

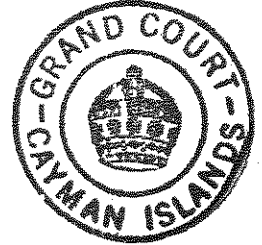
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0105/2012
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7
8 THE QUEEN
9

10 V
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12 ELVIS KELSEY EBANKS
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15 **Appearances:** Deputy DPP, Mr. Trevor Ward Q.C., and
16 Ms. Laura Manson for the Crown

17
18 Mr. Laurence Aiolfi of Stenning &
19 Associates for the Defendant
20

21 **Before:** The Hon. Mr. Justice Charles Quin

22 **Submissions heard:** 17th July 2014
23

24 **SENTENCE RULING**
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26 1. On the 15th May 2014, a jury convicted the Defendant of all four counts on this
27 Indictment namely, two counts of **Bribery** contrary to s.10(1)(b) and (d) of the
28 Anti-Corruption Law (2008) and two counts of **Breach of Trust** contrary to s.13 of
29 the Anti-Corruption Law 2008. All four verdicts were unanimous.

30 2. It is important to make clear how the charges relate to the Defendant's actions on
31 two separate days and therefore the Indictment is set out as follows:
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1 i. **Count 1 – Bribery**, contrary to s.10(1)(b) and (d) of the Anti-Corruption Law
2 (2008). The Particulars of the Offence are that the Defendant on the 10th day of
3 November 2012, in Prospect, Grand Cayman, Cayman Islands, being a public
4 officer, namely, a police officer employed in the service of the Royal Cayman
5 Islands Police Service (RCIPS) obtained for himself a loan or benefit, namely
6 CI\$115.00 and US\$31.00, with intent to interfere with the administration of
7 justice.

8 ii. **Count 2 – Breach of Trust**, contrary to s.13 of the Anti-Corruption Law 2008.
9 The Particulars of the Offence are that the Defendant on the 10th day of
10 November 2012, in Prospect, Grand Cayman, Cayman Islands, being a public
11 officer, namely, a police officer employed in the service of the Royal Cayman
12 Islands Police Service (RCIPS), in connection with the duties of his office,
13 committed a breach of trust, namely, obtaining for himself the sum of
14 CI\$115.00 and US\$31.00, having represented that receipt of money would
15 influence him in the discharge of his official duties.

16 iii. **Count 3 – Bribery**, contrary to s.10(1)(b) and (d) of the Anti-Corruption Law
17 (2008). The Particulars of the Offence are that the Defendant on the 14th day of
18 November 2012, in Savannah, Grand Cayman, Cayman Islands, being a public
19 officer, namely, a police officer employed in the service of the Royal Cayman
20 Islands Police Service (RCIPS) obtained for himself a loan or benefit, namely
21 CI\$500.00, with intent to interfere with the administration of justice.

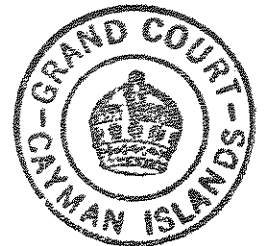
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1 iv. **Count 4 – Breach of Trust**, contrary to s.13 of the Anti-Corruption Law 2008.

2 The Particulars of the Offence are that the Defendant on the 14th day of
3 November 2012, in Savannah, Grand Cayman, Cayman Islands, being a public
4 officer, namely, a police officer employed in the service of the Royal Cayman
5 Islands Police Service (RCIPS), in connection with the duties of his office,
6 committed a breach of trust, namely, obtaining for himself the sum of
7 CI\$500.00, having represented that receipt of money would influence him in
8 the discharge of his official duties.

9 3. Accordingly, Counts 1 and 2 relate to the Defendant's action on the 10th November
10 2012, whilst Counts 3 and 4 relate to the 14th November 2012.



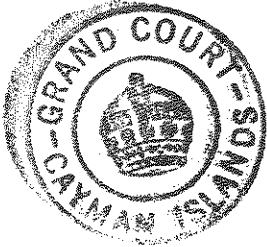
SUMMARY OF FACTS

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4. In summary, the victim of these crimes, Elmer Ferreras (“Mr. Ferreras”), had arrived in the Cayman Islands on the 3rd October 2012 and had, therefore, been on the islands for only five weeks when this incident occurred. His work permit was held by a janitorial enterprise and he was employed as a janitor. Mr. Ferreras earned CI\$350.00 per fortnight (i.e. CI\$700.00 per month) out of which he had to pay for his rent, food, utilities etc.

