

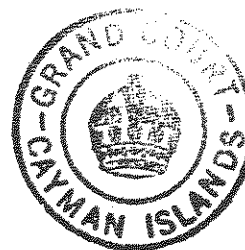
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4
5 **INDICTMENT NO.: 98/2012 (Carter)**
6 **INDICTMENT NO.: 98A/2012 (Ebanks)**
7 **INDICTMENT NO.: 106/12 (Crawford)**
8 **INDICTMENT NO.: 85/13 (Brandon Liberal)**
9

10
11
12 **REGINA**

13
14 **v.**

15
16 **MANUEL RAMIREZ CARTER**
17
18 **JOHN PHILLIP COHEN EBANKS**
19
20 **TARRICK KEVIN CRAWFORD**
21
22 **BRANDON RENO LIBERAL**
23



24
25
26 **Appearances:**

Mme. DPP Cheryll Richards Q.C. and Mr. Neil Kumar for the Crown

Mr. John Furniss for Brandon Liberal

Mr. Charles Clifford for Manuel Carter

Mr. Clyde Allen for John Phillip Cohen Ebanks

27
28
29
30
31
32
33
34
35 **Before:**

The Hon. Mr. Justice Charles Quin

36 **Sentence Submissions heard:**
37

10th April 2014 - Brandon Liberal and Manuel Carter

14th May 2014 - John Phillip Cohen Ebanks

8th & 23rd July 2014 - Tarrick Crawford

40
41 **SENTENCE RULING**
42

1 8. Between July and December 2013 Mr. Cohen-Ebanks provided statements to the
2 police which resulted in an Indictment being laid against Mr. Liberal on the 11th
3 December 2013.

4 9. On the 13th December 2013, Mr. Liberal, pleaded not guilty to both counts on that
5 Indictment.

6 10. On the 12th February 2014, the DPP laid a new joint Indictment – Ind. 98/2012 and
7 Ind. 85/2013 against Mr. Carter and Mr. Liberal.

8

9

10

11

12

13

14

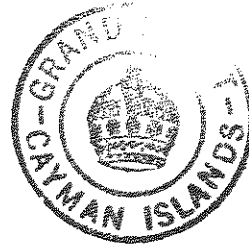
15

16

17

18

19



1 *ii. Re R v. Manuel Ramirez Carter and John Phillip Cohen Ebanks*

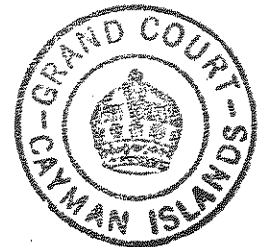
2 (a) Indictments 98/12 and 98A/12 - Dated the 31st October 2012.

3 (b) Count 1 – Robbery, Contrary to s.242(1) of the Penal Code (2010
4 Revision)

5 The Particulars of the offence are that Manuel Ramirez Carter and John
6 Phillip Cohen Ebanks, on Thursday the 4th day of October 2012, in
7 George Town, Grand Cayman, Cayman Islands, stole CI\$8,117.00 and
8 US\$593.00 the property of BritCay Insurance Company, and at the
9 time of so doing and in order to do so sought to put Winston Nelson in
10 fear of being then and there subjected to force.

11 (c) Count 2 – Possession of an Unlicensed Firearm, contrary to s.15(1) and
12 (5) of the Firearms Law (2008 Revision).

13 The Particulars of the offence are that Manuel Ramirez Carter and John
14 Phillip Cohen Ebanks on Thursday the 4th day of October 2012, in
15 George Town, Grand Cayman, Cayman Islands, had in their possession
16 a firearm, namely a Bryco semi-automatic pistol, not under and in
17 accordance with the terms and conditions of a Firearm's User's
18 (Restricted) Licence.



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

iii. Re R v. Tarrick Kevin Crawford

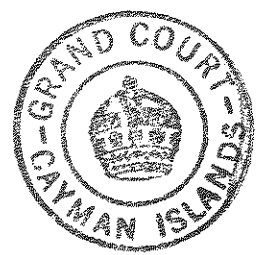
(a) Indictment 106/12 - Dated the 28th November 2012.

(b) Count 1 – Robbery, Contrary to s.242(1) of the Penal Code (2010 Revision)

The Particulars of the offence are that Tarrick Kevin ~~Carter~~¹ Crawford, on Thursday the 4th day of October 2012, in George Town, Grand Cayman, Cayman Islands, together with another person, stole CI\$8,117.00 and US\$593.00 the property of BritCay Insurance Company, and at the time of so doing and in order to do so sought to put Winston Nelson in fear of being then and there subjected to force.

(c) Count 2 – Possession of an Unlicensed Firearm, contrary to s.15(1) and (5) of the Firearms Law (2008 Revision).

The Particulars of the offence are that Tarrick Kevin Crawford on Thursday the 4th day of October 2012, in George Town, Grand Cayman, Cayman Islands, together with another person had in your possession a Bryco .380 semi-automatic pistol, not under and in accordance with the terms and conditions of a Firearm’s User’s (Restricted) Licence.



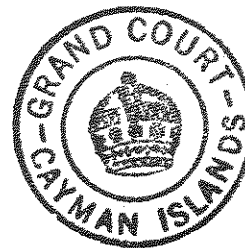
¹ Indictment bore this typographical error.

1 12. A trial date was set for the 24th February 2014. On this date, the Defendants Carter
2 and Liberal were re-arraigned on the new joined *Carter-Liberal* Indictment which
3 contained the same two counts of Robbery and Possession of an Unlicensed
4 Firearm, and both pleaded not guilty.

5 13. On the 24th February 2014, a jury was empanelled but the Defendants were not put
6 under its charge, as both Defendants indicated that they wished to apply for a
7 Goodyear Direction in relation to Count 1.

8 14. On the 25th February 2014 this Court heard a Goodyear application in relation to
9 both Mr. Carter and Mr. Liberal and the Court stated that the maximum sentence
10 the court would impose – with a guilty plea to Count 1 from both Defendants – is 7
11 years.

