IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

IND. NO. 77 OF 2012

THE QUEEN
V
BRIAN BORDEN

IND. NO. 88 OF 2013

THE QUEEN
V
DAVID TAMASA

IN OPEN COURT
THE 14TH DAY OF MARCH 2014
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

APPEARANCES: Mr. Andrew Radcliffe QC and Ms. Tricia Hutchinson for the Crown
Mr. Nick Hoffman of Priestleys for Brian Borden
Ms. Lucy Organ of Samson and McGrath for David Tamasa

Defendants separately indicted for joint offence – whether indictments should be join or severed trials ordered – whether joint trial would be a breach of constitutional right to fair trial.

REASONS FOR JUDGMENT

1. The Defendants are charged on separate indictments for the murder of Robert Macford Bush, committed on 13th September 2011, at West Bay, Grand Cayman[1].

2. The Defendant Borden was indicted on 21 August 2012 and the Defendant Tamasa was indicted on 14 January 2014. The Indictments now separately and respectively allege that Brian Borden (together with another unnamed person who remains at

[1] On the Indictment against him, the defendant Borden is also charged with the offence of the unlawful possession of a firearm.

large) committed the murder by doing the actual shooting that led to the death of Robert Macford Bush and that David Tamasa aided and abetted them in the commission of the offence[2].

3. The prosecution now seeks to join Brian Borden and David Tamasa in a single indictment but this is resisted by counsel on behalf of both Defendants. While the joinder of the two indictments is not opposed in principle, they would seek immediately an order for severance to allow separate trials.

4. Two different provisions of the Criminal Procedure Code ("CPC") arise for consideration and it is the apparent tension between the two that must be resolved

5. Section 162 of the CPC states in relevant part that:

> "*The following may be tried in one indictment and tried together –*
>
> *(a) Persons accused of the same offence committed in the course of the same transaction;*
>
> *(b) Persons accused of an offence and persons accused of abetment or an attempt to commit such offence; ...*"

6. On the other hand, Section 118 (3) of the CPC states:

> *Where, before trial upon indictment or at any stage of such trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or for any reason it is desirable to*

[2] Section 18 1(c) of the Penal Code (2013 Revision) codifies the common law principle that every person who aids and abets another in the commission of an offence is deemed to have taken part in committing the offence and may be charged with actually committing it. And in section 19, the principle that when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

direct that where there are two or more accused persons they should be tried separately, the court may order the separate trial of any count or counts in such indictment or the separate trial of any accused persons charged in the same indictment." (Emphasis added.)

7. As both Defendants are already separately indicted and having been committed separately for trial, it is first the prosecution's application under Section 162 that leave be granted for the filing now of a joint indictment[3]; alternatively, that the existing indictment against Borden be amended so as to join Tamasa to it.

8. Not only do counsel for the Defence both acknowledge the existence of the jurisdiction to allow the filing of a joint indictment or the grant of an amendment; they both also helpfully acknowledge that these Defendants can properly be joined for trial in one indictment and that it is ordinarily in the public interest that persons charged with the same offence should be tried together.

9. These concessions are properly made in this case. In *R v Assim*[4] Sachs J. (as he then was) declared, in his judgment on behalf of the Court which involved a full examination of the case authorities, that:

"Where, ...the matters which constitute the individual offences of the several offenders are upon the available evidence so related, whether in time or by other factors, that the interests of justice are best served by their being tried together, then they can properly be the subject of

[3] *Regina v Wilson 58 Cr. App. R. 169*; *Townsend and Others v R 2 Cr. App. R. 540* and *R v Groom (1976) 62 Cr. App. R. 242* are ample authority for the proposition that defendants committed separately for trial can be joined for trial in the same indictment for an offence (or offences) which can lawfully be charged in counts in the same indictment.

[4] (1966) 50 Cr. App. R. 224, 230 – the English Court of Appeal there considering the provisions of the Indictment Act 1915 upon which the relevant provisions of the CPC are patterned.

counts in one Indictment and can, subject always to the discretion of the Court, be tried together."

10. The Court must of course, balance the interest of the accused persons in being afforded a fair trial against the public interest in the due administration of justice. This will often require the judge to weigh the advantages of a single trial against the possibility of prejudice against the accused and considering how far the appropriate directions to the jury would assist them in considering only such evidence as is relevant and admissible against each co–accused.

