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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE**

INDICTMENT NO: 15/10

**THE QUEEN
V
DAVE BRYAN**



Appearances: **Mr. Michael Snape on behalf of the
DPP for the Crown**
**Mrs. Margeta Facey-Clarke for the
Defendant**

Before: **The Hon. Mr. Justice Charles Quin**

Heard: **21st February to 15th March 2012**

JUDGMENT

1. The Defendant has pleaded not guilty to two counts namely, one count of obtaining money transfer by deception contrary to s.251 of the Penal Code. The particulars of this count are that the Defendant, between the 1st January 2007 and the 31st May 2008, within the jurisdiction of the Cayman Islands, dishonestly obtained money transfer to the value of C\$309,981.37 from Foster's Food Fair Limited by deception, namely by falsely representing the quantity of goods supplied by Cayman Bakery Limited to Foster's Food Fair Limited.
2. On the second count the Defendant pleaded not guilty to making a document without authority, contrary to s.293 of the Penal Code. The particulars of this offence are that the Defendant, on or about the 18th October 2007, within the

1 Cayman Islands, with intent to defraud or deceive, and without lawful
2 authority, did sign a document, namely a Cayman Islands Development Bank
3 (“CIDB”) loan application in the name of Bernie Alfredo Bush (“Mr. Bush”)

4 *CROWN CASE*

5 3. The Defendant was a 40% owner in a Cayman Islands company named
6 Cayman Bakery. He was actively involved in the day-to-day operation of the
7 Bakery, whilst the 60% owner, Mr. Bush, was effectively a silent partner.

8 4. Cayman Bakery baked the bread and other Cayman Bakery products and
9 supplied them to Foster’s Food Fair. The regular Cayman Bakery delivery
10 persons, who were Richard Sinclair (“Mr. Sinclair”) and Gary Brown (“Mr.
11 Brown”), would bring along with them the invoice for the products and hand
12 it over to the Foster’s Food Fair Airport Branch Receiving Clerk who was
13 supposed to check that the Cayman Bakery products corresponded with the
14 Cayman Bakery invoice.

15 5. The Receiving Room at the Foster’s Airport Branch was open from 7 a.m. to
16 2 p.m.

17 6. Having checked the Cayman Bakery products being delivered against the
18 items on the Cayman Bakery invoice, the Foster’s Receiving Clerk would
19 then generate a Foster’s Receiving Invoice. The Foster’s Receiving Invoice,
20 together with the Cayman Bakery Invoice, were supposed to be delivered by
21 the Foster’s Receiving Clerk to the Foster’s accounts department.

22 7. The Foster’s accounts department would assume that the Cayman Bakery
23 products on the invoices were actually the bakery products checked and

1 received by the Foster's Receiving Clerk, and would therefore stamp the
2 Foster's Receiving Invoice and the Cayman Bakery Invoice for payment and
3 issue cheque payments to Cayman Bakery which matched the invoices
4 provided.

5 8. This system broke down because the Foster's Receiving Clerks would not
6 always check the amounts of Cayman Bakery products being received
7 against the Cayman Bakery Invoice. Consequently, Fosters Receiving
8 Invoices would be generated and attached to the Cayman Bakery Invoice
9 with no physical check of the bread and other bakery products being
10 delivered ever being carried out.

11 9. The Crown alleges that the Defendant saw an opportunity to ensure that the
12 Foster's Receiving Clerk did not check the Cayman Bakery products being
13 delivered against the Cayman Bakery Invoice provided, or, alternatively, the
14 Defendant would visit Foster's Food Fair later in the day – at a time after
15 2:00 p.m. when the Receiving Office is closed – to ask a Foster's manager or
16 another authorized person to sign the Cayman Bakery invoice without having
17 checked the products that were delivered.

18 10. Indeed, the Crown contends that sometimes the system ceased to operate and,
19 at such times, the Cayman Bakery Invoices were sent directly to the Foster's
20 accounts department without the Foster's Receiving Invoice and the Cayman
21 Bakery Invoice would, nevertheless, be paid.

22 11. On Saturday the 31st May 2008 the manager of the Foster's Food Fair Airport
23 Branch, Mr. Greg Mitchell ("Mr. Mitchell"), saw two invoices from Cayman
24 Bakery, namely invoice #826508 and invoice #826509. These invoices were

- 1 dated the 30th May 2008. Both invoices included **500 loaves of bread, 600**
2 **spicy buns, 120 cinnamon buns and other items** amounting to a total of
3 **CIS\$5,266.60.**
- 4 12. Mr. Mitchell noted that both Cayman Bakery invoices had been signed off by
5 Foster's Food Fair manager – Mr. Seymour Morgan (“Mr. Morgan”) – and
6 the invoices were to be sent directly for payment with no Foster's Receiving
7 Invoice attached.
- 8 13. A search was made at Foster's for the bread and the other Cayman Bakery
9 products which would match the two invoices but that quantity of Cayman
10 Bakery baked products could not be found.
- 11 14. On the 31st May 2008 Mr. Mitchell went to Mr. Morgan and asked him about
12 the invoices. Initially Mr. Morgan told Mr. Mitchell that he had checked the
13 order and had signed off on the Cayman Bakery invoices provided to him by
14 the Defendant. Mr. Morgan initially told Mr. Mitchell that he was concerned
15 about the size of the delivery, and as a result of this concern the Defendant
16 had agreed to take some of the baked products back. Accordingly, there was
17 a **credit note** in the sum of **CIS\$3,767.50** on invoice **#826510.**
- 18 15. Sometime afterwards Mr. Morgan admitted that he had lied to Mr. Mitchell.
19 He had lied because he was worried about his job, and, in fact, he never
20 checked off the Cayman Bakery products delivered in connection with the
21 Cayman Bakery invoices **#826508** and **#826509.**
- 22 16. Mr. Morgan told the Court that he had only received the Cayman Bakery
23 credit note on the following morning, on the 31st May 2008.

- 1 17. As a result of this incident Foster's Food Fair conducted an internal inquiry.
- 2 18. On the 7th June 2008 a meeting, which included Mr. Neville "Sam" Wright
3 ("Mr. Wright"), who did deliveries for Cayman Bakery for only one week,
4 Mr. Woody Foster ("Mr. Foster"), the Defendant, and other Foster's Food
5 Fair staff members, took place at Foster's Food Fair.
- 6 19. The Defendant said Mr. Wright made the delivery of Cayman Bakery
7 products, which were under discussion, in the afternoon, and it was Mr.
8 Wright who had also delivered the credit note on the same afternoon, to Mr.
9 Morgan.
- 10 20. Consequently, at the end of this meeting on the 7th June 2008, Mr. Wright
11 was arrested.
- 12 21. However, on reviewing the CCTV footage of the Foster's Food Fair
13 entrances and exits Mr. Ulyses Gomez ("Mr. Gomez"), the Foster's
14 Operations Manager and Loss Prevention Officer, discovered that there was
15 no delivery of that quantity of Cayman Bakery products made on the 30th
16 May 2008.
- 17 22. Furthermore, on analysis of the size of the store space allotted to Cayman
18 Bakery, compared with the amount of baked products on the invoice, it was
19 impossible for Foster's to accommodate this amount of baked products. It
20 was established that the shelf space for Cayman Bakery only allowed for
21 approximately C\$500.00 worth of baked products.
- 22 23. Mr. Sinclair, the usual Cayman Bakery delivery person, said he never
23 delivered an order the size of the invoices **#826508 and #826509** and, in fact,

1 he said that that amount of baked products would not fit into the delivery
2 van.

3 24. The Cayman Bakery head baker, Mr. Lascelles Williams (“Mr. Williams”),
4 said Cayman Bakery does not bake enough bread each day for an order of
5 that size.

6 25. The evidence from Foster’s is that Foster’s’ mark-up on bread was
7 somewhere between 26% and 32%, and that, normally, the total sales from
8 Cayman Bakery amounted to C\$74,000.00 per annum. The evidence
9 adduced by the Crown was that Foster’s Food Fair paid C\$56,000.00 to
10 Cayman Bakery for the quantity of bread it sold for C\$74,000.00, allowing
11 for the mark-up.

12 26. On a review of the Cayman Bakery invoices and the Foster’s accounts, it was
13 established that Cayman Bakery had charged Foster’s **C\$395,000.00 for**
14 **\$56,000.00 worth** of bread.

15 27. On further investigations it was established that Mr. Sinclair wrote 603
16 invoices over the period of time in question, and his average invoice
17 amounted to \$142.00. The Defendant wrote a total of 211 invoices, and his
18 average invoice was C\$1,387.00. In fact the Defendant’s average invoice
19 was more than 9 times the average for all other Cayman Bakery invoices
20 delivered to Foster’s Food Fair.

21 28. The Crown submits that on the evidence the accused inflated the Cayman
22 Bakery invoices by adding quantities of baked products which were not
23 delivered. Foster’s paid these invoices. The Defendant picked up the cheques

1 and banked them, thereby dishonestly obtaining money transfer to the value
2 of at least CI\$309,981.37.

