



Neutral Citation Number: [2026] CICA (Crim) 2

**IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

**CICA CIVIL APPEAL No. 0001 of 2024
(formerly IND 0034 and 0093 of 2022)**

BETWEEN

THE CROWN

V

ERICK BRIAN WILLIAMS SOTO

Before: The Hon. Sir Richard Field, JA
The Rt. Hon. Sir Jack Beatson, JA
The Rt. Hon. Sir Anthony Smellie, JA

Heard: On the papers

Draft circulated: 12 February 2026

Judgment delivered: 18 August 2026

JUDGMENT

Field, JA

1. This is a contested application made by the Crown under section 9 (3) of the Court of Appeal Act (2023 Revision) (“the CAA”) for an order that, following his successful appeal against conviction of the offence of manslaughter of Mr Harry Elliot, the appellant, Erick Brian Williams Soto be retried for that offence. We have considered the written submissions on behalf of the appellant dated 4 December 2025 and those on behalf of the Crown dated 15 January. This is the judgment of the Court
2. Mr Elliot was fatally shot by the discharge of a firearm held by the appellant’s co-defendant, Justin Kyle Jackson, in the course of an attempted robbery carried out by both men (“the defendants”) at premises in School House Road, central George Town, at which illegal gambling (the Numbers Game) was in progress.
3. What happened in those premises is described in detail in the judgment of this Court setting aside the appellant’s manslaughter conviction on the ground that it was unsafe.
4. Put shortly, both defendants had been driven to these premises by a man called Caine Thomas who had put them up to committing the robbery and who retreated from the entry to the premises before the defendants went inside. Jackson went in immediately ahead of the appellant. Witnesses who were in the small confines of the premises and who faced the defendants testified that Jackson pulled a gun from his waistband, they heard it being cranked to select a round and it then went off fatally wounding Mr Elliot who was getting up to leave. At the moment when the shot went off Jackson had stumbled backwards into the appellant, the two of them being in the confined space of the doorway. The defendants then fled back to the parked car in which Caine Thomas awaited their return.
5. Jackson did not give evidence at the defendants’ trial in the Grand Court before Justice Richards and a jury. His defence to the charges of murder alternatively manslaughter was that the gun had gone off accidentally and he was unaware that it was loaded. On the other hand, the appellant did

give evidence in his own defence. He testified that when he entered the premises he was wholly unaware that Jackson had been given a gun by Caine Thomas and was carrying it into the premises for use in the robbery. As far as he (the appellant) was concerned, the robbery was to be carried out “bare handed” by grabbing the money that was being gambled. He only learned that the gun brandished by Jackson had come from Craine Thomas when, having fled back to the car, he heard Caine Thomas demand to have his gun back.

6. It was put to the appellant by counsel for Jackson in cross-examination that he knew perfectly well that Craig Thomas had given the gun to Jackson in the car telling Jackson in the appellant’s hearing that it was not loaded. The appellant was forthright in his denial of these suggestions. He had been wholly unaware that Jackson had been given a gun about which there had been no mention in the car.
7. Both defendants were acquitted of the charge of murder but convicted on the alternative count of manslaughter and of being in unlawful possession of an unlicensed firearm. In the appellant’s case the manslaughter conviction was by a majority verdict of the jury, ten to two. On each of these two counts Jackson was sentenced to a total of 11 years and 9 months ordered to run consecutively to a further sentence for a separate firearm offence, whereas the appellant was sentenced on both counts to concurrent terms of 10 years’ imprisonment.
8. In allowing the appellant’s appeal against the conviction for manslaughter, this Court held that the trial judge had erred in giving a “Makanjuola Direction” to the jury that they should consider whether the appellant may have an interest of his own in placing the blame for having a loaded weapon solely on the shoulders of Jackson and should consider and have in mind that the appellant may have had an interest of his own to serve and may have tailored his evidence accordingly.
9. In the view of this Court, Justice Richards had erred in that in many respects the appellant’s evidence had supplemented Jackson’s defence that he had not intended to shoot anyone and the appellant’s denial in cross-examination of the unevidenced suggestion that Craig Thomas had said that the gun was not loaded did not amount to undermining Jackson’s defence. There was therefore no proper basis for the Makanjuola Direction given by the judge.

10. This Court did not, however, set aside the appellant's conviction on the count of joint possession of the firearm with Jackson, the proof of which did not require, as the manslaughter count did, knowledge that the gun was loaded. In the circumstances of the case, the jury were entitled to come to the conclusion that the appellant knew that Jackson was carrying a gun and lent himself to its unlawful possession for the purpose of staging the robbery.

