

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

4 IND. NO: 0002/2018
5
6

7 THE QUEEN
8

9 v.
10

11 ELMER WATLER WRIGHT
12
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14

15 Appearances:

Mrs. Nicole Petit for the Crown

16 Mr. Keith Myers for the Defendant
17
18

19 Before:

Justice St. John-Stevens (Actg.)

20 Heard:

23rd and 24th January 2020
21
22
23



24
25 HEADNOTE

26 *Criminal Law – Possession of an Unlicensed firearm (ammunition), Possession*
27 *of a Bullet Proof vest – Trial by Judge Alone.*
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31 VERDICT JUDGMENT
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- 1 1. This defendant, Elmer Walter Wright, is charged upon an indictment containing
2 two counts, namely:
3 a. Count 1 – Possession of an Unlicensed Firearm (Ammunition) contrary to s.15
4 of the *Firearms Law* (2018 Revision), and;
5 b. Count 2 – Possession of Bullet-proof Vest contrary to s.15 of the *Firearms*
6 *Law* (2018 Revision)

8
9
10 **THE LAW & LEGAL DIRECTIONS**

11
12 **Judge - Alone Trial**



- 13
14 2. This defendant has elected to be tried by a Judge alone pursuant to s.129 of the
15 *Criminal Procedure Code* (2014) which reads:

16 *"If an accused person is of the opinion that, due to the nature of the case or of*
17 *the surrounding circumstances, a fair trial with a jury may not be possible, he*
18 *may,, elect to be tried by a Judge alone... ..;*

- 19
20
21
22 3. I remind myself of the approach that I must adopt. To this end I have reviewed a
23 number of authorities.

- 24
25 4. The Cayman Islands Court of Appeal (CICA) first dealt with the duties of a Judge
26 in Judge Alone trials in its judgment in *K. Richards v. R*¹ when Justice Rowe
27 stated:

28 *"When a trial judge sitting alone has advised himself to the applicable*
29 *principles of law, and given himself any necessary warning, he must indicate*
30 *clearly in his judgment his reasons for acting as he did, in order to*
31 *demonstrate that he has acted with the requisite degree of caution in mind and*
32 *has therefore heeded his own warning. No specific form of words is necessary*
33 *for this demonstration, what is necessary is that the Judge's mind upon the*
34 *matter should be clearly revealed."*
35

¹ 2001 CILR 496



1 5. In *R v. Dave Kennedy Whittaker*², the CICA gave some guidelines regarding the
2 duties of a Judge in Judge Alone trials. In the Judgment of Mottley J. adopted the
3 Judgment of the former Lord Chief Justice of Northern Ireland Lord Lowry in *R v.*
4 *Thompson*³ in which he stated at page 83:

5
6 *"While on the subject I might say a word on the duty of the judge when giving*
7 *judgment in a trial under the 1973 Act. He has no jury to charge and therefore*
8 *will not err if he does not state every legal proposition and review every fact*
9 *and argument on either side. His duty is not as in a jury trial to instruct laymen*
10 *as to every relevant aspect of the law or to give a full and balanced picture of*
11 *the facts for decision by others. His task is to reach conclusions and to give*
12 *reasons to support his view and, preferably, to notice any difficult or unusual*
13 *points of law in order that if there is an Appeal, it may be seen how his view of*
14 *the law informed his approach to the facts."*

15
16
17 6. The CICA in *Randy Martin v. R*⁴ delivered their reasons for dismissing the Appeal
18 on the 7th December 2010. Mottley J.A. again adopting *R v. Thompson*⁵ also
19 adopted *R v. Thain*⁶ where Lowry LCJ said at page 478:

20
21 *"Where the trial is conducted and the factual conclusions are reached by the*
22 *same person, one need not expect every step in the reasoning to be spelled out*
23 *expressly, nor is the reasoning carried out in sealed compartments with no*
24 *inter-communication or overlapping, even if the need to arrange a judgment in*
25 *a logical order may give that impression. It can safely be inferred that, when*
26 *deliberating on a question of fact with many aspects, even more certainly than*
27 *when tackling a series of connected legal points, a judge who is himself the*
28 *tribunal of fact will (a) recognise the issues and (b) view in its entirety a case*
29 *where one issue is interwoven with another."*

