

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**

4 **INDICTMENT NO. 42 of 2022**

6 **REX**  
7 **V.**  
8 **GARFIELD ANTONIO ROBB**



11 **Appearances:** **Ms. Hema Soondarsingh for the Crown**  
12 **Mr. Crister Brady of Brady Attorneys for the Defendant**  
13  
14 **Before:** **The Hon. Justice Frank Williams (Actg.)**  
15  
16 **Judge Alone trial:** **November 2022: 10<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 30<sup>th</sup>.**  
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18 **Verdict Judgment:** **19<sup>th</sup> September 2023**  
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22 **HEADNOTE**

24 ***Criminal law - Section 247 of the Penal Code (2019 Revision), Obtaining Property by Deception -***  
25 ***Section 149 of the Police Act, Defendant remaining silent, Inferences to be drawn from***  
26 ***defendant's silence***  
27

29 **VERDICT JUDGMENT**



1 1. In this case, the defendant is charged with the offence of Obtaining Property by Deception,  
2 pursuant to s.247 of the **Penal Code** (2019 Revision). That section reads as follows: -

- 3
- 4 “247. (1) A person who by any deception dishonestly obtains property  
5 belonging to another, with intention of permanently depriving the  
6 other of it commits an offence and is liable to imprisonment for ten  
7 years.  
8 (2) For purposes of this section a person is to be treated as obtaining  
9 property if he obtains ownership, possession or control of it, and  
10 “obtain” includes obtaining for another or enabling another to  
11 obtain or retain.  
12 (3) Section 240 shall apply for this section, with the necessary adaptation  
13 of the reference to appropriating, as it applies for section 235.  
14 (4) For purposes of this section “deception” means any deception  
15 (whether reckless or deliberate) by words or conduct as to fact or as  
16 to law, including a deception as to the present intentions of the person  
17 using the deception or any other person.”  
18

19 2. The provisions of s.240 of the **Penal Code** (to which section 247 refers) seek to give greater  
20 clarity to the phrase “with the intention of permanently depriving the other of it”, as follows:

- 21
- 22 “With the intention of permanently depriving the other of it  
23
- 24 240. (1) A person appropriating property belonging to another without  
25 meaning the other permanently to lose the thing itself is nevertheless  
26 to be regarded as having the intention of permanently depriving the  
27 other of it if his intention is to treat the thing as his own to dispose of  
28 regardless of the other’s rights; and a borrowing or lending of it may  
29 amount to so treating it if, but only if, the borrowing or lending is for  
30 a period and in circumstances making it equivalent to an outright  
31 taking or disposal.  
32 (2) Without prejudice to subsection (1), where a person, having  
33 possession or control (lawfully or not) of property belonging to  
34 another, parts with the property under a condition as to its return  
35 which he may not be able to perform, this, (if done for purposes of  
36 his own and without the other’s authority) amounts to treating the  
37 property as his own to dispose of regardless of the other’s rights.”  
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1 **THE COUNTS**

- 2
- 3 3. The defendant originally faced a total of 13 counts, relating to agreements which span 2014
- 4 and 2020. No evidence was offered in respect of two of the counts and those were dismissed,
- 5 leaving 11 counts remaining.
- 6
- 7 4. As there is considerable similarity in the claims from the complainants, a table with the
- 8 Counts, which set out the corresponding complainants and amounts paid, may be the best
- 9 way of presenting a summary of the Counts before going on to discuss particulars.
- 10

Count	Complainant	Item	Amount & date paid	Amount refunded	Balance due
1	Diana Jackson	Shutters	\$3,500.00 - May 2014	\$1,900.00 - last payment February 2021	\$1,600.00
2	Anand Adapa	Screen patio	\$3,000.00 - August 2016	Nil	\$3,000.00
3	Ira Bothwell	Shutters	\$1,650-June 2018	\$1,050.00 - last payment September 2019	\$600.00
4	Flavio Franca	Shutters etc	\$2,225.00 – 2 November 2018	Nil	\$2,225.00
5	Burnstein Banks	Shutter	US\$3,414.63.00 - 27 June 2019	CI\$1,700.00	\$2,600.00
6	Abby Rainford	No	evidence	offered	
7	Michalakis Kyberd	Shutter	\$400.00 - March 2020	Nil	\$400.00
8	Allyson Minus-Phillips	Screened patio	\$1,000.00 - 19 June 2020	Nil	\$1,000.00
9	Ruby Ann Petrie	Shutters	\$1,250.00 - 25 June 2020	Nil	\$1,250.00
10	Charles Moore	Shutters	\$1,800.00 - July 2020	\$1,800-from civil suit	Nil
11	Donnet O'Connor	Guttering	\$1,500.00 - 7 October 2020	Nil	\$1,500.00
12	Yvonne Williams	No	Evidence	offered	
13	Erverlyn Burgess	Screens	\$600.00 - December 2020	Nil	\$600.00

- 11
- 12 5. Now it would be useful to give a summary of each case against the defendant.
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1 THE PROSECUTION CASE



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Count 1 – Diana Jackson

6. In this count, the complainant, Ms. Diana Jackson, gave evidence that in May 2014 she wanted some shutters for her home in Bodden Town. She made contact with the defendant, and he agreed to do the job. She obtained a loan, received a cheque payable to him in the sum of CI\$3,500.00 and gave it to him. He had told her that he would have been in a position to start the job about a month after receiving payment. She called him several times when she became concerned that he was taking too long to start. Some of those calls were made around Christmas of 2014. She testified that when she called and spoke with him: “*He would give me excuses, after excuses, after excuses.*”
7. Around the beginning of 2015, he dropped some material at her premises but returned and picked them back up about a week later. She became aware of his visits only by seeing the material and by seeing him on her premises on her security camera. He said that he would have been coming soon to do her job after finishing another job that he was working on, but “*that soon never happened.*” She kept calling him and in 2015 he refunded her \$1,000.00 in cash. In February of 2019 he refunded her \$500.00 and another \$400.00. Apart from promising to do the job, he also promised to repay her; but he never did. In September of 2022 he again promised to deliver; but never did.
8. In cross-examination, she said that he told her that he was ordering the shutters from the United States and that he would get them within two weeks.
9. She denied suggestions that were put to her that in 2014 he told her that he was having difficulty getting the shutters on island. She stated that, after several months and years, she demanded her money back. She also denied that he only came back to pick up the items after she had told him that she no longer wanted him to finish the job. She said that they had no such conversation. She did not tell him to come and get the shutters from her premises. She would call him every week and he would promise to pay her on the Friday of each week that she called, but he never did. She would call him all the time. She further testified that she had no conversation with him to the effect that she had changed her mind about installing



1 the shutters. There was also no conversation that he would sell the shutters to be able to pay  
2 her. There was never a week that she did not call him. She had begun civil proceedings  
3 against him; but stopped that process as it was too “tiresome”.

4  
5 Count 2 -Anand Adapa

6  
7 10. Mr. Anand Kumar Adapa, the complainant in this count, testified that in August of 2016, he  
8 had requested and received from the defendant, a quotation for a screened patio at his home.  
9 The quotation was in the sum of \$6,000.00. It was a package deal for him and two other  
10 persons who lived in the same residential complex. He paid a deposit of \$3,000.00. The only  
11 thing that he got from the defendant were some pieces of material some six months after –  
12 that is, in about February or March of 2017. They were some aluminium strips. On one  
13 occasion, the defendant told this complainant and the other two men who lived at his  
14 complex that he had material to do his job in a container in East End. They accompanied  
15 him there for him to show them the material, but when they arrived, the defendant said that  
16 he did not have the key for the container. The complainant had to get a company to do the  
17 job, and he dumped the material that the defendant had left at his premises. He asked the  
18 defendant for his money several times, but there was “*always an excuse*” – “*never-ending*  
19 *excuses*” – one after the other.