11. The public interest concerns that must be considered in carrying out the balancing exercise were identified by the English Court of Appeal in *R v Lake*[5] in the following terms:

> *"It has been accepted for a very long time in English Practice that there are powerful public reasons why joint offences should be tried jointly; the importance is not merely the saving of time and money. It also reflects the desirability that the same verdict and the same treatment shall be returned against all those concerned in the same offence; if joint offences were widely to be tried as separate offences, all sorts of inconsistencies might arise; accordingly, it is accepted practice that joint offences can be properly tried jointly, even though this will involve inadmissible evidence being given before the Jury and the possible prejudice, which may result from that. Of course, the practice requires that the trial judge should warn the Jury that such*

[5] *64 Cr. App. R. 172, 175*, the *ratio decidendes* of which has been reproduced at *Archbold (2014 Ed.) para 1-257.*

evidence is not admissible (as against a particular defendant or defendants)."

12. The same principle had been earlier recognised in *R v Hoggins*[6] where it was held (among other things) that:

> *"The factor of the public interest in the proper administration of justice is a very powerful factor indeed, and in the majority of cases where men are charged jointly, it is clearly in the interests of justice and ascertainment of truth that all the men so charged should be tried together."*

13. These concerns for ascertainment of the truth and the avoidance of inconsistent outcomes are especially relevant in the present case where the central evidence against each defendant is to come from the same witness. Here, while the case against each defendant may be distinct in terms of the nature and extent of his alleged involvement, the allegation is clearly that of joint involvement in the same offence.

14. The foregoing acknowledgement of established principles and their applicability notwithstanding, Counsel for the Defendants both now argue that in the particular circumstances of this case, separate trials for each of their clients should be ordered by the Court.

15. A consideration of the relevant circumstances, as they may be gleaned from the evidence filed by the Crown, must therefore be taken[7].

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[6] 51 Cr. App. R. 444, 448.

[7] See *R v Assim (above) at page 29, where Sachs J rejected the argument that when examining the question whether a joinder is or is not proper, the court can look only at what appears on the face of the Indictment and is debarred from looking at the substance of the case as disclosed in the depositions.*

16. They centre around the fact that the central evidence against both Defendants will come from a single witness, Marlon Dillon who, for reasons which will no doubt be heavily probed at trial, told the authorities about the involvement of each Defendant at different times – Borden in August 2012, fully a year before Tamasa, in August 2013.

17. This fact, in broad terms, was the reason for the charges being laid against the Defendants at different times although another factor also raised by Defence Counsel, is the delay between the time of Dillon's allegation of Tamasa's involvement and Tamasa being charged for the offence in December 2013[8]. It is said that this delay also militates against the joinder of Borden's trial with Tamasa's, given that the latter has already been awaiting trial for over 18 months and a joint trial date cannot be arranged until some months after the earliest date on which Borden could be tried, if tried alone.

18. But while any undue delay up until now and any avoidable delay to come are important concerns, the gravamen of the Defendants' complaint now is that a joint trial will be unfairly prejudicial to each Defendant, arising from the fact that Marlon Dillon will be the single central witness to the case against each Defendant.

19. That circumstance comes about from what Dillon himself alleges were admissions made by each Defendant in his presence to their respective involvement in the murder of Robert Macford Bush, against the background of gang rivalry between two West Bay factions, one from the area known as Logwoods, the other from the Birch Tree Hill area.

[8] He was later indicted on 14 January 2014 after committal to the Grand Court by the Summary Court on the charge laid before the Summary Court.

20. According to Marlon Dillon, these admissions came about one morning, probably in February or March 2012, when both Defendants drove with him in his car in West Bay in the area of Birch Tree Hill Road. They had been together at Tamasa's house and Tamasa had asked Dillon to give Borden a lift to his home.

21. Dillon reports that as the three travelled in his car along Birch Tree Hill Road towards Firewood Close and turned into Capts' Joe and Osbert Road, Brian Borden said words to the effect:

"*You know where this is. This is Birch Tree Hill Cemetery you know.*"

22. Borden is reported to have then pointed to the left where Robert Macford Bush's car had been found by the police crashed into a wall after he had been shot to the head, disfiguring his face. Borden is reported to have said (again, words to the effect):

"*This is where we mash up that mother fucker boy Robbie. We give him a closed casket.*"

23. The Prosecution will say that the meaning of this as a boastful admission to the brutal murder was obvious and was clearly understood, not only by Dillon, but by Tamasa as well.