5. On Saturday the 3rd November 2012 Mr. Ferreras had agreed to assist his brother-in-law by working at another enterprise (hereinafter, for ease of reference, referred to as “AS”) – although, as Mr. Ferreras accepts, he did not have a work permit for AS. Mr. Ferreras was not gainfully employed by the owner of AS but, whenever he assisted his brother-in-law his brother-in-law would provide him with some financial assistance for his utility bills.

6. Whilst at AS on the 3rd November Mr. Ferreras located a Blackberry telephone on a chair. He took the phone and ultimately, after he used the phone, the owner of the phone was able to identify that the phone was in Mr. Ferreras’ possession. Accordingly, the theft of the phone was reported by the owner to the owner of AS, who then reported the matter to the police.



- 1 7. On the 10th November 2012 the Defendant responded to the report made by the
2 owner of AS, attended AS and met Mr. Ferreras and the owner of the Blackberry.
3 The owner of the Blackberry was so relieved to have his Blackberry returned that
4 he told the owner of AS and the Defendant that he did not wish to press charges for
5 the theft. The owner of AS did not have an opportunity to tell Mr. Ferreras that he
6 was not going to press charges as, by this time, the Defendant had already told Mr.
7 Ferreras to sit in the unmarked police car.
- 8 8. The Defendant drove Mr. Ferreras away from AS to another location, where he told
9 him that he could take him to the police station and arrest him for the theft of the
10 Blackberry. The Defendant also told Mr. Ferreras that he could face a prison
11 sentence of ten (10) years, and then the Defendant asked Mr. Ferreras if he had any
12 money.
- 13 9. The victim begged the Defendant not to arrest him and, in response to the
14 Defendant's query (asking him if he had any money) Mr. Ferreras immediately
15 showed the Defendant the CI\$115.00 and the US\$31.00 which was all the money
16 he had at that time (besides some Filipino currency). The Defendant took the
17 CI\$115 and the US\$31.00 from Mr. Ferreras.
- 18 10. Not content with this amount the Defendant asked the victim for more money. The
19 victim said he could not afford to pay any more money.
- 20 11. The Defendant asked the victim if he could pay him (the Defendant) money on a
21 weekly or monthly basis. In response to this question from the Defendant Mr.
22 Ferreras offered to pay the Defendant CI\$50.00. In response, the Defendant laughed
23 and said,



1 “Are you joking, that is not enough for my gasoline.”

2 The Defendant then said,

3 “Okay, just give me \$500.00 this month.”

4 When the victim told the Defendant that he did not have that amount of money the
5 Defendant said he, the victim, was to borrow the money from a friend and he will
6 contact him by telephone by 12 noon on Wednesday the 14th November 2012.

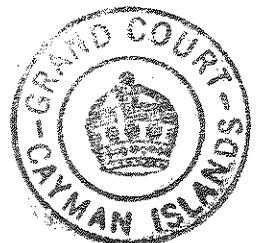
7 The Defendant then drove Mr. Ferreras to a place near to where the victim lived in
8 Savannah and dropped Mr. Ferreras off there.

9 12. Mr. Ferreras told his brother-in-law and other family members about the incident
10 and they, in turn, contacted a police officer and ultimately Mr. Ferreras was taken to
11 the Anti-Corruption Department where the events of the 10th November 2012 were
12 reported to the authorities.

13 Mr. Ferreras was very nervous about giving further assistance to the police and
14 asked for a little time to consider his position. Mr. Ferreras eventually agreed to
15 give further assistance to the police.

16 13. On the 12th November 2012 a telephone recording device was attached to Mr.
17 Ferreras’ telephone by police officers. As he had promised on the 10th November,
18 the Defendant duly telephoned the victim at around 12 noon on Wednesday the 12th
19 November 2012 – calling twice to make arrangements to meet at the Countryside
20 Shopping Village to collect the CI\$500.00.

