

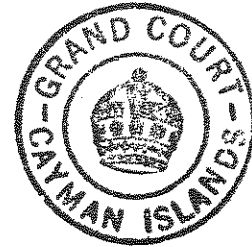
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0064/2013**

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8 **THE QUEEN**

9  
10 **V**

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12 **ODAIN LLOYD EBANKS**  
13 **COURTNEY MASON BRYAN**  
14 **IAN FERNANDO ELLINGTON**



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17 **Appearances:**

**Mrs. Tanya Lobban-Jackson for the Crown**

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19 **Ms. Lucy Organ of Samson & McGrath for**  
20 **the Defendant**

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22 **Before:**

**The Hon. Mr. Justice Charles Quin**

23 **Submissions heard:**

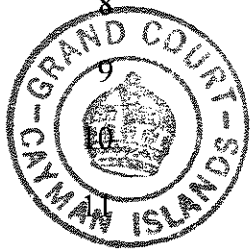
**12<sup>th</sup> December 2013**

24  
25 **SENTENCE RULING**  
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- 27 1. On the 18<sup>th</sup> October 2013 the Defendant, Courtney Bryan, pleaded guilty to both  
28 counts on this Indictment – one count of Robbery contrary to s.242(1) of the Penal  
29 Code (2010 Revision) and one count of Possession of an Imitation Firearm with  
30 Intent to Commit an Offence contrary to s.18(6) of the Firearms Law 2008  
31 Revision.

1           2.       Both charges relate to the robbery that the Defendant committed along with three  
2                   others<sup>1</sup> on the 23<sup>rd</sup> September 2013.

3           3.       The particulars of the two counts on this Indictment are that Mr. Bryan, and  
4                   another<sup>2</sup>, entered Chisholms' Supermarket at #1240 North Side Road, North Side,  
5                   Grand Cayman, and stole 11 packets of Benson and Hedges cigarettes, one 14 carat  
6                   gold chain, one blue topaz pendant, one silver stainless steel ESQ watch, one black  
7                   Nokia mobile telephone and CI\$300.00, all-together valued at CI\$1,495.00, from  
8                   Rhoda and Sheena Ebanks, and at the time of doing so, and in order to do so, put or  
9                   sought to put Rhoda Ebanks and Sheena Ebanks in fear of being then and there  
10                  subjected to force, whilst having in their possession an imitation firearm with intent  
11                  to commit an offence, namely robbery.



12

#### *SUMMARY OF FACTS*

13           4.       It is the Crown's case that prior to the robbery, two of the four Defendants had  
14                   entered the Chisholms' Supermarket and purchased one patty. Their behaviour –  
15                   especially upon leaving the Supermarket after purchasing the patty - had aroused  
16                   the suspicion of the 83-year-old Mrs. Rhoda Ebanks, the store owner, who was  
17                   manning the store along with her granddaughter, Ms. Sheena Ebanks. Mrs. Rhoda  
18                   Ebanks then decided to take note of the registration number of the motor car – 111-  
19                   109 - in which the two males who entered the Supermarket had arrived. Two other  
20                   males had remained in the vehicle.

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<sup>1</sup> Two other Defendants are charged on this Indictment and one other Defendant, a Young Person, is charged for these offences on a separate Indictment. In total, four Defendants are charged in relation to this robbery.

<sup>2</sup> The Young Person charged on a separate Indictment pleaded Guilty to Count 1 of this Indictment on the 1<sup>st</sup> November 2013. At the time of preparing this Ruling discussions are in train between the Crown and Defence in relation to the Young Person's plea to Count 2.

1       5.       The Defendant and the Young Defendant entered the Supermarket some 15 minutes  
2       after the first visit of the two men who purchased the single patty. The Defendant  
3       and the Young Defendant entered the store from the beach side, which is at the  
4       back, and were wearing black-coloured ski masks which fully covered their faces –  
5       leaving only their eyes and mouths exposed. The robbers were also wearing gloves.

