

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

3
4
5 **INDICTMENT NO: 0017/2014**

6
7 **THE QUEEN**

8
9 **V**

10
11 **EVON GEORGE ROBINSON**



12
13
14 **Appearances:**

Ms. Toyin Salako for the Crown

15
16 **Mr. James Stenning of Stenning &**
17 **Associates on behalf of the Defendant**

18
19 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

20 **Heard:**

21 **29th & 30th October; 3rd & 4th November**
22 **2014**

23
24
25
26 **RULING ON ADMISSIBILITY**
27

28 1. The Defence challenges the admissibility of:

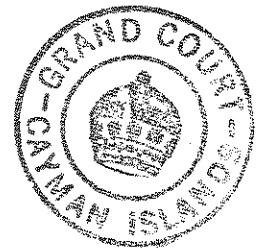
- 29 i. An interview (conducted by Mr. Chad McGhee an employee of the complainant
30 CashWiz at their premises on the 16th May 2012 with the Defendant and
31 recorded in part on Mr. McGhee's iPhone – transcript at Exhibit P180); and
- 32 ii. An interview (conducted Mr. Victor Colon a Senior Security Specialist at
33 FedEx on the 11th June 2012 with the Defendant who was a FedEx employee)
34 and certain handwritten statements made by the Defendant (SP/1 and SP/2
35 dated 11th June 2012 and SP/3 dated 13th June 2012). The challenged interview
36 was the second interview conducted on the 11th June 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

THE MCGHEE INTERVIEW

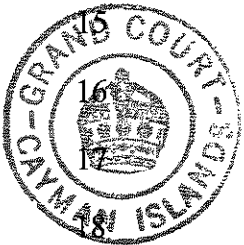
2. This interview was conducted by Mr. McGhee after he asked the Defendant to attend the CashWiz premises when gold shortages had been discovered in the amounts of jewellery shipped via FedEx and handed in sealed packages to the Defendant for onward transmission.

3. I heard evidence from Mr. Chad McGhee and Mr. Chad Davis. Mr. McGhee said, after he suspected the Defendant of stealing gold from CashWiz, he telephoned the Defendant and asked him if he was the thief – phrasing his question as if he knew as a fact that the Defendant was guilty. The Defendant said he was so sorry and apologized for taking the gold. The Defendant attended CashWiz and was asked if he still had the gold and he said he had some of it and agreed to go and get it. He returned with some 9 or 10 pieces of gold, some of which Mr, McGhee recognized as coming from CashWiz. Mr. McGhee then recorded the last part of the conversation which is our transcript of the iPhone recording played in court (Exhibit P180). The recording amounts to an admission of theft. Mr. McGhee says he was then unaware of the true extent of the overall deficiency and told the Defendant that he would prefer to work something out with the Defendant and not contact his employer or the law. However he reported the matter to both FedEx and to the Police when the true extent of the deficiency became known.

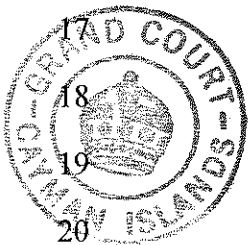


1 4. In cross examination, Mr. McGhee denied threatening to report the Defendant if he
2 did not admit to the thefts. He agreed that he had asked the Defendant to return the
3 gold belonging to CashWiz, and any other gold to make up the deficiency, but
4 denied that this was couched in threatening terms. He said that the Defendant had
5 admitted the thefts before he left to retrieve and return gold. He denied that the
6 recorded conversation had been edited by him or, as far as he knew, by anyone.

7 5. Mr. Davis was a trainee manager. He agreed with the basic sequence of events
8 given by Mr. McGhee. He thought he had packed all the gold shipments but, when
9 shown the waybills, agreed that others may have done so as well. He thought that
10 the Defendant was admitting taking about US\$4000 worth of gold (Mr. McGhee
11 said that the Defendant had said that the gold was sold for between US\$8000 and
12 US\$9000). Mr. Davis said that Mr. McGhee had told the Defendant that, if he
13 returned the gold, or if CashWiz got its money back, the Defendant would not be
14 faced with further process. He was asked in cross examination if Mr. McGhee had
 told the Defendant that he would be reported to his FedEx boss if he did not admit
 stealing from the packages and, at first, he said that something like that was said but
 he explained that what was said was in fact that the matter would be reported to the
 Police and to FedEx if CashWiz did not get its property back. He conceded that he
19 could not recall the precise words used. He said the Defendant was blaming
20 hardship and a grudge over an earlier transaction as reasons for stealing. The
21 Defendant was stuttering, moving and pleading. He too recognized items returned
22 by the Defendant as items sent by CashWiz for recycling. He said the conversation
23 following the return of gold items lasted 5-10 minutes and he thought it was
24 recorded, but he agreed that he did not know at what point the recording had been
25 started.