3 29. The Crown's evidence is that Blossom Bush ("Mrs. Bush"), Mr. Bush's wife,
4 did the accounts for Cayman Bakery and itemized all the products sold to
5 Foster's Food Fair. After some months had elapsed the Defendant stopped
6 providing Mrs. Bush with the cheque stubs from Foster's Food Fair, which
7 would confirm the payments made by Foster's. The Defendant then
8 persuaded his stepdaughter, Racquel Bryan, to prepare fictitious accounting
9 statements which he, the Defendant, provided to Mrs. Bush, thereby
10 concealing the invoices that had been submitted to Foster's and also
11 concealing the payments made by Foster's Food Fair to Cayman Bakery.

12 30. On the 11th July 2008 the Defendant was spoken to by the police. The
13 Defendant said that the responsibility for the delivery on the 30th May 2008
14 was Mr. Wright's.

15 31. On the 29th September 2008 the Defendant told the police that he had written
16 the two invoices (**#826508 and #826509**) at Cayman Bakery. However, he
17 said that he and Mr. Wright made the delivery on the 30th May 2008. He said
18 that he and Mr. Wright had packed the bread and other baked products
19 tightly into the shelves, but had to take some back. The Crown submits that,
20 on the evidence, this is a lie. These Cayman Bakery products were never
21 delivered and never packed into the shelves. The Crown adduces that neither
22 Mr. Wright, the Cayman Bakery delivery person, nor Mr. Morgan, the
23 Foster's manager, knew the invoices were inflated.

1 32. It is the Crown’s case that on the 29th September 2008 the Defendant
2 eventually admitted that he was solely responsible for the crime.

3 33. The Crown relies on the fact that the Defendant told Detective Constable
4 Francella (“DC Francella”) and Detective Sgt Michael Montague (“DS
5 Montague”) on the 29th September 2008 that Foster’s Food Fair never
6 received all the amounts of baked products which he wrote on the invoices.
7 The Defendant said he never paid Mr. Wright or Mr. Morgan for handing the
8 inflated invoices. The Defendant told the police,

9 *“The other guys who signed for inflated invoices did not know that they*
10 *were inflated either. They just did not count the bread in the deliveries,*
11 *but they didn’t know a crime was being committed.”*

12

13 34. Regarding the second count, Mr. Bush said he knew nothing about any loan
14 from CIDB. He gave no authority for the Defendant to sign his name, and he
15 did not give the Defendant any authority to extend the existing loan on his
16 house.

17 35. A Justice of the Peace, Mr. Lewis Ebanks (“Mr. Ebanks”), admitted that he
18 signed the attestation clause under Mr. Bush’s purported signature because
19 the Defendant had told him that Mr. Bush had signed it. It is the Crown’s
20 case that the JP mistakenly assumed that it was Mr. Bush’s signature.

21 36. The Crown’s case from the police officers is that, on the 29th September the
22 Defendant admitted that he signed Mr. Bush’s name and that he had to sign
23 Mr. Bush’s name on many other occasions for other things when he was in
24 Jamaica.

DEFENCE CASE

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37. The Defendant pleads not guilty to both charges. The Defendant does not have to prove his case. The burden of proof is always on the Crown from the beginning to the end of the case. The Defendant is entitled to remain silent and leave the Crown to prove the case against him.

38. S.18(b) of the Evidence Law (2011 Revision) reads:

“The failure of a person charged with an offence to give evidence shall not be made the subject of comment by the prosecution, but the court or jury may draw any reasonable inference from such failure.”

39. I remind myself that the Defendant does not have to give evidence. The Defendant is entitled to sit in the dock and require the Prosecution to prove its case. I must not assume that the Defendant is guilty because he has not given evidence. The fact that he has not given evidence proves nothing one way or the other. It does nothing to establish his guilt.

40. On the other hand it means that there is no evidence from the Defendant himself to undermine, contradict or explain the evidence put before me by the Prosecution.

41. I have been told that the Defendant is a man of good character, in the sense that there are no previous convictions recorded against him. I must remind myself that good character, by itself, cannot provide a defence to a criminal charge, but it is evidence which I should take into account in the Defendant’s favour.

1 42. Although the Defendant has answered questions posed to him by the police,
2 he has chosen not to give evidence before me. Accordingly, I can give what
3 weight I should to his explanation to the police and bear that in mind, and
4 that the explanation was made by a person of good character and take that
5 into account when deciding whether I can believe him.

6 43. It is for me to decide what weight I should give to his account of the facts in
7 this case and, in doing so, I must take into account that he has no previous
8 convictions, and that may mean that he is less likely than otherwise might be
9 the case to commit the crimes with which he is now charged.

10 44. It is the Defendant's case that he wrote up the two invoices on or before the
11 30th May 2008, namely, **#826508 and #826509**.

12 45. The Defendant told the police that the size of the delivery was high, but he
13 would normally ask the Cayman Bakery delivery man how much in terms of
14 patties or bread should be delivered.

15 46. The Defendant said that on the 30th May he did not tell Mr. Wright to bring
16 those quantities; the Defendant said it was the drivers who would tell them at
17 Cayman Bakery how much, in terms of products,

18 "*...they want, and then we bake it.*"

19 47. In addition the Defendant told the police that he tells his delivery men to

20 "*...push as many goods as possible.*"

21 48. The Defendant told the police that he wrote up the invoices and gave them to
22 Mr. Wright, who loaded the van and delivered the products.

- 1 49. The Defendant told the police that he recalls Mr. Wright calling him on the
2 telephone but he was with a friend in West Bay – a lady friend. The
3 Defendant recalls Mr. Wright saying that there was too much bread and Mr.
4 Wright returned with a credit note. The Defendant told the police that Mr.
5 Wright returned with the bread and he wrote up a credit note, and Mr. Wright
6 took the credit note back to Foster’s Food Fair on that night. The Defendant
7 said that Mr. Wright gave the credit note to Mr. Morgan.
- 8 50. The Defendant said he never made any deliveries with Mr. Wright.
- 9 51. The Defence submits that the matter happened so long ago that the Court
10 cannot rely on the testimony of the Crown witnesses.
- 11 52. I am concerned with events which the Defence submits have taken place a
12 long time ago. I must appreciate that, because of this, there may be a danger
13 of real prejudice to the Defendant. I must remind myself that this possibility
14 must be in my mind when I decide whether the Prosecution has made me
15 sure of the Defendant’s guilt.
- 16 53. I have to make allowances for the fact that, with the passage of time, memory
17 fades. Witnesses, whoever they may be, cannot be expected to remember
18 with crystal clarity events which occurred some four years ago. Indeed, it has
19 been said that sometimes the passage of time may even play tricks on
20 memory.
- 21 54. The Defendant told the police that he recalled being called to come to
22 Foster’s Food Fair on the 7th June 2008, and he went into a boardroom where

1 he met Mr. Foster and Mr. Gomez. Mr. Wright was also included in that
2 meeting.

3 55. The Defendant said that Mr. Wright told him that he made a number of trips
4 to deliver the products related to those invoices, and Mr. Foster and Mr.
5 Gomez did not believe him. The Defendant said Mr. Wright told him that he
6 made a number of trips to deliver the products on those invoices – it may
7 have been six trips. It was then that someone called the police and Mr.
8 Wright was arrested, handcuffed and taken away.

9 56. The Defendant told the police that he called a lawyer and the lawyer
10 suggested that Mr. Wright should be terminated and that he, the Defendant,
11 and his co-owner, Mr. Bush, decided to fire Mr. Wright.

12 57. The Defendant told the police that he did not tell Mr. Wright to take those
13 quantities of products.

14 58. It is the Defence case that Mr. Morgan checked the Cayman Bakery items
15 relating to invoices #826508 and #826509, and signed off on them as
16 received. The Defence also submits that Mr. Morgan told Mr. Mitchell and
17 the police that he had counted the items and that he had signed off on them to
18 match the invoices provided.

19 59. The Defence submits that Mr. Morgan has lied to the Court, and in fact, the
20 version he gave to the police is the correct version. The Defence submits that
21 Mr. Morgan had been terminated by Foster's Food Fair in June 2008 and
22 therefore, what Mr. Morgan told the police about checking the items and
23 signing off on them to save his job, is untrue.

- 1 60. The Defence submits Mr. Morgan is not to be believed when he said that he
2 did not sign in relation to quantities or price or amounts, but he only signed
3 the items.
- 4 61. The Defence submits that Mr. Morgan had in fact told Mr. Mitchell on the
5 31st May 2008 that he received the goods, and Mr. Morgan had also told the
6 police that he received the Cayman Bakery products related to invoices
7 #826508 and #826509, and, in fact, Mr. Morgan did not have any job to
8 protect.
- 9 62. The Defence submits that Mr. Morgan would say anything to have the
10 Defendant convicted and to “save his own skin.”
- 11 63. The Defence also submits that there would not be any signed Cayman
12 Bakery invoices if the Cayman Bakery products listed on the invoices had
13 not been delivered. The Defence explains that the receipts themselves are
14 proof that the goods were delivered. The Defence also explained that none of
15 the Foster’s Receiving Clerks were forced to sign the Cayman Bakery
16 invoices.
- 17 64. In relation to the Defendant’s purported admission of guilt on the 29th
18 September 2008, the Defence says that the Court should not rely upon this
19 evidence. The Defence submits that the Defendant did not have his attorney
20 present at the time of the alleged confession and the police should have
21 ensured that he did have his attorney present. Also, the fact that the
22 Defendant was told that it was likely that his stepdaughter was going to be
23 charged acted as undue pressure on the Defendant and caused him to
24 breakdown and to give a statement he would not have otherwise given. The

1 Defence submits that on this occasion the Defendant's free will was sapped
2 and this evidence should not be taken into account by the Tribunal of fact.

