



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

3
4
5 **Neutral Citation Number: [2025] CIGC (Crim) 12**
6

7 **IND. No. 49 & 77/24**
8

9
10 **THE KING**

11 **V**

12 **MARCUS STEVE MANDERSON**

13 **&**

14 **KATELYN MAKAYLA WOOD**
15

16 **Appearances:** **Mr. Orrett Brown, Crown Counsel for the Prosecution**
17 **Mr. Jonathon Hughes for Defendant, Mr. Manderson**
18 **Ms. Amelia Fosuhene for Defendant, Ms. Wood**
19

20
21 **Before:** **Hon. Justice Emma Peters**
22

23 **Heard:** **4 March 2025**
24

25 **Ruling:** **11 March 2025**
26
27

28 *Criminal Law – Ruling on defence application to exclude evidence pursuant to section 40 of the*
29 *Evidence Act (2021 Revision)– whether search that resulted in discovery of firearm unlawful –*
30 *whether evidence found in unlawful search admissible – exercise of discretion to exclude*
31



RULING

The Application

1. Counsel for both Marcus Manderson and Katelyn Wood make an application for the fruits of a search conducted after Manderson (MM) was located in a roof space and arrested to be excluded pursuant to section 40 of the Evidence Act (2021 Revision):

40. 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, operate unfairly against an accused person.

2. The particular piece of evidence that was found by the police that the defence seeks to be excluded is exhibit TT6, a firearm.

The Facts

3. A search was conducted by RCIPS officers of 10 Greenwood Drive on 16 February 2023. That was after they had arrived at that address acting on information received in order to arrest MM who had absconded from his trial before the Grand Court (at which he was convicted in his absence) and a warrant was issued by this Court for his arrest.

4. As the Crown observe at para 11 of their skeleton argument, the police were therefore authorized under section 61 of the Police Act (2021 Revision) to enter and search for MM.

61. (1) Subject to the following provisions of this section, and without prejudice to any other Law, a police officer may enter and search without a warrant authorising the entry and search any premises for the purpose of —

(a) executing —



- 1 (i) a warrant of arrest issued in connection with or arising out of criminal
2 proceedings; or
3 (ii) any warrant issued by a court or officer of the court;

4
5 (2) Except for the purpose specified in subsection (1)(e), the powers of entry and
6 search conferred by this section —

7 (a) are only exercisable if the police officer has reasonable grounds for
8 believing that the person whom the police officer is seeking is on the
9 premises; and

10 (b) are limited, in relation to premises consisting of two or more separate
11 dwellings, to powers to enter and search —

12 (i) any parts of the premises which the occupiers of any dwelling comprised
13 in the premises use in common with the occupiers of any other such
14 dwelling; and

15 (ii) any such dwelling in which the police officer has reasonable grounds
16 for believing that the person whom the police officer is seeking may be.

17
18 5. A warrant for MM's arrest had been issued by the Grand Court. The police arrived at Miss
19 Wood's address that day and found MM hiding in a roof space (which from the photographs
20 appears to be above the part of the premises occupied by Miss Wood). They arrested him at
21 11.15am. He was taken away from the scene. It is what follows that is suggested to be a
22 breach of the authorised and lawful police powers and is further asserted to amount to bad
23 faith on the part of the police.

24
25 6. During the course of submissions, I asked counsel whether, since they were alleging that
26 the officers had acted in bad faith I was required to hear evidence from the relevant officers
27 on a Voir Dire and to reach findings of fact re whether that was so. Counsel for the defence
28 did not suggest that it was necessary and I concluded that, if in the course of considering
29 my ruling I determined that such a step was required, I would pause and make the parties
30 aware of that. I should say that in considering this matter I have concluded that it is not
31 necessary for me to hear evidence from the officers on a Voir Dire.