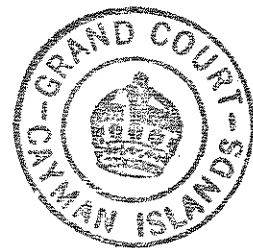
1 6. The Defendant gave evidence. He said that on the 16th May 2012, Mr. McGhee
2 telephoned him and told him there was stuff missing from the FedEx parcels when
3 they arrived at their destination and that it had to be the Defendant who took the
4 items from the packages. The Defendant said he agreed to attend the office of
5 CashWiz but first tried to contact his manager, who was unavailable, but spoke to a
6 senior Courier who advised him to “do whatever he had to do to fix the problem”.
7 He then spoke to Mr. McGhee who told him that he knew the Defendant had stolen
8 gold from their packages and was going to call FedEx and the Police. The
9 Defendant told him to call the Police but not to call FedEx. He said that Mr.
10 McGhee was at the time holding his phone up in the air. The Defendant told him to
11 do what he had to do and Mr. McGhee said he would give him one chance – to go
12 and get some gold (he didn’t care where it came from) he would give him 15 to 20
13 minutes to do that. The Defendant agreed to do that as he did not want to lose his
14 job. He then obtained gold items from his girlfriend, his brother and a friend and
15 took those items to Mr. McGhee who was there at all times with Mr. Davis. He
16 handed the items over and asked if “we are good now”. He was then accused of
17 stealing for some time and asked how often he had stolen items, and asked if he had
18 also stolen from Cash for Gold. He said he then realised something was wrong,
19 thought Mr. McGhee was coming down on him hard and realized that this was a
20 planned set-up against him. He said “I intend(ed) to accept certain of the
21 allegations – I didn’t want Chad to think I wasn’t helping him”. He was then told
22 that he had been recorded on video. He was then threatened that if he did not make
23 up the losses by payments, the recording would be given to FedEx. It is to be noted
24 that, although it is claimed that threats were made in relation to repaying CashWiz
25 for the gold alleged to have been stolen, there were no claims by the Defendant of



1 any threats to refrain from informing FedEx or the Police if the Defendant admitted
2 the crimes.

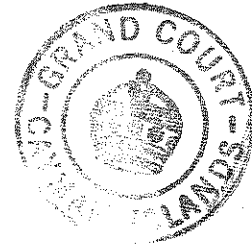
3 7. In cross-examination, the Defendant agreed that he had a previously very good
4 working relationship with CashWiz and with Mr. McGhee. He said he was being
5 blackmailed as he was being told to obtain gold which had not been stolen from
6 anywhere in exchange for Mr. McGhee promising not to allege to FedEx, or to the
7 Police, that he had stolen gold from CashWiz. He said he told Mr. McGhee that the
8 gold he brought in was not stolen. He was unable to give any real explanation for
9 the admissions at Page 180, save that he made admissions to make Mr. McGhee
10 feel more comfortable and to save his job. He did not explain how admitting
11 something of which he was innocent was likely to achieve that end.

12 8. The submissions of the defence are that the Defendant was ambushed with the
13 recording made without his knowledge. It is however conceded that Mr. McGhee
14 was entitled to make the recording without informing the Defendant of that fact. It
15 is argued that the recording is not complete and should be ruled inadmissible on the
16 basis that it would be unfair to admit a partial recording. The Defendant is in any
17 event a simple man more open to suggestions than most.



