

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

3
4 **INDICTMENT NO: 41, 42 and 43 OF 2021**

5
6
7
8
9 **THE QUEEN**

10
11 **V.**

12
13 **ANDRAE CAIN**



14
15 **Appearances:** **Ms. Sarah Lewis for the Crown**

16 **Mr. Crister Brady of Brady Attorneys at Law for the**
17 **Defendant**

18 **Before:** **Justice Cheryll Richards Q.C.**

19 **Submissions on Sentencing:** **6th May 2022**

20
21 **Sentence Judgment:** **13th May 2022**

22
23
24 **HEADNOTE**

25
26 *Criminal Law- Sentencing - Drugs, Importation of cocaine- Sentencing Guidelines.*



1 was questioned by Customs & Border Control officers, he told them that the red
2 suitcase had been given to him by a lady at the Norman Manley International
3 Airport in Kingston, Jamaica and was to be brought to the Cayman Islands to be
4 handed over to Andrae Cain.

5
6 5. The suitcase was examined by the officers and found to contain, clothing,
7 footwear of different sizes and styles, a tin of Jamaican Tastee cheese, packets of
8 plantain chips and some buns. The officers, on examining the tin of cheese, found
9 that it was heavier than they expected.

10
11 6. Mr. Davis was taken to the examination room with the tin of cheese which, when
12 opened, contained a white substance which was later confirmed to be cocaine.

13
14 7. Mr. Davis denied knowledge of the cocaine. His cellphone was seized by the
15 officers. Mr. Davis provided the password for it and told the officers that it would
16 have the phone numbers for the persons in the Cayman Islands, Andrae Cain and
17 Joseph Cain who had asked him to bring the suitcase, and for the lady who gave
18 the suitcase to him at the Norman Manley International Airport in Kingston
19 Jamaica.

20
21 8. In interview by the officers, Mr. Davis said that his friend Joseph Cain telephoned
22 him from the Cayman Islands and asked him to bring some items for a cousin of
23 his, Andrae Cain. Mr. Davis said that he was travelling to the Cayman Islands to

1 commence work on a work permit as a barber. He said that he had been reluctant
2 to take anything for anybody and that his own bags were full. On the morning of
3 his departure from Jamaica he received calls from both Joseph Cain and Andrae
4 Cain. He was told that someone would meet him at the airport with a bag with
5 the items for Andrae Cain and that he would also be given the money to pay for
6 the additional piece of luggage.

7
8 9. Mr. Davis said that a woman met him at the airport and handed the red suitcase
9 to him. When he checked inside the suitcase he did not see any items which
10 appeared to him to be suspicious.

11
12 10. As a result of the information provided by Mr. Davis, Mr. Joseph Cain and Mr.
13 Andrae Cain were arrested.

14
15 11. Joseph Cain admitted that he had spoken to Davis and asked him to bring shoes
16 and clothing for Andrae Cain. Joseph Cain denied knowing about the cocaine.

17
18 12. With respect to Andrae Cain, the prosecution's summary is as follows:

19 *“Mr. Andrae Cain was interviewed under caution. He stated that he*
20 *asked his cousin Joseph Cain if he knew anyone coming from Jamaica*
21 *to Cayman who could bring some items over for him. These items*
22 *were sweat pants that he wanted for the gym, two packs of boxers and*
23 *two packs of undershirts. He stated that he got Mr. Davis' phone*
24 *number from his cousin and contacted him. He made arrangements*
25 *for Mr. Davis to meet a female at the airport in Jamaica whom he*

1 *knew for the past seven years from Old Harbour, Jamaica who sells*
2 *stuff. He stated he had never purchased anything from her previously*
3 *and this was his first time. He stated that he did not know her and*
4 *didn't have a contact number for her as he had only contacted her*
5 *twice using his friend Alex's phone which was on Thursday, 29 April*
6 *2021. He stated that Alex was a good friend who he hung out with*
7 *regularly but he did not know Alex's full name nor where he lives. He*
8 *stated that he did not expect anything else in the suitcase and he did*
9 *not order any bun and cheese from the female as he can purchase that*
10 *in Cayman. He stated that he believed that he and Mr. Davis had*
11 *been set up by someone. He stated that he received a message from*
12 *his cousin Joseph asking him about illegal stuff in the bag which Mr.*
13 *Davis had brought in. He deleted the message from his phone as he*
14 *was frightened and worried about it. He denied being connected with*
15 *the importation of cocaine."*

