

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE

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4 IND #0030/2019

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6 REGINA

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18 **Appearances:**

18 **Mr. Scott Wainwright for the Crown**

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20 **Mr. Keith Myers for Defendant #1**

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22 **Ms. Lee Halliday-Davis for Defendant #2**

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24 **Mr. Jonathon Hughes of Samson Law for**  
25 **Defendant #3**

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27 **Mr. Oliver Grimwood of Barton Attorneys for**  
28 **Defendant #4**

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30 **Before:**

30 **Justice Marlene I. Carter (Actg.)**

31 **Hearing Date:**

31 **29<sup>th</sup> July 2020**

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33 **Ruling Date:**

33 **30<sup>th</sup> July 2020**

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37 **HEADNOTE**

38 *Criminal Law – Conspiracy to Import Ganga - Ruling on Good Character – Good*  
39 *Character raised on the defence case – defendant’s previous convictions –*  
40 *Direction to the Jury.*

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42 **RULING ON GOOD CHARACTER**



- 1        1.        Where reliance is placed on good character it is the duty of defence counsel and  
2                    the defendant to ensure that the judge is aware of that fact. In this case,  
3                    following good practice, counsel for the 3<sup>rd</sup> defendant has sought this court's  
4                    indication on good character in the particular circumstances as outlined below.
  
- 5        2.        At trial a defendant, although he does not give evidence in his own defence, can  
6                    call witnesses to establish his good character. In this case counsel for the 3<sup>rd</sup>  
7                    defendant has alerted the court that the defendant does not intend to give  
8                    evidence in his own defence, but he will seek to introduce, on behalf of the  
9                    defendant, a letter of recommendation attesting to his good character from a  
10                    member of the Legislative Assembly. The court has reviewed the contents of  
11                    the letter and it would clearly be the case that it would be considered evidence  
12                    that goes towards establishing the defendant's good character. In such a case,  
13                    evidence tending to show that he has previous convictions may be adduced. The  
14                    Crown submits that this is what should be permitted in this case.
  
- 15        3.        This court had previously ruled that the Crown would have been entitled to put  
16                    the defendant's previous convictions to him, had he chosen to give evidence in  
17                    his own defence because of the nature of the imputations on the character of  
18                    some of the Crown witnesses which had been made during the course of the  
19                    cross examination of those witnesses. The Court had also ruled that the  
20                    defendant should then have the benefit of a modified good character direction to  
21                    reflect the fact that those previous convictions were of some vintage and, also  
22                    the fact that those previous convictions were expunged under the provisions of  
23                    the *Criminal Records (Spent Convictions) Law*, (2018 Revision).

- 1           4.       The questions that the court must now consider are:
- 2                   i.       Whether the Crown should be able to present evidence of the 3<sup>rd</sup>
- 3                         Defendant’s previous convictions to the jury in consequence of the
- 4                         defendant raising his good character through the recommendation;
- 5                   ii.       What direction would follow if the previous convictions were before the
- 6                         jury;
- 7                   iii.       What directions would follow if the previous convictions were not before
- 8                         the jury.

9           5.       Section 18 of the *Evidence Law* (2019 Revision) states, as far as is relevant:

10                   *“Every person charged with an offence is a competent witness for the*

11                   *defence at every stage of the proceedings, whether the person so charged is*

12                   *charged solely or jointly with any other person:*

13                         *Provided that —*

14                            a)   .....

15                            b)   .....

16                            c)   ....

17                            d) *A person charged and called as a witness under this Law*

18                                 *shall not be asked, or required to answer, any question*

19                                 *tending to show that he has committed or been convicted or*

20                                 *been charged with any offence other than that wherewith he*

21                                 *is charged or is of bad character unless —*

- 22                                    i. *the proof that he has been charged with or*
- 23   *committed or been convicted of such other*
- 24   *offence is admissible evidence to show that he*
- 25   *has committed the offence wherewith he is*
- 26   *charged;*





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ii. *he has personally or by his advocate asked questions of the witnesses for the prosecution to establish his own good character or has given evidence of such good character, or the nature of the conduct of the defence is such as to involve imputations on the character of any other person, in which case evidence tending to show that he has committed, been convicted, or been charged with any offence other than that with which he is charged, or is of bad character, may be adduced whether or not he has given evidence in his own defence; or...*"

