

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

3
4 **IND NO: 0060/2017**

5
6
7 **REGINA**

8
9 **v.**

10 **DAVID DEAN MEADORS**



11
12
13
14
15 **Appearances:**

**Mr. Patrick Moran, Deputy Director of
Public Prosecutions for the Crown**

16
17
18 **Mr. Ben Tonner Q.C. of McGrath Tonner
for the Defendant**

19
20
21
22 **Before:**

Justice Roger Chapple (Actg.)

23 **Heard:**

24th May 2019

24
25
26 **HEADNOTE**

27 *Criminal Law – s.7 of the Bill of Rights – s.60 of the Criminal Procedure Code –*
28 *s.37 and s.38 of the Evidence Law - Application for the Defendant to participate*
29 *in, and give evidence at trial, by video link.*

30
31
32 **JUDGMENT**

33 **ON APPLICATION FOR THE DEFENDANT TO PARTICIPATE IN, AND GIVE**
34 **EVIDENCE AT TRIAL BY VIDEOLINK**



1 1. On 7th September 2017, David Meadors, the Defendant, appeared before the Grand
2 Court and was arraigned upon an indictment containing five counts. He pleaded
3 guilty to counts 1 and 2 (importation and possession of an unlicensed firearm – a
4 Glock 9 mm handgun – on 7th July 2017) and not guilty to counts 3, 4 and 5
5 (importation/possession of 240 rounds of 9mm ammunition and possession of an
6 unlicensed BB gun, also on 7th July 2017).

7
8 2. At the conclusion of that hearing, David Meadors' bail was varied to permit him to
9 leave the jurisdiction for 10 days in order for him to inspect and deal with recent
10 hurricane damage at a property he owns in Florida. An application to allow him
11 further time out of the jurisdiction was refused. The Defendant accordingly
12 returned to the Cayman Islands.

13
14 3. The trial on counts 3, 4 and 5 was scheduled to commence on 19th April 2018. On
15 18th January 2018, following an application, not opposed by the prosecution, bail
16 was again varied to allow David Meadors to leave the jurisdiction until 4th
17 February 2018 – on this occasion, for medical reasons.

18
19 4. Further applications were made and granted for David Meadors to remain outside
20 the jurisdiction, since it was said that a series of medical tests and procedures were
21 required and that his condition had worsened. Following a hearing - at which the
22 Defendant appeared by live video-link - bail was again varied, effectively requiring
23 him to return to the Cayman Islands by 27th April 2018. He did not do so. A
24 warrant was issued for his arrest.

25
26
27
28
29
30
31



1 5. David Dean Meadors remains outside the jurisdiction. He has made it clear, via his
2 legal advisors, with whom he remains in communication that he will not return to
3 this jurisdiction for his trial. It is in these circumstances that the prosecution apply
4 for the trial of counts 3, 4 and 5 of the indictment to proceed in his absence.

5
6 6. David Meadors' position is that although he would very much like matters to be
7 resolved, his medical condition is such that he cannot, reasonably or safely, travel
8 from the United States of America to the Cayman Islands for his trial.

9
10 7. David Meadors has consented to disclosure of his medical records and medical
11 examination by an independent expert. A substantial volume of medical evidence
12 and opinion is now available. The Prosecution, relying principally upon the reports
13 and opinions of Dr Yancey, contend that whilst David Meadors may have some
14 medical problems, they are not such as to prevent him from surrendering to his bail
15 in this jurisdiction and submitting to the trial process. The views of Dr Cox,
16 instructed on behalf of David Meadors and Dr Yancey are, on the face of it,
17 diametrically opposed.

18
19 8. When this case first came before me earlier this month, it was intended that I
20 should hear oral evidence from both Dr Cox and Dr Yancey, in order for me to
21 decide whether or not the Defendant was, in reality, able to return to the Cayman
22 Islands and stand his trial – effectively determining whether his absence was
23 voluntary or involuntary.

24
25 9. The starting point, it is agreed, is the *Cayman Islands Constitution Order, 2009*,
26 which established a *Bill of Rights, Freedoms and Responsibilities* for this
27 jurisdiction. Section 7 of the *Bill of Rights* provides, insofar as it is relevant to this
28 application, as follows:

29

1 proceed with a trial in the absence of a defendant (a similar provision is to be found
2 in the *European Convention on Human Rights*) – even where a defendant’s
3 absence is involuntary. No such discretion exists in this jurisdiction. That
4 distinction must be borne in mind particularly when considering English
5 authorities.

6
7 12. The position here is that unless I am satisfied that David Meadors’ absence is
8 voluntary, no trial can take place. I have no residual discretion.

9
10 13. Since I first became involved in this case, matters have, as Mr Tonner puts it,
11 become more “nuanced.”

