

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

3  
4  
5 **INDICTMENT NO: 0105/2012**  
6

7  
8 **THE QUEEN**

9  
10 **V**

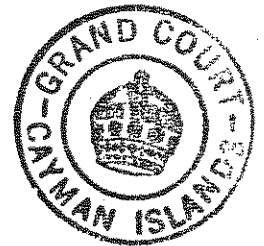
11  
12 **ELVIS KELSEY EBANKS**  
13

14  
15 **Appearances:** **Ms. Laura Manson for the Crown**  
16  
17 **Mr. Michael Wingrave of Stenning &**  
18 **Associates for the Defendant**  
19

20 **Before:** **The Hon. Mr. Justice Charles Quin**

21 **Trial commenced:** **4<sup>th</sup> November 2013**

22 **Stay Application Submissions heard:** **7<sup>th</sup> November 2013**  
23



24 **RULING**

25 **ON APPLICATION BY THE DEFENCE TO STAY THE PROCEEDINGS**  
26

- 27 1. On the morning of the 5<sup>th</sup> of November 2013, during his evidence in-chief,  
28 the complainant said, with some feeling, that he is not a thief. The Interpreter  
29 became, I'm going to say, slightly overcome, or broke down slightly, and  
30 there were tears which she clearly attempted to wipe away, so at the same  
31 time she turned away to compose herself.  
32  
33



1                    "*That's a situation that often occurs in this type of case but you must*  
2                    *avoid an emotional reaction to that sort of evidence. It is your duty to*  
3                    *approach your task of deciding on the factual issues on this matter in a*  
4                    *fair and dispassionate manner, without sympathy, for the prosecution or*  
5                    *against the prosecution, for the defence or against the defence...you*  
6                    *conduct a thorough, reasoned, balanced assessment of all the evidence*  
7                    *and facts that you have heard.*"

8

9            5.        In that particular case, the Northern Ireland Court of Appeal rejected that  
10            particular ground of appeal. Crown counsel urges that such a similar  
11            direction would have the effect of remedying the situation we have before  
12            us. In any event, we are at an early stage of the case and the jury will forget  
13            about it and it will fade into insignificance.

14

*ANALYSIS*

15           6.        I am grateful to both counsel for providing the relevant case law, which I  
16            now examine.

17           7.        The first case is the English Court of Appeal decision of *R. v. Michael*  
18            *Docherty* [1999] 1 Cr.App.R. 274, where the Court stated that the judge, in  
19            exercising his discretion whether or not to discharge the jury, should  
20            approach the issue on the basis of the more prejudicial meaning that could  
21            reasonably be placed on it, rather than on some lesser prejudicial  
22            interpretation. Roch LJ, who states, at page 4 of the judgment:

23

24

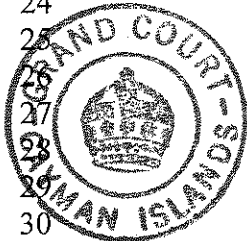


1           *"The first line of authority establishes that it is not in every case where*  
2           *some matter prejudicial to the defendant has inadvertently been admitted*  
3           *in evidence then the jury is to be discharged. Whether or not the jury*  
4           *should be discharged is for the discretion of the trial judge on the*  
5           *particular facts. The Court of Appeal will not likely interfere with the*  
6           *exercise of that discretion."*

7

8           8.       The English Court of Appeal then referred to the House of Lords decision in  
9           the **R. v. Gough** [1993] AC 646. Lord Goff at letter C on page 670 states:

10           *"... I wish to express my understanding of the law as follows. I think it*  
11           *possible, and desirable, that the same test should be applicable in all*  
12           *cases of apparent bias, whether concerned with justices or members of*  
13           *other inferior tribunals, or with jurors, or with arbitrators. Likewise, I*  
14           *consider that, in cases concerned with jurors, the same test should be*  
15           *applied by a judge to whose attention the possibility of bias on the part*  
16           *of a juror has been drawn in the course of a trial, and by the Court of*  
17           *Appeal when it considers such a question on appeal. Furthermore, I*  
18           *think it unnecessary, in formulating the appropriate test, to require that*  
19           *the court should look at the matter through the eyes of a reasonable man,*  
20           *because the court in cases such as these personifies the reasonable man,*  
21           *and, in any event, the Court is first to ascertain the relevant*  
22           *circumstances from the available evidence, knowledge of which would*  
23           *not necessarily be available to the observer in court at the relevant time.*  
24           *Finally, for the avoidance of doubt, I prefer to state the test in terms of*  
25           *real danger rather than real likelihood, to ensure that the court is*  
26           *thinking in terms of possibility rather than probability of bias.*  
27           *Accordingly, having ascertained the relevant circumstances, the court*  
28           *should ask itself whether, having regard to those circumstances, there*  
29           *was a real danger of bias on the part of the relevant member of the*  
30           *tribunal in question, in the sense that he might unfairly regard (or have*  
31           *unfairly regarded) with favour, or disfavour, the case of a party to the*  
32           *issue under consideration by him."*



