

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

Claim No. ANUHCv2003/0485

IN THE MATTER OF THE CONSTITUTION OF ANTIGUA AND BARBUDA

And

IN THE MATTER OF AN APPLICATION OF WILLIAM MARTIN A PERSON ALLEGING THAT
THE PROVISIONS OF SECTIONS 15 (1), 15 (2) (c) AND 15(2) (e) OF THE CONSTITUTION
HAVE BEEN, ARE BEING AND ARE LIKELY TO BE CONTRAVENED IN RELATION TO HIM
AND FOR REDRESS IN ACCORDANCE WITH SECTION 18 OF THE SAID CONSTITUTION OF
ANTIGUA AND BARBUDA

And

IN THE MATTER OF REGINA v WILLIAM MARTIN, No 29 OF 2000

BETWEEN:	WILLIAM MARTIN	- Claimant
	and	
	THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA	- Defendant

Appearances:

Vashist Maharaj and Georges Mendes-Blackman for the Claimant

Carla Brookes-Harris for the Defendant

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2004: June 8 & July 1
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JUDGMENT

- [1] **FERDINAND, J** : The Claimant William Martin complains that his constitutional rights to the protection of the law have been infringed by the failure of the prosecution to disclose to him or his defence counsel before his trial the existence or content of a written statement recorded by the police from an eyewitness who did not testify at his trial.
- [2] On 12th December 1998 the Claimant was arrested and charged with attempted murder of Urcil Peters. This offence was allegedly committed on 8th December 1998, when the Claimant took over the operation of his backhoe from his employee Alex Martin and drove it over certain lands occupied by 70-year old Urcil Peters, despite his objections, and in the process caused injury to the said Urcil Peters with the backhoe. Alex Martin appeared to have been unwilling to defy Mr. Peters' protests at any entry on to his land by the backhoe, which was being driven towards adjacent land owned by the Claimant. The prosecution contends that the Claimant drove "furiously" and "aggressively toward Mr. Peters" after ordering Alex Martin off the backhoe "in an angry tirade". The significance of this being the prosecution 's contentions will be apparent when the relevant evidence is examined in detail later in this judgment.
- [3] The Claimant had purchased a parcel of land, which was adjacent to other land in the possession of Urcil Peters and his wife, when it was auctioned by a bank to whom it had been mortgaged by Mr Peters' stepson. Mr Peters' wife had transferred the said parcel of land to the stepson, who had later mortgaged it. Mr Peters recognized that the land purchased by the Claimant was not accessible by the Claimant other than over the adjacent land which Mr and Mrs Peters had retained. Mr Peters had told the Claimant on some earlier occasion that he the Claimant "would have to negotiate" for access rights over the Peters' adjacent land. This was the background to the confrontation between the Claimant and Urcil Peters on 8th December 1998.

[4] Counsel for the Claimant submits that the prosecution was under a constitutionally-guaranteed duty to disclose the said eyewitness' statement which had been recorded by the police and that the failure so to do violated the Claimant's fundamental rights under the Constitution of Antigua and Barbuda. Specifically, it is contended that the prosecution's failure to disclose the existence and content of the eyewitness' statement given to the police violated the Claimant's constitutional rights to:-

- (1) a "fair hearing" as guaranteed by Section 15 (1) of the Constitution;
- (2) "be given adequate time and facilities for the preparation of his defence" as guaranteed by Section 15 (2) (c) of the Constitution; and
- (3) "be afforded facilities ... to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution" as guaranteed by Section 15 (2) (e) of the Constitution.

[5] There can be no doubt that in many respects the Claimant's criminal trial was fairly and properly conducted, as his appeal against sentence was dismissed by the Court of Appeal.

In these present proceedings in which the Court's constitutional protection jurisdiction is invoked, this Court must be mindful of the pronouncement by the Privy Council in Joseph v The State of Dominica (1988) 36 WIR 216 that the fact that a mistake is made in the course of a trial does not mean that the case has not received a fair hearing.

Constitutional right violation does not arise from every error made in the course of a criminal trial and, ordinarily, the appellate process is the mechanism for ensuring redress of any such errors (see also Forbes v The Attorney General of Trinidad & Tobago [2002] UKPC 21).