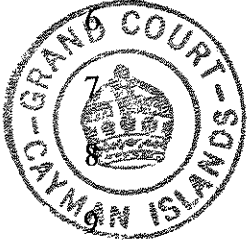
1 9. The Crown points out that the recording shows the Defendant relaxed and that there
2 is no persuasion, merely surprise on the part of Mr. McGhee that a trusted courier
3 had stolen from him. The admissions are not coerced and there is no trickery. He
4 knew how seriously FedEx would regard theft by an employee. It was reasonable
5 to ask the Defendant to return the stolen gold and it was unlikely that he could
6 recover it as he alleges unless it was all in his possession already. The allegation of
7 blackmail makes no sense against the background of a good relationship. The
8 Crown invited me to view the recording (which could not be done in court due to
9 technical difficulties) and I have done so. I am asked to take into account the
10 demeanour of the Defendant.

11
12
13
14
15
16
17
18
19
20



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COLON INTERVIEWS



10. There is no challenge to the admissibility of the first interview conducted on the 11th June 2012 between 13:44-15:14 hrs., and Mr. Stenning has conceded that its contents are properly to be considered by a jury. One possible exception is the passage at P151 – Exhibits which, it is suggested by the defence, refer to a previous unrelated theft by the Defendant from a different victim and which may have to be considered for exclusion by agreement if the Crown accepts the defence contention. In any event, that passage is not the subject of any argument that the first interview or any part of it is inadmissible on the same basis upon which the second interview and the handwritten statements are challenged.

11. The second interview conducted on the 11th June 2012 between 17:13 and 17:47 hrs., and the handwritten statements SP/2 and SP/3, contain confessions of theft from Cash Wiz by the Defendant. It is (correctly) pointed out by Mr. Stenning for the Defendant that the interviews and statements appear to develop from denials to partial admissions, through to full admissions, as the investigation by FedEx proceeded.

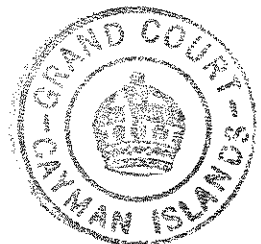
12. I heard evidence from Mr. Victor Colon of FedEx and from DC Grant.

13. Mr. Colon has only a general recollection of events after all this time but is adamant that he (i) did not cajole the Defendant into confessing, (ii) did not screw up and throw away any early handwritten statements whilst telling the Defendant that their contents were unsatisfactory, (iii) did not hold out any promises that the Defendant might keep his job if he co-operated with FedEx and admitted the thefts, (iv) did not tell the Defendant to change anything or to say anything in particular in his statements and (v) did nothing else to persuade the Defendant to make any

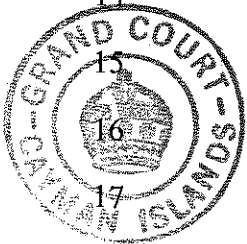
1 admissions against his best interests. He agrees that he told the Defendant at the
2 start of the second interview that it would be best for him to be 'forthcoming' in his
3 dealings with the interview process but did not tell him what he should say in
4 answer to questions. He denied suggesting that the Defendant should say he had
5 opened 4 packages (it was suggested that the Defendant had become muddled and
6 had instead admitted taking 3 or 4 items out of one package).

7 14. After hearing Mr. Colon questioned by the Crown, I am satisfied that the
8 handwritten statement SP/1 was made in the gap of 2 hours after the end of the first
9 interview and mirrored the answers given in that first interview, and that the
10 handwritten statement SP/2 was made at the conclusion of the second interview and
11 mirrored the answers given in that interview. I am left in a state of uncertainty
12 about the precise sequence of events leading to the writing of the third handwritten
13 statement SP/3, but it is clearly written by the Defendant and appears to result from
14 a further meeting with Mr. Colon on the 13th June 2012 – although Mr. Colon has
15 no recollection of a further meeting with the Defendant.

16 15. Although Mr. Colon was not willing to accept that he was in a position of authority
17 over the Defendant within the FedEx hierarchy, I accept that the Defendant's
18 perception would undoubtedly have been that he was. Mr. Colon had the duty of
19 investigating offences committed by FedEx employees. I take the same view of
20 Mr. McGhee, namely, that the Defendant would undoubtedly have perceived him as
21 a figure of authority.