20  
21 11. In cross-examination, he said that the agreement for the defendant to do the job was an oral  
22 agreement and that the \$3,000.00 that he paid was for the defendant to get material to the  
23 island. He did not know the value of the material that the defendant took to his premises. He  
24 said he and the defendant had no discussion about the need to pour concrete first. He said it  
25 was not true that only the mesh was left to be put in. This complainant said that Hyde and  
26 Company did the job in 2017.

27  
28 Count 3 - Ira Bothwell

29  
30 12. Mr. Ira Bothwell was the complainant on this count. His testimony was that he telephoned  
31 the defendant on the 1<sup>st</sup> of June 2018 about fitting accordion and Bermuda shutters at his  
32 home. The defendant visited his home and took measurements the same day and, on the 8<sup>th</sup>  
33 of June 2018, they came to an agreement for the cost of the job, which was CI\$3,300.00.

1 That same day, he gave him a cheque for US\$1965.00, representing 50% of the contract  
2 price. The cheque was cashed the same day.

3  
4 13. This complainant said that every time he spoke with the defendant, the defendant had a  
5 different excuse. He never did the job. The complainant demanded his money back around  
6 the end of July or the 20<sup>th</sup> of August 2018. He was paid \$500.00 in cash on 2 November  
7 2018; \$250.00 on 25 April 2019; \$300.00 in September 2019, which left a balance of  
8 \$600.00. He made no further payments after that. These payments came after Mr. Bothwell  
9 had “bugged” him as often as he could. The defendant stopped taking Mr. Bothwell’s calls  
10 on the 1<sup>st</sup> of October 2019. Mr. Bothwell testified that he got the defendant to confirm by  
11 text message that he owed him \$600.00 by texting him and pretending that he owed him  
12 \$900.00.

13  
14 14. In cross-examination, Mr. Bothwell denied that the defendant had told him that he was going  
15 to keep the money as he (Mr. Bothwell) had caused him to waste gas and money putting the  
16 shutters together. He said that every time they spoke, the defendant had a different “story”.  
17 Mr. Bothwell said that after a while, he realized that the defendant was just “a bag of breeze”  
18 telling “lies on top of lies”.



19  
20 Count 4 - Flavia Franca

21  
22 15. In respect of this count, Mr. Flavia Franca testified that, in late 2018, he and the defendant  
23 reached an agreement that the defendant would install hurricane shutters, roll-up doors and  
24 other items at his premises before December of 2018. Toward this end, he paid the defendant  
25 CI\$2,225.00, this being half the contract price. The defendant said that he had to send abroad  
26 to have the material he needed to do the job designed, fabricated and shipped. The defendant  
27 failed to install the shutters by the agreed time, so Mr. Franca gave him until January 2019  
28 and then March 2019 to do so. He again failed to meet that deadline. All that the defendant  
29 did was to install some tracks onto which the shutters should have been installed. That work  
30 was done without Mr. Franca’s knowledge and when he was not at home. When he inspected  
31 them, they were incomplete and full of scratches. He consulted with someone  
32 knowledgeable in the field and formed the view that the defendant had installed second-  
33 hand material at his home. The defendant later removed the tracks for the roll-up doors, in  
34 June 2019, without the complainant’s permission. Around March 2019 the complainant

1 asked the defendant to return the money but has received no part of his deposit. The  
2 complainant received nothing, despite several promises to pay. The defendant became  
3 aggressive when the complainant followed up to try to recover his money - insulting him  
4 and using indecent language to him. He said the defendant was asked to remove the material  
5 that he had left on his premises, but the defendant never came.  
6

- 7 16. In cross-examination he testified that the defendant put in second-hand parts at his premises,  
8 in order to “buy time”. He never received back the \$2,225.00 that he had paid the defendant.  
9 The defendant removed some of the parts that he had installed and took them away with  
10 him. Mr. Franca put the items the defendant did not remove in his pool pump room for  
11 storage. He pursued this matter for what he said is the justice of the case.

12  
13 Count 5 - Burnstein Banks



- 14  
15 17. Mr. Burnstein Banks is the virtual complainant on this count. A resident of Cayman Brac, he  
16 contacted the defendant in June of 2019 as he wanted accordion hurricane shutters for his  
17 garage door. He received a quote from him for CI\$2,800.00 but the defendant requested to  
18 be paid in United States currency with the explanation that he needed to source the material  
19 from the United States. On the 27<sup>th</sup> of June 2019, he paid him US\$3,414.63 in full by bank  
20 transfer, the defendant having refused his request to pay a deposit of 50%. He was provided  
21 with the exact measurements for the doors. The defendant told him that he had put in the  
22 order for the materials and that he would have called him in two or three weeks. The  
23 defendant told him that he was shipping the shutters directly to Cayman Brac. On two or  
24 three occasions, the defendant told him that the shutters were being shipped by Thompson  
25 Shipping; but when he called that entity, it was proved that that was not so. Every time that  
26 he called the defendant, the defendant had a different excuse. A shipment eventually came,  
27 which he paid CI\$53.70 to clear. The defendant told him that he would charge \$400.00 to  
28 install the shutters. When the shutters came, he examined them with a friend who was  
29 knowledgeable about shutters. He discovered that the shutters shipped to him were second-  
30 hand with scratches, pins and rollers were missing, and the shutters otherwise showed signs  
31 of previous use. Additionally, despite the fact that he provided the defendant with the  
32 measurements for the shutters, the shutters provided were too short. The defendant promised

1 to send the correct shutters but did not do so. The complainant said: “*every time he told me*  
2 *a different lie*”.

3  
4 18. Around the 13<sup>th</sup> of October 2020 the defendant promised to send him CI\$2,000.00; but only  
5 sent \$200.00. He eventually paid a total of CI\$1,700.00, leaving a balance of approximately  
6 CI\$1,100.00. He shipped the shutters back to the defendant.

7  
8 19. In cross-examination, the complainant confirmed that he had been repaid CI\$1,700.00. He  
9 also stated that the defendant telephoned him and told him that was going to repay him but  
10 that he should not let his lawyer know.

11  
12 Count 6 - Abby Rainford

13  
14 20. No evidence was offered on this count, in which the virtual complainant was Ms. Abby  
15 Rainford. It is, therefore, dismissed.



16  
17 Count 7 - Michalakis Kyberd-McIntosh

18  
19 21. On this count, Mrs. Michalakis Kyberd-McIntosh testified to requesting the defendant-to  
20 install hurricane shutters on a property she owned on Eastern Avenue, to protect windows  
21 not just from hurricanes, but also from vandals. The defendant had done work for her  
22 previously. At his request, she paid him a total of \$400.00, which he told her was for the  
23 material to do the job. This was in March of 2020, and she gave her evidence on 15<sup>th</sup>  
24 November 2022. She left this jurisdiction in May of 2022 and up to that time he had not  
25 installed the shutters or returned her money, in spite of her calling and messaging him  
26 numerous times. Although she had left the island, she had not changed her telephone  
27 numbers and could still be accessed via those phones.

