

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

3
4 **IND. NOS. 60 OF 2012, 62 OF 2012,**
5 **63 OF 2012 & 14 OF 2013**

6
7 **REGINA**

8
9 **V.**

10
11 **DAVID JOSEPH MORRIS TAMASA**
12 **RENNIE COLE**
13 **GEORGE MIGNOTT**
14 **ANDRE BURTON**
15 **RYAN ADRIAN EDWARDS**



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18 **Appearances:** **Mr. Trevor Ward of the Office of the Director of Public Prosecutions**
19 **for the Crown**

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21 **Mr. James Curtis Q.C. instructed by Lucy Organ of Samson and**
22 **McGrath for the Defendant Tamasa**

23 **Ms. Prathna Bodden of Samson and McGrath for the Defendant Cole**

24
25 **Mr. Nick Hoffman instructed by Guy Dilliway-Parry of Priestleys for the**
26 **Defendant Mignott**

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28 **Mr. Anthony Akiwumi instructed by Margeta Facey-Clarke for the**
29 **Defendant Burton**

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31 **Ms. Keva Reid of McKinney Reid & Company for the Defendant**
32 **Edwards**

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35 **Before:** **Hon. Justice Henderson**

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2 **Heard:** **May 3, 2013**



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5 **ORAL RULING**

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8 1. The defendant Andre Burton, supported to an extent by the other defendants,
9 applies at this juncture for a judicial stay of proceedings on the ground that the
10 process of the Court has been abused.

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12 2. The law is set out authoritatively in *Warren and others vs. Attorney-General for*
13 *Jersey* 2012 1 AC 22 (Privy Council). In that decision their lordships identified
14 two categories of case in which the Court might exercise its jurisdiction to stay
15 proceedings on the ground of an abuse of process. The first, which is not relied
16 upon here, is where it would be impossible to give the defendant or defendants a
17 fair trial. The second, which is the gravamen of this motion, is where it is
18 necessary to protect the integrity of the criminal justice system. The Court made
19 it clear that the two grounds are distinct and must be considered separately.

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21 3. The second category of case requires an analysis by the Court which is to some
22 extent subjective. The Court must ask whether the impugned conduct on the
23 part of the authorities -- usually the police -- offends the Court's sense of justice
24 and propriety. It is not it seems to me, the Court's subjective view alone which

1 counts; the Court must also take into account its own perception of the public
2 view on the facts presented to it. Would the public in general find that its sense
3 of justice and propriety is offended by permitting the proceeding to continue?

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5 4. Here the application is grounded in the conduct of Detective Constable Rachel
6 Johnson. She was directed by her superior to act as she did.
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8 5. She interviewed Marlon Dillon on at least four occasions while he was a
9 suspect and under arrest. In the second and subsequent interviews she brought
10 to bear a considerable amount of pressure upon Mr. Dillon which eventually
11 had the desired result. He resiled from his rather far-fetched initial story,
12 admitted full involvement in the robbery, and then identified the five
13 defendants presently on trial as his co-conspirators.

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15 6. In bringing about that result Detective Constable Johnson offered what I would
16 judge to be inducements to Mr. Dillon and made what I consider to be threats
17 towards him. There is no doubt that the Judges' Rules were violated (and I think
18 intentionally so) and therefore little doubt that at a trial of Mr. Dillon his second
19 and subsequent interviews would be found to be inadmissible. The question,
20 however, is whether the process has become so tainted by unfairness that my
21 sense of justice and propriety would be offended by allowing the trial of these
22 defendants to continue.
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1 7. Of course, what I have said goes directly and fundamentally to the credibility of
2 Mr. Dillon and the jury will be told that not only by counsel but by myself.

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4 8. It seems to me that the practice of putting pressure upon defendants for the
5 purpose of getting them to incriminate their co-conspirators is a wide-spread one
6 in western democracies, which all strive in their own way to conduct fair
7 criminal proceedings. My understanding of the practice in the United Kingdom
8 is that informants who were participants in a crime are used from time to time as
9 Crown witnesses. It goes without saying that their co-operation must be gained
10 through some sort of inducement or threat. It is highly unlikely that such
11 persons will testify because they think it is simply the right thing to do.

12
13 9. While it can in some ways be seen as troubling that the Judges' Rules would
14 have been breached in Marlon Dillon's case, it is nevertheless a matter which is
15 primarily concerning to Mr. Dillon. The question for these five defendants
16 ultimately is the credibility of Mr. Dillon's evidence. The way in which he was
17 induced to change his story is highly relevant to that. But the rights enjoyed by
18 Mr. Dillon under the Judges' Rules are personal to him. They are not rights
19 enjoyed by his alleged co-conspirators or anyone else whom he may choose to
20 incriminate.

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22 10. I find that the conduct of Detective Constable Johnson did not go so far that the
23 integrity of the criminal justice system would be damaged by allowing the trial



1 to continue. Second, I am satisfied that public opinion in this country would
2 agree with my assessment, assuming that the relevant members of the public
3 were fully aware of the essential facts and considered the matter reasonably.

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5 11. I should not leave this application without commenting upon its timing. The
6 application is brought without any real notice to the Crown immediately prior to
7 the final addresses to the jury. I, of course, have jurisdiction to exclude
8 evidence where to admit it would result in the trial operating unfairly. It was
9 open to any defence attorney to make an application that Marlon Dillon's
10 evidence be excluded on that ground. Not one of the five attorneys made such
11 an application. It seems to me that if there was no significant reason to think
12 that the admission of Mr. Dillon's evidence would operate unfairly, then that fact
13 itself speaks volumes about the somewhat more radical proposition that the
14 integrity of the criminal justice system would be compromised by allowing the
15 case to go to the jury.

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17 12. The application is dismissed.

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19 Dated this 3rd day of May, 2013

20 *Henderson, J.*

21 Henderson, J.
22 Judge of the Grand Court

