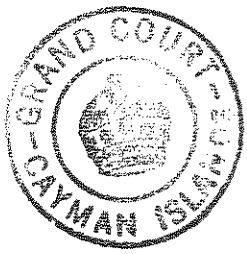
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0017/2014

THE QUEEN

V

EVON GEORGE ROBINSON



Appearances:	**Ms. Toyin Salako for the Crown**
	Mr. James Stenning of Stenning & Associates on behalf of the Defendant
Before:	**The Hon. Mr. Justice Malcolm Swift (Actg.)**
Heard:	**11th November 2014**

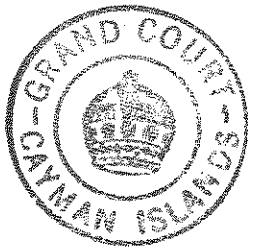
RULING ON TRANSCRIPTS

1. I indicated the general nature of my ruling at the conclusion of submissions on the 11th November 2014 and said that I would provide reasons in writing. Those reasons now follow.

2. The defence submits that:

   i. The audio recordings made by Mr. Victor Colon of his interviews with the Defendant on the 11th June 2012 should only be played during the evidence of Mr. Colon;

   ii. The audio recordings should be played in their entirety;



iii. the transcripts of the audio recordings (although it is conceded that the jury may have them in order to follow the audio recordings when they are played) should be withdrawn from the jury at the conclusion of the playing of the recordings

3. I have already previously ruled that the audio recordings made by Mr. Colon are admissible in evidence. The recordings are interviews with the Defendant in which the Defendant made admissions and contentions which the Crown seeks to adduce as part of the case against him. Those admissions and contentions were made of course in answer to questions he was being asked and I have already ruled that nothing occurred during the entirety of Mr. Colon's dealings with the Defendant which could affect the voluntariness of the Defendant's spoken words.

4. In relation to the first submission, I am satisfied that Mr. Colon provided sufficient evidence of the provenance of his interviews when he attended last week to give evidence. The contents of the interviews have never been in dispute. There is no challenge to the words spoken or to the accuracy of the transcripts or to the quality of the recording. Mr. Colon gave the date and timing of each interview and was referred to specific passages in the transcripts of the interviews during cross-examination. He stated that he had handed the recordings to his legal department (at FedEx) and they handed them over to the Police who transcribed them. If alerted to the present submissions at the time when Mr. Colon was giving evidence, the interviews could easily have been adduced in evidence while he was in the witness box. It is only for reason of practical convenience that they are being adduced after Mr. Colon has completed his evidence (as he needed to leave the country) and after the extended public holiday.

Until this submission was made this morning (11th November), the Crown and the Court were unaware that the defence intended to argue that Mr. Colon should, in effect, produce the audio recording by having it played in his presence. Indeed, until this morning, the defence position had been that the first interview (not even the subject of the admissibility argument earlier in the trial) could be reduced to an agreed summary. That position has now changed. I have no hesitation is deciding that it is not necessary for Mr. Colon to be flown back to this court for the sole purpose of formally producing the audio recordings when he has effectively done that in the course of the evidence he gave last week. No valid reason has been advanced to me to justify this unusual proposed course.

5. I accede to the second submission. It is a matter for the defence to decide whether they agree to a transcript being reduced to a summary (to save Court time when the contents are mainly of peripheral importance) or whether they wish the audio recording to be played (and/or the transcript to be read) to the jury in full. The defence has decided that it requires the whole of both interviews to be played in full and I have no reason to interfere with that course of action. Of course that means that matters which could otherwise have been excluded by agreement from the interviews will now be adduced in evidence at the insistence of the defence.

6. As to the third submission, the defence argues that these interviews should be dealt with in evidence in the same way as video recorded evidence of a complainant in a sexual case is treated. In other words, the defence says that the audio recording should be played and, in order to follow the audio recording, the jury should be permitted to have transcripts but that, at the conclusion of the playing of the evidence, the transcripts should be taken away from the jury so that they cannot retain them and cannot refer to them later in the trial.

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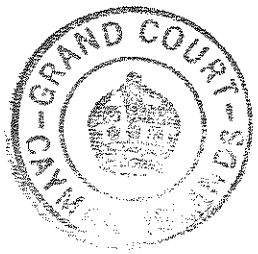
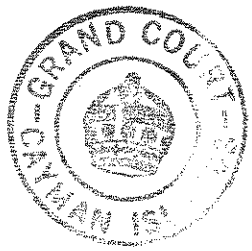
7. I have had drawn to my attention the authorities of ***R v. Popescu***[1], ***R v. Sardar***[2] and ***R v. Coshall***[3]. These cases all establish that, in cases in which the evidence of a complainant in a sexual case is adduced via a pre-recorded video interview and played to the jury as evidence in chief, the jury may have transcripts with which to follow and understand the recording but, at the conclusion of the evidence of the witness, should surrender the transcripts. That is well settled law. Those authorities make clear that the danger that precludes a jury having a transcript is not merely that they might view the evidence-in-chief in the transcript in isolation from the other evidence, but that they will concentrate upon the written word rather than their impression of the witness and their assessment of that witness when giving evidence, both in the video-recording and during cross-examination. The jury, under the common law system of oral evidence, is required to assess the truth of a witness's evidence by reference to their assessment of him whilst giving that evidence which is fundamental to the method by which a jury is expected to reach its verdict. I asked Mr. Stenning whether he could produce any authority in support of his submission that an admissible interview conducted with a Defendant should be treated in the same way as the recording of a complainant in a sexual offence case. He could not.



