

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

3
4 **INDICTMENT NO: 39, 67 & 68 of 2019**
5
6

7
8 **THE QUEEN**
9

10 **v.**
11

12 **CARLOS JAMEEL BUSTILLO**
13 **&**
14 **DANIEL WALLACE RANKINE**
15
16



17
18 **Appearances:** **Mr. Greg Walcolm Crown Counsel for the Crown**
19
20 **Mr. Rupert Wheeler for Defendant Carlos Bustillo**
21
22 **Mrs. Prathna Bodden for Defendant Daniel Rankine**

23 **Before:** **Justice Marlene I. Carter (Actg.)**

24 **Judge Alone Trial:** **2nd, 6th, 11th, 12th, 25th November 2020**
25 **11th – 15th January 2021**
26

27 **Delivery of Decision:** **12th February 2021**
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31 **HEADNOTE**

32 ***Criminal Law – Conspiracy to Commit Burglary –***
33 ***Possession of unlicensed firearm – Attempted Murder***
34

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37 **VERDICT JUDGMENT**
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1. The defendants are charged as follows:
- a. Defendants # 1 and #2 are jointly charged with the offence of Possession of an unlicensed firearm contrary to s.15(1) and 15(5) of the *Firearms Act* (2008 Revision)
 - b. Defendants # 1 and #2 are jointly charged with the offence of Conspiracy to commit burglary contrary to s.243 (1)(a) of the *Penal Code* (2019 Revision).
 - c. Defendant # 2 is charged with the offence of attempted murder contrary to s.194 of the *Penal Code* (2019 Revision.)
2. Defendant #1 has pleaded guilty to the charge of Conspiracy to Commit Burglary.

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.”

¹ 2001 CILR 496

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



1 5. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that the
2 Defendants are guilty of the offences for which they are charged on the Indictment. There is no
3 burden on a Defendant to prove that he is innocent. The Defendants have no obligation to prove
4 that they are not guilty, or to explain the evidence offered by the Prosecution.
5

6 6. I remind myself that I must have regard to the whole of the evidence that has been presented at
7 trial and form my own judgment about that evidence. The questions of fact at issue on this trial
8 are for me to determine.

9
10 7. I will not review every single detail of the evidence presented in this case during the course of this
11 judgment, but I will address my mind to the important or prominent aspects of the evidence in
12 deciding the critical issues in this case. I will not decide every single point that has been raised –
13 only such matters that will enable me to determine whether the charges on the indictment have
14 been proved.

15
16 8. I must consider all of the evidence in this case against each defendant separately and if after having
17 done so, I have any reasonable doubt as to whether either of the Defendants is guilty, I must
18 resolve that doubt in favour of that Defendant and find him not guilty of the offence for which he
19 is charged.

20
21 9. On the other hand, if having considered the evidence I am satisfied so that there is no reasonable
22 doubt in my mind, and I am sure of the guilt of either of the Defendants for any of the offences
23 for which they are charged, then it will be equally my duty to find him guilty as charged of that
24 offence.
25
26
27



1 **THE EVIDENCE AT TRIAL**

2 10. Section 34(1) of the *Evidence Act* (2019 Revision) allows for Proof by formal admission and
3 reads:

4 *“Subject to this section, any fact of which oral evidence may be given in any criminal*
5 *proceedings may be admitted for the purpose of those proceedings by or on behalf*
6 *of the prosecutor or defendant, and the admission by any party of such fact under*
7 *this section is, as against that party, conclusive evidence in those proceedings of the*
8 *fact so admitted.”*
9

10
11 11. Pursuant to s.34 (1) of the *Evidence Act* two Statements of Agreed Facts - “**Agreed**
12 **Facts**” and “**Agreed Facts 2**”, were introduced into evidence. I have considered all of
13 the evidence agreed and presented within these statements.
14

15 12. The Agreed Facts set out the background of the Crown’s case and paragraphs 1 – 13 of
16 the Agreed Facts document presented to the Court read as follows:

17 i. Jamar Radcliffe Timothy and the defendant, Carlos Jameel Bustillo, are
18 known to each other. Jamar and Daniel Wallace Rankine know each other
19 from seeing each other about. Jamar is related to Carlos Jameel Bustillo.

20
21 ii. Carlos Jameel Bustillo is also known as “Biggs”.
22

23 iii. On or around the 25.04.2019 and 26.04.2019 Jamar resided in West Bay;
24 Carlos Jameel Bustillo resided at 25 Eli Bush Street, West Bay, Grand
25 Cayman.
26

27 **INITIAL CITIZEN, POLICE AND EMT RESPONSE**
28

29 iv. On the morning of 26.04.2019 at approximately 1:24 am, the residents of
30 No. 877 West Church Street, George Town, were awoken by Jamar who
31



1 was banging on their door and shouting "*help me I have been shot*". One of
2 the residents, who was an EMT, went and assisted Jamar, whom he noticed
3 was suffering from, what appeared to him to be two gunshots wounds, one
4 to the left eye and the other to the right shoulder. The resident observed that
5 Jamar was bleeding from these wounds and appeared agitated. The resident
6 then contacted 911.

7
8 v. The police arrived at No. 877 West Church Street first and secured the
9 location. They found Jamar on the premises and observed his condition to
10 be stable, though he appeared agitated. They asked the victim what had
11 happened and he responded saying, "*he drop me off and he shoot me.*"

12
13 vi. The EMT's arrived soon thereafter and took custody of Jamar and
14 transported him to the GTH for treatment.

15
16 vii. The police were able to identify the open lot immediately in front of No.
17 877 West Church Street as the scene of the shooting. The open lot appeared
18 dark as there were no lights shining in the open lot area.

19
20 viii. The police processed the scene, to include No. 877 West Church Street and
21 the open lot in front of that premises. The photographs of the scene are
22 exhibited hereto as Exhibit 4.

23
24 ix. The police recovered two .380 calibre spent casings were recovered from
25 the said open lot.

26
27 x. Whilst at the George Town hospital and prior to undergoing surgery PC
28 Wade Gordon spoke with Jamar. PC Wade Gordon stated that Jamar

1 appeared intoxicated, however he gave his name as Jamar Timothy. Jamar
2 told PC Gordon that he went to Cotton Club and had some drinks (Alcohol)
3 and when he was ready to leave he got a ride. There were other people in
4 the vehicle and he identify them as Biggs, Jahneil, Paul Bush and a brown
5 man. Jamar also stated that on entering the vehicle he fell asleep and woke
6 up when he was somewhere in South Sound. Jamar told PC Gordon that he
7 was shot with a black handle gun by a brown skin man.

8
9 xi. Jamar was also briefly spoke with ADCI Sean Bryan whilst he was at the
10 hospital and before undergoing surgery.

11
12 xii. At the time when Jamar was initially assisted by the citizen and thereafter
13 the police and EMT Jamar was wearing a grey short sleeve T-Shirt, light
14 khaki coloured short pants and a black and white slippers. The police later
15 seized and photographed his clothing. The photographs of Jamar's clothing
16 is exhibited hereto as Exhibit 5.

17
18 **MEDICAL TREATMENT OF JAMAR TIMOTHY**

19
20 xiii. Jamar was treated at the George Town Hospital. On the 2.05.2019 Dr Maeve
21 O'Doherty made the following notes:



"April 26th – 2.30am – called to review a patient in A + E by Dr. Campbell. Patient noted to have a gunshot injury to left eye. On examination at 3 a.m. I noted complete globe rupture of left eye. CT scan of facial bones confirmed globe rupture with fractures of ethmoid, sphenoid, maxillary sinus + right orbital floor and a bullet in right pre auricular area. These injuries were consistent with a bullet entering left eye and



traversing through eye, behind nose and lodging in right cheek. He was also noted to have a bullet in right upper lung with entry wound in back. He was taken to surgery at 7.30am and repair of globe rupture performed. Extensive damage to eye not consistent with any vision. Seen post op and noted to have no vision in left eye. Right eye normal. Risk of sympathetic ophthalmia to right eye explained. It was decided by patient on my advice to remove left eye to reduce risk of sympathetic ophthalmia. I removed left eye on May 2nd. I recovered bullet from right cheek + repaired left eyelid lacerate. I am of the following opinions: (a) This condition is serious. (b) These injuries are consistent with infliction by gunshot injury. (c) These injuries are likely to be permanent."

