

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

4 INDICTMENT NO: 53/2017; 54/2017 & 57/2017
5

6
7 THE QUEEN
8

9 v.
10

11 LESHAWN SHAHEEM FORRESTER
12
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14
15 **Appearances:**
16

Greg G. Walcolm for the Crown

17 Mrs. Lee Halliday-Davis of Brady Attorneys
18 for the Defendant

19 **Before:**

Justice Marlene I. Carter (Actg.)

20 **Judge Alone Trial:**
21

3rd and 4th July 2018 & 30th and 31st August
2018
22

23 **Delivery of Decision:**
24

3rd October 2018
25
26

27 **HEADNOTE**

28 *Criminal Law - Possession of an Imitation Firearm with Intent to Resist Arrest,*
29 *Dangerous Driving and Causing Harassment, Alarm or Distress*
30 *- Trial by Judge Alone on Possession of an Imitation Firearm with Intent to Resist Arrest.*
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34 **VERDICT JUDGMENT**
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INDICTMENT

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

- i. Count 1: Dangerous Driving contrary to s.76 of the *Traffic Law* (2011 Revision): The particulars of the offence being that, the Defendant, between the 2nd day of June 2017 and the 4th day of June 2017, in the jurisdiction of the Cayman Islands, drove a vehicle, namely a Honda Sedan, registration number 1211117, dangerously, having regard to the manner of driving on Esterley Tibbetts Highway, Lime Tree Bay Avenue, and West Bay Road;
- ii. Count 2: Possession of an imitation firearm with intent to resist arrest contrary to s.18(6) of the *Firearms Law* (2008 Revision): The particulars of the offence being that, the Defendant, between the 2nd day of June 2017 and the 4th day of June 2017, in the jurisdiction of the Cayman Islands, aided and abetted an unknown male who had with him an imitation firearm with intent to resist arrest;
- iii. Count 3: Causing Harassment, alarm or distress, contrary to s.88A of the *Penal Code* (2017 Revision): The information below details why it is not necessary for me to detail the particulars of this offence here.



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COUNT 1

2. The Defendant pleaded guilty to Count 1 on the Indictment.

COUNT 3

3. Counsel for the defendant made an application to this Court asking the Court to find that there had been an abuse of process relating to the Crown's failure to disclose relevant video footage relating to Count 3 of the Indictment.

4. After hearing submissions from both the Crown and defence and after hearing some evidence on this aspect of the Crown's case, Crown Counsel very fairly stated to the Court that he would not resist the Defence application.

5. The Defendant is therefore discharged with regard to Count 3 of the Indictment.

Count 2

6. The only count on the Indictment remaining for the Court's consideration and determination is therefore Count 2, as the Defendant has pleaded not guilty to Count 2 - Possession of an imitation firearm with intent to resist arrest, with the particulars as stated above.



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THE LAW ON JUDGE ALONE TRIALS

3 7. The defendant elected trial by Judge Alone pursuant to s.129 of the Criminal
4 Procedure Code (CPC) of the Cayman Islands.

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

7 *“When a trial judge sitting alone has advised himself to the applicable*
8 *principles of law, and given himself any necessary warning, he must*
9 *indicate clearly in his judgment his reasons for acting as he did in order*
10 *to demonstrate that he has acted with the requisite degree of caution in*
11 *mind and has therefore heeded his own warning. No specific form of*
12 *words is necessary for this demonstration, what is necessary is that the*
13 *Judge’s mind upon the matter should be clearly revealed.”*
14

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

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

24
25 10. As in all criminal trials the burden is on the Crown to prove beyond a reasonable
26 doubt that the Defendant was in possession of an imitation firearm with intent to resist
27 arrest. The particulars of this count specifically charge the Defendant with having
28 aided and abetted an unknown male who had with him an imitation firearm with
29 intent to resist arrest.
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¹ 2001 CILR 496

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



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

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

13. I remind myself that I am not to speculate about things or matters that are not covered by the evidence. I must have regard only to the whole of the evidence that has been presented at trial and form my own judgment about that evidence. The questions of fact at issue on this trial are for me to determine.

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

15. On the other hand, if having considered the evidence I am satisfied so that there is no reasonable doubt in my mind, and I am sure of the guilt of the Defendant, then it will be equally my duty in law to find him guilty as charged of being in possession of an imitation firearm with intent to resist arrest.



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3 **THE LAW**

4 16. The legal definitions of the offence: *The Firearms Law (2008 Revision)* provides as follows:-

5
6 “s.18(6) *Whoever has with him a firearm or imitation firearm with intent*
7 *to commit an offence, to resist arrest or to prevent the arrest of*
8 *another person, in either case while he has the firearm or*
9 *imitation firearm with him, is guilty of an offence and, subject to*
10 *section 39 is liable on conviction to a fine of one hundred*
11 *thousand dollars and to imprisonment for twenty years”.*
12

13
14 17. The definition section of the Law provides as follows:-

15
16 *“imitation firearm” means anything which has the appearance of being*
17 *a firearm, whether or not it is capable of discharging any shot, bullet or*
18 *other missile.”*
19

20 18. In this case where the Defendant has been charged with aiding and abetting an
21 unknown male, I remind myself of the burden that is on the prosecution in proof of its
22 case and that the prosecution must prove each of the constituent elements of the
23 offence as it relates to this defendant to the requisite standard, beyond a reasonable
24 doubt. The issues for me to determine are as follows:

- 25 i. Has the Crown proved so that I am sure that the unknown male had the
26 item alleged to have been an imitation firearm with him/in his possession?
27 ii. Has the Crown proved so that I am sure that the item alleged to have been
28 an imitation firearm had the appearance of being a firearm?
29 iii. Has the Crown proved so that I am sure that the unknown male, at the time
30 of having the item with him/in his possession, intended to resist arrest?
31



1 19. If I conclude from my examination of the facts and application of the law that the
2 unknown male was in possession of an imitation firearm with intent to resist arrest on
3 the date and time in question, I must then go on to consider whether there is any
4 evidence that the defendant aided and abetted him in that possession. In order to
5 prove its case against the defendant the Crown must go on to prove that the defendant
6 intended to assist the unknown male in the commission of the offence and that he did
7 in fact assist the unknown male with the imitation firearm to resist arrest.