12 15. On the 25th February 2014 – following on from the Goodyear direction, both Mr.
13 Carter and Mr. Liberal were re-arraigned and both pleaded guilty to Counts 1 and 2
14 on the Indictment.



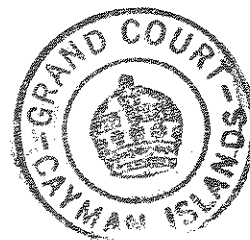
15
16
17
18
19
20
21

1 *THE FACTS*

2 16. Shortly after 1 p.m. on Thursday the 4th October 2012, an employee of Sprint
3 Express Services (“Sprint”) completed a delivery at Grand Pavilion on the West
4 Bay Road. He proceeded along the West Bay Road on to Eastern Avenue where he
5 stopped at BritCay House for another delivery and pick up. The Sprint employee
6 was travelling in a white Toyota Yaris motorcar which bore the Sprint company
7 logo. He parked at the front of the building and then entered the building and made
8 a delivery and collected a black bag with three night deposit bags. He placed that
9 bag in a blue canvas Sprint bag, signed for it and left the office. As he returned to
10 the Sprint motorcar he had the deposits under his arm in the Sprint bag. As he
11 approached his driver’s door he observed a white car coming from the left of the
12 parking lot but did not pay it much attention. As he opened his door the Defendant,
13 Carter, came up to him, pointed a gun towards his stomach and demanded the bag
14 carrying the deposits.

15 17. The Sprint employee said the man that we now know to be the Defendant Carter
16 was wearing a mask, with the eyes and mouth cut. The gun did not actually touch
17 the Sprint employee’s stomach, but Carter was able to take the bag from him and he
18 then got back into the white car.

19 18. The Sprint employee saw the white car exit the complex and turn right on to
20 Eastern Avenue.

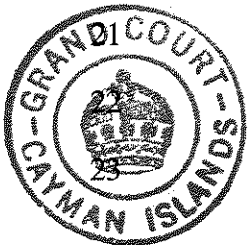


1 19. A 911 call was made and the police responded quickly to the call. PC Tamara
2 Jackson was on mobile patrol duty in the George Town area when she overheard
3 the 911 transmission. She saw a parked white vehicle bearing the registration plate
4 #135 064 and, when checked, discovered that this plate did not match the
5 description of the vehicle and the DVL. PC Jackson then called for assistance. PC
6 Rabess and PS Harvey responded to the call and arrived at 1:45 p.m. They checked
7 the vehicle and found it was still warm – having been abandoned on a grass verge.
8 They called the canine unit and began searching the area. PC Rabess and PS Harvey
9 found the black bag, the blue pouch, a black hand-held radio and open envelopes
10 and immediately called for a Scenes of Crime officer.

11 20. At approximately 2:25 p.m. SOCO Camille Haughton took photographs and
12 secured the items which included: the Butterfield blue zipper bag; the Motorola
13 radio; the Butterfield cheques; a pair of jeans pants; a small firearm – the black
14 Bryo semi-automatic pistol, serial number #1191048; 3 rounds of ammunition – 2
15 of which were viable.

16 21. The Bryo semi-automatic pistol firearm was tested by the Ballistics Expert, Mr.
17 Allen Greenspan and the RCIPS firearms officer, Officer Stewart, and found to be
18 capable of discharging bullets and therefore the firearm is a lethal weapon within
19 the meaning of the Firearms Law.

20 22. The items secured were examined for fingerprints and DNA. Mr. Cohen-Ebanks'
fingerprints were found on envelopes. Mr. Carter's fingerprints were found on the
green receipt. Mr. Carter's DNA was found in the pockets of the pair of jeans pants
– together with the lighter found in the same pocket. The firearm was found in a



1 jeans pocket. Mr. Carter's DNA was found on the right front door of the white
2 vehicle.

3 23. CCTV footage was taken from the parking area of Kirk Home Centre which
4 identified Mr. Cohen Ebanks in the parking lot shortly before the robbery took
5 place.

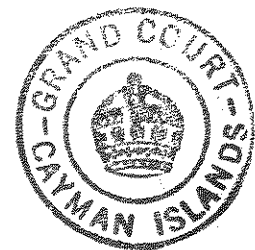
6 24. Mr. Cohen-Ebanks' statements confirm that the Defendants had been observing the
7 Sprint courier vehicle. It should be noted that the Defendants had been observing
8 this vehicle on Monday the 1st October 2012 when the three men had driven in Mr.
9 Liberal's red SUV to reconnoitre the scene.

10 25. On the 3rd October 2012 the Defendants had actually planned to execute the robbery
11 but the Sprint Courier did not turn up.

12 26. From Mr. Cohen-Ebanks' statement it was established that on the 4th October 2012
13 Mr. Liberal and Mr. Cohen-Ebanks left Mr. Cohen-Ebanks' house in Mr. Liberal's
14 red SUV. They went to pick up Mr. Carter and then Tarrick Crawford. From there
15 they drove into George Town – to the house of a man called Big Jeff. At Big Jeff's
16 was the white car which was to be used for the robbery.

17 27. Mr. Liberal left Big Jeff's house in his red SUV and returned in a gray KIA
18 motorcar which belonged to his (Mr. Liberal's) girlfriend. This time Mr. Liberal
19 handed to another man called Big Brother, a small grey gun. Big Brother handed
20 the gun to Mr. Carter, who put it in his waistband.

21



1 28. Mr. Liberal then said, "It's time to go." Mr. Cohen-Ebanks got into the driver's seat
2 of the white motorcar and Mr. Carter got into the backseat. Mr. Liberal and Mr.
3 Crawford got into the grey KIA – with Mr. Liberal driving. The KIA drove to the
4 parking lot of Kirk Home Centre. Mr. Cohen-Ebanks and Mr. Carter followed them
5 there and the all waited in the parking lot. They used hand-held radios to
6 communicate with each other.