3 65. The Defendant elected to be tried by Judge Alone rather than by a Judge and
4 Jury pursuant to s.129 of the Criminal Procedure Code.

5 66. The Defendant is charged with one count of obtaining money transfer by
6 deception contrary to s.251 of the Penal Code, in that he, between the 1st
7 January 2007 and the 31st May 2008, within the jurisdiction of the Cayman
8 Islands, dishonestly obtained money transfer to the value of CI\$309,981.37
9 from Foster's Food Fair by deception, namely by falsely representing the
10 quantity of goods supplied by Cayman Bakery to Foster's Food Fair.

11 67. Deception in this case means that the Defendant falsely inflated invoices
12 without providing the items on the invoice, and thereby inducing Foster's to
13 make a money transfer for goods the supermarket had not received.

14 68. In relation to the second count of making a document without authority, the
15 Crown has to prove that the Defendant, on or about the 18th October 2007,
16 with intent to defraud, and without lawful authority, did sign a document,
17 namely, a CIDB loan application in the name of Bernie Alfredo Bush. The
18 Crown has to prove that the Defendant signed the document without Mr.
19 Bush's authority and with the intent to defraud or deceive in order to obtain
20 the sum of \$27,000.00.

21 69. As the Tribunal of fact I have endeavoured to remind myself of the
22 prominent features of the evidence because it is my responsibility as the

1 Tribunal of fact to judge the evidence and decide on the relevant facts of this
2 case.

3 70. Accordingly, I have reviewed the evidence and I have also taken into account
4 the arguments and the speeches of Crown counsel, Mr. Michael Snape, on
5 behalf of the DPP, and of counsel for the Defence, Ms. Margeta Facey-
6 Clarke.

7 71. I remind myself that the burden of proof is always on the prosecution. It is
8 for the Prosecution to prove that the Defendant is guilty, and further, it is
9 never for the Defendant to prove his innocence. I also have to remind myself
10 that the Prosecution must prove the Defendant's guilt to a high standard of
11 proof, namely, that I must be satisfied that the Defendant is guilty of the
12 charge of obtaining money transfer by deception, and the second charge of
13 making a document without authority, beyond all reasonable doubt, or
14 alternatively, I must be sure that the Defendant is guilty.

15 72. I must look at each count separately. If I find that the Prosecution has not
16 made out the case so that I am sure, I must find the Defendant not guilty.

17 73. Accordingly, I must review all the evidence and decide whether the
18 Defendant is guilty of obtaining money transfer by deception, and of making
19 a document without authority.

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ANALYSIS AND CONCLUSION

*EVIDENCE RELATING TO 30TH AND 31ST MAY 2008
AND CAYMAN BAKERY INVOICES, #826508 AND #826509*

Mr. Neville 'Sam' Wright.

7 74. The Court heard from Mr. Wright who said he did one week of deliveries for
8 Cayman Bakery when Mr. Brown was on leave. Mr. Wright recalled that on
9 the 30th May 2008 he did one early morning delivery. He could not recall the
10 exact order but it included patties, ackee loaves, regular patties and turtle
11 patties. Mr. Wright was shown Cayman Bakery invoice #570955 dated the
12 30th May 2008, which came to \$22.80 and he agreed that this was the
13 delivery he made on the date in question.

14 75. Mr. Wright told the Court that he never made a delivery outside the Foster's
15 delivery hours of 7 a.m. to 2 p.m.

16 76. He recalled the 7th June 2008 that the Defendant had called and asked him to
17 meet him at Foster's Airport. He said they met at Foster's and they went
18 upstairs and met Mr. Foster and Mr. Gomez.

19 77. At the meeting on the 7th June 2008 with Mr. Foster, Mr. Gomez and the
20 Defendant, Mr. Wright said he was asked if he made a delivery on the 30th
21 May 2008 and he said he replied yes. A video of the CCTV camera was then
22 shown and he was next asked what time did he make the delivery, and he
23 said in the morning. Mr. Wright said that at that point the Defendant butted
24 in and said,

25 *"No, it was in the afternoon."*

1 Mr. Wright said when the Defendant said that,

2 *“I was kind of lost but I told him it was early morning before people start*
3 *going to work. They saw me make the delivery early morning but they*
4 *didn’t see me make any delivery after that. ”*

5

6 78. Mr. Wright told the Court that the Defendant insisted that he, Mr. Wright,
7 made a delivery in the afternoon and Mr. Wright insisted

8 *“No, no, no, in the morning.”*

9 79. At the meeting of the 7th June 2008 Mr. Wright was shown Cayman Bakery
10 invoices #826508 and #826509. He said the first time he saw these invoices
11 was at that meeting with Mr. Foster and Mr. Gomez, and he said he knew
12 nothing about those invoices. Mr. Wright said,

13 *“I never delivered them nor do I know anything about them.”*

14 80. Mr. Wright told the Court that Mr. Foster and Mr. Gomez became upset and
15 called the police and he, Mr. Wright, was taken away and arrested.
16 Ultimately his permit was revoked and he was forced to leave the island.

17 81. Mr. Wright told the Court that he spent 30th May 2008 with Mr. Brown. He
18 recalled Mr. Brown buying a car and the two of them driving (in their
19 separate vehicles) to Breakers and then Mr. Brown driving them back to
20 town, and they spent time together until they went to a bar later in the
21 evening and then he, Mr. Wright, went home around 9 p.m.

1 82. Mr. Wright's evidence was that he had never met Mr. Morgan and he had not
2 seen the two Cayman Bakery invoices - #826508 and #826509 – until the
3 meeting on that day.

4 Mr. Lascelles Williams

5 83. The Court recalls the evidence of Lascelles Williams, the head baker at
6 Cayman Bakery.

7 84. Mr. Williams was shown invoice #826508. He said Cayman Bakery never
8 baked that amount of bread. He said they never bake 600 spice buns. He said,

9 *“Foster's just don't get that in one day. They might get 120 maybe 150.”*

10 He said,

11 *“It's not possible to bake that amount or to deliver that amount. We don't*
12 *bake that amount of bread.”*

13 85. Mr. Williams also said that the Defendant does not make a lot of deliveries
14 and he said he has never baked 600 spiced buns for one order. Mr. Williams
15 said that both #826508 and #826509 reflect a tremendous amount of baked
16 products that would cause him great concern. He said

17 *“It just does not make any sense, there is no logic, because the bakery*
18 *would lose so much money.”*

19

20 Mr. Seymour Morgan

21 86. Mr. Morgan told the Court that he did not check the Cayman Bakery
22 deliveries relating to invoices #826508 and #826509.

1 87. He said he recalls being called on the Tannoy “*by Mabel or Emmy*” to come
2 to the bakery section at Foster’s which was where he received the Cayman
3 Bakery invoices #826508 and #826509. Mr. Morgan acknowledged that it
4 was his signature on these two Cayman Bakery invoices. He said he did not
5 check the Cayman Bakery items when he signed the Cayman Bakery
6 invoices. He said the invoices just had the Cayman Bakery products, and had
7 no quantities, no prices and no numbers.

8 88. Mr. Morgan explained that he had told Mr. Mitchell and others, including the
9 police that he had counted the delivery, and did that only because he was
10 afraid of losing his job. He admitted that he told them a lie and that he should
11 have told the truth.

12 89. Mr. Morgan recalls leaving the Cayman Bakery invoices in the balancing
13 room because he was so busy doing other tasks that he forgot about them.
14 Mr. Morgan said he had also intended to check the delivery but he was too
15 busy and just forgot.

16 90. On the following morning, that is, on the 31st May 2008, Mr. Morgan said he
17 called Foster’s to say he would be slightly late. He said that on leaving home
18 and on his way to work the Defendant came towards his house near
19 Northward and flagged him down and stopped him, at which point the
20 Defendant gave him a credit note, which he, Mr. Morgan, brought in to
21 Foster’s.

22 91. Mr. Morgan said Mr. Mitchell confronted him about invoices #826508 and
23 #826509 and he, Mr. Morgan, provided Mr. Mitchell with the credit note, but
24 had no conversation with Mr. Mitchell.

1 Gary Brown

2 92. Mr. Brown, a Cayman Bakery delivery person, made a delivery around 5
3 a.m. on the 30th May 2008.

4 93. He said that he and Mr. Wright finished working at around 1 p.m. on that day
5 and they never made any more deliveries to Foster's, other than the ones in
6 the early morning. He said that he and Mr. Wright spent the rest of the
7 afternoon together and went to a bar in the evening, and Mr. Wright went
8 home around 9 p.m.