24. Dillon reports that Borden's boast continued and Dillon described him laughing while he added:

"*I used a mass bird to lick him with.*"

25. Dillon knew that a "mass bird" meant a shot gun that fired automatically without the need for it to be pumped before each shot. The term "lick" was local slang meaning to shoot.

26. Borden said that the other gun involved a Browning 9MM handgun that belonged to a man called Royce, who Dillon did not know. Dillon had previously seen Borden with a black coloured Browning 9MM handgun.

27. Borden identified another man who goes by the name "Bosh Bosh" as the second gunman involved with him in the shooting, someone whom Dillon also claims to know and who has also been indicted for the murder but remains a fugitive.

28. Dillon listened in silence to Borden's description of the shooting of Robert Bush by the two assailants, including Borden's narration of how it was they had come to know of Bush's whereabouts and how they were able to spring the ambush.

29. According to Dillon, he dared make no comment on what Borden was saying and said nothing. They dropped Borden off at his home and he and Tamasa drove away.

30. Dillon had become friendly with Tamasa about two years earlier, in around 2010 and as their friendship grew closer, had taken to visiting Tamasa at his home in Glidden Lane. There, according to Dillon, Tamasa would show him various firearms and ammunition that he had in his possession. Tamasa told him details about where certain of those guns had come from and where they had been used and said that he would only supply them to those associated with Birch Tree Hill Road faction. He had a range of different ammunition that he showed Dillon, telling him that he obtained them from Jamaica.

31. Returning to the occasion when the three were together in Dillon's car, Dillon reports that after leaving Borden at his home address, he and Tamasa drove back to Tamasa's home so that Dillon could leave him there. But Borden, having spoken so openly about the murder, David Tamasa continued to speak about the matter.

32. Speaking in patois, Tamasa said that "Deward" (who the Crown suggests is one Roger Deward Bush), would be the next to die, because he was behaving like he was the boss of West Bay. Tamasa continued by saying that he was the one who gave Brian Borden the ammunition that was used to shoot Robert Bush and added that he hoped Brian had cleaned the rounds used so that no evidence could lead back to himself.

33. Apart from Dillon's evidence of these admissions, the Crown will also be relying on telephone evidence against both Defendants, the bulk of which relates to communications between Borden and other individuals on the day of the murder and which will help to prove his movements and whereabouts at the time of the shooting. Telephone evidence also shows significant contact between Borden and Tamasa on the day of the murder.

Objections to joint trial: Borden

34. On behalf of Borden, it is said that there are three principal reasons why the risk of prejudice to arise from a joint trial is unusually great.

35. The first is said to be the further delay, on top of the 18 months already experienced, before a trial of the two together could be convened. A trial for Borden alone could be taken in May 2014 but a trial of the two together no sooner than July. I will return to deal with this issue below.

36. The second reason is said to be the fact that Tamasa has recent previous convictions for armed robberies arising from other proceedings in which Marlon Dillon was witness for the Prosecution. These were widely publicized trials about which a jury would inevitably have become aware. So Borden would find himself in the dock with

a man who had recently been convicted on the evidence of Marlon Dillon of two very widely publicized armed robberies. The risk of such prejudice not being removed from the minds of jurors by the customary directions from a trial judge, would outweigh the public interests in a joint trial.

37. The third element of risk of prejudice, as Borden perceives it, will arise from the fact that the Prosecution intends to adduce the alleged admission of Tamasa to Dillon of Tamasa's role in aiding and abetting the commission of the murder by Borden. While that evidence would be admissible as against Tamasa only, it would be adduced before the jury trying them jointly and therefore highly prejudicial to Borden.

38. The customary direction required by the law to be given to the jury in those circumstances which would be to the effect not to treat or regard that evidence as evidence against Borden, could hardly be effective in those circumstances, says Mr. Hoffman. This would be because the jury will know that the evidence on its face is a confession by Tamasa to Dillon: the same man to whom similar confessions were made in previous cases and apparently accepted by the Court in those cases in which Tamasa was convicted. The argument continues that the jury will know of the previous convictions and cannot now be insulated from it. A direction that the jury are to put out of their minds the confession evidence against Tamasa when considering the case against Borden will have, at best, a limited effect and, at worst, it will highlight the very issue that is so dangerously prejudicial to Borden.