1
2 7. After MM had been taken into police custody DC Brian Corbin (in extracts set out below)
3 described the narrative thereafter as follows:
4

5 *I received information that Mr. Manderson was in the custody of the Police having*
6 *been found hiding in the ceiling of #10 Greenwood Drive. He was subsequently*
7 *removed from the location and handed over to personnel from O.S.U... Mr.*
8 *Manderson was then placed in the rear of the marked Police vehicle and*
9 *transported from the location.*

10 *I remained in position until the targeted residence was made sterile by personnel*
11 *from F.R.U. Ms. Wood was asked to accompany us to her residence to carry out*
12 *further investigations. I along with DS Barnett, PC Williams and Ms. Wood then*
13 *proceeded to her residence...*

14 *Whilst at the residence, in my presence, DS Barnett then informed Ms. Wood that a*
15 *search would be conducted at the residence which included her apartment, under*
16 *Section 75(b) of the Police Act (Revision 2021). I took possession of Search Booklet,*
17 *recorded all the names of Police Officers, persons present during the search and*
18 *their subsequent actions. I also made a note of the relevant times and anything of*
19 *significance that occurred or that was brought to my attention during the said*
20 *search.*

21 *Access was gained to Ms. Wood's apartment after she opened the exterior door*
22 *granting access, for the purpose of conducting the search."*
23

24 8. At 13.04h (so just under 2 hours after MM had been arrested) a number of police officers
25 conducted a search which the defence point out was a comprehensive one which lasted for
26 3 hours and 21 minutes. Amongst the items seized were two cell phones and one dark
27 coloured pistol; exhibited as TT6. This is the firearm at the heart of this indictment, and this
28 application. DC Corbin had informed Miss Wood that they would be searching the premises
29 using their powers under section 75 of the Police Act (2021 Revision) which reads thus:
30
31



1 **Search upon arrest outside of police station**

2
3 75. (1) *A police officer may search an arrested person, in any case where the person*
4 *to be search has been arrested at a place other than a police station, if the police*
5 *officer has reasonable grounds for believing that the arrested person may*
6 *present a danger to themselves or other.*

7
8 (2) *Subject to subsections (3) to (5), a police officer shall also have power in that*
9 *case -----*

10 (a) *to search the arrested person for anything---*

11 (i) *which the arrested person might use to assist that arrested person*
12 *to escape from lawful custody; or*

13 (ii) *which might be evidence relating to an offence; and*

14 (b) *to enter and search any premises without a warrant in which the*
15 *arrested person was when arrested or immediately before the*
16 *arrested person was arrested for evidence relating to the offences or*
17 *which the arrested person was arrested.*

18
19 (3) *The power to search conferred by subsection 9(2) is only a power to search*
20 *to the extent that is reasonably required for the purpose of discovering any such*
21 *thing or any such evidence.*

22
23 (6) *A police officer may not search premises in the exercise of the powers*
24 *conferred by subsection (2)(b) unless the police officer has reasonable grounds*
25 *for believing tht there is evidence for which the search is permitted under that*
26 *paragraph.*

27
28 9. Section 75(2)(b) authorizes police “to enter and search any premises without a warrant in
29 which the arrested person was when arrested or immediately before the arrested person was
30 arrested for evidence relating to the offence for which the arrested person was arrested.”

31

1 10. Mr. Hughes makes the point that given that the arrest was being conducted based on the
2 powers granted by a Bench Warrant and MM's trial had already concluded (resulting in his
3 conviction) that there was no power to search for "evidence relating to the offence for which
4 the arrested person was arrested" since he was not arrested for an offence, but due to the
5 existence of a warrant.

6
7 11. It is notable that the offence for which MM was convicted in his absence and that resulted
8 in the issue of a Bench Warrant was an offence relating to the possession of firearms. That
9 fact is I think important when one looks at the factual circumstances in which the police
10 were operating on that day in determining whether there was in fact any bad faith on their
11 part.

