Neutral Citation Number: [2025] CA (Bda) 15 Crim

Criminal Appeal No 15 of 2025

IN THE COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
BEFORE THE HON JUSTICE CARLISLE GREAVES
CASE No 15 of 2011

Dame Lois Browne-Evans Building
Court Street
Hamilton HM12
Bermuda

Date: 21/11/2025

Before:

THE RT HON SIR CHRISTOPHER CLARKE, PRESIDENT
THE RT HON DAME ELIZABETH GLOSTER DBE, JUSTICE OF APPEAL
and
THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL

- -

Between:

KOFI OMAR DILL

Appellant

- and -

THE KING

Respondent

Ms Susan Mulligan, Legal Aid Department, for the Appellant
Mr Adley Duncan, Department of Public Prosecutions, for the Respondent

Hearing date(s): 6 November 2025
Date of Judgment: 21 November 2025

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HICKINBOTTOM JA:

Introduction

1. This is an appeal by Kofi Omar Dill ("the Appellant") against his conviction on a guilty plea of knowingly handling a firearm.

2. The appeal follows a referral by His Excellency the Governor pursuant to section 27(a) of the Court of Appeal Act 1964, under which, on the application of a person affected, the Governor may refer a case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to this Court by the person convicted. The Notice of Referral, which was made on the application of the Director of Public Prosecutions ("the DPP"), asks this Court to consider the conviction on the ground that, based on fresh evidence disclosed by the DPP as a result of her review of this conviction, there has been a miscarriage of justice.

The Facts

3. The essential facts surrounding the finding of the firearm are set out in the Summary of Evidence produced by the Crown which, following the Appellant's guilty plea on 22 August 2011, was read into the court record at his sentencing hearing before Carlisle Greaves J on 24 August 2011. It was the agreed basis upon which the Appellant was sentenced. It read as follows:

> "At approximately 2:30pm on Wednesday, 22nd December 2010 as a result of information received concerning a firearm, Police Officers attended #2 East Gate Lane, Pembroke.
>
> Armed Officers instructed the defendant [i.e. the Appellant] to exit so that the residence could be searched. At this time that defendant was seen to walk to the front door, look out towards the direction of the Officers and then walk back further into the residence. A short time later after several calls from Armed Officers, the defendant then exited the residence. The defendant was arrested on suspicion of possession of a prohibited weapon namely a firearm and cautioned to which he made no reply and was conveyed to the Hamilton Police Station. Upon arrival he was processed, swabbed for DNA and detained.
>
> Officers at the scene commenced a search of the residence, but were halted when a black 'Timberland' drawstring backpack was found about 20 metres east of his residence on a wall along East Gate Lane by police who were also searching the outside area of the residence. The bag was found to contain a pair of black gloves and red cloth containing a 'hard' object. The bag was left in situ until a Forensic Support Unit Officer arrived to photograph and itemized the bag and its contents. Upon the bag being emptied, it was found to contain a pair of black and yellow 'Ironclad' box handler gloves and what appeared to be a red shirt sleeve that was cut and tied at one end. The sleeve was opened and found to contain a black Rexio RJ serie.38 SPL revolver with a black plastic handle bearing the serial number 071766.
>
> In the process of making the handgun safe it was found to contain one (1) single 'G.F.L.' .38 caliber round loaded in the revolver's cylinder. Both the revolver and the ammunition were photographed and the

> revolver was then placed in a brown paper bag and the .38 caliber ammunition in a brown plastic canister and secured by the Forensic Support Unit Officer. The black 'Ironclad' gloves and the red shirt sleeve were also photographed and placed in brown paper bags and secured by the Forensic Support Unit Officer.
>
> At the conclusion of dealing with the firearm, Officers re-entered the defendant's residence and resumed the search of the defendant's bedroom. Several items were found and seized, in particular four (4) cell phones containing photographs of firearms.
>
> Whilst in police custody the defendant Dill was video interviewed under caution. The defendant responded, 'No Comment' to all questions put to him during the interview. In other interviews he claimed that a neighbor left the bag bearing a similar description to the one police recovered the firearm in at his residence after they were drinking. The neighbor later returned and he (the defendant) handed the bag to him.
>
> A preliminary inspection of the firearm was conducted by the Police Armourer and was found to be a Rexio RJ serie.38 Spl with the serial numbers 071766.
>
> The defendant Dill is known as a person who is rising 'through the ranks of the 42nd gang'. The many small streets which stem from St. Monica's Road, Pembroke, are areas known to be associated with the 42nd gang which is involved in many gang related activities including the use and possession of firearms.
>
> DNA testing has revealed the defendant's DNA on the firearm."