1 **THE EVIDENCE FOR THE CROWN**

2
3 20. By way of background, the allegations against the Defendant on the Crown's case was
4 in regard to the following:

5 i. On the night of Saturday, 3rd June 2017, a team of RCIPS police officers
6 were conducting a police check point at the roundabout near the Public
7 Beach which links Esterley Tibbetts Highway and West Bay Road. Several
8 marked police vehicles were at the scene, and there were several officers
9 in full uniform including AS Brandaughn Phillips, PC Javid Myers and PC
10 Craig Hunter.



11
12 ii. At approximately 11:20 p.m. a dark Honda Sedan motor vehicle
13 approached the check point. There were three persons in the vehicle
14 including the driver. The driver was given instructions to stop at the
15 checkpoint. He disobeyed those instructions and sped away at a high rate
16 of speed.

17
18 iii. AS Phillips got into his service vehicle and pursued the dark Honda Sedan
19 as it travelled toward Lime Tree Bay Roundabout at speeds in excess of
20 the speed limit whilst driving in the wrong carriageway and then made a
21 dangerous manoeuvre as it turned onto West Bay Road and headed in the
22 direction of the Public Beach.

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24 iv. When the vehicle reached the Public Beach it turned into the parking lot
25 and came to a stop near the construction site adjacent to the Kimpton
26 Hotel.

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v. PC Phillips came to a stop behind the dark Honda Sedan. He saw two males jump from the left side of the Black Honda Sedan and they ran towards the resort. He noted that one of the males had an object which appeared to be a firearm in his right hand. He shouted at the men to stop, but they continued to make good their escape, on foot, towards the resort.

vi. PC Phillips approached the Honda Sedan and found the defendant in the driver's seat. The defendant was arrested at the scene. He made no reply to caution. PC Hunter and PC Myers arrived at the area whilst the defendant was being arrested.

vii. The Defendant was taken into custody and booked at the Cayman Islands Detention Centre at Fairbanks Road.

21. The Crown led the evidence of three witnesses in support of their case against the Defendant.



1 *POLICE CONSTABLE CRAIG HUNTER (PC 2015)*

2 22. PC Hunter's evidence was that on the 3rd of June he was on duty dressed in full
3 uniform. He stated that he was on mobile patrol at a vehicle checkpoint about
4 minutes after 11:00 pm at the roundabout at Esterley Tibbets Highway and Tiki Beach
5 just below the Kimpton Hotel. He was in the company of Acting Police Sergeant
6 Phillips and Police Constable Myers and other police officers from West Bay.

7
8 23. The salient portions of PC Hunter's evidence are as follows:

9 i. *"There was another police vehicle closely parked so as to have one-way*
10 *traffic going through the vehicle checkpoint. One blocked and one closed*
11 *so vehicles had to move through narrow channel.*

12 ii. *The focus of vehicle checkpoint was vehicles coming out of West Bay. We*
13 *were not checking for a special vehicle but the reason why we were there*
14 *was for high visibility patrol and to see if any wanted person were passing*
15 *in vehicles.*

16 iii. *There was a special need at the checkpoint because at that time we were*
17 *searching for a wanted male hence we set up a vehicle checkpoint at that*
18 *location and to carry out further vehicle check points in and around*
19 *central George Town.*

20 iv. *The person I was checking for was Elmer Wright. I cannot recall what he*
21 *was wanted for.*

22 v. *At the checkpoint, I did have occasion to stop a vehicle, a black Honda*
23 *Accord. I had my flashlight in my left hand and my weapon a G36*
24 *combine and 9" pistol at my thigh. The G36 was string across my chest*
25 *and visible from the front.*

26 vi. *The vehicle I stopped was coming from West Bay.*



- 1 vii. *As vehicle got closer it slowed down and stopped in front of me.*
- 2 viii. *When it stopped in front of me it was about 10 feet in front of me. PC*
- 3 *Myers was coming toward me to my right on the soft shoulder of the*
- 4 *roadway.*
- 5 ix. *When vehicle stopped I used my touch to shine inside the vehicle to*
- 6 *identify the driver and the front passenger. I was able to see driver as I*
- 7 *ask him to turn on his roof light and to wind the windows down.*
- 8 x. *The driver of the car was Leshawn Forrester. He did not turn on his roof*
- 9 *light. He wound the window half way down, the rear passenger window*
- 10 *half way down and the front passenger window all the way.*
- 11 xi. *I was able to see the front passenger but he was not known to me. Besides*
- 12 *the driver and front passenger there was a passenger in rear seat of car*
- 13 *but I was unable to identify that passenger.*
- 14 xii. *Whilst shining light into car and having ID'd the driver, I called PC Myers*
- 15 *by name. I drew his attention to what I was doing at that time. He turned*
- 16 *on his flashlight and also shone on inside of car to ID the occupants as*
- 17 *well.*
- 18 xiii. *In relation to car he was to the left on the side with the front and rear*
- 19 *passenger of the car were.*
- 20 xiv. *Having identified this driver, I told him to pull to the left of the road.*
- 21 xv. *But before that could be done Acting Police Sergeant Phillips tried to*
- 22 *direct him to a special area to pull off the road.*
- 23 xvi. *When Acting Police Sergeant Phillips directed the car to the special area,*
- 24 *the driver then immediately sped away at a high rate of speed.*
- 25 xvii. *Acting Police Sergeant Phillips was still in the roadway and jumped out of*
- 26 *the way of car.*



