

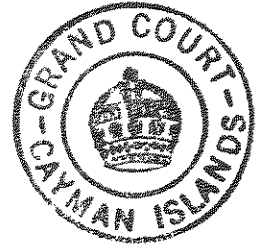
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**
3
4

5 **INDICTMENT NO: 0105/2012**
6
7

8 **THE QUEEN**
9

10 **V**
11

12 **ELVIS KELSEY EBANKS**
13
14



15 **Appearances:**

**Deputy DPP, Mr. Trevor Ward Q.C., for
the Crown**

**Mr. Laurence Aiolfi of Stenning &
Associates for the Defendant**

16
17
18
19
20
21 **Before:**

The Hon. Mr. Justice Charles Quin

22 **Submissions heard:**

On the afternoon of Friday 25th April 2014

23 **Ruling delivered:**

28th April 2014
24

25 **RULING ON ADMISSIBILITY OF STATEMENTS**
26

27 1. On the afternoon of Friday the 25th April 2014 the Crown applied pursuant to
28 s.33(2)(b)(i) and (ii) of the Evidence Law (2011 Revision), for the statements of
29 Detective Constable William Ramsay, dated the 22nd November 2012 and Detective
30 Constable Andrew Bluck dated the 16th November 2012 to be admitted into
31 evidence.

32 2. Section 33(1) of the Evidence Law reads:
33

1 “33. (1) A statement made by a person in a document shall be
2 admissible in criminal proceedings as evidence of any fact of which direct oral
3 evidence by him would be admissible if-

4 (a) The requirements of one of the paragraphs of
5 subsection (2) are satisfied; or

6 (b)

7 (c)

8 (2) The requirements mentioned in paragraph (a) of
9 subsection (1) are-

10 (a) that the person who made the statement is dead or
11 by reason of his bodily or mental condition unfit to attend as a
12 witness; or

13 (b) that-

14 (i) the person who made the statement is
15 outside the Islands; and

16 (ii) it is not reasonably practicable to
17 secure his attendance; or...

18 (c)”
19



20 3. Detective Constable Ramsay's evidence is restricted to the 14th November 2014. He
21 accompanied Detective Inspector Richard Oliver (DI Oliver) to the *Countryside*
22 *Shopping Centre* where he observes Elmer Ferreras standing outside the front of
23 *Subway* with a folded white plastic bag in his right hand. DC Ramsay also holds the
24 video camcorder in an effort to video the scene.

25 4. In addition, DC Ramsay travels with DI Oliver to chase the Defendant's car, and
26 DC Ramsay is present when the Defendant is arrested by DI Oliver

27 5. DC Ramsay records on video the retrieving of the five one hundred dollar bills on
28 the ground outside the car driven by the Defendant. DC Ramsay is also at the
29 police station when the Defendant is searched and the various items are taken from
30 him.

31

1 6. DC Bluck's evidence is also limited to the 14th November 2012. He accompanies
2 DC Keith Taylor, who has given evidence in this trial. DC Bluck's evidence is what
3 he observed at the Countryside Shopping Centre, and afterwards when the
4 Defendant is chased and finally apprehended along the East-West Arterial Bypass.

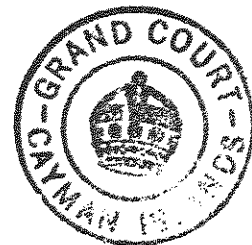
5 7. DC Bluck also states he was present when the Defendant was arrested. He
6 conducted the search of the Defendant's vehicle – Registration Number 130526 –
7 and he searched the Defendant's home.

8 8. Defence counsel objects to the admission of these statements. Counsel submits that
9 there is insufficient evidence to show that reasonable steps have been taken to
10 secure the attendance of the two witnesses. He objects on the ground that it is
11 seriously prejudicial to the Defendant and states that the evidence of DC Hill
12 regarding the Defendant reversing the vehicle is highly controversial and he would
13 wish the opportunity to cross examine DC Ramsay and DC Bluck on this and other
14 issues.

15 9. Defence submits that the inability to cross examine these two witnesses is
16 prejudicial to the Defence and, accordingly, the statements should be ruled
17 inadmissible.

