



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

**IND0087 OF 2023**

**THE CROWN**

**V**

**JAMES PATTERSON EBANKS**

Coram: Hon. Justice Marlene Carter  
Appearances: Ms. Toyin Salako, Assistant Director of Public Prosecutions for the Crown  
Mr. Oliver Grimwood of Samson Law, for the Defendant  
Heard: 24 October 2024  
Ruling: 15 November 2024

**HEADNOTE**

*Criminal Division – Preliminary Issue – application to exclude evidence of Doctor –  
extent of admissible opinion evidence*

**RULING**

1. The application brought on behalf of the Defendant is to exclude the evidence of Dr. Gerrard Christian, who provides two witness statements in this matter dated the 7th of June 2023 and the 5th of July 2023.
2. Counsel for the Defendant submits that the starting point for the Court's consideration is that opinion evidence is not admissible. In certain circumstances, the opinion of an expert on a topic can be admissible, but only when the party seeking to adduce such evidence has met the requirements and there is a need to have recourse to such a witness. In the present case, the Prosecution has failed to meet the basic requirements which must be in place to assist the Court

and Defence in establishing whether a witness can be considered an expert, such as to allow it to circumvent the prohibition on opinion evidence.

3. In this regard the following points were noted:

- (i) The witness does not detail his qualifications and experience relevant to the subject matter of this report. He does not set out the range and limitations of his expertise.
- (ii) The fact that he is a medical doctor and practices as a general practitioner does not provide the basis for suggesting he has expertise in assessing capacity, in this case, that includes financial capacity.
- (iii) No empirical evidence is provided. We do not know in real terms how often he sees a patient that may present with capacity concerns, or how many in any given year. There is simply no detail to this purported experience.
- (iv) The witness has confirmed that assessing financial capacity “*would be above and beyond the scope of my training.*”

4. The Court was referred to ***R v Powery***<sup>1</sup> in which Quin J. set down the practice to be adopted in regard to the reports of expert witnesses and the admissibility of such evidence.<sup>2</sup>

*“The following practice should be adopted when dealing with the reports of expert witnesses. First, the expert witness should detail his qualifications and experience relevant to the report and the range and limitations of his expertise. He should then outline the instructions that he received, including the questions upon which his opinion was sought and the materials with which he had been provided. Additionally, the report should highlight material that was the basis for any opinions expressed and include any relevant extracts from literature cited. The methodology of any tests used in the report and as to whether the work carried out was witnessed must also be included. If there is scope in the matter for a range of opinions, the expert should explain them and why the particular opinion in the report was favoured, while noting anything that detracts from the conclusions reached. Finally, the report should contain a statement that the witness has complied with the duty to the court to provide independent*



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<sup>1</sup> 2009 CILR Note 7

<sup>2</sup> This mirrored and approved the approach in England and Wales. The current approach in England and Wales is contained within the Criminal Procedure Rules 2020 (SI 2020/759), Part 19. Part 19.4 in near identical terms to *Powery*.



*assistance with an objective unbiased opinion on matters within his or her expertise, and that he or she would notify all parties and the court if the opinion were to change on any material issue. Further or supplementary reports should follow the same guidelines (R. v. Harris, [2006] 1 Cr. App. R. 5, followed; R. v. B(T), [2006] 2 Cr. App. R. 3, followed; Archbold, Criminal Pleading, Evidence & Practice, para. 10–68, at 1357 (2008 ed.).”*

5. Counsel for the Defendant in relating these factors to the present case, noted that apart from the issue of the Doctor’s relevant expertise, this evidence was also deficient in the following areas to render it inadmissible:
- (i) The Prosecution have not provided the outline of the instructions Dr Christian received nor the questions upon which his opinion was sought.
  - (ii) The report should highlight the material that was the basis for the opinions expressed, and the methodology of tests used in the report must be included. Counsel has not been provided with any of the doctor’s notes from the appointments with the Complainant that included both office-based and bedside assessments. We also have not been provided with the medical records of the Complainant.
  - (iii) Dr. Christian conducted a Mini-Cognitive exam on the 19<sup>th</sup> of January 2022. In November of that year, this examination was conducted again, along with an Abbreviated Mental Test Score. The methodology of these tests is not provided. The full results from these tests are not provided, only the final score. No notes from these tests are provided. As the names of these tests suggest, by their very nature they are superficial. They are screening tools only.
  - (iv) The GP does not highlight anything that might detract from the conclusion he reaches. There is no mention of any scientific opinion that addresses the accuracy, reliability, or otherwise of the mini-cognitive examination.
  - (v) There is no declaration that the witness has complied with their duty to the Court to provide independent assistance to the Court with an unbiased opinion on matters with his expertise.



