IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

Neutral Citation Number: [2026] CIGC (Crim) 31

INDICTMENT NO: 63 and 106 of 2026

R

v.

DRAYSON MARLON WATSON

Appearances:	**Mr. Martin Mulgrew, Senior Crown Counsel, Office of the Director of Public Prosecutions for the Prosecution**
	Ms. Amelia Fosuhene, Brady Attorneys at Law for the Defendant
Before:	**The Hon. Acting Justice Ben Tonner KC**
Submissions Heard:	**19th November 2026**
Ruling Delivered:	**20th November 2026**

Criminal Law – Murder – Application to Dismiss - Section 85A(9) and Schedule 5, Criminal Procedure Code (2026 Revision)

RULING ON THE DEFENDANT'S APPLICATION TO DISMISS THE CHARGE OF MURDER

Introduction

1. The Defendant, Drayson Marlon Watson, is charged on an indictment dated 25 September 2026 with five counts. Count 1 charges him with the murder of Kenneth Christian (recorded in the post-mortem report as Kenneth Edroy Barnes, also known as Kenneth Edroy Christian), whom I shall call "the Deceased". Counts 2 to 5 charge wounding with intent, unlawful wounding, possession of an offensive weapon, and possession of a prohibited weapon.

2. The charge of murder, a Category A offence, was transmitted to this Court under s.85A(1) of the Criminal Procedure Code (2026 Revision) ("the CPC") by notice dated 24 September 2026. The Defendant has been served with the evidence on which the charge is based and has not been arraigned. By written notice dated 2 October 2026, he applies under s.85A(9) and Schedule 5 for the charge of murder to be dismissed, and for Count 1 to be quashed. The application does not concern Counts 2 to 5.

3. The application is advanced on two grounds. Ground 1 is that the evidence is incapable of proving that any act of the Defendant caused the death of the Deceased. Ground 2 is that the evidence is insufficient for a jury to be sure that the Defendant was not acting in lawful self-defence, or that he acted with malice aforethought.

4. The Crown opposes the application by written response. I have considered the written submissions of both parties and the oral submissions made on 19 November 2026. Neither party sought leave to call oral evidence under para 4 of Schedule 5, and none was called.

Background

5. The following account is drawn from the Crown's papers. Many of the facts are disputed, and nothing I say about them is a finding.

6. On 20 May 2026 the Defendant, then aged 47, was a manager at the Cayman Turtle Centre, West Bay. The Deceased, then aged 78, was a customer. A dispute arose because the Defendant had told the Deceased that he had already bought the maximum weekly allowance of turtle meat.

7. At about 11.53 am, on North West Point Road, there was an altercation between the two men beside the Deceased's car. It is not in dispute that the Deceased struck the Defendant on the head with a pipe, or that the Defendant inflicted knife wounds on the Deceased. The sequence of events, and who was the aggressor, are in dispute.

8. The Defendant himself called 911 at 11.54 am. He said he had been in a fight with a customer, that the customer had hit him with a pipe, and that he had used his knife. Police found him giving first aid to the Deceased. He admitted inflicting the injuries with his folding knife and, on arrest and caution at 12.15 pm, said "Yes sir I will cooperate". He later became unresponsive in police transport and was taken to hospital by ambulance.

9. The Deceased was taken to George Town Hospital with incised wounds to the left ear and neck, a stab wound to the central torso, and a fractured left femur. He underwent neck and orthopaedic surgery. While in hospital, he gave a video-recorded account to the police. At about 1.06 am on 23 May 2026, he suffered a cardiac arrest, and he was pronounced dead at 5.55 am.

10. The evidence about the altercation comes from four main sources: CCTV from three premises, as described in the Crown's summary; an eyewitness, Ms Simone Palmer; the Deceased's recorded account, which is the subject of a separate Crown application to admit it as hearsay; and the Defendant's interview of 22 May 2026. The defence disputes parts of the officer's description of the footage and relies on the footage itself.

