

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0060/2010
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8 REGINA

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10 V

11 RAZIEL JEFFERS
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15 **Appearances:**

16 Mr. Andrew Radcliffe Q.C. instructed by
17 Ms. Tricia Hutchinson for the Crown

18 Mr. Michael Wolkind Q.C. instructed by
19 Ms. Fiona Robertson of Samson & McGrath
20 for the Defendant
21

22 **Before:**

23 Honourable Mr. Justice Malcolm Swift Q.C.
(Actg.)

24 **Heard:**

17th March 2014
25

26 **RULING ON**
27 **THE APPLICATION OF THE DEFENCE**
28 **TO EXCLUDE EVIDENCE OF POSSESSION OF FIREARMS**
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30 1. The defence applies to exclude evidence of the possession by the Defendant of
31 various firearms as set out in the witness statement of Meagan Martinez at pages
32 187 to 189 of the bundle of served witness statements.

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34 2. It is argued that such evidence is only admissible if the defence has first impugned
35 the character of the witness Martinez in cross-examination, although it is conceded
36 that there will be an attack upon her character. It is also submitted that there is no
37 connective link between the firearms allegedly discussed with her or shown to her

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according to Miss Martinez and the firearm used in the killing of the deceased Mr. Ming. Further that there is no evidence of threats or plans or statements of intent to suggest that any such weapon as described by her was likely to feature in the Ming murder or any identifiable features or forensic links between the weapons of which she speaks and that murder. The defence also says that the evidence does no more than establish that the Defendant had a propensity to use firearms some considerable time before the Ming murder. In the end it must be ensured that the Defendant has a fair trial.

3. The Crown submits that the evidence at pages 187 to 189 is admissible, not as bad character evidence tendered in response to any attack on the character of their main witness, but as evidence of an association between the Defendant and firearms and of having the means to shoot another person. It is also evidence underlining her account that the man she accuses of confessing to the murder did also, at an earlier time, have access to firearms. That is not true corroboration of her evidence of course, as it does not come from an independent source, but it is evidence that forms part of her overall description that her dealings with the Defendant were marked by consistent bravado concerning his criminal behaviour displayed in her presence. The evidence therefore also tends to confirm Miss Martinez' account of the consistency of the Defendant's conduct in her presence.

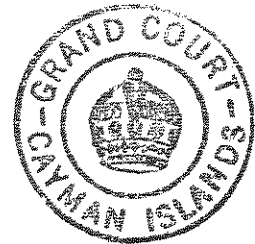


1 4. The Crown also submits that the evidence not only tends to suggest that Miss
2 Martinez' account of the confession is true but also supports an interpretation of the
3 other circumstantial evidence in the case that puts the Defendant in close proximity
4 to the scene of the shooting at the time of it as being for a murderous purpose. Only
5 a man with access to a firearm, says the Crown, was able to shoot Mr. Ming and the
6 man who confessed that he was the perpetrator was not only in the vicinity of the
7 murder at the relevant time but also confessed to having (and had) possession of
8 such weapons.

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10 5. The Crown cites the well-known passage from *Makin v. The Attorney General for*
11 *New South Wales* 1894 AC 57 at P 64 where the Lord Chancellor giving the
12 unanimous decision of the Privy Council stated:

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14 *"It is undoubtedly not competent for the prosecution to adduce evidence*
15 *tending to shew that the accused has been guilty of criminal acts other than*
16 *those covered by the indictment, for the purpose of leading to the conclusion*
17 *that the accused is a person likely from his criminal conduct or character to*
18 *have committed the offence for which he is being tried. On the other hand the*
19 *mere fact that the evidence adduced tends to shew the commission of other*
20 *crimes does not render it inadmissible if it be relevant to an issue before the*
21 *jury, and it may be so relevant if it bears upon the question whether the acts*
22 *alleged to constitute the crime charged in the indictment were designed or*
23 *accidental, or to rebut a defence which would otherwise be open to the*
24 *accused"*.

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27 Here the evidence is tendered as it 'bears upon' the question whether the Defendant
28 had access to guns and whether he was in the immediate area of the murder other
29 than for an innocent purpose.

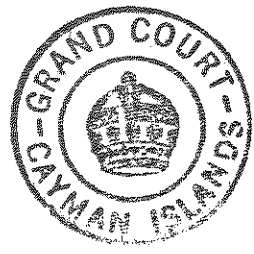


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6. I therefore conclude that the evidence is not tendered for the purpose of showing bad character or a propensity to commit shootings but for the purpose of rebutting the defence of alibi and is also relevant to issues before the jury namely whether the Defendant's confession was true and whether he was at the scene in order to shoot someone.

7. The evidence is therefore admissible. I also note, although it plays no part in my decision, that this same evidence was admitted in the defendant's earlier trial for murder without objection from the defence and did not feature as a ground of appeal against his conviction for that offence.

Dated this the 18th March 2014



A handwritten signature in black ink, appearing to read "M. Swift", is written over the signature line.

**Honourable Mr. Justice Malcolm Swift Q.C.
Acting Judge of the Grand Court**