I will return to that DNA testing shortly.

4. That summary warrants the following comment/clarification.

5. First, the "other interviews" referred to in the summary included an interview on 30 December 2010, the circumstances of which were recorded in a statement of DC Rohan Henry (who was present with DI Michael Redfern and DC Mathurin, and took a note) dated 4 January 2011, as follows:

> "On Thursday 30th December 2010, approximately 12.28pm I attended the Southside Police Station in the company of DI Redfern and DC 2040 Mathurin. On our arrival at the said station we met Sgt Excell and the defendant Kofi Dill. DI Redfern, DC 2040 Mathurin and I escorted Kofi Dill to an interview room at the station.
>
> Having entered the interview room, DI Redfern informed Kofi Dill that it was his information that he Dill wanted to speak to him. Dill told him that he wanted to know what was happening with the investigation for which he was arrested. DI Redfern informed Dill that nothing had changed reference the investigation and that we were waiting for forensic results from overseas. DI Redfern and Dill continued speaking during which time DI Redfern asked Dill whether he had any knowledge of the firearm that the police had recovered from his area and now in our possession. Dill stated that on the day prior to the day he was arrested [a named person]

> came to his residence with a black Timberland bag and handed him the bag in order to pass on to his [named] neighbour. Dill stated that he opened the bag and there he saw, a pair of gloves and a firearm in a red cloth. Dill further stated that he held the firearm for about a minute. DI Redfern then asked Dill whether he was wearing gloves at the time he handled the firearm. Dill stated that he was not wearing gloves but [the named neighbour] whom he handed the firearm to wiped it before putting it back in the bag. He said he remembers giving the firearm to [the named neighbour] sometime after 4.00pm after he came from work.
>
> DI Redfern then asked Dill whether he was willing to repeat what he had said in a video recording interview and he said know [sic] because he is almost certain that his DNA isn't on the firearm and asked why he should incriminate himself.
>
> DI Redfern continued speaking to Dill during which time he stated that he is aware that the firearm was used in several shooting incidents. Dill went on to list the various shooting incidents linked to the firearm.
>
> The conversation with Dill concluded sometime around 2.10pm and we escorted Dill to the jail area."

DI Redfern confirmed that account in his statement also dated 4 January 2011, which also recorded that the Appellant, after stating that he knew the firearm had been involved in shooting incidents, "was concerned that would come back to him". No statement is apparently available from DC Mathurin.

6. Second, the evidence is that the Appellant was arrested at the house on suspicion of possession of a firearm (see, e.g., the statements of DCI Nicholas Pedro dated 23 December 2010 and of PC Seymour Foote dated 22 December 2010, but also reflected in DC Henry's statement quoted above). It was not suggested at the time, nor before us, that the Appellant was not cautioned in the usual way at the time of his arrest.

7. Third, the reference to the Appellant being "known as a person who is rising 'through the ranks of the 42nd gang'" was supported by the statement of PS Alexander Rollin dated 23 December 2010, who confirmed that he knew the Appellant to be a member of the 42nd gang, and knew that that gang was involved in (amongst other things) firearms. He described the Appellant's tattoos (which included tattoos of a gun, bullet holes and empty shell casings, and of references to gangs including the 42nd gang and to his gang "rank") and photographs of the Appellant "throwing up" a 4 and a 2 with his hands, which (PS Rollin considered) was reference to the 42nd gang. PS Rollin said that, in his view, the tattoos showed that the Appellant had "put work in" and risen in the ranks of the 42nd gang.

8. Fourth, the Appellant was charged with knowingly handling both a firearm and ammunition with a co-defendant, Thayja Simons, with whom he cohabited at the address of the search. The named individuals from whom the Appellant was reported to have received the firearm and to whom he was reported as having given the firearm were apparently not charged.