11. A postmortem examination was carried out on 6 June 2026 by Dr Ashwyn Rajagopalan MD FRCPC, a forensic pathologist based at Humber River Hospital, Toronto. His final report is dated 18 September 2026 ("the PM report"). It was served with his witness statement of 16 October 2026, which exhibits it, under the Crown's Notice of Additional Evidence of 26 October 2026. It is the only evidence in the Crown's case on the cause of death.

The test

12. Paragraph 2 of Schedule 5 to the CPC provides that the Judge "shall dismiss a charge and accordingly quash any count relating to it in any indictment preferred against the applicant … if the Judge is satisfied that the evidence against the applicant would not be sufficient to put the applicant on the applicant's trial".

13. The defence put the test as whether the evidence "would not be sufficient for him to be properly convicted", relying on *R (Inland Revenue Commissioners) v Crown Court at Kingston* [2001] EWHC Admin 581, [2001] 4 All ER 721. That case concerned s.6 of the Criminal Justice Act 1987, which governs the transfer of serious fraud cases in England and Wales and asks whether the evidence would be "sufficient for a jury properly to convict". The Divisional Court held (at [16]–[17]) that under that provision the judge must consider the whole of the evidence and assess its weight, though without substituting himself for the jury. The Crown did not address the test.

14. The words of the Cayman Islands provision are different. They echo the language of the preliminary inquiry, whose purpose under s.86 of the CPC is "to determine whether there is sufficient evidence to put the accused person on trial before the Grand Court". In my judgment, the question under para 2 is whether there is evidence, taken at its highest, on which a jury properly directed could properly convict. That imports both limbs of the test in *R v Galbraith* [1981] 1 WLR 1039 at 1042: the charge must be dismissed where there is no evidence of an essential element, and also where the evidence, taken at its highest, is so weak that a jury properly directed could not properly convict on it.

15. Taking the evidence at its highest does not mean selecting the passages that favour the Crown and disregarding the rest. Evidence must be read as a whole and in its context: *Kingston* at [16]; and see *R v Shippey* [1988] Crim LR 767.

16. It is unnecessary to decide whether there is any difference of substance between the Cayman Islands test and that in *Kingston*. Ground 1 does not turn on the credibility of witnesses or on the weight a jury might give to competing accounts. It turns on what the only expert evidence on causation is

capable of proving. If that evidence, taken at its highest and read as a whole, cannot prove causation to the criminal standard, the charge must be dismissed on any formulation of the test.

17. If a charge is dismissed, no further proceedings may be brought on it except by a voluntary bill of indictment (para 6(a)). That provides a safeguard should further evidence emerge.

18. Murder is defined by s.181 of the Penal Code (2026 Revision): "A person who, of malice aforethought express or implied, causes the death of another person by an unlawful act or omission commits the offence of murder." The Crown must therefore prove, so that the jury is sure, that an unlawful act of the Defendant caused the death, that he acted with malice aforethought as defined in s.184, and, the issue being raised, that he was not acting in lawful self-defence: *Woolmington v DPP* [1935] AC 462; s.14 of the Penal Code; *Palmer v R* [1971] AC 814; *Beckford v R* [1988] AC 130.

Ground 1: causation

The law

19. Causation is an element of both murder (s.181) and manslaughter (s.180). The Crown must prove factual causation: that, but for the act of the accused, death would not have occurred when it did. *R v White* [1910] 2 KB 124, which has been cited in argument, is an illustration. There the deceased had not died from the poison the defendant put in her drink but, on the medical evidence, most probably from syncope or heart failure; he was guilty of attempted murder only. A "but for" connection is necessary but not sufficient: *R v Hughes* [2013] UKSC 56.

