

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN IN GEORGE TOWN, GRAND CAYMAN**

3 **IND. NO. 61 OF 2010**

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8

REGINA

V.

RAZIEL JEFFERS

9 **Appearances:** **Mr. Trevor Ward of the Office of the Director of Public**
10 **Prosecutions for the Crown**
11
12 **Mr. Peter Polack of Polack & Company instructing**
13 **Mr. Peter Champagnie for the Defendant**

14 **Before:** **Hon. Justice Henderson**

15 **Heard:** **July 27th 2011**

16

17 **RULING**

18

19 1. The accused, Raziel Jeffers, is charged with the murder of Marcus Ebanks. On
20 this application, he argues that the continued prosecution of him is an abuse of
21 process and the proceedings should be stayed for that reason. It is accepted
22 that I have the jurisdiction to do so. The alleged abuse arises from the
23 intentional failure by the Crown to disclose a portion of its case prior to the
24 preliminary inquiry.

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1 2. A long form preliminary inquiry was held on July 6th, 2010, after which the
2 accused was committed for trial in this court. Just one witness, Ms. Meagan
3 Martinez, was called to give evidence.

4

5 3. Prior to the preliminary inquiry, the Crown disclosed 22 witness statements.
6 These were described in argument by Mr. Ward as the crux of the case against
7 Mr. Jeffers. He said that the Crown intended to rely only upon these 22
8 witness statements at the preliminary inquiry. Well after the preliminary
9 inquiry, a great many more witness statements were delivered to the accused.
10 Included in this group were 58 witness statements which were in the
11 possession of the Crown before the preliminary inquiry and could have been
12 delivered before it started without difficulty.

13

14 4. The accused says that the Crown's failure to deliver the 58 witness statements
15 before the preliminary inquiry, without any justification for withholding them,
16 was so unfair as to amount to an abuse of the process of the court. The result,
17 says Mr. Champagnie, is that the proceedings should be stayed.

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19 5. The obligation of the Crown to disclose its case in the Cayman Islands is the
20 common law obligation. Counsel agree that the Crown has a positive duty to
21 disclose all information in its possession which has some bearing on the

1 offence charged and the surrounding circumstances of the case. They also
2 agree that this disclosure should take place before the preliminary inquiry; the
3 obligation is a continuing one. Whenever new material comes into the Crown's
4 possession, it must be provided to the defence. Of course, there are certain
5 limited exceptions such as material which may be protected by public interest
6 immunity.

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8 6. It should be noted that the Cayman Islands' obligation to disclose differs from
9 the current obligation in the United Kingdom with regard to timing. In the
10 United Kingdom, as a result of legislative changes in 1996, the Crown's
11 obligation to disclose prior to a preliminary inquiry is circumscribed in a way
12 which does not apply here.

13

14 7. In accordance with these concessions, Crown counsel accepts before me that
15 the accused's right to disclosure has been breached. This appears to have
16 happened in good faith, perhaps because of a mistaken assumption that the
17 United Kingdom disclosure regime prevails in this jurisdiction as well. I have
18 been assured during argument that steps will now be taken in the Prosecution
19 Service to ensure that there is no repetition of this unfortunate event.

20

1 8. I am satisfied that the accused's right to full disclosure prior to the start of the
2 preliminary inquiry has been violated. What relief is available to him?

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4 9. No authority has been cited to me which is directly on point. The decision in
5 *R. v Lee* [1999] 2 All E.R. 737 turns upon the 1996 English Legislation and is
6 therefore of limited usefulness here.

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8 10. There is, however, a decision of the Privy Council which is helpful. It
9 considers whether an accused was deprived of his right to a full hearing and
10 due process of law by the Crown's failure to make full disclosure prior to a
11 preliminary inquiry. Those are essentially the same considerations I must have
12 in mind here. My task is to assess whether this accused has been prejudiced
13 unfairly by the failure to disclose.