30
31
32 7. Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J. said in *Randy*
33 *Martin v. R*, at paragraph 31:

34 *"From these cases the following guidance may be discerned. A judge sitting in*
35 *a criminal case without a jury, in rendering his decision and giving his reasons*
36 *for so concluding, is not required to review every fact and to detail each*
37 *argument on which the prosecution and defence rely as if he were summing up*

² Cr App No 14 of 2006

³ 1977 NI 74

⁴ Cr App No 2 of 2010

⁵ 1977 NI 74

⁶ [1985] NI 457

1 to a jury. The judge must set out the conclusion reached and make clear the
2 reasons for arriving at that conclusion. He is required to have regard to any
3 difficult or unusual points of law and to show how those points of law have in
4 anyway impacted the conclusion that he has reached.”
5
6

7 **GENERAL APPROACH TO THE FACTS OF THE CASE**

8
9 8. In judging the facts and reaching my verdict I have not decided every point or issue
10 which has been raised - only such matters that have enabled me to determine
11 whether the charge laid against the defendant has been proved. My task is to reach
12 a reasoned conclusion upon the evidence, to approach the evidence in accordance
13 with applicable law in an objective and dispassionate way.
14

15 9. I have had regard to the whole of the evidence including the agreed read evidence.
16 I have reflected carefully upon all the evidence to determine which evidence is
17 reliable and which is not. I have come to common sense conclusions based on the
18 evidence which I have accepted. I have guarded against speculating against what
19 evidence there might have been.
20

21 10. The defendant has chosen to give evidence, he need not have. I have judged his
22 evidence by precisely the same fair standards as I apply to any other witness in the
23 case. He comes from no position of disadvantage because he is the defendant.
24

25 **BURDEN AND STANDARD OF PROOF**

26
27 11. I remind myself of the Burden and Standard of Proof. The prosecution must prove
28 that the defendant is guilty. He does not have to prove his innocence. That burden
29 of proving the defendant's guilt is and remains upon the prosecution. The standard
30 of proof that the prosecution have to attain in order to succeed in proving the
31 defendant's guilt, is to make me sure. Nothing less than that will do.
32

1 12. If after considering all the evidence I am are sure that the Prosecution has proved
2 its case, then my verdict must be guilty. If am not sure, my verdict must be not
3 guilty.

4
5 **SEPARATE VERDICTS**

6
7 13. I must consider the case against and for the defendant on each count separately.

8
9 14. The important obligation to consider each count separately on its merits does not
10 mean that I should ignore all the evidence of background circumstances, which
11 may well, and it is a matter for me, be evidence which will assist me in reaching a
12 verdict.

13
14 15. It could be that in this case decision on the facts of one count might well assist in
15 coming to a conclusion on another counts. Nevertheless, I must reach separate
16 verdicts on each count having focused on each separately and having formed a
17 separate decision about it.

18
19 **THE INDICTMENT**

20
21 16. The Defendant is charged upon an indictment containing two counts, namely:

22
23 a. Count 1 - Possession of an unlawful firearm, contrary to s.15(1) of the
24 **Firearms Law** (2008 Revision) which provides:

25 *"Subject to subsection (2), no person shall be in possession of any*
26 *firearm except under and in accordance with the terms of a Firearm*
27 *User's (Restricted) Licence"*
28

29
30 The particulars being that on the 29th July 2017 in the vicinity of Desmond
31 Drive, George Town, Grand Cayman the Defendant had in his possession **112**
32 **rounds** of ammunition, which were not under and in accordance with the terms
33 of a Firearms User's (Restricted) License.





1 b. Count 2 - Possession of a **bullet-proof** vest, contrary to s.15(3) of the
2 *Firearms Law* (2008 Revision) which provides:

3
4 *"Subject to subsection (4), no person shall be in possession of a bullet-*
5 *proof vest except with the prior written approval of the*
6 *Commissioner."*

7
8
9 The particulars being that on the 29th July 2017 in the vicinity of Desmond
10 Drive, George Town, Grand Cayman the Defendant had in his possession a
11 bullet-proof vest without the prior written approval of the Commissioner of
12 Police.