39. Given the nature of the objections; in my assessment now of this issue of prejudice, I think I am obliged, as if at trial, to consider carefully, the circumstances and the proposed evidence as they would relate to each Defendant separately.

40. The paramount consideration – that of the public interest in the due administration of justice notwithstanding – is in my view to be found in the words of Section 7 of the Bill of Rights of the Constitution which states that:

> *"Everyone has the right to a fair trial and public hearing in the determination of his or her legal rights and obligations by an independent court within a reasonable time."*(Emphasis supplied.)

41. In the exercise of the discretion that I have in deciding whether there should be separate trials, the paramount question therefore becomes whether a joint trial could be prejudicial to the constitutional right of either Defendant to a fair trial.

42. Borden, as is his right, has elected to be tried by a judge and jury even while Tamasa has exercised his right and elected to be tried by a judge alone.

43. According to section 129(5) of the CPC[9], the default position in this situation is that they are both to be tried by a judge and jury, if they are to be tried together.

44. That is the position mandated by the CPC and which I must regard, in the absence of any challenge to that law's constitutionality, as comporting with the constitutional mandate for a fair trial where it is otherwise proper that defendants should be tried together.

45. In other words, where two or more defendants are jointly indicted and one or more elect trial by jury, there is nothing inherently unfair about other defendants having to submit to trial by jury as well. Under the Constitution, trial by judge and jury is deemed no less likely to be fair than trial by judge alone. And this basic proposition

[9] Which provides that the election for trial by judge alone when two or more accused persons are joined in the same indictment shall only be exercisable by all such accused persons jointly.

must be regarded as accepted by the Defendant Borden, given his election to be tried by judge and jury instead of by judge alone.

46. Borden's election has been made on the basis of competent legal advice and therefore on the basis of an understanding that trial by jury proceeds upon the basis of the settled principle that the law regards juries as obliged to act on the instructions given them by the judges. And moreover, that it is an equally venerable and settled proposition, and experience has shown, that juries in the English – and hence the Cayman Islands tradition, do follow and apply faithfully the directions of the judges.

47. As the case law considered above shows, in the exercise of my discretion now, it is not open to me, nor would it be proper, to assume otherwise. Yet, that is plainly the assumption upon which the arguments on behalf of Borden rest.

48. To be clear, I will state immediately that I do not accept that there is an inherent risk of unfairness to the Defendant Borden from having to submit to a trial in which directions would have to be given to the jury not to treat Dillon's evidence about Tamasa's admission as evidence on which they could rely in any way to establish Borden's guilt.

49. Nor – should the need arise to direct the jury to disabuse their minds of any consideration of Tamasa's earlier trials and convictions based on Dillon's testimony in those cases – do I accept that there would be any inherent risk of the jury failing to do so. Indeed, I do not anticipate a risk of that issue arising at all upon Borden's trial, unless he seeks to raise Tamasa's previous convictions in his own defence.

50. Barring the issue arising in some such specific context, I must proceed now on the basis that the jury will at the outset and at other appropriate stages of the trial, be

directed by the judge to disabuse their minds of any irrelevant or extraneous material; that is: any information apart from the evidence to be adduced before them at trial. A recent Practice Direction is aimed at bolstering this by a warning to jurors that to seek out extraneous information for instance by way of the Internet, would be a contempt and punishable as such. These too would be directions that I must assume the jurors would obey as they are bound by the law and by their oaths to do.

51. Factors of the kind raised above on behalf of Borden as sufficient to identify a risk of prejudice in the mind of jurors have been described in the case law as "*commonplace*" and as insufficient to justify severance[10]. In the recent case of in *R v Miah*[11] it was also said that there had to be a showing of "*exceptional circumstances*" to justify overriding the public interest in, and sound policy reasons for, having a single trial of defendants who are jointly charged with the same criminal offences arising out of the same central facts.