13. In addition, the Crown's Opening detailed how the Crown put its case against these defendants and I now set out paragraph 5 of the Crown's Opening Note:

"Jamar provided an ABE interview to the police, whilst still in hospital, on 27.04.2019. He thereafter provided two further ABE interviews. He gave the following account of how he came to be shot and injured on the morning of 26.04.2019:

- i. *He stated that he went to Bustillo's home where he spoke to him about a plan to rob/burgle a premises that night. Whilst speaking with Bustillo, Rankine was present and they all agreed to the plan.*
- ii. *He left Bustillo's house and was later picked up by Bustillo, who was driving a dark coloured Honda motor vehicle, with Rankine in the front passenger seat.*
- iii. *He described the route they travelled and stated that they stopped at the Esso Service Station, close by the original KFC by Dog City. Bustillo bought*

- 1 \$3 petrol and came out of the vehicle to pay the pump attendant. They then
2 left and went towards the Smith Cove area.
- 3 iv. They drove to the area where the house was that they intended to burgle but
4 after he and Rankine went to check and saw that the lights in the house were
5 on, they decided to abandon that plan. He and Rankine went back to the
6 vehicle and left.
- 7 v. Whilst in the vehicle he saw Rankine pass a small black firearm that he
8 described as a .22 calibre, to Bustillo, who then fired the gun.
- 9 vi. They continued to drive around and returned to the area they first went to
10 and stopped in the open lot across from 877 West Church Street. He and
11 Rankine got out the vehicle and Bustillo remained in the vehicle. He was
12 then shot twice by Rankine who immediately returned to the vehicle, which
13 was then driven away from the location.
- 14 vii. After he was shot he went across the road to get help. The police and EMT's
15 arrived shortly thereafter."

- 16
17
18 14. The Crown presented the evidence of a number of witnesses. For ease of reference, the
19 first defendant will be referred to as "Bustillo" and the 2nd defendant as "Rankine" in
20 the following.

21
22 **OFFICER RUSSELL THESE**

- 23
24 15. Detective These was the CCTV officer in the case. After reviewing CCTV footage from
25 various government CCTV cameras located in West Bay and George Town, as well as
26 CCTV footage from Ugland House at South Church Street in George Town and from
27 the ESSO Service Station at West Bay Road and Eastern Avenue, he created what he
28 referred to as storyboards. He also had in his possession Initial viewing log notes from
29 Sgt. Anderson.
- 30



1 16. He concentrated primarily on one vehicle, which is accepted to be driven by Carlos
2 Bustillo on the night in question. The vehicle was a black Honda CRV, registration
3 number 177482, first visible in West Bay and could be traced from West Bay to George
4 Town.

5 17. The evidence of Officer These is that the vehicle driven by the defendant Bustillo went
6 to the residence of Caleb Orrett and from that residence, the complainant entered the
7 vehicle. This evidence is not in dispute. That the vehicle travelled from West Bay to
8 George Town to the ESSO service station is not in dispute. That the complainant was
9 in the vehicle in the back seat during that journey, with Bustillo as the driver and Rankine
10 as the passenger in the front seat of the vehicle is also not in dispute.

11
12 18. At 12:41 a.m. the vehicle left the Service Station, Bustillo was still the driver of the
13 vehicle. The vehicle turned left unto North Church Street and travelled south, into
14 George Town via Harbour Drive into South Church Street.

15
16 19. Officer These related that the next time that the vehicle is seen on the CCTV was at
17 1:10:59 am, as it travelled in the opposite direction, northbound into George Town from
18 South Church Street. The 911 call from the residence at 877 Church Street, close to the
19 area in which the shooting took place and where the complainant went after he was shot,
20 was made at approximately 1:23:43 am. Approximately 10 mins before the 911 call the
21 vehicle was seen travelling from the South Sound area into George Town.

22
23 20. The vehicle continued north-bound unto West Bay road at 1:16:34 and continued unto
24 the Esterly Tibbets Highway and into West Bay.



1 **JAMAR RADCLIFFE TIMOTHY**

2
3 21. Jamar Radcliffe Timothy, the complainant, related to the court that Bustillo is his cousin.
4 He knows him by the nickname "Biggs" and he knew where he lived in April 2019. He
5 stated that he did not know Rankine. His evidence was:

6 *"I don't know Daniel Rankine. I don't know him. When I say I don't know, I know*
7 *him from, only from that night, I know him the 25th of April."*

8
9 22. He related that on the 25th of April he went to Biggs' house, driven in a car by Caleb
10 Orrett. When he went there he saw Biggs who spoke to Caleb and he also saw Rankine
11 who was inside the house. The complainant was seated and remained in the passenger
12 seat of the car. When he left Biggs house then he went back to Caleb's residence. He
13 The complainant stated that he remained at the residence and he went to sleep. He
14 related:

15 *"After I fell asleep I got forced to come on a mission I ent know nothing about. When*
16 *I say forced, be bad me up. Biggs. I was outside the house when he bad me up.*
17 *When I say he bad me up, he had the gun and he tell me say I need to go on a mission*
18 *he need a lookout. This happen at Nina house, outside of the house. Nina's yard*
19 *have a big tree in front of their yard.*

20
21 *This was by the car that he bad me up. No one else was there when he bad me up.*
22 *One mission I don't know about the mission he never told me about it. Only the time*
23 *he reach to the spot he told me about it."*

24
25 The spot he reached to is Smith Cove.

26
27 23. The complainant stated that he went with Biggs/Bustillo into the Honda and that Rankine
28 was in the front passenger seat. He sat in the back seat behind the driver, Biggs. The
29 complainant stated that after the vehicle left the Esso service station, Biggs drove to

1 Smith Cove. He described this as 'the destination'. He stated that he had fallen asleep
2 after they left the service station and that when they reached to the destination he got
3 bullied out of the car by Biggs. The complainant stated:

4
5 *"Biggs roughed me up. Just pull me out of the car. Daniel was in the front seat*
6 *when B pulled me out of the car. After B pulled me out of car, he got back in the*
7 *driver's seat."*

8
9 24. The complainant stated that he and Rankine then went to a house near to where the
10 vehicle stopped. He stated that it was Rankine who told him where to go and that he
11 knew that the plan was for him to be the lookout. He stated that when they went close
12 to the house, he could see people on the balcony, and he stated that he was not going
13 inside. The complainant stated that when he told Rankine that he was not going inside
14 the house, Rankine asked him if he was "punking out." He went on to relate as follows:

15
16 *"After D said that to me and I replied, we were going back to the car and then he*
17 *shot me. We were walking back to the car and after that I turn around and I saw the*
18 *gun in my face and he shot me two times and he ran in the front seat of the car and*
19 *the car took off.*

20
21 *When we were walking back to the car Biggs was inside the driving seat. When D*
22 *ran to the car after shooting me 2 times Biggs was inside the car. The car did*
23 *already start up. I got shot in my eye and my back. It is my left eye. I lost my left*
24 *eye. I got shot in the right side of my back."*

25 *"When I turned around and saw the gun it was close up. [Witness indicates and*
26 *Court estimates 5-7 feet.]*

27
28 *The lighting in this area where I was shot. It was dark. We, me and Daniel were in*
29 *this dark area outside the car. No one else was outside the car besides me and*
30 *Daniel. The car was already start up, I know because how he shot me, because he*
31 *got in the car and it took off the same time, it had already start.*

1 *The gun I was shot with. It was black. I can't say anything else about the gun. I*
2 *saw Daniel pointing the gun at me before he shot me. ...he just point the gun to me*
3 *and shot me. Like that. [Witness demonstrates, pointing gun forward.] When he*
4 *shot me, I heard it, it was "POW". When I was shot, I feel pain, in my eye. Never*
5 *felt nothing in my back. After vehicle sped off, I just wrapped up face with my own*
6 *shirt and I went to end of the road and I saw a woman taking out her cat litter and I*
7 *asked for help if she could call 911. I asked her if I could get some water. ...The*
8 *house was on the top of the road in relation to where I was shot in the dark area. I*
9 *walk there. I was feeling in pain. I wrapped up eye so it could be safe I don't want*
10 *no dirt or dust in my eye. It was my left eye that I wrap up. Plenty blood was coming*
11 *from my eye."*

12
13
14 25. The complainant stated that he was not attacking Rankine when he was shot. He went
15 on to say that when he was shot, they were at the second destination, that is, the second
16 house that they had gone to with the intention of committing robbery that evening. At
17 the first destination he saw Rankine select the gun and as they went, he saw that there
18 were lights on in the house so they went back to the car. The place where he was shot
19 was at the second destination.

20
21 26. The complainant also described that the defendant Biggs had the gun before they went
22 to the second destination. His evidence in chief was as follows:

23 *"Inside the car B set out one big shot through the window. When B let off shot*
24 *through the window the car was in the destination where we was inside the ditch*

25
26 *B let off the shot, after we went to the 1st house. When B let off shot, it was going to*
27 *the place where the plenty houses. B going to there and he let off the shot. Before*
28 *B let off shot, the gun was on top of him. Before B let off shot, D was sitting down*
29 *in the passenger seat.*
30



1 *Before B let off shot the gun was sitting on top of his waist or somewhere I don't rem*
2 *where he put it. B let off shot through the window. He just push it through the*
3 *window and he shot it off and pull it back in [witness demonstrates]. When he let of*
4 *shot I heard POW and that's it. The gun that B had it was black. Based on what was*
5 *happening it was the same gun that B let off that D shot me with."*

- 6
7 27. The complainant related that he had gone to the destination to be a lookout. He knew
8 that the plan was to rob. The plan was told to him at the destination by Biggs. At the
9 time that Biggs told him the plan Rankine was in the car. The complainant stated:

10 *"Before this night I did not have any beef with B. I did not have issue with that boy.*
11 *I did not have any issues with D before the shooting. The gun the one b let off shot*
12 *was the same gun that D shot me with. B gave D the gun. B gave D the gun when*
13 *he was in the front seat. B gave D the gun after he let off the shot, he give it to him.*
14 *D I don't know what he did with the gun when B gave it to him. He just had it on top*
15 *of him. When going to Ist house, D select the gun. I mean he select it in front of me*
16 *when we went to destination that we took. Select – it like this. Pull it back."*

- 17
18 28. The complainant described being taken to hospital by ambulance after he was shot.