12
13 12. Mr. Hughes submits (and Ms Fosuhene adopts this argument) that it is entirely implausible
14 that a police officer could have believed that he was authorised to search "for evidence
15 relating to the offence for which he was arrested" when they knew they were not there to
16 arrest him for an arrestable offence. Subsection (6), which it is said should give police
17 officers pause for thought in such cases, was therefore not satisfied and the police were
18 precluded say the defence from conducting their secondary search of the premises.

19
20 13. That being so Mr. Hughes submits that the evidence recovered in that search, particularly
21 of the firearm found in the roof space where MM was hiding should be excluded.

22
23 14. Ms Fosuhene on behalf of Ms. Wood adopts that argument and also observes that Ms. Wood
24 was misled by police (it is suggested deliberately) who told Wood that they had the power
25 under section 75(2)(b) of the Police Act to conduct this "secondary" search after MM had
26 been arrested and taken away and that, having misled Ms. Wood, they also acted unfairly
27 by removing her from the premises and not permitting her to witness that search. Ms.
28 Fosuhene says that amounts to bad faith on the part of the police.



1 15. I ask rhetorically how Ms. Wood might have been able to witness the search of the roof
2 space where the weapon was found. But I accept that ordinarily Ms. Wood ought to have
3 been permitted to be present at the search.



4
5 16. I have considered three questions:

6 (1) Was the search of 10 Greenwood Drive lawful or unlawful?

7 (2) Even if it was or might have been unlawful, does that fact give the Court the
8 discretion to exclude the evidence thereby seized?

9 (3) If the Court does have such a discretion, ought the court to exercise it?

10
11 **Was the search during which the firearm was found lawful?**

12
13 17. The Crown say that it does not matter whether it was or not given the authorities regarding
14 the admissibility of the evidence even if the search was unlawful.

15
16 18. The defence say that, given that the search took place after MM had been taken away, it
17 must have been unlawful (and they say the police must have known that) since there is no
18 power for the police to have searched for any further evidence once they had arrested and
19 taken away MM on the Bench Warrant.

20
21 19. On a strict interpretation of the provisions of the Police Act that were relied on by the police
22 in this case and which were engaged by the fact that this defendant was being arrested on a
23 Bench Warrant, I conclude that I am not satisfied that the search was lawful.

24
25 20. However, as I observed during the course of oral submissions in this case, if one were to
26 delete 13 words from section 75(2)(b) i.e. "for evidence relating to the offence for which
27 the arrested person was arrested" then what happened would be lawful. And if you were to
28 take account of the underlying conviction for which the Bench Warrant was granted then
29 this was a search for evidence relating to that same type of offence. Those two factors do
30 not make the search lawful but I conclude that they support the contention that, even if the
31 search was unlawful, there is still no evidence of bad faith.



1
2 21. Having considered the case of J.C. Ebanks v R [2017 (1) CILR 168] I note the following
3 principles to have been applied by the Grand Court in this jurisdiction in 2017:

- 4
5 a. if it is for the defence to show some bad faith or improper conduct on the part of
6 the police
7 b. one should have regard to the nature of the defect and the conduct of the authorities
8 and the seriousness of the offence under investigation.

9
10 22. I find that the strict provisions of section 75(2)(b) were not complied with. The fact that this
11 arrest was on a Bench Warrant means that there was no offence for which to search for
12 evidence. But equally, is there any evidence of bad faith?

13
14 23. I have concluded that I do not need to hear any evidence on this point on a Voir Dire. It
15 seems to me clear that the fast moving and kinetic nature of an arrest conducted of a
16 defendant who has absconded from Court for serious offences and about whom intelligence
17 had become known is such that this was perhaps unlawful but it was fast paced to achieve
18 the result required by the court – the apprehension of a convicted man at the order of the
19 Grand Court. When police knew that this was a man with a criminal history relating to
20 firearms, to have expected them to stand powerless with no ability to look at where he had
21 been when they found him after they had retrieved the defendant from this roof space is a
22 counsel of perfection that leads me to the conclusion that there is insufficient evidence
23 properly to accuse the police of any *mala fides*.