6       6.       The Defendant's co-robber focused his attention on Mrs. Rhoda Ebanks and  
7       shouted:

8               *"Give me the money."*

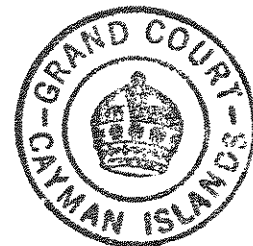
9       The Defendant Mr. Bryan, carrying what was described as a silver-coloured  
10       handgun went around the counter and took up the loose change on the counter.  
11       Next, the Defendant, pointing the weapon at Ms. Sheena Ebanks' collarbone  
12       shouted:

13               *"Give me your jewelry"*

14       The Defendant subsequently pulled her necklace from around her neck, which  
15       broke and fell to the ground. Ms. Ebanks then handed over to the Defendant her  
16       ESQ wrist watch with diamonds.

17       After Ms. Sheena Ebanks was forced to show the Defendant how to open the cash  
18       register, the Defendant took the money from the register, took up cigarettes and a  
19       cell phone and all the items were placed in a blue draw string bag. Before leaving,  
20       one of the robbers shouted:

21               *"Next time make sure you have more."*



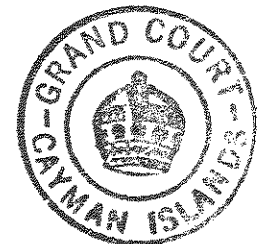
1           7.       The Complainants contacted the police and gave them a description of the getaway  
2                    car and its registration number. The police officers at Bodden Town Police Station  
3                    – WPC Baker and PC Grant – immediately left in a police car, along with PC  
4                    Bennett in a second police car, to chase the getaway car. PC Emmanuel Brown set  
5                    up a roadblock at the Frank Sound junction, and the police helicopter unit was also  
6                    called into action.

7           8.       The getaway vehicle was observed turning onto Frank Sound Road and speeding  
8                    towards East End. The vehicle was chased by the aforesaid police officers on the  
9                    road and by the helicopter unit. It was observed by the police officers that a number  
10                  of items were being discarded from the left side of the vehicle whilst driving. It was  
11                  also later established that an imitation firearm had been thrown into the sea.

12          9.       The vehicle was finally stopped by police at Rivers Side Plaza in East End. The  
13                  Defendant and his three companions exited the vehicle and they were shortly  
14                  afterwards detained and arrested.

15          10.       The police recovered the diamond ESQ watch at the scene of the arrest and also  
16                  recovered two cell phones, a black Nokia phone and a number of cigarettes. Though  
17                  many items were recovered, the pendant valued at CI\$450.00 was not recovered.  
18                  The items recovered were valued at approximately CI\$650.00 – with the pendant  
19                  and the CI\$300 cash not recovered.

20          11.       The Defendant was interviewed under caution on the 25<sup>th</sup> September 2013. He said  
21                  that he was asleep during the entire journey and only woke when the vehicle was  
22                  stopped by the police in the vicinity of the Rivers Side Plaza.



1           12.    The Defendant made no admissions in his interview with the police, but the Court  
2                   accepts that he pleaded guilty at the first opportunity when he appeared in the  
3                   Grand Court with the other Defendants on the 18<sup>th</sup> October 2013 – some three  
4                   weeks after the robbery occurred.

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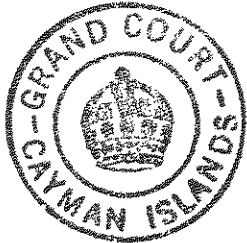
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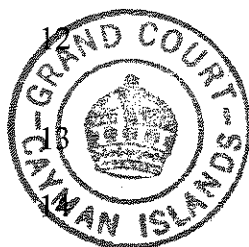


*CROWN'S SUBMISSIONS*

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2       13.     Crown counsel, Ms. Lobban-Jackson, highlights the fact that the younger  
3             Complainant, Ms. Sheena Ebanks, was scared and began to cry during the robbery.  
4             The Defendant pointed the gun directly at Ms. Ebanks and at her collarbone area,  
5             and told her to take off her jewelry – yanking the gold chain from around her neck  
6             in the process and having the said Ms. Ebanks hand over her watch. The pendant on  
7             Ms. Sheena Ebanks' chain was taken in the process. The Crown submits that Ms.  
8             Sheena Ebanks was very shaken by the incident and could not stop crying and the  
9             emotional impact of the incident has been severe as she has had to go through some  
10            12 counselling sessions.