[1] 2010 EWCA Crim 1230
[2] 2012 EWCA Crim 134
[3] 1995 WL 1081923

8. An interview with a Defendant is different to a pre-recorded interview with a complainant. The pre-recorded interview constitutes the evidence in chief of the witness intended to be in substitution for the live evidence of the witness whereas the interview with the Defendant does not constitute the evidence in chief of Mr. Colon nor is it intended to be adduced in substitution for his evidence. The interview contains primary evidence of fact namely the Defendant's account to his employers when first asked by them to account for his actions and is therefore not only evidence of the Defendant's reactions under questioning but also evidence to be contrasted with his present (different) account to the police and, it is anticipated, to the jury.

9. The purpose of taking a transcript away from a jury after they have heard a complainant's evidence is to ensure that undue weight is not attached to a particular piece of evidence and because the transcript is no more than an aid to understanding the evidence not being evidence in itself. The interview transcript on the other hand is not merely an aid to understanding the audio recording (although of course it helps) but is, in the same way as the transcripts of the Defendant's police interviews are, adduced as the evidence itself because no jury could be expected to remember lengthy detailed questions and answers lasting here over 2 hours. I also remind myself that the defence is requiring the playing of the audio recordings instead of taking the usual course of adducing the transcripts alone. By insisting on that course, the defence cannot debar the jury from having transcripts which they would normally have received as a matter of course.

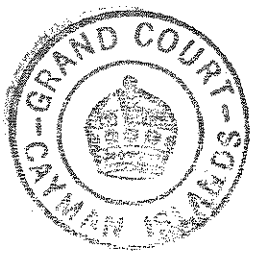


10. Mr. Stenning seeks to argue that these interviews with Mr. Colon fall into a different category to those conducted by the police (which, by implication, Mr. Stenning accepts would be allowed to go before the jury in transcribed form which they can retain into retirement) on the basis that police interviews are conducted according to a rigorous procedure with appropriate safeguards and warnings to the Defendant. I can see no such distinction, the interviews are admissible in evidence as I have already ruled, and I note that Mr. Colon made perfectly clear to the Defendant the status of the interviews being conducted and the Defendant's general rights in relation to his participation in them.

11. In ***R v. Emmerson***[4], the UK Court of Appeal held that a tape recording of an interview, when produced as an exhibit in court, is evidence and there is no reason why the jury should not take it with them on retirement in the same way as any other exhibit. The court laid down guidelines including the following namely:

(a) If all of the tape had been played in open court there was no reason why the jury should not have the tape if either side or the jury wished, as well as any transcript because it was the tape which was the evidence. However, not to waste time, the jury should be directed to the relevant sections of the tape;

(b) If only part of the tape had been played in open court, and the jury had a transcript of the whole, there was no reason why the jury should not take the whole tape; and

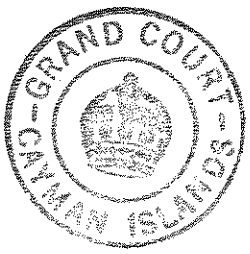


[4] 92 Cr. App.R. 284

(c) If only part had been played in open court and the jury had no transcript, the tape should be edited so that the jury did not take any evidence that had not been given (the emphases are mine). Clearly if the jury is entitled to the audio recording as they obviously are, and are entitled to take it into retirement with them as they obviously are, then there can be no reason to deny them the transcripts. The court in ***Emmerson*** understandably did not even contemplate the possibility that the jury might be deprived of the transcript. It is also worth noting that there is other UK authority allowing a jury in possession of an interview transcript alone to hear the audio recording from which the transcript is taken even if the recording had not previously been played in court. In fact the transcript is enhanced by listening to the audio recording because the jury can hear the nuances of language, the occasions where questions and answers overlap and the manner in which the Defendant answered the questions (particularly important in a case such as this where the suggestion of the defence is that the Defendant's free will was overborn by pressure, threat, promises and coercion by the questioner Mr. Colon).

12. I therefore have no hesitation in rejecting the first and third submissions of the defence which have no sound basis in law and rule that the jury is entitled to have and to retain into retirement the transcripts of the Colon interviews.

Dated this the 11th day of November 2014



Honourable Mr. Justice Malcolm Swift (Actg.)
Acting Judge of the Grand Court