16 **THE MESSAGES**

- 17 13. The messages were produced in evidence as Exhibits and showed that the
18 defendant had been in contact with a friend of his, Alex Kesto. He relayed to Mr.
19 Kesto the progress of the arrangements for the arrival of the person from Jamaica.
20
21 14. There were discussions between himself and Mr. Kesto as to what was to be
22 carried. Those discussions included that some "boogooyagah" or worthless items
23 would be packed in the suitcase, and that more than one person, specifically two
24 persons, every month, would be travelling. Alex Kesto has not been located by
25 the Officers.



1 **STATEMENT OF DC WADE CHASE**

2 15. For the purpose of sentencing, the prosecution has provided by agreement the
3 witness statement of DC Wade Chase dated 5th May 2022. He is a Detective
4 Inspector of Police attached to the Crime Task Force as Unit Commander. He
5 has been a police officer for over 22 years and has been attached to the Crime
6 Task Force, formerly known as the Drugs and Serious Crimes Task Force, for
7 the past six years. He states:

8 *“As a police officer, I have dealt with several cocaine investigations*
9 *throughout my career. Even though I am not an expert, I have*
10 *significant experience in this area. The price of cocaine, is determined*
11 *by the purity, the location of sale, the supplier and the purchaser, it is*
12 *also heavily dependent on the availability of the drug on Island.*

13 *On Thursday the 5th of May 2022, I was asked by Assistant Director of*
14 *Customs Tina Campbell to provide a statement relative to the street*
15 *value of a quantity of cocaine that was recovered. She provided me*
16 *with a drug certificate for accused Odain Damar Davis, dated 7th of*
17 *June 2021, with the Item Reference number HS#1OD. The stated total*
18 *weight of HSI OD 0.63kg (1lb 6.22oz).*

19 *Based on my experience, and current intelligence, I can state that in*
20 *the Cayman Islands, cocaine sells for \$50 KYD per gram to \$850 KYD*
21 *per ounce and between \$8,000 KYD per kilogram.*

22

23

1 *The estimated street value of HS#1 OD 0.63kg (1lb 6.22oz) is as*
2 *follows:-*

- 3 • *If sold by the kilogram, 0.63kg of cocaine can be sold*
4 *for between \$5,040 KYD and \$6,300 KYD.*
- 5 • *If sold by the ounce, 0.63kg (22.22 oz) can be sold for*
6 *between \$11,110 KYD and \$18,887 KYD.*
- 7 • *If sold by the gram, 0.63kg (630g) can be sold for*
8 *between \$31,500 KYD.”*

9
10 16. The defendant was remanded into custody following his arrest on 4th May 2021
11 through to the 27th September 2021 when he was released on conditional bail.

12
13 17. The trial took place between the 1st December 2021 and the 11th January 2022.



14
15 **ANTECEDENT HISTORY**

16 18. The defendant is 36 years old. He has no record of previous convictions.
17

18 **SOCIAL INQUIRY REPORT**

19 19. The Department of Community Rehabilitation (“DCR”) has provided a Social
20 Inquiry Report (“SIR”) dated 20th April 2022 with respect to the defendant.

21
22 20. He is the father of two children, ages ten and four years old. One child is resident
23 in Jamaica and the other in the Bahamas where the defendant resided and worked
24 for some years.

1 21. He relocated to Grand Cayman from Jamaica in 2019 to commence employment
2 as a barber. He graduated from school without incident. His mother migrated to
3 the United States when he was young and he missed her but he did not experience
4 any significant trauma throughout his life. After leaving school he initially
5 worked at various small businesses before he qualified as a barber in 2005.

6
7 22. The Probation Officer states that while this offence may have been motivated by
8 financial gain, there is no evidence that the defendant was experiencing financial
9 hardship or pressure at the time.

