

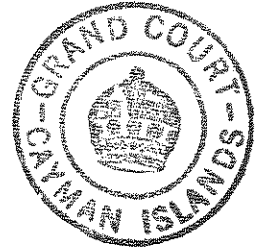
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0075/2013
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7
8 THE QUEEN
9

10 V
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12 LEONARD ANTONIO EBANKS
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15 **Appearances:**

15 Mr. Simon Russell Flint Q.C. with Ms.
16 Elisabeth Lees for the Crown
17

18 Mr. Courtenay Griffiths Q.C. instructed by
19 Ms. Amelia Fosuhene of Stenning &
20 Associates for the Defendant
21

22 **Before:**

22 The Hon. Mr. Justice Charles Quin Q.C.

23 **Submissions heard:**

23 14th November 2014
24

25 **RULING ON THE CROWN'S SPECIAL MEASURES APPLICATION**
26

- 27 1. Following the opening of its case to the jury for the trial of the Defendant on an
28 indictment of murder, on the afternoon of Friday the 14th November 2014 the
29 Crown applied for Special Measures to be implemented for the reception of the
30 evidence of the witnesses Juliet Facey and Chet Ebanks. The application is that the
31 evidence of Juliet Facey and Chet Ebanks with the witnesses being screened from
32 the Defendant and the public gallery.
- 33 2. The application is made pursuant to s.41(B) and s.41(H) of the Evidence Law (2011
34 Revision).

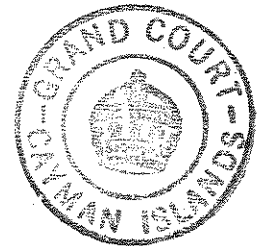
1 3. Section 41(B) and s. 41(H) fall within Part IIIA of the Law entitled "*Special*
2 *Measures Directions in Cases of Vulnerable and Intimidated Witness – Witnesses*
3 *eligible for assistance on grounds of fear or distress about testifying*". S.41(B)
4 reads:

- 5 "41B. (1) For the purposes of this Part a witness in criminal
6 proceedings, other than the accused, is eligible for assistance
7 by virtue of this subsection if the Court is satisfied that the
8 quality of evidence by the witness is likely to be diminished by
9 reason of fear or distress on the part of the witness in
10 connection with testifying in the proceedings.
- 11 (2) In determining whether a witness falls within subsection (1) the
12 court shall take into account, in particular -
- 13 (a) the nature and alleged circumstances of the offence to
14 which the proceedings relate;
- 15 (b) the age of the witness;
- 16 (c) such of the following matters as appear to the court to
17 be relevant, namely -
- 18 (i) the social and cultural background and ethnic
19 origins of the witness;
- 20 (ii) the domestic and employment circumstances of
21 the witness; and
- 22 (iii) any religious beliefs or political opinions of
23 the witness; and
- 24 (d) any behaviour towards the witness on the part of -
- 25 (i) the accused;
- 26 (ii) members of the family or associates of the
27 accused; or
- 28 (iii) any other person who is likely to be an
29 accused or a witness in the proceedings.
- 30 (3) In determining that question the court shall in addition
31 consider any views expressed by the witness.
- 32 (4) Where the complainant in respect of a sexual offence is a
33 witness in proceedings relating to that offence, or to that
34 offence and any other offences, the witness is eligible for
35 assistance in relation to those proceedings by virtue of this
36 subsection unless the witness has informed the court of the
37 witness's wish not to be so eligible by virtue of this subsection."
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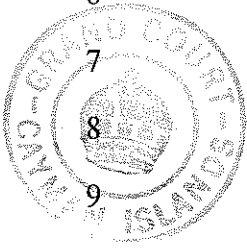
1 4. Section 41(H) reads:

- 2 “41H. (1) A special measures direction may provide for the witness,
3 while giving testimony or being sworn in court, to be prevented
4 by means of a screen or other arrangement from seeing the
5 accused.
6 (2) The screen or other arrangement shall not prevent the witness
7 from being able to see, and to be seen by -
8 (a) the magistrate or judge, or both, and the jury, if there
9 is one;
10 (b) legal representatives acting in the proceedings; and
11 (c) any interpreter or other person appointed in pursuance
12 of the direction or otherwise to assist the witness.
13 (3) Where two or more legal representatives are acting for a party
14 to the proceedings, subsection (2)(b) is to be regarded as
15 satisfied in relation to those representatives if the witness is
16 able to at all material times to see and be seen by at least one
17 of them.
18 (4) The provisions of this section shall not apply in relation to a
19 witness who is the subject of an order under the Criminal
20 Evidence (Witness Anonymity) Law 2010.”
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1 *THE APPLICATION IN RELATION TO JULIET FACEY*