19 *"I lost my left eye because I was shot. I did not wear glasses before, I had two eyes.*
20 *I am wearing them now because my other eye is damaged. My right eye had*
21 *fragments from the bullet. My back after I was shot my back is numb. I can't feel*
22 *my back. Because I was shot nothing else has happened to me. My vision is blurry.*
23 *It was not blurry before I was shot."*

- 24
25 29. He remembered that he was interviewed by the Police on the 27th of April 2019. He
26 stated that at the time of the interview he was frustrated and in pain.

- 27
28 30. The complainant was cross examined extensively by counsel for each of the defendants.
29 When questioned by counsel for Bustillo he was shown his interview of the 27th of April
30 in which he said that the first time he saw the gun was when the little boy gave it to

Biggs (Bustillo) in the car. He stated that he did not remember saying this to the police and that what he did say to them was that Biggs gave him [the passenger] the gun.

31. It was put to the complainant that he never said to the police in his first statement to them that Biggs had ‘*bad him up with a gun*’ before they left the Orretts’ residence although the police had invited him to tell them what had happened in as much detail as possible. The complainant stated that he did not mention this because he felt frightened and threatened, because “*he [Biggs] could come back and try and harm me.*” When it was suggested to the complainant that when he had gone on to tell the officers that Biggs had a gun and also that he shot it off, he could not really have been frightened, the complainant insisted that he had told the police about the gun.

Q: ...you did not mention to either of the officers on that day that you had been badded up with a gun by Biggs at the Orrett house, did you?

R: Yes sir, I told the officers that. I don’t know if he put it in the statement. I told him that....I told the officers everything I know

32. The complainant was questioned about the time immediately before the shooting took place. His evidence was

Q: OK. So from what you have told us, you weren’t focusing on Daniel this whole time when you were walking from the car to the house and then back is that fair:

A: No sir, I not focus on top of him.

Q: When you got shot it happened very quickly yes

A: Yes sir

Q: You got shot in the eye?

A: yes sir.

.....

Q: Were you shot from behind?

A: Yes ...

Q: Did he shoot you in the back, so he was standing behind you



1 A: *Yeah, he shot me in the eye, I turned my back to him and that's when I get*
2 *the shot [in the back].*

3
4 33. In relation to the gun, he stated that the gun that Daniel used was the same gun that Biggs
5 had shot him with. He said that it was not a guess, that he was looking at the gun as it
6 was pointed at him. The complainant denied that it was he who had suggested going on
7 a mission to commit the robbery.

8
9 34. When questioned by counsel for Rankine, the complainant stated that he named a person
10 ‘Kelly’ as being the shooter, because he remembered Biggs saying something about
11 Kelly. He agreed that he asked his uncle about “*who the boy was that hang with Bigg*”.
12 Further in cross examination he stated that he knew who shot him but that he didn’t
13 know his name.

14
15 35. The complainant stated that the person who shot him had a bandanna over his face, and
16 over his head, a black bandana. The complainant stated that he was asleep from West
17 Bay to the Gas Station and although he woke up at the Gas Station he went back to sleep
18 as they left the gas station until they got to South Sound at the destination.

19
20 36. The complainant confirmed that he had got the name Kelly from Biggs and also that his
21 mother had gone onto social media to search for a name. He stated that he did not ask
22 his mother to go on *Facebook* to search up the boy Kelly and that he never said that to
23 the police in his interview.

24
25 37. Further, the complainant related that it was his uncle who told him the name Daniel
26 Rankine, and that he then repeated that name to the police. In answer to counsel for
27 Rankine the complainant insisted that he never said in court that Biggs had shot him
28 even after the court transcript was read over to him. He denied that the reason that he did

1 not say who shot him to the person who assisted him after he was shot and called an
2 ambulance was because he did not know who shot him. He insisted that he knew who
3 shot him.

4
5 38. He agreed that he was given the name Daniel Rankine by his uncle and that this was
6 before he was shown the array of photographs by a police officer. He denied that his
7 mother or uncle showed him a photograph. However, he agreed that *before* the police
8 showed him the photos, he saw a photograph of Daniel Rankine on *Cayman Marl Road*,
9 an online media outlet. He saw this while he was at the hospital. He stated that he
10 saw the name Daniel Rankine beneath the picture on *Cayman Marl Road*.

11 39. The complainant was also questioned about his observations of Rankine in the car when
12 he was awakened and pulled out of the car:

13
14 A: *I got jerked out of the car and got bad up by him [Biggs], miss.*

15 Q *and the little boy as you have described him, was sat in the front passenger*
16 *seat, yes, with his back to you?*

17 A *Yes, he sit in the passenger seat miss*

18 Q *and he's got a hood on, is that right?*

19 A *no ma'am. I don't remember seeing him in no hood miss*

20 Q *but you told us today that he had a what over his face*

21 A *a bandana.*

22
23 40. In re-examination the Complainant stated that the shooter was facing him when he was
24 shot in the eye. He stated that although Rankine was wearing a bandana when he got
25 out of the car that he pulled down the bandana just before he shot him, and he saw his
26 face. He could not say for how long he could see his face. He described the time as
27 being 'very fast'.

28
29 41. He was asked to clarify his knowledge of Rankine before the incident and he said:



1 *"I don't know him from nowhere. I never met him. Only know him from that night.*
2 *That what I trying to say. I only know him from that night. I don't know him from*
3 *nowhere. That what I trying to say. I don't know him. ...only that night I know*
4 *him."*

5
6 42. The complainant clarified that he saw Rankine's face at Biggs' house earlier in the day.
7 He, Rankine, was inside the house and the complainant was in the car outside the house.
8 He stated that he was in the car which was close to the doorstep and he could see inside
9 the house. The complainant pointed out the distance and this was estimated at 15-20 feet
10 away. The complainant related that there was nothing blocking his view of Rankine's
11 face and could only say that he never stayed parked there too long. When he was asked
12 how long he saw Rankine's face for he stated: *"I never paid attention sir, to him sir. I*
13 *just came there to get my stuff and leave."*

14
15 **OFFICERS MARCIA CODNER AND RICHARD SCOTT**

16
17 43. The witness statements of Officer Marcia Codner and of Officer Richard Scott were read
18 into evidence pursuant to the *Evidence Act*. Officer Codner confirmed that she prepared
19 a Photo lineup which contained the photograph of the defendant Daniel Rankine and
20 also photographs of eleven other individuals. There were two sets of photos, MSC#1
21 with photos only and MSC#2 with names attached to the same photos.

22
23 44. Officer Scott's evidence was that he attended at the George Town Hospital with these
24 photographs in a sealed photo identification package. Officer Scott evidence was:

25 *"I further asked Mr. Timothy if since his admission into the hospital, if he had seen*
26 *any picture or video of the man who shot him either on social media or on the*
27 *television to which he answered no he did not even had a phone. I further asked Mr.*
28

1 Timothy if during his stay at the hospital if anyone had shown him any photo or
2 video of the man who shot him, he said no.”

3
4 45. He related that when he opened the package he asked the complainant to look at the
5 photos in MSC#1, to circle any photo he identified and to sign his name beside or under
6 it. He left the complainant with the photos and the complainant circled image number 7
7 and wrote his name at the bottom of it. The complainant said to the officer: “see him
8 officer, the boy that shoot me is him this, ‘im name Kelly.” The photo shown by the
9 complainant corresponded with the named photo Daniel Rankine in MSC#2.

10
11 SAMARA EBANKS

12
13 46. Samara Ebanks, the complainant’s mother, was sworn and tendered for cross
14 examination. The salient aspects of that cross-examination was as follows:

15 “The following day I was informed that he had been shot and I went to the hospital.
16 When I went to the hospital, Jamar told me something and he said was Biggs and
17 someone else there that shot him.

18
19 He told me he had problems with the person before. I know who Biggs is. I did not
20 know who the other person was. He told me he had problems with that person before
21 he couldn’t remember his name but told me he would be able to recognize him. He
22 told me that this individual, he hung out with Charles Walton.

23
24 After I got that information I decided to make my own checks. I found out that the
25 person was Daniel Rankine. I told my brother Charles Michael and asked him if he
26 know anybody who was hanging with B and he also said Daniel Rankine. Then I
27 spk to Det Morrison. I did not tell him straight away that I was going to show some
28 pictures to Jamar. Those pictures were in the newspaper. Not a facebook
29 photograph. I did not show him a photo. I was told not to. I did not tell him the name
30 Daniel Rankine.