52. While, as already recognized and accepted, the public interest and similarly sound policy reasons exist in the Cayman Islands to require a single trial of defendants charged with the same criminal offence, I should explain that I do not proceed on the basis of any implication, that the need to show "exceptional circumstances" to justify severance places a burden upon a defendant to do so. Such an implication would, to my mind, run contrary to the constitutional guarantee of a fair trial which, as already

[10] Recently for instance, by the English Court of Appeal in *Regina v Miah and Choudary [2011] EWCA Crim 945.*
[11] At paras. 57and 58; dicta also expressed by Scarman LJ in *R v Moghal* (1977) 65 Cr. App. R. 56 – to the effect that only in very exceptional circumstances is it wise to order separate trials when two or more accused are jointly charged with participation in one criminal offence.

noted, must take precedence. Indeed, as was reaffirmed by the English Court of Appeal in *Lake's* case:[12]

> *"...the question of severance is primarily one for the trial judge. The discretion was properly exercised in the present instance, and notwithstanding the fact that there must have been some risk of prejudice the decision of the judge, we think was right. Of course if a case is strong enough, if the prejudice is dangerous enough, all rules of this kind must go in the interests of justice...."*

53. The foregoing are the considerations of fairness against which I have measured the perceived risk, concluding that any such risk is to be appropriately addressed by the required directions from the judge, as it may arise in Borden's case.

54. I think it also appropriate to note that as the right to elect trial by a jury was exercised by him after 18 months awaiting trial and only before me upon the hearing of these applications; if Borden really does perceive the risks differently on account of being jointly indicted with Tamasa and wishes to change his election, he ought to be allowed to change his election to trial by judge alone[13].

55. There would be no harm in allowing him to do so in light of this decision that he be tried jointly with Tamasa[14].

56. Nor, should he so elect, would there be any risk of prejudice to Tamasa who has already announced his election for trial by judge alone.

Per the Lord Chief Justice at 175

[13] The premise of the right of election is clearly stated in Section 129(1) of the CPC: "If an accused person is of the opinion that, due to the nature of the case or of the surrounding circumstances, a fair trial with a jury may not be possible, he may, ...elect to be tried by judge alone;...."

[14] Section 129(2) explains that a defendant may with leave change his election because of exigent circumstances.

Tamasa's Objections

57. So what then of the risk of prejudice to the Defendant Tamasa from being required to submit to a joint trial with the Defendant Borden?

58. An obvious concern raised by Miss Organ is that Tamasa would lose his right to elect for trial by judge alone. This, as already noted, would be a function of the operation of the CPC which makes the default position trial by jury, where any one of two or more defendants elects trial by jury. As also already noted, there is nothing unconstitutional or inherently unfair or prejudicial about that loss of the right to elect in such circumstances. The default position as prescribed by the CPC would, in my view, pass the test of compatibility with the Constitution[15]. So too, elsewhere in the language of the Constitution, would the test of what is "reasonably necessary in a democratic society" – in this context – in order to ensure that a defendant is afforded a fair trial while ensuring the public interests in the due administration of justice.

59. Beyond that, the concerns about the risk of prejudice said to arise in Tamasa's case are presented in much the same way as they are perceived on behalf of Borden; that is: evidence of Borden's admissions to the murder, although not admissible as against Tamasa, would nonetheless be heard by the jury.

60. While this concern over admissibility may be at least debatable – as Borden's admissions are to be said by Dillon to have been made in Tamasa's presence and implicitly adopted by him in his own admissions about supplying the ammunition[16] – if correct, can be addressed by the same kind of directions to be given by the trial judge to the jury.

[15] In the context of Section 25 of the Constitution, given its meaning and purpose, "the compatibility" of this provision of the CPC with the Bill of Rights is neither "unclear" nor "ambiguous".

[16] See, for instance, *R v Rhodes (1959) 44 Cr. App. R. 23* and *Blackstone's Criminal Practice 2013 Ed. F17.80.*

61. In Tamasa's case, such directions would, in my view properly extend, if the need was perceived by the judge to have arisen – to directions not to take account of anything coming to their attention about previous offences committed by Tamasa. And I note that I come to this conclusion now, recognizing that the case law emphasizes the need for careful consideration when certain evidence which would not be admissible in the case of one defendant tried alone will become admissible in a joint trial, albeit subject to direction from the judge[17].

62. Mr. Hoffman also argued that the public interests can be readily served by separate trials because if Borden were tried first and acquitted, there would be no basis for a conviction against Tamasa and so a second trial would not be required. But while that could happen, the proposition does not address a situation where Borden is tried first and convicted, resulting in Tamasa having to be tried separately on the evidence of Dillon who would have been accepted as a truthful witness in Borden's case. In that situation, the re-evaluation of Dillon's evidence by a different jury in relation to Borden's participation in the murder of Robert Bush and Tamasa's role as aider and abettor, contingent on Borden's participation, could lead to inconsistent outcomes. This could be so, notwithstanding the possible admissibility of proof of Borden's conviction pursuant to section 35 of the Evidence Law 2011[18] and it seems to me that the safest approach is to have a single tribunal become responsible for the assessment of the reliability of Marlon Dillon as a witness.