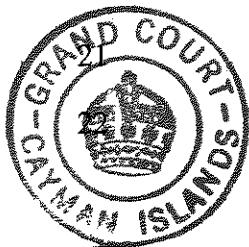
7 29. At some point Mr. Cohen-Ebanks began getting "cold feet" and walked over to Mr.
8 Liberal to tell him not to go through with it. Mr. Cohen-Ebanks eventually returned
9 to the car he drove and then Tarrick Crawford delivered a message to Mr. Cohen-
10 Ebanks from Mr. Liberal which said he was "not to mess up on him."

11 30. The CCTV footage from Kirk Home Centre confirms that Mr. Cohen Ebanks was
12 seen walking from the white motor vehicle to Mr. Liberal's grey KIA.

13 31. After a further wait, Mr. Liberal gave the signal over the handheld radio saying:
14 "*The food is ready*" or, as Defence counsel said he said, "*the food is on the table.*"

15 32. At that point Mr. Cohen-Ebanks saw the Sprint vehicle drive into the car park at
16 BritCay. In his statement Mr. Cohen-Ebanks tells the police that he drove to the
17 front of the BritCay building and told Mr. Carter to "go and get him." Mr. Carter
18 pulled on his mask and went up the courier with the gun he had put in his waist in
19 his hand, grabbed the bag and got back into the white vehicle.

20 33. Mr. Cohen-Ebanks drove out of the BritCay parking lot, on to Eastern Avenue and
then over to Puritan cleaners, where they had agreed to meet up with Mr. Liberal
and Tarrick Crawford.



1 34. Mr. Cohen-Ebanks received a call from Mr. Liberal which advised that there was a
2 police car near the Uncle Bills store and, accordingly, they drove to an area behind
3 Puritan Cleaners – beside an old container. There they cut open the bags, removed
4 the cash – throwing the papers and cheques to the ground of the car. Mr. Carter
5 removed his clothing and left his pants with the gun and ammunition inside them.
6 Mr. Cohen-Ebanks and Mr. Carter left the white vehicle, ran over to North Church
7 Street, where they were picked up by Mr. Liberal in the grey KIA. Mr. Liberal then
8 drove them to West Bay.

9 35. When they got to West Bay Mr. Cohen-Ebanks handed the money over to Mr.
10 Liberal. At this point Mr. Liberal asked for the gun and the radio and Mr. Carter
11 told him he had left them behind. Mr. Liberal became angry.

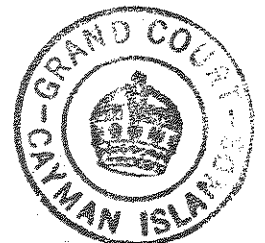
12 36. At Mr. Liberal's home he distributed the money between Mr. Cohen-Ebanks and
13 Mr. Carter and Mr. Crawford.

14 37. Mr. Carter was arrested on suspicion of robbery on the 4th October 2012. He was
15 interviewed on the 5th and 6th October 2012 and in his interviews he said he was at
16 home all day on the 4th October 2012.

17 38. Mr. Liberal was interviewed on the 29th and the 30th November 2013 and denied
18 being involved in the robbery. Ultimately cell phone evidence was obtained and
19 telephone analysis confirmed Mr. Liberal's communication with Mr. Carter and Mr.
20 Cohen Ebanks on the day of the robbery and at the time of the robbery.

21

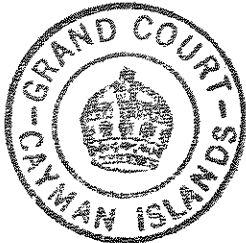
22



VICTIM IMPACT REPORT

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

39. The Sprint employee said that he has never forgotten the events of that day. He said the incident will never go away from his memory. At the time he was extremely frightened when Mr. Carter approached him with the handgun. He said the robbery only lasted for a few seconds but the handgun was pointed at his stomach. Throughout the weeks following the incident he kept going over the robbery in his mind. He said the robbery affected his health, in that, he began drinking more heavily as a way to fall asleep and he now finds that he is scared to go out and he opts to stay home or at a friend's home. As a result of the robbery the victim had to stop working as a courier and he still feels affected by the event.



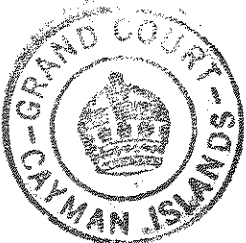
SUBMISSIONS ON BEHALF OF MANUEL CARTER

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

40. Counsel for Mr. Carter acknowledged that the Defendant was aware that the robbery was going to take place. In fact, the robbery was to have taken place on the day prior, on the 3rd October 2012, but the Sprint vehicle did not arrive. Counsel acknowledges that the Defendant was aware of the facts and circumstances, but, at the time, he was under the influence of both cocaine and ganja, and the Defendant specifically recalls being under the influence of cocaine at the time of the robbery. As a consequence, counsel submits that the facts were “fuzzy” for the Defendant and the Defendant did struggle with his ability to recall each and every related fact.

41. Notwithstanding the Defendant’s knowledge of and participation in the robbery, counsel asks the court to accept that the Defendant had pleaded guilty, avoiding the need for a trial – albeit one year and four months after the Indictment was laid on the 31st October 2012.

42. Counsel informs the Court that the Defendant, Carter, was born in Cuba to a Caymanian father and a Cuban mother, and did not arrive in the Cayman Islands until he was 5 or 6 years of age. As a result of having Spanish as his mother tongue he had language problems and was, actually, referred to the Lighthouse School because he was considered a very slow learner. Counsel submits that the Defendant had a very difficult start in life and, as a result of these early challenges Mr. Carter exhibited significant anti-social behavioural problems, which led to serious crime in his adult years.



