

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**

2 **Criminal Appeal No. 1 of 2010**  
3 **(Summary Court Appeal No. 49/08)**

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6 **BETWEEN: HER MAJESTY THE QUEEN**  
7 **Defendant/Appellant**  
8 **AND: LUIS EDUARDO QUESADA CASTRO**  
9 **Respondent**

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11 **Coram:** The Hon. Mr. Justice Henderson

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13 **Appearances:** Mr. Nicholas Dixey appeared for the Defendant/Appellant and Mr.  
14 Masters appeared for the Crown/Respondent

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17 **Heard:** 28<sup>th</sup> May 2010

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20 **JUDGMENT**

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23 1. The Defendant Luis Eduardo Quesada Castro (“Mr. Castro”) was convicted in the  
24 Summary Court of careless driving, driving under the influence of alcohol, and  
25 leaving the scene of an accident. His appeal to this Court was allowed but upon a  
26 further appeal to the Court of Appeal the decision was set aside and the case  
27 remitted to this Court for consideration of the remaining issues on the original  
28 appeal. Those issues are:

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30 (1) Should Mr. Castro, a native Spanish speaker who was “clearly  
31 intoxicated,” have been questioned by the arresting officer at all?

32 (2) If so, was there a need for a formal caution before Mr. Castro was asked  
33 why he left the scene of the accident?

1 (3) Was the Learned Magistrate correct to exercise her discretion to admit Mr.  
2 Castro's statement?

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4 2. Upon receiving information that Mr. Castro may have been the driver of a motor  
5 vehicle involved in an accident at the Quincentennial roundabout on June 19<sup>th</sup>  
6 2006 around 12:25 am, Police Constable Jackson located him in a room on  
7 Eastern Avenue. When she found him, he was lying down and was, as she said in  
8 re-examination, clearly intoxicated. His native tongue is Spanish.

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10 3. Constable Jackson asked Mr. Castro if he was the driver of the motor vehicle and  
11 he replied, "yes". The first question is whether, given Mr. Castro's condition, the  
12 police officer should have questioned him at all. In disposing of this issue, the  
13 Learned Magistrate said:

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15 *"On the evidence before the Court the Defendant, despite his inebriated state, had*  
16 *no difficulty understanding what was asked of him and was able to answer*  
17 *coherently. I find that the circumstances in which the officer asked the question*  
18 *were not oppressive and there was no unfairness to the Defendant.*

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22 *The Court must be satisfied that the answers were given voluntarily and that the*  
23 *answers made can be relied on in the circumstances where the evidence disclosed*  
24 *the defendant was intoxicated and was a native Spanish speaker. I accept the*  
25 *officer's evidence that the defendant was coherent and appeared to understand*  
26 *the questions asked. On the officer's evidence, the defendant not only admitted he*  
27 *was the driving but explained why he had left the scene. The answers he made*  
28 *certainly suggest that he understood the questions.*

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32 *I am satisfied so that I feel sure that the answers were voluntary and were not*  
33 *obtained unfairly. . . . ."*

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4. The evidence provides no basis for concluding that the defendant's state of intoxication and lack of familiarity with English robbed him of the ability to understand the questions or to make coherent answers. There was no expert evidence on behalf of Mr. Castro to explain the likely impact of a .210% blood alcohol level upon his cognitive abilities. The Learned Magistrate applied the operative principles correctly. I see no reason to disturb her decision.

5. For the reasons given by the Court of Appeal in their Judgment of March 18<sup>th</sup>, 2010, that answer was admissible despite the absence of a formal caution and is determinative of the appeal from conviction on the careless driving and driving under the influence charges. His appeal from those convictions is now dismissed.

6. Having received that answer, Constable Jackson asked Mr. Castro why he left the scene of the accident. She had still not administered any formal police warning about the right to silence. Mr. Castro replied that he left the scene because he had been drinking earlier and there was little damage caused. He was arrested. An Intoxilyser test administered at 2:40 am produced a blood alcohol level of .210%.

7. Prior to asking why Mr. Castro left the scene of the accident, Constable Jackson had admissible evidence (in the form of the admission he had just made) that Mr. Castro was the driver. She did not, however, have any admissible evidence as to why he left the scene. She may well have suspected, on solid grounds, that he left the scene in order to avoid prosecution for driving while under the influence of

1 alcohol. However, a suspicion upon reasonable grounds is not sufficient to trigger  
2 the obligation to caution a defendant; the requirement is for evidence which  
3 would be admissible in a criminal prosecution. As is clear from paragraph 37 of  
4 the Judgment of the Court of Appeal, Constable Jackson would have had to be in  
5 possession of admissible evidence tending to show that Mr. Castro left the scene  
6 of the accident without reasonable cause to be obliged to give him a formal  
7 caution. It was only after she received the answer to her second question (and, in  
8 particular, the admission by Mr. Castro that he left because he had been drinking)  
9 that the obligation to administer a formal caution under the Judges' Rules came  
10 into play. My conclusion, therefore, is that there was no breach of the Judges'  
11 Rules and Mr. Castro's answer to the second question was admissible in evidence.

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13 8. Although the Learned Magistrate found that there was no need for a caution, she  
14 also went on to address the question of her discretion to admit an admission or  
15 confession notwithstanding a breach of the Judges' Rules. She said:

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17 *“Even if I am wrong and he ought to have been cautioned before being asked this*  
18 *further question, I do not think that his answers – that he was drunk and that no*  
19 *damage was caused – were obtained unfairly or in a manner that should cause a*  
20 *tribunal of fact to doubt the reliability of the admissions made. I would have*  
21 *exercised my discretion, in any event, to admit the answer into evidence”.*

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24 9. The discretion to admit evidence notwithstanding a breach of the Judges' Rules is  
25 not one with which an appellate court should interfere lightly. The question for  
26 me is not whether I would have exercised my discretion in the same way but  
27 whether the appellant has shown that the Magistrate's exercise of her discretion

1 was wrong in principle or that there was no reasonable basis for it. For the  
2 reasons given by her I am satisfied that there is no ground for interfering with this  
3 discretionary decision.

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5 10. The second ground in the Notice of Appeal alleges that there was insufficient  
6 admissible evidence upon which a reasonable tribunal properly directed could  
7 convict the defendant. The appellant concedes that there was sufficient evidence  
8 to support the charges of careless driving and driving under the influence of  
9 alcohol. As for the charge of leaving the scene, the evidence demonstrates that  
10 Mr. Castro was the driver, that there was an accident, and that he left the scene of  
11 the accident. He has advanced two reasons for doing so: his state of intoxication  
12 and the fact that little damage was caused. His blood alcohol reading suggests  
13 that his state of intoxication was the predominant motivating factor for his  
14 departure. That cannot be considered a “reasonable cause.”

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16 11. For these reasons, all three appeals from convictions are dismissed and the  
17 convictions are affirmed.

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27 Dated: 1<sup>st</sup> June 2010

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The Hon. Mr. Justice Alexander Henderson  
Judge of the Grand Court