

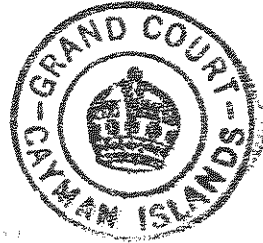
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0063/2013**

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8 **THE QUEEN**

9
10 **V**

11
12 **YOUNG PERSON**
13 **(WDW)**



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16 **Appearances:** **Ms. Candia James for the Crown**
17
18 **Mr. Irvin Banks for the Defendant**
19

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

21 **Submissions heard:** **8th May 2014**

22
23 **SENTENCE RULING**

24
25 ***PREAMBLE***

26 ***REPORTING RESTRICTIONS***

- 27 1. At the time of committing the offence of robbery on the 23rd September 2013 – to
28 which the Defendant pleaded guilty within 8 days after the offence – the Defendant
29 was under the age of 17 years, and therefore is deemed to have committed the
30 offence whilst a “young person” pursuant to s.2 of the Youth Justice Law which
31 states:

32 *“... ”young person” means, ... a person under the age of seventeen...”*

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Therefore, at that age, s.12 of the Youth Justice Law which deals with “Reporting Restrictions” for a “young person” would have wholly applied to this Defendant.

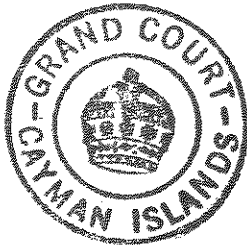
Section 12 states:

“12. (1) In relation to any proceedings in any court, such court may direct that

(a) no published report of or comment on the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any young person concerned in the proceedings, either as being the person by, against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and

(b) no picture shall be published as being or including a picture of any young person so concerned in the proceedings.

(2) Whoever publishes any matter in contravention of subsection (1) is guilty of an offence and liable on summary conviction, in respect of each such offence, to a fine of five thousand dollars or to imprisonment for six months.”



At the time of Sentencing today, the 22nd May 2014 (and paragraphs below under the section “Arraignments” will explain activities before the Court in the intervening seven (7) months) the Defendant had attained 17 years of age over two months prior, in March 2014. Even though s.12 of the Youth Justice Law does not specifically extend the “Reporting Restrictions” to an instance in which the offender committed the offence whilst a young person but is being sentenced after the age of 17, the Court herein directs that Reporting Restrictions be extended to this Defendant’s sentencing and this Ruling.

JURISDICTION

2. As this Defendant is defined as a young person at the time of the offence I note that s.6(1) of the Youth Justice Law states:

1 “6. (1) Where a young person is charged on his own with an indictable
2 offence triable only on indictment, he shall be committed by a youth court
3 for trial before the Grand Court.”

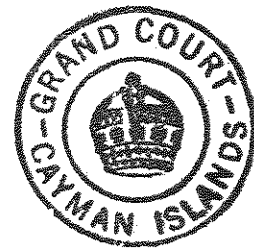
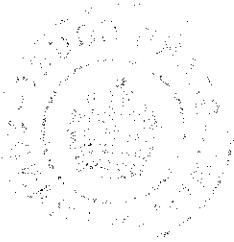
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6 **COMPLIANCE WITH S.13(1)**

7 3. As this Defendant is defined as a young person at the time of the offence I also
8 note that this Court recorded the attendance of this Defendant’s father at every
9 hearing in the Grand Court before me for this Defendant in accordance with s.13(1)
10 of the Youth Justice Law which states:

11 “13. (1) Where a young person is charged with an offence, or is for any
12 other reason brought before any court, the court shall require a person
13 who is a-

- 14 a) Parent of the young person; or
15 b) Guardian or other person who has parental responsibility for
16 him,

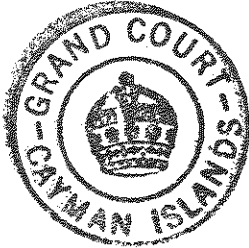
17 to attend at the court during all the stages of the proceedings, unless and to
18 the extent that the court is satisfied that it would be unreasonable to require
19 such attendance having regard to the circumstances of the case.”