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- iv. *At the time where Acting Police Sergeant Phillips and Honda stopped; it was a dark area, exactly where I saw them. The headlights from the police vehicle were on but I can't recall if lights of Honda on.*

- v. *Honda and Acting Police Sergeant Phillips' vehicle were not facing each other, they were in the same direction.*

- vi. *We arrived less, than a minute behind of Acting Police Sergeant Phillips."*



1 *POLICE CONSTABEL JAVID MYERS*

2 25. PC Myers was the second witness for the Crown. The salient portions of his evidence
3 are as follows:

4 i. *“On the 3rd June 2017 I was on duty at above 11:09 pm. I was instructed*
5 *by Acting Police Sergeant Phillips to conduct a vehicle check point at*
6 *Calico Jack’s roundabout on Public Beach roundabout.*

7 ii. *The focus of the check point was for vehicles coming from West Bay.*

8 iii. *Whilst there, about 20 minutes within the vehicle check point, I was*
9 *summoned by Police Constable Hunter for support which is a tactical term*
10 *for assistance. Police Constable Hunter, when I turned to his direction he*
11 *was stopping a black Honda Accord, registration 121-117.*

12 iv. *When I turned the vehicle came to a stop for a very short period. When he*
13 *called my attention, I turned toward him. I saw his motor vehicle and the*
14 *signal that was given showed that the vehicle was of interest. I*
15 *immediately faced the vehicle. I was on the left side of it. I observed a*
16 *male know as Elmer Wright sitting in the rear seat. An unknown male was*
17 *in the front passenger seat and Mr. Forrester was the driver.*

18 v. *After I made my observation, Mr. Wright was acting very suspiciously,*
19 *fidgety. He appeared as he was communicating with the driver and*
20 *looking towards me. He was looking at me with a bit of surprise, hesitant,*
21 *fidgety. He turned toward the driver and by facial expression and body*
22 *language I assumed he was communicating something to the driver. I*
23 *could not hear what he said; however immediately after turning to the*
24 *driver, looking back me, the driver sped away.*

25 vi. *I turned to the direction where the vehicle was heading, towards town.*
26 *Cost U Less roundabout, that’s when I saw Acting Police Sergeant*
27 *Phillips heading towards his vehicle to follow the black motor vehicle.*



1 *ACTING POLICE SERGEANT BRANDAUGHN PHILLIPS (APS 284)*

2 28. APS Phillips explained that he is, as he was on the 3rd June 2017, a member of the
3 Royal Cayman Islands Tactical Firearms Unit at George Town Police Station. The
4 salient portions of his evidence in chief were:

- 5 i. *“I was in charge of the vehicle check point. This was at/in the vicinity of*
6 *Governor’s Harbour and Esterley Tibbetts Highway*
- 7 ii. *The focus of vehicle check point was for vehicles heading from West Bay*
8 *but we had enough staff to focus on northbound/southbound.*
- 9 iii. *We had three to four vehicles and they were on both sides. My vehicle was*
10 *at the center of the roundabout. The West Bay unit was on the southbound*
11 *lane to George Town of the roundabout and Myers and Hunter were on*
12 *the northbound side of roundabout.*
- 13 iv. *When I saw the vehicle at first, the vehicle was not moving. It was a dark-*
14 *colored sedan with a dark tint. In relation to the vehicle, PC Hunter had*
15 *jumped out of the way. As I entered the center of roundabout the vehicle*
16 *was heading straight towards me.*
- 17 v. *I stood directly in its path and I put up my hands to indicate it to stop. As I*
18 *did that the vehicle did not stop and in order to avoid being hit I had to*
19 *jump out of its path. Had I not jumped, I would have been hit.*
- 20 vi. *The vehicle was now heading towards George Town. I immediately went*
21 *to my vehicle and gave command to my armed officers to get in their*
22 *vehicles and we gave chase.*
- 23 vii. *I immediately activated the sirens as the emergency lights were already*
24 *activated. I then sped off at speed to attempt to initiate a traffic stop on*
25 *the vehicle that had breached the road block, registration plate was 121-*
26 *117.*



1 viii. *I never lost sight of the sedan when I was chasing it. I was in contact with*
2 *other police units.*

3 ix. *The driver went into the roundabout, head on into oncoming traffic,*
4 *utilizing the northbound side of roundabout which carries traffic towards*
5 *West Bay. He was going in the direction of George Town. When he turned*
6 *he was on the right side, the incorrect side. There was oncoming traffic*
7 *along that road. The vehicles either had to stop abruptly or move out of*
8 *the way in order to avoid a collision.*

9 x. *The vehicle then travelled along Lime Tree Bay heading to the Governor's*
10 *residence at speed. My initial estimate of vehicle's speed was 80 mph*
11 *going towards Lime Tree Bay. I estimated that based on my vehicle's*
12 *speed and I maintained distance between the speeding vehicle and my*
13 *vehicle.*

14 xi. *When vehicle got onto West Bay Road, I would say I was six to eight car-*
15 *lengths away. The distance varied between chase. I maintained six to*
16 *eight car lengths. Along West Bay Road heading toward West Bay the*
17 *vehicle was travelling at high rates of speed in excess of 75 mph. Traffic*
18 *was medium to light. There was hard overtaking and forcing vehicles off*
19 *the road and not obeying traffic signs, rules or signals.*



20 xii. *As the vehicle headed towards Public Beach, it made a right bend and then*
21 *abruptly turned left into the entrance/exit of Seven Mile Public Beach or*
22 *Calico Jacks.*

23 xiii. *The vehicle came to an abrupt stop just before a dirt mound. I pulled my*
24 *vehicle to the right side. I was not directly behind the vehicle - leaving me*
25 *room to take evasive action if needed. I saw two subjects alight from the*
26 *left of the sedan. They ran towards the front of the vehicle and then*
27 *towards the Kimpton. The two guys were of dark complexion. One had a*
28 *dark shirt in his left hand and in his right hand he was holding what I*
29 *believed to be a firearm. The other had nothing in his hand and was*
30 *wearing a white merino.*