1 ‘Kelly’, I did not give him [Jamar] the name Kelly. Jamar came out with that name
2 Kelly. I don’t know where he heard name Kelly from, but he did not get that from
3 me.”
4

5 **ADS NEVRON BRADSHAW**
6
7

8 47. Officer Bradshaw conducted an ABE interview with the complainant on the day
9 following the shooting. He was also the officer who conducted the interviews of each
10 of the defendants.
11

12 48. His evidence relating to the interview with the complainant:

13 *“After the interview on 27 of April, I did not have any suspect after the first interview,*
14 *apart from Mr. Bustillo. Bustillo was interviewed on the 1st May. After that first*
15 *interview I did not have any additional suspects. After the 3rd May interview, I had*
16 *an additional suspect. Mr. Rankin became a suspect, named in Bustillo’s second*
17 *interview on 3rd May.”*
18

19 49. During Cross examination by counsel for Bustillo, the officer stated:

20
21 Q: *On the first interview you asked Mr. Timothy whether he was ok going*
22 *forward with the interview and he said he was. On second interview you*
23 *asked him, you knew he was in the hospital and may have had discomfort*
24 *and if he feels uncomfortable at any point to let you know.*

25
26 A: *I did, I felt if he was not able to continue with the interview, I would not*
27 *interview him. Equally, if I did not feel he was well enough to continue*
28 *with the interview, if I saw signs he was not well enough to be interviewed*
29 *I would have stopped. On both occasions I formed the view that it was ok*
30 *to interview him.*

31
32 50. The questions from counsel for Rankine and responses of the witness were:
33

1
2 "Q: In three interviews he [Jamar Timothy] gave three different names.
3 A: I don't recall that.
4 Q: In the first interview, he described him as a little boy. In the second
5 interview I remember he said Kelly and then later on he mentions Rankin.
6 A Yes.
7
8 I am an investigator of at least 10 years. I was concerned about the
9 differences in his account. "
10
11 I was concerned about the differences in his account with the names and
12 the identification of the second person.
13 Q: In the 3rd interview is the first time you go through truth or lie evidence
14 with him. Was that to make sure that you were getting best evidence form
15 him.
16 A: That is correct.

17
18
19 51. Under re- examination the witness responded:
20

21 "I was referred to 3 different names given by Jamar about the shooter, based on
22 interviews I did, the 3 interviews. ... it [the information from the interviews] was
23 consistent that one other person outside of Biggs he was talking about the 2nd
24 person, little boy, Kelly and Rankin."

25
26
27 52. Each of the defendants' interviews was tendered into evidence:
28
29
30

31 **THE FIRST DEFENDANT'S (CARLOS BUSTILLO'S) INTERVIEW**
32

33 53. The first defendant, Bustillo, was interviewed on 01.05.2019 under caution in the
34 presence of his attorney. In a prepared statement he indicated that he was at home during
35 the early hours of the morning of the incident and was not involved in the incident. When
36 he was shown still photographs taken from the CCTV at the Esso Gas station in which



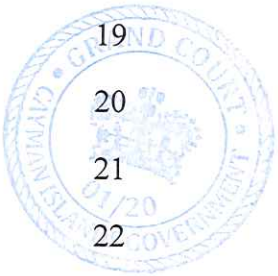
1 he could be seen, he sought to clarify that early hours meant from 5:00 a.m. onwards.
2 He answered “no comment” to questions asked of him during that interview.
3

4 54. Bustillo was interviewed under caution in the presence of his attorney on 3.05.2019, at
5 his request. During the course of this 2nd interview Bustillo stated that on the evening of
6 the incident he was at his West Bay home address at 25 Bush Street in the company of
7 Rankine when Jamar attended his house and called out to him from just outside using
8 the name “Biggs” He went outside and met Jamar and they had a conversation.
9 Thereafter, in the presence of Rankine, Jamar told them that he wanted to “go on a
10 move.” Bustillo stated that he understood the move to be a burglary. He stated that he
11 agreed to go on “the move” but only as the driver.
12

13 55. He stated that Jamar then left with Caleb Orrett telling him he was heading to Caleb’s
14 house. He and Rankine remained at his house for a small amount of time and then made
15 their way to Caleb’s home also in West Bay. He was driving a black 4 door Honda CRV
16 and Rankine sat in the left front passenger seat.
17

18 56. When he arrived at Caleb’s home, Rankine exited the vehicle but remained on the porch.
19 Jamar was also at the location and he, Bustillo, went inside and spoke to Jamar. He and
20 Rankine got back into the vehicle as before, Jamar sat behind him. After they drove
21 around in West Bay for about five minutes Rankine suggested that they go to Town. He
22 agreed and drove into George Town. He stopped at the gas station at Dog City where
23 he bought gas for his vehicle in the amount of \$3.
24

25 57. During the course of the interview, Bustillo was shown still photos extracted from the
26 CCTV captured at the Esso gas station. He identified the vehicle as the one he was



1 driving, and identified the heavyset male wearing the shorts as himself. He identified the
2 other male in the photo as the pump attendant to whom he paid the \$3 for the gas.

3
4 58. Bustillo stated that Rankine suggested going to South Sound and after he left the gas
5 station he travelled along the waterfront toward South Sound. He stated that just before
6 reaching the South Sound area Rankine removed a gun from his front jacket pocket. He
7 stated that Rankine passed the gun to him and instructed him to "BUSS ONE." He stated
8 that he complied with Rankine's instructions by firing a shot through the open car
9 window while driving. He stated that he then returned the gun to Rankine who placed
10 the gun in the same front jacket pocket.

11
12 59. He then drove down to the South Sound dock and turned around. Rankine then instructed
13 him to drive to a dark open lot off the main road where he stopped the vehicle. Rankine
14 and Jamar then exited the vehicle, while he remained inside. After a few minutes he
15 heard a gunshot, then another seconds later. Rankine came running back to the vehicle
16 and told him to drive and he sped off and headed directly to his home address at Bush
17 Street in West Bay.

18
19 60. Bustillo related that he asked Rankine about Jamar and Rankine told him not to worry
20 about that. Rankine told him to say the incident was an ambush. He stated that he was
21 contacted by Jamar's mother on the morning of the incident, and it was she who told him
22 that Jamar was "licked in the eye."

23
24 61. He stated that he asked Rankine to leave his house and to stop communicating with him.
25 He related that he got rid of the phone and the phone chip he used on the night as well

1 as and the clothing he was wearing on the night. He stated he threw them all away, some
2 into the ocean.



3
4 **THE SECOND DEFENDANT'S (DANIEL RANKINE'S) INTERVIEW**

5
6 62. Rankine's interviews were also tendered into evidence by the prosecution. Rankine was
7 interviewed under caution on 21.06.2019.

8
9 63. Rankine denied being involved in the shooting of the complainant. He stated that he had
10 no reason to shoot anyone. The defendant confirmed that he went to Bustillo's yard in
11 Old Bush Street, West Bay some time ago where he stayed for about a night. He stated
12 he was there making music on a computer. He stated that while he was there Bustillo
13 told him about an informer who had caused police to search his yard and that he was
14 going to hurt him. He related that sometime after this conversation with Bustillo he heard
15 about the shooting but really it was none of his business.

16
17 64. As far as Rankine could recall on the day in question, while he was at Bustillo's home,
18 a male, who Bustillo later told him was "the youth" attended the location. He stated he
19 did not see the person but Bustillo referred to the same youth and said that his name is
20 Jamar. He stated that he observed Bustillo take out a container from the refrigerator and
21 go outside but he did not see any of the persons himself.

22
23 65. Rankine stated that sometime after the youth attended the location he wanted Bustillo to
24 take him to Town to pick up some clothes. He recalled that he had gone with Bustillo
25 to a residential address in West Bay and that he had seen a male known to him as

1 Franklyn there. He stated that after that visit he and Bustillo had gone back to Bustillo's
2 home, that Biggs left him there for a few hours and then he drove him (Rankine) to his
3 dad's address in Windsor Park to get some clothes, left him there and he had not seen
4 Bustillo since.

5
6 66. Rankine was asked about Jamar and whether Jamar was in the car on this night or any
7 night that he went to George Town with Bustillo. He stated that he knew Jamar but he
8 was charged up (drinking) that evening and could not quite recall if Jamar was in the
9 vehicle that evening.

10
11 67. Later in the interview the Rankine clarified that "the youth" was in the car and that they
12 went to South Church Street. He stated that he went to George Town intending to get his
13 clothes, that he fell asleep in the vehicle and woke up to realise that Bustillo did not
14 transport him to the Windsor Park address as agreed, but instead had gone to South
15 Church Street. He stated that he got upset with Bustillo, got out of the car and started
16 walking towards his dad's address in Windsor Park.

17
18 68. Rankine's account was that Bustillo then drove off from the location and within minutes
19 came speeding back towards him. He stated when he got back into the vehicle, Bustillo
20 told him that "*Dat little fool picked it up*" and that he hoped the youth was dead. When
21 Bustillo started to drive towards West Bay Rankine demanded that Bustillo let him out
22 of the vehicle and Bustillo stopped on the road and let him out. He exited the vehicle and
23 was later picked up by a friend who took him to his father's address.

