BRITSH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. 6 OF 2012

BETWEEN:

THE QUEEN

and

RODNEY SIMMONDS JR
MIKHAIL HOWE
MICHAEL STEVENS

Appearances:

Mr. Valston Graham for the Crown, Ms. Leslie Ann Faulkner with him
Ms. Corrine George for the First named Defendant
Mr. Yohhahnseh Cave for the Third named Defendant
Ms. Akiliah Anderson with her Ms. Nadine Whyte for the Fifth named Defendant

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2012: June 8

RULING

1. **REDHEAD J:** Mr. Cave, Learned Counsel for the accused Michael Howe objected to the evidence of Tiffany Roy DNA analyst which the Crown intends to lead against his Client in respect of DNA evidence which was found on a pair of Air Jordan shoes found by the police in a ghut.

2. On 21st January 2011 two security men, Julio Bele and Carson Lewis arrived at money Gram to collect money to transport to the bank. The money was put into a bag and the bag was then placed in a box. Mr. Carson Lewis was carrying the box containing the money. As the two men exited the door of

Money Gram building and were heading towards a parked vehicle. They were attacked, Julio Belle in his testimony said:

> "I left Money Gram about 4:35p.m. Mr. Lewis had exited. I followed right behind him. His vehicle was parked close to the building. We exited the building to walk directly to the vehicle. We did not get the opportunity to open the door of the vehicle. I glanced to my left and saw this person, coming from behind the wall on the left hand side of the building.
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> The person was dressed all in black with a hand gun in his hand. I think it was a silver gun. The person with the gun was fair skin light in colour. His head was covered but I could see his eyes. I did not see his face. I see only his eyes. He was about 5ft 10 inches – 5ft. 11 inches. After I saw the men with the hand gun I got out of the way. I went back inside. Mr. Lewis ran around the corner. The same person with the gun was chasing after Mr. Lewis.
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> I went outside to look for Mr. Lewis. I heard gunshots while this man was running behind Mr. Lewis. There were actually two of them that came out behind the wall and running behind Mr. Lewis. Mr. Lewis was infront the tall guy behind and another man behind the tall guy was dressed in black as well.
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> As I arrived around the corner in the alley way... I noticed the box on the ground. As I got to the alleyway the same tall person was running towards me. The money bag was in his hands. He went back behind wall"

3. This witness indicated by way of the photograph exhibit LC1 the direction in which the man with gun came from and where he ran back. This was in the ghut.

4. PC Ballantyne testified that he is attached to the scenes of Crime Department of the RVIPF.

5. On Friday 21st January he was on duty at the Unit at the Road Town Police Station. He said that he received information of a robbery at Money Gram. Along with DC Washington he drove to Money Gram.

6. On arrival at Fishlock road in the area of Money Gram several Police Officers were present. He had a conversation with the officers who pointed out an area on Flemming Drive to him.

7. Along with DC Washington a walk through of the area was made. He found 2 shell casing and a piece of lead fragment on the ground. He PC Ballantyne took possession of the articles.

8. Later the same day PC Ballantyne received certain information. As a result he and DC Washington carried out a search of the covered portion of the ghut along the lower estate public road. During the search of the covered portion of the ghut several pieces of clothing were recovered along with a firearm wrapped in a black long sleeve t-shirt which was stuffed in a piece of pipe and pushed into the wall.

9. PC Ballantyne said that the distance from the pair of Nike to the firearm was some 50 yards Nike was after the firearm...

10. In cross-examination this witness said that it was not a fair estimate that the firearm was found about 125 yards from the Nike (I believe this should be Air Jordon) shoes.

11. Learned Counsel for Mr. Howe agrued that the Air Jordon shoes had no connection to the incriminating materials such as the gun having regard to the distance the Air Jordan shoes were found from the gun.

12. Mr. Grahamn, Learned Counsel for the Crown addressed the crime scene and Nexus issue. He pointed out that the ghut in question ran beside the Money Gram building and exits same yards away.

13. Mr. Grahamn argued that there is a clear nexus with the articles found in the ghut and the Commission of the Crime. He pointed to Mr. Bell's evidence and the deposition evidence of Tracey Fahie who has not yet given evidence in this court.

14. In my judgment, there is direct and circumstantial evidence that the perpartors of the crime ran through the ghut.

15. There is circumstantial evidence that those who ran through the ghut shed their clothes, the gun used in the armed robbery and the shoes found in the ghut. It should also be observed that Mr. Belle described the clothes of the men who were chasing Mr. Lewis as black the items of clothing recovered in the ghut were black.

16. I am fortified in this view having regard to the fact that the gun found in ghut when tested by ballistic expert revealed that the fragment recovered by DC Ballantayne matched that gun.

17. Mr. Cave argued that even the DNA analysis which the prosecution propose to tender establishes that there was more than 1 contributor.

18. In my view that does not affect relevance or admissibility, it may very well be a question of weight.

19. Mr. Cave argued finally that there is no link with Mr. Howe and the items found in the ghut, except the issue. He of the shoes, the result of the test of which is of dubious significance.....

20. Whether there is link or not with Howe and items found is the ghut in a matter of fact which the jury must decide. Learned Counsel referred to Section 123 of the Evidence Act which mandates:

    "Where the prejudicial value of evidence is outweighed by the danger ofunfair prejudice to the accused this court may refuse to admit the evidence".

21. In my opinion the evidence is relevant and probative it should be admitted. I must say that every bit of a evidence which is against an accused person is prejudicial.

22. The evidence which the prosecution intends to lead in this case, ie the DNA evidence in my view is relevant and probative. There is no suggestion that the evidence was obtained by improper or, unlawful means such as trickery etc. I cannot there exercise my discretion to exclude evidence which is relevant and probative.

23. Learned Counsel Miss Anderson for the Accused Michael Stevens argued that there is no evidential basis to from any nexus between Michael Stevens and the crime.

24. Ms. Anderson contended that a report ie DNA report which speaks to a Michael Stevens who has not been identified has no relevance to her client. Michael Stevens. And to lead this evidence against her client would be highly prejudicial.

25. Mr. Graham explained that the report was compiled in that manner so as not to be prejudicial to the accused Michael Stevens. There is nothing advanced before me which shows otherwise. In this regard questions could be asked of the expert in relation to the DNA evidence in relation to the naming of accused Michael Stevens in the report.

26. In light of the foregoing I rule that the DNA evidence in relation to Mikhail Howe and Michael Stevens is relevant and probative and therefore is admissible in evidence.

Albert Redhead
High Court Judge