1 xiv. *They ran in the direction of the Kimpton. Once I saw these persons I then*
2 *put my vehicle in park and got out. I gave commands to stop once I*
3 *recognized the firearm. I then drew my firearm and repeated the*
4 *command to stop. They did not stop.*

5 xv. *In that area, I don't recall any lighting there but my headlights were on*
6 *high and my roof lights and side lights were all illuminated – spot lights*
7 *on roof bar were illuminated. They were directed ahead and to the side -*
8 *Straight because to the front and side of vehicle – alley lights.*

9 xvi. *Eventually, I lost sight of them as I did not give chase. Up to that point for*
10 *when they came out of vehicles was about 10 – 15 seconds. The person*
11 *with the firearm, I can't say if he was ahead or behind him.*

12 xvii. *Nothing was blocking my view of the person with the firearm in his hand.*
13 *I stopped behind but to the right of the sedan. The person came from left.*
14 *They went to the front of the black sedan between the dirt mound and then*
15 *banked around and headed to the Kimpton Hotel.*

16 xviii. *The object I saw appeared to be firearm. I believe that based on my*
17 *professional experience from my years of services and being raised around*
18 *firearms. There are three main points from the outline of the firearm, the*
19 *barrel/chamber side, the handle/grip and the trigger housing, the trigger*
20 *guard. What I saw being held I believed to be a firearm as it carried*
21 *distinct qualities of a firearm.*



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23 xix. *It was being held in one hand by its handle. I saw the bottom position of*
24 *grip/handle, the chamber slide/barrel and the outline of a trigger guard.*
25 *When I first saw the object the male was two to four car lengths away. I*
26 *did not lose sight of the object until they went into the Kimpton out of my*
27 *view.*

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1 xx. *When they went out of my view, the male with the object was between 50 –*
2 *75 yards away. The object was under my observation for between eight to*
3 *ten seconds maybe. Nothing was blocking my view of the object whilst I*
4 *was observing it.*

5 xxi. *I have been a firearms officer since 2011. I was raised around firearms.*
6 *My whole family is law enforcement. When I saw the firearm, it appeared*
7 *to me to have the characteristics of a semi-automatic pistol. It was dark in*
8 *color.*

9 xxii. *I noticed the sedan still in gear and upon close inspection I saw a driver in*
10 *driver's side seat.*

11 xxiii. *I commanded the driver to get out of the vehicle.*

12 xxiv. *At the scene, I instructed officers to search the vehicle ... to which they*
13 *responded back that nothing was recovered or seen. The defendant was*
14 *then placed in an unmarked unit for transport to Cayman Islands*
15 *Detention Centre. I ID'd the driver. It was Leshawn Forrester."*

16 29. The salient portions of his evidence under Cross Examination were:

17 i. *"The men were of dark complexion, that they are not white. That is what I*
18 *meant when I said they were dark.*

19 ii. *The two men ran from the left hand side of the vehicle. One had a firearm*
20 *in his hand and in his other hand he had a black shirt. I can't recall if he*
21 *was wearing anything on the top of his body. The item he was carrying, I*
22 *thought it was a shirt. It was black and appeared fabricky and to me it*
23 *was a shirt or a cloth. I just believe it was shirt cloth like material.*

24 iii. *In his right hand, I saw an item that I believed to be a firearm. The man*
25 *was running into the resort. The area is illuminated by outside lights,*
26 *there is illumination in the parking lot and front of the structure.*





THE ISSUES FOR DETERMINATION

DID THE UNKNOWN MALE HAVE AN IMITATION FIREARM IN HIS POSSESSION ON THE NIGHT OF THE 3RD JUNE 2017?

31. The evidence of possession of an item in the unknown male’s hand is found in AS Phillips’ account of what he saw that evening. The salient portions of his account to the Court were:

- i. *“The vehicle came to an abrupt stop just before a dirt mound. I pulled my vehicle to right side. I was not directly behind the vehicle leaving me room to take evasive action if needed. I saw two subjects alight from the left of the sedan. They ran towards the front of the vehicle and then towards the Kimpton.*
- ii. *The two guys were of dark complexion. One had a dark shirt in his left hand and in his right hand was holding what I believed to be a firearm. The other had nothing in his hand and was wearing a white marino.*
- iii. *They ran in the direction of the Kimpton. Once I saw these persons I then put my vehicle in park and got out. I gave commands to stop once I recognized the firearm. I then drew my firearm and repeated the command to stop. They did not stop.*
- iv. *In that area, I don’t recall any lighting there but my headlights were on high and my roof lights and side lights were all illuminated – spot lights on roof bar were illuminated.*
- v. *They were directed ahead and to the side - Straight because to the front and side of vehicle – alley lights.*
- vi. *Eventually, I lost sight of them as I did not give chase. Up to that point for when they came out of vehicles was about 10 – 15 seconds. The person with the firearm, I can’t say if he was ahead or behind him.*
- vii. *Nothing was blocking my view of the person with the firearm in his hand. I stopped behind but to the right of the sedan. The Person came from left. They went to the front of the black sedan between the dirt mound and then banked around and headed to the Kimpton Hotel.*

- 1 viii. *The object I saw appeared to be firearm. I believe that based on my*
2 *professional experience from my years of services and being raised around*
3 *firearms. There are three main points from the outline of the firearm, the*
4 *barrel/chamber side, the handle/grip and the trigger housing, the trigger*
5 *guard. What I saw being held I believed to be a firearm as it carried*
6 *distinct qualities of a firearm.*
- 7 ix. *It was being held in one hand by its handle. I saw the bottom position of*
8 *grip/handle, the chamber slide/barrel and the outline of a trigger guard.*
9 *When I was first saw the object the male was two to four car lengths away.*
10 *I did not lose sight of the object until they went into the Kimpton out of my*
11 *view.*
- 12 x. *When they went out of my view, the male with the object was between 50 –*
13 *75 yards away. The object was under my observation for between eight to*
14 *ten seconds maybe. Nothing was blocking my view of the object whilst I*
15 *was observing it.*
- 16 xi. *I have been a firearms officer since 2011. I was raised around firearms.*
17 *My whole family is law enforcement. When I saw firearm, it appeared to*
18 *me to I have the characteristics of a semi-automatic pistol. It was dark in*
19 *color.”*