24
25 69. Rankine denied having or handling a gun but stated that Bustillo made mention of a gun
26 and that he had seen an object resembling the shape of a gun in Bustillo's pocket on the
27 day in question. He stated that Bustillo always boasted about having a gun and that based

1 on how he was acting that night, he believed Bustillo was armed. He also said that he
2 saw something black that looked like a handle of the gun when Bustillo was in the car.

3
4 70. He related that when Bustillo had come speeding back he looked frightened and shaken.
5 Rankine said that after he got into the car he did not see Jamar in the car and he asked
6 Bustillo for him and Bustillo said to him *"he just get this thing and that what him get for*
7 *informing"*.

8
9 71. Rankine stated that he did not go back to West Bay with Bustillo because he believed
10 that Bustillo did something and he told him to let him out of the car. He stated that he
11 did not make checks to find out what happened to Jamar because that was not his
12 concern.

13
14 72. Rankine was asked if he is called by any other names and he said he does not have any
15 other name. He was asked if he is called "Kelly" and he said no. He denied having any
16 involvement in the shooting and he had no reason to do it.

17
18 73. He insisted that he was not in possession of a firearm and he did not give any gun to
19 Bustillo to burst a shot in the air. He stated that he owns three hoodies and he does not
20 have any red Vans shoes and he does not have any red shoes.

21
22 74. He denied that he conspired with Bustillo and Jamar to commit burglary on the night in
23 question. He insisted that he went to George Town to get some clothes at his father's
24 house. He stated that Bustillo told him that he had a gun and that it is a .380. He stated
25 that he does not have a firearm and on the night in question he did not touch a firearm
26 and he does not have access to a firearm.



1 **FORENSIC EVIDENCE OF THE FIREARM**

2
3 75. The evidence presented relating to the firearm was as follows:

- 4 i. The bullet recovered from the right cheek of Jamar Radcliffe
5 Timothy and the two .380 spent casings recovered by the police
6 from the open lot were forensically examined³.
7 ii. The results of those examinations are:

8
9 *“Comparison of the two .380 spent casings found similar*
10 *class characteristics. Individual characteristics indicate*
11 *they couldn’t ne identified or excluded as being fired in the*
12 *same firearm. However, these cartridge cases had similar*
13 *damage due to being discharged in a firearm not designed*
14 *for the .380 cartridge. Swelling and splitting of the*
15 *cartridge case mouth indicate they were likely fired in a*
16 *9x18 Makarov.*



23 *Examination of the fired bullet revealed negligible rifling*
24 *present. This is also due to being fired from a firearm not*
25 *designed for the .380 cartridge. This also is indicative of*
26 *being fired from a 9x18 Makarov.”⁴*

27
28 76. Paragraphs 6-11 of the “Agreed Facts 2” document read as follows:

- 29 “6. *At approximately 06:17am on the same day, SOCO Rankine returned*
30 *to the location and conducted a search. She noted that there was a*
 considerable amount of trash seen, most appearing weather or aged.
 She observed a piece of paper with writing and a pen, which were
 photographed and marked with a marker (number 7). She observed a
 380 auto spent casing, which was marked with a marker (8). A further

³ Paragraph 14 of Agreed Facts

⁴ Paragraph 15 of Agreed Facts

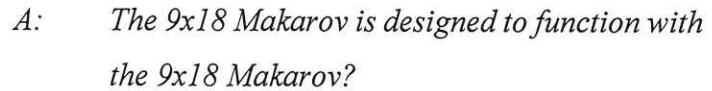
- 1 380 auto spent casing was discovered, marked as 9. Other items were
2 seen in the vicinity of the casings, including a can and a condom.
- 3 7. The casings were visually examined but no marks were observed on
4 either casing. The casings were processed through superglue fuming.
5 No fingerprints of interest were recovered.
- 6 8. On the 3rd May 2019, the Honda CRV (agreed to be the one driven
7 by Carlos Bustillo on the 26th April 2019}, was examined. A visual
8 examination with an Alternative Light Source as conducted of the
9 interior of the vehicle to identify areas of potential gunshot residue.
10 Samples were collected from a number of potential areas of interest,
11 including the steering wheel, gear knob, glove compartment, back of
12 front passenger's seat, side of middle rear headrest, driver's and front
13 passenger's interior doors, and an area on the rear left interior frame.
- 14 9. On the 8th May 2019, a gunshot residue/particles test was conducted
15 on the areas of interest identified above. The test gave a negative
16 result for the presence of GSR. Further checks were made for any
17 possible damage or spent casing in that area. The result was negative.
- 18 10. Neither Defendant, Carlos Jameel Bustillo nor Daniel Wallace
19 Rankine, have ever been issued with a valid Firearms Users
20 Certificate issued in the Cayman Islands.
- 21 11. The parties asked further questions of the expert who forensically
22 examined the .380 spent casings. On the 12th November 2020, those
23 questions were answered in the following way:

24 "1. Q: Can the .380 cartridges and bullet that he
25 examined in relation to this matter be fired
26 from a .22 caliber firearm?

27 A: No, the .380 Auto Cartridge Case and bullet
28 are too large to fit into a .22 caliber firearm.

29 2. Q: What cartridges are usually or are meant to be
30 used in the 9x18 Makarov?





[A]: No there is not. 9x18 Makarov is the designation of the Cartridge the firearm is designed to use. If a firearm is designed for .22 caliber it would so be designated in the firearm description."

77. At the close of the prosecution's case each of the defendants elected to give evidence on oath.

78. I remind myself that I must assess the evidence of each defendant in the same objective and dispassionate manner as I would any witness for the prosecution. I remind myself that if I don't accept the evidence of either of the defendants that I cannot convict a defendant because I do not believe his account. I must return to the prosecution's case to look for evidence that the prosecution has proved its case to the requisite standard before I can find a defendant guilty. If the Crown's evidence does not reach that standard so that I am sure of a defendant's guilt then my verdict must be not guilty.

79. As I assess the evidence presented by the prosecution against the defendants, the evidence must be assessed against each defendant separately, the burden being on the prosecution to prove its case to the requisite standard against each defendant on each count of the indictment.

1 80. Bustillo who is only before this court on the count of possession of an unlicensed
2 firearm, maintained much of what he said in his second interview with regard to how the
3 incident unfolded.

4
5 81. He knew Rankine for about 3-4 years before the incident, they would do music together.
6 He described him: *"I would say he what I know he always serious. Like he would do*
7 *things. In 2019, I knew he was easy to snap in terms of his temper."*

8
9 82. Bustillo stated that there was a discussion with Jamar at which time Rankine was present:

10
11 *"When I had the initial conversation with Mr. Timothy, after that Jamar asked if we*
12 *wanted to do a move. At this point it was me, Jamar and Daniel Rankine present.*
13 *Caleb was in the car. I understood a move meaning to make some money. You*
14 *would make money from a move, I knew what he meant. He mean like to rob or to*
15 *burglarize or something. Jamar asked do you want to go on a move. I replied and*
16 *said alright I can be the driver. Daniel said he were down too. There was no real*
17 *discussion, Jamar was going to go by Caleb and we had to pick him up when we*
18 *were ready."*

19
20
21 83. Bustillo stated that he and Rankine picked up Jamar sometime later. He stated that he
22 did not have to and did not 'bad up' Jamar with a gun: *"I didn't have to do that because*
23 *me and Jamar did things like this already. Robbery and so forth."* Bustillo described
24 driving into George Town. He maintained that it was Rankine who was directing him
25 where to go.

26
27 84. With regard to the circumstances surrounding the discharge of the firearm:
28 *"I told the police that at one point I shot off a gun in interview. This happened when*
29 *we were going in South Sound, Daniel [RANKINE] brandished a firearm or what*
30 *looked like a firearm and he told me to bust it so I rolled down the window and I*
31 *fired it. That was the first time I saw gun. Daniel took the gun out of his jacket.*

1 *When he took it out of his jacket, his mood he was like kind of excited. I got kind of*
2 *worried then because I wasn't expecting that. I got kind of frightened or like timid.*
3 *This was because I didn't know him ...like with a gun or anything like that. He gave*
4 *the gun to me and said to burst a shot. A lot of stuff going through my mind, like if*
5 *I didn't do it what would happen. I thought probably I would be the one getting*
6 *shot. I Thought that...I don't know how to explain it, because I didn't really trust*
7 *him with it. Because to me firearms are dangerous, because I see what it do people*
8 *and stuff like that.*

9
10 *When he said burst off shot what was going through my mind, I felt scared, scared*
11 *if I didn't comply with him it would have probably been me. I don't know he would*
12 *have probably went off on me or something. I think he would go off on me, that is*
13 *just how I felt that time. I don't be around those things.*

14
15 *Although I had the gun in my hand, I did that because the gun was not for me. I*
16 *hand it back because it was not mine. I was holding the gun for 10-15 sec. The gun,*
17 *I only see that it was grey and black. I can't say what sort of weapon it was. I can't*
18 *say whether it was a real or fake gun or what powered the gun. I could not say what*
19 *if any projectile that gun shot. I never saw this item again."*
20

21 85. Bustillo stated that after Rankine and the complainant left the car he heard two shots and
22 Rankine then returned to the car and said drive. He described driving to West Bay and
23 after dropping Rankine off at his home he drove around because he was confused about
24 the entire incident.

