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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IND. NO. 60/02

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REGINA

- vs -

OMAR SAMUELS, HERMAN HUSLIN &
JONATHAN MCLAUGHLIN

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RULING delivered by The Honourable MADAM JUSTICE K.
DOWNS on Wednesday, June 25, 2003, in George Town,
Grand Cayman.

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CHARGE: Conspiracy to import

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APPEARANCES:

FOR THE CROWN:

MS. M. SMITH-ANDACIO

FOR MR. SAMUELS:

MR. L. AIOLFI

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FOR MR. HUSLIN:

MR. J. FURNISS

FOR MR. MCLAUGHLIN:

MR. D. SCHOFIELD

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WEDNESDAY, JUNE 25, 2003

RULING

DOWNS, J.

5 The three defendants before the court stand
charged by indictment that they conspired together to
import a controlled drug, ganja, into the Cayman Islands.
In the course of the police investigation, several
statements in the form of questions and answers were
10 recorded by police officers. The defendants McLaughlin
and Samuels each has raised issues with respect to the
admissibility of a number of these statements. Each
submits that one or more of the statements pertaining to
him was involuntary in the sense that it was obtained from
15 him by fear of prejudice, threats or hope of advantage,
promises, held out by a person in authority. A voir dire
was held; this is the court's ruling on the voir dire.

20 In this ruling, when I refer to "the
defendants", I refer only to the defendants McLaughlin and
Samuels.

25 On the morning of June 4, 2002, the police
received a report of a suspicious vessel, a Jamaican type
canoe, being pulled from the water. The police attended
at an address where the boat was taken and questioned the
men who were there. All three defendants were held for
investigation. The boat was searched and nothing of
significance was found, although it was later swabbed and
30 a trace of ganja was identified.

The defendant McLaughlin was interviewed

5 just after noon on June 6th. The record of interview is marked as Exhibit 3 on the voir dire. Mr. McLaughlin testified on the voir dire. According to him, he asked for a lawyer and a phone call but was told he did not need a lawyer and he would have to wait to make a call until after the statement. Further, according to Mr. McLaughlin, inappropriate things were said to him by the police. However, Mr. McLaughlin did not say that anything contained in the first recorded statement was in consequence of the inappropriate comments made to him by the police officer. Therefore, I find that the contents of the statement made by the defendant McLaughlin recorded in Exhibit 3 on the voir dire is admissible in evidence.

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Mr. McLaughlin testified that between the interview recorded on Exhibit 3 and the interview which is recorded on Exhibit 1 on the voir dire, there was another interview (which has been referred to in the course of these proceedings as the "aborted interview"). He said that when he again stated that the boat was to have been used for a fishing trip, Detective Sergeant Brown said, amongst other things, that he was a "fucking liar". He said Detective Sergeant Brown took the papers and "crushed them up." Mr. McLaughlin said that Detective Sergeant Brown then said to him that he, D.S. Brown, knew that they were going to Jamaica to get weed and that "if I didn't tell him we were going to Jamaica, he'd lock me back up."

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D.S. Brown denied he was present at an "aborted" interview. However, P.C. Pollard testified that there was an attempted interview at which both he and D.S. Brown were present. P.C. Pollard said that the defendant

McLaughlin was taken from cells for an interview but for some reason "we didn't follow-up". He said he could not recall now why they did not follow-up.

5 It should be noted that none of the police officers who testified on the voir dire kept any notes of the investigation or their dealings with the defendants. Each relied upon his own recollection of events and the recorded statements tendered as exhibits on the voir dire.

10 At 5:30 p.m. on June 6th, the second recorded interview of Mr. McLaughlin was begun. He said that he again asked for an attorney. Mr. McLaughlin said that in response to this request, D.S. Brown said, "No, you don't need a lawyer because this is going to be over
15 in no time. It's nothing serious, just tell me if you were going to Jamaica because if you was going we can't do nothing. The boat was clean. We can't do you nothing if you were going, it's just a trip."

20 According to Mr. McLaughlin, D.S. Brown, during the course of this interview, repeatedly called him a liar. He said D.S. Brown said, "If you don't deal with me right, I won't deal with you right." He said he was
25 forced to give the answers which he gave to the questions asked although his first response to many of the questions was "no comment". He said he understood that if he did not give the answers D.S. Brown wanted, he would not be given bail and would be locked up again. Mr. McLaughlin
30 said the answers recorded on the statements were not the answers he intended to give. He said he did not give his answers voluntarily.

