

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

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4 **INDICTMENT NOs: 0036/2014**

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7 **THE QUEEN**

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9 **V**

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11 **SHAQUILLE MORGAN**

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14 **Appearances:**

Toyin Salako for the Crown

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16 **Richard Barton for the Defendant**

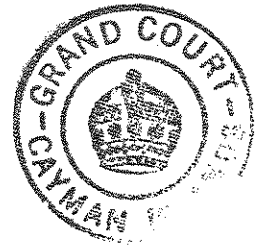
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18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Submissions heard:**

29th October 2014

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21 **SENTENCE RULING**
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23 ***INTRODUCTION***

- 24 1. On the 27th June 2014 the Defendant pleaded guilty to counts 2 and 3 on this 3-
25 count Indictment. The Defendant pleaded guilty to Possession of a Forged Currency
26 Note contrary to s.295(1) of the Penal Code (2013 Revision) – Count 2 on the
27 Indictment. The particulars of this offence are that the Defendant on the 22nd
28 October 2013 at St. Ignatius School, Walkers Road, George Town, Grand Cayman,
29 without lawful excuse had in his possession a forged currency note, namely
30 CI\$50.00 note, serial number C2-493354.

1 2. On the same date, the Defendant also pleaded guilty to Making or Having in
2 Possession Paper or Implements of Forgery contrary to s.303(c) of the Penal Code
3 (2013 Revision) – Count 3 on the Indictment. The particulars of this offence are
4 that the Defendant on the 21st October 2013 in Bodden Town Grand Cayman,
5 without lawful excuse or authority made upon printing paper words, figures, letters
6 or marks the print whereof resembled in whole or in part words, figures, letters or
7 marks peculiar to use in or on the currency note of the Cayman Islands.

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9 3. At approximately 13:15 hours on the Tuesday 22nd October 2013, the Defendant
10 attended the reception at St Ignatius School and tendered a counterfeit \$50 note in
11 an attempt to obtain genuine currency in exchange.

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13 4. At the time the Defendant was aged 17 and a pupil at St Ignatius School, Grand
14 Cayman.

15 5. The counterfeit bill was handed to the school receptionist who was immediately
16 suspicious as to whether the bill was genuine or not.

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18 6. The Defendant was challenged about the bill. He responded by producing another
19 \$50 note which was in fact genuine currency. The genuine currency was accepted
20 by the school for goods and he was provided with change.

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1 7. Later that day the Defendant was summoned by the Head of the 6th Form
2 department. He was questioned about the production of the counterfeit note and
3 responded with varying excuses. The matter was later referred to the Headmaster
4 who in turn informed the Defendant that his parents should attend the
5 school.

6 8. The Head Master obtained a copy of the genuine note handed to the school.
7 Upon inspection it was noted that the counterfeit note had the same serial
8 number as the genuine \$50 note. The Defendant then admitted that he had
9 made the counterfeit note himself.

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11 9. The Defendant was suspended and the matter was reported to the police.

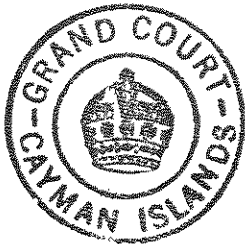
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13 10. The Cayman Islands Monetary Authority (CIMA) confirmed that the
14 counterfeit note was a copy.

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16 11. On the 2nd November 2013 the Defendant was interviewed by the police in
17 the presence of his father and attorney and during the interview he gave the
18 following account:

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20 (i) The Defendant accepted presenting the counterfeit note to the
21 receptionist;

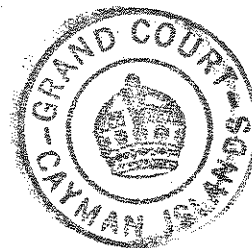
22 (ii) He accidentally gave the receptionist the counterfeit note;

23 (iii) When he realized his error he asked for the return of the
24 counterfeit note;



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- (iv) The Defendant said he initially lied about the counterfeit note because he was embarrassed;
- (v) The Defendant accepted knowingly being in possession of a counterfeit note;
- (vi) The Defendant stated that he did not intend to use the note and that he was going to destroy it;
- (vii) He accepted that he had produced the counterfeit note by using a copier and paper from home following several failed attempts;
- (viii) The Defendant was remorseful and wished he had not done it – adding that he wanted to be an accountant and that he has to be seen as honest;
- (ix) The Defendant described this incident as a lack of judgment and he said he felt like a complete idiot and apologized to the school and to his parents.