28  
29 22. In cross-examination, she stated that he had done other jobs for her in the past and had then  
30 done good work at reasonable rates. She denied that she had had conversations with him  
31 about his inability to complete the job because of Covid-19 restrictions. She said that at one  
32 point, he told her that the shutters had arrived on the island. She testified that, even if he had  
33 forgotten to do her job, she had made numerous telephone calls and sent numerous messages

1 to him that would have been a reminder about her job. She did not think of suing him, as  
2 based on the amount of money involved, it was not worth it.



3  
4 Count 8 - Allyson Minus-Phillips

5  
6 23. Ms. Allyson Minus-Phillips testified to needing a screened-in patio to be done at her  
7 premises in the Savannah area. The defendant had done satisfactory work for her previously.  
8 He looked at the property, took measurements and gave her a quotation in the sum of  
9 CI\$1,650.00. She paid him a deposit of CI\$1,000.00 around the 19<sup>th</sup> of June 2020 and he  
10 promised to complete the job within that week. She said: "*he was always promising, but the*  
11 *work was never done*". He would sometimes turn up at the property and stay for a while but  
12 would not do the job. She eventually got him to do the framing for the patio and she was  
13 only able to do that by using her car to block his vehicle to prevent him from leaving on one  
14 of his visits to her premises. He also installed screens, and she needed a roof to complete the  
15 project. He put up a temporary roof. However, she was not satisfied with the work he had  
16 done, as some of the screens had holes in the corners; the top of the roof leaked and the  
17 flashing had sharp edges, which might have made it unsafe for children. She eventually  
18 employed someone else to do the job when the defendant did not respond to her requests for  
19 him either to complete the job or to return the balance of her deposit. The last time she  
20 contacted him was on the 6<sup>th</sup> of February 2021. She had started the process of suing him but  
21 decided to stop it as she felt that it was not going anywhere.

22  
23 24. In cross-examination, she testified that he had done a screened-in porch for her prior to that  
24 time and that she was satisfied with the quality of the job and the price was reasonable. She  
25 said that he did take some material to her premises and did do some work there for the  
26 current assignment. She said that he did not owe her anything now as she got the job  
27 completed. She has put it behind her and wants nothing from the defendant.

28  
29 Count 9 - Ruby Ann Petrie

30  
31 25. Mrs. Ruby Ann Petrie testified that in June of 2020 she needed some hurricane shutters and  
32 telephoned the defendant to whom she had been referred by a friend. He provided her with  
33 a quotation for CI\$2,500.00 with a requirement that she provide a 50% deposit before the

1 job would be started. On 29 June 2020 she gave him CI\$1,250.00 as the deposit. The  
2 defendant told her that he was ordering the material from overseas. At one point, he installed  
3 frames that the shutters would run in but did no other work. He made numerous promises to  
4 do the job but never turned up. She made a request for the return of her deposit about a year  
5 and a half after it was paid over to him.  
6

7 26. In cross-examination, Ms. Petrie testified that she paid the defendant the deposit in June of  
8 2020, and, in September of that year, he sent her a picture of what he said was the bill of  
9 lading for the shutters and indicated that the shutters had arrived. At one point, the defendant  
10 told her that the shutters appeared to be too big for her windows and that he would have to  
11 cut them to fit. In October, he installed a track above the double doors that she believes the  
12 shutters should run in. She stated that she did not know the cost of the runner or track or the  
13 cost of installing it. She gave a statement to the police in January of 2021. She was not aware  
14 that the defendant had been told not to return to the premises.  
15

16 27. In re-examination, she said that she had never seen any of the shutters.  
17

18 Count 10 - Charles Moore



19  
20 28. Evidence on this Count came from Mr. Charles Bruce Moore, who testified that, in July of  
21 2020, he needed to have hurricane shutters installed over a sliding door and bay windows at  
22 his home. The defendant visited him home, took measurements and gave him a quotation of  
23 CI\$4,500.00. On the 28<sup>th</sup> of July 2020, he gave him a cheque drawn on Butterfield Bank in  
24 the sum of CI\$1,800.00 and the defendant signed an agreement acknowledging receipt of  
25 the deposit and agreeing to do the job. Around the 8<sup>th</sup> of August 2020, the defendant finally  
26 called him (after numerous attempts by Mr. Moore to contact him) showing him by  
27 WhatsApp video shutters that he said were Mr. Moore's. The explanation that the defendant  
28 gave for the delay was that he had wanted to complete all the shutters so that he could install  
29 them all at one time.  
30

31 29. Mr. Moore further testified that, on the 12<sup>th</sup> of November 2020, he called the defendant and  
32 told him that he was tired of his lies and dishonesty and would be referring the matter to the  
33 authorities. Between August and September 2020, the defendant showed up at his house

1 with some “old scrap pieces of material and installed two pieces of runners on one window”.  
2 Those runners looked like used material that he had salvaged from somewhere else.  
3 Additionally, they were too big for his windows and required to be cut. He said that the  
4 defendant also brought some clear fiberglass which he said was for use on the arches, when  
5 they had no such agreement.  
6

7 30. He sued the defendant, thinking at the time that that was his best recourse and, in fact, had  
8 to serve him with the papers twice, as the defendant did not respond to the claim when first  
9 served. Once, when confronted by Mr. Moore, the defendant pulled a knife at him.  
10

11 31. The Court ordered the defendant to repay the deposit plus costs and interest.  
12

13 32. In cross-examination, Mr. Moore denied suing the defendant because he had not  
14 satisfactorily completed the contract, saying that it was because the defendant had  
15 completely failed to do the installation. All he did was to put up two bars (runners). He  
16 agreed that he was required to remove bolts on the windows before the installation and said  
17 that that was done, and he had so informed the defendant. The items that the defendant left  
18 at his premises were still there in August of 2020 before he gave a statement to the police.  
19 They have been lying in the same spot for some two years. He removed the tracks that the  
20 defendant had installed, and he did so by simply unscrewing them.  
21

22 Count II - Donnet O'Connor



23  
24 33. Ms. Donnet O'Connor gave evidence that, in October of 2020, she wanted guttering installed  
25 and painting done at her premises. One of her church brothers recommended the defendant  
26 to her as someone who could do the guttering. The defendant collected the deposit that he  
27 had requested of CI\$1,500.00 on the 7<sup>th</sup> of October 2020 at her home. The agreement was  
28 for him to complete the job early enough so that she could have painted the whole house  
29 before Christmas, 2020. Before the beginning of December, he told her that he had gotten  
30 the material. He promised to go to her house several times to do the job, but he never turned  
31 up. She requested a refund of the deposit for the guttering on the 16<sup>th</sup> of December 2020. He  
32 called her and asked her to let him do the painting of the house. She agreed to this as  
33 Christmas was fast approaching. When he eventually came, he started to power wash the left  
34 side of the house. However, he never brought any guttering material – that is, after he had

1 told her that he had received the material. He did not return, and, about two days before  
2 Christmas, she texted him, telling him not to touch her house. She reported the matter to the  
3 police on the 24<sup>th</sup> of December 2020.  
4

5 34. In cross-examination, she said that she had had no discussion with the defendant about her  
6 house needing to be power washed, but she just figured that it was a part of the painting. The  
7 agreement between them was for the guttering work to begin as soon as he got the material.  
8 She said that she did not even know that he had started the power washing, and she had to  
9 do all that over.  
10