10
11 23. The defendant expressed to her his regret that his cousin Joseph Cain was
12 involved in the justice system because of his actions and his relief that Joseph
13 Cain and Odain Davis were not convicted of these offences. He says that he has
14 apologised to them.

15
16 24. The defendant is described as sharing a harmonious and supportive relationship
17 with his children and wider family. His mother says that her concern about him
18 is his choice of companions which she believes led to the commission of this
19 offence. Through the Probation Officer, the defendant expresses his desire “to
20 get this matter out of the way and return home”. He says that he does not have
21 any support in Cayman. He said to the Officer:

22 *“It’s bittersweet [...] after going through everything, I feel like I*
23 *wasted the court’s time because I was found guilty. I wish they would*

1 *understand I'm a nice person. I wish they would give me a chance to*
2 *go deal with my kids."*

3 25. Under Assessment/Evaluation, the Officer describes the defendant as polite,
4 confident, well-spoken, and intelligent. He is a goal-oriented person with good
5 family values. The Report states:-

6 *"In discussing the offences for which he is now before this*
7 *Honourable Court, Mr. Cain exhibited common criminal thinking*
8 *errors. According to the client, he believes that the drugs belongs to*
9 *an associate (Alex). However, he is reportedly unable to disclose any*
10 *further information about Alex and, until now, it is unknown whether*
11 *this individual is real or fictitious. Mr. Cain views himself as the*
12 *victim of his friend's actions and blames him for his current quandary*
13 *before the court. The client constantly rationalized that he could not*
14 *have committed the offences because he is a good person. He sought*
15 *to highlight his positive traits as evidence of his innocence. He*
16 *further stated that he would have "covered" [his] tracks better" if he*
17 *had actually committed this offence."*

18
19 26. The defendant was assessed using the LS/CMI/Risk/Need Assessment Tool. His
20 overall risk of re-offending was assessed as medium.

21
22 27. The Officer identified his pro-criminal attitude/orientation as being of medium
23 level. This given his attempts to rationalize his involvement in the current offence
24 and the view that his years of illicit cannabis use indicates that he is supportive

1 of drug related crime. He also equally demonstrates a desire to lead a
2 conventional lifestyle by his role as a supportive father to his children.

3
4 **THE MISUSE OF DRUGS ACT (2017 REVISION)**



5 28. Section 45(2) of the *Misuse of Drugs Act* provides as follows:-
6

7 *“Notwithstanding any other section of this Law or sections 6(2) and*
8 *8 of the Criminal Procedure Code (2017 Revision) or any provision*
9 *of any other Law, where a person is convicted of an offence on trial*
10 *upon indictment pursuant to subsection (1)(a), the Grand Court may*
11 *impose a term of imprisonment and a fine in accordance with section*
12 *16(4) or Part B of Schedule 2.”*

13
14 29. Section 16(5) provides as follows:

15 *“Notwithstanding subsection (1), a person who commits an offence*
16 *that —*
17 *(a) is contrary to any provision of this Law;*
18 *(b) is specified in Part B of Schedule 2; and*
19 *(c) is in relation to a controlled drug that is a hard drug, is, on*
20 *summary conviction, liable to imprisonment and a fine in*
21 *accordance with Part B of Schedule 2”*

22
23 30. Part B of Schedule 2 to the *Act* provides that upon conviction of Being Concerned
24 in the Importation of 2 ounces or more of cocaine the maximum sentence on
25 conviction before the Grand Court is 25 years and a fine without limit.

26 **THE CHIEF JUSTICE’S GUIDELINES 2002**

27 31. In the *Statement on Tariffs and Guidelines for Certain Offences* issued by the
28 Chief Justice in 2002 it was stated:



1 “As regards **DRUG OFFENCES** under the *Misuse of Drugs Law* and
2 in particular those related to the widespread problem with cocaine
3 abuse in these Islands, the following tariffs are now confirmed: ...
4

