

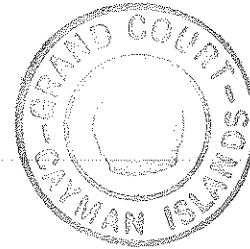
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
3 CRIMINAL SIDE

Cause No. IND. 15 OF 2011

6 REGINA

8 V

10 RAZIEL JEFFERS



13 In Open Court on 4 to 15 August 2014
14 Before the Honourable Chief Justice

17 **APPEARANCES:**

Miss Cheryll Richards QC and Miss Candia James for the Crown

19 Mr. Brian O’Niel QC instructed by Ms Fiona Robertson of Samson & McGrath for
20 the Defendant

22 **RULING ON NO CASE SUBMISSION**

- 23 1. The defendant is charged on an indictment that alleges that he, together with one
24 Jordan Manderson, on the 11 of March 2010, at 28 Malwinas Way, West Bay, Grand
25 Cayman, murdered Marcos Mauricio Duran.
26
- 27 2. The defendant applies that the indictment be dismissed on the basis that the evidence
28 against him would not be sufficient to put him on his trial. He applies pursuant to the
29 provisions of section 85A of the Criminal Procedure Code, having been committed for
30 trial without the benefit of a preliminary enquiry and so the Crown takes no issue with
31 his right to make this application.
32
- 33 3. Jordan Manderson, who had been previously charged and joined on this indictment for
34 the murder of Mr Duran, was ordered to be separately tried and subsequently tried and
35 acquitted by Justice Quin sitting without a jury.
36
- 37 4. It is accepted nonetheless that the case against the defendant must be examined
38 according to the evidence as it would relate to him.

- 1 5. The prosecution accepts that it must of course, be able to adduce evidence upon which
2 a reasonable jury properly directed could be sure that the elements of the offence of
3 murder are established as prescribed by section 181 of the Penal Code.
4
5 6. For proof of the requisite malice aforethought, the prosecution places reliance upon
6 sections 18 and 19 of the Penal Code and upon the applicable case law.
7
8 7. Section 18 deems a person who aids or abets or counsels or procures the commission of
9 an offence to have taken part in the commission of the offence and to have committed
10 the offence.
11
12 8. It is in those capacities that the defendant is alleged to be liable for the murder of Mr
13 Duran.

14 Section 19 of the Penal Code provides:

15 *"When two or more persons form a common intention to prosecute an unlawful*
16 *purpose in conjunction with one another, and in the prosecution of such purpose*
17 *an offence is committed of such a nature that it's commission was a probable*
18 *consequence of such purpose, each of them is deemed to have committed the*
19 *offence".*
20
21

- 22 9. Here the prosecution's case depends essentially, upon the evidence of Miss Megan
23 Martinez, a young woman with whom the defendant was in a close relationship at the
24 time of the incident and with whom he had a child. Her evidence would be to the effect
25 that the defendant admitted to her he was the person who master-minded a plan to rob
26 Mr Duran, a plan which involved the use of a firearm or firearms which he admitted to
27 have provided to those whom he recruited to carry out the robbery. It follows, says the
28 prosecution, that a reasonable jury properly directed could conclude that the
29 intentional infliction of serious bodily harm was a probable consequence of the robbery.
30
31 10. I am of the view that a reasonable jury properly directed could conclude on the
32 evidence of Miss Martinez as follows:
33
34 1. That the defendant admitted to having planned with others to rob the "numbers
35 man", who turned out to be Mr Duran
36

1 II. That the defendant admitted to have provided at least one or more than one of
2 those others with a firearm or firearms, which he said would be used to
3 "frighten" the numbers man.
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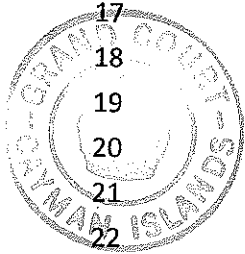
5 III. That he admitted to being at the apartment of Rita Martinez at 28 Malwinas
6 Way, for the purpose of alerting his accomplices to the arrival of the numbers
7 man (Mr Duran) on 11 March 2010; for the purpose of aiding and abetting the
8 robbery.
9

10 IV. That he admitted to telephoning his accomplices, who were laying in ambush
11 outside the apartment, actually alerting them to the arrival of the numbers man
12 and of his departure from Rita Martinez' apartment.
13

14 V. That immediately following the botched robbery and fatal shooting of Mr Duran,
15 the defendant fled from Rita Martinez' apartment for fear of being accosted by
16 the police and hid until he was picked up by Ms Martinez and her friend on
17 Ebanks Road near to the scene of the shooting, in a state of panic. He then told
18 Ms Martinez that "he did not know yet what had happened but the poor
19 numbers man was dead."
20

21 VI. He admitted to having helped one of his accomplices, Craig Johnson to clean his
22 car on the day after the murder, that which was planned for and used as the
23 getaway car for the robbery, to rid it of any traces of evidence and, implicitly to
24 having discussed with Craig Johnson, what had happened during the incident. He
25 recounted to Ms Martinez what he claims to have been told about the incident,
26 including that Jordan Manderson had gotten into a struggle with the numbers
27 man and the gun Manderson was carrying went off, shooting Manderson in the
28 leg. That another accomplice named Joshua shot the numbers man and a third
29 named Austin managed to retrieve the firearm Manderson had dropped and also
30 shot the numbers man.
31

32 11. The forensic evidence in the case shows that Mr Duran was shot at least three times,
33 and that at least two different firearms were involved. The independent evidence also
34 confirms that Jordan Manderson sustained a gunshot injury to the leg and DNA evidence
35 confirmed that he had bled at the scene.
36



1 12. The independent evidence in the case shows that the numbers man, Marcos Duran was
2 shot and killed as he left Rita Martinez's apartment on the 11 March 2010 at about the
3 time that Jeffers is reported by Ms Martinez to have called her in a state of panic and
4 when he told her the shooting had taken place.
5

6 13. On that evidence if accepted as true, a jury could properly conclude that the defendant
7 was responsible not only for conspiracy to commit the failed robbery of Mr Duran, but
8 also for his murder on the basis that, viewing the circumstances objectively as a whole,
9 it was an offence which was the probable consequence of the carrying out of the
10 planned robbery. See *R v Stuart* 134 CLR 426 where this statement of the principle was
11 approved.
12

13 14. In the alternative on the basis of section 59 of the Criminal Procedure Code, it could be
14 left to the jury to consider whether the defendant is guilty of manslaughter on the basis
15 that he was a party to an unlawful act, the attempted robbery; which was by any
16 measure a dangerous act because of the involvement of the firearms, and which
17 resulted in the death of Mr Duran. At the very least, the plan to rob Mr Duran involved
18 the intention to assault him by scaring him with the firearms and so was an unlawful act
19 which, because it involved the use of firearms, was also an inherently dangerous act.

20
21 Ruling delivered in open court on 5th August 2014
22

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26 
27 **The Honourable Justice Anthony Smellie**
CHIEF JUSTICE

