



**Neutral Citation No: [2025] CIGC (Crim) 26**

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

**IND 0087 of 2023**

**THE CROWN  
V  
JAMES PATTERSON EBANKS**

Coram: Hon. Justice Marlene I. Carter  
Appearances: Ms. Toyin Salako, Assistant Director of Public Prosecutions for the Crown  
Mr. Oliver Grimwood of Samson Law, for the Defendant  
Heard: 14 May 2025  
Ruling: 15 July 2025

**Headnote**

*Criminal Law-Evidence Act, Section 40 – application to exclude ABE interview of complainant whether admission if interview would operate unfairly against the defendant*

**RULING**

1. The application before the court is an application to exclude the ABE interview of Mr. James Orrin Ebanks [“the complainant”] recorded on 30 November 2021. The application is made pursuant to section 40 of the Evidence Act (2021 Revision). The admissibility of the interview is challenged on a number of grounds.



## **Background**

2. This is a matter in which the defendant faces two counts of theft. Briefly, the Crown's case is that the complainant, the father of the defendant, held a bank account with CIBC First Caribbean Bank. On 4 September 2013, the defendant was added to this account making the defendant and the complainant joint-account holders. On 29 May 2017 there was a withdrawal from that joint account by the defendant in the amount of \$190,008.25. On 11 January 2021 there was a further internal transfer from the joint account to one held by the defendant in the amount of \$14,000.
3. It is the Crown's case that the defendant had only been added to the joint account by the complainant to facilitate the payment of bills. When the complainant attended at the bank in February 2021 to request the removal of the defendant's name from the joint account, he learnt that the amount standing to the joint account was only \$17,000.
4. It is accepted that the ABE interview is the Crown's only evidence going towards the intention of the complainant regarding the monies standing to that joint account. Therefore, the account in the interview is the only evidence of the allegation that the withdrawals on the 29 May 2017 and 11 January 2021 were not authorized by the complainant.
5. The ABE interview was conducted on the 30 November 2021 by two officers of the RCIPS, constables Murray and Mencer.

## **The Grounds of the application**

6. The grounds set out in the submissions of counsel for the defendant refer to (i) the expert evidence of Doctor Lockhart; (ii) the conduct of the police officers who conducted the interview of the complainant; (iii) the presence and involvement of a family member during the course of the ABE interview; and (iv) related civil proceedings during the course of which evidence was presented which appears to indicate a contrary narrative to that presented by the complainant during the course of the ABE interview.

### *Ground 1*

7. Counsel referred to various aspects of the ABE interview highlighted by Dr. Lockhart in his evidence before the court. I reproduce those relevant aspects of the Doctor's Report:



*“Mr. Orrin Ebanks was demonstrably confused:*

- a) He failed to recall that he worked for the government for several decades (instead believing he was a Seaman all his life).*
- b) When later pushed on this topic he positively asserted that he did not work for government.*
- c) He did not know the month of the year.*
- d) He did not know that Christmas occurred in December.*
- e) He could not remember which of his children was the eldest.*
- f) He stated he has 8 children. He has 9 – 5 girls and 4 boys.*
- g) He believed he sold land to Mr. James Patterson Ebanks when he, Mr. Orrin Ebanks, went off to sea. Mr. Patterson Ebanks was child when his father went to sea. Land was in fact transferred in 2012.*
- h) He at one stage stated he put his son on his account to assist with paying bills, and later told the police that he could not remember why he added him.”*

Counsel for the defendant argued that these matters referred to by Dr. Lockhart pointed to issues with credibility of the complainant, but more relevant on this application, the reliability of the account and evidence in the ABE interview.

#### *Ground 2*

8. On the conduct of the ABE interview by the police officers, counsel for the defendant’s arguments were as follows:
  - (i) That it is standard practice for any police officer to address his mind to the issue of whether any person who is to provide a witness statement is fit to do so. In this case the complainant was not required to sign the usual declaration of truth, nor was there any attempt to address an oral version at the beginning of the ABE interview.
  - (ii) There is no evidence that the officers considered whether the complainant was fit to be interviewed. When the officers posed the first questions in the interview: *“we are investigating an allegation of theft. Do you understand?”* the complainant’s response was



“I don’t understand Sir.” Counsel states that this should have prompted the officer to stop the interview to seek professional guidance.

- (iii) The complainant’s counsel submits that it was obvious that the complainant was vulnerable, however, the officers did not seek to adapt their approach accordingly. Instead, they sought to lead him to answers on important topics directly relevant to the allegations which form the basis of the charges against the defendant. This conduct, counsel argues, should be seen to undermine the reliability of what was said in the interview.