11 35. In re-examination she stated that she had to get someone else to do the guttering more than  
12 a year after. She also stated that she could not definitively say what a photograph that she  
13 was shown represented.  
14

15 Count 12 - Yvonne Williams  
16

17 36. No evidence was offered on this count, for which the complainant was Ms. Yvonne Williams.  
18 As a result, this charge was dismissed.  
19



20 Count 13 - Erverlyn Burgess  
21

22 37. Mrs. Erverlyn Burgess was the virtual complainant on this count. She testified to making  
23 contact with the defendant as she wanted to install guttering and replace mosquito screens  
24 at her home. On the 10<sup>th</sup> of December 2020 he gave her a quotation in the sum of  
25 C1\$1,200.00 and requested a deposit of C1\$600.00 before commencing the job. She paid the  
26 deposit in cash the same day. He had installed the original mosquito screens about nine years  
27 before.  
28

29 38. About five days after she paid the deposit, he went to her premises and left a piece of  
30 guttering, about 12 or 13 feet long, which would have been able to fit just the back of the  
31 premises. He installed that piece about three or four days after that. The agreement was  
32 entered into on the defendant's assurance that the job would have been completed before  
33 Christmas.  
34

1 39. She testified that: “*Since that day I have never seen him*”. (She gave her evidence on the 15<sup>th</sup>  
2 of November 2022). When he installed the piece at the back, it was not completed as there  
3 were no down spouts and it was not sealed. When she contacted him and asked for her money  
4 back, he started sending her “masonic signs” via the telephone. On the 24<sup>th</sup> of December  
5 2022, her husband got someone else to finish the job, and the person did so in less than four  
6 hours.

7  
8 40. In cross-examination, she indicated that she did not know how much of the deposit went  
9 towards purchasing the gutter or for his labour in installing it. He had pulled down the mesh  
10 and the frame for the mesh but did not tell her his labour cost for that. However, she wanted  
11 her money back.



12  
13 **EXHIBITS**

14  
15 41. Various exhibits were tendered through the witnesses, mainly consisting of copies of  
16 cheques and receipts evidencing payments to the defendant, copies of text messages and  
17 WhatsApp messages, bills of lading and similar documents. All the exhibits are consistent  
18 with each witness’ testimony.

19  
20 **THE DEFENCE**

21  
22 42. At the conclusion of the Crown’s case, the defendant’s counsel made a no-case submission  
23 on the basis that the charges were not made out. He stated that the complaints were more in  
24 the nature of breaches of contract which would sound in civil law. The submission was  
25 rejected and the court ruled that there was a case for the defendant to answer.

26  
27 43. The defendant was, in keeping with s.149(2) of the Police *Act*, informed by the court of his  
28 right to give evidence, the Crown having closed its case, and warned that, should he choose  
29 to remain silent or refuse to answer such questions as might be put to him, if he chose to be  
30 sworn, it was open to the court to draw such inferences as might be reasonable, having regard  
31 to the evidence. He decided to remain silent.



1 **ADMISSIONS**

2  
3 44. Twenty-one (21) admissions were made by the Crown and Defence. The admissions made  
4 at paragraphs 18 to 20 do not appear to be relevant to this case; and so were not considered.  
5 Of particular relevance, however, are paragraph 15, in part, paragraphs 16 and 17 and  
6 paragraph 21. They read as follows: -

7  
8 *“15. On Tuesday the 9<sup>th</sup> March 2021 Mr. Garfield Robb was Arrested at his home*  
9 *address...*

10  
11 *16. On the 9<sup>th</sup> March 2021 and 5<sup>th</sup> April 2021 Garfield Robb was interviewed*  
12 *under caution. Mr. Robb denied all the allegations. He had a number of*  
13 *explanations as to why the work had not been carried out and or why things*  
14 *had gone wrong. Both interview and transcripts are hereby exhibited.*

15  
16 *17. On the Monday 17<sup>th</sup> January 2022 Mr Robb was charged with thirteen*  
17 *[counts] of Obtaining Property by Deception to which he replied “Yes”. They*  
18 *have proof of that? They don’t have any proof “All of the peoples house are*  
19 *finished, complete.”*

20  
21 ...

22  
23 *21. Mr. Garfield Robb has no previous convictions.”*  
24

25 **THE INTERVIEWS**

26  
27 45. Apart from the general denial of having unfinished work or owing any of the complainants,  
28 made in paragraph 17 of the admissions, the defendant also, in his interviews, given under  
29 caution, addressed the complaints made by the complainants as is summarised below.  
30



COUNT	COMPLAINANT	DEFENDANT'S RESPONSE
1	Diana Jackson	The shutters were bought and were sitting at her premises for some three years. She decided she did not want the shutters again. (Page 7 of 1 <sup>st</sup> interview).
2	Anand Adapa	He poured concrete, installed the frame and it was only the mesh that was left to go in; but this complainant got angry and said he got someone cheaper to do the job. (Page 15 of 1 <sup>st</sup> interview)
3	Ira Bothwell	Admits to owing him \$600.00. Had asked him to call him and remind him. (Page 9 of 1 <sup>st</sup> interview)
4	Flavio Franca	He said that he told this complainant that it would have taken up to a month for the shutters to arrive. He put up two bathroom windows and a shutter box and was only waiting for the roll-over tracks. He explained that those would take long to arrive; but the complainant demanded his money back in full. (Page 7 of the 2 <sup>nd</sup> interview). He admitted to owing the complainant but said he did not repay him as the complainant did not call him back. He cannot pay him everything at once (Page 29 of 2 <sup>nd</sup> interview)
5	Burnstein Banks	He demanded his money back and he repaid him more than half and he still kept the shutters (Page 16 of 1 <sup>st</sup> interview)
6	Abby Rainford	No evidence offered
7	Michalakis Kyberd	He had her shutters at the time of the interview. It was just that he had been busy why they had not been installed. (Page 26 of 1 <sup>st</sup> interview).
8	Allyson Minus-Phillips	He completed the job and she in fact owes him (Page 11 of 2 <sup>nd</sup> interview)
9	Ruby Ann Petrie	He has her shutters but had just been too busy to install them. He was going to do it before the hurricane season of 2021. (Page 28 of 1 <sup>st</sup> interview).



COUNT	COMPLAINANT	DEFENDANT'S RESPONSE
10	Charles Bruce Moore	He said that he told this complainant that he had used shutters and the complainant told him that he did not want new shutters. He used the deposit of \$1,800.00 to buy the shutters and put up the tracks; but the complainant said he no longer wanted them. The shutters are still at this complainant's premises and the complainant has not answered his request to return the shutters so he can sell them. (Pages 13 & 14 of the 2 <sup>nd</sup> interview) He has not returned for the shutters as Mr Moore told him not to go back there (Page 31 of 2 <sup>nd</sup> interview)
11	Donnet O'Connor	He took two workers there, rented a power-wash machine and power-washed most of the house; but she wanted back all of the money she paid. He withdrew half the money to give to her: \$750.00 (Page 33 of 1 <sup>st</sup> interview)
12	Yvonne Williams	He said that this complainant contracted him to put up a fence and power wash her roof. He put up the fence and started to power wash the roof but did not finish because the roof was very steep. She said she did not want him to complete the job again. She gave him \$500.00 out of the \$1,800.00 he charged her to do the roof. She in fact owes him money for the work on the roof – about \$1,500.00 or \$1,600.00 (Page 15 of 2 <sup>nd</sup> interview)
13	Erverlyn Burgess	He only owes her \$50.00. He put the guttering up near to Christmas. The gutter was installed (Page 37 of 1 <sup>st</sup> interview). He went to her premises and installed the gutter; “install everything up”. He did additional work for which he was not paid. Her husband intervened and they agreed that he owed the husband only \$50.00 (Page 19 of 2 <sup>nd</sup> interview)

1  
2  
3

46. In general comments (see, for example, page 50 of the 1<sup>st</sup> interview) he stated that he made sure to tell his customers before that he had shutters but that they were not brand new.



