

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

3 **INDICTMENT NO: 15/10**

4
5 **THE QUEEN**

6
7 **V**

8
9 **DAVE BRYAN**



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12 **Appearances:**

**Mr. Michael Snape on behalf of the
DPP for the Crown**

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15 **Mrs. Margeta Facey-Clarke for the
Defendant**

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18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Heard:**

20 **21st February to 15th March (Trial);**
21 **3rd April (Delivery Judgment and**
22 **Sentencing Submissions); 17th April**
2012 (Sentencing submissions)

23
24 **SENTENCE RULING**
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27 1. After a three-week trial in the Grand Court the Defendant was found guilty of
28 Count 1 and Count 5 on Indictment Number 15 of 2010.

29 2. On Count 1, the Defendant was found guilty of obtaining money orders by
30 deception contrary to s.251 of the Penal Code. The particulars of this offence
31 were that the Defendant, between the 1st January 2007 and the 31st May 2008
32 did dishonestly obtain money transfer to the value of CI\$309,981.37 from
33 Foster's Food Fair by deception, namely, by falsely representing the quantity
34 of goods supplied by Cayman Bakery to Foster's Food Fair.

1 3. The Defendant was also found guilty on Count 5, namely, making a
2 document without authority contrary to s.293 of the Penal Code, in that he,
3 on the 18th October 2007, with intent to defraud or deceive, and without
4 lawful authority, did sign a document, namely, a Cayman Islands
5 Development Bank (CIDB) loan application in the name of Bernie Alfredo
6 Bush, the Defendant's business partner.

7 4. The facts relating to Counts 1 and 5 are fully set out in my Judgment dated
8 the 3rd April 2012.

9 5. The Defendant pleaded guilty to Count 2, which was a conspiracy to defraud,
10 contrary to the common law. The particulars of that offence are that the
11 Defendant, David Bryan, between the 14th August 2006 and the 2nd July 2008
12 conspired to defraud the National Building Society (NBS) by dishonestly
13 causing the NBS to advance funds on cheques drawn on Cayman National
14 Bank (CNB) account number #01110302 in the name of Cayman Bakery
15 Limited.

16 6. In relation to Count 2, the Defendant held personal accounts at NBS. He
17 would write a cheque from the Cayman Bakery account to himself or to his
18 stepdaughter or to a fictitious person. An example of this is, on one occasion,
19 Mr. Bernie Bush signed a cheque in favour of Sagicor. The Defendant altered
20 the cheque to read "Timothy Sagicorini", faked an endorsement on the
21 cheque and then cashed the cheque at NBS. This is how the Defendant's
22 scheme would operate, in that, fraudulent Cayman Bakery cheques would be
23 cashed at NBS, and then the Defendant would deposit the cash he received
24 back into the Cayman Bakery account.

- 1 7. NBS allowed the Defendant to do this because he had built up trust with
2 NBS as a customer.
- 3 8. However, problems arose in January 2008 when CNB did not honour seven
4 cheques drawn on the Cayman Bakery account which were for a total of
5 CI\$100,000.00, and which had been deposited to the Defendant's savings
6 account. These cheques had been presented for payment by RBC, the
7 clearing bank of NBS. Despite the value of the cheques involved, NBS had
8 given the Defendant immediate value for the cheques. The Defendant had
9 immediately withdrawn \$87,000.00 from his account and deposited it back
10 into the Cayman Bakery account. NBS was unable to then debit the cheques
11 from the Defendant's account, as the Cayman Bakery account held
12 insufficient funds (otherwise, the cheques would not have been honoured in
13 the first place). Accordingly, NBS found itself in the position of having
14 advanced the funds to the Defendant until he was in a position to repay them.
- 15 9. Over the course of the next three months the Defendant was able to withdraw
16 funds from the Cayman Bakery account to cover the debit in his NBS
17 accounts.
- 18 10. This activity, which the Defendant said was 'kiting', coincided with an
19 increase in fraudulent invoicing to Foster's Food Fair by the Defendant, and
20 an increase in cash to the Cayman Bakery account.
- 21 11. In summary, the Crown has submitted that between the 15th August 2006 and
22 the 7th January 2008 the Defendant's cheque activity between NBS and CNB
23 totalled CI\$1,128,250.93. These payments were effectively circular and
24 many represented cash cheques that were false on their face.