[17] *R v Miah* (above).

[18] Reversing the old common law rule by which the convictions of one person were not admissible as evidence of the facts on which they were based at the subsequent trial of another: *Turner (1832) 1 Mood CC 347* and *Blackstone's 2013 Ed. F11.6.*

63. Again, it must be emphasized that the practice developed over very many years has shown that appropriate directions are given by the judges and followed by juries for dealing with concerns of the kind arising in this case.

64. There are many examples to be found in the case law but as the question of joinder or severance in each case must be considered on its own peculiar facts and circumstances, there would be little point in reciting examples. The application of general principles will always be affected by the facts of individual cases.

65. I will conclude on this issue of possible prejudice with reference to but one more of the many cases which are illustrative.

66. In *R v Joseph and Christie*[19] the defendant Joseph had made statements to the police which were highly damaging to his co-defendant Christie but which were admitted into evidence at their joint trial. Nonetheless, the Court of Appeal held that:

> *"The fact that statements of a co-defendant may rub off on the other accused, however hard the judge tried to avoid it; is just one of those things that happens in the course of a multiple trial. The advantage of having co-defendants tried together is so great that the right to order a separate trial will not be granted unless there is good reason for it."*

67. In the present case, I have been particularly concerned about the efficacy of a direction to be given to a jury to disabuse their minds of the admissions to be attributed to the Defendant Tamasa, in so far as those admissions might implicate his co-Defendant Borden. In the end, I am satisfied that as the jury must also be told that they can convict neither Defendant without being sure that Dillon is an accurate and truthful witness, there should be no unusual risk of a conviction arising from them

[19] 65 Cr. App. R. 253 CA

failing to act on such directions. I am satisfied that there is no good reason to direct separate trials, especially bearing in mind the attendant risk of different juries taking different views of the evidence to come from Marlon Dillon as the central and common witness for the Crown against both Defendants.

68. Those are the essential reasons for my refusal to order separate trials.

69. I will go on to explain why concerns over delay in Borden's case do not persuade me otherwise.

70. Prosecutorial delay has not yet become an issue on Borden's case. A first trial date was set in timely fashion for 12 February 2013 but was vacated because his leading Counsel unfortunately sustained an injury shortly before.

71. A second trial date was set on 18th June 2013 but was vacated and the judge's file note reflects that this was because "the Crown is reviewing its position concerning its key witness Marlon Dillon". Cryptic though that explanation may seem, we now know that the Defendant Tamasa was arrested and charged shortly afterwards in August 2013, on the strength of Dillon's statement.

72. A third trial date was then set for Borden on 20 January 2014 but by that date his defence team had been notified of Tamasa's arrest and indictment for the same offence and applied for the postponement of the trial. Their concern was that they had not yet been given full disclosure of the Crown's case against Tamasa and that they might wish to apply for a joint trial.

73. Counsel for the prosecution, in retrospect with seemingly equal irony, then argued against the adjournment on the basis that the case against the Defendants could and should be tried separately. However, this is a position which Mr. Radcliffe QC now

explains was taken primarily out of concern to avoid further delay in Borden's trial, not at all because the prosecution doubted the justification of a joint trial.

74. That being the history and the next earliest possible trial date for Borden being 14 May 2014, the further postponement of two months to 14 July 2014 in order to secure a joint trial with Tamasa, can now properly be justified.

75. Delay is therefore in my view no reason not to order a joint trial of the Defendants in this case. The applications for severance are refused.

76. Accordingly, the Crown's application to join the Defendants in a joint indictment is granted and the case set for trial on 14 July 2014.

77. The later trial date which had been set for the Defendant Tamasa alone on 15 September 2014 is vacated.

78. The Defendants are remanded in custody to await trial, subject to their appearances before the Court on remand in the meantime.

79. I record my appreciation for the helpful submissions of counsel in this matter.

Hon. Anthony Smellie
Chief Justice

GRAND COURT CAYMAN ISLANDS

Hearing on 14 March, 2014
Decision delivered on 17 March 2014
Full written reasons delivered on 20 March 2014