20. The Crown must also prove legal causation: that the act was a significant and operating cause of death, meaning one that is more than minimal, negligible or trivial. It need not be the sole or the main cause: *R v Smith* [1959] 2 QB 35 at 42–43; *R v Cato* [1976] 1 WLR 110; *R v L* [2010] EWCA Crim 1249; *R v Wallace* [2018] 2 Cr App R 22 at [64]; *R v Mellor* [1996] 2 Cr App R 245.

21. A defendant must take his victim as he finds him, and cannot rely on a pre-existing condition to escape liability for a death his act has in fact caused: *R v Blaue* [1975] 1 WLR 1411. To hasten the death of a person who is already dying is to cause it: *R v Dyson* [1908] 2 KB 454. In *Dyson* the conviction was quashed because the jury had been directed that they could convict on the basis of injuries inflicted more than a year and a day before the death. Whether the later assault had accelerated death was a question of fact, and the Court could not be sure that a properly directed jury would have so found.

22. Section 188 of the Penal Code provides that a person is deemed to have caused death although his act is not the immediate or the sole cause, in five situations. The Crown relies on two of them:

- Paragraph 188 (a) applies where the injury leads to surgical or medical treatment "which causes death". That paragraph provides that it is then immaterial whether the treatment was proper or mistaken, provided it was employed in good faith and with common knowledge and skill; the threshold requirement remains that the treatment caused death.
- Paragraph 188 (d) applies where the act "hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death".

23. Section 188 widens the circumstances in which the law treats an act as a cause of death. It does not relieve the Crown of proving the causal fact on which each paragraph depends: that the treatment caused death, or that the act hastened it.

24. Hastening must be proved affirmatively. In *R v Morby* (1882) 8 QBD 571, referred to by defence counsel in oral argument, the medical witness could say only that the chances of the child's life would have been increased by medical aid, and that life might probably have been prolonged, but not that it would have been. The Court for Crown Cases Reserved quashed the conviction for manslaughter. Lord Coleridge CJ said (at 574) that "it must be shewn that the neglect had the effect of shortening life" and that "affirmative proof is required". Stephen J said (at 575) that to convict "you must shew that he caused death or accelerated it".

25. *Morby* was applied in *R v Broughton* [2021] 1 WLR 543. The Court of Appeal held (at [23]) that "to be sure that the gross negligence caused the death the prosecution must exclude realistic or plausible possibilities that the deceased would anyway have died". Expert evidence that the

defendant's failure had deprived the deceased of a 90% chance of survival "leaves a realistic possibility that she would not have lived" (at [101]). The evidence was "not capable of establishing causation to the criminal standard", and the case should have been withdrawn from the jury under *Galbraith* (at [103]–[104]). The court observed (at [14]) that concurrent causes may arise in assault cases too, giving as an example "an assault which provokes a fatal heart attack".

26. Where acceleration is relied on, it must be significant. In *R v Bawa-Garba* [2016] EWCA Crim 1841, a case I raised with Crown counsel in oral argument, the Court of Appeal approved a direction that the jury must be sure the deceased "died significantly sooner" because of the defendant's conduct, and held (at [30]) that this is the same thing as proof that life would have been significantly prolonged.

27. Juries are not required to apply scientific certainty, and need not consider theoretical or fanciful alternatives: *R v Bracewell* (1978) 68 Cr App R 44; *R v Gian* [2009] EWCA Crim 2553 at [22]. But where the cause of death is a matter of specialist medical judgment and the expert evidence is all the jury has, they cannot properly reach a conclusion that the evidence does not support. In *R (Khan) v HM Coroner for West Hertfordshire* [2002] EWHC 302 (Admin) Richards J held (at [43(v)]) that a finding on whether earlier intervention would have saved or prolonged life, made without supporting expert evidence, would rest "not on legitimate inference and common sense but on impermissible speculation". That was on the civil standard. The point applies with greater force to the criminal standard.

28. The question for me is therefore whether there is evidence on which a jury properly directed could be sure that the Defendant's acts caused the Deceased's death, in the sense of being a significant and operating cause of it, or of hastening it significantly.