1 **SUMMARY OF SUBMISSIONS FOR THE CROWN**

2  
3 47. In its written submissions in this matter, the Crown urged the court to find the defendant  
4 guilty of all the 11 remaining counts on the indictment. It was submitted that the Crown,  
5 through the evidence from the complainants, had discharged its burden of proof and had  
6 done so to the criminal standard, as required.

7  
8  
9 48. The Crown relied on the case of *R v Laverty*<sup>1</sup>, to submit that the deception to be proven  
10 related to what operated on the mind of the complainant or victim. The Crown also cited the  
11 authority of *DPP v Ray*<sup>2</sup>, submitting that the intention to deceive on the part of a defendant  
12 need not be formed at the inception of the interaction between the parties, but could be  
13 formed later in the relationship, citing the following passage to be found at page 2 of the  
14 report:

15  
16 *“[T]he transaction had to be regarded as a whole in that the defendant’s conduct was*  
17 *a continuing representation of his present intention to pay and his change of mind*  
18 *produced a deception, the effect of which was that he was treated as a honest customer*  
19 *whose conduct did not call for precautions and, accordingly, the defendant had been*  
20 *rightly convicted of obtaining the evasion of his debt by that deception.”*  
21

22 49. It was submitted that: *“If at any point after the initial agreement, the defendant realized that*  
23 *he could not go along with the agreement but continued to behave as if he could, that is*  
24 *evidence of deception and therefore should be considered as such.”*<sup>3</sup>.

25  
26 50. The Crown also submitted that it: “must establish that the deception was made dishonestly.”  
27 In this regard it referred to paragraph 21-206 of the *2002 edition of Archbold*, which states  
28 as follows:

29 *“...In the case of a lie or lies told in order to obtain goods on credit, in practice the*  
30 *case which comes to court is the one where the instalments are not paid at all, or are*  
31 *intermittent and late. The evidence relating to the repayment history will, of course,*  
32 *go far towards proving that there never was any genuine intention to pay or*  
33 *expectation of being able to pay: this, in turn, will tend to prove dishonesty. Where all*  
34 *the installments are paid in time, the reality is that there would be little likelihood of*  
35 *prosecution...”*

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<sup>1</sup> 54 Cr App R 495, CA

<sup>2</sup> [1974] A.C. 370

<sup>3</sup> (See paragraph 10 of the Crown’s written closing address)



1 51. The Crown further referred to two cases in which, in what it said to be similar circumstances,  
2 the defendants in those cases pleaded guilty. Those cases are: (i) *R v Flynn (Errol)*<sup>4</sup>; and (ii)  
3 *R v Tripper (Paul David)*<sup>5</sup>.

4  
5 **FOR THE DEFENCE**  
6

7 52. The main thrust of the Defence submissions is that the issues between the complainants and  
8 the defendant are more suited to resolution through civil litigation and do not amount to  
9 crimes. It was submitted that, in some cases, it is possible that the defendant is owed money  
10 by complainants and that, even if the defendant owes money to any of them, a civil trial,  
11 where evidence could be taken from both sides and values established, is the most  
12 appropriate recourse.

13  
14 53. Paragraph 3 of the written submissions gives the gist of the submissions advanced, and reads  
15 as follows:  
16

17 “3. *There can be little dispute that there were contracts between the defendant*  
18 *and each complainant. In all cases, there was work done to varying degrees.*  
19 *In all cases, there is a question as to what value for money was given. In all*  
20 *cases, there was part performance, all issues which are questions of fact and*  
21 *degree for a civil tribunal, and for each party to prove or disprove by evidence*  
22 *with a view to determining who owes who, and whether or not terms or*  
23 *conditions were in fact breached. That standard is on a balance of*  
24 *probabilities. This is in essence a civil trial in a criminal court.”*

25  
26 54. It was also submitted that, in order to establish the crime for which the defendant has been  
27 charged, it is necessary for the Crown to prove that there was deception from the inception  
28 of the arrangement. In this regard, counsel relied on the case of *Vijay Kumar Ghai & Ors.*  
29 *(Appellant(s)) v The State of West Bengal & Ors (Respondent(s))*<sup>6</sup>. It was submitted that,

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<sup>4</sup> [1998] 2 Cr App R 413

<sup>5</sup> (1993) 14 Cr App. R (S) 177

<sup>6</sup> The Supreme Court of India Criminal Appellate Jurisdiction, Criminal Appeal No. 463 of 2022 (arising out of S.L.P (Crl.) No. 10951 of 2019)

1 in that case, reference was made, to the case of *Uma Shankar Gopalika vs. State of Bihar*  
2 & *Anor.* and paragraphs 6 & 7 of that case quoted, so far as is relevant, as follows:

3 “6. Now the question to be examined by us is as to whether on the facts disclosed  
4 in the petition of the complaint any criminal offence whatsoever is made out  
5 much less offences under Section 420/120-B IPC. The only allegation in the  
6 complaint petitioner against the accused person is that they assured the  
7 complainant that when they receive the insurance claim amounting to  
8 Rs.4,20,000, they would pay a sum of Rs.2,60,000 to the complainant out of  
9 that but the same has never been paid. It was pointed out that on behalf of the  
10 complainant that the accused fraudulently persuaded the complainant to  
11 agree so that the accused persons may take steps for moving the consumer  
12 forum in relation to the claim of Rs.4,20,0000. It is well settled that every  
13 breach of contract would not give rise to an offence of cheating and only in  
14 those cases of breach of contract would amount to cheating where there was  
15 any deception played at the very inception. If the intention to cheat has  
16 developed later on, the same cannot amount to cheating. In the present case,  
17 it has nowhere been stated that at the very inception that there was intention  
18 on behalf of the accused person to cheat which is a condition precedent for  
19 an offence under 420 IPC.

20  
21 7. In our view petition of complaint does not disclose any criminal offence at all  
22 much less any offence either under Section 420 or Section 120-B IPC and the  
23 present case is a case of purely civil dispute between the parties for which  
24 remedy lies before a civil court by filing a properly constituted suit.”

## 25 26 DISCUSSION

### 27 28 THE LAW



29  
30 55. In relation to the cases referred to on behalf of the defendant, it is apparent that those cases  
31 are based on s.420 of the Indian Penal Code. It reads as follows:

32  
33 “420. **Cheating and dishonestly inducing delivery of property.**— *Whoever cheats*  
34 *and thereby dishonestly induces the person deceived to deliver any property*  
35 *to any person, or to make, alter or destroy the whole or any part of a*  
36 *valuable security, or anything which is signed or sealed, and which is*  
37 *capable of being converted into a valuable security, shall be punished with*  
38 *imprisonment of either description for a term which may extend to seven*  
39 *years, and shall also be liable to fine.”*

40  
41 56. In that case, an important finding by the court was also that: “*In the case at hand, complaint*  
42 *filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the*  
43 *appellants.*” This phrase appears to acknowledge an evidential deficiency leading to the  
44 ruling in that case.