The DNA Evidence

9. The DNA evidence that was awaited on 30 December 2010 was received in the form

of a report of Dr Candy Zuleger of Trinity DNA Solutions dated 6 January 2011. She compared the Appellant's DNA with the DNA found in swabs taken from the firearm, the red cut off sleeve in which it was found, the glove and the Timberland black bag. It is unnecessary to go into the details of the analysis for the purpose of this appeal. Suffice it to say that, although the Appellant was excluded as a contributor to the DNA mixture found in several of the swabs, Dr Zuleger found that the Appellant was included as a contributor to the DNA mixture obtained from the trigger/trigger guard at eleven loci, the likelihood of an unrelated individual's DNA being found in the mixture being 1 in 130,000 for a Black Bermudian and 1 in 53,000 for a White Bermudian. This evidence therefore apparently showed that the Appellant's DNA was on the firearm and bag. He was also included as a contributor to the mixture in some swabs taken from the revolver grips, and the Timberland black bag and the red cut-off sleeve.

10. It was only after receipt of this DNA evidence that the Appellant pleaded guilty to handling a firearm – but not straightaway. Indeed, in his affidavit sworn 5 November 2025 for this appeal, the Appellant says that he first appeared before the Magistrates' Court in January 2011 (paragraph 3(d)) when it seems he indicated a not guilty plea; and he entered a guilty plea only on the first day of the trial (paragraphs 3(d) and (l)-(n)). As the Judge described at the sentencing hearing, between January and August 2011, the Appellant engaged with the authorities, providing them with cooperation and assistance (a factor which a court is required to take into account in a defendant's favour by way of mitigation of sentence: section 55(g)(v) of the Criminal Code), with the result that he pleaded guilty on what was due to be the first day of his trial on the basis that the Crown agreed that his sentence for the firearm offence should be restricted to 8 years. Having seen the extent of that cooperation and assistance, set out in a confidential exhibit before the court, the Judge imposed a sentence of 8 years. Further, the Crown did not pursue charges against his co-defendant.

11. The Appellant duly served that sentence.

12. However, the reliability of Dr Zuleger's evidence came under scrutiny following the judgment of the Judicial Committee of the Privy Council in Julian Washington v R [2024] UKPC 34 in which Mr Washington, following not guilty pleas and a trial, had been convicted by a jury of (i) premeditated murder, (ii) the attempted murder of a second man, (c) using a firearm to commit an indictable offence, and (d) unlawfully handling ammunition. The prosecution case had been largely dependent upon expert DNA evidence of Dr Zuleger. However, in later, post-conviction expert DNA evidence, Dr Dan Krane (instructed by the defendant/appellant) and Dr Barbara E Llewellyn (instructed by the Crown) were agreed that the evidence of Dr Zuleger was unreliable. In particular, in relation to the DNA evidence from the ammunition casings, Dr Llewellyn concluded that "Trinity DNA Solutions did not have in place the appropriate policies and procedures to permit the analysis and interpretation of the multiple amplifications of the mixed sample of DNA taken from the casings…. As a result, [Dr Llewellyn] consider[ed] that the sample should have been deemed inconclusive and no statistics should have been given on the basis of this sample" (recited at [50] of the judgment). On that basis, the Crown accepted the criticisms of Drs Krane and Llewellyn: and the Board considered that, in these circumstances, (i) it was in the interests of justice to admit the fresh evidence contained in their reports, and (ii) the convictions were unsafe and should be quashed (see [51]-[53]).

13. As recorded by the Board (at [60]-[63]), the DPP instigated a review of all cases in which Dr Zuleger had given evidence on behalf of the Crown and convictions had been

recorded, because all DNA analysis for the Bermuda Police Force between 2009 and 2015 was undertaken by Trinity DNA Solutions and the flaws which occurred in the Mr Washington's case may have occurred in other cases.

14. One of the reviewed cases was that of the Appellant. In a report dated 24 June 2025, Dr Llewellyn concluded that the methodology used by De Zuleger in this case was flawed; but, even more fundamentally (at paragraph 7):

> "Each of these samples was a degraded mixture of at least 3 people. There were obvious alleles below the threshold. These samples were of poor quality and should have been deemed inconclusive for comparisons to known standards."

In other words, no matter what tests had been done on these DNA samples, results could not have been obtained which would have supported the proposition that the Appellant had handled the firearm.

The Application/Appeal

15. There is before us an uncontested application to admit Dr Llewellyn's evidence as fresh evidence. I would admit that evidence.