DEFENCE SUBMISSIONS

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12. On the 22nd October 2013 the Defendant was found to be in possession of a forged CI\$50 note. The Defendant was in his final year as a student at St. Ignatius Catholic School. During his interview with the police he admitted photocopying an authentic currency note from which he created the forged note. He further confessed to having the note in his possession on the subject date. He was subsequently charged by the police and committed to the Grand Court on Indictment.

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13. Defence counsel submits that the Defendant is an 18-year old Caymanian student who, at the material time of the offence, was 17 years of age, with no previous convictions. He resides with his parents – both of whom are also Caymanian and both of whom are in Court today and have been on every other occasion. In July 2014 the Defendant graduated with honours from St. Ignatius Catholic School and has received conditional offers of acceptance from various universities in the US as well as in the United Kingdom for the pursuit of his tertiary studies.

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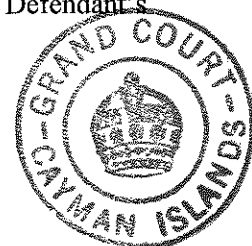
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14. Defence counsel states that throughout his five years at High School the Defendant obtained a Grade Point average “GPA” above 3 – receiving a remarkable 3.11 in his penultimate year of study. The Defendant has been a high-performing student and is described as being a successful student both academically and on the sports field. The Defendant has long held a passion for accounting and has consistently produced excellent work throughout this course – as described by his former Accounts teacher who stated that she is very impressed by the Defendant’s dedication to succeed.



1 15. Counsel for the Defendant has stated that it is clear from the admissions made by
2 the Defendant to the police that he had full knowledge that the note was forged –
3 having photocopied it himself – and therefore he could offer no excuse, justifiable
4 under the law, for being in possession of the forged note.

5 16. Counsel for the Defendant emphasised the fact that the Defendant was only 17 at
6 the time of the offence and, throughout his years, has only been a student and has
7 not left the school environment. Defence counsel asks the court to place the
8 Defendant's inappropriate behaviour in this context.

9 17. Defence counsel asks the Court, in the face of the Defendant's very young age, his
10 previous good character and absence of antecedents, his immediate admission of
11 guilt to the police and school staff, his early guilty plea, his clear remorse and the
12 fact that only one forged note was found in his possession, not to record a
13 conviction in this case.

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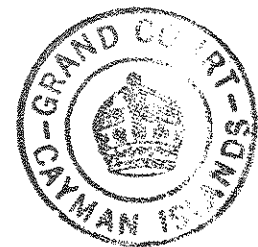
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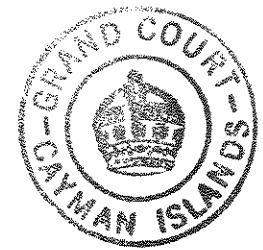
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1 **THE LAW**

2 18. I am grateful to both counsel for their helpful review of the authorities.

3 19. In *R v. Anthony Frank Howard*¹ the then Lord Chief Justice, Lord Lane, stated:

4 *"Where a Defendant is convicted of passing counterfeit notes, the issue of*
5 *which undermines the whole economy of the country, in nearly every case this*
6 *requires a custodial sentence to punish the wrongdoer and deter him from*
7 *committing the same sort of offence in the future and to act as a deterrent to*
8 *others."*

9 Lord Lane stated,

10 *"The most important consideration in this sort of case is the quantity of*
11 *counterfeit notes which are found in the Defendant's possession because that*
12 *will demonstrate to some degree of accuracy at least the proximity to or the*
13 *distance from the source of the notes which the Appellant's position occupied."*

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15 20. In *Howard* the Appellant was close to the source of the notes and when the police
16 arrested the Appellant it was discovered that he had recently transferred 49 similar
17 notes. Additionally, one recipient received no less than £3000.00 worth of
18 counterfeit money for which he (the Appellant) paid £550.00. The Appellant
19 received a 2-year prison sentence.