20
21 32. When he was cross examined he gave some further details – from which I identify the
22 most relevant portions as follows:

- 23 i. *“In his right hand, I saw an item that I believed to be a firearm. The man*
24 *was running into the resort. The area is illuminated by outside lights,*
25 *there is illumination in the parking lot and front of the structure.*
- 26 ii. *I was positioned behind the Honda but to the right. Two to four car*
27 *lengths, 35 – 40 feet. The position in relation to this car could have been*
28 *as far away as 70 feet but it could also have been as low as 40.*
- 29 iii. *The item in the right hand, I was able to recognize distinctive parts of the*
30 *item in the man’s hand from up to 70 feet away. I would say I could*
31 *recognize that.*
- 32 iv. *My headlights were on high beam and service vehicle also had its*
33 *headlights illuminated.”*

1 33. Officer Phillips was adamant that he saw what appeared to be a firearm in the hand of
2 the man who was running away from the Honda vehicle. He was clear that it was not
3 an assumption - as was put to him by counsel for the defence. He denied that because
4 he was unable to say whether what the unknown male had in his left hand was a shirt
5 or a piece of material, that this meant that the did not see the firearm in the male's
6 right hand.

7
8 34. I observed AS Phillips as he gave his evidence - his demeanour and his responses
9 when cross-examined. He gave clear and cogent evidence and his confidence in what
10 he had seen was not shaken under cross-examination. I remind myself however that
11 even a confident witness can be mistaken in what he has seen. I have to consider
12 whether there were any weaknesses in his identification of this item in the unknown
13 male's hand.

14
15 35. I have therefore also considered the conditions under which the officer states that he
16 saw the imitation firearm. There is clear evidence of the lighting, the distance and the
17 time within which the observation was made. In addition, I take into account the
18 officer's experience with firearms which supports his identification of the item in the
19 unknown male's hand.



1 36. Officer Phillips related that he first saw the object when the male was two to four car
2 lengths away from him and that he did not lose sight of the object until the men went
3 into the Kimpton out of his view. He said that the male with the object was between
4 40 – 75 yards away, the object was under his observation for between eight to ten
5 seconds and there was nothing blocking his view of the object whilst he was
6 observing it. The officer gave a solid and detailed description of the firearm and the
7 lighting and positioning of his vehicle which enabled him to see it in an otherwise
8 dark area.

9
10 37. When the defendant gave his evidence he suggested that Officer Phillips could not
11 have seen the unknown male. His evidence was that the officer's vehicle was parked
12 to the side and back of the Honda but in a position where the lights did not shine
13 forward. He suggested that the Honda would have been blocking the headlights of
14 Officer Phillips' vehicle and that the officer had his strobe lights on, but not the bright
15 lights to the top of his vehicle. He stated that his [the defendant's] headlights were on
16 but he then went on to state that it was only the right headlight on his car that was
17 working and that it was only this headlight and his fog lights that were on. He went
18 further that:

19
20 *"When the men ran they never ran in front of the car. They ran opposite from the*
21 *lights. They ran on the left. Where AS Phillips lights were shining was not the*
22 *area where the men ran."*



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38. I do not believe the defendant’s evidence on this issue. Officer Phillips had just completed a high-speed chase of the Defendant’s vehicle along West Bay Road. Apart from the evidence of lighting detailed at paragraphs 31 and 32 above, Officer Phillips’ evidence as he began that chase was:

“I immediately activated the sirens as the emergency lights were already activated.”

39. I believe the evidence of Officer Phillips as to the lighting from his vehicle at the Kimpton Hotel. I am satisfied that he was in a position to see and that there was sufficient lighting for him to see what he described: the unknown male with an item in his possession at the time that he alighted from the Honda vehicle and that this item had the appearance of being a firearm.



1 ***DID THE UNKNOWN MALE AT THE TIME OF HAVING THE ITEM WITH HIM OR IN HIS***
2 ***POSSESSION INTEND TO RESIST ARREST?***
3

4 40. I apply the law as stated in *R v F.O. Thompson*³:

5
6 *“On a charge of possession of a firearm or imitation firearm with intent to*
7 *resist arrest, contrary to s. 18^A of the Firearms Law (2008 Revision), to*
8 *prove an intent to resist arrest, it is only necessary to establish that the*
9 *defendant’s intent was resist being arrested, regardless of the possibility or*
10 *likelihood of arrest and regardless of whether any such arrest would be*
11 *lawful or unlawful.”*
12

13 41. The parameters of this principle are further elucidated in the written judgment in *R v*
14 *F.O. Thompson*⁴ as follows:

15
16 *“To prove an intent to resist arrest, it is only necessary to establish that*
17 *the Defendant’s intent was to resist being arrested regardless of whether*
18 *an arrest was, in fact, likely, possible, unlikely or impossible and*
19 *regardless of whether any such arrest was lawful or unlawful because the*
20 *true intent of the Defendant is to take whatever steps he thought he needed*
21 *to take in order to get away from the police who, he believed, were either*
22 *intent on arresting him, or, if they detained him, would surely find the*
23 *weapon and as a result arrest him even if that arrest turned out to be*
24 *unfounded. I have therefore decided that the law does not require the*
25 *arrest, which the Defendant is said to have intended to resist, to be a*
26 *lawful arrest. It is only necessary to prove that the Defendant intended to*
27 *resist his arrest as perceived by him namely as an unwanted restraint on*
28 *his freedom likely to result in the police recovering the weapon he had*
29 *been carrying.”*
30

31 42. Applying this principle to the facts of this case, the court must look to find whether
32 there is any evidence that the unknown male had an intention to resist arrest.
33
34
35



³ Indictment 92/2016 dated the 8th May 2017

⁴ *supra*

1 43. On the facts, the unknown male was in the “Dark Honda” as it approached the police
2 checkpoint. After the Honda was pulled over the evidence of Officer Myers was that
3 the unknown male, seated in the rear of the vehicle, spoke to the driver of the Honda,
4 the defendant, and after this conversation the defendant drove off, driving in a
5 dangerous manner until the vehicle stopped in the vicinity of the Kimpton Hotel.