14

15 11. The case is *Ferguson v Attorney-General* [2001] UKPC 3, also reported at
16 (2001) 58 WIR 446. The court began its analysis at page 453 by observing that
17 the question of whether there has been a breach of the right to a fair trial or the
18 right to due process of law must be judged on a realistic assessment of the
19 proceedings considered as a whole. That approach, said the court, does not
20 undermine those guarantees, but rather it serves to concentrate on matters of
21 substance without focusing on technicalities or causally irrelevant breaches

1 and thus enhances the cause of human rights. The court then observed that if
2 the appellant Ferguson had a complaint at all, it must be based upon the
3 conduct of the preliminary inquiry. The court said the function of a
4 preliminary inquiry is to ensure that no one is brought to trial unless a prima
5 facie case has been made out. It cited the decision in *R. v Epping* [1973] QB
6 433. Next, the court considered the sufficiency of the evidence at the
7 preliminary inquiry. It concluded that if the relevant undisclosed witness
8 statements had been handed over at the preliminary inquiry and if those
9 witnesses had been tendered for cross-examination, the Magistrate would still
10 have been bound to commit the appellant for trial.

11

12 12. The decision in Ferguson provides me with a road map of how I must
13 approach this case. What I must now do is examine the material which could
14 have been but was not disclosed prior to the preliminary inquiry and assess
15 whether its disclosure might have affected the result. If the result of the
16 preliminary inquiry would necessarily have been the same with or without the
17 undisclosed material, the accused has suffered no prejudice.

18

19 13. The evidence of Meagan Martinez at the preliminary inquiry was as follows.
20 After being sworn, she said she was 18 years old and unemployed. She
21 continued:

1 "I know the accused Raziel Jeffers. I have a child with him. He is 15
2 months old. I was in a relationship with Raziel about six months or so
3 before I got pregnant. I was 16 when I got pregnant. Before the birth of
4 the child I lived between my sister's and my aunt's house and after the
5 child was born, I went to stay with a teacher for awhile. And then
6 Raziel and I moved in together at 134 Fairbanks. It was not the first
7 address I lived with him. That was 62 Nickel Lane, Birch Tree Hill,
8 West Bay. That was after the child was born. I was not employed then.
9 Raziel provided for myself and the child. I moved to 134 Fairbanks
10 with Raziel after we left the Nickel Lane address. We lived at Nickel
11 Lane for about six months.

12 There came a time when I became aware that there had been a shooting
13 at Bonaventure Road in May, 2009. I first learned about the shooting
14 the night it happened. I heard about it first from Raziel. I don't know
15 where he was. We were on the phone. Before that phone call from
16 Raziel telling me about the shooting I last saw him 6-6:30 that evening,
17 at 62 Nickel Lane. At home, yes. When I saw him he was with a man.
18 The man was short, dark skin and his hair was cut low. He left home
19 about 6-6:30. He left in his car that he had at the time, a white Toyota
20 Camry. It was tinted. [The next sentence is illegible.]

21 He told me he was going fishing. I understood him to mean he was
22 going on a hunt for his enemies. I knew who he considered his
23 enemies, Robert Bush, Jose Sanchez, Deward - don't know his last
24 name - Mason, Chris Bush, Andy Barnes and others associated with
25 them. Raziel and I lived together. He spoke about things often, that's
26 why I say fishing meant hunting for enemies. He used the expression
27 before. He did not return home that night. He called me around nine or
28 just after. He said that Joseph's yard had just got shot up. He was
29 referring to Joseph Hurlston. He said he wasn't coming home and he
30 was going to stay at a friend's house. He didn't say which friend's
31 house he was going to stay at. Not at the time, no. I did not hear from
32 him again that night. I saw him about ten days later because he got
33 arrested. I saw him the Saturday before his birthday. His birthday is
34 July 19th. I saw him at 62 Nickel Lane. He told me he was arrested on
35 suspicion of murder at Bonaventure, at Joseph's house. He didn't tell
36 me at the time whether he was involved or not in the murder. He said
37 he had went to his friend's house and he were there for a while then a
38 whole bunch of police came and put him on the ground and told him
39 they were arresting him on suspicion of murder.