1 57. The requirement for proof of intention at the outset of the transaction appears to be a feature  
2 of the Indian jurisprudence. However, in the cases cited by the Crown and which appear to  
3 be based on s.15 of the England and Wales *Theft Act 1968*, there appears to be no such  
4 requirement. The following references to sections of *Archbold, 2002 edition*, seem to  
5 support that contention. At paragraph 21-197, the following is stated:

6  
7 *“[I]n R v Miller (S.H.), 95 Cr App R 421, CA. It was held that to establish that property*  
8 *has been obtained by deception, it is not necessary to isolate the moment when the*  
9 *property is handed over to see if, at that time, the lies told operated to deceive the*  
10 *victim. If, on the evidence taken as a whole, it can legitimately be said that the various*  
11 *deceptions alleged in the indictment were the cause of the property being handed over,*  
12 *it is, or may be, irrelevant that at the final moment the victim suspected or even*  
13 *believed that he or she had been swindled.”*  
14

15 58. The terms of s.15 of the English *Theft Act, 1968* are almost identical to the provisions of the  
16 section under which the defendant is charged in this case. Section 15 reads as follows:

17  
18 ***“15 Obtaining property by deception.***

19 (1) *A person who by any deception dishonestly obtains property belonging to*  
20 *another, with the intention of permanently depriving the other of it, shall on*  
21 *conviction on indictment be liable to imprisonment for a term not exceeding*  
22 *ten years.*

23  
24 (2) *For purposes of this section a person is to be treated as obtaining property if*  
25 *he obtains ownership, possession or control of it, and “obtain” includes*  
26 *obtaining for another or enabling another to obtain or to retain.*

27  
28 (3) *Section 6 above shall apply for purposes of this section, with the necessary*  
29 *adaptation of the reference to appropriating, as it applies for purposes of*  
30 *section 1.*

31  
32 (4) *For purposes of this section “deception” means any deception (whether*  
33 *deliberate or reckless) by words or conduct as to fact or as to law, including*  
34 *a deception as to the present intentions of the person using the deception or*  
35 *any other person.”*  
36

37 59. In the light of the similarity between s.15 of the *Theft Act* and s.247 of the *Penal Code* (2019  
38 Revision), the section under which this defendant is charged, (they are almost identical) it  
39 seems to me that the cases dealing with the *Theft Act* would be more applicable and more  
40 nearly reflect the principles by which we ought to be guided, as opposed to the Indian cases.  
41

1 60. It appears to be the case that the English authorities seem not to impose a stringent  
2 requirement that the deception ought to have been perpetrated at the inception of the  
3 transaction; but the deception must precede and be the cause of the obtaining of the property.  
4

5 GENERAL GUIDANCE  
6

7 61. The following paragraphs of *Archbold* appear to include the relevant general guidance in  
8 relation to this charge:

9 "21-196 ... *The making of the deception must precede the obtaining of the property:*  
10 *see R. v. Collis-Smith [1971] Crim L.R. 716, C.A.*"  
11

12 21-202... "*In R. v. Staines, 60 Cr. App R. 160, CA, James LJ said, with regard to the*  
13 *use of the word "reckless" in section 15(4), that the court accepted it meant more*  
14 *than being careless or negligent, and that it involved "an indifference to or*  
15 *disregard of the feature of whether a statement be true or false."*  
16

17 62. Similarly, in *DPP v Ray*, the court gave the following guidance on the meaning of the word  
18 "deception" in the Act:

19 i. "*Deception*" is a word which is well under- stood. As Buckley J. said in *In re*  
20 *London and Globe Finance Corporation*  
21 *Limited [1903] 1 Ch.728, 732—*  
22

23 '*To deceive is, I apprehend, to induce a man to believe that a thing*  
24 *"is true which is false, and which the person practising the deceit*  
25 *" knows or believes to be false."*  
26

27 BURDEN AND STANDARD OF PROOF  
28



29 63. It is recognized that in respect to these various counts, there is a burden on the prosecution  
30 to prove each count against the defendant, and to do so to the criminal standard, which is,  
31 so that the court feels sure or has no reasonable doubt of the defendant's guilt. This burden  
32 remains on the Crown throughout and does not shift. A corollary to this is that the defendant  
33 is entitled to the presumption of innocence.  
34

35 GOOD CHARACTER  
36

37 64. By virtue of paragraph 21 of the admissions, it is accepted that the defendant is a person of  
38 good character. In that regard, the court warns itself as follows:

39 a. Good character is not a defence to the charge, but it is relevant in two ways:

- 1 i. First, the defendant's good character is a positive feature which the court  
2 takes into account in his favour when considering his credibility – that is,  
3 whether the court accepts what he said in his interviews and on being  
4 arrested.  
5 ii. Secondly, the fact that the defendant has not offended in the past may make  
6 it less likely that he acted as the prosecution alleges in this case.  
7 b. What importance the court attaches to the defendant's good character and the extent  
8 to which it assists, on the facts of this particular case, are for this court to decide. In  
9 making that assessment the court may take account of everything it has heard about  
10 the defendant.



11  
12 ANY UNTRUTHFUL STATEMENTS

- 13  
14 65. While he was being arrested, the defendant declared that he had completed all the jobs for  
15 the complainants. In his interviews, however, he gave varying accounts in relation to at least  
16 some of the complainants' contentions that might be at variance with his initial blanket  
17 assertion about completing all the jobs.  
18  
19 66. In considering whether his inconsistent statements amount to lying, I consider the following:  
20  
21 a. A defendant's lie, whether made before the trial or in the course of evidence or both,  
22 may be probative of guilt. A lie is only capable of supporting other evidence against  
23 the defendant if the court is sure that: (1) it is shown, by other evidence in the case,  
24 to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates  
25 to a significant issue; (3) it was not told for a reason advanced by or on behalf of the  
26 defendant, or for some other reason arising from the evidence, which does not point  
27 to the defendant's guilt. Only if the court is sure that these criteria are satisfied can  
28 the defendant's lie be used as some support for the prosecution case, but the lie itself  
29 cannot prove guilt.  
30  
31 67. The court is also conscious of the need to consider each count separately, although there are  
32 several counts appearing on the same indictment.  
33  
34 68. The court bears all these warnings in mind in considering the evidence on each count. The  
35 fact that they might not be repeated whilst discussing each count, does not mean that they  
36 were not considered.



1 **FINDINGS OF FACT - THE COUNTS**

2  
3 **COUNT 1 - DIANA JACKSON**

4  
5 69. The court rejects as untrue the blanket denial of completion of the job for Ms. Jackson that  
6 the defendant made on being arrested. It also rejects the assertion made in the first interview  
7 that the shutters were bought, delivered, were sitting at Ms. Jackson's premises for three  
8 years and the non-completion of the job was due to her changing her mind (arbitrarily, it  
9 seems) about wanting the shutters installed. Going back to the Crown's case, the court found  
10 Ms. Jackson to be a truthful and convincing witness, and accepted her evidence in all  
11 respects, in particular, that she expected the defendant to do the job weeks or a month after  
12 she paid the deposit. The court also accepts that part of her evidence in particular, the  
13 defendant's dropping material at her premises and then taking away some of it sometime  
14 after, without her knowledge or authorisation. In relation to suggestions made, or questions  
15 asked, in cross-examination, about his informing her of difficulties in getting the shutters on  
16 island or, later, that he would have to sell the shutters to repay her, no evidence in that regard  
17 was led. However, in any event, those are rejected.