13
14 17. The defence accept that that none of the statutory permissive defences are
15 applicable in this case.

16
17 **"POSSESSION"**

18
19 18. The fundamental issue in relation to each count, separately considered, is whether
20 the Prosecution has satisfied the Court so that it is sure, that the Defendant
21 *possessed* the particularised items.

22
23 19. I remind myself that the question of possession is a matter of fact. The article must
24 be physically in the custody or under the control of The Defendant. A person does
25 not have to be present at the place that the article is kept in order to be in
26 possession of it.

27
28 **CIRCUMSTANTIAL EVIDENCE**

29
30 20. Sometimes a tribunal of fact is asked to find some fact proved by direct evidence.
31 However it is often the case that direct evidence of a crime is not available, and the
32 prosecution relies upon circumstantial evidence to prove guilt.

1 21. In this case the Prosecution is relying upon evidence of various circumstances
2 relating to the crime and the defendant which they say, when taken together, will
3 lead to the sure conclusion that it was the defendant who committed the crime.

4
5 22. Circumstantial evidence can be powerful evidence. But it is important that the
6 Court must consider whether the evidence upon which the prosecution relies in
7 proof of its case is reliable and whether it does prove guilt. Furthermore, before
8 convicting on circumstantial evidence the Court must consider whether it reveals
9 any other circumstances which are or may be of sufficient reliability and strength
10 to weaken or destroy the prosecution case.

11
12 23. Finally, the Court is careful to distinguish between arriving at conclusions based on
13 reliable circumstantial evidence, and mere speculation.

14
15 **PREJUDICIAL MATERIAL THAT IS NOT PROBATIVE**

16
17 24. The Prosecution has placed evidence before the court that at the time of the alleged
18 offence the Defendant had an electronic monitoring tracking device fitted on him.
19 Further, the historical tracking data download of his movements on the day in
20 question is before the court.

21
22 25. Its potential probative value is not in dispute. However the court is mindful that it
23 must not speculate nor in anyway hold the fact that the Defendant was being so
24 monitored against this defendant. It cannot and will not prejudice the court. The
25 mere fact he was on a “monitor” does not, and cannot be regarded as supporting
26 the Prosecution’s case.



1 **COURT SECURITY**

2
3 26. There has also been a higher than normal level of security surrounding this trial. It
4 is clear to this court that the defendant is in custody. I am resolute in my approach
5 that this in no way has any bearing upon the decision of the court.

6
7 **NO COMMENT IN POLICE INTERVIEW**

8
9 27. On 18th October 2017, the Defendant was interviewed under caution. During the
10 course of the interview he answered no comment to some of the questions. He did
11 however set out his defence, and the facts he relies upon. He has made some
12 comments upon the Prosecution case, this being in the spirit of possible answer to
13 the Prosecution case rather than assertions of fact.

14
15 28. The fact that The Defendant exercised his right not to answer provides no support
16 for the Prosecution case. The court in no way holds this against the Defendant.

17
18

19 **THE PROSECUTION CASE**

20
21 29. The Prosecution case is that:
22 a. The Defendant hid the items in the dense bushes, for him or another to retrieve.
23
24 b. It is beyond coincidence that the Defendant happened to go to this location and
25 move around for 5 minutes.
26
27 c. Further, it is beyond coincidence that a plastic bag wrapping the ammunition
28 had his fingerprint on it.

29



1 30. The Prosecution contend that the Defendant's account that he may have touched a
2 bag, perhaps at his cousin's house is fanciful – as is the suggestion that someone
3 has falsely implicated him.

4
5 **THE EVIDENCE**

6
7 31. A great deal of the Prosecution case has been reduced in to Formal Admissions -
8 pursuant to section 34 of the *Evidence Law* (2019 Revision).

9
10 32. On 19th July, 2017, the defendant was enrolled in the Electronic Monitoring
11 program by the Royal Cayman Islands Police Service (RCIPS) and was fitted with
12 a Wearable Tracking Device ("the Monitor").

13
14 **THE DEFENDANT'S MOVEMENTS**

15
16 33. The historical data for the Monitor demonstrates that on 29th July, 2017 the
17 Defendant was in the vicinity of 165 Shamrock Road (15:09:56), and then in the
18 bushes opposite Desmond Drive (15:18:56). He was stationary in those bushes for
19 5 mins. He moved between 5 locations during this time. (15:17:56 to 15:23:56).

