

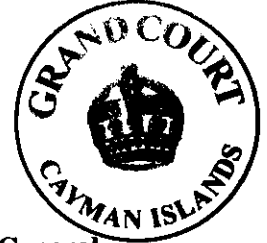
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 74/2008**

4
5 **THE QUEEN**

6
7 **V**

8
9 **WILLIAM MCLAUGHLIN MARTINEZ**



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12 **Appearances:**

12 **For the Crown:**
13 **Ms. Cheryl Richards Q.C., Solicitor General,**
14 **and Crown Counsel, Ms. Tanya Lobban**

15
16 **For the Defendant:**
17 **Mr. Mark Tomassi instructed by Mr.**
18 **Nicholas Dixey of Mourant Ozannes**

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20
21 **Before:**

The Honourable Mr. Justice Charles Quin

22 **Heard:**

6th, 7th 8th, 11th and 12th April 2011

23
24 **RULING**
25

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27 1. The Solicitor General, Cheryl Richards Q.C. has applied on behalf of the
28 Crown for leave not to call Mr. Alcott Fisher ("Mr. Fisher") as part of their
29 case, but rather to ensure that he attends at Court, and is available to the
30 defence, should they wish to call him.

31 2. The Crown has prepared a helpful chronology setting out the factual
32 circumstances and background to this application, much of which I have
33 adopted.

34 3. On the 11th December 2008 the Crown gave notice to the defence that Mr.
35 Fisher would be called as part of their case.

- 1 9. Mr. Hinds' sister also confirmed that on Tuesday the 5th April 2011 Mr.
2 Hinds had received calls from a Cayman telephone number that Cayman
3 police officers were in Jamaica to arrest Mr. Hinds and needed to find him by
4 10:00 a.m. on the morning of the 6th April 2011 when the adjourned trial was
5 due to start.
- 6 10. Yesterday the defence and the Court were provided with a statement from
7 Sgt. Wright. It appears from his statement that on Wednesday the 6th April
8 2011 Mr. Hinds told him that he had received calls from a Cayman telephone
9 number, which he recognised as the telephone number of his former
10 employer, Mr. Fisher. Mr. Hinds told Sgt. Wright that he had received three
11 (3) calls from Mr. Fisher's number that morning. Mr. Hinds also added that it
12 was strange, because he had not heard from Mr. Fisher since he had been
13 arrested in 2008. Furthermore, the Court notes that this is the same morning
14 that the trial was due to start and Mr. Hinds was to give his evidence.
- 15 11. The Crown, as a result of the evidence received from Chief Inspector Kennett
16 and Sgt. Wright, has caused an investigation to commence into this matter, to
17 ascertain whether there has been a deliberate attempt to interfere with the
18 witness and pervert the course of justice.
- 19 12. On Thursday the 7th April 2011 a statement was obtained from the prison
20 authorities with copies of the Visitors' Logs. These logs show that Mr. Fisher
21 is listed as a friend of the accused and has visited him at HMPS Northward,
22 on the 10th April 2008, 13th December 2008, 22nd February 2009, 7th June
23 2009, 21st June 2009, 4th July 2010, 26th September 2010, and the 8th January
24 2011.

1 16. Mr. Tomassi submits that options (iv) and (v) would be forcing the
2 Defendant to call Mr. Fisher, which would be wholly unusual, counter-
3 productive and doomed to fail.

4 17. The defence wishes to have Mr. Fisher's evidence in Court. The defence
5 submits that at the first trial he appeared to be a perfectly decent man giving
6 credible evidence. The defence wishes the Crown or the Court to call Mr.
7 Fisher, not only in relation to the motor vehicle and the items in the motor
8 vehicle, but also as a witness to testify to the good character of the
9 Defendant. In addition, the defence submits that Mr. Fisher can give
10 evidence that is relevant in relation to the existence or not of the ice pick
11 instrument, the non-appearance of the machete, and the possible motive for
12 the attack by Mr. Hinds on the deceased, which the defence says took place.

13 **The Law**

14 18. The legal principles relating to the Crown's duty to call witnesses are clearly
15 set out in Blackstone's Criminal Practice 2011 at paragraph D15.17 onwards
16 and can be summarized as follows. The normal practice is that the
17 Prosecution has a duty to call all the witnesses whose statements have been
18 served and appear on the back of the Indictment, or to tender these witnesses
19 for cross examination.

20 19. The Privy Council in *Adel Muhammed El Dabbah v. A-G for Palestine*
21 [1944] AC 156, held that although prosecution counsel has a discretion not to
22 call a witness on the back of the Indictment, he must exercise that discretion
23 in a proper way and not for some oblique motive such as to frighten or
24 unfairly prejudice the accused.

1 20. The Crown relies upon paragraph D15.18 of Blackstone where the learned
2 editors state that:

3

4 *“The rationale for [this] rule is that, by denoting an individual as a*
5 *Prosecution witness the defence may hesitate to approach the witness or*
6 *take a further statement from him. Moreover since the Prosecution would*
7 *ensure the attendance of its witnesses, the defence will take no step to*
8 *ensure they attend.”*

9

10 21. The learned editors of Blackstone at paragraph D15.19 quoting from Lord
11 Parker C.J. in *R v. Oliva* 1965 WLR 1028 state:

12 *“Prosecuting counsel has a discretion not to call a witness whose name*
13 *is on the back of the indictment if the witness no longer appears to be a*
14 *credible witness worthy of belief”*

15

16 22. The English Court of Appeal in *Russell-Jones* [1995] 1 Cr. App. R.,
17 reviewed both *Adel Muhammed El Dabbah* and *Oliva* and set out the
18 principles which apply, relating to Crown witnesses at the trial of a
19 Defendant, and they are as follows:

20 “(1) *Witnesses who are on the back of the indictment ought to be at*
21 *Court, if the defence wants those witnesses to attend;*

22 (2) *The prosecutor has a discretion whether or not to call them to*
23 *testify, depending on the particular circumstances of the case;*

24 (3) *The discretion is not unfettered, and must be exercised in the*
25 *interests of justice.*

26 (4) *It is for the prosecution to decide which witnesses give direct*
27 *evidence of the primary facts of the case, although normally all*
28 *such witnesses should be called or offered to be called;*

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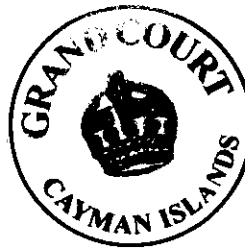
1 25. However, it is important that the Court ensures that there is no prejudice to
2 the Defendant. The defence has interviewed Mr. Fisher and has been able to
3 use the information obtained from the interview to cross examine Mr. Hinds.
4 As the Crown has indicated that it will make Mr. Fisher available, it is open
5 to the defence to interview him again before opening their case. The defence
6 can call Mr. Fisher, so that they can attack the evidence of Mr. Hinds, if they
7 so wish. Whether the Defendant himself is to give evidence is a matter in
8 which he can exercise his independent judgment on advice from his
9 experienced leading counsel and attorney. Should the Defendant choose to
10 exercise his right to remain silent, there is sufficient protection within our
11 legal system, together with the necessary directions to the jury to ensure that
12 he is not prejudiced by the Crown's decision not to call Mr. Fisher or tender
13 him for cross examination.

14 26. Accordingly, I accede to the Crown's application.

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16

17 **Dated this the 12th day of April 2011**

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