16. On the basis of this fresh evidence, as described above, the DPP applied to the Governor who referred it to this court on 19 August 2025 to consider the Appellant's conviction on the ground that there has been a miscarriage of justice.

17. By section 27(a) of the Court of Appeal Act 1964, on referral, the case is treated for all purposes as an appeal to this Court "by the person convicted". At the time of the referral, the Appellant could not be located, the DPP believing that he had relocated overseas after he was released from prison; but he was later found overseas and a notarised affidavit dated 5 November 2025 obtained from him by his Counsel, Ms Mulligan. In it, he confirmed what he had told Ms Mulligan, as follows (paragraph 3):

> "a. I was charged with handling a firearm in 2011. The only evidence relied upon by the Prosecution against me was DNA evidence.
>
> b. My co-defendant was Thayja Simons and she was 22 years old. I grew up and lived in town (Pembroke). She came from country (Somerset).
>
> c. I was represented by Charles Richardson and Ms Simons was represented by Marc Daniels.
>
> d. We first appeared before the Magistrates' court in January 2011. I entered a guilty plea in August 2011.
>
> e. I don't recall knowing much about the DNA evidence until a relatively close to my trial date.
>
> f. I think this was one of the first cases in Bermuda where the Prosecution relied on DNA evidence. There might have been one or two before but it was still relatively new in Bermuda. No one had

much experience or knowledge about DNA evidence. I thought that if the expert said it was your DNA, there wasn't any way to challenge that.

g. I knew I had not handled this gun, so I asked my lawyer to set a trial date. I could be wrong, but I believe I changed my plea to guilty on my trial date.

h. I remember thinking that the DNA evidence was not as strong against me as it was against Ms Simons.

i. The evidence about how many other people could have left the DNA on the gun and other items, was more difficult for Ms Simons. The expert also reported that two other persons' DNA was on the gun but they were not charged with me and Ms Simons – I don't know why.

j. Ms Simons advised me, and I verily believed, that she was scared. She said she was pregnant and did not know what would happen if she were sentenced to jail.

k. We had both maintained our innocence, but we did not know how to effectively challenge the DNA evidence. We thought we would both likely be convicted because it was DNA evidence and it seemed very strong against Ms Simons.

l. After speaking with Ms Simons as we sat in the dock, I instructed my lawyer to approach the Prosecutor to ask if she would let Ms Simons go if I pleaded guilty.

m. Mr Richardson went somewhere for a discussion with the Prosecution, and I think maybe also with the Judge, and then came back and told me they would let her go if I pleaded guilty.

n. I entered my guilty plea and a few days later was sentenced to 8 years in prison. No evidence was offered against Ms Simons and she was released. I served the time, got out and left the jurisdiction as soon as I could to try to start over somewhere else. Fortunately, I have done that successfully.

o. I was not guilty of this offence."

18. Later in his affidavit, the Appellant said:

"8. If I had had more money and was more sophisticated at the time when I was charged with this offence, I likely would have hired an expert to review the DNA evidence, write a report and fly in from Overseas. I was not at all knowledgeable about DNA, though, and I was a poor black man from the back of town. I believed we would both be wrongly convicted, so it was better that I do the time in prison than a young, pregnant woman.

9. I entered a guilty plea because I believed, no matter what the truth was, the DNA evidence from an expert witness from the United States would be accepted over my word. She would say it was our

> DNA and we would say it wasn't. If I were on the jury, I would have convicted us on her evidence."

The Law

19. Section 21(1) of the Court of Appeal Act 1964 provides:

> "Upon the hearing of an appeal under section 17(1)(a) or (b), the Court of Appeal shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Supreme Court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a mis-carriage of justice, and in any other case shall dismiss the appeal:
>
> Provided that the court may—
>
> (a) notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred; or
>
> (b) in an appropriate case and if the interests of justice so require, set aside the conviction and sentence of the appellant and remit the case to the Supreme Court to be re-tried; and in any such case, the Court may make such order as it thinks fit for the detention of the appellant in custody pending the re-trial or for his release on bail or otherwise.

20. The diligent researches of Counsel before us had not identified any case in which this Court had allowed an appeal against a conviction entered on a guilty plea. However, it was common ground between them that this Court has jurisdiction in such a case because section 21(1) empowers the Court to allow an appeal "if on any ground there was a mis-carriage of justice".