18  
19 70. The court finds that he deceived Ms. Jackson into parting with her money on the false  
20 promise that he would have done the job within a month or so of collecting the deposit; that  
21 she had to repay the loan with interest and that he still owes her, after some eight years, the  
22 balance of the deposit he collected, less what he repaid.

23  
24 71. The court also finds that the inconsistency arising from his blanket assertion on being  
25 arrested, his assertion in the first interview and the questions asked and suggestions put in  
26 cross-examination, are the product of his not being truthful. That, in turn, his assertions are  
27 deliberate untruths arising from his realization of the predicament that he faces in this trial  
28 and its consequences. In the result, the court finds the defendant guilty of this count.

29  
30 **COUNT 2 – ANAND ADAPPA**

31  
32 72. In relation to this count, the court also rejects the blanket assertion by the defendant that he  
33 had completed all the jobs and his assertion in the interview that he had poured concrete,  
34 done the framing and that it was only the mesh that was left to go in when this complainant

1 changed his mind. Mr Adappa struck the court as an honest, forthright, and impressive  
2 witness and the court accepted his evidence in its entirety, including his evidence as to being  
3 reliably informed that the materials delivered were “completely obsolete”, which affected  
4 his state of mind and his decision to have the job done by someone else. In particular, as  
5 well, the court accepts his evidence of the trip to East End with the defendant, purportedly  
6 for the defendant to prove that he had in a trailer the material to do the job, and, on arrival,  
7 stating that he did not have the key to open it and his non-performance of the job as a  
8 continuation of the deception, further manifested in his non-payment of any part of the  
9 deposit of CI\$3,000.00 between August of 2016, when it was paid by the complainant and  
10 the date of trial. The verdict on this count is “guilty”.

11  
12 **COUNT 3 – IRA BOTHWELL**



13  
14 73. With regard to this count, the defendant’s blanket assertion of completion is contradicted by  
15 his admission that he owes this complainant the CI\$600.00 to which the complainant  
16 testified. His admission at the interview helps to confirm the complainant’s testimony which  
17 the court accepts in its entirety. As Mr. Bothwell testified: “*He said he had all the material,*  
18 *then only had half, then he was coming and never came*”. The court also in particular accepts  
19 this complainant’s evidence on all aspects of his interaction with the defendant from the  
20 deposit was paid on the 8<sup>th</sup> of June 2018 to when the defendant stopped responding to his  
21 calls and texts on the 1<sup>st</sup> of October 2019. Another particular aspect of his evidence that is  
22 accepted is his testimony that the defendant did not tell him that he would have been keeping  
23 the CI\$600.00 as he had caused him to waste gas and money putting the shutters together;  
24 and that there would have been no need to put the shutters together as they came already  
25 “made up” and needing only installation. These contrasting and untrue assertions arising  
26 through questions asked in cross-examination are further evidence of the defendant’s  
27 continuing deception in order to obtain money on the promise of provision of a job within  
28 an agreed or reasonable time, the defendant’s non-performance and, further, his inventing a  
29 reason to avoid repaying the deposit. On this count as well, the defendant is guilty.

30 **COUNT 4 – FLAVIO FRANCA**

31  
32 74. The defendant, in his second interview, admitted to owing this complainant. That is the only  
33 truthful aspect of his assertions on this count, in the court’s finding. Mr. Franca was also  
34 found to be an honest witness, whose evidence the court had no reason not to believe, and

1 therefore accepted. In particular, the court accepts his evidence that the defendant requested  
2 and accepted his deposit of CI\$2,225.00 on the 2<sup>nd</sup> of November 2018, on the promise of  
3 completion of the job before Christmas of that year, which was his main requirement and  
4 that he has not been repaid. The court further accepts that the defendant, in perpetuation of  
5 the deception, put up a few tracks which were second-hand and had scratches. The court  
6 generally rejects the defendant's assertion, given in interview, that the complainants agreed  
7 to accept second-hand shutters and other material; and rejects it in particular in relation to  
8 this complainant – it, seeming incredulous that, someone who would go to the expense of  
9 installing roll-up doors to enclose a cabana and hurricane shutters, would wish to use  
10 scratched, second-hand materials. Further accepted by this court is the evidence that the  
11 defendant failed to do the job even when the agreed completion date was varied twice to  
12 March of 2019 and that he delivered material, and later removed it, without the  
13 complainant's knowledge. The defendant is guilty on this count.

14  
15 **COUNT 5 – BURNSTEIN BANKS**

16  
17 75. In respect of this count, the defendant admits to owing the complainant about half of the  
18 deposit of US\$3,414.63 (the price of the shutters in full that was requested), that was paid  
19 on 27 June 2019, which balance still remained unpaid at the time of trial. The court accepts  
20 that, as Mr. Banks testified, *“every time he told me a different lie”*, when, with numerous  
21 attempts, he tried to get the defendant either to repay the money or install the shutters. In  
22 this case as well, the defendant, through the deception of a promise of the provision of  
23 competent work within a reasonable time, obtained the complainant's money, went through  
24 the charade of performing the contract by supplying second-hand material and doing his  
25 utmost to avoid repaying the complainant. The verdict on this count is one of guilty.

26  
27 **COUNT 6 - ABBY RAINFORD**

28  
29 76. No evidence was offered by the Prosecution on this count and, therefore, the charge on this  
30 count is dismissed.





1                   **COUNT 7 - MICHALAKIS KYBERD-MCINTOSH**

2  
3       77.       On this count as well, in the court’s finding, the defendant collected the complainant’s money  
4           on the promise of doing a job within a reasonable time and has failed to do so more that two-  
5           and-a-half years after the payment of the deposit, despite numerous requests for him either  
6           to repay the money or provide the hurricane shutter. The defendant’s assertion in interview  
7           that the shutters were then available for installation, confirms the complainant’s testimony  
8           of a failure to do the job or refund the deposit, despite numerous requests to that effect. The  
9           verdict on this count is “guilty”.

10  
11                   **COUNT 8 -ALLYSON MINUS-PHILLIPS**

12  
13       78.       The interaction between the complainant and the defendant in respect of this count seems  
14           somewhat different and the nature of the evidence leaves the court in doubt about the  
15           defendant’s guilt. That guilt will be resolved in the defendant’s favour with a verdict of “not  
16           guilty”.

17  
18                   **COUNT 9 – RUBY-ANN PETRIE**

19  
20       79.       The court rejects the assertion made by the defendant in the first interview that he had this  
21           complainant’s shutters at the time of the interview but had just been too busy to install them.  
22           This, again, conflicts with the general assertion that he made at the time of his arrest. This  
23           case as well reflects the obtaining of money on the promise that a job would have been done  
24           within a reasonable time, with the complainant having to demand a refund of her deposit a  
25           year-and-a-half after it was paid in June of 2020, with none of it refunded at the time she  
26           gave her evidence in November of 2022 - even though in September of 2020 he sent her an  
27           image purporting to be a copy of a bill of lading evidencing the arrival of her shutters. Again,  
28           on going to her house, looking at the job to be done and providing her with the quotation, he  
29           deceptively represented to her that he would have done the job she requested within a  
30           reasonable time, and has failed to do the job within a reasonable time or at all, using further  
31           deception not to do the job or to refund the money. The defendant is guilty on this count.