6
7 44. The salient portions of the evidence of Officer Phillips relating to when the vehicle
8 stopped was as follows:

- 9
10 i. *“I saw two subjects alight from the left of the sedan. They ran towards the*
11 *front of the vehicle and then towards the Kimpton.*
- 12 ii. *The two guys were of dark complexion. One had a dark shirt in his left*
13 *hand and in his right hand was holding what I believed to be a firearm.*
14 *The other had nothing in his hand and was wearing a white marino.*
- 15 iii. *They ran in the direction of the Kimpton. Once I saw these persons I then*
16 *put my vehicle in park and got out. I gave commands to stop once I*
17 *recognized the firearm. I then drew my firearm and repeated the*
18 *command to stop. They did not stop.”*

19
20 45. This is clear evidence that the unknown male refused a lawful command coming from
21 a police officer. The unknown male came out of the vehicle with the item in his hand.
22 He could not have been unaware that the Police were following them and that it was a
23 police vehicle that had stopped behind the Honda. The evidence of Officer Phillips
24 was that the officer when he first gave chase of the Dark Honda sedan had
25 *“immediately activated the sirens as the emergency lights were already activated.”*
26 The driver of the Honda had ignored an order to pull over at the Vehicle Check Point.
27 At this stage the only intention that could be inferred from the unknown male’s
28 actions was an intention to resist his arrest and I so find.

1 46. The Crown has produced evidence upon which I am satisfied beyond a reasonable
2 doubt of the three elements of the unknown male's possession of an imitation firearm.



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1 *DID THE DEFENDANT AID AND ABET THE UNKNOWN MALE IN HIS POSSESSION OF THE*
2 *IMITATION FIREARM?*
3
4

5 47. The remaining issue for this court's determination is whether there is evidence that
6 this Defendant aided and abetted the unknown male in his possession of the imitation
7 firearm. The Crown invited this court to find that the actions of the Defendant in
8 driving off from the vehicle checkpoint after he spoke to the unknown male in the rear
9 passenger seat, the manner in which he drove as he sought to evade the Police on that
10 evening, and driving to a point from which the unknown male was able to escape the
11 Police, are all matters that go to the defendant's active participation in the unknown
12 male's possession of the imitation firearm.
13

14 48. This court notes the evidence of Officer Myers as to what he observed of the
15 interaction between the Defendant and the passenger in the rear of in the Defendant's
16 car just before it sped away from the vehicle check point. Officer Myers in his
17 evidence stated:

18
19 i. *"When I turned the vehicle came to a stop for a very short period. When*
20 *he called my attention, I turned toward him. I saw his motor vehicle and*
21 *the signal that was given showed that the vehicle was of interest. I*
22 *immediately faced the vehicle. I was on the left side of it. I observed a*
23 *male know... sitting in the rear seat. An unknown male was in the front*
24 *passenger seat and Mr. Forrester was the driver.*

25 ii. *After I made my observation, Mr. Wright was acting very suspiciously,*
26 *fidgety. He appeared as he was communicating with the driver and*
27 *looking towards me. He was looking at me with a bit of surprise, hesitant,*
28 *fidgety. He turned toward the driver and by facial expression and body*
29 *language I assumed he was communicating something to the driver. I*
30 *could not hear what he said; however immediately after turning to the*
31 *driver, looking back me, the driver sped away."*

1 49. Under cross examination, neither Office Myers' observations of the passenger in the
2 rear of the vehicle nor the fact that he related that there was a conversation between
3 this passenger (the unknown male) and the defendant, were challenged.
4

5 50. The evidence of AS Phillips was that he had to jump out of the defendant's path as he
6 sped away from the police checkpoint in order to avoid being run over by the
7 defendant' vehicle. The manner in which the Defendant drove away from the
8 checkpoint and the officers, described by AS Phillips as he drove behind the
9 defendant's vehicle, can only be described as dangerous in the extreme both to the
10 defendant and other road users. The salient portions of Officer Phillips' evidence
11 were:

12
13 i. *"The driver went into the roundabout head on into oncoming traffic*
14 *utilizing the north bound side of roundabout which carries traffic towards*
15 *West Bay. He was going in the direction of George Town when he turned*
16 *he was on the right side, the incorrect side. There was oncoming traffic*
17 *along that road. The vehicles either had to stop abruptly or move out of*
18 *way in order to avoid a collision.*

19 ii. *The vehicle then travelled along Lime Tree Bay heading to Governor's*
20 *residence at speed. My initial estimate of vehicle's speed was 80 mph*
21 *going towards Lime Tree Bay. I estimated that based on my vehicle's*
22 *speed and maintained distance between speeding vehicle and my vehicle.*

23 iii. *When vehicle got onto West Bay Road, I would say I was six to eight car*
24 *lengths, the distance varied between chase. I maintained six to eight car*
25 *lengths. Along West Bay Road heading toward West Bay. The vehicle was*
26 *travelling at high rates of speed in excess of 75 mph. Traffic was medium*
27 *to light. There was hard overtaking and forcing vehicles off the road and*
28 *not obeying traffic signs, rules or signals.*

29 iv. *As vehicle headed towards Public Beach, it made a right bend and then*
30 *abruptly turned left into entrance/exit of Seven Mile Public Beach or*
31 *Calico Jacks."*

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51. The evidence of the three police officers relating to the area where the defendant stopped the vehicle is relevant to this issue. Officer Hunter stated:

“As you bend you can see the road on left, small service road, with the car park on left and public beach and Calico Jacks further on and then a dead end. The illumination in relation to that area, there were no lights in that area at the time.”