9 Mr. Gregory Mitchell

10 94. Mr. Mitchell was the Foster's Food Fair store manager. He recalls the 30th
11 May 2008 and that at about 5:30 a.m. he was in the balancing room and he
12 saw the two Cayman Bakery invoices, **#826508 and #826509** near to the
13 computer. He noted immediately that they were for a very large amount and,
14 in fact, he was shocked by the amount. He said he would not expect to see
15 invoices there and he would not expect to see that amount of bakery products
16 on an invoice. He then did a search and checked with the Grocery Manager,
17 Alex, and they could not find that amount of Cayman Bakery products
18 anywhere. It was not on the racks or near the bread room. He said if that
19 quantity of items had been delivered he would have noticed it.

20 95. He told Mr. Foster about the invoices. Mr. Mitchell said they discovered that
21 there had been another delivery that morning from Cayman Bakery and both
22 Mr. Mitchell and Mr. Foster thought this was extremely peculiar.

1 96. Mr. Mitchell said the Defendant came in to Foster's on that morning and said
2 Cayman Bakery had taken back some the products on that invoice and Mr.
3 Mitchell said he told the Defendant that Foster's would not take any more
4 Cayman Bakery deliveries until they found out what had happened.

5 97. On the following morning, the 31st May 2008 Mr. Mitchell said that he
6 approached Mr. Morgan when he came to work and Mr. Morgan
7 immediately reached into his pocket and gave him, Mr. Mitchell, the **credit**
8 **note #826510**. Mr. Mitchell said he told Mr. Morgan,

9 *"I am not talking to you now, I want to investigate this."*

10 Mr. Mitchell said Mr. Morgan told him that he had thought *"it was an awful*
11 *lot"* so he refused some of it.

12 Mr. Woody Foster

13 98. Mr. Foster's evidence accords with Mr. Mitchell's evidence when Mr.
14 Mitchell brought to Mr. Foster Cayman Bakery invoices **#826508 and**
15 **#826509** and he realized the invoices reflected a tremendous amount of
16 products, which caused great concern. Mr. Foster said he knew the space and
17 he did not know how that amount of baked products could fit into the space
18 allotted for Cayman Bakery.

19 99. Mr. Foster recalls calling the Defendant and Mr. Wright into the office. Mr.
20 Foster said,

21 *"Mr. Bryan (the Defendant) told us, or led us to believe, that it was Mr.*
22 *Wright who made the delivery"*

1 and consequently Mr. Wright was taken away by the police and arrested.

2 100. Mr. Foster said he realized that invoices #826508 and #826509 reflected far
3 too much baked products and there was no logic for it because Cayman
4 Bakery would have to take back the unsold bread and suffer a very
5 substantial loss.

6 Mr. Ulyses Gomez

7 101. Mr. Gomez was the Operations Manager and Loss Prevention Officer –
8 dealing with accidents, shoplifting and similar matters.

9 102. Mr. Gomez explained to the Court about the cameras at the doors and at the
10 cash registers. He said the cameras work 24 hours a day, 7 days per week and
11 go for a period of 28 days.

12 103. Mr. Gomez viewed the video footage for the 30th May 2008 from 7 a.m. to
13 11 p.m. He was looking for a large delivery to match invoices #826508 and
14 #826509.

15 104. He noted that Cayman Bakery made 2 deliveries early in the morning.

16 a. One was at **6:44:06 hrs** when the delivery was a small parcel of
17 Jamaican patties and pastries. Camera 3.7 and 3.10 picked up the
18 delivery being made in a small pastry box and the Cayman Bakery
19 delivery person left at 6:49:29 hrs.

20 b. Another delivery was picked up on system 4 which occurred at **8:35:15**
21 **hrs** and for that delivery the driver left at 9:09:24 hrs.

1 105. Mr. Gomez checked the CCTV cameras for the whole day and he said it took
2 him approximately two days to view the footage from the four camera
3 systems and he did not see any further deliveries from Cayman Bakery. He
4 said the footage covered the entire day and also all the entrances and exits.
5 He was looking for deliveries that would match the Cayman Bakery invoices
6 **#826508 and #826509**. He said a delivery like that would have been in trays
7 or crates in order to transport that amount of baked produce. He again
8 confirmed that a delivery or deliveries which would match Cayman Bakery
9 invoices **#826508 and #826509** never arrived at Foster's on the 30th May
10 2008.

11 106. Mr. Gomez explained that he gave the CCTV footage to the police and in the
12 transfer of the footage he did lose a couple of hours during the day. There is a
13 gap between 10:9 hrs to 3:45 hrs on the footage.

14 Donald Aitkin

15 107. Finally, on the evidence relating to the 30th May 2008, and the large Cayman
16 Bakery invoices, Donald Aitkin, the new Loss Prevention Officer at Foster's,
17 gave evidence. He produced Exhibit DA1 which is Foster's floor plan, along
18 with photographs and measurements. The floor plan shows the Foster's
19 bakery area and the photographs show seven racks of bread with a total of 85
20 trays and 850 loaves.

21 108. Mr. Aitkin said that Cayman Bakery invoice **#826508** had 1275 units on it
22 and it would equate to a similar size of delivery as in picture #1. He said a
23 delivery of that size would be clearly visible as it passes through and around
24 the store.

- 1 109. Mr. Aitkin confirmed that he surveyed the space provided by Foster's for
2 Cayman Bakery and he checked the number of shelves and the depth of the
3 shelves. Mr. Aitkin said he measured the depth from front to back, the height
4 from top to bottom and the width from left to right for Cayman Bakery
5 products. He said the space allocated would only take about 200 units of
6 Cayman Bakery products.
- 7 110. Mr. Aitkin agreed that the area for Cayman Bakery identified by Mr. Sinclair
8 as RS1 and RS2 was the Cayman Bakery space and it could only
9 accommodate \$500.00 worth of Cayman Bakery goods even when they were
10 "*stacked and packed like soldiers.*"
- 11 111. Mr. Aitkin told the Court that Cayman Bakery was not allowed to store bread
12 in the Foster's bread room. The Foster's bread room was for overseas bread
13 alone and Foster's would never act as a warehouse for any local bakery.
- 14 112. Mr. Aitkin confirmed that if the shelves allotted for Cayman Bakery were
15 empty, the shelves would only be able to hold 15% of all the products listed
16 on invoice **#826508**.
- 17 113. Having reviewed all the evidence before the Court, the Court finds that the
18 Cayman Bakery products on invoices **#826508** and **#826509** were never
19 received by Foster's Food Fair Airport. There is no evidence whatsoever that
20 the products on these Cayman Bakery invoices ever arrived at Foster's on the
21 30th May 2008 or on the 31st May 2008.
- 22 114. The Court accepts Mr. Morgan's evidence that he never checked to see of the
23 items on invoices **#826508** and **#826509** matched the delivery made to

1 Foster's on that day. I also accept Mr. Morgan's explanation that he panicked
2 and lied to his employers and to the police in the interest of preserving his
3 job.

4 115. Mr. Morgan has admitted that he made a previous statement to the police,
5 which was untrue and inconsistent with the evidence he gave in Court.

6 116. When Mr. Morgan was interviewed by the police in July 2008 he confirmed
7 that he had checked the items on the Cayman Bakery invoice with the items
8 that came into Foster's Food Fair. Mr. Morgan in his evidence to the Court
9 said that he did not see the items being delivered in relation to invoices
10 **#826508 and #826509.**

11 Mr. Morgan accepted that he told a lie and said that he was trying to secure
12 his job. He accepted that he did not see the goods. In addition Mr. Morgan
13 said he felt a compulsion to set the record straight and that is why he said he
14 would clear up everything. He said:

15 *"You have something hanging over your head and you want to get it*
16 *clear."*

17 117. When considering Mr. Morgan's reliability as a witness I must take into
18 account these inconsistencies, and also Mr. Morgan's explanation for them.

19 118. It is for me to judge the extent and the importance of these inconsistencies. If
20 I conclude that Mr. Morgan has been inconsistent on an important matter, I
21 should treat both his accounts with considerable care. If, however, I am sure
22 that one of Mr. Morgan's accounts is true, in whole or in part, then it is
23 evidence that I may consider when deciding upon my verdict.

1 119. I am satisfied that Mr. Morgan is now telling the truth. Mr. Morgan told the
2 Court that he first lied to Mr. Mitchell. He then told the police the same lie.
3 In between first lying to Mr. Mitchell and then lying to the police, he was
4 dismissed. It is clear to the Court that he deeply regrets lying about the two
5 invoices. He had been with Foster's for 26 years and he said that he would
6 dearly love to turn the clock back. I find that he is genuinely remorseful for
7 problems caused to himself and others by his lies, and, in the Court's view,
8 has been honest in his evidence before the Court.

9 120. The Court also finds that it is clear that the system of delivery of Cayman
10 Bakery products to Foster's, and the system of receiving Cayman Bakery
11 goods at Foster's, had broken down so completely, from many angles,
12 including the fact that the Defendant had engendered trust throughout the
13 Foster's staff. This breakdown was so widespread, and over such a long
14 period, that there was no complicity needed on the part of Mr. Morgan to
15 facilitate the passage of falsified Cayman Bakery invoices through to the
16 Foster's accounting department. Accordingly, I find that Mr. Morgan is a
17 witness of truth who did not corroborate with the Defendant for the passage
18 of falsified Cayman Bakery invoices through to the Foster's accounting
19 department.