25
26 86. When cross examined by counsel for Rankine, Bustillo denied that it was his plan to go
27 on a mission. He denied that Timothy had been asleep during the journey. He denied
28 that Rankine had asked him to take him to town to get clothes from his father. He agreed
29 that he never told the police during his interview that he was confused about the entire
30 incident. He maintained that he only fired the shot from the gun because he felt he had



1 no choice. He denied that he had made up the story of Rankine's involvement in the
2 shooting.

3
4 87. Bustillo was cross-examined by counsel for the Crown. The defendant Bustillo denied
5 in cross examination that it was his idea to go on the mission or that he "badded up" the
6 complainant with a gun to force him to go on the mission. He insisted that it was the
7 complainant who asked him to go on the mission. He stated that in interview he had
8 denied knowing anything about the shooting because he was confused. He denied that
9 he had only given the second interview because he realized that the police had CCTV of
10 him being at the Esso Gas Station and therefore he had to change his story to meet that
11 evidence. Bustillo reiterated that it was Rankine who went out with the complainant and
12 shot him and came back to the car. He also reiterated that he was frightened when
13 Rankine took out the gun and asked him to bus' off a shot.

14
15 88. The defendant's explanation for his actions in throwing his clothes into the sea at East
16 End were not credible. Similarly, this court doubts his reasons for how the phone which
17 he used during the course of the evening of the 25th April into the morning of the 26th
18 April 2019 came to be disposed of. Counsel for the prosecution highlighted that even if
19 a phone may need to be thrown away because it has fallen into water as the defendant
20 described in his evidence, the timing of the damaged phone was too coincidental and, in
21 any event, this did not adequately explain why the phone chip also needed to be thrown
22 away. The defendant offered that he threw away the phone chip "*because I was getting*
23 *a lot of all kind of calls.*"

24
25 89. I carefully observed the demeanour of Bustillo as he gave his evidence. I prefer the
26 evidence of the complainant to that of Bustillo. The complainant was very forthright in
27 answering the questions asked of him. While counsel for the prosecution has submitted

1 that this court can rely on this evidence to, as it were, corroborate the evidence of the
2 complainant that Rankine was the shooter on the night in question, given this court's
3 finding as to the veracity of this defendant's evidence, and given that this is accomplice
4 evidence where each defendant is seeking to lay the blame on the other, this court must
5 be cautious about using this evidence in this way.

6
7 90. In any event this court must return to the prosecution's case even if it does not believe
8 the account given by Bustillo.

9
10 91. I have carefully considered the evidence of the second defendant, Rankine. The second
11 defendant in his evidence in chief admitted that he had lied to the police at the time that
12 he gave his interview, and that he had changed his story during the course of the
13 interview. He however maintained that he did not have anything to do with the shooting
14 of the complainant or of being involved in a conspiracy to rob involving the Bustillo and
15 the complainant. He stated as he did in interview that he had only gone to Bustillo's
16 home to make music, something that Bustillo confirmed in his own evidence.

17
18 92. Rankine stated that he never went outside to speak to anybody in a car on the 25th of
19 April 2019. Rankine maintained that on the 25th of April he wanted to go to Windsor
20 Park to get clothes from his father. He stated that Bustillo:

21
22 *"Was saying something like he had to make a drive into town anyway so he would*
23 *deal with it for me, he would take me. On the day I wanted to get clothes, I did not*
24 *talk to anyone. We stop at couple places and I just would hold my corner because I*
25 *don't know anybody like that because I really from Bodden Town."*

26
27 93. Rankine gave evidence that that evening after they had made a stop at a house:

28 *"I think B got back in car, the driver. And one little youth. Another person came.*
29 *That person sit somewhere in back seat not sure if behind me or Biggs, I can't*

1 *remember. I Did not talk to this person. He looked kind of serious. Not in a literal*
2 *way. I did not know who that person was. All I remember is looking at his hair, like*
3 *he was walking through a bushy area, hair had some stuff in it like then, like he went*
4 *through shortcut or something. I didn't ask Biggs any questions about this guy."*

5
6
7 94. Rankine related that he knew that they drove into town, but he was "*between*
8 *consciousness, in and out of sleep.*" He remembered the stop at the gas station and that
9 Biggs dropped him off in the area of Smith Cove. He stated:

10 *"I did not make any other arrangement with Biggs. I was supposed to get clothes*
11 *and come back to make music. When leaving there was no conv between me and*
12 *them, the other youth was passed out. No conv he then told me he had other plans."*

13
14 He stated:

15 *"I did go to my dad's. I stayed there till that morning. From when he dropped me*
16 *off to morning I called Biggs to try to get back some of my stuff. It was mainly about*
17 *computer. Didn't mind him hanging on to the mike but the computer not mine. I*
18 *borrow the computer. I did not get equip. back the following day. He was*
19 *unreachable I couldn't reach him.*

20

21 *I did not go back to West Bay with him that night. He did not tell me to leave his*
22 *house. If he did I would not leave my stuff. I would have taken my stuff. I got*
23 *computer back since I was in prison. My mom went to pick it up from his mom."*

24
25
26 95. In cross examination by counsel for the Bustillo, Rankine denied that he had a gun or
27 had given a gun to Bustillo that night. He denied knowing the complainant. He denied
28 changing his story about the complainant being in the car that evening. He sought to
29 clarify that he was unsure if it was the complainant in the car when the Police questioned
30 him:

31 Q: *You changed your account because you were lying to police.*

1 A: Certain things I said were not true but I felt a way because I was a passenger
2 and get a ride and then in the middle of the interview they are telling me
3 that this person say, who I thought was a friend say I shot somebody in their
4 face.

5 Q: You lied to the police about knowing Jamar was there because you knew
6 that you had gun. You were trying to confuse the police at this stage of
7 interview, to divert attention away from you.

8 A: That is not correct because it clearly did not work.”
9

10 96. In answer to questions by counsel for the prosecution Rankine agreed that he had lied to
11 the police during the course of his interview.

12 “I said what I remember happening when Biggs took me into town. I admitted I lied
13 to police in interview. I went overboard. When I told them I see him fidgeting like
14 he had a gun that part honestly I never see nothing like that. I lied two times. I lied
15 about [him] dropping me off and picking me back up and also when I said I saw him
16 fidgeting. Not about anything else in the interview.”
17

18 97. Rankine went further to state:

19 “I don’t remember how many lies I told or the conversation with the police. I can’t
20 say how many times I said something that was a lie, all I know I didn’t do anything
21 never try shoot or shoot nobody I remember that.”
22

23 98. Rankine admitted that he knew the complainant:

24 “I seen him before that night but I did not know him. I know he exist, seen him
25 before but I don’t talk to him. I don’t know him like that. I seen him before think it
26 was years ago. I only realised who he was after I saw images of him after the matter
27 came to court. I had done hear about the incident. On the night when he was in the
28 car, I knew of him by seeing him before. I was too charged. Didn’t want to give an
29 exact thing to say I seen him. I was too charged.”
30

31 99. Rankine gave the following as his explanation for the lies that he told the Police.

32 Q: Why should we believe that what you say today.

1 R: *I have No reason to lie, I never involved in nothing. He bad him up with a*
2 *gun to get to George Town so I shoot him for no reason in world. ... A Lot*
3 *of stuff not correct. If I could get ride and end up the suspect what else*
4 *possible so that is the reason I said certain things. I felt like I need to defend*
5 *myself somehow. ...He driving. Not guilty for firing the gun that I never*
6 *see. Never present for conversation for planning a mission and that is not*
7 *making no sense. Is frustration, knowing this man telling lies straight to my*
8 *face. That is doing me something, it is frustration."*

9
10 100. I remind myself that I cannot convict the defendant because he has admitted to lying.

11
12 101. People sometimes tell lies for reasons other than a belief that they are necessary to
13 conceal guilt. I am guided by the leading authority in this regard. Lord Lane CJ in the
14 case of *R v Lucas (Ruth Iyabode)*⁵ states that four conditions must be satisfied before a
15 defendant's lie could be seen as supporting the prosecution case:

- 16
17 i. The lie must be deliberate;
18 ii. It must relate to a material issue;
19 iii. The motive for the lie must be a realisation of guilt and fear of the truth; and
20 iv. The statement must be clearly shown to be a lie by evidence other than that
21 of the accomplice who is to be corroborated - that is to say by admission or
22 evidence from an independent witness.

23
24 102. I bear in mind that even if a court concludes that a witness has lied about one matter, it
25 does not follow that he has lied about everything for the simple reason that a witness
26 may lie for many reasons.
27

⁵ [1981] 73 Cr App R 159



1 COURT'S CONSIDERATIONS AND CONCLUSIONS

2
3 103. As I consider the evidence presented by the various witnesses in this case I am free to
4 accept all of a witness' evidence or to reject all of a witness' evidence. I can reject part
5 of a witness' evidence and accept part of a witness' evidence. You may accept the
6 evidence of one witness and reject the evidence of another witness.