1 12. On the analysis of the forensic accountant, Special Constable Richard Harris,
2 approximately CI\$172,408.00 remained unaccounted for from the Cayman
3 Bakery account transactions. An amount of CI\$59,431.00 was classed by Mr.
4 Harris as being most likely directed towards the Defendant's personal use.
5 However, Mr. Harris had to accept that there is no evidence to demonstrate
6 or prove what happened to the balance of the funds that remain unaccounted
7 for.

8 13. Counsel for the Defendant described her client as a man of good character.
9 He is 47 years of age with no previous convictions. He is the father of three
10 children of ages 24, 20 and 4 years old. The Defendant's marriage ended
11 shortly after his arrest in December 2010. As the Defendant was the primary
12 provider for his family, his stepdaughter, Racquel Bryan, had to discontinue
13 her tertiary level academic studies, and his son was unable to meet his
14 graduation fees.

15 14. Defence counsel told the Court that the Defendant has suffered "total
16 embarrassment" and his future employment opportunities have been
17 seriously and detrimentally affected. Furthermore, Defence counsel submits
18 that the Defendant's application for Permanent Residence in the Cayman
19 Islands now appears to be doomed.

20 15. The leading case for offences where there has been a breach of trust is the
21 English Court of Appeal decision of *R v. John Barrick* (1985) 81 Cr. App.
22 R. at page 78 and the Judgment of the then Lord Chief Justice Lord Lane.
23 Lord Lane's Judgment was applied and recorded extensively in the Cayman

1 Islands Court of Appeal decision of **R v. Fyne** 2007 CILR 177. Lord Lane
2 stated at page 81:

3 *“The type of case with which we are concerned is where a person in a*
4 *position of trust, for example, an accountant, solicitor, bank employee or*
5 *postman has used that privileged and trusted position to defraud his*
6 *partners or clients or employers or the general public of sizeable sums of*
7 *money. He will usually, as in this case, be a person of hitherto*
8 *impeccable character. It is practically certain, again as in this case, that*
9 *he will never offend again and in the nature of things, he will never*
10 *again in his life be able to secure similar employment with all that that*
11 *means in the shape of disgrace for himself and hardship for himself and*
12 *also his family.”*

13
14 16. These words could have been written for this case. The Cayman Islands
15 Court of Appeal has adopted the guidelines set out by Lord Lane in **R v.**
16 **John Barrick** and in particular reminds the Court that it:

17 *“...should have regard to the following matters – (i) the quality and*
18 *degree of trust reposed in the offender including his rank; (ii) the period*
19 *over which the fraud or the thefts had been perpetrated; (iii) the use to*
20 *which the money or property dishonestly taken was put; (iv) the effect*
21 *upon the victim; (v) the impact of the offences on the public and public*
22 *confidence; (vi) the effect upon fellow employees or partners; (vii) the*
23 *effect on the offender himself; (viii) his own history; (ix) those matters of*
24 *mitigation special to himself such as illness; being placed under great*
25 *strain by excessive responsibility or the like; where, as happens, there*
26 *has been a long delay, say over two years, between his being confronted*
27 *with his dishonesty by his professional body or the police and the start of*
28 *his trial; ...”*

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30 17. Having heard counsel on behalf of the Defendant I am compelled to state that
31 there are very few mitigating features aside from the Defendant’s previous
32 good character, and, regrettably, there are some serious aggravating features.
33 The pre-meditation, the planning – relating to invoices, deliveries and other
34 matters – as well as the protracted nature of the Defendant’s criminal
35 activity, all compose a shocking picture of single-handed deception.

1 18. The Defendant perpetrated this deception and fraud for over 12 months. He
2 saw the opportunity and he callously used many people – with no thought to
3 the possible consequences of his actions on their lives – in order to obtain the
4 inflated money transfers from Foster’s Food Fair.

5 19. Defence counsel submits that the Court should consider the fact that the
6 Defendant went about this single-handedly, and that there is no evidence that
7 he induced anyone to knowingly participate in his illegal activities.

8 20. This, in my view, provides no relief or mitigation. One only has to look at the
9 effect his criminal conduct has had on his former employees and his business
10 partner to realize that these elements, to the contrary, demonstrate a callous
11 disregard for the lives of people with whom this Defendant worked, and who,
12 most importantly, reposed trust in him.

13 21. First, this callous disregard for others included his own stepdaughter who
14 now, as told to the Court by Defence counsel, is suffering the consequences
15 of her stepfather’s thoughtlessness.

