



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

3 **Neutral Citation Number: [2026] CIGC (Crim) 6**
4 **INDICTMENT NO: 73 of 2025**

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8 **R**

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10 **V.**

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16 **Appearances: Mr. Andre Wedderburn, Crown Counsel, Office of the Director of Public**
17 **Prosecutions for the Prosecution**

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19 **Mr. Oliver Grimwood, Samson Law for the Defence**
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22 **Before: The Hon. Justice Cheryll Richards KC**
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24 **Submissions Heard: 23rd February 2026**
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26 **Ruling: 24th February 2026**
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31 ***Criminal Law – Section 40 of the Evidence Act (2021 Revision); Application to Exclude Identification***
32 ***Evidence on the basis of breaches of Code of Practice.***
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RULING

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3 1. This is an application to exclude the identification evidence of Acting Police Sergeant Donville
4 Myers pursuant to section 40 of the *Evidence Act* (2021 Revision). This is made on the basis
5 that to admit it would operate unfairly against the defendant.
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- 7 2. The primary ground for the application is said to be the failure of Sergeant Myers to make an
8 adequate contemporaneous note at the time of his viewing of the Closed Circuit Television,
9 (“CCTV”) footage on the 6th of January 2025 and to complete the required MG21 form with
10 details as to how and by what means the identification was made and the circumstances of it.
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- 12 3. Counsel relies on Code D of the *Police and Criminal Evidence Act* 1984 of England and
13 Wales, as referred to by the Cayman Islands Court of Appeal in the case of *Gary Oliver v R*¹.
14 Counsel also notes that the Royal Cayman Islands Police Service Standing Order C4 on
15 identification of suspects instructs that police officers must utilise the form MG21 when
16 viewing and identifying suspects by CCTV, digital images and/or photographs.
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- 18 4. Counsel submits that the witness Sergeant Myers, having viewed the CCTV footage firstly on
19 the 6th of January 2025, it was not until in a further witness statement on the 11th of January
20 2025 that he expressed confidence as to the identification. Subsequently, on the MG21 form,
21 which was completed on the 20th of February 2025, he gave additional details and for the first
22 time referred to the slim face of the defendant. Counsel submits that there is a slow creep of
23 confirmation and that this is against the background of a lack of substantial detail as to how the
24 identification is made.
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- 26 5. Counsel submits also that we do not have clear footage of the individual's face, and the evidence
27 as to clothing is fairly generic. There is no DNA evidence or fingerprint evidence. In other
28 words, there is nothing to support the identification purportedly made by the Officer. Counsel
29 submits that the CCTV footage upon which the identification is based is not capable of
30 providing a sound basis for an independent assessment by a jury and that the jury will not have
31 an objective means of testing the evidence. Counsel submits that all these circumstances must

¹ [2018] (2) CILR 308

1 inevitably lead to the conclusion that the evidence ought to be excluded because it would be
2 unfair to admit it.

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4 6. A *voire dire* was conducted, and the Court heard evidence from Sergeant Myers and was
5 provided with the three clips referenced by him. The Officer explained that when he viewed
6 the footage on the 6th of January 2025, he viewed it on one occasion. He was in the middle of
7 a shift. The station was short-staffed, and he could not view it more than once. He made notes
8 on a notepad, which notes have been produced.

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10 7. The note in reference to Clip 3 says in part, “*appeared to be JE from John Gray, knows him,*
11 *covers face with small part.*” With reference to Clip 2 the note says in part “*walk and holding*
12 *crotch similar walk to JE*”.

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14 8. The Officer explained that he next viewed the footage on the 11th of January because, in
15 between the 6th and 11th January, he was on the usual four-day leave. He said that in the interim,
16 he did not discuss the videos with anyone. On the 11th of January, he viewed each clip twice.
17 He said that, having viewed them, he was confident that it was Mr. E, and he immediately wrote
18 a statement which he sent to Officer Mena who had circulated the clips. In respect of both the
19 4th and 11th of January, he said that he had viewed the footage by himself with no one else
20 present. He said that he refreshed his memory from a notepad that he had from 2022 for the
21 correct name of Mr. E. The first name was “K” and not “J”. That was the only thing that he
22 checked. He said that he had an interaction with Mr. E in respect of a matter and had been with
23 him for some two to three hours in December 2022. He explained that the MG 21 form came
24 about because he had been told subsequently by Sgt. Ennis, that one was required to be filled
25 out. He had not done an identification procedure previously.

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27 9. I have considered the submissions of Counsel and in approaching this matter I am mindful of
28 the principles espoused in the case of *Gary Oliver* and also in the cases of:

- 29 • R v Billal Lariba²
- 30 • R v Liban Yaryare³
- 31 • R v William Bogie⁴



² [2015] EWCA Crim 478

³ [2020] EWCA Crim 1314

⁴ [2023] EWCA Crim 1280



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I have provided copies of these cases to Counsel, and they have been afforded the opportunity to make submissions.

10. The principles to be derived from these cases may be summarised as follows. A failure to follow the relevant provisions of Code D and to keep contemporaneous records is a factor which may impact upon the fairness and thus the admissibility of recognition evidence. A trial judge must review the particular circumstances of the case with care in order to determine whether, in the case at hand, the failure is such that the evidence ought to be excluded.

