS*

2 97. Both counsel for the Crown and for the Defendant addressed the Court at the close of
3 the evidence. I remind myself that the opinions and arguments of counsel are not
4 evidence in this case. These opinions and arguments have been placed before the
5 Court for consideration, but I am not bound by them.

6 *THE PROSECUTION'S SUBMISSIONS*

7 98. The Crown asks this court to consider their case against the defendant as having three
8 strands:

9 i. *The location and circumstances of discovery of the firearm:*

10 a) Only the Defendant and his girlfriend had use of the Defendant's
11 bedroom.

12 b) The Defendant admits that items of his clothing were found in the
13 same drawer as the firearm.

14 c) The attempts by the Defendant to distance himself from the drawer
15 during cross examination.

16 d) The location in which the gun was found was readily accessible by
17 the Defendant.

18 e) Items found on the top of the chest of drawers in which the firearm
19 was found, two passports and a driver's licence, were items of
20 personal value and importance to the Defendant.



1 ii. The confession interview:

2 a) The Defendant, despite having certain mental issues and despite
3 any features of his medical or psychological makeup, was well
4 capable of giving straightforward answers to straightforward
5 questions.

6 b) It was accepted that there was no element of trickery or vagueness
7 or ambiguity in the questions asked and the answers given and
8 there was no suggestion of pressure, coercion or ambiguity.

9 c) The Defendant was asked a specific question about a firearm and
10 he gave a specific answer.

11 d) If the Defendant were in fact scared, one would have expected that
12 he would have denied it or disowned it - not accepted it.

13 e) Was the Defendant trying to place the blame on Katrina Bodden:
14 The fact that KB may have known of the presence of the weapon
15 does not obviate the Defendant from liability as knowledge,
16 custody and control are elements of possession. Her possible
17 knowledge was no defence to the charge against the defendant.

18 iii. DNA: While the Crown accepted that the DNA report suggested only a
19 weak result, this was not conclusive of the prosecution case. Court may
20 choose to attach weight to it as it sees fit.



1 *THE DEFENCE SUBMISSIONS*

2 99. The Crown's case on each aspect must be cogent for it to be successful.

3 i. Access and occupation of premises:

- 4 a) Rueben Hydes not present when premises were searched.
- 5 b) The door was forced, that is, Katrina Bodden did not let the police
- 6 in.
- 7 c) Jason Hydes could have had access to the Defendant's room as it
- 8 was the same sort of door that he had forced in the other bedroom
- 9 to let the police in.
- 10 d) Two others – Katrina Bodden and maybe Jason Hydes had access
- 11 to the room.



12 ii. Behaviour of Katrina Bodden:

- 13 a) Nervous of going to drawer in which the firearm was found.
- 14 b) No female clothes in that drawer.
- 15 c) All of her clothes in the silver bag – but her laptop was recovered
- 16 from the drawer.

17 iii. On the issue of custody and control:

- 18 a) Defence admits that KB and her movements do not take the
- 19 Defence case very far but absent the confession and DNA the
- 20 court may have to acquit.

1 iv. Where issue is knowledge and control, exclusion of others must be shown:

2 a) Does Crown have to disprove Katrina Bodden's possession and
3 control? The girlfriend is present when Defendant is not and the
4 girlfriend going into the drawer means that the Crown have to
5 disprove on the basis of *Ritchie*⁷ that it was her gun and disprove
6 that she had control of it.

7 b) The fact that it was his premises is not sufficient evidence to prove
8 knowledge.

9 v. DNA evidence:

10 a) Three individuals disturbed the drawer before the firearm was
11 recovered.

12 b) Both experts agree that the DNA is a weak result and the Defence
13 expert's evidence is that it could be consistent with transfer from
14 clothes.

15 c) On the question of weight, the DNA does not take the prosecution
16 case much further and Defence says that Court should not give any
17 weight to it at all.

18 vi. Confession poor:

19 a) Bare admission without detail. There is no detail to show whether
20 his mind guilty or not.

⁷ Per Bingham, Ag. J. 30th April 1993

- 1 b) The Expert's/Experts' warning is to take care.
- 2 c) Defendant admits to Jason Hydes' drugs in the house.
- 3 d) The veracity of the confession should be given very little weight.
- 4 e) Defence maintains this is a False confession

5 vii. Is this a false confession:

- 6 a) Medical evidence to say that he would tend to be a personality
- 7 which may confess in order to relieve the immediate pressure he
- 8 may feel in this case.
- 9 b) Medical evidence unchallenged.

10 viii. Incriminating interview but exculpatory live evidence. The Defendant may

11 understand the questions but did he give truthful answers – evidence

12 should be treated with caution.

13 ix. Is the prosecution case so overwhelming in all of these circumstances?

