

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

IND. NO. 35 OF 2002

18-03-03



REGINA

VS

DAMEAN SEYMOUR

Reasons for Judgment on the admissibility
of evidence delivered by The Honourable
Mr. Justice Edwards on March 18, 2003
in George Town, Grand Cayman.

CHARGE: MURDER

APPEARANCES:

On behalf of the Crown:

MR. A. MON-DESIR
MR. S. WILSON

On behalf of the Defendant:

MR. C. MISKIN, QC instructed by
MR. L. AIOLFI

(REASONS FOR JUDGMENT - ADMISSIBILITY OF EVIDENCE)

1 REASONS FOR JUDGMENT

2 RULING ON ADMISSIBILITY OF EVIDENCE

3

4 THE COURT: Last week I ruled the Crown
5 could seek to introduce computer-generated cell
6 phone records by meeting the requirements of
7 section 35 of the *Evidence Law*, and perhaps
8 other requirements necessitated by the burden
9 of proof in a criminal case.

10 Yesterday I granted the Crown leave to
11 seek to introduce such evidence as required
12 under the ruling of Mr. Justice Sanderson of
13 January 10, 2002.

14 Admissibility rests essentially on the
15 reliability of the computer which generated the
16 records as indicated by section 35(1)(c) of the
17 *Evidence Law*.

18 Section 35(2) of the *Evidence Law* provides
19 for a certificate as a means of demonstrating
20 reliability and/or authenticity of computer
21 generated records.

22 In this case, reliability was sought to be
23 demonstrated by the expert evidence of Rudolph
24 Myles, the Cable & Wireless investigations
25 manager for Cayman. A voir dire was held to

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1 consider if the evidence of Mr. Myles met the
2 section 35 criteria for admissibility of
3 computer records.

4 In short, the issue is, does Mr. Myles'
5 evidence demonstrate that the criteria for
6 admissibility under section 35 are met by the
7 records sought to be introduced into evidence,
8 and if so, is section 35 adequate in a criminal
9 case?

10 Mr. Myles' evidence includes two
11 statements dated June 25th, 2002 and March 12th
12 2003 and his testimony on the voir dire.

13 I reject the defence submission that
14 Mr. Myles could only certify or state that the
15 computer on his own desk from which he printed
16 the records in question was "operating
17 properly" in the words of section 35(1)(c).

18 The definition of computer in section 2 of
19 the **Evidence Law** is as follows: "means any
20 device or combination of devices used together
21 or in succession for the purpose of storing or
22 processing information".

23 Mr. Myles' testimony described how call
24 data were recorded from the inception of a call
25 by switch computers, then transferred to

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1 storage in other computers, and how reports
2 were generated by still other computers. All
3 these steps were automatic, in the sense that
4 the data were transferred from one computer to
5 another and stored and processed in each
6 without human input, except as to produce the
7 paper version of the report.

8 I am satisfied that the computers working
9 in succession constituted a "computer" as
10 defined by section 2 of the *Evidence Law*.

11 While Mr. Myles conceded that no one
12 person could certify that the whole of the
13 telecommunications system was working properly,
14 he said that if the system was not operating
15 properly there were alarms from various parts,
16 (switches, routers, etc.) on the local area
17 network which would alert Cable & Wireless to
18 the malfunction. He also stated that had there
19 been any reason to suspect a malfunction he, in
20 his position, would have been advised. He also
21 testified that his own desk top was part of the
22 local area network and the report he produced
23 from it did not indicate there was any problem
24 with the entire system made up of the various
25 computers which record and process the call

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1 data.

2 I am satisfied that Mr. Myles' evidence
3 demonstrates that the computer; that is, those
4 devices which operated in succession to produce
5 the records, was working properly. In other
6 words, the requirements of section 35 are met.

7 Defence counsel suggested that even if
8 that were so, there are the other criteria
9 which should be imposed because of the fact
10 that Cable & Wireless was not regulated and had
11 to meet no standard of accuracy but its own
12 self-imposed standard, citing as well the
13 absence of any audit trail or protocol for
14 producing the reports in question.

15 Additional criteria would go to the
16 question of what "operating properly" in
17 section 35 means. Implicitly, Mr. Myles'
18 evidence is that "operating properly" means
19 producing data which Cable & Wireless regards
20 as sufficiently reliable for its own purposes.
21 Cable & Wireless is not required to produce
22 data to meet any higher standard of
23 reliability.

24 The law, even the criminal law, does not
25 require that any record, computer generated

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1 indeed, any other evidence for that matter,
2 must be infallibly accurate in order to be
3 admitted.

4 I find that the computer-generated
5 telephone records are admissible as being
6 produced by a computer that was "operating
7 properly" in the sense that it produced records
8 of sufficient reliability to meet
9 Cable & Wireless' own standards.

10 As I said, Cable & Wireless is required to
11 meet no other standard. There is no evidence
12 that Cable & Wireless' equipment was
13 substandard by world standards.

14 Mr. Myles' attendance for
15 cross-examination provided the defence with the
16 opportunity to undermine the Cable & Wireless
17 standard of accuracy as inadequate for purposes
18 of proof in a criminal case.

19 For example, two possible errors an
20 apparent missing 911 call and the fact that
21 cell and landline call durations were not
22 recorded as the same were satisfactorily
23 explained by Mr. Myles.

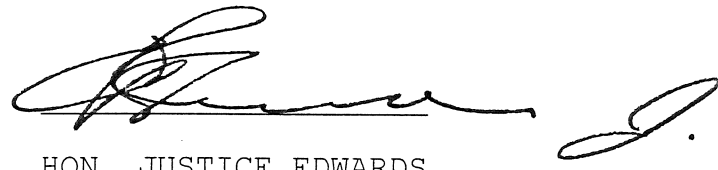
24 If the defence seeks to call its own
25 expert to undermine the Cable & Wireless

(REASONS FOR JUDGMENT - ADMISSIBILITY OF EVIDENCE)

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standard of record accuracy or reliability, the
Crown has said it will not oppose an
adjournment.

That safeguard in my view assures the
fairness of the trial process. In the result,
I have determined that the records in question
are admissible.



HON. JUSTICE EDWARDS