52. Officer Myers described that the defendant had turned into an “unfinished road”. AS Phillips said the Defendant’s vehicle stopped in the area of a “dirt mound” and that he did not recall that there was any lighting there. The Crown offers this testimony as further evidence pointing to the Defendant’s assistance of the unknown male to evade the Police.



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THE DEFENCE CASE

53. The defendant gave evidence at trial. I remind myself that although he elected to go into the witness box and give evidence and subject himself to cross-examination by Counsel for the Prosecution that there is no burden on the defendant to prove that he is innocent. The burden of proof remains with the prosecution to prove its case beyond a reasonable doubt.

54. I remind myself that I must assess the defendant's evidence by the same fair, clinical and dispassionate standards that I would all of the other witnesses who gave evidence in this case.

55. The defendant stated under oath that on the date in question he was driving from West Bay going into town. The salient aspects of his evidence in chief were as follows:

- i. *"I stopped at some time. I stopped because I picked up two light skin males on a drizzling night. The rain was falling, light. I picked them up because they wanted a ride. One of the individuals had up their hand for a ride. I did not know them.*
- ii. *There was no conversation between me and the males in the car.*
- iii. *When I saw the police road block, there was no conversation in the car. I stopped the car when I actually went to the road block.*
- iv. *After looking through the car and everything, he [P.C. Hunter] then told me to pull over. After he told me as I was meaning to pull over the guy, the rear passenger in the back, told me, "Yow, I got drugs on me, don't f.....g stop!"*
- v. *Then I panicked and I drove off like a madman. That is when the madness start with the chasing with the Police.*
- vi. *I just was afraid to go in jail for somebody's stupidity. I panicked.*

- 1 vii. *Then when I reached the bend at Seven Mile Beach, I came to my senses,*
2 *like why I was running for. Then I turned left onto the construction site.*
3 *Then I began to come to my senses. "I not got nothing. I got no*
4 *knowledge of nothing." I made a hard stop into the construction site.*
5 viii. *I stopped and the two males jumped from the car and ran.*
6 ix. *During the police chase there was no conversation between me and these*
7 *two men.*
8 x. *When I came to a stop, I stayed in the car. I did not make any attempt to*
9 *run or get out of the car. I could have run if I wanted to.*
10 xi. *I did not have knowledge of a firearm in the vehicle. No one told me they*
11 *had a firearm in the vehicle."*

12
13 56. Under Cross-Examination, Counsel for the Prosecution questioned the Defendant as
14 to why he drove away from the vehicle check point, whether he had a conversation
15 with the passenger in the back seat of the vehicle at the checkpoint, why he stopped at
16 the construction site and also why he did not tell anyone about the reasons for his
17 action that he gave in examination in chief. The defendant's responses to these and
18 some other questions posed by Counsel for the Prosecution were as follows:

- 19 i. *I was in West Bay that night because I went to check a friend, a girl that is*
20 *a friend not a girlfriend.*
21 ii. *The two unknown males that I picked up on the drizzling night, I can't*
22 *recall what time I picked them up after leaving my friend's house.*
23 iii. *The two men when I picked them up, I don't know what they had. I didn't*
24 *really look at them. I can't recall what they had with them. I am not sure*
25 *what they were wearing.*
26 iv. *I have not seen the men after and I didn't know them before.*
27 v. *The person in the back spoke to me when I was about to pull over.*
28 vi. *I did not see him with any drugs. I can't recall if he had a bag. I did not*
29 *smell any drugs. I did not have any drugs.*
30 vii. *I sped off because he said he had drugs.*
31 viii. *Throughout the drive to the construction site, I did not say anything to the*
32 *two men. I don't know why.*

- 1 ix. *I did not tell them where I was going and they did not ask where I was*
2 *going or tell me where to go. All they said to me is what they said at the*
3 *road block.*
- 4 x. *The police road block was at the first roundabout after you pass the*
5 *Kimpton. If I had continued, I would have been at the roundabout. That is*
6 *not why I turned onto the construction site. I just turned to stop because I*
7 *came to my senses.*
- 8 xi. *I stopped because I came to my senses not because there was nowhere else*
9 *to go.*
- 10 xii. *At the construction site, I did not tell them [the police] that I panicked.*
11 *And what the men said, I did not tell that to the police.*
- 12 xiii. *I told Brandaughn [Officer Phillips] I was sorry when I was at the*
13 *Detention Centre. I did not tell him why I drove off.*
- 14 xiv. *I was in custody for two months after being arrested.*
- 15 xv. *I did not tell any officer at the Detention Centre booking me in that I drove*
16 *off only because of what the guy in the backseat said to me.*
- 17 xvi. *When I was interviewed, I did not tell officer interviewing me about that*
18 *either. I said no comment.*
- 19 xvii. *My attorney tell me I didn't have to answer any questions. It was my*
20 *interview. My attorney gave me advice but it was my interview.”*

21

22 57. The Defendant’s account is extraordinary. His response relating to his actions at the
23 checkpoint appears to this court to be extreme in a situation where he does not know
24 the two men whom he says he had only just picked up along the West Bay Road and
25 whom, on his account, he did not know to have anything illegal with them. Although
26 he states that the passenger said. “*Yow, I got drugs on me, don’t f....g stop!*” in an
27 aggressive manner, he gives no other indication that the men forced him to act as he
28 did.