16 22. There is evidence that the Defendant involved his stepdaughter in the writing
17 of statements for the Cayman Bakery bookkeeper, Mrs. Bush, thereby
18 concealing the true picture of the amounts he was receiving from Foster’s,
19 from Mrs. Bush and his Caymanian business partner, Mr. Bush, and, at the
20 same time, co-opting the unwitting participation of his stepdaughter in this
21 scheme.

22 23. Secondly, the Defendant prevailed upon the good nature of several
23 employees, and long-term employees of Foster’s Food Fair, who then

1 unwittingly participated in the Defendant's deception by processing the
2 inflated Cayman Bakery invoices to the Foster's accounting department for
3 payment.

4 24. On the 30th and 31st May 2008 when Foster's Food Fair stumbled upon this
5 deception the Defendant immediately tried to blame a Cayman Bakery
6 employee who was a stand-in driver, and who had been on the job for only
7 one week. In order to conceal his own culpability the Defendant cynically
8 went through the charade of taking legal advice to support his dismissal of
9 the stand-in driver, who was subsequently arrested and detained. This
10 employee was ultimately deported from the Cayman Islands. It goes without
11 saying that this employee suffered significant mental anguish after coming to
12 the Cayman Islands to take up fulltime employment to support himself and
13 his family.

14 25. Thirdly, the Defendant's conduct caused his business partner, Mr. Bush,
15 great anguish and upset, and he had to close down Cayman Bakery, which
16 meant the loss of employment for several employees. Additionally, there was
17 the resulting damage sustained by Mr. Bush, who now had his reputation
18 sullied and had to struggle for many months to avoid bankruptcy.

19 26. Fourthly, as a direct result of the Defendant's conduct, a cloud of suspicion
20 was cast over a long-term employee of Foster's Food Fair, who ultimately
21 also had his employment with Foster's terminated.

22 27. Accordingly, the Defendant's conduct has caused untold anguish and distress
23 for many persons and their families, and it is hard to imagine a more cynical
24 and prolonged course of dishonest conduct.

1 28. The Court of Appeal in *R v. John Barrick* stated that the Court should pass a
2 sufficiently substantial term of imprisonment to publicly mark the gravity of
3 the offence. In the UK where cases involve sums between £10,000.00 and
4 £50,000.00 the term of imprisonment would range between two and three
5 years. Where greater sums are involved – over £100,000.00 – then a term of
6 3 ½ to 4 ½ years of imprisonment would be justified. These guidelines were
7 followed by the Cayman Islands Court of Appeal in *R v. Fyne*, who also
8 added that:

9 *“The length of imprisonment will vary in each case depending on the*
10 *mitigating and aggravating factors. In light of the economy of the*
11 *Cayman Islands the sentence imposed by the Court in cases of theft*
12 *involving breach of trust should be one which would act as an effective*
13 *deterrent.”*

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15 29. In light of the very significant aggravating features of this case I impose a
16 sentence of five (5) years imprisonment.

17 30. The Defendant pleaded not guilty to Count 5, namely, making a document
18 without authority. The Defendant, without discussing the matter with his
19 partner, Mr. Bush, or without seeking his approval, tricked personnel in the
20 CIDB and the Justice of Peace to prepare documentation for a loan without
21 his partner’s knowledge or approval. After the trial the Defendant was found
22 guilty on this Count as well.

23 31. In this case Cayman Bakery was started by Mr. Bush and for his partner to
24 try and increase the mortgage on Mr. Bush’s family home by a sum of
25 \$27,000.00, without Mr. Bush’s knowledge or consent, would seem to be the

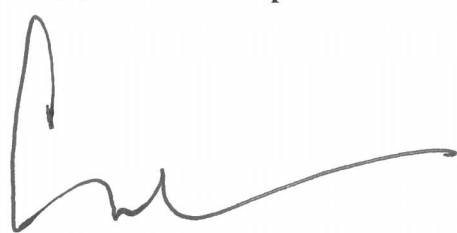
1 greatest treachery. Accordingly, I impose a sentence of twelve (12) months to
2 run consecutively to the five years on Count 1.

3 32. In relation to Count 2 I have to accept the Crown's submission that it has
4 been difficult to quantify the sums in relation to exactly how much money
5 has been lost and, accordingly, I impose a sentence of twelve (12) months.
6 However, I do take into account the total figure, and the fact that the
7 Defendant pleaded guilty to Count 2, and, accordingly, I order that these 12
8 months are to run concurrently with the five years on Count 1 and the 12
9 months on Count 5, with time spent in custody is to be taken into account.

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12 **Dated this the 19th April 2012**

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17 **Honourable Mr. Justice Charles Quin**
18 **Judge of the Grand Court**