20 21. In *R v. David Miller*² the English Court of Appeal reduced a 2-year sentence to one
21 of 15 months. The Appellant in *Miller* had pleaded guilty to three counts of passing
22 or tendering counterfeit currency notes and one count of having custody or control
23 of counterfeit notes. Although *Miller* was described as not the worst case of it type,
24 Miller had tendered three £20 notes within a short period of time and three
25 additional notes were found at his home. Miller was 27 years of age and, although

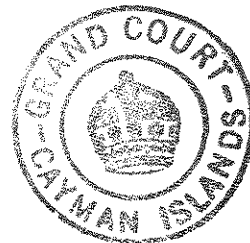
¹ (1986) 82 Cr. App. R. 262

² [2010] 2 Cr. App. R. (S.) 62

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he had no previous convictions for counterfeit currency, he had previous convictions for other criminal offences. However, the English Court of Appeal reduced the sentence of 2 years' imprisonment to one of 15 months.

22. In the recent Cayman Islands case of *R v. Shannon Ebanks*³ the Defendant was convicted by a jury in December 2013 of counterfeit currency offences. Ms. Ebanks was found guilty of Possession and Uttering a Forged \$10.00 note at a bar in Bodden Town. She was also found guilty of possessing three coloured notes in the denomination of \$25.00 and implements used to make forged documents. Police also found 38 black and white images of \$25.00 notes. The Grand Court placed the Defendant on probation for two (2) years and ordered her to remain under house arrest for nine (9) months.



³ Indictment #112/2012

1 *ANALYSIS AND CONCLUSION*

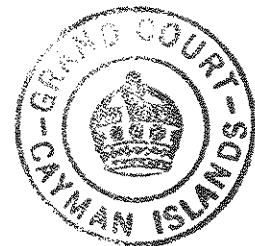
2 23. The Court acknowledges that the police have accepted that the copy of the
3 CI\$50.00 note made by Defendant Morgan is not a good copy. It was done on
4 ordinary photocopying paper. There was only one note and there is no suggestion
5 that there were any other notes in his possession or at any other time. This case is
6 not as serious as either *Howard* or *Miller* and, furthermore, unlike *Shannon*
7 *Ebanks*, the Defendant has pleaded guilty at the very first opportunity.

8 24. The Court notes that the Defendant wrote to the Headmaster of St. Ignatius Catholic
9 School on the 5th November 2013 and stated:

10 *"I can't explain why I did it or the reasons for doing it. I now know it was very*
11 *stupid and I never imagined that it would lead to a police investigation. This*
12 *lapse of judgment on my part has caused great pain, suffering, shame and*
13 *embarrassment to my school, teachers and others that believed in me."*

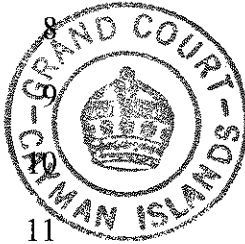
14 The Defendant also wrote:

15 *"I deeply apologise for the embarrassment I have brought to the School. I*
16 *realise the seriousness of this offence and thank you for giving me the chance to*
17 *complete my 'A' levels."*



1 25. The Court has also had the benefit of references from the Rev. Rohan O. Forrester
2 of the Webster United Church and from Mrs. Ingrid Ebanks and from Mrs. Myra
3 Dalphine Terry. These referees confirm that the Defendant is well respected,
4 responsible, hardworking and well mannered. Most importantly, the Headmaster,
5 Mr. Tom McGrath, in his letter of reference states:

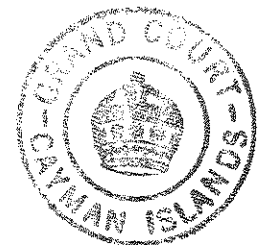
6 *“We believe that this one incident of foolish behaviour has been an important*
7 *lesson for Shaquille and the school has been impressed by how Shaquille has*
8 *dealt with this incident and how he has applied himself subsequently. Shaquille*
9 *has a bright future ahead of him and we believe that the outcome of this court*
10 *case will have a profound impact on his future career prospects. Shaquille has*
11 *learned a very important and costly lesson and I appeal to you Honour to deal*
12 *leniently with this case.”*