1 16. I heard evidence from the Defendant. It was unfortunate that not all of the matters
2 alleged by the Defendant against Mr. Colon had been put in cross-examination of
3 Mr. Colon in order to give him the opportunity to comment upon them. I do not
4 however take that into account against the Defendant. The Defendant said that, on
5 the 11th June 2012, he was summoned to the FedEx office and confronted by an
6 angry Mr. Colon who told him to take off his FedEx identification and hand it over
7 and then searched him before the first interview began. In fact those events are
8 demonstrably shown to have taken place during the early part of the recorded
9 interview transcript and I have no difficulty in finding that, on this part of the case,
10 the Defendant's evidence is untrue. Next the Defendant says that, after the first
11 interview finished, Mr. Colon told him that (i) he could not help the Defendant if
12 the Defendant did not cooperate, (ii) he had proof of guilt, (iii) the Defendant had to
13 admit guilt if he wanted to keep his job, and, (iv) that only Mr. Colon could save
14 the Defendant. The Defendant says that he then wrote out a statement which Mr.
15 Colon read and, after reading it, screwed it up and threw it in a bin. The Defendant
16 says Mr. Colon told him that he wanted an admission that the Defendant had gone
17 into the FedEx packages and then the Defendant could go home. Mr. Colon added
18 that the matter was merely disciplinary and would be dealt with internally if the
19 Defendant admitted his guilt.



20 17. The Defendant says he then wrote the statement (SP/1) which contains no
21 admissions of guilt but which Mr. Colon read through, nodded, said "OK OK" and
22 took away, saying he would 'get back to' the Defendant. Mr. Colon left and spoke
23 to Mr. Hall outside. He returned. There followed a period of around 20 minutes
24 during which Mr. Colon repeated his attempts to persuade the Defendant to confess,
25 saying that he had proof of theft recorded on a cellphone (a reference to the

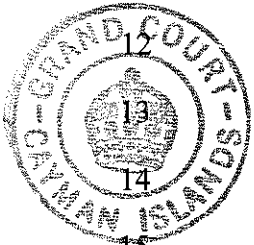
1 recording made by Mr. McGhee), that the Defendant would make things easier if he
2 admitted guilt, that he was trying to make sure the Defendant kept his job, and, that
3 Mr. Colon never liked to go away empty-handed when he interviewed a person in
4 the Defendant's position. The second interview then took place in the course of
5 which the Defendant made a partial admission of guilt (P168) which he says was
6 made because of what Mr. Colon had told him before the interview began. The
7 Defendant says that after the second interview was concluded he made a second
8 handwritten statement (SP/2) which was again the product of being told by Mr.
9 Colon what he should say.

10 18. On the 13th June 2012, a further handwritten statement was made by the Defendant
11 in which are contained more serious admissions of guilt (SP/3). The Defendant's
12 account of this is that he saw Mr. Colon that day and was told that Mr. Colon was
13 '*tired of this mess*', used indecent language to him, repeated his insistence that the
14 Defendant should admit guilt, and, repeated his attempts to cajole a confession with
15 similar threats and promises to those made on the 11th June. In effect the Defendant
16 says he was bullied into his confession. Mr. Colon told him he would involve the
17 Police, that the Defendant had been wasting his time and that this was the
18 Defendant's last chance to make a deal, but that he had to admit going into the
19 packages not once, not twice, not three times but 4 times. The Defendant also said
20 that where he had initialed an alteration from the word 'several' to the word
21 'seven', this was at the insistence of Mr. Colon, as was the final alteration of the
22 sum of \$11,000 to \$9,000.



1 19. In cross-examination, the Defendant agreed that he was recorded agreeing that no
2 promises had been made to him but maintained that everything said was what Mr.
3 Colon had told him to say. He agreed that SP/1 and SP/2 appeared to reflect the
4 contents of the recorded interviews preceding their making. He said repeatedly that
5 the interviews were 'planned' with Mr. Colon before they took place and that his
6 story about a pawned gold chain was true but was suggested by Mr. Colon as a
7 story that could be used to explain the motive for the thefts of gold. All the details
8 of the thefts were details he was told by Mr. Colon to put into his story although,
9 oddly, the story about opening the packages 'inside his van' was his own invention.
10 When he spoke of re-packaging the items afterwards, the Defendant was trying to
11 trip up Mr. Colon by giving information which could be shown to be incorrect.
12 Even when it is recorded that the Defendant said '*this is the truth, sir, honestly*'
13 (P173), that also was a planned response. The Defendant said, finally, that on the
14 13th June, after he had completed his statement SP/3 and had refused to sign an
15 employment termination letter at the request of Mr. Hall, he went immediately to
16 see a police officer friend (Mr. Grant) at Georgetown Police Station and told him
17 that he had been made promises and told to make his admissions.