7
8 104. I remind myself that when presented with inconsistencies in a witness' evidence I should
9 assess whether the inconsistency is major or minor. I must consider whether they go to
10 an important fact or issue in the case and determine whether they cause me to reject that
11 part of the witness' evidence or, whether they affect my view of the reliability of that
12 witness and his evidence as a whole.

13
14 105. I remind myself also that notwithstanding the presence of inconsistencies, here, on the
15 Crown's case, depending on the particular facts, a tribunal of fact is still entitled to
16 convict. However, if the inconsistencies are substantial and unexplained, this can affect
17 a witness' credibility and the weight of his evidence. There is a danger in acting on
18 evidence of this quality.

19
20 106. There are a number of inconsistencies in the evidence of the complainant as presented
21 by the prosecution. I remind myself that in this instance the complainant had agreed to
22 be the lookout when they went to rob and can be considered an accomplice in all the
23 circumstances. The court must be cautious as it considers the weight to be attached to
24 accomplice evidence.

25
26 107. One of the major issues in this case is that of identification. I remind myself that I must
27 be cautious when considering this evidence of identification because a witness who has
28 identified a person can be mistaken even when the witness is honest and sure that a

1 convincing witness but may be wrong. I can only rely on the identification evidence if
2 I are sure that it is accurate.

3
4 108. This court must be careful to consider all the circumstances in which the defendant was
5 identified by the complainant:

- 6 a. For how long could W [witness] see the person W says was D [Defendant] and, in
7 particular, for how long could W see the person's face?
8 b. How clear was W's view of the person, considering the distance between them, the
9 light, any objects or people getting in the way and any distractions.
10 c. Had W ever seen D before the incident? If so, how often and in what circumstances?
11 If only once or occasionally, had W any special reason for remembering D?
12 d. How long was it between the time of the incident and the time when W identified
13 D to the police?
14 e. Is there any significant difference between the description W gave of the person and
15 D's appearance?
16

17 109. The following aspects of the Agreed Facts 2 document are pertinent to this issue of
18 identification:

19 "2. *First responders have noted that when they arrived at the scene, Jamar*
20 *Timothy was not able to provide any details as to how he was shot or what*
21 *car he arrived at the scene in.*

22 3. *At 01.49am PC Andrew Hemmings attended the Trauma Room at the*
23 *George Town Hospital and spoke to Jamar Timothy who stated 'I lef cotton*
24 *club wid Biggs, Jenife, Paul Bush and brown skin boy. Lef in a light blue*
25 *car like a honda fit.' Jamar further stated that the gun used to shoot was*
26 *black and small like the palm of his hand and was used by the brown skin*
27 *boy. Jamar was then taken to do X-Rays.*

28 4. *At the hospital DC Sean Bryan spoke with Jamar Timothy, who appeared*
29 *barely conscious, and asked him who shot him and he stated "Biggs". Jamar*

1 *was mumbling and DC Sean Bryan could not clearly understand if he was*
2 *saying "Joneil" or "Janell".*

3 5. *On the 2nd May 2019 at approximately 02:47am, SOCO Tiffany Rankine*
4 *attended a vacant lot across from 877 South Church Street (agreed to be the*
5 *scene of the shooting). She noted that there was little to no lighting in the*
6 *vacant lot."*

7
8 110. As set out above, the agreed facts state that the defendant Rankine and the complainant
9 are known to each other from seeing each other about. In evidence, the complainant
10 says however that he did not know him before the date of the incident. His evidence in
11 chief was:

12 *"I don't know Daniel Rankine. I don't know him. When I say I don't know, I know*
13 *him from, only from that night I know him the 25th of April."*

14
15 111. When the complainant was asked in re-examination to clarify his knowing Rankine
16 before the night of the shooting, he said:

17 *"I don't know him from nowhere. I never met him. Only know him from that night.*
18 *That what I trying to say. I only know him from that night. I don't know him from*
19 *nowhere. That what I trying to say. I don't know him. only that night I know him."*

20
21 112. The complainant's mother Samara Ebanks related what the complainant said to her on
22 the day after the incident, the 27th of April 2019:

23 *"When I went to the hospital, Jamar told me something and he said was Biggs and*
24 *someone else there that shot him. He told me he had problems with the person*
25 *before. I know who Biggs is. I did not know who the other person was. He told me*
26 *he had problems with that person before he couldn't remember his name but told*
27 *me he would be able to recognize. Him. He told me that this individual, he hung out*
28 *with Charles Walton."*

1 113. The complainant stated in evidence that he saw Rankine's face on the afternoon before
2 the incident. He related that he saw Rankine's face at Biggs house earlier in the day on
3 the 25th of April. He, Rankine, was inside the house and the complainant was in Caleb's
4 car outside the house. He said that the car was close to the doorstep and he could see
5 inside the house. The complainant pointed out the distance and this was estimated at 15-
6 20 feet away.

7
8 114. The complainant related that there was nothing blocking his view of Rankine's face.
9 When he was asked specifically how long he saw Rankine's face for he stated:

10
11 *"I never paid attention sir, to him sir. I just came there to get my stuff and leave."*

12 The complainant stated that the car never stayed parked there too long.

13
14 115. The outcome is that there was no evidence led to explain how long he had him in view,
15 to give his description on any of the matters that could assist this court with regard to his
16 identification of Rankine at that time.

17
18 116. In relation to the evidence of the complainant having observed Rankine while he was in
19 the car on the night of the shooting: In cross examination the complainant described that
20 during the journey in the car, on the way to the destination, he was asleep except when
21 they got to the Gas Station. When they arrived at the destination he was awakened when
22 Biggs pulled him out of the car. The time in which he could have made any observations
23 of Rankine in the car is therefore very limited.

24
25 117. The complainant stated that Rankine put a bandana on his face when he went to rob.
26 When he was asked to say exactly when Rankine put on the bandana he stated that he
27 put it on inside the car. Rankine was wearing a bandana when he came out of the car to
28 go and rob. The complainant stated that Rankine pulled the bandanna down immediately

1 before he shot him. However the only evidence of the length of time of his observation
2 of Rankine then was that it was very fast. The conditions were difficult. The witnesses
3 all describe a dark area without lighting. The complainant does not say that there was
4 any lighting by which he could see the shooter. Although there is evidence that the lights
5 from the car were left on the complainant does not say that this aided his ability to see
6 the shooter, to identify him as Rankine.

7
8 118. The Agreed Facts 2 document at paragraph 5 records as follows:

9
10 “5. On the 2nd May 2019 at approximately 02:47am, SOCO Tiffany Rankine
11 attended a vacant lot across from 877 South Church Street (agreed to be the
12 scene of the shooting). She noted that there was little to no lighting in the
13 vacant lot.”
14

15 119. The complainant made differing, unclear statements with regard to the identity of the
16 shooter. As set out in the agreed facts 2 at paragraphs 2-4, the complainant gave a
17 differing statement as to who shot him. He named Bustillo and also the brown boy. At
18 various times he said that his shooter was the young boy, and also Kelly. There is no
19 evidence that Rankine is called Kelly. While I accept that the statements made
20 immediately after he was shot and while in hospital awaiting surgery would have been
21 made in difficult, stressful circumstances which may explain this confusion, these are
22 matters which this court must consider in the round as it examines all of the evidence
23 of identification presented by the prosecution.
24

25 120. The circumstances which led to the complainant giving the police the name Rankine are
26 unsatisfactory. The complainant admitted in evidence that he saw a picture and the name
27 of the Rankine on social media before the photo array was shown to him. His mother

1 and his uncle were involved in these rather unscientific avenues to identification. The
2 photo array is obviously tainted and unreliable for these reasons. In fairness the
3 prosecution has not sought to rely heavily on this because counsel would be well aware
4 that the weight to be attached to this identification in these circumstances would be
5 minimal.

6
7 121. The complainant's evidence is a mass of contradictions on the identification of Rankine.
8 On this the central issue with regard to the defendant Rankine, the cogency of the
9 complainant's evidence of identification is lacking. It follows that these contradictions
10 on this central issue lead this court to find that this evidence of identification unreliable.
11 This onus is on the prosecution to present evidence before the court that is cogent and
12 compelling. The onus is on the prosecution to prove its case beyond a reasonable doubt.
13 This court has reasonable doubt that this defendant has committed the offence of
14 Attempted Murder for which he is charged on this indictment.

15
16 122. The complainant gave his evidence in a forthright manner. However it appeared to this
17 court that he was somewhat confused as to the sequence of events on the evening that he
18 was shot. I do not find that he has deliberately sought to mislead the court. The evidence
19 is that the complainant had been drinking alcohol on the evening of the incident. One
20 of the officers who saw him at the George Town hospital on the night of the shooting,
21 PC Wade Gordon stated that Jamar appear intoxicated⁶. This may also explain his
22 apparent confusion and the lack of cogency of his evidence before the court. While the
23 court has every sympathy for this young man this court cannot be swayed by sympathy
24 or sentiment. It must consider only the evidence presented in a clinical and dispassionate
25 manner in seeking to arrive at a verdict in this case.