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1 *ANALYSIS AND CONCLUSION*



2 *The Confession*

3 100. Defence counsel suggested that the findings by the doctors should be considered by
4 this Court when it is making its determination on the matter of the veracity of the
5 Defendant's confession that is, whether the Court could be sure that it was not a false
6 confession given in order to protect his girlfriend and his brother.

7 101. The Defence goes further to submit that this medical evidence should cause the Court
8 to consider closely whether the Defendant would tend to be a personality which may
9 confess in order to relieve the immediate pressure he may feel in this case. Defence
10 counsel underscores that the medical evidence was unchallenged.

11 102. I do not accept the submission by the Defence that the Defendant's
12 medical/psychiatric/psychological makeup and personality traits are such as to render
13 his confession unreliable or unsafe.

14 103. The doctors were both clear as to the Defendant's character traits, and neither could
15 state that the personality traits and psychological conditions displayed by the
16 Defendant were significant enough for them to conclude that he was of a personality
17 type to make a false confession.

18 104. This Court has heard the record of the interview and has observed the Defendant as he
19 gave evidence. There is no question in my mind that the confession was voluntarily
20 given. The fact that the Defendant was stressed – even given his personality traits – is
21 not such as to cause me to find that the confession is unsafe and that I should not rely
22 on it in assessing whether the Crown have proved their case against the Defendant to
23 the requisite standard.

1 105. The questions asked during the interview were straightforward and the Defendant had
2 no difficulty in understanding them as he gave clear answers to them.

3 106. The Defendant was not tricked into answering any questions during the interview.
4 When questioned in cross-examination, the Defendant admitted that he had understood
5 the questions asked. His answers to the direct questions on interview were that he had
6 possession of the gun and that he had it for his own protection.

7 107. This Court notes that when the Defendant gave evidence at trial he attempted to
8 characterize what he had said in interview as a hypothetical question, instead stating:

9 *“I said if I had a gun it would be for my own protection.”*

10 108. This Court has heard the record of interview and it is clear that the Defendant did not
11 answer the question posed on the interview in this way. The record as set out at
12 paragraphs 45 - 53 above is a true record of what the Defendant stated in answer to the
13 question posed by Officer Louise Daniels: Why did he have possession of the gun.

14 109. The apparent lack of further detail is not such that the Court should find that the
15 Confession is unreliable or false.

16 110. The Defendant, after having the benefit of counsel, was happy to answer the questions
17 asked. He confessed to having possession of the firearm quite early on in the interview
18 and it is obvious that the interviewing officer was attempting to get further details from
19 the Defendant when he asked to speak to his attorney for a second time. After this
20 second conversation with his attorney the Defendant answered no comment to all
21 questions asked.
22



1 111. It was clear at the outset of the interview that the Defendant understood that he had a
2 choice of whether he wanted to answer the questions posed by the officer or not. He
3 said:

4 *"She told me I could go ahead and give a statement and she said it was all*
5 *up to me if I want to give a no comment statement."*

6 112. The Defendant stated to this Court that he took responsibility for the firearm because
7 he was *"frightened to hear the charges they were putting to me"* and because his
8 girlfriend was locked up and he did not want her to get into trouble. He went on to
9 state:

10 *"No one explained how serious these allegations were. I never knew it*
11 *was a lengthy prison sentence of at least 7 years. I was just frighten."*

12 113. In cross examination the Defendant also stated: *"I don't know it was illegal to have a*
13 *gun. I don't know nothing about the gun."* Also: *"I did not understand that I could get*
14 *in more trouble"*

15 114. I note that one of agreed Admissions on the evidence was that the Defendant's brother,
16 Leon Hydes, had a previous conviction for possession of an unlicensed firearm for
17 which he received a sentence of eight (8) years' imprisonment.

18 115. While it was never directly suggested to the Defendant that he must have known how
19 serious the allegations were, and that they attracted a lengthy prison term because of
20 his brother's conviction and sentence, I do not accept that the defendant was telling the
21 truth about his lack of knowledge about the seriousness of the allegation to which he
22 was admitting.



1 116. I accept the confession is evidence against the Defendant.

2 *Custody and Control of the firearm*

3 117. The firearm in question was recovered in the drawer of a chest of drawers belonging to
4 the Defendant in the Defendant's room.

5 *Access to the room*

6 118. The Defendant said in his evidence that he had slept in the bedroom in which the gun
7 was found for about 2 years, and probably even more, before the incident.

8 119. The Defendant agreed that the bedroom door had a lock on it and he had the key to get
9 in and out. He stated that Katrina Bodden did not have a key and that no one else had a
10 key.

11 120. Yet, in cross examination the Defendant's evidence was that at the time of the police
12 search he was not sure that only he and his girlfriend had access to the room. When
13 asked, the Defendant went on to say that it could have been Katrina Bodden or his
14 brother Jason who opened his room and put the gun in there. I note here that it was
15 never suggested to the police that the door appeared to be forced before they broke in
16 and I remind myself that the Court should not speculate on this point.