1 43. Counsel points out that the Defendant now sees the error of his ways and realises
2 that he must change his lifestyle, or, otherwise, he will spend the rest of his life in
3 prison. Quoting from the SIR, counsel refers to the section where Mr. Carter states:

4 *“I was not thinking about the consequences because of this drug thing, it*
5 *doesn't give me time to think and, because I wanted that drug, that is why I*
6 *know I did it.”*

7 44. Counsel went on to add that his client now feels bad because, *“it (the robbery) is*
8 *keeping him away from everything that he loves.”* Counsel said the offence also
9 gave him a name which he never wanted to have, namely, *“a robber.”*

10 45. In conclusion, counsel submits that Mr. Carter has seen the error of his ways and
11 that is the main reason for his guilty plea.

12 46. Counsel stated that because the firearm, of itself, is an aggravating factor in
13 connection with the Robbery, it would be usual and reasonable for the term of
14 imprisonment imposed for Count 1, the Robbery charge, to run concurrent with the
15 term for Count 2, rather than consecutive

16

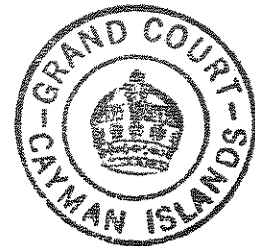
17

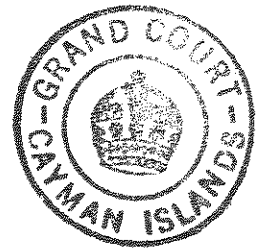
18

19

20

21





BRANDON LIBERAL

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

47. Like counsel for Mr. Carter, counsel for Mr. Liberal stated that because the firearm, of itself, is an aggravating factor in connection with the Robbery, it would be usual and reasonable for the term of imprisonment imposed for Count 1, the Robbery charge, to run concurrent with the term for Count 2, rather than consecutive. Counsel for Mr. Liberal stated that this approach is consistent with the case law in the Cayman Islands and the United Kingdom.

48. Counsel for Mr. Liberal stated that although Mr. Liberal's guilty plea was late – entered on the 25th February 2014 when his client was first charged in December 2013 – it still saved the Court at least two weeks of valuable court time and avoided Crown witnesses being subject to cross examination.

49. Counsel concedes that Mr. Liberal participated in the robbery and because of the fact that all four defendants participated in the robbery, they are all equally guilty of possession of the firearm and that the firearm was part of the robbery.

50. Counsel acknowledges that the expression "*the food is ready*" was Mr. Liberal's words and counsel added that the expression was actually "*the food is on the table*" but for the purposes of this hearing the difference is immaterial. Mr. Liberal was clearly giving the signal to go.

51. Counsel points to the fact that all four Defendants played a particular part. Mr. Carter put the gun to the Sprint employee, collects the money and brings it back to the car; Mr. Cohen Ebanks was the getaway driver and played a part in the planning. However, counsel states that the person who supplied the firearm to Mr. Liberal and Big Jeff are not before the court.

1 52. At the close of proceedings on the 8th July 2014 and today, counsel on behalf of Mr.
2 Liberal drew the court's attention to the fact that, on the 14th April 2014 – some
3 four days after the Sentencing Submissions were made by him on the 10th April
4 2014 on behalf of Mr. Liberal – Mr. Liberal requested a meeting at which he
5 offered to assist the police with the recovery of an illegal firearm, that is, a .22
6 revolver. Mr. Furniss explained that the recovery of the firearm took place shortly
7 afterwards.

8 Mr. Furniss advised that the firearm “was functional” even though he accepts that it
9 was capable of firing only once and, in addition, there was no connection between
10 the firearm recovered and the charges against Mr. Liberal on Indictment 85/2013.

11 Mr. Furniss asks the Court to note that an Indictment was not laid against Mr.
12 Liberal until December 2013 and, therefore, Mr. Liberal has provided this
13 assistance with the discovery of an unlicensed firearm only some 4 months after
14 being charged. Therefore, Mr. Furniss states it would be wrong of the Court to view
15 Mr. Liberal's association with this case as being as long as that of his co-defendants
16 – that is, more than a year prior in October 2012.

17 Mr. Furniss states that, in light of the existing dangers when an illegal firearm is
18 “on the streets” and, in light of this Court's view, expressed in the past, relating on
19 the importance of persons cooperating with the authorities for the recovery of
20 firearms, Mr. Liberal is entitled to credit for the production of the weapon.

 Counsel asks the Court to consider that this is an exceptional circumstance for the
 purpose of s.39 of the Firearms Law.

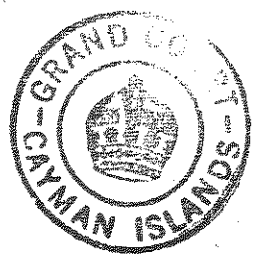


1 53. As I stated on the 8th July 2014, I cannot find how the handing in of an unlicensed
2 firearm – one that is wholly unrelated to the events of the 4th October 2012 – could
3 constitute “exceptional circumstances” in relation to Count 2 of this Indictment, or
4 in relation to Mr. Liberal.

5 54. Further, it is my view that, Mr. Liberal, having now pleaded guilty to the robbery
6 which occurred almost 2 years ago on the 4th October 2012, involving the use of a
7 firearm, is, by his own guilty plea, and, in the eyes of the Court, associated with this
8 crime since the 4th October 2012. Therefore, this Court rejects Mr. Furniss’
9 submission that this is not a late act on the part of Mr. Liberal because his
10 Indictment was laid just over 12 months after the Indictment against Mr. Carter and
11 Mr. Cohen-Ebanks. Mr. Liberal, having now pleaded guilty to robbery involving
12 the use of a firearm which occurred in October 2012, for which the basis of his plea
13 includes the fact that he was the one who supplied the firearm to Mr. Carter to point
14 towards the stomach of the Sprint employee, has, in this Court’s view, stood
15 silently by for more than a year and a half while the RCIPS invested a large amount
16 of manpower and resources into investigating this crime.