⁶ Agreed Facts paragraph 10

1 123. With regard to the offence of conspiracy to rob, the Crown must prove that there was an
2 agreement between two or more people to commit an intended crime. The agreement is
3 itself a crime, separate from the intended crime itself. In this case the prosecution say
4 that the intended crime was to rob persons in the South Sound area and that each of the
5 defendants was part of a conspiracy or agreement to commit that crime. I bear in mind
6 that in a conspiracy it is not necessary for the conspirators to know or meet or
7 communicate with all of the other conspirators or to know all the details of the
8 conspiracy.

9
10 124. I now look at the complainant's evidence of the conspiracy. The complainant's evidence
11 was that it was Bustillo who drew him into going on a mission to rob. His evidence to
12 support this is of Rankine being the person who leaves the vehicle with him to go towards
13 the houses on the first occasion and it is on the second occasion when they were returning
14 to the vehicle after leaving with the intention of robbing that the complainant is shot.
15 Bustillo gave evidence that it was the complainant who first spoke of going on a move
16 and that Rankine was present when this was discussed at Bustillo's residence. Bustillo
17 testified that on the way to town for the move, Rankine gave instructions as to where to
18 go.

19
20 125. The complainant gives no evidence of a discussion between himself, Rankine and
21 Bustillo at Bustillo's residence about going on a move and denied that he had ever
22 initiated the move or mission. Rankine's evidence is that he did not know anything
23 about a mission or a move to rob. Having found that the evidence of identification is
24 insufficient to make this court sure that Rankine was the person who shot the
25 complainant. The evidence presented of the conspiracy to rob against Rankine is equally
26 unreliable and insufficient.

1 126. With regard to the offence of possession of a firearm, I am satisfied from the evidence
2 presented that the firearm that was used to shoot the complainant was the same firearm
3 that Bustillo shot out of the window on the night in question. There is no evidence of
4 there being more than one firearm in the vehicle. The complainant is adamant that there
5 was only one firearm and that this is the firearm that was used to shoot him.

6
7 127. It is an Agreed Fact that neither of the defendants in this case have ever been issued with
8 a valid Firearm Users' Certificate issued in the Cayman Islands⁷.

9
10 128. The firearm was capable of firing the .380 cartridges as evidenced by the spent .380
11 auto-spent casing found at the accepted scene of the shooting. These were discharged
12 by the firearm on the night in question⁸.

13
14 129. The defendant Bustillo accepts that he was in possession of a firearm on the night in
15 question and that he fired off a shot from that firearm. He has however raised the defence
16 of duress. In effect he says that he was driven to take possession of the firearm and to
17 fire off the shot because of what he interpreted to be a threat from the defendant Rankine.

18
19 130. The defendant's evidence was:

20 *"D took the gun out of his jacket. When he took it out of his jacket, his mood he was*
21 *like kind of excited. I got kind of worried then because I wasn't expecting that. I*
22 *got kind of frightened or like timid. This was because I didn't know him ...like with*
23 *a gun or anything like that. He gave the gun to me and said to burst a shot. A lot of*
24 *stuff going through my mind, like if I didn't do it what would happen. I Thought*
25 *probably I would be the one getting shot. I Thought that...I don't know how to*
26 *explain it, because I didn't really trust him with it. Because to me firearms are*
27 *dangerous, because I see what it do people and stuff like that.*
28

⁷ See the Agreed Facts 2 document, item #10

⁸ Agreed facts 2 paragraph 6.

1 *When he said “burst” off shot what was going through my mind, I felt scared, scared*
2 *if I didn’t comply with him it would have probably been me. I don’t know he would*
3 *have probably went off on me or something. I think he would go off on me, that is*
4 *just how I felt that time. I don’t be around those things.*
5 *I didn’t stop the car and get out rather than take gun because it was my cousin car.*
6 *When I had the gun in my hand, I fired the shot off because he told me to.”*
7

8 131. As in every criminal case, it is for the prosecution to prove the Defendant’s guilt, it is
9 for the prosecution to prove that the defence of duress does not apply in this case. It is
10 not for the Defendant to prove that it does apply.
11

12 132. I must determine first, whether the Defendant, was or may he have been, impelled to act
13 as he did because, as a result of what he reasonably believed to be the situation, he had
14 good cause to fear –that otherwise, death or serious physical injury would result?
15

16 133. Second, I must determine if so, may a sober person of reasonable firmness, sharing the
17 characteristics of the defendant, have responded to that situation by acting as the
18 defendant acted? If the answer to both those questions was yes, then the verdict on this
19 count should be not guilty.
20

21 134. The evidence of the complainant was that it was Bustillo who he first saw with the gun
22 on the night in question. The complainant’s evidence is counter to that of Bustillo, that
23 is, that Rankine handed him the gun and told him that he must bust off a shot. Instead,
24 the complainant’s evidence is that Rankine was given the gun by Bustillo. The
25 complainant’s evidence on this point was as follows:

26 *“Before Biggs let off shot, the gun was on top of him. Before Biggs let off the shot,*
27 *Daniel was sitting down in the passenger seat.*
28





1 *Before Biggs let off shot the gun was sitting on top of his waist or somewhere I don't*
2 *rem where he put it. B let off shot through the window. He just push it through the*
3 *window and he shot it off and pull it back in [witness demonstrates]. When he let of*
4 *shot I heard POW and that's it. The gun that B had it was black. Based on what was*
5 *happening it was the same gun that B let off that D shot me with."*

6
7 135. The complainant also stated in evidence that Biggs had "bad him up" with a gun when
8 he first demanded that the complainant go on this mission with him. This particular
9 piece of evidence was first mentioned at trial. The complainant stated that he had never
10 mentioned it to the police in interview because he was frightened of Biggs. I do not
11 accept this explanation. The complainant told the police during that same interview that
12 Biggs had fired the gun and also that Biggs had driven him to the destination where he
13 was eventually shot. I find that the complainant may have been seeking to bolster his
14 evidence in this regard.

15
16 136. It therefore remains to determine whether the prosecution have satisfied me so that I am
17 sure that Bustillo had possession of the gun, that it was never passed to him as he says,
18 that he was never told to "bus' off" a shot with the gun.

19
20 137. I have carefully considered all the circumstances that the defendant Bustillo has offered
21 in evidence concerning his fear of Rankine. On Bustillo's own evidence, Rankine was
22 staying at his home. They were at his home to make music. He had known Rankine for
23 some time. Even if I accept his evidence that he had never seen Rankine with a gun
24 before, he does not say that there was any overt action that may have caused him to feel
25 that there was a threat of him being injured or hurt by Rankine. His evidence in chief of
26 Rankine was to the following:

27 *"I now Daniel Rankine. I have known him for like 3-4 years. In 2019, I was*
28 *interviewed by the police and in the interview, I said to the police that Mr. Rankine*

1 *is a friend or supposed to be friend, but we not really like down down. "... in April*
2 *2019 the relationship with Mr. Rankine: we used to do music together and that is*
3 *about it. In 2019, I would see Mr. Rankine, I would see him one or two times a month.*
4 *I described him as a serious dude with no remorse, I would say he, what I know he*
5 *always serious. Like he would do things. In 2019, I knew he was easy to snap in*
6 *terms of his temper."*

7
8 138. This enterprise/mission/move was at the behest of Jamar Timothy on Bustillo's account.
9
10 The prosecution have highlighted that Bustillo's actions do not support his defence that
11 he reasonably believed he was in danger or serious injury or death. The prosecution
12 points to the fact that when Rankine and Timothy exited the vehicle, Bustillo remained
13 in the vehicle, on his account, on the phone with his girlfriend. He also stated that he
14 drove Rankine back to his house in West Bay. I do not find in all the circumstances that
15 Bustillo was or may he have been, impelled to act as he did because, as a result of what
16 he reasonably believed to be the situation, he had good cause to fear that otherwise death
17 or serious physical injury would result.

18 139. I must go back to the prosecution's case. I find that the prosecution's evidence does
19 satisfy me so that I am sure that Bustillo was in possession of the firearm on the night in
20 question. I accept the complainant's evidence of his observations of Bustillo with the
21 gun at the destination.

22 140. With regard to Rankine, there is no forensic evidence to connect this defendant to the
23 shooting. Coupled with this court's finding that the evidence of identification is
24 insufficient to make this court sure that Rankine who was the person who shot the
25 complainant, this court is not satisfied so that I am sure that Rankine was in possession
26 of an unlicensed firearm on the night in question.
27
28

1 141. The court's verdict is:

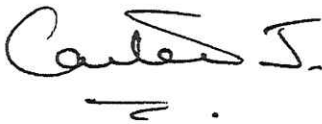
2
3 a. Not guilty on all counts for Rankine

4
5 b. Guilty to possession of the firearm for Bustillo.

6
7

8 **Dated this 12th day of February 2021.**

9





10
11
12
13
14

Madam Justice Marlene I. Carter
Judge of the Grand Court (Acting)