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RELATED INDICTMENT 64 OF 2014

4. The Director of Public Prosecutions brought the charges against this Defendant on Indictment 63 of 2014 which bears only the name of this Defendant. However, the offences, to which he has pleaded guilty, were committed by the Defendant along with three (3) other Defendants, *not* young persons under the law, who were charged on Indictment 64 of 2014 in *R v. Odain Lloyd Ebanks, Courtney Mason Bryan, Ian Fernando Ellington* - all of whom also entered guilty pleas at different times and were sentenced separately¹.

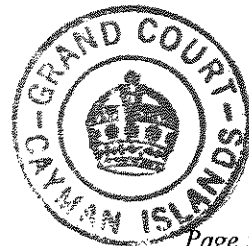


¹ Bryan was sentenced on the 29th January 2014 before me as, at that time, Ellington and Ebanks had maintained not-guilty pleas and were proceeding to trial. This Young Person, at that time, though having pleaded guilty to robbery (Count 1), was in discussions with the Crown relating to Count 2. On the 3rd February 2014, after Bryan had already been sentenced by me on facts understood to be applicable to all Defendants charged with the offence, the Crown presented an Amended Indictment and, Ellington and Ebanks, on that date in February, pleaded guilty to new counts (count 3 and 4) on the Indictment. Their pleas were accepted by the Crown – based on a Basis of Plea which differed significantly (in relation to Ebanks) from the one I accepted for Bryan. Accordingly Ellington was sentenced before me on the 27th March 2014. As I did not accept the new “Basis of Plea” agreed between the Crown and Defence in relation to Ebanks, in early April 2014 Ebanks was sentenced before Henderson J.

ARRAIGNMENTS

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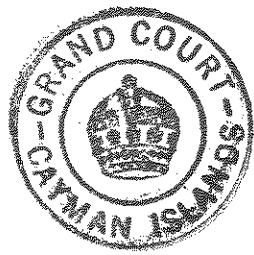
5. On the 1st November 2013 – a week following the offence for which the Defendant is charged – the Defendant pleaded Guilty to Count 1 on this two-count Indictment – the charge of Robbery contrary to s.242(1) of the Penal Code (2010 Revision).
6. The Court notes that, on the 1st November 2013 the Defendant was *not* arraigned on Count 2 – the charge of Possession of an Imitation Firearm with Intent to Commit an Offence, contrary to s.18(6) of the Firearms Law, as the Court was advised by Crown counsel, Ms. Marilyn Brandt, that the Crown would be “*reviewing Count 2*”.
7. In demonstration of the Defence’s position on that date that there was every hope for the Defendant to proceed to sentencing, and not go to trial in this case, Pre-sentence reports – a Social Inquiry Report (SIR) and a medical report – were ordered on the same date, that is, the 1st November 2013.
8. On the 22nd November 2013 the Crown advised the Court that Count 2 was still under review.
9. On the 6th December 2013 the Crown advised the Defence and the Court that the single plea to Count 1 was not accepted and the Defendant must enter a plea to Count 2.
10. On the 7th February 2014 the Defendant was arraigned for the first time on Count 2 and pleaded Not Guilty to that Count.
11. On the 21st February 2014 a trial date was set for the 13th October 2014 and the Court ordered an earlier date to be set.



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12. On the 21st March 2014 the new trial date of the 28th April 2014 was set.

13. On the 17th April 2014, (following extensive discussions between the Crown and Defence counsel in chambers on the 11th April 2014), the Defendant was re-arraigned in Open Court and pleaded Guilty to Count 2.

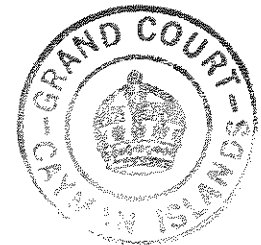


1 *THE FACTS*

2 14. Both Counts relate to the robbery that the Defendant committed with Courtney
3 Bryan on the 23rd September 2013.

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

13 16. It is the Crown's case that prior to the robbery, two of the four² 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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² See footnote 1: *Odain Lloyd Ebanks, Courtney Mason Bryan, Ian Fernando Ellington* and this Young Defendant.

1 17. This Young Defendant and Courtney Bryan entered the Supermarket some 15
2 minutes after the first visit of the two men – one of whom purchased the single
3 patty.