21 14. On the first telephone call on that day the victim said to the Defendant,



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“If I give you this money there will be no problem for me”

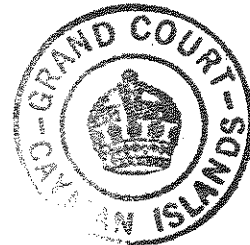
And, on the second call, the victim said,

“If Sir, you not arrest me if I see you?”.

The Defendant and the victim agreed to meet and the victim said again,

“You sure you not arrest me if you see me?”

15. The police provided the victim with the CI\$500.00 and he went to the Countryside Shopping Village, as arranged, and handed the money over to the Defendant. The Defendant immediately left in his vehicle and he was pursued by the police. The Defendant was eventually stopped along the East-West Arterial bypass. The Defendant was arrested and the CI500.00 was found outside his vehicle.



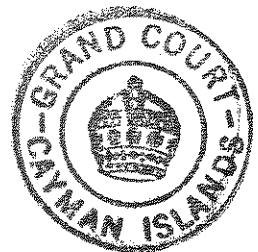
CROWN'S SUBMISSIONS

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16. The Crown submits that Bribery attracts a maximum sentence of 14 years, whilst the Breach of Trust charges attract a maximum sentence of five years. The Crown also refers to the Chief Justice's Sentencing Guidelines¹ and points to the section on Offences of Dishonesty which states:

“For offences of THEFT or related offences, depending on the value of the property stolen and any other aggravating factors, particularly where there is a breach of trust in the context of a relationship of employment, an immediate term of imprisonment ranging from 1 to 4 years for a first offence, and an order for repayment, will likely be imposed...”

17. The Crown reviewed English case law which was reviewed in the *R v. Patricia Webster*². In that case, the Defendant Webster was a civilian employed by the Royal Cayman Islands Police Service (RCIPS) who pleaded guilty to 2 counts of Misconduct in Public Office, namely soliciting information from the database of the Cayman Islands Department of Immigration and using the confidential police database, otherwise than in accordance with her authorised duties. In that case, it was accepted that there was no criminal intent, no pecuniary reward and extreme naiveté on the part of the Defendant who made no attempt to conceal her wrongdoing. The Court imposed a sentence of nine (9) months' imprisonment suspended for 12 months.



¹ Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002
² Indictment 85/2011, dated the 16th May 2013

1 18. The Crown relies on the decision of Smith J. (Actg.) in *R v. Keith Guthrie*³.
2 Defendant Guthrie, who was a police officer, pleaded guilty to one count of official
3 corruption for the receipt of \$500.00 for not prosecuting an individual for traffic
4 offences. Smith J. referred to the Chief Justice's Sentencing Guidelines and
5 imposed a sentence of 18 months imprisonment.

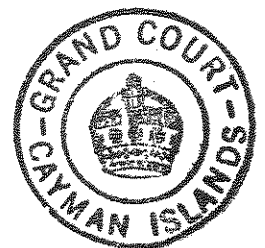
6 19. The Crown points to the aggravating factors in the case before this Court. Mr. Ward
7 Q.C. submits that the Defendant was a police officer who held an important position
8 of trust. Therefore, Mr. Ward points out that the degree of trust was high and it can
9 properly be regarded as a very serious breach of trust. The Defendant abused his
10 position as a police officer and he was the prime mover in entering into a corrupt
11 bargain for the sole purpose of making a profit. Mr. Ward Q.C. says this is a serious
12 and marked departure from the standards expected of a member of the RCIPS.

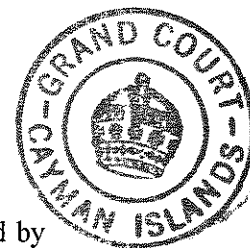
13 20. The Crown also submits that the Court can take into account the impact on the
14 victim. Mr Ferreras was traumatized by the events from the 10th to the 14th
15 November 2012. He was new to the island. He was an extremely vulnerable
16 individual and he faced very aggressive demands for payments from none other
17 than a police officer who threatened Mr. Ferreras with imprisonment for 10 years.

18 21. The Crown also relies on the fact that this has a detrimental effect on the public
19 confidence in the RCIPS and the Court must impose a sentence that acts as a
20 deterrent for others who might be considering committing this type of offence.

