

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

3 **INDICTMENT NO: 74/2008**

4
5 **THE QUEEN**

6
7 **V**

8
9 **WILLIAM MCLAUGHLIN MARTINEZ**

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12 **Appearances:** **For the Crown:**
13 **Ms. Cheryl Richards Q.C., Solicitor General, and**
14 **Crown Counsel, Ms. Tanya Lobban**
15
16 **For the Defendant:**
17 **Mr. Mark Tomassi instructed by Mr. Nicholas Dixey**
18 **of Mourant Ozannes**
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21 **Before:** **The Honourable Mr. Justice Charles Quin**

22 **Heard:** **17th – 19th January 2011**

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24 **RULING**
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27 1. This is an application by the Crown for leave to call Jason Hinds (“Mr. Hinds”),
28 a Crown witness, by way of a live television link, pursuant to s.37(1)(a) of the
29 Evidence Law 2007 Revision, which reads:

30 *“A person other than an accused person may give evidence through a*
31 *live television link in proceedings to which subsection (2) applies if (a)*
32 *the witness is outside the Island or (b) if the witness is a child, or is to be*
33 *cross examined following the admission under s.39 of a video recording*
34 *of testimony from him and the offence to which is one to which 39(2)*
35 *applies, but such evidence may not be given without the leave of the*
36 *Court.”*

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38 2. Section 37(2) reads: *“This section applies to (a) trials on Indictment.”*

1 3. In aid of its application the Crown has produced a witness statement from Mr.
2 Hinds, dated the 15th January 2011 in which Mr. Hinds states:

3 *“I also strongly believe that my life would be in danger if I was to return*
4 *to the Cayman Islands because I heard a lot of things in prison about*
5 *witnesses getting attacked while in witness protection.”*

6 Mr. Hinds went on to state:

7 *“I also told Mr. Wright [police officer] if there was any other way for*
8 *giving evidence I would but I will not return to Cayman.”*

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10 Mr. Hinds says he has to take care of his own two young children, aged 4 and 7,
11 by himself. Mr. Hinds also stated in his Statement that his own father was a sick
12 man.

13 4. At the suggestion of the Defence, and with the consent and active support and
14 participation of the Solicitor General, the Court directed Chief Inspector Peter
15 Kennett to travel to Jamaica to see if Mr. Hinds would be prepared to change his
16 mind and travel to Cayman to give his evidence in the courtroom. The Court also
17 directed Chief Inspector Kennett to tell Mr. Hinds that the Cayman authorities
18 would provide him with witness protection for the whole time he was in the
19 Cayman Islands, and, if necessary, would make childcare arrangements, either in
20 Jamaica or in Cayman, for the care of his two young children.

21 5. Mr. Hinds was due to give live television link-evidence on Tuesday the 18th
22 January 2011, but was not present at the designated studio in Jamaica at the
23 scheduled time. It transpired that, unexpectedly, he had to take his younger son to
24 hospital, and therefore was not available to be contacted.

- 1 10. The Defence also highlights the fact that this is a re-trial of their client and that
2 the witness, Mr. Hinds, was an accomplice, who was within yards of the
3 deceased at the time of the murder.
- 4 11. In addition, the Defence submits that Mr. Hinds has been given very special
5 treatment from the moment he was arrested. The Defence submits that, pursuant
6 to their instructions, the witness, Mr. Hinds, is the murderer and they do not
7 accept the reasons given by Mr. Hinds for his refusal to come to Cayman and
8 give live testimony.
- 9 12. The Defence submits that the childcare issues which Mr. Hinds raised can be
10 taken care of. The Defence further submits that there was no evidence that the
11 suggestion of fear, raised by Mr. Hinds, was instigated by the Defendant or the
12 Defendant's associates.
- 13 13. Finally, the Defence submits that if the Court accedes to the Crown's application,
14 it will allow the witness, Mr. Hinds, to give evidence in a consequence-free
15 environment, which will be prejudicial to the Defendant.
- 16 14. The Defence submits that s.37(1)(a) of the Evidence Law applies to routine
17 witnesses such as expert witnesses who are detained overseas and unable to
18 travel to the Cayman Islands. The Defence submits that s.37(1)(a) should not be
19 used in cases of this nature where the witness is the main prosecution witness and
20 also, in the eyes of the Defence, more than an accomplice but actually the
21 perpetrator of the murder.