5 *At the other end of the scale of gravity, that is to say, trafficking in*
6 *hard drugs in any quantity as defined in the Misuse of Drugs Law, the*
7 *maximum penalty prescribed for offences involving 2 ounces or more*
8 *is 20 years for the first offence and 30 years for a second or*
9 *subsequent offence with an unlimited fine in each case. That of course*
10 *is the maximum – the sentence for the worse possible offence by the*
11 *worse possible offender. The tariff for a first such offence, involving*
12 *less than 2 ounces of cocaine or less than 4 grams of cocaine base*
13 *without mitigating circumstances, will be 8 years. For offences*
14 *involving 2 ounces or more or 4 grams or more of cocaine base*
15 *without mitigating circumstances the tariff will be 10 to 12 years. 15*
16 *years or more will be imposed where such an offence involves*
17 *substantial importation or dealing in anyway either in powder or*
18 *crack cocaine. We would define ‘substantial importation or dealing’*
19 *as any transaction involving several ounces or kilo quantities. The*
20 *Courts recognise that many of the people caught are couriers or*
21 *intermediaries and that the worse offenders in the chain of*
22 *distribution often remain concealed. Therefore there will be a*
23 *substantial discount on sentence for those offenders who are prepared*
24 *to co-operate with the police in their enquiries.”*
25

26 **CASES**

27 32. In the recent case of *Michael Palmer v R*¹ the Cayman Islands Court of Appeal
28 (“CICA”) re-affirmed that the *Statement of Tariffs and Guidelines* remains the
29 definitive source of sentencing guidance in cases such as the present. This is
30 notwithstanding the passage of time since they were propounded and notwithstanding
31 that the maximum sentence for the offences has substantially increased. In that case
32 the appellant *Palmer* imported 1.93 kgs of cocaine. He was sentenced to 8 years’

¹ CICA Appeal 23/2019 Unreported Judgment dated 25th November 2020

1 and 9 months' imprisonment which sentence was upheld on appeal. The
2 Appellate Court approved the starting point of 15 years as being reflective of the
3 *Statement of Tariffs and Guidelines*. In the related case *Kemar Boothe v. R²*, in
4 which the appellant was said to have played a significant role as one of the
5 persons who had organised the importation of the drugs, the appellate Court
6 considered that a starting point of 17 years was appropriate.



7
8 33. In the case of *Beacher v R³* the appellant received a sentence of 15 years'
9 imprisonment after trial for being concerned with the importation of 460 grams
10 of cocaine which was to be collected by him from a courier. The Appellate Court
11 held that the sentence was not manifestly excessive, given the quantity of cocaine
12 involved, and that it was also within the 2002 guidelines.

13
14 34. In the case of *Edwards, McBean and Others v. R⁴*, the Grand Court considered
15 a number of appeals from sentences imposed by the Summary Court. The
16 appellant Junior Dixon had pleaded guilty to importing 388 grams or more than
17 14 ounces of cocaine. He was a courier. His appeal against a sentence of 9 years'
18 imprisonment was dismissed. The appellant Erick McBean was convicted by the
19 Summary Court on his own plea of being concerned in the importation of 207
20 grams or 7.3 ozs of cocaine from Jamaica into the Cayman Islands. His sentence

² CICA Appeal 3/2021 and 4/2021 Unreported Judgment dated 14th December 2021

³ [2007] CILR 333

⁴ [2001] CILR 334

1 of 11 years was reduced on appeal to the Grand Court to one of 8 years. Howard
2 Antonio Edwards facilitated the purchase of approximately \$13,000.00 worth of
3 cocaine. Given his limited and minor role, in the absence of evidence that he
4 would profit, the Grand Court considered that a sentence of 6 years'
5 imprisonment was appropriate on a guilty plea.



6
7 **THE UNITED KINGDOM SENTENCING GUIDELINES**

8 35. Prosecuting Counsel has referred the Court to the *United Kingdom Sentencing*
9 *Guidelines* on the Fraudulent Evasion of a Prohibition by bringing into or taking
10 out of the United Kingdom a controlled drug. The maximum penalty in the
11 United Kingdom in respect of Class A drugs is life imprisonment. The sentence
12 range is 3 years 6 months' to 16 years' custody.

13
14 36. While the sentence range and maximum sentences are different from those for
15 the Cayman Islands, the *United Kingdom Guidelines* may be of assistance in
16 assessing an offender's Culpability and the category of Harm.

17
18 37. Culpability is demonstrated by an offender's role when certain characteristics are
19 present.