### *Ground 3*

9. Counsel for the defendant submitted that the court should consider the issue of the suitability of a family member being present whilst the ABE interview was being conducted. Counsel noted that concerns about the presence of the family member are heightened when that person has a direct interest in the account being presented in a certain manner. The family member present during the ABE interview in this case was the same person who initiated the instant criminal proceedings against the defendant, after the civil proceedings against the defendant failed. Counsel put his argument in the following context:

*“The lady with a vested financial interest in the success of the civil proceedings, and who initiated the criminal proceedings, was permitted to watch over Mr. Orrin Ebanks as he was being asked about his financial affairs. This further undermines the reliability of the interview process and the responses being eked out of and cajoled from this confused gentleman.”*

### *Ground 4*

10. The complainant gave a sworn affidavit in Grand Court Civil case 63/2021. This affidavit was signed and dated in March 2021 [the “2021 affidavit”]. During this period, the Crown contends, the complainant was of suitably sound mind and had the requisite financial capacity with the result that any evidence that he gave should be viewed as reliable. Counsel for the defendant submits that:

*“If this is correct, then one of three positions must apply: He deliberately attempted to mislead the Court during the civil proceedings, or that he deliberately attempted to mislead the police during the interview of the 30th of November 2021, or that he was confused during the ABE interview and his responses are inherently unreliable.”*

11. Counsel referenced exhibits from the civil proceedings which he submits, call into question the complainant soundness of mind.



- (a) A note from Miss Carol Holness, a bank employee at First Caribbean International Bank, relating to the joint account opening document, confirms that the complainant understood the full scope of what he was doing when he permitted the defendant to be added to this account. This undermines the accounts given in the 2021 affidavit and the ABE interview as to how the defendant came to be added as a joint account holder with the complainant.
- (b) The 2021 affidavit also makes an allegation that land was transferred<sup>1</sup> without permission (in circumstances where the complainant says he was tricked into believing he was signing a will). Miss Hope Stephenson, Justice of the Peace, who witnessed the signing of the land transfer forms swore an affidavit contradicting this, insisting that in her opinion the complainant thoroughly understood the document at the time of signing, knew what he was signing and had no hesitation in signing it.

### **The Crown's position**

- 12. Counsel for the prosecution submitted that the Crown accepts that there are shortcomings in how the ABC interview was conducted, however the Crown's position is that, during the course of that interview, the complainant was able to clearly explain significant aspects of his finances relevant to this case. The Crown further submits that allowing the ABE evidence to be adduced would not result in unfairness to the defendant.
- 13. The Crown accepts the complainant's daughter, Ms. Garcia was present during the entire course of the interview. In written submissions to the court, the Crown stated in relation to her presence.

*"It is understandable and indeed best practice for investigators to have an appropriate adult present while interviewing a vulnerable witness. Additionally, it is best practice for the appropriate adult to be someone with whom the witness is comfortable, who has some form of relationship. However, it is acknowledged that the appropriate adult in this case should not have been his daughter Miss Garcia. She was closely connected to the complaint, and likely to have been asked to provide a witness statement, especially since she initially made the police complaint. Nevertheless, the Crown submits that [the complainant's daughter] played [only] a limited role in the interview."*
- 14. Counsel for the prosecution submits that the court should look at the purpose for which the interview was conducted. Counsel submitted that the ABE interview was conducted to gather

---

<sup>1</sup> This is the transfer by which the defendant became the joint owner of the property with the complainant



evidence of whether a crime has been committed and not to determine if the complainant had fully understood his financial affairs. Further the court should consider that the ABC interview was brief and that the complainant was asked only a limited number of questions about his finances. What is not in doubt is that the complainant was clear that he did not give the defendant permission to withdraw funds from his accounts, except to pay bills for food.

15. It is submitted by the Crown that permitting the Crown to rely on this ABE interview will not cause the defendant any unfairness, that any prejudice or unfairness or element of unfairness could be cured by clear and robust directions to the jury regarding the weight to be given to the ABE interview, should it be admitted. Counsel for the Crown urged the Court to examine the quality of the evidence in the ABE interview, consider the issues in the case and the probative value of the evidence in relation to the elements of the offense of theft.
16. Counsel submitted that this was a classic case for the jury. The quality of the ABE interview was a matter of weight for the jury to decide.

### **Court's considerations**

17. Section 40 of the evidence Act (2021) states: *"Nothing in this Act derogates from the power of a court in any criminal proceeding to disallow evidence otherwise admissible which, in the opinion of such court, would, if allowed, operated unfairly against an accused person."*
18. The court has been urged by the Crown to *"balance the fairness to the defendant with the public interest in allowing the prosecution to present all available evidence."*
19. The Crown invited the court to consider the matter of *Anderson v R*<sup>2</sup>. This was a case in which the issue raised at the Cayman Islands Court of Appeal was whether the trial judge should have left the case to the jury after a submission of no case. The principal arguments advanced by the Appellant related to the nature of the evidence of the complainant. The Court of Appeal recorded this aspect as follows:

*"30. While it is clear that from time to time, Mr. Anderson became confused, and there were some inconsistencies in his evidence, this was in our view a strong case at the close of the prosecution. There was powerful evidence that neither*

---

<sup>2</sup> CICA Criminal Appeal 6 of 2021



*he nor Mrs. Anderson signed the documents which formed the basis of the convictions in respect of the counts of forgery.*

.....