11       14.     Ms. Rhoda Ebanks who experienced the robbery with her granddaughter, Sheena,  
12             stated to the Probation Officer:



13                   *"I am 83 years of age and I still work for a living. These idiots come and take  
14                   your few dollars instead of trying to work. I get up from 6 a.m. to get to work  
15                   for 7 a.m. I am there until 7 p.m. and they are idling their time away."*

16       15.     Crown counsel urges the Court to adopt the UK sentencing guidelines as they have  
17             been endorsed by the Cayman Islands Court of Appeal in ***R v. Haylock, Avila,***  
18             ***McLaughlin, Watson*** CICA (Crim) No. 33 of 2010.

19       16.     The Crown asks the Court to note the degree of force used in this case and the fact  
20             that the gun was pointed at the collar bone of the younger Complainant. The  
21             Crown points out that whether the firearm is real or an imitation is of no  
22             consequence, as the amount of fear is the same and the use of the weapon is an  
23             additional consideration.

*DEFENCE SUBMISSIONS*

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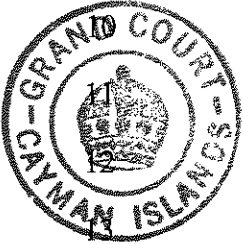
17. The Defence accepts that Mr. Bryan’s offence fits into the category of the robbery of a small business and both counsel agree that it is a category 2 offence.

18. The Defence accepts that the Defendant was carrying an imitation firearm which, after the event, he threw into sea.

19. The Defence submits that there were not two guns, but will carry the point no further as the Defendant is not seeking to undermine his responsibility for the offence, since he accepts that he had possession of an imitation firearm.

20. Defence counsel’s first submission is that the Defendant always intended to plead guilty and was anxious to enter his guilty plea at the first possible opportunity. The Defendant apologises to the Court and asks the Court to accept that this is an out of character act. Defence points out that the Defendant has never sought “to shift the blame” and has never submitted a bail application since remanded in custody. Defence counsel therefore asks the court to accord the Defendant the full discount of 33<sup>1/3</sup> % off the sentence imposed for his very early guilty plea.

21. Defence counsel accepts that although this was a terrifying offence, it was mercifully short lived. Defence counsel also notes that the Defendant made no oral threats to the victims such as “I will shoot you or else”, but, nevertheless, counsel accepts that the use of the firearm was an implicit threat and there was some amount of force used to remove the Complainant’s necklace from her neck. Defence counsel asks the Court to take into account that, again, mercifully, no physical injuries were inflicted or sustained.



1       22.     Defence counsel accepts that there are two aggravating features namely, the  
2             possession of the imitation firearm, and the fact that the Defendant wore a disguise  
3             – which both demonstrate an element of planning. Nevertheless, Defence counsel  
4             submits that the offence was an impulsive act that lacked sophistication, and the  
5             Defendant did not take part in any of the planning; the ruse was simply suggested to  
6             him and he played along.

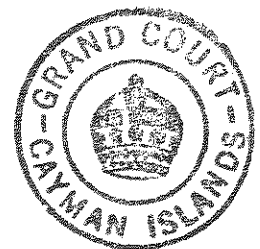
7       23.     Defence counsel submits that the Defendant was not one of the two men who  
8             entered the shop 15 minutes prior to the robbery, even though he fully accepts that  
9             he took part in the robbery, he was one of the robbers, and, he had the imitation  
10            firearm.