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6. In *R v Nye*<sup>1</sup> the court was concerned with the effect of spent convictions and good character. The court stated:

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*"It is entirely a question for the discretion of the judge [whether when a man who has been previously convicted and has reached the stage when his convictions are spent should as of right be entitled to present himself as a man of good character when he comes to be tried for some offence]. ...The essence of this matter is that the jury must not be misled and no lie must be told to them about this matter."*

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7. In *R v Hunter*<sup>2</sup>, the Court stated at paragraph 72:

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*"72. It may sound like a statement of the obvious but only defendants with a good character or deemed to be of effective good character are entitled to a good character direction. A defendant who has a record of previous convictions or has a bad character of some other kind is not entitled as of right to a good character direction; it matters not for this purpose who has adduced the evidence and whether the bad character evidence is relied upon as probative of guilt. It does not follow from the fact that the bad character is not considered probative of guilt that a defendant is entitled to be treated as if he had a good character. Once evidence of bad character is admitted, a judge cannot ignore it and give directions to a jury which would make no sense. Where a defendant has a bad*

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<sup>1</sup> 75 Crim. App. R 247

<sup>2</sup> 2015 EWCA Crim. 631

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*character, a judge is not obliged to give a good character direction, s/he has a discretion.”*

8. Regarding “*Effective good character*” the Court stated:

“79. *Where a defendant has previous convictions or cautions recorded which are old, minor and have no relevance to the charge, the judge must make a judgement as to whether or not to treat the defendant as a person of effective good character. It does not follow from the fact that a defendant has previous convictions which are old or irrelevant to the offence charged that a judge is obliged to treat him as a person of good character. In fairness to all, the trial judge should be vigilant to ensure that only those defendants who merit an 'effective good character' are afforded one. It is for the judge to make a judgement, by assessing all the circumstances of the offence/s and the offender, to the extent known, and then deciding what fairness to all dictates. The judge should not leave it to the jury to decide whether or not the defendant is to be treated as of good character.*”

80. *If the judge decides to treat a defendant as a person of effective good character, the judge does not have a discretion whether to give the direction. S/he must give both limbs of the direction, modified as necessary to reflect the other matters and thereby ensure the jury is not misled.”*

9. I have taken into account the submissions of both counsel, the relevant legislation: the *Evidence Law*, the *Criminal Records (Spent Convictions) Law*, especially s.26 and s.27 of that Law – and the authorities. I have also considered in the exercise of this court’s discretion in this case, the nature of the defendant’s previous convictions, the age and the disposition of these convictions and the Court’s overriding duty to ensure fairness in the proceedings.

1        10. I find that the introduction of this evidence that goes towards establishing the  
2        defendant's good character, opens the door for the prosecution to be given the  
3        opportunity to rebut by presenting evidence of the defendant's previous  
4        convictions and that it would *not* be in the interests of justice were the Court not  
5        to permit the prosecution to do so - even in the circumstance where the  
6        defendant's record can be considered to be expunged.

7        11. I therefore find as follows:

8            i. If the letter of recommendation goes before the jury on the defence case, the  
9            defendant's previous convictions should also be before the jury.

10          ii. If the defendant chooses to raise his good character before the jury in this  
11          way, by introducing the letter of recommendation, evidence of his previous  
12          convictions should be before the jury so that the jury will not be misled.  
13          This evidence may be by way of admission or rebuttal.

14          iii. In such case, the defendant would be entitled to a modified good character  
15          direction, or as termed in *Hunter*, an Effective Good Character direction.

16          iv. If the court had determined otherwise, and the defendant's previous  
17          convictions were not put before the jury, the defendant would not thereby  
18          be entitled, as of right, to a direction that he is of absolute good character on  
19          the principles of *R v Hunter*.

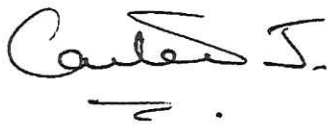
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1 v. The discretion to give this direction of absolute good character would  
2 remain with the court. In order that the jury not be misled in *that*  
3 circumstance, this court would be inclined to the view that no good  
4 character direction should be given.

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**Dated this the 30<sup>th</sup> day of July 2020**



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**Mme. Justice Marlene Carter  
Acting Judge of the Grand Court**