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The pathologist's evidence

29. The PM report records the cause of death in two parts. Part I gives the immediate cause as "cardiac arrhythmia", due to "atherosclerotic and hypertensive heart disease". Part II, headed "Other significant conditions contributing to the death but not causally related to the immediate cause (a)",

reads: “Hospitalization and surgical repair of multiple incised/stab wounds and left femoral fracture”.

30. The objective findings were severe coronary artery disease, with stenosis of up to 90% in the left anterior descending artery and up to 80% in the right coronary artery; cardiomegaly (512 g) with concentric left ventricular hypertrophy; and marked nephrosclerosis. There was no acute infarct and no pulmonary embolism. No internal organ was injured. The neck wound was superficial, not extending beyond the platysma, with the carotid artery, jugular vein and nerves intact. The torso wound reached the left rectus muscle only. The femoral fracture was closed and surgically repaired, with no large overlying haematoma.

31. Under “Summary and Interpretation”, the pathologist states (para 1):

    (a) “Death is attributed to a sudden cardiac arrhythmia due to atherosclerotic and hypertensive heart disease complicating hospitalization and surgical repair of multiple incised/stab wounds and left femur fracture.”

    (b) “His injuries appeared to be healing well, and there was no evidence that they caused death directly or through a surgical complication” (para 1(b)).

    (c) “This heart disease was severe enough that it could have caused death at any time, i.e., even in the absence of his injuries” (para 1(d)).

    (d) “However, individuals recovering from surgery are under physiological stress, and are at an increased risk of sudden and unexpected death in the post operative state” and “Therefore, the injuries have contributed to death by placing him in a higher risk state than he otherwise would have been” (paras 1(e)–(f)).

32. Most importantly, under the heading “Limitations” (para 3 of the report), the pathologist states: “I cannot say that, in the absence of injuries/surgery, this man would not have suffered a similar fatal arrythmia [sic] that same day. However, the probability of his death was higher on that day, and that increased probability was due to his post-operative state.”

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The parties' submissions

33. For the Defendant, Ms Fosuhene submits that the pathologist has placed the injuries outside the causal sequence in Part I; that he does not attribute death to them directly or through any complication; and that, by para 3, he cannot exclude that the Deceased would have died that day in any event. An increased statistical risk is not proof of causation. The thin skull principle, *Dyson* and s.188 all presuppose proof that the injuries caused or hastened death, and that proof is absent in this case.

34. For the Crown, Mr Mulgrew submits that the pathologist's evidence is that the surgical repair contributed to death; that the surgery would not have been needed but for the injuries; and that it increased the risk of a fatal arrhythmia. He relies on s.188(a) and (d), *Smith*, *Wallace*, *Broughton*, *Cato*, *L*, *Hughes* and *Blaue*, and submits that whether the injuries hastened death by increasing that risk is a question of fact for the jury.

Analysis

35. The defence submits that the Part II certification shows the injuries played no causal role. That puts it too high: Part II records conditions that contributed to the death. But the submission has force to this extent. The pathologist did not place the injuries in Part I, the causal sequence leading to the fatal arrhythmia, and Part II is reserved for conditions "not causally related to the immediate cause". That is consistent with the rest of his report. The form of a medical certificate is not, however, determinative of legal causation, and I do not decide the application on it. The question is what kind of contribution the pathologist describes, and whether a jury could be sure of it.

36. Read as a whole, the report identifies only one way in which the injuries contributed: by placing the Deceased "in a higher risk state". It excludes the usual routes by which injuries cause death, namely directly or through a surgical complication. It does not identify the post-operative state as a mechanism that in fact operated at the moment of death. And in para 3 the pathologist expressly declines to say that the Deceased would not have suffered a similar fatal arrhythmia on the same day had he not been injured. The reasoning in paras 1(e) and 1(f) moves from a general proposition

about patients recovering from surgery to a conclusion about this patient's level of risk. It is not an observation that his post-operative state was in fact abnormal. The patient-specific findings are to the contrary: the history records that he remained stable in hospital, the pathologist found his injuries to be healing well, and there was no surgical complication or significant haemorrhage.