1 15. The Defence submits that leave should not be granted, save in the most
2 exceptional circumstances, and the facts and circumstances in relation to this
3 application do not merit such leave being granted.

4 **Crown's Position**

5 16. The Solicitor General says that s.37(1)(a) is not limited to any kind of witness
6 and is certainly not limited to expert witnesses. The Solicitor General argues that
7 the Court can seek some assistance and guidance from Part A of the Criminal
8 Justice Act 2003 in the United Kingdom, and in particular s.51(6) and (7)(a) as to
9 which circumstances the Court should consider in an application under our s.37
10 of the Evidence Law. Section 51(7)(a) of the Criminal Justice Act is conveniently
11 set out at paragraph D21.35 of Blackstone's Criminal Practice 2011:

- 12 *“(a) the availability of the witness*
13 *(b) the need for the witness to attend in person*
14 *(c) the importance of the witness' evidence to the proceedings*
15 *(d) the views of the witness*
16 *(e) the suitability of the facilities at the place where the witness would*
17 *give evidence through a live link*
18 *(f) whether a direction might tend to inhibit any party to the proceedings*
19 *from effectively testing the witness' evidence.”*

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21 17. The Solicitor General submits that there is no different test for Mr. Hinds than
22 there would be for any other witness – be it an expert or a non-expert. The
23 Solicitor General submits that the evidence cannot be lost to the case or to the
24 Court, and that in these circumstances, it is in the interests of justice for this
25 witness to be allowed to give his evidence via the video link.

1 18. The Solicitor General submits that the Defendant will not be prejudiced.
2 Furthermore, she submits that the interests of the victim will be acknowledged or
3 realised by the receipt of Mr. Hinds' evidence. The Solicitor General further
4 submits that the Crown is not trying to have his evidence read in. The Solicitor
5 General adds that the Defence will be able to hear and see Mr. Hinds give his
6 evidence and will be able to cross examine him on any aspect of his evidence,
7 including his reasons for not being able to attend Court, and give his evidence
8 from the witness box.

9 **Conclusion**

10 19. Clearly the power exists for the Court to grant the application of the Crown to
11 admit Mr. Hinds' evidence by video link, pursuant s.37(1)(a) as read with
12 s.37(2)(a) of the Evidence Law.

13 20. In *R(D) v. Camberwell Green Youth Court* [2005] 1 WLR 393 the House of
14 Lords held that the use of live television links is compatible with the right of the
15 accused to a fair trial under the Convention for the Protection of Human Rights
16 and Fundamental Freedoms.

17 21. To adopt the words of Baroness Hale of Richmond, the Cayman Islands
18 legislators have modified and adopted the domestic legal system to meet modern
19 conditions. Furthermore as Baroness Hale stated at paragraph 49 on page 408 of
20 the Judgment:

21 *“The accused can see and hear it all. The accused has every opportunity*
22 *to challenge and question the witness against him at the trial. The only*
23 *thing missing is the face-to-face confrontation but the appellants accept*
24 *that the convention does not guarantee a right to face to face*
25 *confrontation.”*

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22. To adopt the words of s.51(4) of the Criminal Justice Act (2003 Revision), I find

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that it is in the interests of the efficient or effective administration of the Grand

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Court for Mr. Hinds to give evidence in the proceedings through a live link.

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23. I also find, pursuant to the House of Lords decision in *R(D) v. Camberwell*

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Green Youth Court, that even though the Defendant is deprived of the usual face

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to face confrontation, there is no material before me to support the contention

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that the Defendant will not be able to have a fair trial.

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24. Accordingly, I accede to the Crown's application.

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15 **Dated this the 19th day of January 2011**

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19 **Honourable Mr. Justice Charles Quin**

20 **Judge of the Grand Court**