17 55. Mr. Liberal’s assistance to the police has now occurred far too late – a mere
18 afterthought long after he had fully instructed his counsel through his Goodyear
19 hearing on the 24th February 2014 and the full mitigation submissions made on his
20 behalf at the Sentence hearing on the 10th April 2014.

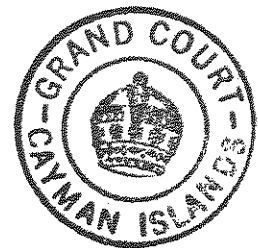
21
22



1 56. Accordingly, it is my view that, whilst Mr. Liberal's handing in of a weapon was a
2 creditable act on his part, this assistance is far too late and it does not alter his
3 position in relation to this Indictment. I therefore reject the submission that the
4 handing in of an unrelated firearm, sometime after Mr. Liberal had already fully
5 instructed his counsel through a sentence hearing on his behalf, is an exceptional
6 circumstance and deserving of a discounted term of imprisonment.

7 57. The Court can take judicial notice of the fact that there has been no amnesty in
8 relation to firearms in the late 2013 or in 2014 and, therefore, whilst the Court
9 commends Mr. Liberal for handing in an unlicensed firearm, the fact that he has not
10 been charged with another offence of possession of an unlicensed firearm, means
11 that the authorities have already given him the credit he seeks. Consequently, and
12 despite the fact that there is no current amnesty, in handing in the illegal firearm
13 Mr. Liberal has avoided facing a new and second charge for possession of an
14 unlicensed firearm contrary to s.15(1) and (5) of the Firearms Law (2008) Revision.

15 58. Accordingly it is my view that this late handing in of the unlicensed firearm does
16 not, in my opinion, constitute "exceptional circumstances" relating either to Count
17 2 on Indictment 85/2013 or to Mr. Liberal which would justify this Court giving
18 Mr. Liberal less than the minimum prescribed of seven (7) years' imprisonment.



JOHN PHILLIP COHEN EBANKS

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

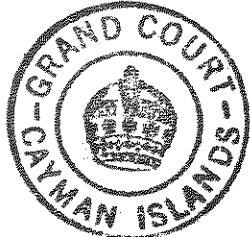
59. This Defendant gave a number of statements denying his involvement and then, at a later stage, provided statements giving full details of how the robbery occurred and the roles each robber played.

60. Mr. Ebanks gave the Crown further witness statements and expressed a willingness to give evidence on behalf of the Crown. Mr. Cohen-Ebanks maintained this position for several months, right up to the start of the trial, including on the 14th February 2014, when he gave a further witness statement before trial – indicating certain corrections to details of the robbery.

61. Furthermore, Mr. Cohen-Ebanks was physically present at the beginning of the trial on the 24th February 2014 – fully ready and prepared to give evidence against the other Defendants.

62. Mme DPP stated that this Defendant has been of significant assistance to the prosecution and the RCIPS has said that, without his evidence and his willingness to assist, they would have failed to identify two of the other three offenders responsible for the robbery.

63. Somewhat similar to Mr. Carter, Mr. Cohen-Ebanks has said that his addiction to cocaine has led him into the difficulties he now faces, and is largely responsible for his poor criminal record.



1 64. Counsel points to the fact that before the robbery took place Mr. Cohen-Ebanks
2 tried to stop the robbery, or at least tried to get himself out of it. However, the
3 evidence shows that the Defendant was forced into continuing by Brandon Liberal
4 who threatened to harm Mr. Cohen-Ebanks and his family if he didn't carry out the
5 robbery as planned.

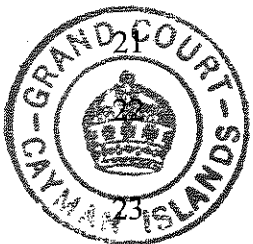
6 65. Counsel stated that serious consideration was given to the Defence of duress in
7 relation to Mr. Cohen-Ebanks but, Mr. Cohen-Ebanks accepted his responsibility in
8 the robbery. At that stage, he had made it clear that he would be prepared to assist
9 the Crown by giving evidence against the other offenders.

10 66. Aside from cocaine, Mr. Cohen-Ebanks said he used the money he obtained from
11 the robbery to pay his mother's medical bills and, since that time, his mother has
12 passed away.

13 67. Counsel explained that one of the reasons for the delay in assisting was the time it
14 took to ascertain whether or not the defence of duress was open to Mr. Cohen-
15 Ebanks.

16 68. Counsel submits that, despite threats to the Defendant's life he has come forward
17 and provided very significant information to the police – which has assisted the
18 prosecution of this case and, ultimately led to the guilty pleas of two other
19 offenders.

20 69. Counsel has acknowledged that his client is not of exemplary character. He does
 have a bad record. However, this Defendant was never the ringleader or the
 mastermind.



1 70. Counsel also points out that the firearm was not given to Mr. Cohen-Ebanks; it was
2 given to Mr. Carter and Mr. Carter sat behind Mr. Ebanks.

3 71. Counsel relies heavily on the significant assistance his client has given to the police
4 and the Crown and contends that, together with Mr. Cohen-Ebanks' contrition and
5 remorse can constitute exceptional circumstances in relation to Count 2. Counsel
6 relies upon the fact that Mr. Cohen-Ebanks' assistance to the police and his
7 willingness and preparedness to give evidence right up to the 24th February 2014,
8 constitutes one single striking feature – which itself can constitute exceptional
9 circumstances in relation to Mr. Cohen-Ebanks for the purposes of imposing a
10 sentence less than the minimum sentence of seven (7) years for Count 2.

11

12

13

14

15

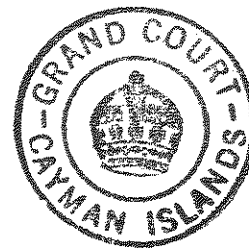
16

17

18

19

20



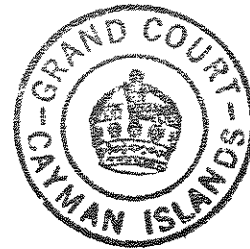
1 *ANALYSIS AND CONCLUSION*

2 72. I am grateful to the DPP and to all counsel for the Defendants for their helpful
3 review of both the UK and the Cayman authorities.