*We did not attach any weight to the suggested inconsistency between Mr. Ebanks' evidence, as set out in the admissions, to the effect that he recognized Mrs. Anderson's signature, and Mr. Anderson's evidence that that she had not signed the documents. If Mr. Ebanks did recognize Mrs. Anderson's signature, it is difficult to understand how he missed the fact that on two documents, ostensibly signed by her, her name was misspelt and, furthermore, that it was not consistently signed as between different documents.*

*32. In short, we had no doubt the judge was right to leave the case to the jury."*

20. While the court must be careful not to intrude on the province of the jury in considering the evidence and finding the facts that they believe from that evidence, the court must also consider carefully the nature of the evidence to be presented to the jury and the context in which such evidence is to be presented. Matters such as leading questions asked of the complainant and the quality of his recollection would in the usual course be matters for the jury to consider and ultimately determine the weight to be attached to that evidence. In the instant case, there is here something more than just the inconsistent or incoherent evidence from a witness.
21. The court cannot discount the influence of the presence of the complainant's daughter during the ABE interview. Her mere presence, given that she was the person who made the initial complaint to the police, was suspicious and should not have been permitted. However, she also participated in the interview. At one stage of the interview, she prompted the complainant to give a particular answer.
22. The court is mindful as it considers the evidence of Dr. Lockhart that the doctor did not in fact interview the complainant. However, the expert opinion of the doctor, his view of what he witnessed of the ABE interview is relevant. The court notes his assessment of the impact of the daughter's presence at the ABE interview. When he was being cross-examined by Ms. Salako for the Crown about the voluntariness of the complainant's answers during the ABE interview, the doctor would not confirm that the complainant had "*voluntarily told the police the basis upon which he allowed his son to be on his bank account.*" The doctor's reasons for this reluctance on this point are noteworthy. He stated that he took note that the complainant did not have time to finish his thought process when answering that question [about the defendant and his bank account]. He stated that his reluctance was also as a result of the presence of the family member in the room.



23. Dr Lockhart stated that in his opinion “*coercion could be overt, but it can also be covert. I can give a look to somebody, and they will know how or if they should or should not respond*”. The doctor stated that he did not see direct coercion during the interview. He stated: “*I did not see coercion, but I heard the voices. There was a family member there making comments while an interview was ongoing*”.
24. While the doctor agreed that there was no particular direction given via the comment, it is difficult to ignore the doctor’s observations regards coercion, being overt or covert, in the context of a very short interview. One cannot ignore the fact of such a presence, especially where the family member remained present throughout the interview. It is difficult to quantify the extent to which that presence influenced the complainant’s responses during the course of the ABE interview. However, it is a significant factor when one considers the issue of fairness as on this application.
25. Specifically, regarding the complainant, the court considers the doctor’s assessment of the complainant’s capacity. Whereas it may be that Doctor Lockhart concentrated on financial capacity in light of the nature of the charges against the defendant, it is clear that to aid such an assessment the doctor had to make careful observation of the complainant’s demeanor, behaviour and presentation. Doctor Lockhart described the course of the interview as
- “...a lot of leading and answering and guiding rather than waiting for him [the complainant] to come up and initiate information.”*
26. The question for this court is whether the admission of the ABE interview evidence would operate unfairly against the defendant. Counsel for the prosecution has submitted that the ABE interview was conducted to gather evidence of whether a crime has been committed and not to determine if the complainant fully understood his financial affairs. While this court agrees with that factual statement, it does not diminish the effect of the failings of the police officers in the manner in which the interview was conducted. It does not reduce the Court’s unease regarding the presence of the complainant’s daughter and her influence on the complainant, nor does it resolve concerns regarding the complainant’s soundness of mind at the time the interview was conducted. All of these factors are taken together in the context of the ABE interview being the main evidence for the Crown against the defendant.

27. Taking into account the foregoing, this court is satisfied the admission of the ABE interview would operate unfairly against the defendant. The order of this court is that the ABE interview is to be excluded pursuant to Section 40 of the Evidence Act.

A handwritten signature in blue ink, appearing to read "Carter J.", is written above a horizontal line.

**Hon. Justice Marlene Carter**  
**Judge of the Grand Court**