20 ***“Leading Role:***

- 21 i. *Directing or organizing buying and selling on a commercial scale;*
22 ii. *Substantial links to, and influence on, others in a chain;*
23 iii. *Close links to original source;*



- 1 iv. *Expectation of substantial financial gain;*
2 v. *Uses business as cover; and*
3 vi. *Abuses a position of trust or responsibility.*

4
5 ***Significant Role:***

- 6 i. *Operational or management function within a chain;*
7 ii. *Involves others in the operation whether by pressure, influence,*
8 *intimidation or reward;*
9 iii. *Motivation by financial or other advantage, whether or not operating*
10 *alone; and*
11 iv. *Some awareness and understanding of scale of operation.*

12 ***Lesser Role:***

- 13 i. *Performs a limited function under direction;*
14 ii. *Engaged by pressure, coercion, intimidation;*
15 iii. *Involvement through naivety/exploitation;*
16 iv. *No influence on those above in a chain;*
17 v. *Very little, if any, awareness or understanding of the scale of*
18 *operation; and*
19 vi. *If own operation, solely for own use (considering reasonableness of*
20 *account in all the circumstances).”*

21
22 38. Harm is indicated by the quantity of drugs concerned upon which the starting
23 point is based. In respect of cocaine it is:

24 Category 1 - 5kg
25 Category 2 - 1kg



1 Category 3 - 150 grams
2 Category 4 - 5 grams

3

4 **THE SUBMISSIONS**

5 39. Prosecuting Counsel submits that the appropriate starting point for this case
6 based on local guidelines is greater than 8 years but less than 20 years. It is
7 further submitted that the amount imported places this offence at the higher range
8 of the sentencing authorities, and thus the starting point of 12-15 years would be
9 applicable.

10

11 40. Defence Counsel submits that while the *United Kingdom Sentencing Guidelines*
12 may be helpful in guiding the Court as to the appropriate sentence, they ought
13 not to be followed in isolation. Counsel referred to the case of *Milton and*
14 *Campbell v R*⁵ and highlighted the statement of Lord Toulson as follows:

15 *“There are no statutory guidelines and the courts appear to have*
16 *developed a practice of using the provisions of Schedule 21 of the UK*
17 *Criminal Justice Act 2003 for guidance. The courts are entitled to look*
18 *for guidance to sentencing practices in other countries, but the Board*
19 *would not recommend that they bind themselves too closely to the*
20 *regime of a particular country, including the UK. Local judges are in*
21 *the best position to assess the appropriate tariff in their jurisdiction,*
22 *subject to their own statutory provisions.”*
23

⁵ [2015] UKPC 42

1 41. Counsel also referred the Court to the principles discussed by the learned Chief
2 Justice in the case of *Mitchell Comrie v R*⁶ - pointing out in particular that there
3 are three factors that should guide a sentencing Judge:

- 4 i. The quantity of the drug
- 5 ii. The role of the defendant
- 6 iii. The antecedent history of the defendant



7
8 42. In this regard, Defence Counsel cited a number of cases including the following.
9 In *Kenecia Millwood v. R*⁷, the Appellate Court considered that a starting point
10 of 15 years rather than 17 years should have been applied, given the lesser role
11 of the appellant. A sentence of 10 years was imposed for importation of 2.86 kgs
12 of cocaine from Columbia.

13
14 43. In *R v Watson and Manahan*⁸, the first appellant was sentenced to 10 years
15 imprisonment on a guilty plea to being concerned in the possession of cocaine
16 with intent to supply 2 kgs of cocaine. The Appellate Court held that, subject to
17 mitigation, the appropriate sentence for importation or being concerned in the
18 importation or supply of 2 kgs of cocaine was 15 years' imprisonment on a not
19 guilty plea and 12 years' imprisonment on a guilty plea. The Court reduced the
20 sentence of 10 years to 9 years on the basis that the lower court had not given full
21 credit for the first appellant's guilty plea which came after the preferment of a

⁶ [2012 (1) CILR Note 3

⁷ 2016 (2) CILR Note 5

⁸ (2000 CILR Note 16 CICA Crim. App. No. 14 of 2000, August 2000, unreported.