29

30



1 58. The defendant admitted when cross examined that he was surrounded by police
2 officers when this man whom he did not know informed him that he had drugs with
3 him. If he was not coerced at the checkpoint beyond what the passenger said to him,
4 his actions to leave an area where he was surrounded by law enforcement officers are
5 inexplicable. He chose not to pull over or to exit the vehicle. Instead he sped away
6 from the checkpoint and proceeded in a dangerous and reckless attempt to evade the
7 Police. His evidence was that the men said nothing at all to him after he sped away
8 from the checkpoint and up until they ran out of the vehicle in the vicinity of the
9 Kimpton Hotel. His actions were entirely his own.

10
11 59. The defendant's account is that he came to his senses just as he got to the vicinity of
12 the Kimpton Hotel. Although the Defendant agreed that if he had continued along the
13 road just past the Kimpton Hotel that he would have been back at the police
14 roadblock, he chose instead to turn into an unlit area at the construction site at the
15 Hotel, an area through which the unknown male and his companion made good their
16 escape. It is noteworthy that although he realized then that there was no reason for
17 him to be running from the police; that he had nothing illegal; that he had no
18 knowledge of anything, he did not give any explanation or proclaim his ignorance of
19 anything to do with the imitation firearm or the unknown individual before the date of
20 trial. The Defendant stated in examination in chief that he did not want to go to jail for
21 somebody else's stupidity, yet he remained in custody for two months after being first
22 arrested for the instant offence.



FAILURE TO GIVE RESPONSES IN HIS POLICE INTERVIEW

1
2
3 60. The Crown has submitted that this court should draw an adverse inference from the
4 defendant not having given the account of the incident until he gave evidence at trial.

5 The defendant in his evidence stated:

6 *“When I was interviewed I did not tell the officer interviewing me about*
7 *that [that I drove off only because of what the guy in the back said to me]*
8 *either. I said no comment. The officer did explain that this was my*
9 *opportunity to give my version. He explained [that] to me before asking*
10 *questions and he told me the interview would be recorded and about my*
11 *right to silence.”*

12
13 61. The defendant further stated that he understood the caution which was given to him as
14 follows:

15 i. *“If you choose not to answer the court may determine when you come to*
16 *give evidence that you did not tell the Police what you are now saying*
17 *because you are making it up”*

18
19 62. The Defendant stated:

20 *“My attorney tell me I didn’t have to answer any questions. It was my*
21 *interview. My attorney gave me advice but it was my interview.”*



1 63. Section 148 of the Police Law states:

2 “148. (1) Where, in any proceedings against a person for an offence,
3 evidence is given that the accused -

4 (a) at any time before he was charged with the
5 offence, on being questioned by a police officer
6 trying to discover whether or by whom the offence
7 had been committed, failed to mention any fact
8 relied on in his defence in those proceedings; or

9
10 (b) on being charged with the offence or officially
11 informed that he might be prosecuted for it, failed
12 to mention any such fact; or

13
14 (c) at any time after being charged with the offence,
15 on being questioned under the Terrorism Law
16 (2017 Revision), failed to mention any such fact,

17
18 being a fact which in the circumstances existing at the
19 time the accused could reasonably have been expected to
20 mention when so questioned, charged or informed, as the
21 case may be, subsection (2) shall apply.

22 (2) A -

23 (a) court in determining whether there is a case to
24 answer; or

25 (b) court or jury, in determining whether the accused
26 is guilty of the offence charged,

27
28 may draw such inferences from the failure as appear
29 proper.

30 (3)

31 ... ”
32

33 64. I am satisfied that before his interview the defendant was cautioned. He was first told
34 that he need not say anything. It was therefore his right to remain silent. However, he
35 was also told that it might harm his defence if he did not mention when questioned
36 something which he later relied on in court; and that anything he did say might be
37 given in evidence.



1 65. I find that:

2 i. When he was interviewed the defendant could reasonably have been
3 expected to mention the facts on which he now relies;

4 ii. The only sensible explanation for his failure to do so is that he had no
5 answer at the time or none that would stand up to scrutiny;

6 iii. Apart from his failure to mention those facts, the prosecution's case
7 against him is sufficiently strong that it clearly calls for an answer by him.
8

9 66. I find that this failure on the part of the defendant should count against him.
10

11 67. I remind myself that I cannot convict the Defendant wholly or mainly on the strength
12 of my conclusion that his silence should count against him but I take it into account as
13 some additional support for the prosecution's case and, when making a determination
14 whether the defendant's account about these facts is true.

15 68. I do not believe the defendant's account of what transpired on the evening of the
16 Saturday 3rd June 2017.
17

18 69. I remind myself that I cannot convict the defendant because I reject his account. I
19 must go back to consider the Crown's case in order to make a finding of the
20 defendant's guilt or innocence on the evidence presented by the Crown and that it is
21 only if I am satisfied so that I am sure of the defendant's guilt on that evidence that I
22 can find him Guilty of the offence. If I am not so satisfied on the Crown's case then
23 my verdict must be Not Guilty.
24



1 70. I have listened to and considered all of the evidence in this case. I am satisfied that
2 the evidence presented of the Defendant's actions is evidence from which I can infer
3 that the defendant intended to assist the unknown male in his possession of the
4 imitation firearm with intent to resist arrest. I also find from the evidence of the
5 Defendant's actions that he did in fact aid and abet the unknown male with possession
6 of the imitation firearm to resist arrest.

7
8 71. I am satisfied so that I sure of all of the elements of the offence for which the
9 defendant is charged and I am satisfied so that I am sure of his guilt.

10
11 72. Accordingly, on Count 2 of the Indictment, Possession of an imitation firearm with
12 intent to resist arrest contrary to s.18(6) of the *Firearms Law* I find the defendant
13 guilty in that he aided and abetted the unknown male in such possession.

14
15 73. On Count 3 of the Indictment, Causing Harassment, alarm or distress, contrary to
16 s.88A of the Penal Code, for the reasons set out at paragraphs 3 and 4 above, the
17 Defendant is discharged.

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21 Dated this the 3rd day of October 2018.



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