4 18. This Young Defendant and Courtney Bryan entered the store from the beach side,
5 which is at the back, and were wearing black-coloured ski masks which fully
6 covered their faces – leaving only their eyes and mouths exposed. The robbers were
7 also wearing gloves.

8 19. This Young Defendant focused his attention on Mrs. Rhoda Ebanks and shouted:

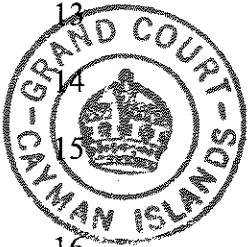
9 *“Give me the money.”*

10 His co-accused, Courtney Bryan, carrying what was described as a silver-coloured
11 handgun, went around the counter and took up the loose change on the counter.

12 20. The co-accused, Courtney Bryan, pulled a necklace from Ms. Sheena Ebanks’ neck,
13 took money from the cash register, the cigarettes, the cellphone and the other items
14 which were all put into a blue draw-string bag. Before leaving, one of the robbers
15 shouted:

16 *“Next time make sure you have more.”*

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



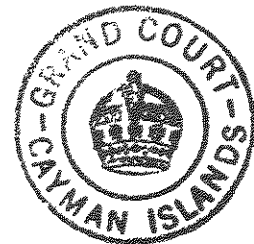
1 22. The getaway vehicle was observed turning onto Frank Sound Road and speeding
2 towards East End. The vehicle was chased by the aforesaid police officers on the
3 road and by the helicopter unit. It was observed by the police officers that a number
4 of items were being discarded from the left side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

6 23. The vehicle was finally stopped by police at Rivers Side Plaza in East End. The
7 Defendant and his three companions exited the vehicle and they were shortly
8 afterwards detained and arrested.

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

14 25. All four males were arrested and eventually interviewed under caution. The co-
15 accused, Bryan, denied involvement. The other Defendants Ellington and Ebanks
16 gave no-comment interviews; whilst this Young Defendant made full admissions to
17 committing the robbery.

18 26. This Young Defendant told the police that he committed the offence because one of
19 the other three co-defendants pulled out a gun and “*asked if he can go with the*
20 *person.*” This Young Defendant said the others would have done him harm if he did
21 not do as they asked, so he said he went along “*to help.*”



DEFENCE SUBMISSIONS

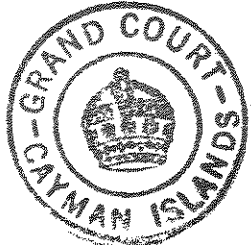
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33. The Defence submits that the Young Defendant admitted to the charge of robbery at the very earliest opportunity. He was fully cooperative with the police and it is clear from the initial interviews at West Bay police station that he was visibly upset and emotionally disturbed.

34. The Defence submits that this Defendant felt threatened and intimidated by the older men but accepts that he participated in the robbery and therefore does not rely upon any defence of duress.

35. This Defendant admits that committing this offence was extremely poor judgment and that he should have resisted the efforts by the three older Defendants to encourage him to participate.

36. Counsel for this Defendant relies upon the Psychological Evaluation dated the 30th August 2011. It appears that this Young Defendant was removed from mainstream academic life and over to the Alternative Education Centre in his early teen years. The Defendant's father states that the Defendant was introduced to ganja whilst at the Alternative Education Centre. From there, the Defendant was moved to the Therapeutic Community Centre at the former Bonaventure Boys' Home. It is the Defence case that the Defendant has not been handled by qualified professionals, and this has led to him having an "anti-authority attitude" and great scepticism of reform systems. This Defendant has never returned to a proper school environment and has continued smoking ganja for many years.



1 37. The SIR reveals that the Defendant continued to defy all positive efforts made on
2 his behalf by the Department of Children and Family Services (DCFS) and the
3 Bonaventure Therapeutic Community. The SIR is also critical of the Defendant's
4 inability to see the harmful effects of his deviant behaviour, negative demeanour
5 and attitude which has led him to find himself in this extremely regrettable
6 situation.