18 10. The English Court of Appeal decision of *Luis Angel Castillo*¹ is the leading
19 authority in relating to the interpretation of these provisions. Section 23 of the UK
20 Criminal Justice Act 1988 mirrors s.33 of the Cayman Islands Evidence Law 2011.
21 The President of the English Court of Appeal, Stuart-Smith LJ, in *Castillo* stated in
22 the holding:

¹ [1996] 1 Cr. App. R. 438



1 *“In deciding whether it was reasonably practicable for a witness to*
2 *attend, the mere fact that it was possible for the witness to attend did*
3 *not answer the question. The judge had to consider a number of*
4 *factors. First, the importance of the evidence that the witness can give*
5 *and how prejudicial it was to the defence that the witness did not*
6 *attend. Secondly, the expense and inconvenience of securing the*
7 *witness’s attendance. Thirdly, the reasons put forward as to why it was*
8 *not reasonably practicable for the witness to attend.”*

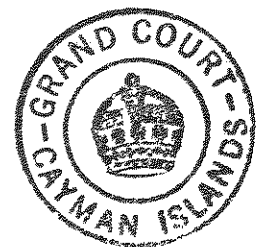
9
10 11. In Deborah Barker Roye’s Third Edition of *Criminal Litigation in the Cayman*
11 *Islands*, the learned author cites with approval the English Court of Appeal decision
12 in *Castillo*. In addition, at page 256 the learned author states:

13 *“The more recent case of R v. Mei Hua YU [2006] EWCA Crim. 349 is a good*
14 *example of the English Court of Appeal taking a more relaxed approach to this*
15 *issue² agreeing with the trial judge’s decision to admit a written statement of a*
16 *witness from China.”*

17
18 Although there were issues regarding passports and lengthy travel, Ms. Barker
19 Roye states that the English Court of Appeal held in *Mei Hua YU* that

20 *“it had not been seriously prejudicial to the defence for the witnesses not to*
21 *attend in person.”*

22
23 12. The evidence as to the current whereabouts of these two witnesses was given by DI
24 Oliver.



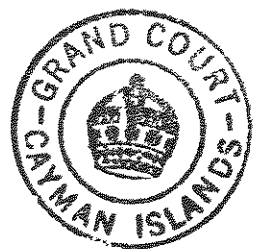
² Section 23(2)(b) of the UK Criminal Justice Act is in identical terms to s.33 of the Evidence Law.

1 13. *In relation to former DC Ramsay:* DI Oliver told the Court that DC Ramsay is no
2 longer with the RCIPS and left the Cayman Islands in September 2013. DI Oliver
3 told the Court that, in the run up to the previous trial dates he contacted DC Ramsay
4 many times. DI Oliver told the Court that DC Ramsay had been available to do a
5 video link on previous occasions however, on this occasion which is the third
6 commencement of the trial for this Indictment, DC Ramsay is out of contact as he is
7 on vacation. DI Oliver said a colleague had been in contact with DC Ramsay, who
8 reported that Mr. Ramsay had gone “on a walking holiday in a remote area” and as
9 such was not available. The emails produced today confirm that this witness is on
10 holiday and not available until the end of this week.

11 14. *In relation to former DC Bluck:* DI Oliver told the Court that Mr. Bluck left the
12 RCIPS before Mr. Ramsay. DI Oliver told the Court that he had an email exchange
13 with Mr. Bluck, but Mr. Bluck said he was not available. Mr. Bluck stated that it
14 was largely due to the pressure of work that he was experiencing at the time, and
15 that he, was not willing to make himself available for this reason. DI Oliver also
16 said that Mr. Bluck advised that, although he is resident in the UK he often works
17 overseas. In emails produced this morning I note that this witness is distinctly
18 unwilling to return due to what he claims to be his unfair treatment by the RCIPS.

19 15. It is quite clear from the reading of s.33(1) of the Evidence Law 2011 that the
20 statements of former DC Ramsay and former DC Bluck:

21 “...shall be admissible in criminal proceedings as evidence of any fact of which
22 direct oral evidence by him would be admissible.”



1 16. It is clear to the Court that both former Detectives Ramsay and Bluck are outside
2 the Cayman Islands and further, it is not reasonably practicable to secure their
3 attendance at this hearing. For different reasons, neither is available – despite the
4 steps taken by DI Oliver to try and secure their attendance.