11            Defence counsel points to the fact that the Defendant is only 20 years of age and he  
12            is not fully mature or developed. Defence counsel adds that the Defendant’s early  
13            years were very difficult – without a relationship with either his father or mother.

14            The Defendant is Caymanian with a Caymanian mother but has spent a  
15            considerable part of his young life with his paternal grandmother. He has no  
16            relationship with his mother and a very poor relationship with his father. The  
17            Defendant went to the United States at a very early age to live with his father but  
18            that relationship broke down and he was cared for by his paternal grandmother. In  
19            October 2012 the Defendant returned to the Cayman Islands to try to establish a  
20            relationship with his mother, but that did not materialize.

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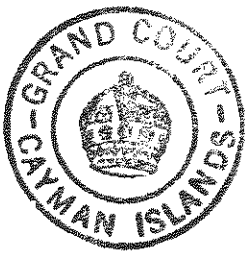
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1       24.   Defence counsel points to the extreme remorse exhibited by the Defendant. The  
2       Defendant has written to the Court stating that he is sorry for the pain he has caused  
3       by his actions. The Defendant also stated that he is sorry he cannot turn back the  
4       hands of time and all he can do is stand and “*take judgment for his wrong (doing).*”

5       The Defendant points to his association with the wrong companions and his  
6       dependency on drugs – both ganja and cocaine – as being the source of his criminal  
7       behaviour. Defence counsel points to the fact that the Defendant has had a solid  
8       educational base but his unstable past has not allowed him to obtain full time  
9       employment.

10       In relation to the Defendant’s clearly consistent drug use it is disturbing to note that  
11       the Defendant has told the Probation Officer that he smokes “five ganja a day”  
12       whilst in custody at HMPS Northward.



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*ANALYSIS*

25. When one looks at the offences to which the Defendant has pleaded guilty, they all warrant a significant custodial sentence. The UK Sentencing Guidelines Council states:

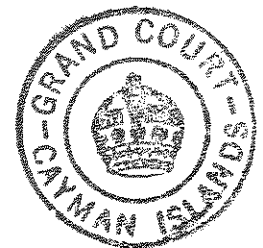
*“It is the element of violence that is the most serious part of the offence of robbery, but it is not the only determining factor. The relative seriousness of each offence depends on factors such as the degree of injury to the victim or the nature and the duration of the threats. The degree of force used is important in determining the seriousness of the offence but the degree of fear which is experienced by the victim is a relevant consideration.”*

26. I find that Count 1 comes within level 2 of the United Kingdom Sentencing Guidelines because a weapon was produced and used to threaten the owners of Chisholms’ Supermarket. This Court noted in the case of *R v. Josh Alexander Bodden* Indictment 68 of 2010 dated the 22<sup>nd</sup> December 2010:

*“The Court accepts that the Defendant used an imitation gun, but, at the same time, notes that this is a very serious offence, and one which put the Complainant in considerable fear for his life.”*

27. Also the Sentencing Guidelines Council states:

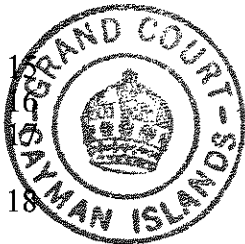
*“Whether the firearm is real or an imitation is not a major factor in determining the appropriate sentence because the amount of fear created in the victim is likely to be the same.”*



1 28. There is evidence before this Court that some planning went into this offence owing  
2 to the fact that one of this Defendant's co-accused<sup>3</sup> entered the Supermarket prior to  
3 the incident and bought one patty. The inescapable inference is that the first two  
4 men went in to "case the joint" to see if the coast would be clear to execute the  
5 crime. In addition, the Defendant and his co-robber wore black masks to conceal  
6 their identity, had with them a blue draw-string bag in which they carried their  
7 takings from the robbery, and the Defendant used an imitation firearm.