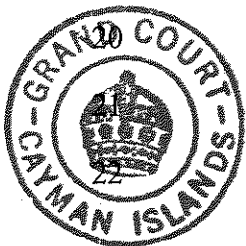
7 38. Defence counsel, Mr. Banks, points to the remarks made recently by the current
8 Minister of Education, the Hon. Tara Rivers:

9 *"Things are going wrong with regard to the implementation of therapeutic*
10 *strategies and there is a serious lack of resources in mental health provisions in*
11 *the country overall, which is even worse for the children that are affected."*

12 Defence counsel states that one of the glaring omissions has been the successive
13 failure of governments to build a juvenile justice centre to demonstrate that juvenile
14 centres must be separate from adult centres. Defence counsel points out that the
15 former Minister of Community Affairs, Gender & Housing, Mr. Mike Adam, and
16 the current Minister, Hon. Ms. Rivers, have both recognized that there is what the
17 present Minister has described as *"a gap in suitable secure therapeutic*
18 *accommodation for these young people."*

19 39. Dr. Marc Lockhart stated in his report that,

"...at times David shows great disrespect for authority. He expresses anger at
how he was treated when younger and he was taken into foster care due to his
father's substance abuse, and he showed decreased concentration in school."



1 40. Defence counsel submits that it is possible for the Court to consider imposing
2 orders pursuant to the Youth Justice Law (2005 Revision). He states that it is open
3 to the Court:

4 (a) To impose a Youth Rehabilitation Order – pursuant to s.27;

5 (b) To impose an Attendance Order – pursuant to s.24.

6 41. Defence counsel submits that, for the reasons set out, the Defendant should not be
7 sentenced to any more confinement – either at Northward or at the Bonaventure
8 Therapeutic Centre. Defence counsel states that the evidence demonstrates that the
9 Defendant suffers from severe psychological difficulties. These difficulties, tied to
10 his regular consumption of ganja, make it impossible for the Defendant to properly
11 appraise the future consequences of his actions.

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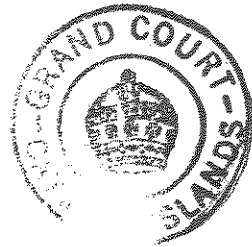
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CONCLUSION

42. As I said in my Sentence Ruling in *R v. Courtney Bryan* dated the 29th January 2014,

“There is evidence before this Court that some planning went into this offence owing to the fact that one of this Defendant’s co-accused³ entered the Supermarket prior to the incident and bought one patty. The inescapable inference is that the first two men went in to “case the joint” to see if the coast would be clear to execute the crime. In addition, the Defendant and his co-robber wore black masks to conceal their identity, had with them a blue draw-string bag in which they carried their takings from the robbery, and the Defendant [Bryan] used an imitation firearm.”

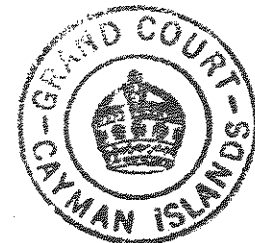
43. Courtney Bryan played a more senior role in this robbery. Bryan had the gun and Bryan tore the necklace from Ms. Sheena Ebanks’ collarbone while shouting “give me your jewelry.”

44. Nevertheless, this Young Defendant played an active and significant role in this serious robbery.

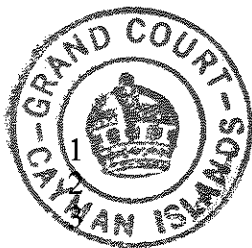
45. As I stated in my Judgment dated the 29th January 2014,

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

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



³ Either the Young Defendant, or any of the other two Defendants.



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

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5 47. Had it not been for the courage and quick thinking of Mrs. Rhoda Ebanks and Ms.
6 Sheena Ebanks, in reporting this incident to the police, these robbers might never
7 have been apprehended.

8 48. The Law distinguishes between the sentencing to be applied for adult offenders,
9 such as Courtney Bryan, as opposed to youth offenders, such as this Defendant.

10 49. It is common ground between counsel that this offence, “with the use of a weapon
11 to threaten”, is classified under the UK Sentencing Guidelines as a Level 2 robbery
12 of a small business. For adult offenders, for an offence of this nature, the starting
13 point is four (4) years’ imprisonment with a range of 2 to 7 years. For young
14 offenders, the starting point is three (3) years’ detention with a range of 1 to 6
15 years.