5 17. There are two other provisions contained in the Evidence Law which are relevant to
6 this application. First, s.33(6) which reads:

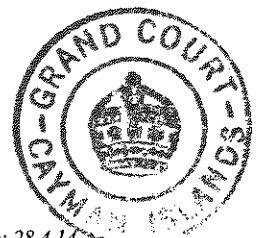
7 “33. (6) Notwithstanding subsection (1), in criminal proceedings a
8 written statement by any person is admissible as evidence to the like extent as
9 oral evidence to the like effect by that person if the court determines that it is in
10 the interest of justice to admit such written statement.”
11
12

13 And, secondly, s.40 which reads:

14 “40. Nothing in this Law derogates from the power of a court in any
15 criminal proceedings to disallow evidence otherwise admissible which, in the
16 opinion of such court, would, if allowed, operate unfairly against an accused
17 person.”
18

19 18. Having read the statements of both former Detective Ramsay and former Detective
20 Bluck, it is revealed that Ramsay accompanied DI Oliver on the day in question. DI
21 Oliver has been cross examined at some length regarding the events of the 14th
22 November 2012. Mr. Bluck accompanied DC Taylor on the day in question, and
23 DC Taylor too has been subject to significant cross examination on the events of
24 the 14th November 2012.

25 19. When I consider the question of fairness, a fair trial to the defence, and the overall
26 interests of justice, I can see no reason to prevent the admission of the witness
27 statements of former RCIPS Officer Ramsay and Bluck.



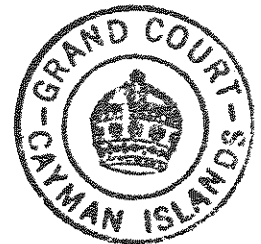
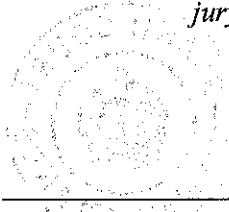
1 20. When I consider s.40 of the Evidence Law and the contents of the statements of
2 former RCIPS officers Ramsay and Bluck. I find that the non-appearance of these
3 two witnesses is not seriously prejudicial to the defence. To put it another way, I
4 fail to see how the admission of their statements would operate unfairly against the
5 Defendant or prevent him from having a fair trial in the circumstances of this case.

6
7 21. In fact, former DC Ramsay confirms that the Defendant ignored his caution and
8 went on to state that he had nothing wrong and only borrowed the cash. This is the
9 consistent with the Defendant's prepared statement. I would have thought that it is
10 in the interest of the Defendant for this evidence to be disclosed to the jury as it sets
11 out his defence made at the earliest opportunity.

12 22. I find support for this approach in the Privy Council case of *Richard Scott &*
13 *Another v. R and Winston Barnes & Another v. R*³. Although the case is different
14 from the one before me, the question of whether the judge should disallow evidence
15 otherwise admissible is addressed. The judgment of the Judicial Committee is
16 delivered by Lord Griffiths and, at letter C and letter D on page 1259 Griffiths LJA
17 states:

18 "C The deposition must of course be scrutinized by the judge to ensure that
19 it does not contain inadmissible matters such as hearsay or matter that is
20 prejudicial rather than probative and any such material should be excluded
21 from the deposition before it is read to the jury.

22 D Provided these precautions are taken it is only in rare circumstances
23 that it would be right to exercise the discretion to exclude the deposition. Those
24 circumstances will arise when the judge is satisfied that it will be unsafe for the
25 jury to rely upon the evidence in the deposition."



³ [1989] 1 AC 1242

1 23. In construing s.33 of the Evidence Law, I followed the principles set out by the
2 English Court of Appeal in *Castillo (supra)* where the Court stated that the mere
3 fact that it was possible for the witness to attend did not answer the question.

4 24. The Crown considers the evidence of former DC Ramsay and DC Bluck important.
5 Section 33 of the Evidence Law states that the statement shall be admissible. I find
6 that the requirements set out in s.33(2), namely, that the witnesses are outside the
7 Islands and it is not reasonably practicable to secure their attendance are satisfied. It
8 has not been possible to secure their attendance for this trial and I would only add
9 that, if it had been possible, it would have involved some considerable expense and
10 inconvenience.

11 25. I find that the Crown should be entitled to read in the witness statements of former
12 DC Ramsay and DC Bluck. Their evidence is something the jury should be allowed
13 to consider.

14 26. After the evidence is read in I will give Defence counsel leave to re-call DI Oliver
15 and DC Baker – should he wish put any further questions to either witness.

16 I will also give the direction to the jury that the evidence will be untested by cross
17 examination and that they must take that into account in deciding what reliance can
18 be placed upon it.

19

20

21



1 27. Accordingly, the Crown's application to admit the witness statements of former DC
2 Ramsay and former DC Bluck is hereby granted and these statements are now made
3 admissible and shall be read in, pursuant to s.33 of the Evidence Law.

4

5

6

7 **Dated this the 28th April 2014**

8

9

10

11

12 **Honourable Mr. Justice Charles Quin**
13 **Judge of the Grand Court**