- (vi) The purpose of expert opinion is to provide the Court with information which is likely to be outside the experience or knowledge of a judge or jury. The opinion provided is based wholly or substantially upon the specialist knowledge of the expert. This type of evidence is not admissible simply to prove the existence of a fact. If the jury can form their own conclusions without specialist help, then the opinion of an expert is not required.
- (vii) Dr Christian presents general factors such as age, hearing, education, etc., along with bradyphrenia (mild cognitive impairment) as reasons why the Complainant may not have seemed to understand the questions put to him or given unusual answers to the investigators. What is presented is not based upon specialist knowledge but on observations equally open to a layman. There is a danger that admission of such information from someone presented as an expert who no doubt possesses significant experience, and qualifications will elevate these facts to a status not warranted and will add undue weight to this evidence.
- (viii) It is vital that both the Court (Judge and Jury) and Defendant are provided with the facts upon which any opinion or analysis is based. This is not only a procedural requirement but is necessary to ensure a fair trial occurs.
- (ix) The provision of the test result, notes, and supporting documentation is also relevant to the reliability of the opinion and will be addressed in more detail below. There is no explanation advanced as to why this is not provided.
- (x) Reliability is not simply a matter for the jury when considering what weight to apply to evidence. It is a gateway to admissibility. [Counsel for the Defendant] submits that there is nothing to prohibit this Court from considering reliability as a precursor to admission, and every reason why this should be adopted as common best practice. The Court must ascertain what is the purpose for admitting of the evidence and then go on to assess whether it stands as a reliable source of evidence to assist the jury in considering the issue it speaks to.

6. The Crown submits that Dr. Christian can properly provide evidence of the doctor-patient relationship with the Complainant, especially since he had seen the Complainant approximately 30

times since he first came under his care. Dr Christian has been James Orrin Ebanks' primary care physician since 2007. The Crown argues that the Doctor should not be barred from giving evidence since he is the only person that can give evidence as to the complainant's cognitive health and deterioration over the years that the complainant has been his patient.

7. The parts of Dr. Christian's evidence with which the Defence take issue surround the main aspects of his assessment and the opinion expressed therein as summarized by Crown Counsel in written submissions:



*“(a). As of 11 February 2021, he did not observe any cognitive impairments.*

*(b) On 19 January 2022 he performed a "mini cognitive exam" which indicated "no significant cognitive decline compared to his previous and usual base line."*

*(c) Carried out a home 'assessment on 10 November 2022 from which he provided the following opinion:*

*“not able to understand information relevant to making a decision, not being able to retain information required to make a decision and not being able to use information as part processes of making a decision, at that time.’*

*(d) Opined, "in my medical opinion Mr. Ebanks up until 19 January 2022, he would have been able to make decisions as he had previously being able doing throughout his life."*

8. The Crown's position is that the question of whether Dr. Christian is competent to give evidence as an expert is a question of law for the Judge to decide as a matter of admissibility. The Crown referred the Court to *Myles*<sup>3</sup> and submitted that the test was affirmed by the Court of Appeal to be:

*“the subject-matter of the opinion was such that a person without expertise in that area would not be able to form a sound judgment on the matter without the assistance of an expert and that the area of expertise was in a sufficient[ly] recognized field of knowledge; and*

*the particular witness is qualified to express an opinion on the subject matter and has sufficient knowledge to render his/her opinion valuable to the court."*

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<sup>3</sup> *Myles v Her Majesty the Queen* Criminal Appeal 11/2021, 13/2021 & 14/2021

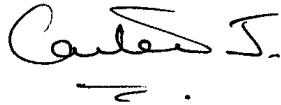


9. The Crown's further position is that even if the Doctor's evidence is not admitted as expert evidence, this does not render his evidence inadmissible. Once the Doctor's evidence is admitted it is a question of what weight or value should be applied to such evidence.

### **Court's conclusions**

10. The Crown has indicated that the witness is not being presented as an expert psychiatric or psychological expert. The Doctor is not being called to give opinion evidence on any matters in those fields. He is being presented as a doctor who had primary care of the complainant over a number of years.
11. There can be no argument that he is qualified to say what his observations are of the complainant as he has treated him over that time, even as to his clarity of thought. It must be within his scope as a general practitioner to do so. Dr. Christian can give evidence of what tools he employs, what tests he administers, in treating his patients. He can say how his reading of the tests may have assisted him in treating the patient. This does not encompass him making any expert conclusion.
12. I agree with counsel for the Defendant that the Crown must be scrupulous in their examination of this witness that he does not offer any opinion or conclusion on the results of his tests beyond this. There can be no prejudice to the defendant by this course. As counsel has outlined in his submissions there are many ways in which Dr. Christian's evidence can be shown to be deficient regarding his lack of expertise as a psychiatrist or a psychologist. These are matters that it will be for a jury to assess the weight that they can place, if any, on the Doctor's evidence.
13. The court will also be scrupulous in ensuring that any necessary directions to the jury on this issue are clear. The court will distinguish between the witness's evidence as a general practitioner and any other evidence that may touch upon the matters of concern on this application for the jury.
14. The concerns of the defendant regarding the witness' qualifications and experience relevant to the subject matter of this report, including the range and limitations of his expertise, can be addressed. Counsel has noted that the fact that he is a medical doctor and practices as a general practitioner does not provide the basis for suggesting he has expertise in assessing capacity, in this case, that includes financial capacity. The witness has confirmed that assessing financial capacity "*would be above and beyond the scope of my training.*" Questions surrounding how often in real terms he sees a patient that may present with capacity concerns, or how many in any given year are again all matters that may be put to the witness during the course of the trial.

15. The witness Dr. Christian can give evidence before the jury. It is not for this court to fetter the Crown regarding the witnesses that the Crown believes can provide evidence relevant to the charges on the indictment. The court can limit the extent of the evidence of a witness. The determination of the court is that Dr. Christian is not an expert psychiatrist or psychologist, and he will not give opinion evidence in those fields.

A handwritten signature in black ink, appearing to read "Carter J.", with a horizontal line underneath.

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