1 new charge of being concerned in the possession of cocaine with intent to supply.
2 The initial charge had been, being concerned in the importation of the drug.

3
4 44. In the case of *Tidyl Fellner v. R*⁹ a sentence of 9 years which was imposed after
5 trial for the offence of Being Concerned in the Importation of 680 grams of
6 cocaine was affirmed by the Court of Appeal. The defendant was 26 years old
7 and had no previous convictions.

8
9 45. In the case of *R v Lobo, Perez-Ruiz, Taylor-Dominguez and Others*¹⁰, the Grand
10 Court considered the appropriate sentences for conspiracy to import a kilo of
11 cocaine and a second offence of attempted importation of just over 1.8 kilos of
12 cocaine. The Court identified starting points of 17 years' imprisonment for the
13 leading players in the importation and starting points of 15 years for middle
14 management. From a starting point of 17 years Mr. Taylor Dominguez, who had
15 given evidence at the trial of the main defendant, Mr. Lobo, received a sentence
16 of 4 years' imprisonment following discounts for assistance and guilty pleas.

17
18 46. Defence Counsel submits that the defendant in the instant case played no more
19 than a lesser role. This is argued on the basis that while he had some awareness
20 of the scale of the operation, there is nothing to suggest that he had control over
21 the actual drugs or received or was to receive any financial benefit.

⁹ Court of Appeal, Crim. App. No. 32 of 2001, August 16th, 2001, unreported.

¹⁰ [2019 (1) CILR Note 19



1 47. Counsel noted the evidence from the messages that the defendant was seeking
2 loans from a third party. Counsel also submits that given these messages, Alex
3 Kesto appeared to have played the leading role in the operation.

4
5 48. With respect to Harm, defence Counsel referred to the quantity of the drug in this
6 case, 630 grams of cocaine or 1lb, 6.22 ounces.

7 **AGGRAVATING FACTORS**

8 49. Prosecuting Counsel submits that there are seven aggravating factors as follows:

9
10 i. The operation was a sophisticated one in that the cocaine was concealed
11 in a factory-sealed tin.

12
13 ii. The operation involved multiple persons across two jurisdictions and was
14 therefore a large-scale operation. Counsel submitted that at least five
15 persons have been involved, Andrae Cain, Joseph Cain, Odain Davis,
16 Kim and Alex Kesto.

17
18 iii. The defendant played an important role in the operation. He recruited
19 other persons.

20
21 iv. The offence was motivated by financial gain. The defendant was
22 gainfully employed as a barber at the time of his involvement.



1 v. Whilst convicted of being concerned with the importation of cocaine on
2 only one occasion, the telephone evidence suggests that this was part of
3 an ongoing operation. The defendant Andrae Cain accepted in evidence
4 that he asked multiple people to bring items over to the Cayman Islands
5 for him.

6
7 vi. The defendant did not provide as much assistance to the investigators as
8 he could have.

9
10 vii. The defendant put the futures of the two men recruited, his cousin Joseph
11 Cain and Odain Davis into jeopardy. Whilst it is Mr. Cain's legal right
12 says Counsel to put the prosecution to proof and contest the matter, in
13 doing so, he did not assist with the investigation and he placed in jeopardy
14 two men who showed him good will in agreeing to have the suitcase
15 brought over to carry items for him.

16
17 50. Defence Counsel submitted that there are no obvious aggravating factors in this
18 case.

19
20 51. Counsel submitted that the offending took place over a limited period of time
21 some four to six weeks and that there was nothing sophisticated about it. The
22 sealing of a tin of cheese is not an indication of sophistication as argued by the
23 prosecution as tin sealers are readily available to the public. As to the



1 prosecutions' argument about the defendant placing others in jeopardy, defence
2 Counsel argued that it is the prosecution that placed others in jeopardy as despite
3 having the benefit of phone records and messages it was determined to be
4 appropriate to bring charges against others. Counsel also submitted that the
5 absence of assistance should not be taken into account by the Court as an
6 aggravating factor. The defendant gave evidence in the matter and provided all
7 the information which he had in relation to Alex Kesto.