20
21 34. The electronic monitoring maps JA/1-9 (exhibited to the Statement of Jessica
22 Austin [Ex.5] - which was read as agreed evidence) - reflect this.

23
24 35. The area as can be seen from the exhibited photographs [Ex.3 photo.p1-3] is
25 densely bushy. It is all noted that the route, mapped by the monitoring map, from
26 the road into the bushes - appears not be a footpath nor any discernible passage.
27 The satellite image [Ex.1] illustrates this.

28
29 36. Indeed it is the defence case that the Defendant went into the bushes to either
30 defecate or hunt for carbs and/or iguana.



1 37. Formal Admission (#8) summarises the situation: *"The electronic monitoring*
2 *history of the defendant places him in the bushes where the ammunition and bullet*
3 *proof vest were recovered."*

4
5 **THE FINDING OF THE AMMUNITION & BULLET-PROOF VEST**

6
7 38. On the 8th August, 2017, a search team comprising RCIPS and Customs Officers
8 conducted a search of this bushy area.

9
10 39. Recovered approximately 56 feet into the bushes from Desmond Drive, was a bag
11 which contained a blue bullet proof vest, (the subject of count 2). This bag was
12 hidden under a sheet of corrugated zinc.

13
14 40. A second black plastic bag (WH#2) was also found under a sheet of zinc
15 approximately 68 feet from the roadway.

16
17 41. The bag contained two transparent plastic jars with a yellow-looking substance,
18 which appeared to be cornmeal, and 112 rounds of ammunition (the subject of
19 count 1).

20
21 42. The locations where these items were found have been annotated on the satellite
22 image [Ex.1].

23
24 **FINGERPRINT EVIDENCE**

25
26 43. A single fingerprint was recovered from the black plastic bag (WH#2) which
27 contained the transparent jars with the ammunition. This was established to be the
28 left forefinger impression of the defendant.

29
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31



1 **EXAMINATION OF THE AMMUNITION & BULLET-PROOF VEST**

2
3 44. The 112 rounds of ammunition were all found to be lethal and capable of being
4 discharged. They therefore fell within the definition of a firearm.

5
6 45. The defendant is not a licensed firearms holder, nor is he licensed to hold a ballistic
7 vest. Also, the defendant does not have the prior written approval of the
8 Commissioner of Police to be in possession of a ballistic or bullet proof vest
9 (Admission #11.)

10
11 **ARREST & DEFENDANT'S POLICE INTERVIEW**

12
13 46. On 18th October 2017, the Defendant was arrested at his home address in Prospect,
14 on suspicion of possession of firearms. On 19th October 2017, he was interviewed
15 under caution in the presence of his attorney.

16
17 47. During the course of the interview he answered no comment to some of the
18 questions. He did however set out his defence that he had no dealing with the
19 items. He accepted that he went into the bushes. He elaborated that he could not
20 remember the exact day – saying it was months earlier – but stated that he went in
21 to either defecate or hunt for carbs and/or iguana.

22
23 48. He explained that the single fingerprint found on the plastic bag could have got
24 there as he touches bags – and he gave examples. He also suggested that he could
25 implicated by others.

26
27 **THE DEFENDANT'S EVIDENCE**

28
29 49. The Defendant, who is 26 years old, explained that he was living at Birch Avenue,
30 Prospect, on the day in question (29th July 2017).
31



1 50. He explained further that he knows the location Desmond Drive, and accepts that if
2 the monitor put him there, then he was there.

3
4 51. He was asked why he was there. He said he had no specific recollection of that day
5 but assumes that he went there to use the bathroom. He said *"I have a cousin Neill*
6 *Thomas who lives in Clarence Drive near Desmond Drive. Can't recall if I went to*
7 *see him that day"*

8 52. The Defendant was asked to account for his presence at that location during his
9 police interview on the 19th October 2017. During that interview he said.