13 26. Finally, the Court has received considerable assistance from an in-depth Social
14 Inquiry Report (SIR) from the Cayman Islands Department of Community
15 Rehabilitation (DCR). It is clear that, not only has the Defendant no previous
16 criminal convictions, but the Probation Officer confirms that he is a respectful and
17 responsible young man who, based on representations to this Court, has always
18 displayed a good attitude at school and in life in general. The Probation Officer
19 reveals that the Defendant has shown genuine and deep remorse for this serious
20 error of judgment. I note that, having performed several assessments and
21 evaluations, the Probation Officer states that there is a very low risk of the
22 Defendant ever reoffending. The Probation Officer concludes that, given the
23 Defendant’s *“very low risk of re-offending he appears to be a suitable candidate for*
24 *a non-custodial sentence”*.

1 33. On the statute books of the Cayman Islands offences in this category are considered
2 serious. However, the amount of money, the sophistication of the process and the
3 scale of the process are to be considerations for the Court in the Assessment of the
4 Offence⁴ - along with possible Aggravating and Mitigating Factors. In relation to
5 Passing Counterfeit Currency the *UK Sentencing Guidelines* instruct that where the
6 nature of the offence relates to a single counterfeit note or small number of coins,
7 the sentencing range is a Community Order to 3 months custody. For Possessing
8 Counterfeit Currency, where the nature of the offence relates to a single counterfeit
9 note, the sentencing range is a fine to 3 months' custody. I therefore consider the
10 following:

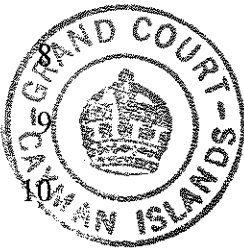
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- 12 i. *The amount of money*: The amount of money in question is CI\$50.00. It is my
13 view that in a jurisdiction, such as the Cayman Islands, where there the cost of
14 living is considered to be high, the goods or services which the Defendant could
15 have gained from this amount cannot, in any way, be considered to be
16 substantial.
- 17 ii. *The scale of the process*: This amount was comprised of a single CI\$50.00 note.
18 This amount was not composed of a number of notes in smaller denominations
19 – requiring the Defendant to have made copies of various notes of currency.
20 Therefore, in my view, having photocopied a single note, the scale of the
21 process is at an extremely low level.
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⁴ See UK Sentencing Guidelines on Counterfeit Offences: Passing Counterfeit Currency and Possessing Counterfeit currency. Pages 34 and 35 of the Magistrates Court Bench Book.

1 iii. The sophistication of the process: The evidence is that this was a crude and
2 clumsy photocopy of a single note, done on unsuitable and ordinary photocopy
3 paper, and reproduced in the Defendant's own home. In my view, the process
4 lacked any evidence of sophistication, planning or effort.

5 iv. Aggravating Factors: According to the UK Guidelines the Court, in making its
6 assessment of the offence, must also consider any possible aggravating factors,
7 that is, to what extent was the offence committed for the purpose of financial
8 gain and what was the level of professionalism. As I stated in 33 (i) (ii) and (iii)
9 above, I view the levels of financial gain and professionalism to be negligible in
10 the former case and non-existent in the latter.



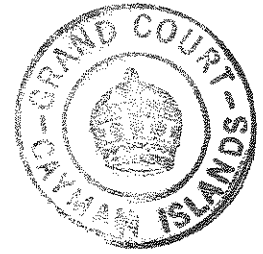
11 v. Mitigating Factors: According to the UK Guidelines the Court, in making its
12 Assessment of the Offence, must also consider any possible mitigating factors,
13 and one such consideration would be whether the note was acquired innocently.
14 It is clear from the evidence that the Defendant made the single photocopy
15 himself from his own money and, by his own confession, did not intend to use
16 the photocopy he made.

17 34. This is not a trivial offence, but, rather, a serious one. The court understands the
18 seriousness of offences in this category in the context of the Cayman Islands which
19 relies heavily on an efficiently run financial services industry.