12
13 14. At that first hearing, I raised, in the unusual circumstances of this case, the question
14 of whether the Defendant could participate in his trial by live video-link from
15 Florida. If that were legally permissible and acceptable to both parties, I had
16 thought this may obviate the need to hear and resolve disputed medical evidence,
17 with an obvious saving of court time. It was agreed that both sides would consider
18 matters further.

19
20 15. I now have additional skeleton arguments from Mr Tonner and Mr Moran. Having
21 taken further instructions, Mr Tonner explains David Meadors’ revised position as
22 follows: “[*he*] is willing to consent to the trial proceeding in his physical absence
23 provided he is given the opportunity to participate in the trial via live video link.”
24 It became obvious, in the course of oral submissions, that David Meadors’ *provisio*
25 about participation included his giving evidence via live video link.

26
27 16. The questions which arise are these:





- 1 i. Does the Grand Court have the power to allow a defendant who is
2 outside the jurisdiction and is either unwilling or unable to attend his
3 trial in person to attend his trial by video-link?
4 ii. If so, may that defendant, should he wish to do so, give evidence at
5 that trial via live video-link?
6 iii. If, as a matter of law, David Meadors can both attend his trial and give
7 evidence via live video-link, should he be allowed to do so, assuming
8 that the court has a discretion in the matter?

9
10 17. If all three questions can be answered affirmatively, the trial can take place – either
11 because it is not a trial in his absence or if it is, David Meadors has given his
12 consent to it. In arriving at my decision, I may or may not need to answer all three
13 questions.

14 **QUESTION 1:**

15 18. Section 60 of the *Criminal Procedure Code* (2019 Revision) reads as follows:

16 ***“Accused persons entitled to be present at trial and related proceedings and may***
17 ***be represented by a legal practitioner***

18 **60. (1)** *Every person accused of any criminal offence shall be entitled to be*
19 *present in court during the whole of any proceedings relating to such*
20 *offence unless he is excluded by the court because he so conducts*
21 *himself in the court as to render the continuance of the proceedings in*
22 *his presence impossible.*

23 (2) *Notwithstanding subsection (1) and subject to section 54(2) —*

24 a) *where an accused person so conducts himself in the court as to*
25 *render the continuance of the proceedings in his presence*
26 *impossible, as an alternative to excluding the accused under*
27 *subsection (1), the court may direct for such period as the*
28 *court determines, that the accused shall appear by counsel or*
29 *by live television link or by any other means that would allow*
30 *the court and the accused to engage in simultaneous visual*
31 *and oral communication; or*

32 (b) *except where section 60A applies, the court may, in its*
33 *discretion —*

34 (i) *where an accused is confined in prison (whether on*
35 *remand or otherwise); and*



1 (ii) where the prosecutor and an accused so agree at any
2 time during any proceedings relating to an offence
3 other than a part in which the evidence of a witness is
4 taken,

5 direct that the accused may appear by counsel or by live
6 television link or any other means that allow the court and the
7 accused to engage in simultaneous visual and oral
8 communication.

9 (3) A court shall not give a direction under subsection (2) unless the court
10 is satisfied that it is in the interests of the efficient or effective
11 administration of justice for the accused person to appear in the
12 proceedings through a live link or other means.

13 (4) In deciding whether to give a direction under this section, the court
14 must consider all the circumstances of the case; and such
15 circumstances shall include the suitability of the facilities at the place
16 where the accused or a witness would give evidence through a live
17 link.

18 (5) For the purposes of this section, the consent of the accused person to
19 the conduct of the proceedings in his absence may be deemed to have
20 been given in a case in which he enters a written plea of guilty under
21 any law or in any case in which the court is satisfied that, having been
22 duly summoned to appear before the court a reasonable time before
23 the date appointed, the accused person wilfully refuses to attend at any
24 time appointed by the court.

25 (6) Every person accused of any criminal offence, whether present in
26 person or absent in accordance with this section, may be defended
27 before any court by a legal practitioner.

28 (7) A statement made on oath and given in evidence through a link by
29 virtue of this section shall be treated for the purpose of section 101 of
30 the Penal Code (2019 Revision) as having been made in the
31 proceedings in which it is given in evidence.

32 (8) The Rules Committee of the Grand Court may make such rules as
33 appears to it to be necessary for the purposes of this section.”
34
35

36 19. This section provides that “every person accused of a criminal offence shall be
37 entitled to be present in court during the whole of any proceedings relating to such
38 offence unless he is excluded by the court because he so conducts himself in the
39 court as to render the continuance of the proceedings in his presence impossible.”