2 5. Leading counsel on behalf of the Prosecution Mr. Russell Flint Q.C. highlights the
3 fact that Ms. Juliet Facey (“Ms. Facey”) made statements to the police on the 25th
4 April 2008, the 8th November 2011, the 23rd December 2013, the 1st May 2014 and
5 the 5th May 2014 – all pertaining to the offence of which the Defendant is accused.
6 She provided a further statement on the 6th November 2014 stating that she had had
7 a volatile on/off relationship with the defendant for a number of years. She knows
8 he does not like her and she is very scared of him. She is nervous and scared of
9 giving evidence in his presence.



10 Leading counsel acknowledges that Ms. Facey did give evidence in the trial of *R v.*
11 *Chad Anglin* without a screen, but this was because she had no history with Mr.
12 Anglin. Ms. Facey also states it will have a “*terrible effect*” on her if she saw this
13 Defendant, Leonard Ebanks, in court.

14 6. Leading counsel points out that, more recently, the witness Ms. Facey indicated that
15 she did not wish to give evidence at all as she was in such fear. She was spoken to
16 by DC Dean and agreed to give her evidence – and counsel refers to the
17 Memorandum of DS Dean at Tab 2.

18 7. Leading counsel argues that the fact that Ms. Facey’s evidence relating to the
19 alleged confession to her by the Defendant may be an issue in the proceedings and
20 that the defence may seek to cast doubt upon her credibility, is not, it is respectfully
21 submitted, a matter that should be considered in determining this application for
22 special measures.

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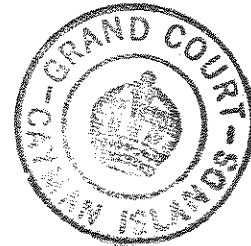
1 *THE APPLICATION IN RELATION TO CHET EBANKS*

2 8. Leading counsel Mr. Russell Flint Q.C. highlights the fact that Chet Ebanks gave
3 statements on the 12th February 2008 and the 13th February 2008. He gave a
4 further statement on the 12th November 2014 stating that he is in fear for his life
5 because he has heard rumours “on the road” that “they” are going to get the
6 witnesses who are testifying. He says he has been scared from the beginning of the
7 investigation since 2008.

8 Leading counsel points out that no statement was received from him in the matter
9 of *R v. Chad Anglin*, at which time he gave evidence without a screen. At that time
10 Chet Ebanks said that he had not heard the rumours.

11 9. Leading counsel points to the latest statement of Chet Ebanks dated the 14th
12 November 2014 in which he states that when he first gave evidence in the case of
13 the Frederic Bise murder there were no threats made prior to that case. However,
14 since the first trial, Chet Ebanks has advised that he has been hearing of threats
15 which have made him fear for his life and he thinks he could end up being killed in
16 the same way that Frederic Bise was killed.

17 10. Although Chet Ebanks does not know the Defendant, Leonard Antonio Ebanks
18 personally, he does not wish to face him without the presence of a screen.



1 11. In conclusion, leading counsel submits that the Court should properly conclude that
2 the quality of the evidence of each of these witnesses is likely to be diminished by
3 reason of the witnesses' fear or distress in testifying against this Defendant. The
4 Crown further submits that the Court must have regard to the fact that both
5 witnesses are to give substantial and important evidence in a murder trial where the
6 deceased has sustained brutal injuries to cause his death, and was then burned in his
7 own car at his own home. The nature and circumstances of the offence to which the
8 proceedings relate are thus of the utmost seriousness and gravity.

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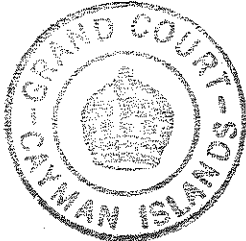
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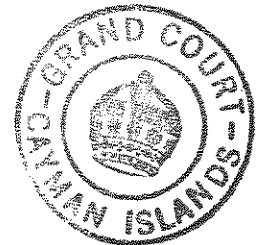
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DEFENCE SUBMISSIONS

12. Leading counsel Mr. Courtenay Griffiths Q.C. on behalf of the Defendant submits that the sole evidence against the Defendant are the alleged confessions made by Ms. Facey and Arlene White. Leading counsel points out that their evidence forms the sole and decisive evidence against the accused. Furthermore, Mr. Griffiths Q.C. submits that there is no forensic or other independent evidence to support the allegations made by these two witnesses.

