

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)**

CASE NO. ANUHCR2024/1002

BETWEEN:

THE KING

-and-

DONTE HUNKINS

Appearances:

Mr. Curtis Cornelius for the Crown

Mr. Daniel Lawrence for the Defendant

2025: May 13th
July 18th

JUDGMENT

[1] **BAKRE, J.:** The defendant, a 21 year old boy was charged with two count of aggravated robbery and robbery. The amended indictment filed on 13th of May 2025 has the following two counts:-

Count One. Aggravated Robbery. Contrary to Section 33(1) (a) of the Larceny Act, Laws of Antigua and Barbuda. (As amended by Section 3 of the Larceny (Amendment) Act 2017).

**Count Two. Robbery contrary to Section 33(2) of the Larceny Act
Laws of Antigua and Barbuda.**

PLEA

- [2] Upon arraignment, the defendant pleaded guilty to the second count of the indictment. The prosecution did not however accept the plea to the alternative charge of robbery and insisted on trial of the first count. Thus the trial for the charge of aggravated robbery was set.

JURISDICTION

- [3] Trial was held on 13th day of May 2025 and 14th May 2025, under the Criminal Proceedings (Trial by Judge Alone) Act No. 8 of 2021, (as amended by Act No. 7 of 2022). Section 4, makes it mandatory for some offences to be tried by a Judge, sitting alone without a jury. The Judge therefore is the forum of both the law and of fact in this case.
- [4] As in any criminal case, the burden of proof rests squarely upon the Crown. The Crown must also prove its case beyond reasonable doubt. The defendant is under no obligation to prove his innocence.

EVIDENCE AT TRIAL

- [5] The basic fact is that on the 11th day of February 2023, the virtual complainant (herein subsequently referred to simply as VC), a 63 year old retiree had parked his car, a Honda CRV with registration number A 46685 at Ni Hao supermarket on Cassanda Gardens road leading to Staples Night Club.
- [6] The VC came out of the supermarket into his car and just as he drove a few blocks, he noticed movement at the back seat and the defendant, who had hid there while he was in the supermarket jumped to the front seat beside him and according to the Virtual complainant, he pointed a chrome colored gun with a design on it towards him and asked him to get down from the car.

- [7] The VC said he was scared but he still made to the defendant a statement like “why are you doing this” and in order to avoid getting shot, he came down from the car and the defendant made away with the car.
- [8] The prosecution called five witnesses including the virtual complainant who gave testimony on how he was robbed reiterating that the defendant pointed a gun at him. He said he reported the incident to the police afterwards.
- [9] Under cross examination, the VC stated that he saw the gun and described it as chrome colored gun with design on it. He said he saw the gun for about a minute and that is why he knew it was chrome colored and with design. He said he was not hit physically neither was he verbally threatened.
- [10] Four police officers also gave evidence. Each in respect of the aspect of investigation undertaken by him. Officer Kenny McBurne described how the accused was arrested for over speeding a few days later and was interrogated for his driver’s license and ownership of the car.
- [11] The defendant upon being arrested for over speeding was taken to the police station and asked to produce his aunty that owned the car while the car was impounded and he was released. He never did.
- [12] Maurice Benta was the investigation officer. He visited the scene and eventually called Virtual complainant to identify the car when the car was found. Officer Benta obtained a search warrant with which a search was carried out in the house of the accused. Several items including the original plate number of the car was found in the house of the accused.

ANALYSIS OF FACTS

- [13] I stated earlier that the defendant pleaded guilty to the alternative count of robbery which the prosecution refused and opted to go to trial for the offence of aggravated robbery.

- [14] The fundamental difference between the offence of aggravated robbery and robbery is the use of firearm or a weapon of offence.
- [15] In the circumstance, the issue before the court is thus whether there was the use of gun as alleged by the VC during the robbery. In the determination of that the court is enjoined to look at the case presented by the prosecution through the witnesses.
- [16] The defendant had denied the fact that he used a gun at the point of the robbery. The testimony of the police officers who gave evidence is that they obtained a search warrant and made a search on the premises of the defendant shortly after the incident but they did not find any gun in his house. There was also no gun found in the car or by anyone in the course of the investigation.
- [17] The only time an issue of a gun was raised is when the VC stated that he was attacked with a gun.
- [18] Prior to coming to court to give evidence, on the 23rd day of February 2023 shortly after the robbery that had taken place on the 11th day of February 2023, the virtual complainant gave a statement to the police regarding the incident. In his statement, he stated, even at that early stage that he was attacked by a slimly built young man in black cloth with a silver gun with a brown handle.
- [19] In the course of the trial, the Virtual complainant, Mark Paul also gave testimony that he was attacked by the defendant with a gun. This time around, he described the gun as chrome colored gun.
- [20] The virtual complainant said he was afraid that he would be shot so he obeyed the boy and got down from the car. He stated also that he told the boy, "why are you doing this". This however was not part of his statement that he gave to the police.
- [21] Upon cross examination, the VC insisted that he actually saw the gun for about a minute before he exited the car.