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Mr. McLaughlin suffers from asthma. He testified that while he was being held he was taken to hospital three times for asthma attacks. He said that at one point during the second recorded interview D.S. Brown told him "You have asthma, just go easy on yourself. Just tell us you were going to Jamaica and you can go free. I'll give you bail, no charges." In his testimony, D.S. Brown denied any knowledge about Mr. McLaughlin having a health problem. P.C. Pollard testified that he recalled that Mr. McLaughlin made two trips to hospital and that Mr. McLaughlin said he had asthma.

Mr. Samuels also testified on the voir dire. A recorded statement, marked as Exhibit 2 on the voir dire, was taken at 4:00 p.m. on June 5th. In that statement, answers were given to questions about the boat, the Jamaican canoe, which was owned by him and the outboard engine on that boat which had been reported to have been stolen in February 2002. I find that Mr. Samuels's statements in that recorded interview were made voluntarily and are admissible in evidence.

Mr. Samuels testified that immediately after the Exhibit 2 interview was concluded, P.C. Pollard and D.S. Brown began another interview, which they started to record, about drugs. Mr. Samuels said he did not admit to drugs, that he told them they were going fishing, that there was nothing on his boat and that he had nothing more to say. He testified that in response to this D.S. Brown said that he could do nothing with that and instructed that Mr. Samuels be locked down.

Mr. Samuels testified, as did Mr. McLaughlin, that both of them were about to be given bail by Officer Montague and that while they were together and the bail documents were being written, D.S. Brown intervened and tore up the papers. Mr. Samuels and Mr. McLaughlin both testified to the effect that D.S. Brown told Mr. McLaughlin to take his jewellery back off and instructed that they be locked down again. Mr. Samuels said that D.S. Brown said at that time, amongst other things, that they were both liars.

On June 6th at 1:00 p.m., Mr. Samuels was again interviewed. He said before the interview he was told that "they had nothing on me and couldn't charge me but they knew we had planned to go to Jamaica." He said, "They told me that if I didn't tell them what they wanted to hear, it would be worse for me." Mr. Samuels also testified that D.S. Brown said that "Jonathan (Mr. McLaughlin) had to go to hospital - he wasn't handling jail life. He said your brethren can't handle jail life so make it easy on the two of you and tell me what I want to hear."

Mr. Samuels said he asked for an attorney but was told he did not need one as this was nothing serious. He said he was persuaded into believing that if he cooperated he would not be charged. He said he would not have given the answers recorded on Exhibit 4 on the voir dire if not for the promises given or threats made by D.S. Brown.

On cross-examination, Mr. Samuels said

5 D.S. Brown threatened to find something to charge him with. He said D.S. Brown said, "If this was in Jamaica, the whole thing would be dealt with in a totally different manner - hit first, ask questions later." Mr. Samuels said he didn't want to get into that situation.

10 Mr. Samuels testified further on cross-examination to the effect that D.S. Brown told him that he had to answer the questions and "he basically told me what he wanted to hear." Mr. Samuels said D.S. Brown said, "Either you tell me what I want to hear or I'll make this harder for you."

15 The police officers who testified on the voir dire all testified that the only conversations and interviews with defendants were those recorded on the records of interviews marked as exhibits. However, P.C. Luke testified he asked Mr. McLaughlin before the first interview if he wanted a lawyer present and that he said, "No." P.C. Luke acknowledged in cross-examination this was not written down.

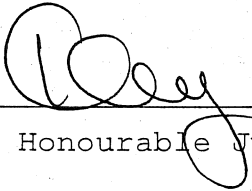
20 In these reasons, I have related only a portion of the evidence given on the voir dire. In reaching my decision, I have, of course, given
25 consideration to all the testimony given.

30 It is common ground that the law requires that the Crown prove beyond a reasonable doubt that the statements given by the defendants were given voluntarily. This is a fundamental condition of admissibility as set out in the Judges' Rules. Having considered the whole of

the evidence, I have a reasonable doubt as to the voluntariness of the statements contained in Exhibits 1 and 4 filed on the voir dire. I find they are inadmissible evidence and they shall be excluded.

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The Honourable Justice Downs

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