20 121. The Court accepts Mr. Wright as a witness of truth and accepts his evidence
21 that he never made any delivery relating to Cayman Bakery invoices
22 **#826508 and #826509**, and that he had no knowledge of these invoices.

23 122. I also accept the evidence of Mr. Williams that Cayman Bakery never baked
24 that amount of products on the 29th or 30th May 2008.

1 123. I accept the evidence of Mr. Gomez that the CCTV cameras would have
2 picked up such a delivery and that no deliveries matching Cayman Bakery
3 invoices **#826508 and #826509** were ever made. The Court viewed the
4 CCTV footage and saw the early morning deliveries brought by Mr. Brown
5 on the 30th May 2008.

6 124. The Defendant accepts that the handwriting on invoices **#826508 and**
7 **#826509** is his hand writing.

8 125. I reject the Defendant's evidence that Mr. Wright made the delivery or
9 deliveries relating to these invoices and I fully accept Mr. Wright's evidence
10 that he never delivered the Cayman Bakery products set out in invoices
11 **#826508 and #826509.**

12 126. I also find beyond all reasonable doubt that the products reflected on these
13 invoices never existed and was never delivered to Foster's on the 30th May
14 2008 or at any time.

15 127. The Court finds beyond all reasonable doubt that the Defendant knew that
16 the Cayman Bakery products on these two invoices were neither baked nor
17 delivered to Foster's. The Defendant had falsified invoices **#826508 and**
18 **#826509** in order to obtain money transfers to the value of \$5,266.60 by
19 deception. Once the Defendant realized that Foster's had discovered this
20 fraud the Defendant tried to put the blame for the inflated invoices and the
21 deception on to Mr. Wright.

22

23

CAYMAN BAKERY TO FOSTER'S FOOD FAIR INVOICE SYSTEM

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128. The evidence is that the two Cayman Bakery delivery drivers, Mr. Sinclair and Mr. Brown, would monitor the amounts of Cayman Bakery products needed by Foster's Food Fair, and report back to the head Cayman Bakery baker, Lascelles Williams and his team, on the amount of baked products that would be needed in the forthcoming days. This was the system adopted so that Cayman Bakery would not have to take back baked products that had not been sold by Foster's. This system was put in place to safeguard Cayman Bakery from suffering any losses on unsold produce.

129. The products would be baked at Cayman Bakery and the Cayman Bakery delivery drivers would deliver the products, usually, early in the mornings. The deliveries would normally be made anytime between 7 a.m. and 2 p.m., when the Receiving Office at Foster's Food Fair Airport branch was open, and the two main Receiving Clerks, Anthony Shaw ("Mr. Shaw") and Paula Hughes ("Ms. Hughes"), would receive the products.

130. It was for the Foster's Receiving Clerks to check that the items on the Cayman Bakery invoices matched the items being delivered, and the Cayman Bakery delivery drivers, Mr. Sinclair and Mr. Brown, would pack the products on the shelves – which can be seen in red and blue on the floor plan of the Foster's Airport Bakery area.

131. Mr. Wright was hired by Cayman Bakery when somebody was on holiday and he worked for one week along with Mr. Brown.

1 132. The evidence from Mr. Sinclair and Mr. Shaw was that one would normally
2 enter through the back of Foster's Fair, which is covered by CCTV cameras,
3 although, sometimes, the front entrance would be used, which was also
4 covered by CCTV cameras.

5 133. If the Foster's Receiving Clerks, Mr. Shaw or Ms. Hughes were busy, the
6 Cayman Bakery delivery persons would seek out a manager or someone else
7 in authority at Foster's to check the Cayman Bakery invoice and accept the
8 delivery. Mr. Sinclair said he would write up the Cayman Bakery invoice
9 whilst unpacking the products outside. He said he would check the products
10 one by one and he was the one who started that system. He said the Cayman
11 Bakery invoice would be taken to the Foster's Receiving Clerk who would
12 check the products being delivered against the Cayman Bakery invoice. He
13 said the Foster's Receiving Clerk would not normally give back the invoice
14 to him. He said he would keep his copy. Mr. Sinclair said:

15 *"You give them the top sheet, and then you [have] got your copy, and*
16 *then you carry the bread around to the bread room. As you are putting*
17 *the bread on the shelves you would check and estimate what would be*
18 *needed in the future. A normal week would be 20 or 30 white sandwich*
19 *bread and 20 whole wheat sandwich bread, and some bullas and buns.*
20 *You certainly don't want to have to take bread back because that would*
21 *cause a loss."*

22 Mr. Sinclair said that a typical delivery was:

23 *"...Sandwich bread and whole breads, 50 to 60; bullas – 60 to 70 or*
24 *maybe 100."*

1 134. Mr. Sinclair produced Exhibits RS1 and RS2 which delineated the amount of
2 space available for Cayman Bakery at the Foster's Food Fair and Mr. Sinclair
3 said there were no other shelves for Cayman Bakery products.

4 135. Mr. Sinclair gave evidence that very few of his Cayman Bakery invoices
5 would exceed \$400.00 and he said that the highest invoice was in July 2007
6 for \$520.00. The Court has been very impressed by the evidence of Mr.
7 Sinclair who was clearly a very honest, trustworthy and reliable employee.

8 136. The Court then heard from a number of Foster's employees including the
9 Receiving Clerks and other employees who were authorised to receive
10 Cayman Bakery produce. The following personnel received the Cayman
11 Bakery products and signed off on invoices written by the Defendant:

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Jose Salinas	4.4.07	#428037	110	3lb Easter buns;	
			260	2lb Easter buns	
			120	2lb Easter buns	\$1,894.00

12

13 Mr. Salinas said that that the quantity listed was more than he received.
14 This was 590 Easter buns and Mr. Salinas said this was too much. He
15 said it should be about 150. He said he worked in the bakery section and
16 he knew how many baked products would fit in the shelves. He said:

17 *"That can't be. It makes no sense. The quantity here is not the*
18 *one I signed off on."*

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Jose Salinas	16.6.07	#328705	110	46 sandwich bread;	\$1,034.70

1

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Mr. Salinas said this was more than the amount he would receive. He said Foster's would only usually receive approximately 12. He said the shelf cannot hold this amount.

3

4

5

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Jose Salinas	15.12.07	#996431	481	Miscellaneous	\$1,006.80

6

7

Mr. Salinas said the amount was too high. He said,

8

“Every time we count it, but when we are busy we must trust the vendors. I know how much bread fits on the shelves. This amount is too high.”

9

10

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	30.1.08	#960854	450	Miscellaneous	\$912.00

11

12

Mr. Thompson said he does not recall receiving this amount. There is too much on the invoice. The normal load would be 80 to 100, maybe at a stretch 120, but not this amount.

13

14

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	28.2.08	#997951	1600	Easter Buns	\$5,475.00

1

2

Mr. Thompson said that that was his signature:

3

"...but this is too much."

4

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	29.2.08	#997955	2412	Easter Buns	\$5,626.00

5

6

Mr. Waide Thompson said he never received this and:

7

"the ticks on the invoice are not my ticks."

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	9.3.08	#997964	2031	Easter Buns	\$7,735.00

8

9

Mr. Thompson said,

10

"This is ridiculous. This amount seems ridiculous. Although my

11

signature is there I don't recall this amount"

12

13

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	15.3.08	#997965	1420	Easter Buns	\$3,860.00

1

2

Mr. Waide Thompson said he never received this amount.

3

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Wade Thompson	15.3.08	#998069	604	Miscellaneous	\$1,279.00

4

5

Mr. Thompson said he never received this amount.

6

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Ofalina Hall	17.3.08	#997982	1560	Easter Buns	\$6,120.00

7

8

Ms. Hall said she never got that amount of products,

9

"...not that I recall. I signed the invoice but I did not check the number of items."

10

11

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Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Seymour Morgan	27.2.08	#997959	1150	Easter Buns	\$3,762.50

1

2

Mr. Morgan said he never received that amount of products. He said,

3

"I received buns but not in that number. I did not see the prices on or the numbers on the invoice. I trusted Mr. Bryan."

4

5

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Seymour Morgan	17.3.07	#428005	405	Miscellaneous	\$750.80

6

7

Mr. Morgan said,

8

"I don't accept that I received that amount."

9

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Seymour Morgan	1.4.08	#977227	1600	Easter Buns	\$8,600.00

10

11

Mr. Morgan said he never received that amount. He said he could not

12

receive so much when Easter was almost over. He said:

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“No bakery on the island would have so much left over. I did not receive that. It just can’t hold on the shelves. There are not enough shelves to hold that amount of bread. Zeroes have been added. 12 had gone to 1200, 14 changed to 1400 and 16 to 1600. Two zeroes have been added to each figure. I am positive it was Bryan.”

Mr. Morgan also said that this amount of baked products:

“...could not come into the store. The U-boat is very high – 8 feet high and can take 120 boxes by 10.”