- [22] At this point, this court is confronted with the testimony of the virtual complainant Mr. Mike Paul and the unsworn statement of the defendant. The court is reminded that the accused person has no duty to prove his innocence and it is the duty of the prosecution to prove his guilt.
- [23] In this instance, though the defendant chose not to give testimony, his unsworn statement is that he did not rob the VC with a gun. The evidence of the police is that they were not able to recover any gun upon the search of the defendant's house. This court is thus left with the evidence of the virtual complainant only.
- [24] In considering this evidence, I have looked at the fact that the virtual complainant did tell the police at the earliest time that a gun was used to rob him and it was the fear of this gun that made him exit the car and give it up to the defendant. In the statement, he had described the gun as silver with brown handle.
- [25] In his testimony, he maintained that he was attacked with a gun and that the gun was chrome colored with a design on it. He said he had seen the gun for about a minute and also that he spoke to the defendant and asked why he was doing this.
- [26] I have tried to compare the testimony of the Virtual complainant with the statement he gave to the police. I see that he actually described the gun in two different ways. His description of the gun with which he was attacked in his statement of 23rd February 2023 is silver with a brown handle, while in his testimony, he described the gun as chrome with design on it.
- [27] I also consider the circumstances described both by the VC and the Defendant and wonder if there was actually enough time for the VC to actually comprehend exactly what he saw or what was happening at that moment.
- [28] I imagined a situation where as stated by the virtual complainant, that he had left his car and came back within five minutes into the car, started the engine and moved for about a block only to be jumped by a young man from his back seat while he was driving at about 7 am in the morning. He said the boy dressed in all black

jumped from the back seat to the seat beside him. I imagine the shock that he would be in.

- [29] It is difficult however for me to understand if in that state, an average man confronted by that situation would be able to look at a gun pointed at him in order to see the features on it. The VC said he was in shock, he said he was afraid that he might be shot however, he also said he was there for about a minute and even asked his assailant, why are you doing this. These to my mind do not show the attribute of someone in a state of shock.
- [30] I can comprehend the shock that a man in that state would be. I agree that it is shocking enough to see a man jumped from the back seat of one's car (when you believed there was no one with you in the car). It is my view that the shock is better imagined. I am of the view that a man confronted with that situation would be in total shock and his ability to comprehend what was happening would be limited.
- [31] In that situation, an average man is likely to simply obey what his assailant says, I presume that he would not know if the assailant was alone and the most likely reaction would be to protect his life. It is my understanding that in such a situation, such a man would not spend a minute to take a close look at a gun or even see if the assailant actually has any weapon before he starts to obey.
- [32] The above notwithstanding, I consider whether it is reasonable for the defendant to actually attempt to jump on an unsuspecting victim without any form of weapon to try and hijack his car.
- [33] There is nothing on record to show that the VC was a targeted victim to whom the Defendant had calculated the risk and imagined that could be over powered without a weapon. I am unable to understand that the defendant actually attempted to use his mere voice to scare the Virtual complainant to get down of the car.
- [34] As a trial judge, I had the opportunity of seeing the virtual complainant. He looked relatively frail. While I agree that he may have been scared with the unexpected appearance of a young by in his car and would immediately be in shock. I am unable

to understand that the defendant who did not have a prior knowledge of who his victim would be and what his strength might be, planned to rob a car with only a scare.

[35] I also had the privilege to hear the defendant give his unsworn statement. I observed that he is a slim young man with very soft voice. I had to tell him on several occasion to speak up so I could hear him. Looking at the defendant, I am at loss whether a victim would be scared to merely listen to him and be scared without a weapon.

[36] All these notwithstanding the whole set of facts makes it rather difficulty to see clearly that there was a weapon used in the robbery. The use of a gun was not clearly proved in my view.

[37] It is a fundamental principle of criminal law that where the court entertains doubt, it would be resolved in favor of the accused. There is a presumption of innocence in favor of the accused.

[38] In this instance, based on all the circumstances. This court is unsure that a gun was used by the defendant in the commission of this offence. This is because of the contradictory description of the gun that the VC said was pointed at him when he gave his testimony and also the statement he gave to the police at the earlier time. Also the court considers that despite the fact that a surprise search was conducted on the home of the defendant, no gun was found.

[39] I have stated above that the difference between the offence of aggravated robbery and the offence of robbery that the defendant pled guilty to is basically the use of a weapon. I am unable to agree with the prosecution in this case that there is a proof beyond reasonable doubt that a gun was used in the commission of this offence.

CONCLUSION

[40] In conclusion, I am unable to find the Defendant guilty of aggravated robbery in this instance. Having pleaded guilty however to the alternative offence of robbery, the accused is hereby convicted for the offence of robbery.

Tunde A. Bakre
High Court Judge

By The Court

Registrar