21. I agree with that analysis. Whilst the earlier parts of that sub-section apply only where there is a verdict of a jury or a judgment of the Supreme Court, the miscarriage of justice ground is free-standing: this court has the power to allow an appeal against conviction where there is any miscarriage of justice, however arising – so long as the miscarriage of justice is "substantial", and so the caveat in section 21(1)(a) does not apply.

22. We were referred to the Court of Appeal of England & Wales judgment in R v Tredgett [2022] EWCA Crim 108; [2022] 4 WLR 62 which, Ms Mulligan submitted, provided guidance as to how the section 21 power should be exercised. However, the relevant power in England & Wales derives from the Criminal Appeal Act 1968 as amended which provides that the sole ground upon which an appeal can be allowed is "that the conviction is unsafe". Whilst there may of course be considerable overlap in the tests, "unsafety" of a conviction is not the same test as "miscarriage of justice", the latter on its face being a wider concept. That inevitably restricts the relevance of Tredgett in this Court.

23. Having said that, I consider the jurisprudence from England & Wales is of some assistance. In R v Asiedu [2015] EWCA Crim 714; [2015] 2 Cr App R 95 at [19] (quoted in Tredgett at [152]), Lord Hughes said:

> "A defendant who pleads guilty is making a formal admission in open court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence…. But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open court. A defendant will not normally be permitted in this court to say that he has changed his mind and now wishes to deny what he has previously thus admitted in the Crown Court."

Later in the judgment, Lord Hughes said (at [31], again quoted in Tredgett at [152]):

> "… Of course a defendant who is confronted by a powerful case may have difficult decisions to make whether to admit the offence or not. He will of course be advised that if he does plead guilty that fact will be reflected in sentence, but that general proposition of sentencing law does not alter his freedom of choice in the absence of an improper direct inducement from the judge…. He will always have it made clear to him that a plea of guilty, should he choose to tender it, amounts to a confession. Only he knows the true facts, which usually govern whether he is guilty or not and did so here. If he is guilty, the fact that the choice between admitting the truth and nevertheless denying it may be a difficult one does not alter the effect of choosing to admit it."

24. Equally, I consider that, in Bermuda, where a defendant has publicly admitted facts relied on by the Crown by an unambiguous and deliberately intended plea of guilty, an appeal against his conviction will generally be bound to fail because there could be no arguable miscarriage of justice in a conviction based on the defendant's own voluntary confession in open court. A defendant will not normally be permitted in this court to say that he has changed his mind and now wishes to deny what he has previously admitted in the Supreme Court. Indeed, as reflected in the historical sparsity – indeed, apparent absence – and any such previous case in this Court, the cases in which such a denial will be allowed will be very rare.

The Ground of Appeal: Discussion

25. Although formulated in different ways, Ms Mulligan essentially submitted that the prosecution of the Appellant was based entirely on the then practically irrefutable DNA evidence of Dr Zuleger, which the Crown now accept is fundamentally flawed, which (it is now said) vitiates his guilty plea. The Appellant could not, in practice, obtain his own DNA evidence to refute that of Dr Zuleger. He was thus robbed of his right to make an informed decision as to his plea. That was, Ms Mulligan submitted, a plain miscarriage of justice, which can only be rectified by this Court allowing the appeal and quashing the appeal.

26. Whilst accepting the limitations of Tredgett for this court, Ms Mulligan submitted it was an important case for the purposes of this appeal. If a case fell within the categories of case identified in Tredgett at [153]-[180], an appellant is entitled to submit that, notwithstanding the inherent admission of guilt inherent in a guilty plea, their conviction is "unsafe". "Unsafety of conviction" being a narrower concept than "miscarriage of justice", if this case falls into one of the Tredgett categories, then (she submitted) it must

amount to a miscarriage of justice which, in this jurisdiction, this Court should correct.

27. The three Tredgett categories (which, as the court in that case stressed, are not exclusive) are as follows:

    (i) The first category: The guilty plea is vitiated by (e.g.) being equivocal or unintended, where an erroneous ruling by the judge leaves no arguable defence to be put to the jury, improper pressure from the judge, or incorrect legal advice which goes to the heart of the plea.