Foster’s Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Seymour Morgan	25.6.07	#635331	380	Miscellaneous	\$801.90

Mr. Morgan said,

“I cannot say that I received all that amount.”

Foster’s Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Peter Smalldon	28.6.07	#529255	341	Miscellaneous	\$685.85

Mr. Smalldon said he could not remember receiving this delivery.

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Peter Smalldon	18.8.07	#326811	400	Sandwich loaves	
			285	Whole wheat loaves	\$1,295.75

1

2

He said,

3

"We would never receive a delivery of that size or a quantity of that amount. We might receive 40 sandwich loaves but not 400. We might receive 25 to 30 whole wheat loaves but never 285. I would remember if we had received 685 because it is a very large amount."

4

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Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Peter Smalldon	2.11.07	#992552	544	Miscellaneous	\$1,079.70

9

10

Mr. Smalldon said,

11

"I don't remember it."

12

Mr. Shaw said,

13

"I developed a trust with Dave Bryan. I would not question him. Dave Bryan would bring a delivery with one invoice and say he has three more. I would sign it and not check it. There were times when I should have been more careful. If the Receiving Office was closed I would tell Dave Bryan to come back tomorrow or take the invoice to our Control Manager"

14

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Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Yoani Bird	30.11.07	#996407	543	Miscellaneous (including 30 banana cakes)	\$1,013.75

1

2

The witness said she never received this amount and she never received

3

30 banana cakes.

4

"I did not put the ticks that are on that invoice."

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Yoani Bird	18.2.08	#960866	562	Miscellaneous	\$1,079.80

5

6

The witness said,

7

"I didn't receive this in one go. It would never fit on four trays.

8

This invoice was not given to me by Cayman Bakery."

Foster's Employee	Date	Cay Bakery Invoice #	Quantity	Product Description	Total \$
Paula Hughes	20.3.08	#997986	2062	Easter buns	\$7,324.00

9

10

Asked if she ever received that amount in a delivery from Cayman

11

Bakery she said,

12

"Not that I can remember."

1 137. In addition, and by way of example, the Foster's store manager, Mr.
2 Mitchell, on looking at the invoices on the 20th March 2008, there were three
3 Cayman Bakery invoices numbers #997985, #997986 and #997987 entered
4 by the Defendant and amounting to \$16,340.00. He said each of those
5 amounts would alarm me.

6 *"It's an awful lot of products."*

7 138. It is clear from Mr. Mitchell's evidence and Mr. Foster's evidence that the
8 system, in Mr. Foster's words, "*had broken down dramatically*" and in fact
9 didn't operate effectively.

10 139. It is noted from the spreadsheets produced by Mr. Alistair Fletcher ("Mr.
11 Fletcher") of Foster's Food Fair that the for the first 3 or 4 months Mr.
12 Sinclair made all the deliveries and his invoices were always received by a
13 Foster's Receiving Clerk.

14 140. The first invoice where there is no Foster's Receiver is dated the 16th
15 December 2006, invoice #228664 for \$86.40 and issued by Racquel Bryan. It
16 is not until the 13th January 2007 that there is a delivery purportedly made by
17 the Defendant. The Defendant made 6 or 7 deliveries in January and
18 February, of which the highest is CI\$601.20. But the first time there is a
19 delivery with no Foster's Receiver and no Foster's Receiving Invoice is on
20 the 24th February 2007 in a delivery purportedly made by the Defendant.

21 141. The Court notes that the Defendant purportedly made 211 deliveries, but for
22 97 of those the system broke down completely and nobody from Foster's
23 Food Fair created a Foster's Receiving Invoice. When this is compared on

1 Mr. Fletcher's spreadsheet to the period when Cayman Bakery's Mr. Sinclair
2 made the deliveries, all his deliveries had Foster's Receiving Invoices
3 prepared by Foster's staff which accompanied the Cayman Bakery invoices.

4 142. The compelling inference is that the Defendant realized that the invoice
5 would be accepted by the Foster's accounting department without the
6 Foster's Receiving Invoice accompanying the Cayman Bakery invoice, and
7 that Foster's would pay out on the Cayman Bakery invoice alone.

8 143. Mr. Sinclair made 603 deliveries of products for Cayman Bakery for which
9 Foster's paid the sum of \$86,180.00, which is an average of \$142.92 per
10 delivery.

11 144. The Defendant made 211 deliveries of Cayman Bakery products for which
12 Foster's Food Fair paid \$292,716.00, which is an average of \$1,387.28 per
13 delivery.

14 145. A total of 954 Cayman Bakery deliveries were made to Foster's by Mr.
15 Sinclair, Mr. Brown and others, for which Foster's paid the far less amount
16 of \$98,000.10.

17 146. The evidence from several witnesses clearly reveals that the Foster's
18 employees trusted the Defendant to complete the invoice and ensure that a
19 Foster's Receiving Invoice was created to accompany the Cayman Bakery
20 invoice. It is quite clear from the evidence of all these witnesses that the
21 Cayman Bakery products were not checked against the Cayman Bakery
22 invoices.

- 1 a. From the 2nd March to the 7th April in 2007 the Defendant created 9
2 invoices for 7,194 Easter Buns at a price of \$24,074.70.
- 3 b. In 2008 the Defendant created 18 invoices from the 27th February to the
4 1st April, totaling 26,743 Easter Buns at a total cost to Foster's of
5 \$87,128.00.
- 6 c. On the 29th March 2008 alone the Defendant purportedly made 3
7 deliveries – invoices #997985, #997986 and #997987. The first and third
8 invoice had no Foster's Receiving Clerk identified and those two
9 invoices totalled 5,612 Easter Buns at a cost of \$14,293.00.

10 152. Mr. Morgan gave evidence that he did not receive the Easter Buns on
11 invoices #997985 and #997987.

12 153. Relating to the other invoice, #997986, Ms. Hughes was asked if she ever
13 received the amount reflected on the invoice in a delivery from Cayman
14 Bakery , she said,

15 *“Not that I can remember.”*

16 154. If that were not bad enough, the Defendant, on the 1st April 2008, one week
17 after Easter got a Cayman Bakery invoice #977227 in the sum of \$8,600.00.
18 Again, Mr. Morgan said he did not receive that amount, but the Cayman
19 Bakery invoice was submitted to Foster's accounts department and paid
20 without the Foster's Receiving Invoice accompanying it. I am satisfied
21 beyond all reasonable doubt that this is another example of how the
22 Defendant dishonestly obtained money transfer by deception.

- 1 155. In relation to the Easter Bun deliveries Mr. Thompson described them as
- 2 “...*wholly ridiculous.*”
- 3 156. Mr. Morgan’s evidence was that the usual level of an Easter Bun delivery
- 4 from Cayman Bakery would be somewhere in the region of 60 buns.
- 5 157. The Crown, through John Thistle (“Mr. Thistle”), has produced Exhibit JT1
- 6 – the total sales for Easter Buns for the entire period amounted to \$2,348.76,
- 7 rather than the Defendant’s figure of over \$130,000.00.
- 8 158. I accept the Crown’s submission that the Defendant became too greedy. The
- 9 Defendant produced false invoices for 33,937 Easter Buns at a total of
- 10 \$111,202.70 which monies Foster’s paid out. Yet, based on Foster’s internal
- 11 figures produced by Mr. Thistle on Exhibit JT1, the total Foster’s sales of
- 12 Easter Buns was \$2,348.76. Even allowing for the lowest level of markup of
- 13 26%, it can be seen that, on Easter Buns alone, the Defendant dishonestly
- 14 obtained money transfer to the value of over \$100,000.00 by falsely
- 15 representing the amount of Easter Buns delivered to Foster’s.
- 16 159. I find that the employees of Foster’s, including Mr. Morgan, had unwittingly
- 17 participated in the Defendant’s deception by processing the inflated Cayman
- 18 Bakery invoices to the Foster’s accounting department for payment.

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*DEFENDANT'S INTERVENTION
BETWEEN CAYMAN BAKERY'S ACCOUNTANT
AND FOSTER'S ACCOUNTANT*

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160. Mrs. Bush was employed as an accountant/bookkeeper by Cayman Bakery and paid \$1,000 per month.

161. In the early stages of the operation of Cayman Bakery the Defendant would provide Ms. Bush with copies of all the Cayman Bakery invoices setting out the items sold, at what price and in what quantities. The agreed system was that Mrs. Bush would input this information into her computer, and create a statement. For example the Cayman Bakery statement dated the 31st August 2006 has on every invoice, the Cayman Bakery products sold, the prices at which the products were sold and the quantity sold to Foster's Food Fair. Mrs. Bush would then give the Cayman Bakery statement to the Defendant, who would then deliver the statement to Foster's. At Foster's the statement would be checked by Ms. Solomon, now Mrs. Connor, and she would make sure that the Cayman Bakery invoice copies and the Foster's invoice copies matched the amounts on Mrs. Bush's Cayman Bakery statements. Once these were checked through they would be cleared for payment and a cheque issued by Foster's to Cayman Bakery. This cheque would be picked up by Cayman Bakery personnel, banked and the cheque stub and information would come back with the cheque to Mrs. Bush. This was a safe and proper bookkeeping system which served to protect both Cayman Bakery and Foster's.