18 20. DC Grant told me that he had little recollection of events but he did remember that
19 the Defendant – an acquaintance or friend – called one day and said he had either
20 been interviewed or was to be interviewed by someone from overseas who FedEx
21 had brought in for the purpose. He said that the Defendant made no complaint to
22 him and went into no details about the matter under investigation. His advice to the
23 Defendant was to seek legal representation. He could not recall the Defendant
24 saying that he had been coerced into making admissions or that he had admitted
25 stealing gold.



1 21. The submissions of the defence (partly contained in the skeleton argument which I
2 have read) are supplemented in oral argument and are that Mr. Colon kept no notes
3 of his dealings with the Defendant and could not explain the events of the 13th and
4 how the third handwritten statement came to be made. Although Mr. Colon denies
5 that he made any inducements, he has a poor recollection of events. If inducements
6 were made, as the defence suggests, then it is submitted that the admissions are
7 tainted and should be excluded. It is further submitted that it would be unfair to
8 admit the confession evidence under s.40 of the Evidence Law (2011 Revision) on
9 the grounds that it might operate unfairly against the Defendant.

10 22. The Crown argues that Mr. Colon made clear that he was in no position to influence
11 future events and the outcome of the investigation. The first interview
12 demonstrates that nothing was said off tape and that the Defendant was, at that
13 stage, making no admissions. There was no evidence of coercion. On the contrary,
14 the questioning throughout both interviews is open and restrained and does not lead
15 or suggest answers. There is no indication that there has been any coaching or
16 cajoling and the Defendant specifically confirms that such improper behaviour has
17 not taken place. The Crown took me to numerous examples in the transcripts where
18 these points are demonstrated. The Crown says that there are examples of
19 information only the thief could have known and that his admissions turned out to
20 be supported by evidence unrevealed at the time. Also the handwritten statements
21 are merely confirmation of what has already been discussed in interview in which
22 he writes out the confessions he has already made. The Crown says that the whole
23 picture is one of voluntary admissions freely made recorded with the knowledge of
24 the Defendant. He brought in gold voluntarily and explained how he had stolen it
25 on several occasions. Words were not being put into his mouth and not dictated.

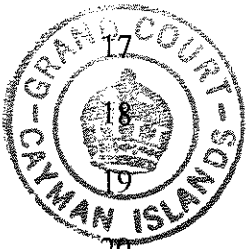


1 The Defendant was given the opportunity to retract the admissions made to Mr.
2 McGhee but instead made no suggestion that they were in any way challenged. He
3 did not mention the alleged destruction of his first statement when interviewed soon
4 afterwards and he had the chance to do so. It was entirely the Defendant's free
5 choice to make admissions and it appears that he did so in the hope that he could
6 retain his job by accepting guilt and in the hope that CashWiz would not pursue a
7 complaint.

8 23. I remind myself that the burden is on the Crown to prove that the admissions
9 alleged to have been made were made voluntarily that is free from any threat,
10 promise or other inducement and were the product of the Defendant's own free
11 will. The standard of proof required is beyond reasonable doubt. The test is
12 objective – namely am I satisfied that nothing was said or done likely in the
13 circumstances to render the confessions unreliable.

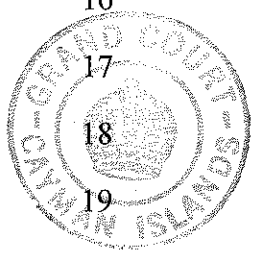
14 24. Although I find that the Defendant would have thought that Mr. McGhee and Mr.
15 Colon were in positions of authority, I do not find that the Defendant was in any
16 way influenced by that fact alone. In particular I do not find that his reactions,
17 words and conduct were affected by his perception of their status. I must then go
18 on the consider whether anything they said or did may have been capable of
19 affecting the exercise of the Defendant's free will and may have caused him to
20 admit doing something of which he may have been innocent.