24
25 **Even if it was or might have been unlawful, does that fact give the Court the discretion to**
26 **exclude the evidence thereby seized?**

27
28 24. The central Cayman authority on unlawful searches is the case of J.C. Ebanks v R [2017 (1)
29 CILR 168], a decision of Quin J sitting in the Grand Court. Ebanks was an application to
30 exclude evidence obtained through a search conducted on the authority of a defective search
31 warrant. The Court held that:



1 *“If the evidence were to be excluded, the defendant would have been required to show not*
2 *only that the warrant was defective but that the evidence had been obtained by conduct of*
3 *which the Crown ought not to take advantage. In other words, the defendant had to show*
4 *some bad faith or improper conduct on the part of the police officers.”*

5
6 25. The Court went on in that case to refuse the application on the basis that the defects were
7 technical in nature, and no bad faith had been established or even alleged against the police.
8 Ebanks concerned a case with a defective warrant. The instant case concerns a case where
9 the warrant was a Bench Warrant. In this case the allegation is that the police had no power
10 to continue to search once the defendant had been taken from the scene given that this was
11 an arrest on a Bench Warrant.

12
13 26. The case of Jeffrey v Black [1978] QB 490 dealt with the old common law position which,
14 it is suggested, section 75 of the Police Act is designed to reflect and the Court in that case
15 held (Widgery LCJ giving the lead judgment) *per curiam* that:

16 *Police officers have authority to inspect premises after a lawful arrest to obtain evidence*
17 *connected with the offence charged but the common law does not authorise police officers,*
18 *without a search warrant or the consent of the accused, to search premises for evidence of*
19 *another unrelated offence.*

20
21 27. In Jeffrey v Black, when considering the permissibility of a police search of a man’s house
22 for drugs when he had been arrested elsewhere for the theft of a sandwich, the Court
23 considered a number of authorities including;

24
25 (i) Ghani v Jones 1970 1 QB 693 where Lord Denning MR said that police were
26 perfectly entitled to take goods they found during a search which were material
27 evidence in relation to the matter for which the defendant was arrested.

28 (ii) Kuruma v The Queen [1955] A.C. 197, P.C. in which the court found that the only
29 question with which a court need trouble itself is whether evidence is relevant. “If
30 it is, then it is admissible, and the court is not concerned with how the evidence was
31 obtained.” I note however in the Jeffrey v Black judgment that Widgery LCJ

1 observes the point that in English law a common law discretion to exclude existed
2 referred to in terms of being “a general discretion to decline to allow any evidence
3 to be called by the prosecution if they think that it would be unfair or oppressive to
4 allow that to be done”. In which case Widgery LCJ said that “if the police had been
5 guilty of trickery or they have misled someone or... unfair” ... then the discretion
6 should be exercised in favour of exclusion.

7
8 28. I agree with Mr. Hughes’ observation that the line of authorities establish that a defect or
9 wrong step without more is not enough for the court to exclude otherwise relevant and
10 admissible evidence. He further submits that a failure to comply with the law coupled with
11 behaviour on the part of the police which amounts to misleading someone can change the
12 picture.

13
14 29. Mr. Hughes cites a decision of a former Chief Justice of these islands in R v Douglas [1980-
15 83 CILR 119] where the privacy of householders versus the public interest in fighting crime
16 was balanced but in Ebanks, Quin J distinguished Douglas and referred to a number of other
17 authorities supporting the Crown’s position which concerned evidence, the exclusion of
18 which was being sought. He went on to refer in that judgment to the Privy Council ruling in
19 King v R [1969] 1 AC 304 which quoted Lord Cooper in Lawrie v Muir (a 1950 case):