37. On that evidence, taken at its highest, a jury could be sure that the injuries and their treatment increased the risk of a fatal arrhythmia, but they could not be sure that the injuries caused this death, or hastened it at all, still less significantly. Proof that a risk was increased is not proof that the risk materialised because of the increased risk. That is the kind of evidence held insufficient in *Morby* and *Broughton*. In *Broughton* the expert put the chance of survival at 90%. Here the increase in risk is not quantified, and the pathologist's own findings that the heart disease was "severe enough that it could have caused death at any time" make the possibility of death from natural causes on the same day a realistic one, not a fanciful one.

38. The Crown's case under s.188(d) is that the injuries "hastened the death". That is a counterfactual proposition: it requires proof that, without the injuries, the Deceased would have lived longer. The only evidence on that question is para 3 of the report, and it does not support the proposition.

39. Section 188(a) does not assist the Crown either. The treatment did not cause death through any complication (para 1(b)). The Crown's case is that the post-operative state raised the risk of death, which is the same evidential gap in another form.

40. Nor could a jury properly fill the gap. Whether a fatal arrhythmia in a 78-year-old man with up to 90% stenosis of the left anterior descending artery was brought on by healing, surgically repaired wounds, two and a half days after the injuries, is a question of specialist medical judgment. The matters a jury might otherwise rely on, such as the timing of death, the history of chest pain the evening before and the absence of an earlier cardiac event, were all before the pathologist when he formed his opinion. There is no evidence on which a jury could reach a different conclusion from his. To invite them to do so would be to invite speculation: *Broughton* at [75]; *Khan* at [43(v)].

41. The anaemia does not assist the Crown. The pathologist records a haemoglobin of 7.6 g/dL shortly before death, but says that the anaemia "may or may not have contributed to death", that its cause is "unclear", and that diabetic kidney disease and other explanations are possible (para 2 of the report). The femoral fracture, whatever its cause, did not cause death directly or through any complication.

42. In oral argument, the Crown submitted that *Blaue* is a key authority and that it provides a complete answer to the Defence submission. In my view, however, *Blaue* does not assist the Crown. The principle that an assailant takes his victim as he finds him governs attribution where the act is proved to be an operating cause of death; in *Blaue* itself the stab wound plainly was. It does not relieve the Crown of proving that the act was a cause. The observation in *Blaue* that causation is a question of fact for the jury presupposes evidence on which a jury could be sure: compare *Broughton* at [102], where the same point is made about *R v Misra* [2005] 1 Cr App R 21.

43. In *White* the medical evidence was that the deceased had not died from the poison. I accept the Crown's submission that *White* is not closely analogous to the present case. In the present case, there is a plausible physiological connection between the injuries and the death. The difficulty for the Crown is not that a connection is inconceivable, but that the evidence cannot prove it to the criminal standard.

44. The defence also observes that the PM report records that the history was taken from attending officers and "police report (2025-06198)", which is not the reference for this investigation, and does not state that the hospital records were reviewed. That may go to the weight of the report. It does not affect my conclusion, which rests on the report taken on its own terms.

Conclusion on Ground 1

45. Causation becomes a question for the jury only if there is evidence on which a jury, properly directed, could be sure of it. That requires evidence capable of excluding, as a realistic possibility, that the Deceased would have died when he did in any event: *Broughton* at [23] and [100]–[104].

46. The Crown's evidence, taken at its highest, goes no further than an increase in risk, and the only expert evidence in the case cannot exclude death from natural causes on the same day. A jury could not turn that evidence into proof beyond reasonable doubt without speculating. In dismissing the charge on that basis, the Court is not usurping the function of the jury. It is applying the threshold that must be met before any issue can be left to them.