8 29. The Defendant was 20 years of age at the time of the offence and is classified as an  
9 adult offender. The starting point under the UK Sentencing Guidelines Council –  
10 which has been adopted by both the Cayman Islands Court of Appeal and the Grand  
11 Court – is 4 years in custody, with a sentencing range of two years to seven years,  
12 depending on the number of aggravating and mitigating factors.

13 30. The President of the CICA, Sir John Chadwick, stated at paragraph 11 in the case of  
14 *R v. Haylock, Avilla, McLaughlin and Watson:*



17 *"Nevertheless those who arm themselves with weapons and undertake pre-  
18 meditated robbery of small commercial businesses in these islands must expect  
at least five years' imprisonment if they are convicted."*

19 31. Both Crown counsel and Defence counsel accept that this is a level 2 offence under  
20 the UK Sentencing Guidelines for which the starting point is 4 years' custody in  
21 relation to a Defendant who pleads **not** guilty and has no previous convictions.

22 32. Aside from the Defendant's professed remorse and apology to the victims, and the  
23 fact that he has no previous convictions, there are few, if any, mitigating factors.

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<sup>3</sup> Either the Young Defendant charged on a separate Indictment or any of the other two Defendants charged on this Indictment.

1 33. I do accept that the Defendant had a troubled upbringing and very little love and  
2 support from his parents which, regrettably, is an increasingly common occurrence.

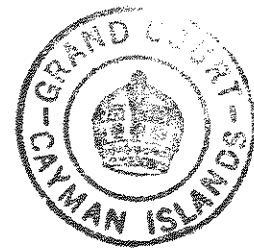
3 34. Since leaving school the Defendant has only been employed on a part-time basis for  
4 only two weeks. The Defendant submits that he has not sought further employment  
5 as he planned to return to the United States.

6 35. From the thorough report produced by Probation Officer, Ms. Marvo Callender, we  
7 learn that the Defendant states that since his return to the Cayman Islands he has  
8 been smoking the incredible number of between 10 to 15 joints of ganja per day. At  
9 the time of the offence he states that he owed CI\$600.00 for ganja and CI\$2000.00  
10 for cocaine. The Defendant admits to using both substances on the day of his arrest  
11 and, since being remanded in custody, the Defendant states that he smokes ganja  
12 five times per day.

13 36. There are many similarities in this case to the recent case of *R v. Aaron*  
14 *McLaughlin*. Again, that was a level 2 offence with a starting point of 4 years'  
15 custody. However, in light of aggravating factors the Court held that the appropriate  
16 sentence for *McLaughlin* was 5 years, with a 20% discount due to a belated guilty  
17 plea.

18 37. Like *McLaughlin*, the Defendant was in possession of an imitation firearm which  
19 he pointed at the owner in a threatening manner and, like *McLaughlin*, the  
20 Defendant wore a mask to conceal his identity. These are common aggravating  
21 features in both cases.

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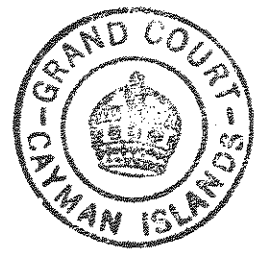


1 38. However, unlike *McLaughlin*, there are additional aggravating features as set out  
2 by the UK Sentencing Guidelines. The case now before the Court involves four  
3 Defendants, which demonstrated a greater level of planning. Two of the four  
4 Defendants went in to the Chisholms' Supermarket to case the joint whilst the  
5 Defendant and his co-robber carried out the robbery.

6  
7 39. There is no evidence that the robbers would have known how much money would  
8 have been in the cash register, but the take in this case amounted to CI\$1,495.00  
9 which is a large amount of money for a small business in the Cayman Islands. By  
10 contrast, the amount in the *McLaughlin* case, was less than half that amount –  
11 some CI\$612.00.