9 SUBMISSIONS IN MITIGATION

10 52. In mitigation Counsel referred to the SIR and the matters identified therein.
11 Counsel said that the defendant is before the Court on bended knees asking for
12 leniency. He has not sought to flee the jurisdiction as Mr. Kesto obviously did.
13 This Court is asked to consider that a significant part of the life of his young
14 children will be spent without him.

15 ANALYSIS

16 53. The *United Kingdom Guidelines* state that one or more of the characteristics
17 listed may demonstrate the offender's role. One of the characteristics listed under
18 significant role is the involvement of others in the operation. In this case some of
19 the messages from Exhibit 12 and the evidence on oath given by Joseph Cain and
20 Odain Davis make it plain that they became involved in the operation as a result

1 of the repeated requests made by this defendant. The messages include the
2 following:



3 a. **26th April 2021 - 11:29 am Voice note message: AC to Kesto**

4 *"I just found someone who is coming Friday and don't want to carry*
5 *anything for anybody. My cousin told me that his barber friend is*
6 *coming up Friday and I'm trying to get the pussy to bring a thing for*
7 *us. A bag for me, shoes and stuff and the batty boy is acting like he*
8 *doesn't want to bring it. Yo I'm heated and would buss his head if I*
9 *saw him you know."*

10
11 b. **26 April 2021 at 11:54 Voice note message from AC to Kesto**

12 *"Check this out the person I told you about not too long ago? It seems*
13 *he's softening up to agree with the bag thing. Because I told him to*
14 *just make us put a bag together and pay for it. So he's talking about*
15 *he's full and this and that. So I suggested that he can carry an extra*
16 *luggage and all he has to do is pay for it. Whichever kind of bag he*
17 *wants to carry it doesn't matter. So it seems like he's agreeing to it."*

18 c. **26th April 2021 at 11:28- Message AC to JC**

19 *"Prince what I'm saying to you is call the youth and make him know*
20 *it's a little bag and you'll send him the money to pay for it. This is*
21 *how serious things are that they don't want to carry anything for*
22 *anybody. Reason with him and make him know. It's not like he's*
23 *going on train with it. It won't inconvenience him. I don't like*
24 *country man style. Reason with people and stop going like ya'll don't*
25 *have sense."*

26 d. **29 April 2021 at 23:43:23 Voice note message from AC to JC**

1 *“Prince what you up to? I called your friend a while ago but he*
2 *sounds like he doesn’t want to do anything for anyone. I don’t know*
3 *but I’d like you to contact him in the morning to see if he’s still going*
4 *deal with it for me because I got him but he said he was going to call*
5 *me back. So let me know still and just in case he calls back I’ll let*
6 *you know.”*

7
8 54. Odain Davis in respect of the call with AC on the 29th April 2021 at 11:56:22,
9 says that the defendant was swearing and cursing and endeavouring to persuade
10 him to carry the bag.

11 55. The overwhelming evidence is that the defendant involved others in the operation
12 whether by pressure, influence, intimidation or reward.

13
14 56. The messages exchanged between the defendant and Mr. Kesto indicate that the
15 defendant had some awareness and understanding of the scale of and
16 arrangements for the operation.

17
18 57. The messages include the following:

19
20 a. **26th April 2021 - 11:57am Voice note message: Kesto to AC**

21 *“You can sort that out just get some heaps of clothes and some*
22 *worthless items and pack a bag to send up for you fast.”*

23
24 b. **26th April 2021 11:51 Voice note: AC to Kesto**

25 *“No dog none of them is this one. It’s the girl [inaudible] on no flight*
26 *daddy. The next one for next week is coming still. Her flight is*

1 *straight. But the next one, her flight has been pushed back until next*
2 *month.”*

3
4 c. **26th April 2021 11:52 Voice note: AC to Kesto**

5 *“Yea bro all the way next month the 28th the next one there is*
6 *coming.”*

7
8 d. **26th April 2021 11:53 Voice note: Kesto to AC**



9 *“[Inaudible] far you know my friend the 28th of the next month is frr*
10 *frr frr you know. Remember it’s 2 of them bro. 2 of them you know*
11 *remember. 2 of them you had. You always forget that so I’m*
12 *reminding you one more time.”*

13
14 58. Given all the circumstances, the conclusion is that this defendant played a
15 significant role. He recruited persons for the operation which was critical to the
16 success of it. Without his involvement the drugs would have remained in
17 Jamaica. He was aware of important details. The messages and the information
18 upon arrival of Davis showed that it was the defendant who was waiting to collect
19 the suitcase with the drugs, from him.