    (ii) The second category: The guilty plea was made in circumstances in which it would have been offensive to justice to have brought the defendant to trial, e.g. where there had been a breach of the fundamental right to a fair trial, or there had been entrapment, or there were other circumstances which meant that, as a matter of law, the trial should never have taken place.

    (iii) The third category: The guilty plea is vitiated because it can be established that the defendant/appellant could not have committed the crime because (e.g.) it has been established that he was in prison at the relevant time or later DNA evidence proves that they took no part in the crime (as in R v Joel Jones [2019] EWCA Crim 1959).

28. However, in my view, this case can fall into neither the first category (because the plea was unambiguous and intended), nor the third category (because the new DNA evidence did not exonerate the Appellant but merely undermined the support in Dr Zuleger's evidence for the case against him). Ms Mulligan focused on the second category, submitting that it would be an abuse for the Crown now to rely on Dr Zuleger's evidence because they now know that it is defective. However, Ms Mulligan (rightly) accepted that, when the Appellant pleaded guilty, the Crown had not been guilty of any (nor had there been any) possible abuse of process: the Crown had no reason to suppose that the evidence of Dr Zuleger was other than reliable. It cannot be said that it would have been "offensive to justice" to have prosecuted the defendant in 2011, a matter to which I shall shortly return.

29. Ms Mulligan accepted that this case does not fall easily in any of the categories identified in Tredgett. I agree.

30. However, of course, that is not the end of the matter. As I have described, not only are we not bound by Tredgett, it concerns a different test in a different statutory scheme; the categories identified in that case were expressly not exclusive; and the miscarriage of justice test which we are required to apply is in any event wider than the unsafety of conviction test.

31. The question we must address is whether it would be a miscarriage of justice to leave the guilty verdict entered against the Appellant extant in circumstances in which it was entered on the basis of DNA evidence which has been shown to be fundamentally defective and incapable of supporting any prosecution against the Appellant.

32. That is necessarily a fact-specific issue. Having considered that question with particular care, I have concluded that the conviction on the Appellant's guilty plea was not a miscarriage of justice that would be perpetuated by our refusing to quash it. In coming to that conclusion, I have particularly taken into account the following.

33. Had the Appellant pleaded not guilty, and been found guilty at trial on evidence including

that of Dr Zuleger, I would have had no difficulty in being persuaded that that would amount to a miscarriage of justice, because the jury would have taken that DNA evidence into account in coming to their verdict. However, by his guilty plea, the Appellant publicly accepted his guilt. What might have happened had he pleaded not guilty is not to the point.

34. There is no evidence (from the Appellant or anyone else) or even suggestion that, when he was arrested, he was not properly cautioned in the usual way.

35. Following his arrest and apparent caution, he made the statement recorded by PC Henry and DI Redfern (see paragraph 5 above). That statement was referred to (I accept, somewhat obliquely) in the summary of evidence which the Appellant publicly accepted as the basis of his plea. Although the Appellant has lodged an affidavit for this appeal, he does not suggest in it that he did not make the statement as recorded. Although the statement confessed to handling the firearm, it was intended to be self-exculpatory so far as the serious offences that had been committed with the weapon were concerned. In that, it seems to have been successful: he was not prosecuted for any of those other matters.

36. Indeed, it is clear that the Appellant sought to minimize his sentence for the handling offence by cooperating and assisting the police in relation to other gang-related offending. Although we do not know the exact nature of that assistance (because we have not been privy to the confidential material which was disclosed to the sentencing judge) that too appears to have been successful: in return for the cooperation and assistance he gave, (i) his sentence was restricted to one of 8 years; (ii) the prosecution did not seek to proceed with the charge in relation to the ammunition; and (iii) the prosecution agreed not to proceed against Ms Simons. Whilst all that was done after Dr Zuleger's DNA evidence was served in January 2011, that evidence was clearly not immediately regarded by the Appellant as a knock-out blow so far as his defence was concerned. In his affidavit dated 5 November 2025, he says that he does not recall knowing much about the DNA evidence until "relatively close to his trial" (see paragraph 17 above): the cooperation and assistance he gave were given at a time when, on his own evidence, he had asked his lawyer to fix a trial date and had not given much thought to the DNA evidence which had been served and it was not bearing on his mind. Indeed, when he did focus on the DNA evidence, he thought that "it was not as strong against [him] as against Ms Simons" (again, see paragraph 17 above). In the event, the Appellant pleaded guilty; but there is no evidence that he intimated any intention to plead guilty until the first day of the trial when he (the Appellant) instructed his lawyer to approach the prosecutor to ask if she would let Ms Simons go if he pleaded guilty, the inference being that, had the Crown not agreed to that course, the Appellant would have contested the trial despite the DNA evidence as it then stood. The Appellant does not say that he obtained, or even sought, advice on this course of action which (the Appellant now suggests) involved pleading guilty knowing that he was not guilty.