20
21 *“From the standpoint of principle... the law must strive to reconcile two highly*
22 *important interests which are liable to come into conflict (a) the interest of the*
23 *citizen to be protected from illegal or irregular invasions of his liberties by the*
24 *authorities and (b) the interest of the State to secure the evidence bearing upon the*
25 *commission of crime and necessary to enable justice to be done shall not be*
26 *withheld from courts of law on any merely formal or technical ground... it would*
27 *usually be wrong to exclude some highly incriminating production merely*
28 *because it was found by a police officer in the course of a search authorised for a*
29 *different purpose....”*



1 30. The Crown rely on what must be the most relevant and authoritative case given the direct
2 application of the legislation with which this application is concerned. The case of *Minzett*
3 *v R* [2011] 2 CILR 236 is a Court of Appeal authority concerning the application of the
4 discretionary exclusion in section 40 of the Evidence Act (albeit I accept an earlier version
5 but one that is substantially the same) in circumstances where relevant evidence was
6 obtained but in circumstances alleged to be unfair or improper.



7
8 31. The Court of Appeal in *Minzett* in 2017 said as follows:
9

10 *21. We think it clear that, as the law now stands in England and Wales following*
11 *the decision of the House of Lords in R. v. Loosely (4), a judge before whom a case*
12 *of this nature came for trial in that jurisdiction would need to address the question*
13 *whether, as a matter of discretion, the evidence of an undercover police officer in*
14 *an 'entrapment' case ought to be excluded by PACE, s.78. Failure to address that*
15 *question would, we think, be an error of law.*

16 *22 It does not follow that that is the position in this jurisdiction. PACE, s.78(1) is*
17 *in these terms:*

18 *'In any proceedings the court may refuse to allow evidence on which the*
19 *prosecution proposes to rely to be given if it appears to the court that, having regard*
20 *to all the circumstances, **including the circumstances in which the evidence was***
21 ***obtained**, the admission of the evidence would have such an adverse effect on the*
22 *fairness of the proceedings that the court ought not to admit it.'* [Emphasis
23 *supplied.]*

24 *23 PACE, s.78(1) has no counterpart in the legislation of the Cayman Islands. We*
25 *were taken to the Evidence Law (2007 Revision), s.40. That section is in these*
26 *terms:*

27 *'Nothing in this Law derogates from the power of a court in any criminal*
28 *proceeding to disallow evidence otherwise admissible which, in the opinion of the*
29 *court, would, if allowed, operate unfairly against an accused person.'*

30 *24 It is plain that that section preserves the existing power of a court to exclude*
31 *evidence, otherwise admissible, if to allow that evidence to be given would or might*



1 *lead to the trial being unfair. But, importantly in the present context, the Evidence*
2 *Law, s.40 does not purport to extend that power. In particular, it does not include*
3 *the words of PACE, s.78(1) which we have emphasized: ‘including the*
4 *circumstances in which the evidence was obtained.’*

5
6 32. I enquired of Mr. Hughes during the course of hearing submissions on Minzett as to the
7 legislative chronology. Was it that section 40 Evidence Act (EA21) had been enacted after
8 s78 Police and Criminal Evidence Act (PACE) 1984 so as to lead to the conclusion that the
9 Cayman legislature actively chose not to insert the words “including the circumstances in
10 which the evidence was obtained” found in s78 PACE but not section 40 EA21? Or was it
11 the case that section 40 predated s78? Mr. Hughes confirmed the latter to be the case – at
12 the very latest section 26 of The Evidence Law 1978 is in substantially the same terms as
13 section 40.

14
15 33. What is notable however is that, as at the 2021 Revision of the Evidence Act with which
16 this Court is dealing and by which this court is bound, the existence of the judgment in
17 Minzett had not led the legislature on these Islands to choose to alter the terms of section 40
18 as to incorporate those extra words that s78 PACE contains and the omission of which the
19 Court of Appeal found to be of such import in Minzett.

20
21 34. That being so, it is my conclusion that the law in this jurisdiction is that as stated in Minzett
22 – that the circumstances in which the evidence is obtained are not relevant to an application
23 under section 40 Evidence Act.

