

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

3
4 **INDICTMENT NO: 12/11**

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6
7 **THE QUEEN**

8
9 **V.**

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11 **JOHN ALFREDO MILLER III**



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14 **Appearances:**

Elisabeth Lees for the Crown

John Furniss for the Defendant

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18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Heard:**

18th October 2011

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21 **SENTENCE RULING**
22

- 23 1. On the 18th October 2011 the Defendant pleaded guilty to the charge of being
24 an accessory after the fact of robbery contrary to s.323 and s.324(b) of the
25 Penal Code 2010 Revision.
- 26 2. The particulars of this charge are that the Defendant, on the 29th November
27 2010 in Grand Cayman, knowing or believing that three persons unknown
28 had committed an armed robbery at "The Shoppe", Watercourse Road, West
29 Bay, did, without lawful authority or reasonable excuse, an act with intent to
30 impede their apprehension or prosecution, namely, assisted the said three
31 men to leave the scene of the crime.

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Summary of the Facts

- 3. The robbery took place on the 29th November 2010 when three gunmen robbed “The Shoppe” in West Bay. The Shoppe is located at the intersection turning into Northwest Point Road with Watercourse Course Road on the right.

- 4. The owner of The Shoppe at the time was Mr. Glasford Dawkins (“Mr. Dawkins”) who rented The Shoppe from Mr. Kirk McCarthy (“Mr. McCarthy”), the landlord, who lived nearby.

- 5. Present at The Shoppe at the time of the incident were Mr. Dawkins, Mr. Wayne Gallimore (“Mr. Gallimore”) and Mr. Alex White (“Mr. White”) who were all outside The Shoppe while Mr. White’s sister, Ms. Marlene White, (“Ms. White”) was inside The Shoppe. Mr. Gallimore, Mr. Dawkins and Mr. White were outside The Shoppe working on a truck when three men, walking on Watercourse Road, towards The Shoppe, from the direction of Hell Road, came on to the premises. All three men had their faces covered and all three were carrying guns. One of the men said, “*Don’t move, and give me all the money.*” Mr. Gallimore was holding two mobile phones in his hand at the time and one of the gunmen went over to him, pointed the gun at him and took the two phones from him. One of the three gunmen went into The Shoppe and pointed the gun at Ms. White and said, “*Where’s the money?*” The man took five hundred and fifty dollars (\$550) in cash and left. One of the gunmen also pointed a gun at Mr. White’s head outside The Shoppe.

- 1 6. Mr. McCarthy was, by chance, walking towards the crime scene when he
2 saw a white Ford Explorer in a nearby driveway with its engine running. Mr.
3 McCarthy noted that there was damage to the vehicle's right front fender.
4 Although the vehicle was empty, it was facing the road with its engine
5 running. When the three masked men left The Shoppe one of them, on seeing
6 Mr. McCarthy, held the gun at him and told him to turn back the other way.
7 Mr. McCarthy, not surprisingly complied with the gunman's instruction.
- 8 7. The armed gunmen took the five hundred and fifty dollars cash and the two
9 mobile phones.
- 10 8. Mr. Dawkins saw the white Ford Explorer pull out of the nearby driveway
11 and all three men got into it. The Defendant, who was the driver of the
12 vehicle, drove it to the intersection of Watercourse and Northwest Point
13 roads and turned left towards the 4-way stop main intersection in West Bay.
- 14 9. Mr. Gallimore also saw the Ford Explorer drive out, pull up, and pick up the
15 three men and drive off at a fast speed. He noted the Registration Number
16 132 632.
- 17 10. The Crown submits that the vehicle appeared to pull up and pick the men up
18 and drive off.
- 19 11. Mr. Dawkins immediately called 911. The police responded and PC
20 Williams drove to Willie Farrington Drive and called for a back-up car.
21 Eventually, the Ford Explorer was stopped and the Defendant was ordered
22 out of the vehicle and apprehended at 20:48. The three gunmen in the vehicle

1 had escaped capture as they were not in the vehicle when it was stopped by
2 the police.

3 12. The Defendant said he was visiting his girlfriend at the time of the arrest. The
4 police made their enquiries and although the Defendant's girlfriend said he
5 had tried to call her, they had no arrangements to see each other that night.

6 13. The Defendant said his mother was the owner of the vehicle and she had
7 loaned it to him. The Defendant accepted that the vehicle was unique because
8 it was a right-hand drive Ford Explorer.

9 14. One black glove was recovered from the vehicle.

10 15. Mr. Dawkins provided a victim-impact statement. He said he had begun to
11 hear of a number of robberies all over the island and, in an effort to protect
12 himself and his employees he had bought a CCTV system and installed it. He
13 said he was putting in the finishing touches when he was robbed in this
14 incident. Mr. Dawkins said that since the robbery he dreads being alone in
15 The Shoppe. He said he is constantly looking outside, writing down license
16 plate numbers and paying close attention to customers. He said that when he
17 is at home he is constantly thinking about what will happen if I get robbed
18 again. He said,

19 *"I feel scarred from thinking about that night of the robbery with the gun*
20 *being pointed at me, thinking how lucky I am to be alive. I am pondering*
21 *right now if I should continue on with the business or just close down for*
22 *good. I wouldn't like anyone to go through this because I can tell you*
23 *that it is not a good feeling."*

1 years. There were several mitigating factors and the Defendant received a
2 sentence of 18 months imprisonment.