11. Section 9(2) of the CCA provides:

"Subject to this Act, the Court shall, if it allows an appeal against conviction, quash the conviction and direct that a judgment and verdict of acquittal be entered, or, if the interests of justice so require, may order a new trial in accordance with such directions as the Court may give."

12. In putting the Crown's case for the retrial of the appellant, Mr Wainwright cited paragraph 7-112 of Archbold Criminal Pleading, Evidence and Practice:

"The decision whether to order a retrial requires an exercise of judgment, involving consideration of the public interest and the legitimate interests of the defendant. The former was generally served by the prosecution of those reasonably suspected on available evidence of serious crime, if such prosecution could be conducted without unfairness to, or oppression of the defendant."

He then went on to make the following submissions:

- (1) The alleged manslaughter constitutes serious offending involving the use of firearm, during a joint enterprise robbery of commercial premises where members of the public were present.
- (2) The incident giving rise to the manslaughter occurred not that long ago in April 2022 and the prosecution understood that the relevant witnesses remain available to give evidence.

- (3) There remains a triable issue because the quashing of the manslaughter conviction arose from a misdirection by the trial judge on a discrete and less than straightforward point of law.
- (4) It is indisputable that the appellant took part in a joint-enterprise robbery during which Mr Elliot was fatally shot. There is nothing to suggest that a retrial would be unfair or oppressive towards him.

13. In opposition to the Crown's application counsel for the appellant submitted as follows:

- (1) It is not in the public interest that there be a retrial: the public interest has been served by the prosecution securing the conviction of Jackson for the manslaughter of Mr Elliot. Further and in any event, the appellant's blameworthiness does not warrant the ordeal of a further trial given that he played a lesser role and the jury was plainly satisfied that the shooting was accidental.
- (2) If the appellant is retried he would face a disadvantage he did not face at trial because his conviction for joint possession of the firearm that would be admissible relevant evidence in the retrial under section 35(3) of the Evidence Act (2021 Revision) giving the prosecution the fortuitous advantage of saying that that conviction speaks for itself.
- (3) In the absence of a retrial, the appellant will continue to serve the sentence of 10 years that is concurrent and identical with the sentence imposed for the manslaughter and if he is further convicted he is overwhelmingly likely to receive a sentence that seeks no more than to maintain that status quo, but because of the release rules he might end up serving more than intended which would be unfair. At present, he has about 3 and a bit years still to serve with a release date in 2029. Given the congested Grand Court time table and the current availability of counsel, a retrial is unlikely to come on for a further year, in consequence of which, to maintain the status quo, any sentence for manslaughter then imposed would have to be much shorter than the 10 years which the public might anticipate and bring the system into disrepute.

- (4) There is a real risk that the fairness of a retrial would be undermined by the prejudicial publicity that surrounded the appellant's trial, conviction and sentence.
- (5) On a retrial for manslaughter, the appellant will lose his right to trial by a jury of twelve and could be convicted on a majority 5-2. A reduced jury increases the risk of earlier publicity playing a negative role whilst at the same time imposing a greater strain on the jurors.
- (6) On a retrial, the appellant is unlikely to be represented by a KC because Legal Aid is unlikely to grant a certificate for foreign counsel in a manslaughter case of this kind.
14. In our view, there exists a compelling ground for refusing this application that has not been directly referred to in the submissions put before the Court. It is this. On a retrial, the prosecution would have to prove to the requisite standard that the appellant not only knew that the gun would be used to threaten people in the "numbers shop" but also that the gun was loaded. As Justice Richards very properly instructed the jury in her summing up on the alternative manslaughter charge, to convict the appellant of this offence, the jury had to be satisfied so as to be sure that the prosecution had proved that the appellant knew that a **loaded** firearm would be used to threaten or frighten people in the numbers shop and if they were not sure of this the charge would not have been made out.¹
15. The judgment of the Court was delivered by Smellie JA. In paragraph 56, allowing the appellant's appeal against the manslaughter conviction, it was stated that there was simply no evidence at the trial that the appellant knew that the firearm was loaded. In our judgment, this would also be the case if there were a retrial in which the prosecution called the same witnesses as testified first time round, as proposed by the Crown. It is not, in our opinion to be inferred from the appellant's conviction of joint possession of the unlicensed firearm to the standard of beyond reasonable doubt that he knew that the firearm was loaded. Accordingly, the prosecution on a retrial of the manslaughter charge would be bound to fail and for that reason this application for a retrial is refused.

¹ See page 23 of the transcript for 30th October 2023, lines 7 - 25 : "The critical element in this case, again, is the element of knowledge ... If you find that Mr Soto did not know that a loaded firearm would be carried and used [to scare and frighten people in the numbers shop] or you are not sure whether he did know your verdict would be not guilty of manslaughter."