

3. The Learned Trial Judge under the provision of section 70P of the Criminal Code 1907 ordered that the appellant was to serve half the sentence before being eligible for parole.
4. The appellant has appealed against his conviction and sentence.
5. The case as presented by the prosecution may be summarized as follows:
6. On November 4, 2011 at about 10:12 pm, a CCTV footage obtained from 3 Crane Lane showed the appellant arriving at the home of Darrion Simons with an object in his hand which the Crown alleges looked like a pouch.
7. At around 10:47 pm that same evening, the CCTV footage showed the appellant leaving Darrion Simons residence on the back of a bike ridden by another male. At the same time Darrion Simons was also seen leaving his residence on another bike.
8. On November 5, 2011 at about 12:30 am, CCTV footage obtained from the Gravity Night Club showed several bikes arriving from the direction of Clay House Inn and entering the car park. The appellant and Darrion Simons were amongst those arriving on the bikes. Both were seen going to the direction of the night club where they were searched before being admitted.
9. At about 12 am the CCTV footage showed the appellant and Darrion Simons leaving the club together. Shortly afterwards the appellant re-entered the club.
10. At about 2:15 am on Saturday, November 5, 2011, the police officers including Police Constable Terry Thompson were driving along the North Shore road in the area of the old Clay House Inn which is about 150 feet west of the Gravity Night Club.
11. A man dressed in all black was seen on a motorcycle in the area of the old Clay House Inn between the building and a motor car parked alongside it. Constable

Thompson spoke with other officers and the roof lights and the highlights of the police vehicle were turned on.

12. Constable Thompson observed the head of a second man appearing from behind the car, who then placed an object beneath the left rear fender and on top of the wheel of the car.
13. The man then ran and jumped on the motor cycle with the man in black and they attempted to ride away. The police intercepted them and they were identified as Darrion Simons and Kaya Dill. Darrion Simons was identified as the man who had placed the firearm on top of the wheel of the car.
14. Constable Thompson went to the car where he had seen the men and retrieved from the top of the left rear wheel a black sock. He described it as being hard to the touch. He looked inside the sock and discovered that there was a loaded firearm in the sock. The ammunition was removed from the firearm.
15. The appellant exited the club about seven minutes later and showed an interest in what was taking place by the police car. The appellant eventually left at around 2:47 am as a passenger on the back of one of the bikes.
16. The sock, firearm, and ammunition, along with other items were sent overseas for DNA testing. Buccal swabs taken from Darrion Simons, Kaya Dill, the appellant and Constable Terry Thompson were also received by the testing laboratory.
17. The appellant's DNA as the main donor was found on the outside and the inside of the sock. The appellant admitted that the sock was one which he had sometimes worn and which he said was sometimes left at Darrion Simons' house along with other clothes. They both wore each other's clothing.
18. The appellant's DNA was also found on the revolver grip, the trigger and the ammunition.

19. The defence of the appellant at trial was that he had never handled the firearm whether it be on the 4th or 5th November 2011 or at any other time.
20. The defence explained that his DNA on the socks was because he had worn the sock but the DNA on the firearm was as a result of contamination either direct from the sock to the firearm or indirectly because there was evidence that the police officer having handled the sock, then handled the firearm which could have transferred the appellant's DNA from the sock to the firearm.
21. There was no explanation as to how the appellant's DNA came to be on the ammunition. The evidence was that when the ammunition was retrieved from the firearm, the police officer was wearing latex gloves.
22. The DNA expert states that if the Officer had been wearing latex gloves and handled the ammunition she would not expect him to transfer any DNA from the sock to the ammunition.
23. The prosecution case was that the appellant handled the firearm either on the 4th or 5th November 2011. The issue as to whether the appellant may have handled the firearm at some other date was not raised at the trial.
24. The CCTV footage showed the appellant arriving at Simons' home on the 4th November 2011 with what the prosecution suggested was a pouch. The appellant's evidence was that it was a bag with a shirt in it. The prosecution was alleging that the firearm was in that pouch.
25. The appellant and Simons later left the home together and were together for the rest of the evening until Simons was arrested. It was part of the prosecution's case that the firearm was taken from Simons' home in the sock which belonged to the appellant.

26. There was no direct evidence of this but the prosecution relied on the evidence of the DNA of the appellant which was found on the firearm and the ammunition.
27. The jury must have rejected the explanation of the appellant as to how his DNA came to be on the firearm and the ammunition. By their verdict the jury must have found that the appellant handled the firearm and the ammunition at some time before it was seized by the police. There was no evidence as to when the appellant's DNA got on the firearm, the ammunition or the sock.
28. Mr. Mussenden for the appellant concentrated his submissions on:
- 1) The definition given to the jury when the following question was asked by the jury "Can the jury receive a written definition of 'handled' as described in the laws of Bermuda Firearms Act 1973?"
 - 2) Gang evidence which was prejudicial to the appellant.
 - 3) Contamination of DNA evidence.
29. Mr. Mussenden submitted that in the directions to the jury in answering their question the Learned Trial Judge failed to tell the jury that the handling of the firearm had to be knowingly handled and this omission would render the verdict to be quashed.
30. The jury's question related to the definition of "handled" and not "knowingly". It is conceded that the trial Judge in his direction earlier on the offence charged, accurately described to the jury the definition of "handled" and also directed the jury that the prosecution had to prove that the appellant knowingly handled the firearm:
- "The prosecution must also prove that when the defendant handled the firearm he did so knowingly"

“The ultimate question for you will be whether the prosecution had proven that the defendant knowingly handled it at the time the prosecution says in the indictment that he handled it.”

31. The evidence of the appellant was that he never ever handled the firearm or any firearm. The jury in their question was concerned with the meaning of “handled” and not as to whether the firearm was “knowingly” handled.
32. The trial Judge cannot be faulted from omitting to deal with “knowingly” in answer to the jury’s question. There is no merit in this submission.
33. The Trial Judge had ruled that gang evidence was inadmissible. Mr. Mussenden submission that certain photographs which were introduced amounted to gang evidence was rejected by the trial judge and it cannot be accepted. There was no evidence led before the jury as to gangs. A question put to the appellant about a gang was not permitted.
34. Mr. Mussenden submitted that the DNA evidence was evidence of contamination and that such evidence was insufficient to connect the appellant with the firearm. That being the only evidence against the appellant, the jury’s verdict cannot stand.
35. This cannot be said about the DNA of the appellant on the ammunition. There was no evidence of contamination of the ammunition.
36. We are satisfied that the evidence including the DNA was sufficient to leave the case for the jury’s consideration.
37. The jury must have rejected the appellant’s explanation as to the DNA evidence as his defence that he had never handled this or any firearm. The prosecution’s case was advanced on the basis that the firearm was handled at some time in the course of the events on 4/5 November 2011. Had the appellant contended he might have handled the gun on some occasion prior to 4 November, which he did

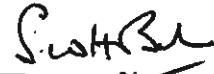
not, this would have led to an immediate request to amend the indictment which would have inevitably have succeeded.

38. There was sufficient evidence for the jury to have concluded that the appellant handled the gun on 4/5 November as alleged in the indictment.

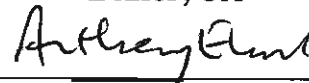
39. For the above reasons we order that the appeal against conviction is dismissed and the conviction affirmed.



Zacca, P



Baker, JA



Evans, JA