

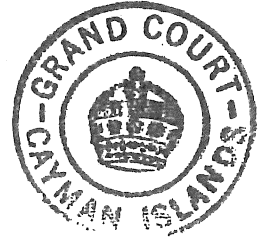
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

5 INDICTMENT NO: 0105/2012

8 THE QUEEN

10 V

12 ELVIS KELSEY EBANKS



15 **Appearances:** Deputy DPP, Mr. Trevor Ward Q.C., for
16 the Crown

18 Mr. Laurence Aiolfi of Stenning &
19 Associates for the Defendant

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

25 **RULING ON**
26 **CROWN'S APPLICATION TO PROVIDE TO THE JURY**
27 **THE TRANSCRIPTS OF THE DEFENDANT'S TELEPHONE CONVERSATIONS**
28 **WITH THE COMPLAINANT**
29

30 1. On the afternoon of Friday the 25th April 2014 the Deputy DPP Mr. Ward Q.C.
31 applied to have the transcripts of the recordings of the telephone conversations
32 between the Defendant and Mr. Elmer Ferreras, the Complainant, on the 14th
33 November 2012, put before the jury.

34 2. It is not contested that it is the Defendant who called the Complainant leading to the
35 two subject conversations between them.

1 3. The first cellphone call from the Defendant was received by the Complainant at
2 11:40 a.m. on the 14th November 2012 and lasted 3:51 minutes. The call from the
3 Defendant to the Complainant was made from an unknown number.

4 4. The second cellphone call from the Defendant was received by the Complainant at
5 12:31 p.m. It was also from an unknown number and it lasted 2:13 minutes.

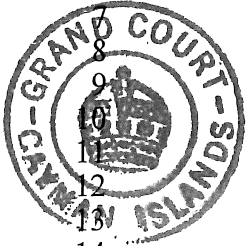
6 5. When these calls came in from the Defendant to Mr. Ferreras, Mr. Ferreras's phone
7 had a recorder attached to it, and whilst the conversations were taking place, Mr.
8 Ferreras was in the presence of PC Maranan, Delores Pascal (a friend of Mr.
9 Ferreras), Det. Insp. Peter McLaughlin, Det. Const. Lois Anglin, and, Det. Alvin
10 Boxwell. DC Boxwell has introduced into evidence the audio recording of the two
11 conversations which were Police Exhibit AB2 and are now Court Exhibit 3.

12 6. The Crown now seeks to place the two written transcripts of the two recorded
13 telephone conversations which are Exhibit RO4 and Exhibit RO5, along with the
14 disc of the audio recording before the jury.

15 7. Defence counsel objects to the Court providing the transcripts of these telephone
16 conversations for the jury and relies upon the portion at paragraph 8-92 of the 2014
17 Edition of *Archbold Criminal Pleading Evidence & Practice* which reads:

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1 *"In R v. Popescu [2011] Crim.L.R. 227 C.A. it was held (considering R v.*
2 *Welstead [1996] 1 Cr. App.R. 59, CA, and R. v. Morris [1998] Crim.L.R. 416,*
3 *CA): (i) great care must be taken before a jury are given the transcript of an*
4 *interview at all, even whilst the video-recording of the interview is being*
5 *shown; this should only be done if there is good reason for it (e.g. the evidence*
6 *would be difficult to follow on screen, or the audio quality is poor); ... (iii) other*
7 *than in exceptional circumstances, the transcript should be withdrawn from the*
8 *jury once the evidence-in-chief has been given; (v) retention by the jury of*
9 *the transcript after the witness has finished must be for a good reason; (vi)*
10 *exceptional circumstances apart, the jury should not be permitted to retire with*
11 *the transcript; those exceptional circumstances will usually only present if the*
12 *defence positively want the jury to retire with the transcript, and the judge is*
13 *satisfied that there are good reasons why they should do so; and the summing*
14 *up must explain why the jury are being allowed the transcript and the limited*
15 *use to which they must put it, viz. to aid them to understand the evidence-in-*
16 *chief of the relevant witness..."*

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18 8. Although this portion of *Archbold* relates to the transcript of a police interview with
19 a Defendant, Defence counsel submits that it applies equally to the transcript of the
20 recording of the telephone conversations between the Defendant and the
21 Complainant in this case.

22 9. Defence counsel further submits that in a tape recording of a police interview the
23 Defendant knows he is being taped, but, in this scenario there has been
24 eavesdropping on the Defendant's telephone conversation – which is quite different
25 from the police interview, and all the more reason for the transcript not to be given
26 to the jury.