37. During all of this, the Appellant does not say more than that he and Ms Simons "thought [they] would both likely be convicted because it was DNA evidence and it seemed very strong against Ms Simons". He does not say that he considered the DNA evidence meant that he was certain to be convicted at trial, only "likely".

38. Furthermore, Mr Duncan for the Crown submitted that the DNA evidence was not the only evidence upon which the prosecution relied in relation to the handling of a firearm offence. In addition, there was (i) the location of the firearm when it was found, 15-20m from the Appellant's house, (ii) the Appellant's statement as recorded by PC Henry and DCI Redfern referred to above (paragraph 5), made after caution and (despite the

admissions in relation to the firearm) being essentially exculpatory in nature in respect of which, Mr Duncan submitted, there was at least a strong argument for admission; and (iii) the evidence of DC Rollin as to the apparent role of the Appellant in gang-related matters including firearms. There was also the possibility of obtaining further evidence from alternative sources, not in the event sought because of the DNA evidence and the Appellant's eventual guilty plea. Whilst accepting that the DNA evidence was material to the Appellant's decision to plead guilty – and given that plea, the circumstance was hypothetical – Mr Duncan said (and I accept) that, if the DNA had been ruled out as defective, then the Crown would likely have proceeded with the prosecution of the Appellant (and, of course, Ms Simons) with the other evidence that it could muster. Whilst, of course, it would have been an abuse of process to have relied on the DNA evidence had the prosecution known it was fundamentally defective (which they did not), it cannot be said that it would have been "offensive to justice" to have prosecuted the defendant at all in 2011.

39. Therefore, on the basis of all the evidence, in my view, this is clearly not a case that falls within the scope of the historical cases under the "unsafe convictions" scheme in England & Wales which have seen convictions on a guilty plea overturned; nor is it a case in which the Appellant had no choice but to plead guilty to the handling firearms offence because of the DNA evidence. Far from holding his hands up to the offence in January 2011 when the DNA evidence was received, the Appellant, no doubt on advice, cooperated and assisted the authorities with a view to pleading guilty if the terms were acceptable to him. As Lord Hughes said in Asiedu (see paragraph 23 above), a defendant often has a difficult decision to make whether to admit an offence or not. The defendant, of course, knows if he is guilty or not. He will be advised, as no doubt the Appellant was, that if he pleads guilty that will be reflected in sentence and that cooperation with the authorities in relation to the instant or other offences is required by statute to be taken into account as mitigation. Those, in themselves, do not inhibit a defendant's freedom of choice.

40. Nor do I consider that the defective nature of the DNA evidence upon which the Crown relied at the time vitiates the Appellant's guilty plea. I accept, of course, that that evidence was relevant to his decision to plead; but, without any focus on that evidence, he appears to have sought to do a deal with the authorities whereby he practically eliminated the risk of being prosecuted for far more serious offences committed with the firearm, entirely eliminated the risk of his pregnant girlfriend being prosecuted, and exchanged the risk of a much higher sentence for the certainty of an 8 year custodial term by pleading guilty. From his point of view, that would have been a deal worth considering without the DNA evidence; I accept that, with that evidence it was far more attractive, but I do not consider that, on all the evidence, it can be said that the Appellant's mind was overborne by that defective evidence or, consequently, that his conviction on his own guilty plea was a miscarriage of justice.

41. I have therefore concluded that this is not one of the very rare cases in which this Court should quash a conviction on a guilty plea.

Conclusion

42. For those reasons, I would allow the application to admit fresh evidence; but refuse the appeal leaving the Applicant's conviction to stand.

GLOSTER JA:

43. I agree.

CLARKE P:

44. I, also, agree.