40
41 20. Subsections (2) - (4) of s.60 are concerned with disruptive defendants remanded in
42 custody – and the arrangements that can be made for them to “appear in the
43 proceedings through a video link” (the words used in s.60(3)).
44
45
46

1 21. Section 60 speaks of a defendant’s entitlement to be “present in court”. However,
2 there would seem to me no statutory prohibition upon a physically absent
3 defendant appearing by live video-link, should he wish to do so. If there is a good
4 reason for a defendant’s physical absence, a court should surely permit him to
5 “attend” by any reasonable means.

6

7 22. In *R v Welland*¹, the English Court of Appeal observed as follows:

8 *“we agree that this is not a case where a trial has taken place in the absence of*
9 *the defendant or without his participation. Apart from his absence for part of*
10 *the third day..... he was throughout the trial either present in court or*
11 *observing the proceedings over video link and was able to give instructions to*
12 *his counsel.”*

13

14

15

23. In *R v Ukpabio*², the English Court of Appeal said as follows:

16 *“there may well be circumstances in which... it may be appropriate that a*
17 *defendant on his own application should not be present in court for all or part*
18 *of the trial, provided that his participation in the trial can be adequately*
19 *secured by, if the relevant equipment is available, his being in touch by video-*
20 *link or in some other way. In other words, there may be circumstances,*
21 *exceptionally, where that might be a sensible method of ensuring participation*
22 *for a defendant who would otherwise not be able to participate properly in all*
23 *sum of the trial process.”*

24

25 24. I am satisfied that this court has the power to permit David Meadors to attend his
26 trial by video-link from outside this jurisdiction. I am equally satisfied that
27 whether he should be permitted to do so is a matter for the discretion of this court.

28 **QUESTION 2:**

29 25. The courts have been increasingly willing over the years to permit witnesses to
30 give evidence by live video-link when, whether by reason of vulnerability or
31 otherwise, there is good reason. The law continues to evolve.

32



¹ [2018] EWCA Crim 2036

² [2007] EWCA Crim 2108



1 26. The relevant provisions in this jurisdiction are to be found in s.37 and s.38 of the
2 *Evidence Law (2019 Revision)* – and s.41A et seq. dealing with special measures.

3
4 **“Evidence through television links**

5 37. (1) A person other than an accused person may give evidence
6 through a live television link in proceedings to which
7 subsection (2) applies if—

- 8 (a) the witness is outside the Islands;
9 (b) the witness is a child, or is to be cross examined
10 following the admission under section 39 of a video
11 recording of testimony from him and the offence is one
12 to which section 39(2) applies; or
13 (c) the witness is to give evidence as to a violent or sexual
14 offence,

15 but such evidence may not be given without the leave of the
16 court.

17 (2) This section applies to—

- 18 (a) trials on indictment;
19 (b) appeals to the Court of Appeal;
20 (c) summary trials of Category B offences;
21 (ca) summary trials of Category C offences;
22 (d) proceedings in any youth court; and
23 (e) preliminary inquiries.

24 (3) A statement made on oath by a witness outside of the Islands
25 and given in evidence through a live television link by virtue of
26 this section shall be treated for the purpose of section 101 of
27 the Penal Code (2019 Revision) as having been made in the
28 proceedings in which it is given in evidence.

29 (4) Where the court gives leave for a person to give evidence
30 through a live television link then, subject to subsection (5),
31 the person concerned may not give evidence otherwise than
32 through a live television link.

33 (5) A court may give permission for a person to give evidence
34 otherwise than through a live television link if it appears to the
35 court to be in the interests of justice to give such permission.

36 (6) Permission may be given under subsection (5)—

- 37 (a) on an application by a party to the case; or
38 (b) of the court’s own motion,

39 but no application may be made under paragraph (a) unless
40 there has been a material change of circumstances since the
41 leave was given by virtue of sub-section (1).

42 (7) The Cabinet may make such rules as appears to him to be
43 necessary for the purposes of this section.”
44

45 **“Evidence through television links by accused**

46 38. An accused person may give evidence through a live television link
47 in accordance with section 60 of the Criminal Procedure Code
48 (2019 Revision).”
49
50

1 27. Section 37, provides:

2 “a person other than an accused person may give evidence through a
3 live television link in proceedings to which subsection (2) applies.”
4

5 This includes trials on indictment:

6 “if (a) the witness is outside the Islands, (b) the witness is a child.....or
7 (c) the witness is to give evidence as to a violent or sexual offence.”
8
9

10 28. Section 38, as noted above, permits an accused to give evidence via video-link if
11 the provisions of s.60(2) of the *Criminal Procedure Code (2019 Revision)* -
12 disruptive custody defendants – are satisfied. I should note that in this jurisdiction
13 defendants are not eligible for special measures directions.