3 18. The Court's attention was also drawn to *R v. Jason Hinds* Indictment 49 of
4 2008, Mr. Hinds was an accessory after the fact in the case of William
5 McLaughlin Martinez, who was later found guilty of murder. The Defendant
6 Jason Hinds not only pleaded guilty, but provided very significant assistance
7 to the Crown. In fact, it was accepted by Mr. Furniss that there would
8 probably have been no case against William McLaughlin Martinez had it not
9 been for the assistance and evidence of Jason Hinds. Mr. Hinds was
10 sentenced to three years for being an accessory.

11 19. Indeed it is clear that both the Defendant and his counsel understand that it is
12 hard to imagine a stronger mitigating factor than assisting the police and the
13 Crown to identify the principal offenders, so that they can be apprehended
14 and the guns they used, recovered.

15 20. In the case of *R v. Jason Hinds*, the Defendant provided significant
16 assistance to the Crown and this was the main reason for the substantial
17 reduction in his Sentence of imprisonment.

18 21. Mr. Furniss submits that as soon as the charge of accessory after the fact was
19 included on the Indictment the Defendant immediately pleaded guilty and
20 therefore should be entitled to a reduction.

21 22. Mr. Furniss, on behalf of the Defendant, submits that the Defendant accepts
22 that he would receive a custodial sentence – having acknowledged the
23 serious nature and consequences of what he did.

1 28. The learned editors of Blackstone’s Criminal Practice 2011 state at paragraph
2 A5.1 on page 69:

3 *“Responsibility for a criminal offence may be incurred either as a*
4 *principal offender or as an accessory.”*

5 The learned editors go on to state at paragraph A5.1:

6 *“A principal offender is the actual perpetrator of the offence, the person*
7 *whose individual conduct satisfied the definition of the particular offence*
8 *in question, while an accessory is one who aids, abets, counsels or*
9 *procures the commission of the offence.”*

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11 29. On the evidence before me the Defendant was waiting in the Ford Explorer
12 to collect the three gunmen and take them away after they had completed the
13 robbery. The engine of the Ford Explorer was left running near The Shoppe –
14 the obvious inference being to ensure that the Defendant could drive away
15 the three gunmen without unnecessary delay. The evidence is that the
16 Defendant drove the three gunmen off, away from the scene of the crime, at
17 great speed, thereby helping them to escape from the scene of the crime. The
18 Defendant in making good the escape of the gunmen aided, abetted and
19 assisted the gunmen to leave the scene of the crime undetected, and therefore
20 impeded their apprehension and prosecution.

21 30. The Defendant assisted the three gunmen to leave the scene of the crime.
22 Accordingly, one must examine the facts surrounding the robbery and its
23 consequences, even though, the Court acknowledges that there is no evidence
24 that the Defendant participated in the actual robbery involving the guns, or
25 imitation firearms, or the taking of the money and the mobile phones.

- 1 a. It is hard to imagine a more serious armed robbery than the one that took
2 place here. The three men came with masks covering their faces in order
3 to avoid identification, and all three also had firearms or imitation
4 firearms.
- 5 b. As has been stated on previous occasions, whether a firearm is real or an
6 imitation is not a major factor in determining the appropriate sentence of
7 imprisonment because the amount of fear created in the victim is likely
8 to be exactly the same.
- 9 c. One of the gunmen told Messrs. Gallimore, White and Dawkins not to
10 move and to hand over their money. Mr. Gallimore handed over the two
11 mobile phones. One gunman went into The Shoppe and pointed the gun
12 at Ms. White, forcing her to hand over five hundred and fifty dollars
13 (\$550). Another gunman pointed the gun at Mr. White's head. When Mr.
14 McCarthy, who was not at the scene, but who was walking towards the
15 scene, saw the gunmen attempting to leave, one of the gunmen, holding a
16 gun towards him told him to turn back the other way, which he did. The
17 gunmen left the scene of the crime with the cash and the two mobile
18 phones.
- 19 d. Robbery is a very serious criminal offence. These three gunmen caused
20 extreme fear in the minds of at least four, and probably five, persons at
21 the scene. Therefore it can only be described as a robbery of the most
22 serious kind and of the kind which has plagued Grand Cayman over the
23 past few years.

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1 31. The gunmen are still at large and their guns have not been recovered. This
2 Defendant has decided that, due to a fear for his safety and that of his family,
3 he will not assist the Crown, the Court, or indeed, himself, by identifying the
4 gunmen, or by providing some information which could assist the police to
5 recover the three guns used against these law abiding and hardworking
6 persons.

7 32. I turn now to the appropriate Sentence in the circumstances of this case. As
8 has been stated before, the distinction between an accessory and a principal
9 offender is, in many cases, of little importance, because the accessory allows
10 the principal offenders to escape undetected.

11 33. The Legislature has set a maximum of seven (7) years for this particular
12 offence. Given the very serious nature of this armed robbery, I find that the
13 starting point for Sentencing, had the Defendant pleaded not guilty, would be
14 somewhere between six to seven years. In light of his guilty plea he is
15 entitled to a discount and therefore I impose a sentence of five (5) years
16 imprisonment. I order that time spent in custody be taken into consideration.

17 34. This Court is compelled to comment on the fact that this absence of
18 cooperation with the police is a deeply regrettable consequence of the
19 pervasive and abhorrent influence these criminals have on our community.
20 To this Defendant I state that the fear he has for himself and his family will
21 only spread if criminals are allowed to thrive and remain at large. I would
22 implore this Defendant to examine carefully all the consequences related to
23 his silence, in the round, and understand that there is no long term good for

1 him, his family, or the community when criminals are allowed to thrive and
2 their actions go unpunished.

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5 **Dated this the 25th October 2011**

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9 **Honourable Mr. Justice Charles Quin**
10 **Judge of the Grand Court of the Cayman Islands**