1 *The position of the firearm in the room*

2 121. In his interview with Officer Daniels the Defendant was adamant that Katrina Bodden
3 knew nothing of the gun yet when he gave evidence at trial he seemed to resile from
4 that certainty and offered a weak response – saying that it could have been his brother
5 or his girlfriend who put the gun there. The gun was found wrapped in a handkerchief.
6 The defendant's DNA did not appear on the handkerchief but it did appear on the
7 trigger of the gun, albeit, a weak result.

8 122. The Defendant's answers in cross examination were noted by the Court. The
9 Defendant repeatedly sought to distance himself from the clothes that he admitted were
10 his in the drawer in which the firearm was found.

11 *Principles relative to possession*

12 123. The Court was referred to the case of *Brandon Leslie Ebanks*⁸ by the Defence. I do
13 not find that case useful in my determination of the guilt of the accused in this case. In
14 *Ebanks* the court was concerned with the possession of a firearm that was found in a
15 car which the accused had borrowed from his girlfriend earlier in the evening. The
16 court found that:

17 *“Custody and control of everything in somebody else's car is not*
18 *established by the mere fact that the car is driven on a one time basis by*
19 *the accused.”*



⁸ Ruling of Levers J. of 4th April 2017, Ind#16/07

1 124. In the instant case, the room in which the firearm was found was the Defendant's
2 room, which he admitted that he had occupied this room exclusively for at least two
3 years before the firearm was found. The facts of the case distinguish themselves
4 entirely from the finding in *Ebanks*.

5 125. The Defence also asks the Court to review the case of *Ritchie v R*⁹. In that case the
6 issue was the possession of cocaine found in a guest bedroom of the Appellant's home.
7 The evidence was that there were 6-8 guests in the house on the day that the drugs
8 were found.

9 126. The Court of Appeal of England and Wales held that mere occupation of the premises
10 was not sufficient evidence that the Appellant was in possession of the drugs. The
11 Court had to be satisfied that he had control of the drug to the exclusion of all of the
12 other persons present on the premises that day.

13 127. The case for the prosecution in *Ritchie* was, at best, that any one of the persons present
14 could have placed the drug in the bathroom in which it was found. The prosecution in
15 *Ritchie* could not exclude possession of all the other persons present.

16 128. In the instant case, the firearm was found in the Defendant's own bedroom – which he
17 admits that he occupied exclusively, except when his girlfriend visited and for which
18 he alone had a key and to which he states he alone had access. These facts are
19 distinguishable from the facts in *Ritchie* on the very aspects and factors that must be
20 considered in order to attribute possession.

21
22

⁹ Per Bingham, Ag. J. 30th April 1993



1 129. I remind myself of the definition of "possession" set out in s.3 of the Penal Code as
2 follows:

3 *"possession" includes not only having in one's own personal possession,*
4 *but knowingly having anything in the actual possession or custody of any*
5 *other person, or having anything in any place (whether belonging to or*
6 *occupied by oneself or not) for the use or benefit of oneself or any other*
7 *person, and if there are two or more persons and any one of them or more*
8 *of them with the knowledge and consent of the rest has or have anything in*
9 *his or their custody or possession, it shall be deemed and taken to be in the*
10 *custody and possession of each and all of them;"*

11
12 ***DNA EVIDENCE -***

13 ***EXTENT TO WHICH IT CAN SUPPORT THE PROSECUTION EVIDENCE***

14
15 130. Having carefully considered the evidence of the experts, I find that the DNA found on
16 the trigger of the firearm is not conclusive as to the Defendant's custody, control or
17 power over the firearm. Although it may tend to show that the Defendant is associated
18 with the firearm and it is one of the factors that the Court can look to in determining
19 whether he was in possession of the firearm on the date in question, I do not attach
20 much weight to this result which is accepted by the Crown and the Defence as being, at
21 most, a weak result. It does not add much to the Crown's evidence against the
22 defendant in this case.



1 *CONCLUSION*

2 131. I have listened to and considered all of the evidence in this case.

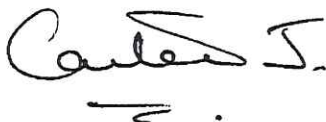
3 132. I am satisfied that the Defendant's record of interview was voluntary.

4 133. I reject the Defendant's evidence that he was lying when he admitted possession of the
5 firearm on interview.

6 134. I find that the evidence on the Crown's case of the finding of the firearm, and the
7 defendant's custody or control of the firearm in the Defendant's room, bolster the
8 Defendant's admissions and the record of interview.

9 135. I am satisfied to the requisite standard, beyond a reasonable doubt, that the accused had
10 possession of the High-Point Model JCP Handgun and eight (8) rounds of .40 calibre
11 cartridges, contrary to s.15(1) and s.15(5) of the Firearms Law.

12
13 **Dated this the 21st March 2018**

14 

15 **Madam Justice Marlene Carter**
16 **Acting Judge of the Grand Court**