12 40. In addition, as a result of his co-robbers' first visit to the Supermarket, the  
13 Defendant and his companion would have realized that there were only the two  
14 women in the Supermarket - with women being more vulnerable targets. This  
15 Defendant pointed the gun at Ms. Sheena Ebanks' collarbone, shouted "*Give me*  
16 *your jewelry*" and then grabbed Ms. Ebanks' necklace from her neck with such  
17 force that it broke and her pendant fell to the ground. This use of force by the  
18 Defendant was a significant additional aggravating feature, which increases the  
19 level of seriousness. The result of Mr. Bryan's threat was that Ms. Sheena Ebanks  
20 took her diamond watch from her own wrist and gave it to the Defendant, who then  
21 took the necklace and the pendant as well as the other items and placed them in his  
22 blue draw-string bag. As these robbers left the Supermarket one of them shouted  
23 back:

24 "Next time be sure to have more money."



1 41. It is not known if there was a mastermind or ringleader in this enterprise but, on any  
2 view, the Defendant played a major rather than a minor or peripheral role in this  
3 robbery.

4 42. Ms. Rhoda and Ms. Sheena Ebanks suffered a terrifying attack and clearly it is an  
5 experience that they will never forget. Store owners and employees must be able to  
6 operate their businesses in peace and without the ever-increasing levels of fear of  
7 robbery and personal harm.

8 43. As the Court of Appeal stated (*supra*) and I repeat:

9 *“Those who arm themselves with weapons and undertake pre-meditated*  
10 *robbery of small commercial businesses in these islands must expect at least*  
11 *five years imprisonment if they are convicted.”*

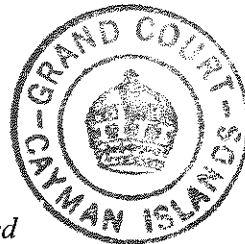
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13 44. Based on the foregoing additional aggravating features I consider this case to be  
14 slightly more serious than the case of *McLaughlin*, and therefore I deem the  
15 appropriate sentence is six (6) years' imprisonment.

16 45. However, unlike *McLaughlin*, this Defendant pleaded guilty at the earliest  
17 opportunity, and accordingly, under the guidelines and case law, the Defendant is  
18 entitled to a discount of 33 <sup>1</sup>/<sub>3</sub>%. Consequently I impose a sentence of 4 years'  
19 imprisonment on Count 1.

20 46. In relation to Count 2 I take into account that for the robbery he used an imitation  
21 firearm and, accordingly I impose a sentence of three (3) years' imprisonment, to  
22 run concurrent with the 4 years on Count 1.

23 47. On the total sentence of 4 years' imprisonment, time spent in custody is to be  
24 deducted.



1       48.     The Court would like to complement both Ms. Rhoda Ebanks and Ms. Sheena  
2       Ebanks for their courage and for their quick action in accurately recording the  
3       licence plate number of the vehicle outside the Supermarket and reporting the  
4       matter to the police. They took this quick action despite Ms. Ebanks' expressed  
5       concern that Defendants now know them and would realize that they have reported  
6       them to the police. It is only this kind of stand against antisocial and criminal  
7       behaviour by members of the public that will assist the police in putting a stop to  
8       the activities of the criminal elements in our society.

9       49.     In addition, the speed with which the police officers in the police cars and the  
10       helicopter unit acted in order to apprehend the robbers and recover a considerable  
11       number of the stolen items is to be highly commended. It was the combined quick  
12       action of the Complainants and the police which resulted in the robbers being  
13       apprehended in the shortest possible time.

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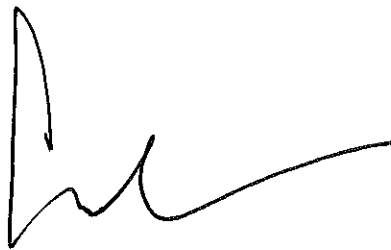
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16     **Dated this the 29<sup>th</sup> day of January 2014**

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**Honourable Mr. Justice Charles Quin**

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**Judge of the Grand Court**