47. I am satisfied that the evidence would not be sufficient to put the Defendant on trial for murder, because it is incapable of proving to the criminal standard that any act of the Defendant caused the death of the Deceased. A jury properly directed could not properly convict on it. Because causation is equally an element of manslaughter, the count cannot proceed on that alternative basis. Ground 1 succeeds.

The Crown's request for an adjournment

48. Before turning to the consequences of my conclusion on Ground 1, I deal with a matter raised in oral argument. During an exchange with the Crown, I observed that the pathologist's report might have been clearer, and I asked Crown counsel why the Crown had not sought to clarify certain matters in advance of this hearing. Crown counsel's response was that the report was sufficiently clear, but that if I was minded to rule against him, he would ask for an adjournment.

49. I decline to adjourn, for three reasons. First, the request was conditional on the outcome. An application to adjourn must be made, and determined on its merits, before the Court rules. It cannot be held in reserve, to be pursued only if the ruling proves adverse, so that the Crown may then fill whatever gap the ruling has identified. To permit that would allow a party to test the Court's view of its evidence and then repair the evidence in the light of it.

50. Second, even if it were treated as an application in its own right, it has no evidential foundation. The defence grounds served on 2 October 2026 put para 3 of the PM report squarely in issue. The pathologist's witness statement of 16 October 2026, served under the Notice of Additional Evidence of 26 October 2026, was taken after those grounds were served, yet it exhibits the same report without any clarification of it. The Crown's written response does not suggest that his

opinion goes further. I have been told nothing to indicate that he has been approached on the point, or that there is any basis for thinking that he would go beyond para 3 of his report. An adjournment would serve only to discover whether a considered expert opinion might change.

51. Third, refusing an adjournment causes no injustice. If the Crown obtains expert evidence capable of proving causation, para 6(a) of Schedule 5 permits it to seek a voluntary bill of indictment, subject to the scrutiny that procedure entails. Against that, the Defendant is entitled to have the application he made on 2 October 2026 determined, without further delay, on the evidence the Crown has chosen to serve.

52. For the same reasons, neither party having sought leave under para 4 of Schedule 5, I do not consider that the interests of justice require me to order the pathologist to give oral evidence of my own motion.



Ground 2: self-defence and malice aforethought

53. In view of my conclusion on Ground 1, Ground 2 does not arise. The submissions on self-defence and malice aforethought were advanced only as further reasons for dismissing the charge of murder, and that charge is dismissed.

54. I decline to express any view on Ground 2. The same issues, namely whether the Defendant acted in lawful self-defence, whether he intended to cause grievous bodily harm, and whether any wound was inflicted by accident (s.7 of the Penal Code), arise on Counts 2 and 3. Those counts are not the subject of this application, and the Defendant has said that he will contest them at trial. The issues are for determination at trial, by the jury and, on any submission of no case to answer, by the trial judge, on the evidence as it is then given, including the CCTV footage itself.

55. Nothing in this ruling is a finding on any disputed fact. In particular, the account of the altercation at paragraphs 5 to 10 summarises the Crown's papers and the parties' positions, and is not to be relied on at trial as a finding of this Court.

Disposal

56. The charge of murder is dismissed under para 2 of Schedule 5 to the CPC, and Count 1 is quashed.

57. By para 6(a) of Schedule 5, no further proceedings may be brought on the dismissed charge except by the preferment of a voluntary bill of indictment.

58. The Defendant remains charged on Counts 2 to 5, which are unaffected by this ruling.

59. I direct that:

    (a) the quashing of Count 1 be endorsed on the joinder indictment, and the Crown is to lodge a copy of the indictment for trial containing Counts 2 to 5 only; and

    (b) the matter be listed for mention and further directions on Counts 2 to 5 on 27 November 2026.

60. I am grateful to counsel for their written and oral submissions.

Dated this the 20th November 2026



The Hon. Justice Ben Tonner KC
Acting Judge of the Grand Court