20 35. However, having given careful consideration to the above factors and all the
21 circumstances of this case I deem it appropriate and just to invoke s.41(1) of the
22 Penal Code:

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- (i) The Defendant's young age;
- (ii) The fact that he has no previous convictions;
- (iii) His early guilty plea;
- (iv) The Defendant's clear remorse;
- (v) The fact that the Defendant is assessed as being at a "very low" risk level for reoffending;
- (vi) The offers for a bright academic future that awaits the Defendant;
- (vii) The Defendant's strong family background for support in the future;
- (viii) My Assessment of the Offence in 32 (i) to (v) above;



36. This was clearly a serious error of judgment on the part of this Defendant. The fact that this Defendant is a bright and intelligent student make this offence all the more disappointing for his family, his school and for himself. However, the Defendant has acknowledged his culpability and demonstrated sincere remorse.

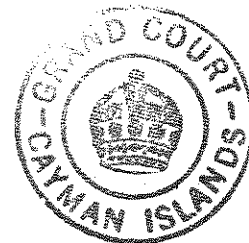
37. The Defendant can be grateful for the caring and eminently sensible approach taken by his Headmaster. In addition to the foregoing list of points in paragraph 35 above, I take into account the references provided on the Defendant's behalf and everything the Probation Officer and Defence counsel submitted to this Court and I sentence the Defendant to 240 hours of Community Service to be directed and supervised by the Probation Officer. Upon confirmation of completion of the 240 hours community service, the Court will not record a conviction.

1 38. I think it is important to set out the purpose and the effect of a Community Service
2 Order in this jurisdiction. The "*Scheme of Arrangements for Community Service*
3 *by Offenders in the Cayman Islands*" was a document prepared and gazetted in
4 June 2000 after consultation with the judiciary and others involved in the criminal
5 justice system of the Cayman Islands. This *Scheme of Arrangements for*
6 *Community Service* is clearly set out by Deborah Barker Roye at paragraph 9.11 in
7 her 3rd *Edition of Criminal Litigation in the Cayman Islands*. Ms. Barker-Roye
8 refers to the *Scheme of Arrangements* which sets out the aims of a Community
9 Service Order:

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11 *"The key concepts within Community Service by Offenders are, firstly, that it*
12 *offers an option other than incarceration that does not restrict the liberty of the*
13 *individual; secondly, it is an active and public punishment that keeps the*
14 *offender visible (imprisonment takes place out of the public view); and thirdly,*
15 *it requires the offender to make amends through his or her own efforts."*

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17 39. The Probation Officer may well consider directing the Defendant by ordering work
18 placement with bodies such as the Public Works Department or the Ministry of
19 Education or the National Trust. The Probation Officer assigned to the Defendant
20 will advise him of his placement details and the Defendant's performance will be
21 reviewed, monitored and recorded throughout his placement by the officer assigned
22 to his case.

23 40. Section 42(3) of the Penal Code reads:



1 "42. (3) A court shall not make a community service order in respect of
2 a person convicted of an offence unless the court -

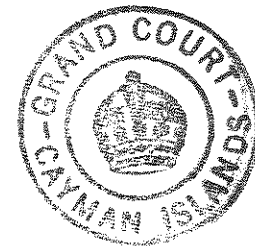
3 (a) has been notified by the Governor that arrangements exist
4 for work to be performed under such orders;

5 (b) is satisfied after considering a report by a probation
6 officer about such person and his circumstances and (if
7 the court thinks it necessary) hearing a probation officer,
8 that he is suitable person to perform work under such an
9 order; and

10 (c) is satisfied that provision can be made under the
11 arrangements referred to in paragraph (a) for him to
12 perform such work."
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14 41. The Defendant must understand that, should he fail to comply with this Court Order
15 of Community Service, the Court has power under s.44(2) to impose a fine of
16 CI\$2,000.00 or may revoke the Order and impose, in substitution for the Order, any
17 other sentence which it may have imposed at the time of conviction. This
18 substituted penalty may include a fine or imprisonment or both.

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22 Dated this the 3rd day of November 2014



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31 Honourable Mr. Justice Charles Quin Q.C.
32 Judge of the Grand Court