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³ Ind. 37/2007 delivered on the 17th April 2007





DEFENCE SUBMISSIONS

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22. Defence counsel relies upon the detailed Social Inquiry Report (SIR) prepared by the DCR⁴ dated the 17th June 2014. The Court was also provided with a Performance Report from the RCIPS in which it stated that the Defendant will, most likely, be dismissed. In addition the Court has been provided with a letter from the Defendant's wife and mother of their children along with the references as follows:

Referee	Referee's Title etc.	Date
Doyle Scott	Knowing the Defendant for over 20 yrs.	2.6.14
Shyam & Tamara Ebanks	Defendant's neighbours	2.6.14
Buel Braggs	Former Commissioner of the RCIPS	30.5.14
Martha Johnson	Knowing the Defendant for 4 yrs.	undated
Edward Howard	Deputy MD of the Nat'l Roads Authority	28.5.14
Corey Anderson	Pastor	31.5.14
Orville Grant	Knowing the Defendant for 9 or more yrs.	22.5.14
Brent Bush	Knowing the Defendant for "a couple of" yrs.	28.5.14
Janet Slauter	Community of Christ Evangelist	26.5.14
Vernon Webb	Associate Pastor, Community of Christ	23.5.14
Melinda Ebanks	Knowing the Defendant for over 10 yrs.	26.5.14
James Slauter	Knowing the Defendant for 1 year (approx.)	24.5.14

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These letters all attest to the Defendant's good character and that he is a good father and husband.

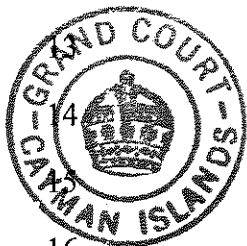
23. A former Commissioner of the RCIPS, Mr. Braggs, informs the Court that the Defendant is "*incredibly remorseful for what has transpired and now realises that he acted in an unprofessional manner in accepting financial assistance from the Complainant.*" Mr. Braggs also states: "*Elvis Jr has agreed with me that this was a foolish mistake on his part and [he] must be accountable for the consequences of his actions.*"

⁴ Department of Community Rehabilitation/Probation Department

1 24. It is clear from all the references that the Defendant still insists that Mr. Ferreras,
2 who was earning \$700.00 per month was merely lending the Defendant CI\$500.00
3 as a favour, and, further that, the Defendant had agreed to pay the victim back
4 \$600.00 as a way of saying thanks.

5 25. Defence counsel submits that, despite some unfavourable comments in the RCIPS
6 report there is no record of any disciplinary convictions, and no findings of any
7 misconduct on the part of the Defendant.

8 26. Defence counsel points out that the English case law is of minimal assistance for
9 the sentence to be imposed here because there is no corresponding maximum prison
10 sentence. However, Mr. Aiolfi states that the Crown's recommendation of 3 years'
11 imprisonment as a starting point is too high. He makes the point that this is not a
12 case where the victim was to have been prosecuted and he was not prosecuted in
consideration of a bribe and, to that extent, there was no miscarriage of justice.



14 Defence counsel underscores that this aggravating factor is significantly absent in
15 this case. Accordingly, Defence counsel submits that the case of *Guthrie* is more
16 serious than this case.

17 27. Defence counsel relies on the case of *R v. David Andrew Keyte*⁵ in which the
18 Applicant was a serving police officer who was convicted of misconduct in public
19 office. Over a period of 12 months he obtained information on 192 occasions from
20 the police national computer and supplied it to private investigators. In most cases
21 the information related to the identities of the registered keepers of motor vehicles.
22 The High Court had sentenced the police officer to two years' imprisonment. The
23 Court of Appeal upheld the sentence of imprisonment of two years and said that as

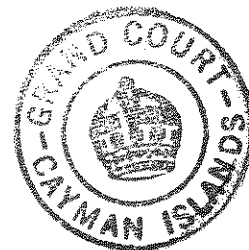
⁵ [1998] 2 Cr. App. R. (S) 165

1 he was a serving police officer he was in a position of trust. The Court of Appeal
2 added that the Defendant had abused his position for profit. Accordingly, the Court
3 of Appeal held that the sentence of 2 years as not excessive.