10 *"I can't recall why moving around in the bush, normally go in the bush to take*
11 *a shit but can't recall if I did that day".*

12
13
14 53. He said he may have gone looking for crabs. In evidence he said he may also have
15 been hunting iguanas. He also said: *"I like to smoke when shit. Can't do that in the*
16 *bathroom."*

17
18 54. He accepted that his Monitor shows him moving from spot to spot, (5 stops in 5
19 minutes).

20
21 55. At no point can the Defendant recall corrugated metal in the bushes.

22
23 56. He was asked about the fact that his fingerprint of his fore-finger (left-hand) was
24 found on the plastic bag containing the ammunition. In response the defendant
25 explained that he may have touched the bag at some other location. He said that his
26 cousin lived on Desmond Drive, – which is a one-minute walk from the scene. The
27 Defendant said there were black plastic garbage bags there and he said that at times
28 he had put bags out there.

29



1 57. He emphatically denied that he ever possessed the ammunition or the bullet-proof
2 vest. He said that the items did not belong to him. He said, further, that he would
3 not go to that location with "them knowing" he had the monitor on. He also said
4 that there was a possibility that he had been set-up by others unknown.

5
6 **THE DEFENCE SUBMISSIONS**

7
8 58. I do not propose to set out all of the defence submission - but I have taken them all
9 into account in my adjudication of this case.

10
11 59. The defence invite the court to take into account that:

12 a. The Defendant was interviewed months after July 2017, therefore his inability
13 to account precisely for his movements on the day in question is wholly
14 explicable;

15
16 b. The Defendant did not have to give evidence;

17
18 c. There is no supporting scientific forensic evidence obtained from the glass jars
19 containing the ammunition and none from the ammunition. There is only a
20 single fingerprint delivered by a finger of the left hand. No other marks;

21
22 d. There is no supporting scientific forensic evidence on the plastic bag
23 containing the bullet-proof vest, and none on the zinc sheeting;

24
25 e. There is no evidence both articles were left by the same person;

26
27 f. It is mere speculation that the Defendant left the articles there and the
28 Defendant would not do so when he knew he was being monitored;

29
30 g. It is speculation that it was the Defendant who left the articles there - it could
31 have been anyone;
32



1 h. The Defendant puts garbage out at his cousin who lives a minute away from
2 the subject location which could account for the fingerprint.

3
4 **CONCLUSION**

5
6 60. Applying the legal directions to the facts, I am driven to the sure conclusions as
7 follows:

8
9 i. **Both the ammunition and the bullet-proof vest were left by the**
10 **same person.**

11 1. The possibility that it could be by coincidence that they would
12 be hidden in such close proximity (12 feet) one to another can
13 be excluded;

14
15 2. They were both wrapped in plastic and hidden under zinc
16 sheeting.

17
18 3. I also take account nature of the bushy area and fact it was not
19 a thoroughfare or other place where persons generally would
20 have reason to visit.

21
22 ii. **The Defendant “possessed” the ammunition and the bullet-proof**
23 **vest he hid in the bushes.**

24
25 1. I am sure on the two strands of circumstantial evidence
26 (Monitor positioning and fingerprint) that, when taken
27 together, I am led to the sure conclusion that it was the
28 defendant who hid the items in the bushes.



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2. I have considered carefully whether the circumstantial evidence reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case.

3. I reject the possibility that:

- a. Some other person happened to go that same location to hide the items;
- b. The Defendant innocently touched the bag;
- c. The bag with his (accidental) fingerprint was coincidentally used by another person to place the ammunition in;
- d. The Defendant was set-up – in the sense that another person used a bag with the Defendant's fingerprint. These are valuable items that may or may not have been found by a person who could or would implicate The Defendant.



61. I had the opportunity of hearing and seeing the Defendant give evidence. He is a consummate liar.

62. I am sure that the defendant's account for visiting the bushes on the day in question was a lie. I am also sure that the defendant's explanations as to how his fingerprint was on the bag were lies.

1 63. I am satisfied that the Prosecution have made me sure of the other ingredients of
2 each offence.

3
4 64. The verdicts of the Court are:

5 a. Count 1 - Guilty.

6
7 b. Count 2 - Guilty.

9

10

11

12

13 Dated this the 28th day of January 2020



14

15

16 Justice St. John-Stevens
17 Acting Judge of the Grand Court