4 73. It is common ground that this offence is a street robbery with the use of a firearm.
5 Under the Chief Justice's Sentencing Guidelines² (the Guidelines) at page 6 this
6 offence could attract a tariff of 14 years imprisonment for a first offence involving
7 the use of a firearm. Under the UK Sentencing Council Guidelines this would
8 equate to a Level 2 offence. At page 11, the UK Sentencing Guidelines set out the
9 various starting points for the offence of a street robbery or robbery of a small
10 business. Under s.225 and 227 of the UK Criminal Justice Act 2003 robbery is a
11 serious offence with a maximum penalty of life imprisonment. Under Cayman law,
12 the maximum penalty is also life imprisonment.

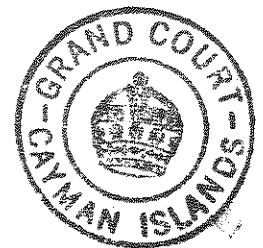
13 74. It is agreed between counsel that Count 1 is a level 2 offence and the Guidelines set
14 out a starting point of 4 years' custody with a sentencing range of 2 to 7 years'
15 custody, depending on the nature and duration of the threat.

16 75. In this case there are several aggravating factors which would warrant a more
17 severe sentence and, if the aggravating factors are exceptionally serious, the case
18 may move to the next level of seriousness, namely, Category 3.



² Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002

- 1 76. In this case:
- 2 i. We have a loaded firearm.
- 3 ii. We have four offenders before the court.
- 4 iii. It is clear that the offence was pre-planned with some considerable
- 5 organization.
- 6 iv. We have two different vehicles being used – one to commit the robbery and
- 7 another to get away from the robbery.
- 8 v. We have the switching of licence plates for the vehicles.
- 9 vi. We have the presence and use of handheld radios for the robbers to
- 10 communicate with each other.
- 11 vii. The Defendant Carter who actually used the gun to execute the robbery wore a
- 12 disguise in the form of a ski mask to conceal his identity.
- 13 viii. A large sum of money was targeted for the robbery.
- 14 ix. Three Defendants played a very active part



15 77. There is evidence to suggest that Liberal supplied the handheld radios and made

16 sure that Cohen-Ebanks did not back out of the planned robbery at the last moment.

17 In addition, Liberal is the one who gave the signal to go when he said either "*the*

18 *food is ready*" or "*the food is on the table*" – clearly indicating that he was the man

19 who was directing the heist. It was Liberal who spotted the police near to the pre-

20 arranged meeting point after the robbery and, consequently, warned Carter and

21 Cohen-Ebanks not to go there.



1 78. The UK Sentencing Guidelines state:

2 *"It is the use of violence that is the most serious part of the offence of robbery,*
3 *but it is not the only determinative factor.*
4 *The relative seriousness of each offence depends on factors such as the degree*
5 *of injury to the victim or the nature and duration of threats.*
6 *The degree of force used is important in determining the seriousness of the*
7 *offence but the degree of fear which was experienced by the victim is a relevant*
8 *consideration."*

9
10
11 79. In this case the Sprint employee suffered a terrifying and traumatic fright. He is no
12 longer able to be employed as a courier and finds adjusting to normal activities such
13 as going out with other people, extremely difficult. One cannot underestimate the
14 effect such a terrifying incident, with a gun being pointed at him, must have had on
15 this innocent victim.

16 80. The President of the CICA Sir John Chadwick stated at paragraph 11 in the case of
17 the *R v. Haylock, Avila McLaughlin and Watson*³:

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

21
22 81. As a result of the high number of aggravating factors in this case the starting point
23 for Count 1 has to be between six (6) and seven (7) years. It should be noted that
24 this is at the higher end of the range for Category 2 offences recommended by the
25 SGC. It is a long established principle that the earlier an accused pleads guilty, the
26 greater the reduction in the sentence imposed by the Court. Had the accused, Carter
27 and Liberal, pleaded guilty from the outset, they would have been entitled to a
28 discount of 33 1/3 %. As they maintained their not guilty pleas until the day of the
29 trial, and after a jury had been empanelled, any discount can only be 10% or less.

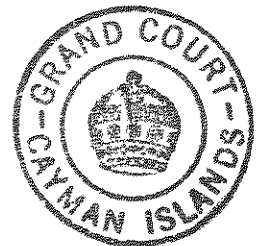
³ CICA (Crim) No. 33 of 2010

1 82. Mr. Carter was the robber who actually put on the mask and pointed the gun at the
2 victim outside BritCay. Mr. Carter took the bag containing the cash from the Sprint
3 courier. Mr. Carter has 23 previous convictions, including six for Burglary and
4 Attempted Burglary, 3 for Criminal Trespass and convictions for Aggravated
5 Criminal Trespass, Common Assault and Assault Causing Actual Bodily Harm.

6 83. There is sufficient evidence for the Court to find that Mr. Liberal played a, if not
7 the, major role in organizing the robbery. He was involved in obtaining the firearm
8 from others not before the Court. The evidence shows that he provided the vehicles
9 and the false registration plates for the vehicles used in the robbery. He provided
10 the hand-held radios for the robbers to communicate with each other before and
11 after the robbery. He made sure that Cohen-Ebanks did not back out of the robbery
12 when it was clear that Mr. Cohen-Ebanks was having second thoughts. Mr. Liberal
13 was the one who gave the signal to go when he said, via his radio, "*the food is*
14 *ready*" or "*the food is on the table*". After the robbery Mr. Liberal was the one who
15 warned Carter and Cohen Ebanks not to go to the pre-arranged meeting point as the
16 police were nearby. Finally, and very significantly, Mr. Liberal was the one to
17 whom the money was handed after the robbery and he was the one who allocated
18 and distributed the portions to the other robbers.

