

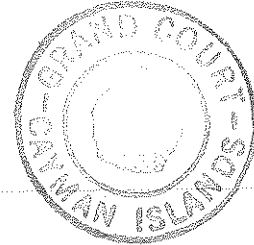
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
3 CRIMINAL SIDE

Cause No. IND. 15 OF 2011

4
5 REGINA
6 V
7 RAZIEL JEFFERS
8

9 In Open Court on 7 August 2014

10
11 Before the Honourable Chief Justice
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14 **APPEARANCES:** Miss Cheryll Richards QC and Miss Candia James for the Crown

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

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19 **RULING ON ADMISSIBILITY OF STATEMENT OF ACCOMPLICE**

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1. A central issue for the jury in this case in their assessment of Megan Martinez’s evidence, will be the state of mind of the accused when he made the alleged admissions to her as to whether his admissions were true assuming they accept that he did in fact make them.
 2. The jury will have to consider whether those admissions, if true, go to prove that the defendant was a party to the joint enterprise of robbery that led to the death of Marcos Mauricio Duran.
 3. The narrative from Megan Martinez’s statement that I am now invited to exclude on the basis that it contains prejudicial hearsay nonetheless purports to contain a detailed account by the defendant himself of what was reported to him, implicitly by Craig Johnson of the events of the attempted robbery and fatal shooting of Marcos Duran.

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The Defendant told Megan Martinez that it had been reported to him that Duran had engaged with Jordan Manderson, the gun which Manderson had went off shooting Manderson in the leg and then another accomplice Justin Ebanks, shot Marcos Duran to the head. Manderson was then assisted to the car in which Craig Johnson was waiting. Johnson then drove Manderson from the scene to his home in West Bay. Johnson said

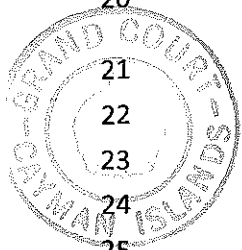
1 for that reason it was important that the car be cleaned to remove any trace of
2 evidence.

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4 4. The jury would be entitled to consider whether the report was given to the defendant
5 by Craig Johnson because they were accomplices to the joint enterprise and in
6 furtherance of the joint enterprise; for instance whether the report helped to inform the
7 defendant of the reason why it was important to rid the getaway car of any possible
8 trace of incriminatory evidence (R v Blake (1844) Vol. 115 E.R 49 (6 Q.B. 126) and
9 Blackstones Criminal Practice 2014 F 16.76 – F 16.82 considered). In the text at F16.79,
10 it is explained that the rule permits the actions and declarations of one party to a joint
11 enterprise, A, to be used in evidence against the other, B, and is thus an exception to
12 the general rule that B is not to be prejudiced by the acts or statements of another, and
13 an exception to the hearsay rule insofar as it may involve reliance on A's statements as
14 evidence of the truth of their contents. Here the rule is a fortiori applicable because the
15 declarations of Craig Johnson (party A) are adopted and reported by the defendant
16 himself (party B) in his admissions to Megan Martinez of his own involvement in the
17 joint enterprise and as the truth of what actually happened during the course of the
18 joint enterprise.

19 As the textbook also explains: In order for the act or statement of A to be admissible
20 against B, the rule requires:

- 21 (1) that the act or statement of A must be that of an accomplice in the course
22 and furtherance of the common purpose; and
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24 (2) that independent evidence be adduced of the existence of the conspiracy
25 [[joint enterprise]] and the involvement in it of B.

26 Here as to (1) above – the act or statement attributed to Craig Johnson as accomplice in
27 the course or furtherance of the common purpose; according to the defendant himself,
28 Craig Johnson's account to him was for the purpose of securing the successful
29 completion of the common purpose by cleaning the vehicle to avoid arrest and
30 prosecution for their involvement in it. It was not hearsay, but an account given to the
31 defendant which he implicitly accepted, as to the truth of what transpired during the
32 attempted robbery and murder of Marcos Duran. In this sense, it is to be regarded as
33 evidence of the truth of its contents: see *Regina v Onyeabor* [2009] EWCA Criminal 534.
34 The fact that the statement was first made by Craig Johnson to the defendant and
35 recounted by him to Megan Martinez did not change the nature of the statement.



1 What matters, is that the jury might accept Megan Martinez's evidence of it as an
2 accurate and reliable report of what the defendant told her.

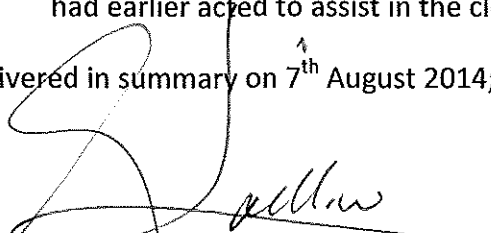
3 As to (2) above – the need for independent evidence of the existence of the joint
4 enterprise and the involvement of the defendant in it that comes from his admissions to
5 Megan Martinez to having planned the robbery; his having provided the gun or guns to
6 others involved to be used to frighten the numbers man; his being present in a state of
7 panic in the vicinity of the crime when he was picked up by Megan Martinez and Miss
8 Grant; then declaring that he was aware that the "poor numbers man was dead"; and
9 from the other forensic scientific and circumstantial evidence in the case (such as the
10 telephone records) all pointing to the joint enterprise and the defendant's involvement
11 in it.

12 5. Counsel for the defence accepts that the prosecution would be entitled to establish that
13 a report of the incident was given to the defendant by Craig Johnson.

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15 6. Counsel also concedes that the jury would be entitled to consider whether the state of
16 mind of the defendant must have been affected by the report which he heard. This
17 concession is also correct on the basis that it is alleged that he was a party to the joint
18 enterprise. However, it would not be possible for the jury to assess whether his state of
19 mind must have been affected without hearing what the account was. By the same
20 measure, nor would the jury be able to determine whether he acted as he did in helping
21 to clean the car on account of what he had been told, without knowing what he had
22 been told.

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24 7. I am satisfied that the narrative of the account related by Megan Martinez as reported
25 to her by the defendant, is admissible as evidence of what he was told by an accomplice
26 in furtherance of the joint enterprise and is evidence of what his state of mind must
27 have been, both when he made the alleged admission to Megan Martinez and when he
28 had earlier acted to assist in the cleaning of the car.

29 Delivered in summary on 7th August 2014; full ruling issued on 12 September 2014.

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34 **The Honourable Justice Anthony Smellie**
35 **CHIEF JUSTICE**