40 There came a time when he said more about the murder. We were at
41 his aunt's house, on the board walk at Ocean Club. We were talking
42 about the war that was going on, the people that were dying in the war
43 between Logwoods and Gaza in West Bay. Gaza is Birch Tree Hill.
44 We were talking about that quite a few innocent people had died. I
45 brought up Jeremiah, Andy Barnes' son and he said Jeremiah was just

1 like Marcus. I knew he was referring to Marcus at Bonaventure even
2 tho he didn't say it to me directly. He said Marcus wasn't meant to die
3 either. He said when he ran into the yard he assumed that Marcus was
4 'Peto', José Sanchez. He said he shot Marcus assuming he was Peto.
5 His friend stayed nearer to the bushes shooting, but he was the only
6 one who went inside the yard. I said to him don't tell me anymore,
7 don't tell me this. He went quiet. I mentioned the name Peto before as
8 one of his enemies. They considered him as an enemy and believed if
9 you don't kill first, you'll be killed. Peto's baby mother and I used to be
10 best friends. We were going out one night and Peto didn't want his
11 baby mother to go and he and I got into a physical fight. I ended up
12 going to the hospital. I was pregnant but I didn't know. Peto kept
13 screaming things about Raziel like yeah, make your bad man defend
14 this because he knew me and Raziel were going out. I told Raziel about
15 this fight. He and Peto had got into a physical altercation at Kelly's,
16 after Peto and I had our fight, but I don't recall when that was. The
17 feeling of enmity only got worse. It never got better. He told me he
18 assumed Marcus was Peto and shot him.”

19

20 14. The third witness statement of Adrian Powell was also considered at the
21 preliminary inquiry. He said that when Marcus Ebanks was killed, both of the
22 assailants were wearing masks but for a brief moment the mask of one man
23 fell off. During this brief interval, Powell recognised the accused, Raziel
24 Jeffers.

25

26 15. Mr. Champagne's argument on behalf of the accused concentrated on three
27 aspects of the undisclosed material. First, he made reference to a witness
28 statement of a Ms. Frances Pringle, a pharmacist who provided some potential
29 expert evidence on the effects of morphine upon a witness' memory of events
30 and powers of recollection. That was of relevance because Mr. Powell, who

1 was shot at the same time as the deceased, was under the influence of
2 morphine for a period of time before giving his third witness statement.

3

4 16. Second, Mr. Champagne emphasised the non-disclosure of the witness
5 statement of Kurt Walton, the lead investigator. Mr. Walton questioned Powell
6 in the hospital before Powell gave his witness statement and engaged in a sort
7 of demonstration which may have influenced his recollection of what he saw.

8

9 17. Finally, the failure to disclose the crime scene photographs is criticised as they
10 may have assisted the defence in reconstructing the location of the various
11 witnesses and participants at the time of the shooting.

12

13 18. In my judgment, the evidence of Meagan Martinez and Adrian Powell justified
14 a committal for trial. If it could be said that the evidence of Frances Pringle
15 and Superintendent Walton was so cogent as to obliterate any vestige of the
16 credibility of Mr. Powell, then the Magistrate would have had to disregard his
17 evidence entirely. However, their evidence does not go so far. It may
18 ultimately serve to undermine the evidence of Mr. Powell, but it is not clear
19 that it will do so. In any event, the evidence of Meagan Martinez by itself
20 would justify a committal for trial.

21

1 19. It follows that the availability of the undisclosed evidence could not have
2 resulted in a decision by the Magistrate to discharge the accused instead of
3 committing him for trial and Mr. Jeffers has suffered no real prejudice from
4 what has happened.

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6 20. For these reasons, the application for a stay is dismissed.

7 Dated this 27th day of July, 2011

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9 Henderson, J.
10 Judge of the Grand Court

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