19 84. Mr. Liberal, on the other hand, unlike Mr. Carter, has only 2 convictions – one for
20 possession of ganja and the other for disorderly conduct. However, in view of his
21 leading role in this armed robbery, I can find no good reason to impose a lesser
22 sentence than one imposed for Mr. Carter.

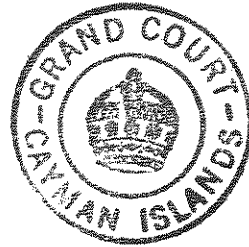
23



1 85. Accordingly, in all the circumstances I find that, on Count 1 both Defendants
2 should be sentenced to six (6) years' imprisonment:

3 86. On Count 2 both Defendants are sentenced to seven (7) years' imprisonment – the
4 minimum prescribed by the law – to run concurrent to the sentence on count 1.

5
6
7
8
9
10
11
12
13
14
15
16
17
18

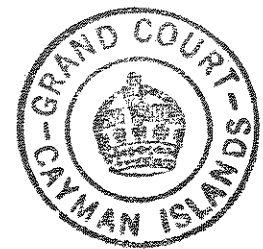


1 **MR. JOHN PHILLIP COHEN EBANKS**

2 87. Mr. John Phillip Cohen Ebanks has 59 previous convictions. The Court notes that
3 of those 59, 28 offences relate to the consumption and possession of illegal drugs.
4 He has 2 offences of burglary and several offences of obtaining property by
5 deception and uttering a false document, and, one conviction for theft.

6 88. In England, assistance to law enforcement agents is governed by the Serious
7 Organised Crime and Police Act 2005 (SOCPA). In the Cayman Islands we do not
8 have any corresponding legislation.

9 89. The English Court of Appeal in the case of *R v. P and Derrick Stephen Blackburn*⁴
10 reviewed the case law in relation to Defendants assisting investigations and
11 prosecutions – both before the SOCPA and since. This Court notes that the UK
12 statute did not include any direct provisions suggesting the level of discount
13 appropriate to be provided to the Defendant who entered into and performed an
14 agreement to assist the prosecution. At Chapter E 1.13 of *Blackstone's Criminal*
15 *Practice 2014*, the learned editors state that s.73 and 74 of the SOCPA are silent as
16 to the appropriate extent of any reduction to reflect actual or promised assistance by
17 the offender. The former Lord Chief Justice, Lord Judge, in *R v. P and Derrick*
18 *Stephen Blackburn* stated that the pre SOCPA Court of Appeal authorities are still
19 relevant despite the introduction of the statutory scheme.

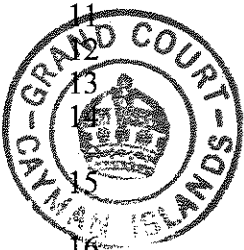


⁴ [2008] 2 Cr. App R. (S) 16

1 90. The learned editors of the *Archbold 2014* review the case law provided other than
2 in accordance with the new SOPCA 2005 Act. At paragraph 5-139 the learned
3 editors of Archbold refer to *R v. P and Derrick Stephen Blackburn* and *R v.*
4 *Sinfield*⁵ and state that an offender who assists the police by giving information that
5 leads to the apprehension and prosecution of his associates or of other offenders
6 may expect a discount – possibly substantial – from his sentence.

7 91. In *R v. Michael King*⁶ the English Court of Appeal set out some guidelines
8 regarding the appropriate discounts for those who assist the authorities in their
9 investigation and prosecution of offenders. Stating that it would be impossible to
10 lay down any hard and fast rule, the Lord Chief Justice, Lord Lane, said:

11 *“The amount by which that figure should be reduced would depend on a*
12 *number of variable features; the quality and quantity of the material disclosed*
13 *... its accuracy and his willingness to confront other criminals or give evidence*
14 *against them.”*
15



16 The Lord Chief Justice, giving the opinion of the Court of Appeal stated that there
17 should be an expectation of some substantial reduction of what otherwise would be
18 the proper sentence and suggested that the amount would vary between a half and
19 two-thirds of the appropriate sentence.

20 92. Some three years later the English Court of Appeal in *R v. Sivan*⁷ confirmed that it
21 was a well-established feature of sentencing practice that credit should be given to a
22 Defendant in certain circumstances for assistance or information given to the
23 authorities. The Court of Appeal said that the matters that should be taken into
24 account are:

⁵ 3 Cr App R (S) 258

⁶ 7 Cr. App R. (S) 227

⁷ 10 Cr. App R. (S) 282

1 *“The nature and the effect of the information, did it bring justice to persons*
2 *who otherwise would not have been brought to justice, and the degree of the*
3 *assistance provided, namely, was the offender prepared to give evidence, and,*
4 *finally, the degree of risk to which the defendant had exposed himself and his*
5 *family.*

6 *Within those limits the judge must bring himself to tailor the sentence so as to*
7 *punish the Defendant, but at the same time reward him as far as possible for*
8 *the help he had given, in order to demonstrate to offenders that it was worth*
9 *their while to disclose the criminal activities of others for the benefit of the law-*
10 *abiding public in general.”*

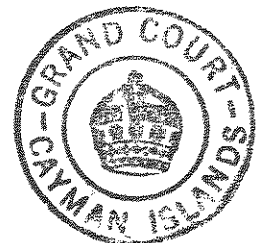
11
12 93. Finally, in considering the appropriate reduction, there are authorities to suggest
13 that the judge should consider the reduction for the assistance separate and apart
14 from any reduction for a plea of guilty. However, in *R v. Sehitoglu (Dervis)*⁸ the
15 English Court of Appeal stated that the sentencer should determine the final
16 sentence by calculating a single discount – taking into account all the relevant
17 factors including the plea of guilty and the assistance given to the authorities. I
18 follow and adopt this approach from Mr. Cohen-Ebanks.