11. A Court should consider the extent and significance of any breaches, and any consequential unfairness. The authorities identify two notable strands. On the one hand are those cases where no contemporaneous records are kept, and the evidence of recognition is poor, and on the other, cases where, despite a failure to follow the Code, there is a detailed explanation given for the basis of the recognition. In the case of *Yaryare* the Court said this: -

“On the other hand, in cases such as *Chaney* and *Lariba*, notwithstanding the failure to apply Code D (including in *Chaney* promptings by other officers that the defendant may be in the stills or CCTV footage), if a detailed explanation is given of the basis for the recognition, particularly when the jury is in a position to view the relevant material itself, it may – depending always on other factors – be fair to admit the recognition evidence.”

12. In the case of *Lariba*, the Appellate Court considered the quality of the CCTV images and noted that there was one particular frame at which the CCTV recording could be paused to reveal a frontal image of the suspect from above in sufficient clarity to form the basis for facial recognition. The Court concluded that while the scope for recognition was reduced by the limited facial view of the suspect, it was not so far reduced as to be inadequate for consideration by a jury properly directed.

13. I take it from this that what is required is a qualitative assessment of the material in each case, and note that the Court also said this: -

“Once the judge concluded that the images were of sufficient quality to permit the evidence to be given, it remained the task of the jury to assess whether they could be sure that the



1 recognition based upon it was reliable. The advantage that a jury has in a case of
2 recognition from a scene of crime image is that they can see exactly what the witness saw
3 and the image is permanent. That is not the position when there is no photographic record
4 and the jury is considering only the quality of identification evidence given by an eye-
5 witness to an ephemeral scene. In our judgment, these images were of sufficient quality to
6 enable the jury to assess whether a recognition made from them was one on which they
7 could rely even though they were not of sufficient quality to permit an identification of
8 their own.”
9

10 14. In *Bogie* there were said to be multiple and significant breaches of Code D. The video used to
11 make the identification had been lost, only stills were available. The officers had failed to make
12 contemporaneous notes and had communicated with each other before one officer had made an
13 identification. In refusing an appeal, the appellate Court said that, notwithstanding the absence
14 of contemporaneous notes, there had been evidence on the *voire dire* explaining the reasons
15 which led them to recognise the appellant.
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17 15. Counsel for the defence submits that the circumstances of the instant case are distinguishable.
18 There is no detailed explanation in this case as to the features upon which identification is
19 based. Short clips were viewed rather than hours of CCTV footage. The clips themselves are
20 not such as to show features from which an identification can be made. The level of familiarity
21 with the defendant over the years is limited in nature.
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23 16. Counsel notes that the requirement in the RCIPS Standing Order is mandatory that an officer
24 must utilise the form MG21 when viewing and identifying suspects via CCTV images.
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26 17. Counsel for the prosecution submits that there is a sufficiency of material from the clips, the
27 contemporaneous notes of the Officer, and the Officer’s evidence that it is not unfair to leave
28 the recognition evidence to the Jury.
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30 18. Having considered all the evidence and submissions, these are my conclusions on this
31 application.
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33 19. I have had the opportunity to view the clips used by Sergeant Myers to make the identification.
34 I am satisfied having viewed them, that with respect to Clip 2, it is open to the viewer to say



1 that the person shown therein walks while holding his crotch. I have looked at CUP 3, and I am
2 of the view that it is of sufficient quality in terms of where the face of the person can be seen
3 for a Jury to make an assessment as to whether somebody who knows that person can properly
4 recognise that person. In summary, it is of sufficient quality that a jury would be able to assess
5 for themselves the reliability of the identification being made. A large portion of the face can
6 be seen. It is a weakness that the hair of the person partially covers the sides of the face, but
7 this is a weakness which can be pointed out to the jury.

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9 20. On the evidence given on the *voire dire*, I am satisfied that the circumstances are not such as
10 to suggest collusion or influence to an extent that the evidence should be excluded at this stage.

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12 21. Sergeant Myers gave a sequence of events and explanations which can properly be left to the
13 jury for its the consideration. In particular, the progression from the 4th to the 11th January
14 2025. He also gives details of how well he knows the defendant.

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16 22. This is a case where there are identified weaknesses and a failure to follow the safeguards to
17 the letter, for example, not immediately completing an MG21 form. This is an aspect which
18 can be pointed out to the jury, and they can properly be directed with appropriate directions
19 crafted with the assistance of Counsel.

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21 23. Importantly, material in the form of contemporaneous notes made on the first viewing on the
22 6th January 2025 and a witness statement made immediately on the two further viewings on the
23 11th of January 2025 is available. This can be robustly tested in cross-examination.

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25 24. The jury's attention can be drawn to the appropriate question, which is whether the
26 identification is accurate and reliable, and they will, of course, be given the usual warnings.
27 Overall, the challenge in this case, which I have considered with some care, is as to the quality
28 of the identification and recognition evidence against a background of procedural failures. I do
29 not find the circumstances of the recognition to be of such poor quality, and the failures to
30 follow the Police Standing Order C4 and the Code D safeguards to be so extensive and
31 significant that it would be unfair to admit this evidence.

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33 25. My view is that, given the material available, the explanations given by the Office on the *voire*
34 *dire*, the CCTV footage itself from which the identification is made, that this is properly a
35 matter for the jury at this stage, and I so rule.

1 **POSTSCRIPT**

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3 26. This ruling has been redacted to remove the defendant's full name; the case having been left to
4 the jury, which rendered a verdict of acquittal upon its conclusion.

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6 **Dated this the 24th February 2026**

A handwritten signature in blue ink, consisting of a series of connected, fluid strokes that form a stylized, cursive representation of a name.

7

8 **The Hon. Justice Cheryll Richards KC**
9 **Judge of the Grand Court**