[6] The legal violation alleged by the Claimant in this case is not of the type which was raised in Joseph's case, and from the evidence adduced it appears that, through no fault of the Claimant, the issue raised was not susceptible to redress by the trial judge or by the Court of Appeal as it only came to light subsequent to those hearings. Both "the trial judge and in their turn the Court of Appeal were ignorant of the contents and of the very existence" of

the witness statement which is the focus of these proceedings (to quote from the Privy Council's judgment in Berry v R (1992) 41 WIR 244). There is no evidence that the witness statement in issue ever came to the Claimant's attention prior to the decision of the Court of Appeal dismissing the Claimant's appeal against the fine of \$15,000.00 imposed upon him and which was paid.

- [7] In R v Stinchcombe (1992) LRC (Crim) 68, 72 the Supreme Court of Canada said:
- “... the law with respect to the duty of the Crown to disclose is not settled
 ... Production and discovery were foreign to the adversary process of adjudication in its earlier history when the element of surprise was one of the accepted weapons in the arsenal of the adversaries. This applied to both criminal and civil proceedings. Significantly, in civil proceedings this aspect of the adversary process has long since disappeared, and full discovery of documents and oral examination of parties and even witnesses are familiar features of the practice. This change resulted from acceptance of the principle that justice was better served when the element of surprise was eliminated from trial and the parties were prepared to address issues on the basis of complete information of the case to be met. Surprisingly, in criminal cases in which the liberty of the subject is usually at stake, this aspect of the adversary system has lingered on.”
- [8] In 1993 the Privy Council, speaking of section 20 of the Jamaican Constitution which is in virtually identical terms to section 15 of the Constitution of Antigua and Barbuda, stated in Franklyn and Vincent v R (1993) 42 WIR 262 at 267d:
- “In section 20 are the requirements of the Constitution which are designed to ensure that when a person is charged with a criminal offence he is provided with proper protection by the law.”
- [9] In the same case the Court opined at (1993) 42 WIR 267j - 268a :
- “These provisions of section 20 do no more than codify in writing the requirements of the common law which ensure that an accused person receives a

fair trial. They would therefore be part of the law of Jamaica even in the absence of the Constitution. They do not contain any specific requirement as to what is to be provided to a defendant before trial and a determination of whether the Constitution has been contravened by the non-provision of statements of witnesses who are to be called by the prosecution before a trial depends upon an assessment of the facts of a particular case as against these general standards of fairness prescribed by the Constitution.”

- [10] The Privy Council itself has since reconsidered its perspective of fundamental constitutional rights being merely a reflection of common law rights. As it emphatically pronounced in Gairy v The Attorney General of Grenada [2001] UKPC 30:

“By Chapter 1 and section 106 of their constitution the people of Grenada established a new constitutional order. The constitution has primacy (subject to its provisions) over all other laws which, so far as inconsistent with its provisions, must yield to it. To read down its provisions so that they accord with pre-existing rules or principles is to subvert its purpose. Historic common law doctrines restricting the liability of the crown or its amenability to suit cannot stand in the way of effective protection of fundamental rights guaranteed by the constitution.

It was however argued for the Attorney General in *Jaundoo* that the constitution conferred no greater rights on the subject against the executive than had previously been enjoyed. This reflected the approach of the Board to a number of constitutions which it considered at this period: it was assumed that the rights specified in the constitutions were already secured to the people and that the object of embodying them in the constitution was to restrain future enactments which might derogate from them.”

- [11] The recognition that the prosecution’s duty of disclosure is a dimension of the rights guaranteed by section 15 of the Antigua and Barbuda Constitution affords greater protection than the common law because the right cannot be derogated from by ordinary

legislation and as a fundamental constitutional right it has also become amenable to the extensive enforcement and remedial armoury available pursuant to section 18 of the Constitution.

- [12] “ [H]uman rights guaranteed in the constitution of Antigua and Barbuda are intended to be a major influence on the practical administration of the law.”

per Lord Cooke in Observer Publications Ltd v Matthew, The Commissioner Police and The Attorney General of Antigua and Barbuda [2001] UKPC 11.

Prosecuting authorities at all levels must be ever mindful of this principle when exercising the important public duty with which they are entrusted by the law.

- [13] The law and practice relating to prosecution disclosure in a Caribbean jurisdiction was reviewed by the Privy Council in Berry v R (1992) 41 WIR 244 where it was remarked that:

“In relation to the disclosure to the defence of material in the possession of the prosecution, the key is fairness to the accused; but the practice varies between different jurisdictions in the common law world.”