21 25. I was not impressed with the Defendant's evidence. I found him garrulous and
22 evasive, frequently seeking to cover up his inability to answer straight questions
23 with straight answers by going off at a tangent and trying to divert attention from
24 the point in issue.



1 26. In relation to the McGhee recording, the Defendant's account does not come
2 anywhere near raising any rational suggestion that there was any inducement to
3 confess to theft. On the contrary, there is no suggestion that anything was said to
4 that effect. At best there was an offer to the Defendant to return the stolen gold or
5 its value if he was to avoid his employers being informed. There was no private
6 conversation with Mr. McGhee before the recording (as he himself now accepts)
7 and the Defendant is not now suggesting that either Mr. McGhee or Mr. Davis held
8 out any inducements to him to confess – despite such matters being suggested in
9 cross-examination.

10 27. In relation to the Colon interviews, the Defendant did not tell me the truth about the
11 events before and between the interviews. I am satisfied that the events alleged as
12 occurring before the first interview did not take place at all as I am satisfied that the
13 beginning of the recording demonstrates that the Defendant and Mr. Colon were
14 clearly meeting for the first time as the recording began. There is no acceptable
15 evidence that anything material to this case was said and not recorded. I find that
16 the mental gymnastics required of anyone seeking to provide answers to questions
17 in interview in accordance with pre-planning are of Olympic proportions and too
18 great for a man of the Defendant's obvious limitations. I was impressed with Mr.
19 Colon as a witness – he conceded when he could not recall events and did not strike
20 me as the bullying person described by the Defendant. He seemed to me to be
21 truthful. He denied the serious allegations against him and seemed to be surprised
22 by them. The same goes for Mr. McGhee. Although Mr. Colon could not recall the
23 events of the 13th June, I see no reason to accept the Defendant's version of events
24 of that day because I find that the handwritten statements SP/1 and SP/2 merely
25 followed the contents of the previously recorded interviews which preceded them

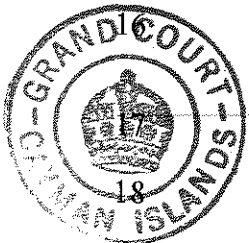


1 on the 11th June and I see no reason to think that SP/3 did not, in the same way,
2 follow the contents of the discussion between Mr. Colon and the Defendant which,
3 it seems to me, must have taken place on the 13th June, on which day, I accept, there
4 was no formal recorded interview. I do not accept that Mr. Colon screwed up the
5 first handwritten statement when, according to the Defendant, he accepted SP/1
6 with approval despite its innocuous contents. I am satisfied that SP/1 was the first
7 statement the Defendant wrote. In short the evidence as a whole satisfies me that
8 the admissions of guilt contained within the recorded interviews and in the
9 handwritten statements were made by the Defendant voluntarily albeit reluctantly
10 and uninfluenced by any threats or promises held out to him. Nor was he merely
11 repeating what he had been told to say.

12 28. It follows that:

- 13 i. I am satisfied so that I am sure that Mr. McGhee, Mr. Davis and Mr. Colon did
14 not act as alleged by the Defendant;
- 15 ii. Nothing was said or done likely in the circumstances to render unreliable the
confessions, the test being objective; and
- 18 iii. The Prosecution has proved beyond reasonable doubt that the particular
19 confessions were not obtained in consequence of anything said or done by Mr.
McGhee, Mr. Davis and Mr. Colon.

20 29. I also find that there are no aspects of the confession evidence which could possibly
21 be suggested to raise any issue of unfairness for the purposes of s.40. It was not
22 unfair to record the Defendant after he started to confess to theft at CashWiz's
23 premises. It was not unfair of Mr. Colon to interview the Defendant to give him a



1 very full opportunity to explain his conduct and it was not unfair to allow the
2 Defendant to write out his confessions in his own hand.

3 30. The evidence of admissions made by the Defendant is therefore admissible in
4 evidence.

5

6 **Dated this the 4th day of November 2014**

7

8

9 



10 **Honourable Mr. Justice Malcolm Swift (Actg.)**
11 **Acting Judge of the Grand Court**