16 50. In sentencing Courtney Bryan the Court took into account the several aggravating
17 features before deciding that the appropriate sentence in all the circumstances for
18 Bryan as an adult offender was six (6) years. The aggravating features include the
19 facts that this was a planned robbery with four participants. In addition, both Bryan
20 and this Young Defendant had masks and gloves to conceal their identities. The
21 Court also took into account the fact that Mrs. Rhoda Ebanks and Ms. Sheena
22 Ebanks were unprotected and vulnerable targets for crime. The use of force with the
23 threat of the imitation firearm was arguably the most significant additional
24 aggravating feature, which the Court has found increases the level of seriousness of
25 the offence.

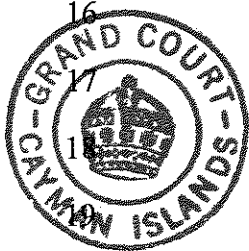
1 51. In light of the fact that Bryan had no previous convictions and entered an early
2 guilty plea, the Court imposed a sentence of four (4) years' imprisonment.

3 52. Although counsel for the Defendant, in his well-prepared written submissions has
4 submitted that the Court should approve a Youth Rehabilitation Order or an
5 Attendance Order pursuant to the Youth Justice Law, I do not consider that such
6 penalties are commensurate with the seriousness of this offence.

7 53. Although this Defendant was only 16 years of age, he went along with the other
8 three offenders, and he played a very significant role in the actual robbery.

9 54. For a young offender who has committed a level 2 offence, the starting point is 3
10 years, with a range of between 1 and 6 years. Unlike Bryan, this Defendant has
11 several previous convictions. In light of the seriousness of the offence, the
12 aggravating features and all the circumstances, the appropriate sentence in the case
13 of this Defendant is 4 years' imprisonment

14 55. The SIR states that "*this Defendant does not appear to have any remorse for his*
15 *crime, nor regard for what could happen to him and his future.*" However, unlike
16 the other Defendants, this Defendant admitted his guilt to the police at the very
earliest opportunity and also entered a guilty plea to the charge of robbery at the
earliest opportunity – that is, in the Grand Court only some 8 days after the offence.
Accordingly, I find that this Young Defendant is entitled to the full 33 1/3%
20 reduction in his sentence and, accordingly, I impose a sentence of two (2) years and
21 six (6) months' imprisonment, with time spent in custody to be deducted. In
22 addition I impose a sentence of 2 years' imprisonment in relation to Count 2 –
23 Possession of an Imitation Firearm. The two years are to run concurrent to the 2 ½
24 years imposed for the offence of Robbery.



1 56. In closing I must say this:

2 i. Counsel for this Defendant has presented to this Court, on behalf of this Young
3 Defendant, what has been described as the inadequacy of, and the failures in,
4 rehabilitative and therapeutic provisions in the Cayman Islands which, he
5 states, seem to be incapable of turning back the antisocial and criminal
6 behaviour in some youth. However, I need to say this to this Defendant:

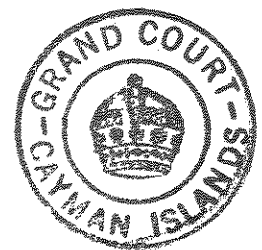
7 Stand please: All over the world there are thousands of children and
8 teenagers who have faced difficulties far worse than yours. The
9 Cayman Islands are not the worse place to live with the worst facilities
10 in the world. Some children would have done anything to receive the
11 assistance you have received through the institutions we have in the
12 Cayman Islands.

13 Understand this: You and you alone are responsible for your actions –
14 no one else. You decide whether you want to go along the right path or
15 along the wrong path. There are many students in schools and colleges
16 who started out with less than you have had and have made something
17 good of their lives. They were determined to do the right thing and not
18 the wrong thing and, in so doing, they found many persons to assist
19 them along the way.

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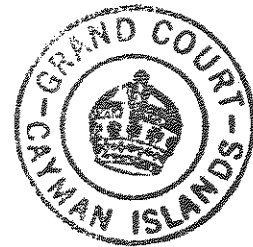
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You are young and you can make a change. But only you can decide that, no one else. Use the next 2 years well. Learn what you can and stay away from drugs and trouble. There is professional assistance if you reach out in the right direction. You are no longer a child, you are an adult. Wake up to that reality and turn away from crime now.

Dated this the 22nd May 2014



Honourable Mr. Justice Charles Quin
Judge of the Grand Court