162. Although there is no evidence that Foster's made any complaints regarding Mrs. Bush's statements, the Defendant alleged that Foster's made such a

1 complaint and consequently the Defendant stopped giving Mrs. Bush copies
2 of the invoices, and persuaded his stepdaughter, Racquel Bryan, to prepare a
3 handwritten statement from selected invoices.

4 163. The evidence shows that the Defendant stopped giving Foster's Mrs. Bush's
5 statements. Instead, Racquel Bryan prepared a handwritten statement of the
6 invoice copies, given to her by the Defendant, and that is the Cayman Bakery
7 statement that went to Foster's and on which basis Foster's did its
8 reconciliations and made its payments to Cayman Bakery. Racquel Bryan's
9 evidence was clear that she never entered any quantities or prices on the
10 Cayman Bakery invoices, although she admitted preparing the handwritten
11 statements as instructed by the Defendant.

12 164. The Defendant did not give the cheque stub or any official record of receipt
13 of the payment back to Mrs. Bush, but instead, provided Racquel Bryan with
14 a reduced amount to hand write into a payment schedule, which would then
15 be given Mrs. Bush.

16 165. By way of an example, in March 2008, it is known, based on the Foster's
17 spreadsheet prepared by Mr. Fletcher, that the total Cayman Bakery invoices
18 paid by Foster's for March 2008 totalled \$83,251.54. The Cayman Bakery
19 statement which was located at Foster's has the ticks and the Foster's
20 "PAID" stamp, which were all placed on the invoice by Mrs. Connor.

21 166. The statement prepared by Mrs. Bush for Cayman Bakery on the selected
22 information given to her by the Defendant had a total of \$25,224.03.

- 1 167. The statement Mrs. Bush prepared for March 2008 – Exhibit BB14 – has
2 total sales of \$20,000.00.
- 3 168. These Exhibits demonstrate how the Defendant seized control of the
4 statements, accounts and information passing from Cayman Bakery to
5 Foster’s and from Foster’s to Cayman Bakery.
- 6 169. The March cheque from Foster’s to Cayman Bakery was in excess of
7 \$90,000.00. Neither that cheque, nor the cheque stub ever got to Mrs. Bush
8 or Cayman Bakery. Mrs. Bush was provided with a handwritten schedule
9 prepared by Racquel Bryan on the instructions of the Defendant – found at
10 Exhibit BB1 – that is, instead of \$90,000.00, the payment on the handwritten
11 schedule refers to \$25,000.00 being paid by Foster’s to Cayman Bakery.
- 12 170. Based on Mrs. Bush’s evidence, Racquel Bryan’s evidence, and these
13 exhibits, this Court finds, beyond all reasonable doubt, that the Defendant
14 concealed the invoicing and the payment from Cayman Bakery’s own
15 bookkeeper and its majority shareholder. The Court further finds beyond all
16 reasonable doubt that the Defendant did this every month throughout 2007
17 and until May 2008.
- 18 171. Mr. Fletcher of Foster’s has provided the Court with Exhibit AF 1205 which
19 is the chart regarding Foster’s purchase of Cayman Bakery products, for
20 which figures were taken from the Cayman Bakery invoices and the sales of
21 Cayman Bakery products.

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Total	Month	\$ Purchases from Cayman Bakery	\$ Foster's Sales	\$ Difference
	August 06	3,786	2,154	836
	September 06	4,694	3,751	943
	October 06	5,139	3,915	1,224
	November 06	3,269	3,364	-96
	December 06	2,665	3,006	-340
	January 07	5,068	3,036	2,032
	February 07	5,676	3,127	2,549
	March 07	22,629	3,850	18,780
	April 07	15,990	3,677	12,313
	May 07	8,718	2,756	5,962
	June 07	11,577	4,137	7,440
	July 07	11,320	2,602	8,718
	August 07	16,299	5,230	11,069
	September 07	10,458	2,939	7,519
	October 07	13,136	2,301	10,835
	November 07	22,185	4,943	17,241
	December 07	22,368	2,475	19,893
	January 08	28,175	3,728	24,447
	February 08	35,339	3,270	32,068
	March 08	81,777	3,420	78,356
	April 08	38,435	3,086	35,349
	May 08	26893	3,519	23,374
	June 08	0	718	-718
Total		394,800	75,006	319,794

1

2 172. The Court notes that for the first six or seven months of Cayman Bakery's
3 operations, Cayman Bakery sales were between \$2,000.00 and \$5,000.00.
4 Then there was a sudden hike in March 2007 when the Defendant became
5 inexplicably involved in the deliveries to Foster's and made nine deliveries,
6 for which there was no corresponding Foster's Receiving Invoice.

7 173. Mr. Fletcher produced AF 1205, a chart, which I record below, showing the
8 cheques made out by Foster's to Cayman Bakery.

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Total	Date	Cheque #	\$ amount	Exhibit
	14 Sept 06	085350	5,252.00	AF1207
	13 October 06	085784	6,594.55	AF1208
	14 Nov 06	086202	7,626.95	AF1209
	14 Dec 06	086740	6,179.64	AF1210
	12 January 07	087111	5,092.60	AF1211
	15 February 07	087551	7,566.18	AF1212
	14 March 07	087881	8,440.25	AF1213
	16 April 07	088211	27,559.84	AF1214
	15 May 07	088673	21,589.83	AF1215
	15 June 07	089262	12,309.62	AF1216
	15 July 07	089726	15,705.02	AF1217
	14 August 07	090276	15,311.03	AF1218
	14 Sept 07	090817	22,416.60	AF1219
	16 October 07	091374	14,942.37	AF1220
	15 Nove 07	091894	20,241.87	AF1221
	17 Dec 07	092489	23,641.09	AF1222
	15 January 08	093027	29,366.93	AF1223
	15 February 08	093562	27,939.68	AF1224
	14 March 08	094087	43,438.13	AF1225
	11 April 08	094627	90,636.12	AF1226
	14 May 08	095273	43,216.78	AF1227
			\$374,067.08	

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2 174. Based on this incontrovertible evidence I am satisfied beyond all reasonable
3 doubt that the Defendant committed a massive fraud and is guilty of
4 dishonestly obtaining money transfer to the value of at least \$309,981.37 by
5 deception, namely, by falsely representing the quantity of goods supplied by
6 Cayman Bakery to Foster's Food Fair.

7

POLICE EVIDENCE

8 175. The evidence shows that DC Francella, the officer in charge of the
9 investigation, and DS Montague, went to the Defendant's premises on the 9th
10 July 2008 and executed a search warrant. At approximately 4:15 p.m., after
11 the search, DC Francella arrested the Defendant on suspicion of obtaining
12 property by deception; she read him his rights, cautioned him and took him
13 to the George Town police station to be processed.

- 1 176. On the 11th July 2008 DC Francella and DS Montague attended on the
2 Defendant at George Town police station. DC Francella read the Defendant
3 his rights and cautioned him again.
- 4 177. The Defendant was taken from the George Town Police Station to the
5 Financial Crimes Unit (FCU). At the beginning of the interview the
6 Defendant was given the opportunity to speak to his attorney. His attorney,
7 Scott Wilson, was called and the Defendant spoke with him by phone.
- 8 178. After the call the Defendant advised DC Francella and DS Montague that he
9 would be happy to proceed without an attorney, and that if he did not feel
10 comfortable with any questions he would just say, “*No comment.*”
- 11 179. On the 29th September 2008 the Defendant and his stepdaughter, Racquel
12 Bryan, attended the FCU to answer their bail.
- 13 180. On that occasion, initially, DC Francella spoke with Racquel Bryan and then,
14 subsequently, she spoke with the Defendant.
- 15 181. The Defence challenges the veracity of the of the police evidence taken on
16 this occasion. In addition, the Defence says that the Defendant was not
17 cautioned on the 29th September 2008 at the FCU. Defence counsel relies
18 upon the fact that DS Montague said that the police would give the usual
19 caution because it was the normal thing for the police to do – submitting that
20 DS Montague was not sure that the caution delivered.
- 21 182. Furthermore, Defence relies upon the fact that DC Francella said that she
22 wrote down the caution on an interview sheet, and yet that interview sheet
23 has not been produced at the trial. Accordingly, the Defence says that this

- 1 187. I have to ask myself the question: If I think that the confession was or might
2 have been obtained by something said by DC Francella, which was likely to
3 make it unreliable, I must disregard it, even if I think that it was, or may have
4 been true.
- 5 188. If, however, I am sure that the confession was not obtained as result of any
6 oppression or due to some inducement or improper statement to the
7 Defendant, and that it was true, I may take it into account when considering
8 my verdict.
- 9 189. The evidence before me is that the Defendant had been arrested on the 9th
10 July 2008. He was told of his rights and he was cautioned.
- 11 190. On the 11th July 2008, the Defendant was cautioned again and told of his
12 right to remain silent and of his right to have an attorney present. At the
13 interview on the 11th July 2008 I find that the Defendant spoke to his then
14 attorney, and after speaking with his attorney he said he was happy to
15 proceed with the interview, and if there were any question about which he
16 did not feel comfortable, he would just say “*No comment.*”
- 17 191. It is clear to this Court that the Defendant fully understood the nature of the
18 caution and his right to remain silent.
- 19 192. On the 29th September 2008 both the Defendant and his stepdaughter were
20 answering to their police bail. It would be quite apparent to the Defendant at
21 that time that both he and his stepdaughter could well be facing serious
22 charges relating to Cayman Bakery and Foster’s Food Fair.