19 94. In *R v. P and Blackburn* the Lord Chief Justice, Lord Judge, endorsed the totality
20 principle when it came to sentencing in cases of this nature and stated that the
21 normal level for reduction would continue to be a reduction of between a half and
22 two-thirds.

23 95. Had Mr. Cohen-Ebanks not provided this substantial assistance to the RCIPS and
24 the Crown, I would have imposed a sentence of 6 years’ imprisonment on Count 1.
25 In light of his substantial assistance and willingness to give evidence at trial, I
26 impose a sentence of three (3) years’ imprisonment.

27 96. I turn now to this Defendant’s guilty plea to Count 2.

⁸ [1998] 1 Cr. App R. (S) 89 CA



1 97. Section 39(2) of the Firearms Law (2008 Revision) reads:

2 “(2) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code
3 (2006 Revision), the court of summary jurisdiction or the Grand Court before
4 which the individual pleads guilty or is convicted, shall-

5 (a) in a case where the individual pleads guilty, impose a sentence of
6 imprisonment for a term of at least seven years (with or without a fine); or

7 (b) in any other case, impose a sentence of imprisonment for a term of at least
8 ten years (with or without a fine),

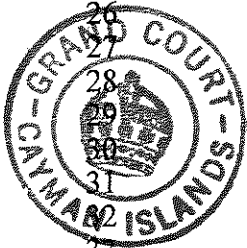
9 unless the relevant court is of the opinion that there are exceptional
10 circumstances relating to the offence or to the offender which justify its not
11 doing so; and such exceptional circumstances shall be stated by the relevant
12 court.”

13
14 98. In the case of *Chavarría-Atily v. R*⁹ the CICA applied Lord Bingham’s dicta in *R*
15 *v. Avis et al.* The Acting President Forte JA set out Lord Bingham’s guidelines and
16 added the following words at paragraph 10 of his Judgment:

17 “In the Cayman Islands, it has been the massive increase in offences under the
18 Firearms Law that has led Parliament to enact the minimum sentences in
19 respect of those offences, while at the same time making special provision for
20 cases of exceptional circumstances.”

21 99. The English Court of Appeal in *R v. Zakir Rehman and Gary Dominic Wood*¹⁰
22 examined the question of “exceptional circumstances” in relation to the minimum
23 sentence under the UK Firearms Act 1968, which are similar to the provisions
24 under our Firearms Law. The then Lord Chief Justice, Lord Woolf stated:

25 “The question of exceptional circumstances in that context has been considered
26 in *Buckland* (2000) 2 Cr. App R (S) 217. In the light of that decision the court
27 considered that it was not appropriate to look at each circumstance separately
28 and then to conclude that it did not amount to an exceptional circumstance. A
29 holistic approach was needed. There would be cases where there was single
30 striking feature which related either to the offence or the offender, which
31 caused that case to fall within the requirement of “exceptional circumstances.”
32 There could be other cases where no single factor by itself would amount to an
33 exceptional circumstance, but the collective impact of all the relevant
34 circumstances truly made the case exceptional.”



⁹ [2009] CILR 118

¹⁰ (2006) 1 Cr App R. (S) 77

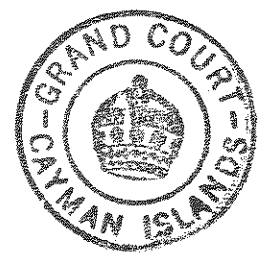
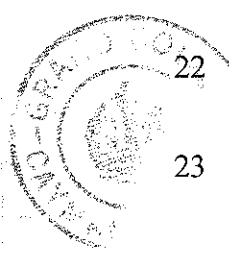
1 100. In *Chavarría-Atily v. R* the Cayman Islands Court of Appeal referred to *R v. Zakir*
2 *Rehman and Gary Dominic Wood* and added at paragraph 12 of their Judgment:

3 *“We would say, however, that the section (in the Firearms Law) makes it clear*
4 *that it is the opinion of the court that is critical as to what constitutes*
5 *exceptional circumstances.”*

6
7 In *Chavarría-Atily v. R* the Court of Appeal did not disturb the Grand Court’s
8 finding of exceptional circumstances.

9 101. The DPP has confirmed to the Court that the Defendant Mr. Cohen-Ebanks
10 provided several statements which assisted both the investigation of this case and
11 the prosecution of both Carter and Liberal. Ms. Richards has confirmed that since
12 Mr. Cohen-Ebanks gave his statements assisting the police he had always expressed
13 a willingness to give evidence in court and he maintained that position right up to
14 the 24th February 2014 when the jury was empanelled. Mme DPP confirmed that, in
15 summary, this Defendant has been of significant assistance and the police have
16 stated that, without his assistance they would have been unable to identify 2 of the 3
17 offenders responsible for the robbery.

18 102. The Court notes that Mr. Cohen-Ebanks cannot be described as a person of good
19 character in light of his record which demonstrates that he had or has a serious drug
20 addiction which led to many offences under the Misuse of Drugs Law and other
21 criminal offences.



1 103. Defence counsel for Mr. Cohen-Ebanks submits that his client's assistance
2 constitutes a single striking feature and his willingness to come forward and help
3 the police – notwithstanding the threats to him and his family – constitute
4 exceptional circumstances.

5 104. I am satisfied when a Defendant gives such significant assistance – assistance
6 which enables the police to apprehend the perpetrators of such a serious crime, and
7 assistance which includes giving evidence in the court proceedings – this
8 constitutes, in my view, “exceptional circumstances” relating to Mr. Cohen-Ebanks.
9 This view justifies me not imposing a minimum sentence of seven (7) years’
10 imprisonment.

11 105. Accordingly, I impose a sentence of three (3) years’ imprisonment in relation to
12 Count 2, with time spent in custody to be deducted.

13

14 **Dated this the 23rd day of July 2014**

15

16

17

18

19 **Honourable Mr. Justice Charles Quin**
20 **Judge of the Grand Court**