24
25 35. Furthermore, it must also follow that there is no discretion to exclude otherwise perfectly
26 relevant and admissible evidence just because of the means by which it was obtained. The
27 Court in Minzett went on to say:

28
29 *25 It is important to have in mind the question which had been referred to the*
30 *House of Lords in R. v. Sang (6) and the answer which was given to that question.*
31 *The question referred asked ([1980] A.C. at 409):*



1 *'Does a trial judge have a discretion to refuse to allow evidence, being evidence*
2 *other than evidence of an admission, to be given in any circumstances in which*
3 *such evidence is relevant and of more than minimal probative value?'*

4 *26 The House of Lords answered that question in these terms (ibid. at 437, per Lord*
5 *Diplock):*

6 *'(1) A trial judge in a criminal trial has always a discretion to refuse to admit*
7 *evidence if in his opinion its prejudicial effect outweighs its probative value. (2)*
8 *Save with regard to admissions and confessions and generally with regard to*
9 *evidence obtained from the accused after commission of the offence, he has no*
10 *discretion to refuse to admit relevant admissible evidence on the ground that it was*
11 *obtained by improper or unfair means. The court is not concerned with how it was*
12 *obtained. It is no ground for the exercise of discretion to exclude that the evidence*
13 *was obtained as the result of the activities of an agent provocateur. I would dismiss*
14 *this appeal.'*

15 *27 As we have said, PACE, s.78(1) reverses the decision of the House of Lords in*
16 *R. v. Sang (6) (see the observations of Lord Nicholls of Birkenhead in R. v. Loosely*
17 *(4) ([2001] 1 W.L.R. at 2066)). It does so by the words to which we have already*
18 *drawn attention: including the circumstances in which the evidence was obtained.'*
19 *Absent those words, the position remains as stated by the House of Lords in R. v.*
20 *Sang (6). The trial judge has no discretion to exclude admissible evidence on the*
21 *ground that it was obtained by improper or unfair means.*

22 *28 That, as it seems to us, is the position in this jurisdiction. The court is not*
23 *concerned with how the evidence was obtained; it is no ground for the exercise of*
24 *discretion to exclude that the evidence was obtained as the result of an undercover*
25 *operation. It follows that the Chief Magistrate did not err in law in failing to*
26 *consider whether the evidence of the undercover police officer should be excluded.*
27 *The law as it is in the Cayman Islands did not allow her to exclude that evidence.*

1 **If the Court does have such a discretion, ought the court to exercise it?**

2
3 36. I conclude that I have no discretion based on the authority of Minzett. However, if I am
4 wrong about that, I observe that I would not have exercised the discretion, even if I had one.
5 This is highly relevant and probative evidence – a lethal firearm with the male defendant’s
6 DNA on it found in a roof space above the female defendant’s home and found in precisely
7 the same roof space as he was found hiding in when police became aware of his whereabouts
8 as he was a fugitive from justice having been convicted of firearm offences and with a Bench
9 warrant issued by the Grand Court for his arrest. It is significantly more probative than it is
10 prejudicial.

11
12 37. At paragraph 33 of Ebanks, Quin J observed that Lord Nolan’s words in R v Khan [1997]
13 AC 558 could have been written for the case of Ebanks when Lord Nolan said:

14
15 *“I confess that I have reached this conclusion not only quite firmly as a matter of*
16 *law but also with relief. It would be a strange reflection on our law if a man who*
17 *has admitted his participation in the illegal importation of a large quantity of heroin*
18 *should have his conviction set aside on the grounds that his privacy has been*
19 *invaded.”*

20
21 38. It might be said that it would offend the sense of justice of some if a man convicted of
22 firearm offences who fled justice were not able to be held to account for the fact that when
23 arrested, he was brought down from a roof just two hours or so before a firearm he had with
24 him was found in that same roof. I refuse the application in respect of both defendants.

25
26 **Dated the 11th day of March 2025**

27
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29 

30
31 **The Hon. Justice Emma Peters**
32 **Judge of the Grand Court**