1 rearranged the time for the interview. The Defendant was familiar with the
2 meaning of the caution, he was fully aware of his right to an attorney during
3 any interview with the investigating officers, and, he was fully aware of his
4 right to remain silent.

5 197. I am satisfied beyond all reasonable doubt that the statements he made to DC
6 Francella and DS Montague on the 29th September 2008 were not the product
7 of any threat, promise or inducement by them as persons in authority. I find
8 that the Defendant spoke voluntarily to the police officers in full knowledge
9 of what he was saying, understanding the nature of the caution and the
10 previous cautions that had been delivered to him. I find that the statements
11 the Defendant made on the 29th September 2008 had not been obtained by
12 any oppression or unfairness.

13 198. In his statement to DC Francella and DS Montague on the 29th September
14 2008 the Defendant explained that he had used fictitious names for a practice
15 that he called "kiting". He would write a cheque from the Cayman Bakery
16 account to someone whose name he made up. He would cash the cheque at
17 National Building Society then take the cash and go and deposit it into the
18 Cayman Bakery account at CNB. The Defendant reported that he got into
19 trouble for bringing so many thousands of dollars to CNB.

20 199. In this statement the Defendant told DC Francella and DS Montague that he
21 and Mr. Wright made the delivery on the 30th May 2008. He said they
22 stopped and packed the shelves as tight as they could and left bread in the
23 bread room. The Defendant said Mr. Morgan called him to take some of the

1 bread away, so they went back and took some of the bread away and gave
2 Mr. Morgan a credit note.

3 200. The Defendant told the police that neither Mr. Wright nor Mr. Morgan knew
4 the invoices were inflated. Moreover, the Defendant said Foster's never
5 received all the bread that he wrote on the invoices.

6 201. The Defendant said he never paid Mr. Wright or Mr. Morgan for inflated
7 invoices. The Defendant also said,

8 *“The other guys who signed for inflated invoices did not know they were*
9 *inflated either. They just didn't count the bread on their deliveries, but*
10 *they didn't know a crime was taking place.”*

11 The Defendant added that he did not want anyone else to get fired or be
12 charged as they did not know what was going on.

13 202. I find that, on the basis of the Defendant's confession to the police on the 29th
14 September 2008 that he admitted that he was responsible for the inflated
15 invoices and that he further admitted that Foster's never received all the
16 products that he wrote on the invoices.

17 203. I am satisfied beyond all reasonable doubt that the Defendant made this
18 admission and confessed, to DC Francella and DS Montague, that he was
19 solely responsible for inflating the invoices. I am also satisfied beyond all
20 reasonable doubt that the Defendant confessed to the officers that Foster's
21 never received all the bread that he wrote on the inflated invoices.

- 1 204. It is alleged that the Defendant lied to the police in saying that Mr. Wright
2 made the delivery on the 30th May 2008, and that Mr. Wright was responsible
3 for delivering the items on Cayman Bakery invoices **#826508 and #826509**.
- 4 205. The Crown submits that I am entitled to consider what it believes to be lies
5 made by the Defendant to support the case against the Defendant.
- 6 206. Accordingly, I must decide whether the Defendant did in fact deliberately tell
7 these lies. If I am not sure he did, I should ignore the matter.
- 8 207. If I am sure that he lied, I must remind myself that the mere fact that he told a
9 lie is not in itself evidence of guilt of the charges facing the Defendant. The
10 Defendant may lie for many reasons. They may possibly be innocent lies, in
11 the sense that they do not denote guilt, for example, lies to bolster a true
12 defence to protect somebody else or to conceal some disgraceful conduct,
13 other than the commission of the offence, or, indeed, out of panic, distress
14 and confusion.
- 15 208. If I think that there is or may be an innocent explanation for these lies, then I
16 should take no notice of them.
- 17 209. It is only if I am sure that he did not lie for an innocent reason that the
18 Defendant's lies can be regarded by me as evidence supporting the case for
19 the prosecution.
- 20 210. Based on the evidence before me I find that the Defendant did lie. He lied
21 because he had falsified invoices **#826508 and #826509**. He realized that
22 Foster's had discovered the protracted fraud and he tried to deflect the blame
23 for the falsifications and deception on to Mr. Wright.

1 was granted because the Defendant had told Mr. Lewis that the transaction
2 was one of urgency to acquire a generator in the hurricane season.

3 217. Mr. Bush's evidence is that the Defendant never discussed a loan extension
4 with him. Mr. Bush said he never received a copy of the Defendant's letter
5 dated the 6th August 2007 to CIDB.

6 218. Mr. Ebanks, a Justice of the Peace, said that the Defendant came to see him
7 on or about the 18th October 2007 and asked him to witness the Defendant's
8 signature and Mr. Bush's signature. Mr. Ebanks said that Mr. Bush wasn't
9 present, but he trusted the Defendant, who told him that it was Mr. Bush's
10 signature.

11 219. Accordingly, Mr. Ebanks witnessed Mr. Bush's signature, although Mr. Bush
12 was not present. Mr. Bush's signature was purportedly on the acceptance of
13 the loan, the irrevocable authority to deduct, and, the Unanimous Resolution
14 of the directors – all of which documents accompanied the loan. Mr.
15 Ebanks's evidence is that he would not have done this if he had not known
16 Mr. Bush and he had not trusted the representation that the Defendant made
17 to him. Mr. Ebanks said that the only reason he signed the documents was
18 because he trusted the Defendant. Mr. Ebanks accepted that he had made a
19 mistake and that he should never witness a signature without the person
20 making the signature being present in front of him at the time he makes his
21 signature.

22 220. On the 13th May 2009 Mr. Frank Norwitch, a handwriting expert, who
23 resided in Florida, received the loan documentation with the questioned

1 signatures of Mr. Bush, together with Mr. Bush's original standard
2 signatures.

3 221. Mr. Norwitch stated:

4 *“Although the questioned signatures bore some pictorial resemblance to*
5 *the standard signatures, the questioned signatures do not compare*
6 *favourably with the individual characteristics present in the standard*
7 *signatures and, in fact, display significant departures from the genuine*
8 *signatures. These dissimilarities are beyond the range of normal*
9 *variation found within the standard signatures and are indicative of and*
10 *consistent with simulation. Other indications normally associated with*
11 *simulated signatures such as tremor, hesitation and a slow drawn*
12 *appearance are present.”*

13 222. Mr. Norwitch concluded by stating:

14 *“In view of the above findings it is the opinion of this examiner that the*
15 *questioned Bernie Bush signatures on the documents are simulations and*
16 *as such are not genuine.”*

17 223. Mr. Andrew Thomas (“Mr. Thomas”), an accountant employed with CIDB,
18 gave his statement on the 21st August 2003. He said that he dealt with the
19 Defendant in relation to the request for the additional \$27,000.00 for the
20 purchase of a heavy-duty generator. He said he only ever dealt with the
21 Defendant in relation to this loan.

22 224. Mr. Bush said he knew nothing about any additional loan on his house until
23 one day somebody from CIDB called him to say *“the cheque is ready.”* Mr.
24 Bush said he asked,

25 *“What cheque?”*

1 and the reply was that there was a cheque for \$27,000.00. Mr. Bush said he
2 told the lady at the bank that he neither requested the funds nor signed any
3 application. Mr. Bernie Bush then called the Defendant, and the Defendant
4 said that there had been a

5 *“mix up”.*

6 Mr. Bush recalled discussing the matter with the Defendant and the
7 Defendant said,

8 *“Everything’s okay.”*

9 Mr. Bush said,

10 *“I didn’t sign for anything and I knew there was no cheque for me.”*

11 225. Mr. Bush confirmed that he never discussed increasing the loan by
12 \$27,000.00, he never signed any documentation or the documentation on the
13 purported application for the extra \$27,000.00, he did not sign the
14 irrevocable authority to deduct, nor did he sign the Unanimous Resolution.
15 Mr. Bush said he never discussed any loan with the Defendant and he never
16 saw or signed any documentation in relation to any loan. I entirely accept Mr.
17 Bush’s evidence in this regard.

18 226. Based on the evidence of the employees of CIDB, the JP, Mr. Ebanks, the
19 document examiner, Mr. Norwitch, and the evidence of Mr. Bush, I am
20 satisfied beyond all reasonable doubt that the Defendant is guilty of making a
21 document without authority contrary to s.293 of the Penal Code, in that the
22 Defendant, on the 18th October 2007, with intent to defraud, and without

1 lawful authority, did sign a document, namely, a CIDB loan application in
2 the name of Bernie Alfredo Bush.

3 227. Accordingly, I find the Defendant guilty on Counts 1 and 5.

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7 **Dated this the 3rd April 2012**

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11 **Honourable Mr. Justice Charles Quin**
12 **Judge of the Grand Court**