13. Leading counsel submits that the overriding test is whether *“the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings”* and, in applying that test the court is enjoined to take into account *“in particular”* the matters set out in sub-sections (2)(a) to 9d), but that, necessarily, does not preclude the court from bearing in mind other factors. Thus, Mr. Griffiths Q.C. argues that the the submission made at paragraphs 13 and 14 of the Prosecution’s skeleton argument have no merit whatsoever.

14. The defence submits that the Court must be *“satisfied”* that this is indeed the case before this application can be granted. This implies that the applicable standard of proof is the normal criminal standard and that submission is based on (a) the fact that this is an application made by the prosecution, in criminal proceedings, they bear the burden of proof and (b) the very use of the word *“satisfied.”*



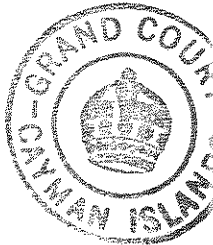
DEFENCE SUBMISSIONS RELATING TO JULIET FACEY

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15. Defence counsel's submission is that Juliet Facey is one of the two witnesses upon which the case for the Prosecution is founded and her evidence will be challenged in toto and therefore her credibility is the central issue joined between her and the Defendant.

16. Mr. Griffiths Q.C., then goes on to highlight that Ms. Facey had an on/off relationship with the Defendant for several years. She first gave a statement to the police on the 25th April 2008 outlining a version of the confession she supposedly received from the Defendant. Thereafter she provided further statements to the police. The Defence states that as far as they know Ms. Facey remained living in the West Bay community ever since that date, which is a period of some six (6) years, and there is no suggestion that any attempt has been made by the Defendant or his family or associates to interfere with either Ms. Facey or her family, such as to engage subsection 41(B)(2)(b).

17. Accordingly, Leading counsel for the defence submits that the application for special measures in respect of Ms. Facey is founded solely on sub-section 41(B)(3). This is confirmed by the statement she has made in respect of this application. In that statement she acknowledges that she has given evidence regarding these matters on a previous occasion without the use of screens and, in consequence, it must be assumed that subsection 41(B)(2)(a) is not engaged. Further, that statement makes no suggestion that any of the matters outlined in subsection 41(b)(2)(c) are applicable. Leading counsel submits further that, therefore, the basis of the application is that:

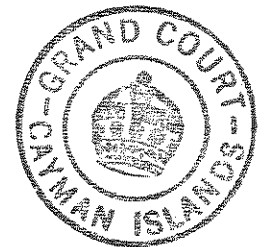


1 “[The Defendant] now does not like me and I am very scared of him. Although
2 he has not threatened me in any way, I am very nervous and scared regarding
3 giving evidence in his presence...if I see him in Court and more importantly, if
4 he sees me, it will have a terrible effect on how I give my evidence. I am also
5 sure that numerous friends and family of Tonio will be present so that is making
6 me feel even worse.”

7 18. Mr. Griffiths Q.C. submits that it is important to set those assertions against the
8 known facts regarding the nature of the relationship between the witness and the
9 Defendant and adds that there is material available to the court, which gives a
10 flavour of this and of the witness’s true character (reference unused documents
11 291).

12 19. In relation to Ms. Facey, defence counsel presents in summary that this is a witness:

- 13 i. Who does not fall in the category of a vulnerable witness;
- 14 ii. Who is a mature woman with previous criminal convictions;
- 15 iii. Who knows the Defendant and has known him for several years;
- 16 iv. Who, despite her allegations against him has continued to maintain contact with
17 him even after she first made her allegations against him;
- 18 v. Relating to whom there is no credible evidence to suggest that any threat has
19 been made to either her or her family, either from the Defendant or anyone
20 associated with him;



1 vi. About whom, despite the volatility of their relationship as evidenced by the
2 various contacts with the police, there is no evidence of any physical attempt to
3 intimidate or interfere with;

4 vii. Whose evidence deals with a narrow and discrete area of evidence, i.e. what she
5 was told by the Defendant. This evidence cannot be diminished by the passage
6 of time or by the length of the period over which the event occurred. It is rather
7 compressed into a short and easily recollected event;

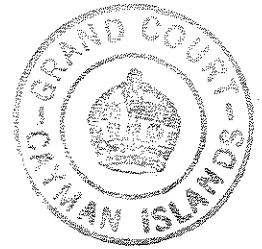
8 20. Leading counsel contends that Ms. Facey continues to live in West Bay and there is
9 no direct evidence of threats made against Juliet Facey.