4 28. Defence also relies on the case of *R v. Ghazi Ahmed Kassim*⁶, in which the
5 Defendant was a police officer who had pleaded guilty to three counts of
6 misconduct in public office. The Defendant had made the acquaintance of a
7 diplomat, and he used his status as a police officer to make enquiries into private
8 individuals on behalf of the Diplomat and was paid for doing so. The Defendant
9 gained access to data stored on police computers in order to obtain information
10 about persons who were of interest to the Diplomat. Over the period in question the
11 Defendant received an estimated payment of £14,000.00. The Court of Appeal held
12 that the 2 ½ years' imprisonment for the misconduct in public office was not
13 manifestly excessive and therefore upheld the sentence.

14 29. Defence counsel maintained that the starting point should be below 2 years'
15 imprisonment and that, in all the circumstances, one year would be appropriate.

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⁶ [2006] 1 Cr. App. R. (S) 4

1 *ANALYSIS AND CONCLUSION*

2 30. Both counsel seem to accept that the most similar case to this case is the *Guthrie*
3 case in which the Defendant was sentenced to 18 months' imprisonment by the
4 Grand Court. In that case, the Defendant pleaded guilty to one count of official
5 corruption. In *Guthrie* the Defence maintained that the Defendant was approached
6 by an individual who offered to pay him \$500.00 not to proceed with the
7 prosecution and, therefore, it involved a direct intervention in the course of justice.

8 31. Since *Guthrie* the Anti-Corruption Law 2008 has been enacted. The maximum
9 penalty for Bribery under the law is 14 years' imprisonment, and the maximum
10 penalty for a Breach of Trust is 5 years' imprisonment.

11 32. In this case the Defendant placed the victim in the police car which he had driven to
12 AS.

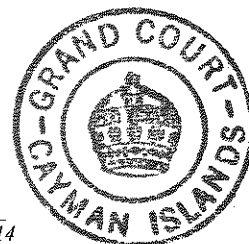
13 33. The Defendant did not inform the victim that the owner of the Blackberry did not
14 wish to press charges. Instead the Defendant told Mr. Ferreras that he could still be
15 arrested and prosecuted for the theft of the phone and, consequently, could go to
16 prison for 10 years. One must recall that the victim had only been on the island with
17 a work permit as a janitor for only a few weeks. He earned \$350 per fortnight from
18 which he had to pay for rent, food and utilities.



1 34. The Defendant asked for money in exchange for not proceeding to arrest and
2 prosecute Mr. Ferreras for the theft of the phone. The victim gave the Defendant all
3 the money he had at that time on the 10th November 2014 – except for the Filipino
4 currency which the Defendant refused. The CI\$115.00 the victim handed to the
5 Defendant was money he had saved and set aside to send home to his family. In
6 order to placate the Defendant the victim even tried to give the Defendant his
7 Filipino currency, but the Defendant returned this to the victim. Not content with
8 taking all the money the victim had on the 10th November, the Defendant asked the
9 victim to give him more money. When the Mr. Ferreras maintained he had no
10 money, he offered the Defendant a further CI\$50.00, to which the Defendant
11 responded that that would not even pay for his gasoline. The Defendant told the
12 victim to get the money by borrowing it and then he said he would call Mr. Ferreras
13 on the following Wednesday to make the arrangements to collect the money. The
14 Defendant called Mr. Ferreras on the day and at the time he promised and made the
15 necessary arrangements to collect the CI\$500.00 from Mr. Ferreras on that day.

16 35. It is clear from reading the SIR and the references that the Defendant is still
17 denying that he extracted a bribe. His actions could also be properly described as
18 extortion. The Defendant's evidence was that the victim was lending him
19 CI\$500.00 as a favour. Furthermore, the Defendant's evidence was that he was
20 going to repay the victim the money in January and would add an additional
21 CI\$100.00 to the repayment sum as a way of saying thanks. Accordingly, the
22 Defendant still maintains he was borrowing CI\$500.00 from the victim and
23 repaying the victim CI\$600.00.

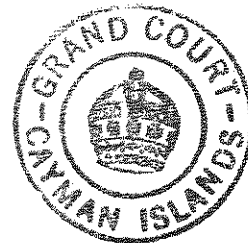
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1 36. The Defendant's account is entirely implausible – particularly when, as a
2 Caymanian police officer, he could have obtained loans from any of the five local
3 retail banks and the Cayman Islands Civil Service Credit Union⁷ at a much more
4 favourable rate of interest than the one he claims he agreed to pay Mr. Ferreras.
5 Accordingly, despite his many references, there is no evidence of any genuine
6 remorse or contrition on the part of the Defendant for the four offences for which
7 the jury found him guilty. This is an aggravating factor which the Court must take
8 into consideration when deciding the appropriate sentence.