27 10. Mr. Ward submits that the provision of the transcripts to the jury is an
28 administrative convenience to assist them in their task and he relies upon paragraph
29 F8.53 of the 2014 edition of *Blackstone's Criminal Practice* which states:

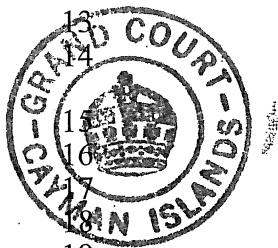
30 *"At common law, it was held that there is no objection to a properly proved*
31 *transcript of the recording being put before the jury, provided they are guided*
32 *by what they hear (Maqsud Ali, at p.702). See also Rampling [1987] Crim. LR*
33 *823: the transcript, not in itself evidence, may be used as a convenience to the*
34 *jury."*

1 11. Although this is a transcript of the telephone conversation, Mr. Ward relies upon
2 the English Court of Appeal decision of *Rampling*¹ which is cited by the learned
3 editors of *Blackstone* at F8.55. In *Rampling* the Court of Appeal stated:

4 “(e) *The transcript of the recording can be produced by the officer, who,*
5 *before the trial, should have checked it against the recording for*
6 *accuracy. The tape recording is the evidence in the case and can be*
7 *made an exhibit; the transcript, not in itself evidence, may be used as a*
8 *convenience to the jury...*

9 (f) *Use of the transcript is an administrative matter to be decided in his*
10 *discretion by the trial Judge. In many cases the accused will agree to*
11 *its use and will not require the tape to be played at all, in which case*
12 *the transcript will be read out by the officer who produced it; however,*
13 *the accused is entitled, if he so wishes, to have any part of the tape*
14 *played to the jury.*

15 (g) *If any part of the tape is played, it is for the judge to decide whether the*
16 *jury should have the transcript in order to follow the tape, and have it*
17 *with them when they retire; the use of the transcript is within the*
18 *judge’s discretion and is not dependent on the consent of the parties; a*
19 *transcript is usually of very considerable value to the jury but each*
20 *case has to be decided on its own facts.”*



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22 12. In this case the jury has heard the audio recording (Exhibit 3). In fact, it was the
23 jury who asked for the audio recording to be re-played.

24 13. The audio recording was played to the Defendant during his second interview
25 which took place on Thursday the 15th November 2012 from 7:17 p.m. to 7:41 p.m.
26 The written transcript of the audio recording of the telephone conversations is at
27 pages 44 and 52 of Exhibit RO/7 “The Second Interview of the Defendant on the
28 15th November 2012” and has been made available to the defence since that date.

29 14. The Defence does not question the accuracy of the written transcript of the
30 recordings of the subject telephone conversations.

¹ [1987] Crim LR 823

1 15. As the Court of Appeal stated in *Rampling*, the transcript: "...is usually of very
2 considerable value to the jury" and I can see no good reason for not letting the jury
3 have the transcripts when they retire to consider their verdict. As the Commentary
4 states in the *Criminal Law Review (CLR)* 1987 after the report of *Rampling*:

5 "...the tape-recording is the best evidence of what took place at the
6 interview.....A transcript is, however, secondary evidence."

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8 The *CLR* commentary goes on to state:

9 "If the jury is satisfiedthat the transcript is an accurate record of the tape-
10 recording ...then the transcript is evidence of what was said at the interview."

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12 16. I note that the English Court of Appeal in *R v. Maqsd Ali, R. v. Ashiq Hussain*²
13 stated at the third holding at paragraph C on page 689:

14 "(3) That a transcript of tape recording was obviously a convenience and an
15 aid to a jury, and provided that they were guided by what they heard and based
16 their ultimate decision on that, there was no objection to a copy of a transcript,
17 properly proved, being put before them; ..."

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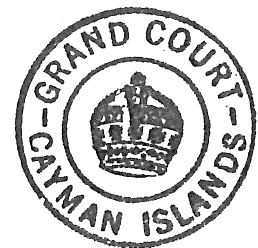
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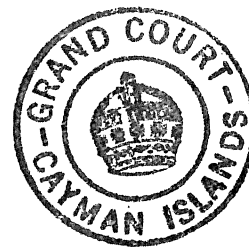
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² [1966] 1 QB 688

1 17. It is agreed that the transcript is a proper and accurate written recording of what was
2 said between the Defendant and the Complainant in the two conversations on the
3 14th November 2012. I find that it would be of “very considerable value to the jury”
4 in the circumstances of this case. Accordingly I accede to the Crown’s application
5 to put the written transcripts before the jury as an administrative convenience to
6 assist them in their task.

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



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16 **Honourable Mr. Justice Charles Quin**
17 **Judge of the Grand Court**