1                   **COUNT 10 – CHARLES MOORE**

2

3       80.       The defendant’s assertions in his interviews concerning this complainant agreeing to take

4               second-hand shutters are rejected in their entirety. It must be recognized as well that the

5               assertions run counter to the blanket assertion of completion made at the time of the

6               defendant’s arrest. This complainant was among the more impressive witnesses, appearing

7               to the court to be truthful in every respect. Accepted in particular are those parts of his

8               evidence to the effect that: (i) the defendant visited his premises and, after seeing what

9               needed to be done, requested from the complainant a deposit of CI\$1,800.00, which was

10              paid; (ii) it was paid on the defendant's assurance that the work would have been completed

11             within a short period of time and that he would have been able to start working the following

12             week, once the deposit was paid and he got the material; (iii) he did not say where the

13             material was coming from; (iv) on the basis of this representation, the deposit was paid and

14             (v) up to the 12<sup>th</sup> November 2020, no work had been done or the deposit refunded, even

15             though (vi) in August, the defendant had shown him, by WhatsApp video, shutters that the

16             defendant said were his (the complainant’s). The defendant is guilty on this count.

17

18                   **COUNT 11 – DONNET O’CONNOR**

19

20       81.       The defendant, in interview, spoke about power washing a part of this complainant’s house

21               and of replacing fascia boards. That, again, runs counter to his blanket averment of having

22               completed the job of installing guttering that he made on being cautioned. Ms. O’Connor’s

23               complaint, however, was of the defendant’s obtaining her CI\$1,500.00 on the 7<sup>th</sup> of October

24               2020, visiting her home to collect it, on the representation that he would have installed

25               guttering there so that she could have painted her house before Christmas of that year. Before

26               the start of December, he informed her that he had received the material to do the job; but

27               the job was never done, and the money has not been repaid. On the return of her husband to

28               the jurisdiction, she had to get someone else to do the job. The defendant never took any

29               guttering material to the house, although he turned up eventually and did some power

30               washing there and encouraged her to let him do the painting of the house. When shown a

31               photograph of a man working on a fascia board, she said that she was not aware that the

32               board had been replaced and noted that the photograph was undated and in fact she did not

33               ask him to deal with the fascia board. The court accepts her evidence that the power washing



1 “was just a stalling process”. The deposit for the installation of guttering was not repaid  
2 when it was demanded. Neither was the guttering done. The verdict on this count is “guilty”.

3  
4 **COUNT 12 – YVONNE WILLIAMS**

5  
6 82. No evidence was offered on this count. The charge on this count is, therefore, dismissed.

7  
8 **COUNT 13 – ERVERLYN BURGESS**

9  
10 83. The court found itself left in doubt about the evidence given on this count. Resolving that  
11 doubt in favour of the defendant, the verdict on this count is “not guilty”.

12  
13 **COURSE OF CONDUCT**

14  
15 84. Although the court has considered each count on its own facts, and has arrived at each verdict  
16 accordingly, it is difficult not to notice that a clear pattern emerges when the facts relating  
17 to each count are looked at. Whether the initial contact came through a referral or by a  
18 complainant making contact with him through a listing in the Yellow Pages, the defendant’s  
19 modus operandi was to collect money from persons on the promise of completing jobs of a  
20 certain standard, within the time frame required by them or within a reasonable time, and  
21 then either totally failing to perform or doing the barest minimum. Sometimes doing the  
22 barest minimum involved using old material, which, in some cases, he would leave at a  
23 property and then take back some time after. Additionally, when there was a demand for a  
24 refund, it was never made when requested. Also, when there was a repayment, it was never  
25 in full, but over a protracted period of time and in several parts, after numerous entreaties  
26 and requests by the parties. Untruthful explanations were given to avoid or delay payment  
27 for as long as possible. The non-performance and failure to refund the deposits came even  
28 after assurances were given of having received the materials necessary to do the job. Claims  
29 to the cause of delay being due to shipping issues have been shown to have no basis - in fact,  
30 by the documentary evidence before the court (such as, for example, the schedule of goods  
31 (exhibit 10c)). The schedule of goods was particularly instructive in relation to the  
32 untruthfulness and deception of the defendant especially in the cases of the complainants  
33 Franca, Bothwell, Banks, Petrie and Moore.

1 85. In considering the question of whether the actions of the defendant were dishonest, the court  
2 asked itself these questions: (a) what was the defendant’s actual state of knowledge or belief  
3 as to the facts and (b) was his conduct dishonest by the standards of ordinary decent people?  
4 The court has considered what the defendant knew or believed the factual situation to be in  
5 each case and has found that he could not have been and was not mistaken as to the desires  
6 of the complainants and finds that he has been shown, through evidence, of being dishonest  
7 and deceptive by the standards of ordinary, decent people (as per *Ivey v Genting Casinos*  
8 *(UK) (trading as Crockfords Club)*<sup>7</sup> and *Booth & Anor v R*<sup>8</sup>).

9  
10 86. Additionally, even if the correct approach is that reflected in the Indian authorities, that  
11 standard, on the facts of this case, has been met.  
12

### 13 INFERENCE FROM SILENCE

14  
15 87. The defendant, having been warned pursuant to s.149 of the *Police Act*, and having remained  
16 silent, the court, having examined all the circumstances of each count, is satisfied that his  
17 refusal to testify arises from his recognition of his guilt, and his knowledge of his inability  
18 to offer any rational, consistent answer to the charges against him.  
19

20 88. In the result, on each count, (with the exception of counts 8 and 13, and those not proceeded  
21 with [counts 6 and 12]) the Crown has satisfied the court, so that it feels sure, of the guilt of  
22 the defendant. Sufficient evidence has been presented to prove the main ingredients of the  
23 offence, in that: there have been clear instances of dishonest deception by the defendant  
24 (deliberate, or, at the very least, reckless) by which he obtained property belonging to others,  
25 with the clear intention of permanently depriving those persons of it. A tabular breakdown  
26 of the verdicts is set out below for ease of reference.  
27  
28  
29  
30  
31



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<sup>7</sup> [2017] UKSC 67; [2018] AC 391

<sup>8</sup> [2020] EWCA Crim 575 (29 April 2020)

Count	Complainant	Verdict/Order
1	Diana Jackson	Guilty
2	Anand Adappa	Guilty
3	Ira Bothwell	Guilty
4	Flavia Franca	Guilty
5	Burnstein Banks	Guilty
6	Abby Rainford	No evidence ordered - dismissed
7	Michalakis Kyberd-McIntosh	Guilty
8	Allyson Phillips	Not Guilty
9	Ruby Ann Petrie	Guilty
10	Charles Moore	Guilty
11	Dorret O'Connor	Guilty
12	Yvonne Williams	No evidence offered – dismissed
13	Erverlyn Burgess	Not guilty

1

2

3 **Dated this the 19<sup>th</sup> day of September 2023**

4 

5

**Hon. Justice Frank Williams (Actg.)**

6

**Acting Judge of the Grand Court**