10 21. Mr. Griffiths Q.C. went through the history of “disturbances” surrounding Ms.
11 Facey, which, the Defence contends, shows that she is quite capable of handling
12 threats made to her/against her and, furthermore, of threatening violence herself. In
13 other words, the Defence submits that Ms. Facey is a robust character who is
14 perfectly capable of holding her own in any arena. Consequently the Defence
15 submits that there is no requirement to provide her with a screen as she is not a
16 vulnerable witness.

17 22. Defence counsel submits that nervousness and fear accompany any venture into the
18 courtroom by a witness. Unfamiliarity, shyness and nervousness are the natural and
19 inevitable companions of appearing in the public arena. Counsel states that it is in
20 the process of dealing with those passing feelings and emotions that the truth is
21 found.



1 23. The Defence therefore submits that the Crown's application ought not to be allowed
2 and that the Defendant's right at common law to confront his accuser should, in the
3 circumstances, be upheld.



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5 ***DEFENCE SUBMISSIONS IN RELATION TO CHET EBANKS***

6 24. Leading counsel Mr. Griffiths Q.C. submits that this witness does not give any
7 controversial evidence and the Defence does not challenge his evidence. Rather,
8 counsel submits, the Defence seeks to emphasise certain aspects of Chet Ebanks'
9 account. The Defence also seeks clarification of some of the features of his
10 evidence. Defence counsel states that the importance of his evidence is that he was
11 involved in a longstanding, casual sexual relationship with the deceased, which is
12 the Crown's case.

13 25. Leading counsel submits that there is no direct evidence of any threats made against
14 Chet Ebanks and, furthermore, the Defence will not be prying into his sexual
15 history.

16 26. Leading counsel submits that there is no evidence to suggest that the Defendant
17 knows the witness, and the Defendant does not assert that he knows Chet Ebanks.
18 However, sight of the witness may well assist the Defendant in the development of
19 his defence. Leading counsel therefore submits that not permitting the Defendant to
20 see the witness may well hinder the proper presentation of the Defence case.

21 27. Accordingly, the Defence submits that the application in respect of Chet Ebanks
22 should also be refused.

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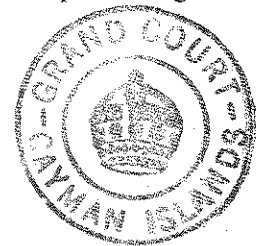
ANALYSIS AND CONCLUSION

28. Section 17 of the **Youth Justice and Criminal Evidence Act 1999** in England and Wales sets out the criteria for eligibility of witnesses seeking assistance on the grounds of fear or distress about testifying. This section is in the same terms as s.41(B) of the Evidence Law (2011 Revision) of the Cayman Islands. Section 17 in England and s. 41(B) in the Cayman Islands apply to both witnesses for the Crown and witnesses for the Defence. Both Leading Counsel for the Crown and the Defence have set out a list of matters which the Court should take into account, which is not an exhaustive list. At paragraph 8.75 of the 2104 Edition of *Archbold Criminal Pleading, Evidence & Practice*, the learned editors refer to the English Court of Appeal decision of *R v. Brown*¹. The English Court of Appeal held that:

“(1) *Whilst s.17(2) (and 41(B)(2) in our Evidence Law) oblige the Judge to have regard to various matters for the purpose of determining whether a witness was “eligible for assistance” within subsection (1) on the ground that the quality of the witness’ evidence was likely to be diminished by reason of fear or distress, it was open to the Judge so to conclude by reference to paragraph (a) alone, that he could do so, notwithstanding that the witness was neither young nor particularly vulnerable; and*

(2) *Where several witnesses to an alleged offence were eligible for special measures, the fact that another witness was not, could not possibly be a reason for saying that the Judge should not make a special direction in the case of any of the witnesses.”*

29. Accordingly, although I must consider all the factors set out in 41(B)(2)(a), (b), (c) and (d), together with 41(B)(3), I can make the decision solely on s.41(B)(2)(a) – the nature of the alleged circumstances of the offence to which the proceedings relate.

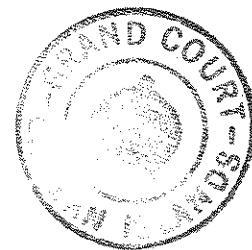


¹ [2004] EWCA Crim. 1034

1 30. In relation to Ms. Facey I note that she did not apply for a screen in the case of *R v.*
2 *Chad Anglin*, however, in that case, she was not required to give any evidence that
3 was detrimental to the Defendant, and, in fact, I understand that no questions were
4 asked of her in cross examination. Furthermore, since the *Chad Anglin* trial, *supra*,
5 the Defendant has become aware that Ms. Facey has given statements against him
6 in these proceedings, and he has described her as “*a very evil, spiteful, bad-minded*
7 *woman*”.