33

34           9.       The Court of Appeal in **R v. Lawson** [2007] 1 Cr. App. R. 20, at letter B on  
35           page 671 also quoted Lord Woolf in **R. v. Gough** where he supported Lord  
36           Goff and stated:

1                   *“I agree that the correct test to adopt in deciding whether a decision*  
2                   *should be set aside on the grounds of alleged bias is that given by Lord*  
3                   *Goff, namely whether there is a real danger of injustice having occurred*  
4                   *as a result of the alleged bias.”*

5  
6           10.     The House of Lords in ***R v. Gough*** also referred to the tests that the Court of  
7           Appeal applied, namely, if a verdict is challenged before the Court of Appeal  
8           on the ground of bias, the ultimate principles to be applied are: Is the  
9           conviction safe? – in which case the appeal is to be dismissed, or: Is the  
10          conviction unsafe? – in which case the appeal is to be allowed.

11          11.     I move on now to the case of the ***R. v. Lawson*** [2007] 1 Cr.App.R. 20, and  
12          the judgment of the Court of Appeal given by Auld LJ, in which he states, at  
13          paragraph 64:

14                   *“The ultimate question for the court in determining whether the judge*  
15                   *correctly ruled against the appellant's application to discharge the jury*  
16                   *is whether, given the error he made and the steps he took to mitigate it, it*  
17                   *is satisfied that the convictions are safe.”*

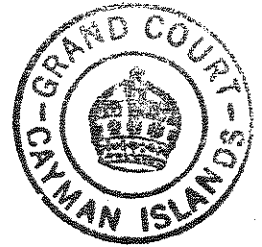
18  
19          12.     The Court in ***Lawson*** approved the test in ***Docherty*** that the court should  
20          look at the most prejudicial interpretation and its possible effect on the jury.  
21          At paragraph 65, Auld LJ states as follows:





1 15. No criticism is intended of the Interpreter. It was an involuntary and  
2 inadvertent act. However, her emotional reaction to the Complainant's  
3 evidence is too closely connected to his evidence because she is telling the  
4 jury what the complainant is saying. In a way, her show of emotional  
5 sympathy for the Complainant could be interpreted as supporting the  
6 complainant's case and therefore confirming his credibility.

7 *CONCLUSION*



8 16. I make the following four conclusions:

9 i. I find in all the circumstances of this case that the Complainant's  
10 evidence on this issue is important evidence. The case will be decided, to  
11 a large extent, upon the credibility of the complainant as against the  
12 credibility of the defendant.

13 ii. I agree with defence counsel's submission that the court must not indulge  
14 in reading the jury's mind.

15 iii. I find that the Interpreter's reaction when interpreting the complainant's  
16 evidence before the jury is potentially unfairly prejudicial to the  
17 defendant.

18 iv. When I consider if it is possible to remedy the potential prejudice, I am  
19 unable to give a sure or even confident answer.

1        17.    In my final conclusion, mindful of the fact that I must approach the issue on  
2            the basis of the more prejudicial meaning that could reasonably be placed on  
3            it, rather than on some lesser prejudicial interpretation, and applying the test  
4            as set out in both *Docherty* and *Lawson*, I find that to continue the trial  
5            would, or could, result in an unsafe conviction. I find that there is a real  
6            danger of bias and therefore a real danger of injustice.

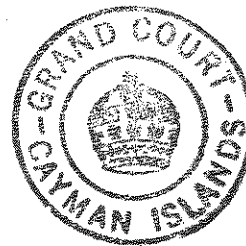
7        18.    Accordingly, I feel compelled to accede to the Defendant's application and I  
8            therefore stay the case. I will discharge the jury and order a new trial.

9

10

11

12



13    **Dated this the 5<sup>th</sup> November 2013**

14

15

16

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