

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

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4 **INDICTMENT NO: 84/10**

5
6 **THE QUEEN**

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8 **V**

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10 **LEONARD EBANKS**



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13 **Appearances:**

**Mr. Trevor Ward and Ms. Marilyn
Brandt for the Crown**

**Mr. Martin Heslop Q.C. instructed by
Ms. Lucy Organ of Samson and
McGrath for the Defendant**

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20 **Before:**

The Hon. Mr. Justice Charles Quin

21 **Heard:**

5th -9th September 2011

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24 **RULING**

25 **ON DISCLOSURE OF DOCUMENTS**
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- 27 1. On the afternoon of the 8th September 2011, Ms. Arlene Whyte, witness for
28 the Crown, gave evidence during cross examination that the Defendant
29 admitted to her that he had committed another murder.
- 30 2. The witness was asked whether she had given a statement to the police in
31 relation to this other matter, to which she replied that she thought, and she
32 seemed to recall that she had.

1 3. The suggestion being made by the Defence was that because the witness had
2 worked in a police station she would be the unlikely recipient of a confession
3 by the Defendant of a criminal offence.

4 4. I will, for the record her evidence:

5 *Question: And Leonard Ebanks knew that you had worked at a*
6 *police station in Jamaica didn't he?*

7 *Answer: Yes Sir*

8 *Question: I have to put it to you, though it may be a matter of*
9 *comment, all the more reason on to confess to you of all*
10 *people. Do you see the point I am putting forward?*

11 *Answer: He confided in me. There is a lot of things he tell me*
12 *about. There is a lot of things we talk about. He just*
13 *have a lot of confidence in me, so he tell me.*

14 *Question: What sort of things did he confide in you about?*

15 *Answer: We are talking about this particular one now ---*

16 *Question: I'm sorry?*

17 *Answer: We are talking about this bit*

18 *Question: What sort of things did he confide?*

19 *Answer: He tell me a lot of things*

20 *Question: Well what sort of things?*

21 *Answer: Did he tell you?*

22 *Question: What sort of things?*

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“The test of materiality found in R v. Melvin (Unreported 1993) and adopted in R v. Keane [1994] 1 WLR 746 was applied, namely:

Information was material in the realm of disclosure if it was “seen on a sensible appraisal by the prosecution”:

- (i) to be relevant or possibly relevant to an issue in the case*
- (ii) to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use*
- (iii) to hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to (i) or (ii).”*

10. As has been cited in a number of cases the obligation on the Crown is to provide the Defendant with full disclosure and in particular, any material which might undermine the Crown case or assist the Defence.

11. It is my view that this statement relating to the other investigation and dated the 3rd October 2010 should have been provided to the Defence. However, as the witness is still now under cross examination the Defence can use the statement as it deems fit. The witness can be cross examined on it and the Defendant can put his case to the witness.

12. If the Defence requires an adjournment, then the Court is prepared to grant counsel a reasonable time to take instructions, if they so wish, on the contents of this new statement.

13. The other offence referred to in Arlene Whyte’s statement of the 3rd October 2010 is not relevant to these proceedings. However, to be fair to the Defendant, I order the Crown either to disclose the answers to questions 1 to 5 in the email from the Defence dated the 9th October 2011, or, alternatively, to provide a short summary of the material facts relating to the investigation

1 about which the witness was asked during the course of cross examination by
2 the Defence.

3 14. I find that the other questions contained in the email from the Defence which
4 is dated the 9th September 2011, are not relevant to these proceedings, and
5 indeed, may stray into the area of public interest immunity. Accordingly, I do
6 not order the Crown to answer those questions – that is, questions 6 to 13.

7 15. I assume that all the notes of the police officers' contacts with the witness,
8 Arlene Whyte, have been provided. However, out of an abundance of caution
9 this should be checked and confirmed. If there are any other notes, they
10 should be provided.

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13 **Dated this the 9th day of September 2011**

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18 **Honourable Mr. Justice Charles Quin**
19 **Judge of the Grand Court**