8 31. In relation to Chet Ebanks it is accepted that he gave evidence in the *Chad Anglin*
9 trial without asking for a screen. In a statement dated the 12th November 2014 given
10 by Chet Ebanks he states that “*I have been scared from the beginning of this*
11 *investigation since 2008*”. Also in an earlier statement dated the 13th February
12 2008, he said he “*feels sad and scared due to the death of his friend*” – Mr. Frederic
13 Bise.

14 In a statement dated the 12th November 2014 Mr. Chet Ebanks says that he wishes
15 to state that he is “in fear of his life” and that he “*has heard rumours on the road*
16 *that persons are saying they are going to get the witnesses who are testifying*”. On
17 the 14th November 2014 Chet Ebanks clarifies that when he first gave evidence in
18 the *Chad Anglin* trial there were no threats made. It was only giving evidence in
19 that trial that he has heard about the threats and, hence, he fears for his life. He
20 states “*I wish to have a screen put up when giving evidence. I do not wish to face*
21 *this accused person.*”



1 32. Both witnesses live in a very small community where it is virtually impossible to
2 remain anonymous. This is another factor that the Court is obliged to consider and
3 take into account.

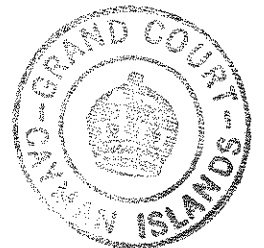
4 33. Furthermore, under s.41(B)(3) the Court “shall” in addition consider any views
5 expressed by the witnesses.

6 34. It is clear from their respective statements that these two witnesses are in fear and
7 distress about the prospect of testifying without a screen. Ms. Juliet Facey has
8 expressed her fear and distress regarding the prospect of giving evidence in her
9 statement dated the 6th November 2014. This is corroborated by the Memorandum
10 from DS Peter Dean – which informs that Ms. Facey has a perceived threat of
11 violence from associates of the accused man.

12 35. This trial concerns the most serious crime on the statute books. It is accepted by
13 both the Crown and the defence that the deceased was murdered in a most brutal
14 way by being bludgeoned to death. The evidence is that the deceased was then
15 placed in the boot of his car and the car set alight. I find that the nature and
16 circumstances of this murder are of the utmost seriousness and gravity.

17 36. Regardless of the fact that the Defence contends that Ms. Facey is a mature woman
18 who is known to the Defendant for several years, her statement, together with DS
19 Dean’s memorandum, satisfy me beyond all reasonable doubt that she is in fear. I
20 find that the fear and distress -caused by the prospect of giving evidence without a
21 screen – is likely to diminish the quality of the evidence that she can give.

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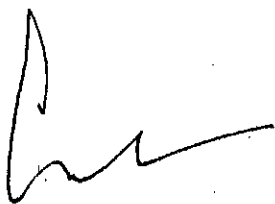
1 37. In addition, I find from my review of his statements that Chet Ebanks is also in
2 genuine fear and distress at the prospect of giving evidence in relation to the murder
3 of his friend Frederic Bise. I am therefore satisfied beyond all reasonable doubt that
4 the quality of his evidence is likely to be diminished by reason of fear and or
5 distress in connection with testifying in these proceedings.

6 38. I am satisfied that, light of the very serious nature and grave circumstances of this
7 charge and the stated views of Ms. Facey and Chet Ebanks, that this is a case where
8 they both should be granted the assistance of the screen.

9 39. Furthermore, I find the provision of the special measure of a screen will not prevent
10 the Defendant from having a fair trial. The Defendant has a very experienced and
11 senior Queens Counsel leading his Defence team along with an experienced junior
12 counsel who will both be able to see Ms. Facey and Chet Ebanks and observe their
13 demeanour as they give their evidence and, therefore, the cross examination of Ms.
14 Facey and Chet Ebanks will therefore not be hampered or impaired. I therefore find
15 that the Defendant will be able to have a fair trial.

16 40. Accordingly, and for the above reasons, I accede to the Crown's application for
17 special measures under s.41(B) and 41(H) of the Evidence Law.

18 **Dated this the 17th day of November 2014**

19 

20 **Honourable Mr. Justice Charles Quin Q.C.**
21 **Judge of the Grand Court**