20
21 59. Consideration has also been given to defence Counsel’s submission that the
22 defendant played a lesser role in respect of each point on the list in the
23 **Guidelines**. There is nothing to suggest that the defendant was performing a
24 limited function under the direction of Alex Kesto or anyone else. Rather the

1 messages suggest an equal role or discussions between partners. There is nothing
2 to suggest that the defendant had no influence on Alex Kesto and no evidence
3 that the defendant's involvement was through pressure, coercion or intimidation.

4
5 60. It is proposed in this case to adopt a starting point of 15 years. The basis for this
6 mid-range approach is in part, the quantity of the drug which is less than one half
7 the amount in the recent case of *Michael Palmer v. R.*¹¹, (630 grams compared
8 to 1930 grams). The lower starting point of 10-12 years which is mentioned in
9 the *Statement of Tariffs* is not adopted given the role played by this defendant
10 which is considered to be significant and the quantity of the drug. This is a case
11 of substantial importation. The higher starting point of 17 years which was
12 adopted in the cited case of *Kemar Boothe v. R.* is not adopted in this case
13 because of the lower quantity of the drugs. While there is a similarity of
14 significant roles there is a lower quantity of drugs in this case and thus the starting
15 point adopted is 15 years.

16
17 61. The Court has considered the submissions made by both Counsel by reference to
18 the list of aggravating factors identified in the *Guidelines*. Care must be taken
19 not to double count. The important role played by the defendant in the operation,
20 his involvement of others and his knowledge of the operation is already reflected
21 in the starting point adopted. The outstanding factor would be as to the

¹¹ CICA Appeal 23/2019, 13th November 2020



1 sophisticated nature of the operation. The submissions of defence Counsel are
2 accepted in part. There is some level of sophistication to avoid concealment, but
3 it is at the lower end of the scale. The Court does not propose to apply an uplift
4 in sentencing with respect to this factor.

5
6 62. The offending in this case is of a serious nature with damaging implications for
7 the residents of the Cayman Islands who would by the presence of this drug have
8 access to harmful substances. As defence Counsel submitted:

9 *“The damage cocaine causes to the Cayman community cannot be*
10 *minimised. Serious risks are well documented to the users’ health, in*
11 *addition to unemployment and disrupted families. Often, harm*
12 *extends beyond the user and other serious offending burglaries in*
13 *order to fund addiction are not uncommon.”*

14 63. The custody threshold is firmly passed in this case and there is nothing in the
15 defendant’s personal circumstances which suggests that a custodial sentence is
16 avoidable.



17
18 64. From a starting point of 15 years, the Court takes into account everything that
19 has been said in the defendant’s favour in the SIR, which is summarised above,
20 and by his Counsel. He is 36 years of age. He has no previous convictions and is
21 of good character. He has good personal qualities and has been gainfully
22 employed. He is the father of young children. One child is only four years old.
23 Incarceration in the Cayman Islands will mean that he will be separated from his


1 family in his home country and will be unable to provide for and support his
2 children.

3
4 65. When all these factors are taken into account, the sentence is reduced from 15
5 years to one of 11 years imprisonment. Any time served is to be deducted.

6
7 66. The defendant has been on an electronic monitor with a curfew from 7pm to 7am
8 from the 27th September 2021 through to today, a total of 228 days. The Court is
9 guided by the *Cayman Islands Sentencing Guidelines* with respect to credit for
10 curfew. It is noted that for a defendant of his character, his occupation and on the
11 evidence which emerged at trial, his particular extra-curricular activities, this
12 would have been particularly restrictive for him. Therefore the court proposes to
13 give him credit of 50 % for a total of 114 days.

14
15 67. The drugs are ordered forfeited to be destroyed.

16 **Dated this 13th day of May 2022**

17 



18 **Honourable Justice Cheryll Richards Q.C.**
19 **Judge of the Grand Court**