9 37. This is not the usual case – one where a citizen may have committed an offence and
10 then offers the police officer at the scene a bribe in order not to be arrested and
11 prosecuted. In such a situation the duty is on the police officer to arrest the citizen
12 for the offence committed and for the offence of bribery or attempted bribery. In
13 such cases the police officer could be described as the passive participant of a
14 proposed corrupt bargain. However, in this case, the Defendant is, as Mr. Ward
15 Q.C. correctly describes, the “prime mover.” The offences of Bribery and Breach of
16 Trust are therefore, arguably more serious criminal acts than the more common
17 corrupt bargain that police officers are sometimes confronted with.

18 38. In addition, whilst the amounts of CI\$115.00 and US\$31.00 may be relatively
19 small, one must consider that these sums represent a substantial portion of Mr.
20 Ferreras' monthly earnings – leaving him with little or no money to pay for his
21 utilities, rent and food.



⁷ Cayman Islands Civil Service Association Co-operative Credit Union Limited (CICSA Credit Union)

1 39. As Swinton Thomas LJ said towards the end of his judgment in *Keyte* at page 166:

2 *“Police officers are given considerable powers and privileges which are*
3 *necessary for the performance of their duties. If they dishonestly abuse their*
4 *position and do so for profit, not only must a prison sentence follow, but it must*
5 *of necessity in our view be a severe one.”*

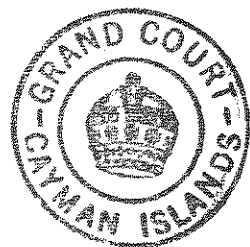
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7 This Court agrees with this view.

8 40. I take into account that in this case the offence did not involve thwarting the
9 prosecution of someone to be charged. I also take into account that the Defendant is
10 a person of good character with no previous convictions. It is also evident from the
11 references received that he is a good family man and a regular church member.
12 These convictions will have a devastating effect on his career and his family.

13 41. However, the Defendant’s conduct and behaviour in threatening to arrest and
14 prosecute the victim for a theft for which the owner did not wish to press charges
15 was egregious. It is difficult to identify any mitigating factors in this case. The
16 vulnerable victim was demonstrably terrified and clearly thought that he could go to
17 prison in this foreign land for a very long period of time. The Court commends Mr.
18 Ferreras for his courage in reporting these serious crimes and giving evidence in,
19 what was for him, a strange and foreign forum through the assistance of an
20 invaluable interpreter.

21 42. The Defendant’s conduct not only undermines the good name and reputation of the
22 RCIPS but it also actually damages the good name of the Cayman Islands. The
23 Courts and this country cannot tolerate any form of bribery or corruption.



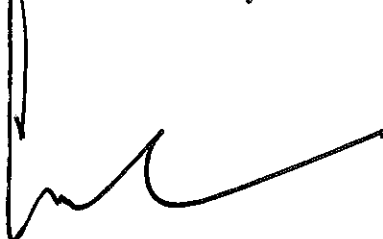
1 43. The fact that the legislators in the Anti-Corruption Law set the maximum penalty
2 for the offence of bribery at 14 years demonstrates the seriousness with which this
3 country views offences of this nature.

4 44. Having considered the submissions of both counsel, having read the SIR and all the
5 references and, having examined the relevant case law in the UK and the Cayman
6 Islands, I find that the appropriate sentence is a total of 3 years' of imprisonment on
7 Count 1 – with the sentences for the remaining 3 counts to run concurrent to Count
8 1 as follows:

- 9 (a) Count 1 – 3 years
- 10 (b) Count 2 – 18 months
- 11 (c) Count 3 – 3 years
- 12 (d) Count 4 – 18 months

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14 45. I also order the Defendant to repay to the victim, or his closest family member
15 resident on these islands, the sums of CI\$115.00 and US\$31.00 within seven (7)
16 days – with 30 days in default. These funds are to be paid to the Court Funds Office

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18 **Dated this the 24th July 2014**

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