14
15 29. Mr Moran submits that the *Evidence Law* provides a complete and plainly
16 expressed statutory scheme as to the circumstances in which evidence can be given
17 via video-link. They are, Mr Moran contends, the only circumstances in which
18 evidence can be given by video-link in proceedings to which s.37 applies. The
19 legislature clearly turned its mind to the question of an accused giving evidence via
20 video-link and decided this should not be permitted (save in the case of a disruptive
21 custody defendant). Mr Moran helpfully drew attention to the case of *Ukpaibo*³
22 the judgment which I have found helpful and persuasive. Mr Moran’s submissions
23 are I am sure correct.
24

25 30. Section 37 is plain and straightforward. The default position is that a defendant’s
26 evidence must be given in court and not by live video link; the only exception to
27 that position is provided in s.38/s.60(2).



28
29
³ *supra*



1 31. Section 37 envisages precisely the position of David Meadors – an accused person
2 outside the Islands. Mr Tonner’s submissions to the contrary were valiant but in
3 my judgement cannot be right. To allow this Defendant to give evidence via video
4 link at his trial would be to flout the plainly expressed words of s.37, interpreting
5 “a person other than the accused” to mean “a person including the accused.”
6

7 32. I am sure no discretion exists in the matter. No court can go behind the plainly
8 expressed provisions of s.37 and s.38 of the *Evidence Law*.

9
10 33. Question 3 does not fall to be answered, given my conclusion as to question 2
11 above.

12
13 34. The next step must then be to hear and resolve the disputed expert medical
14 evidence, in order for the court to decide whether or not David Meadors is able,
15 reasonably and sensibly, to surrender to his bail and stand trial – whether or not he
16 is “voluntarily absent from the proceedings.”

17
18 35. The Defendant, I understand, would wish to attend *that* hearing via video link. He
19 has attended at least one previous hearing by video link, without objection from the
20 prosecution or the court. I see no reason why he should not do so on this occasion,
21 should he so wish.

22
23 36. I am further asked to rule upon whether, in the context of that hearing – enquiring
24 into whether David Meadors is or is not voluntarily absent – he can give evidence
25 relevant to that issue - over a video link, should he so wish.

26
27 37. This must depend upon whether this pre-trial hearing falls within the scope of s.37.
28 Section 37(2) applies the statutory scheme to a broad range of hearings, as follows:



- 1 a. trials on indictment;
- 2 b. appeals to the Court of Appeal;
- 3 c. summary trials of category B offences
- 4 i. (ca) summary trials of category C offences
- 5 d. proceedings in any youth court
- 6 e. preliminary inquiries.

7
8 38. The forthcoming hearing certainly *relates to* trial on indictment, but of course it is
9 not the trial itself.

10
11 39. Had the intention of the legislature been to apply the scheme to all hearings
12 “relating to trial on indictment”, or “all proceedings in the Grand Court” it could –
13 and I think would - have said so. Section 37(2) instead applies the scheme to five
14 (5) specific types of hearings.

15
16 40. I should add here for the avoidance of doubt that in this jurisdiction “preliminary
17 inquiries” is a term of art and clearly a reference to a particular type of hearing
18 (that laid down by s.88 of the *Criminal Procedure Code* (2019 Revision), rather
19 than preliminary hearings in the more general sense.

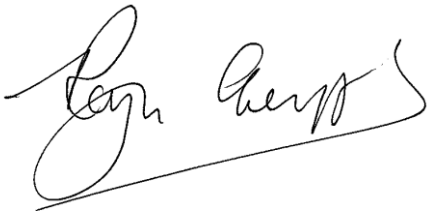
20
21 41. Not without some hesitation, I conclude that the forthcoming hearing is not a trial
22 on indictment but a pre-trial hearing. That being so, it falls outside the scheme
23 provided by s.37. There is then no statutory prohibition upon the court receiving
24 evidence from David Meadors, in this context, over a video link.

25
26 42. As with all occasions upon which it is proposed that evidence be given via video
27 link, the court has discretion as to whether to receive it in this way. I exercise that
28 discretion to permit David Meadors to give evidence in this way with this *proviso*:
29 the video link is to be arranged and funded by the defence; in fairness to all, it is to

1 be a good quality and secure link, provided by professionals who have experience
2 and expertise in providing video-conferencing facilities. It is important that the
3 participants in the video link can see and hear each other clearly. For the avoidance
4 of doubt the use of a cell phone, iPad, and/or Skype or similar would not be
5 appropriate. I leave it to the Defendant's representatives to liaise with the court in
6 this regard.

7
8 43. I will hear the evidence relating to this issue, as arranged, commencing on 13th
9 June 2019.

10
11 **Dated this the 29th May 2019**

12 

13 **Justice Roger Chapple**
14 **Acting Judge of the Grand Court**