- [14] I agree with the submission of counsel for the Claimant that the common law has evolved towards placing an increasing duty of disclosure on the prosecution (see Mills v R [1997] 3 All E R 780, H.L.). In State v Scholtz (1997) 1 LRC 67 at 81 Dumbutshena Ag. JA in the Supreme Court of Namibia said that:

“... recent trends in England and Wales on non-disclosure have been influenced to a great extent by a number of what I would call indiscretions on the part of some police investigating crimes and some experts who elected to leave out relevant materials or statements they believed favoured the defence in cases they regarded as highly sensitive. As a result courts were forced to make judgments ignorant of evidence, witness statements or relevant materials favourable to the accused. The accused were convicted. After convictions and in some cases long afterwards, upon information received the Home Secretary referred these cases to the Court of Appeal. I refer below to some of those cases because they helped in

the development of a new and vigorous judicial policy on the duty to disclose statements, results of interviews and other relevant materials to the defence.”

- [15] In support of this view, detailed reference was then made by Dumbutshena Ag. JA to decisions of the English Courts in R v Maguire (1991) LRC (Crim) 227, (1992) QB 936, R v Ward (1993) 2 All ER 577 and R v McKenny (1991) LRC (Crim) 196, (1992) 93 Cr. App. R 287 (this latter being the case popularly known as that of “the Birmingham Six”). The learned Namibean Justice of Appeal expressed the further view that:

“... the English approach with regard to disclosure of evidence in the possession of the state has undergone dramatic changes which are primarily attributable to the *Attorney General=s Practice Note* [1982] 1 All ER 734. In my view the courts have gone beyond the Attorney General's guidelines. These developments were expedited by the nature of the cases the courts were hearing and the ominous consequences brought about by acts of violence and terrorism and the subsequent reaction of the police to those acts and the serious nature of the crimes arising from them. There were attempts by the police and others to hide away pieces of evidence of help to the defence in the preparation of the accused's case. This resulted in a failure of justice. But what is significant for our purposes is that these developments have taken place in England and Wales without a Bill of Rights and without the benefit of a written Constitution. England has in a very significant way moved away from the law in force on 31 May 1961,”

- [16] In 1992 the Privy Council, delivering judgment in Berry, stated that they “were shown” a judgment of the Supreme Court of Canada delivered in 1991 in “ R v Stinchcombe from which it appears that (partly in reliance on section 7 of the Canadian Charter of Rights and Freedom) a much wider view is taken of the prosecution's duty of disclosure of documents to the defence, namely that (subject to certain discretions as to whether and when disclosure should be made) the Crown has a legal duty to disclose all relevant information to the defence on the basis that:

'the fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done.' "

[17] Later in the Berry judgment the Privy Council said:

"Having examined the practice in different common law jurisdictions, their Lordships consider that the principles endorsed by the Jamaican Court of Appeal [in the cases of Purvis (1968) 13 WIR 507 and in Barrett (1970) 16 WIR 267], particularly with regard to inconsistent previous statements, represent what will normally be an acceptable way of achieving fairness to the accused and they take the opportunity of saying that in a civilised community the most suitable ways of achieving such fairness (which should not be immutable and require to be reconsidered from time to time) are best left to, and devised by, the legislature, the executive and the judiciary which serve that community and are familiar with its problems.

Bearing in mind the reference by Shelley JA, in R v Barrett (1970) 16 WIR 267 at page 268 to the concept of counsel for the Crown as 'minister of justice whose prime concern is its fair and impartial administration', their Lordships, while not feeling bound to accept in relation to Jamaica the comprehensive principles, almost amounting to criminal discovery, which the appellant has attempted to rely on, recognise that the Purvis - Barrett principles do not cover every situation in which fairness may demand that the prosecution make available material to the defence."

[18] The foregoing decided cases and dicta clearly demonstrate that in many Commonwealth jurisdictions the prosecution's duty of disclosure has been the subject of evolutionary development towards an obligation of greater disclosure.

- [19] By 1997 R v Stinchcombe (*ante*) was quoted with approval in R v Mills [1997] 3 All E R 780, where the House of Lords ruled that it is the duty of prosecuting counsel to provide a copy of the statement of the witness to the defence and that the duty is not limited to furnishing only the name and address of the witness, where prosecuting counsel has reasonably decided that the maker of a statement is not a witness of truth and will seek to depart from or contrive an explanation for that statement if called as a witness. In Mills the evidence was that defence counsel had actually interviewed the witness prior to the trial, and the witness was in fact called to testify before the Court of Appeal. In those circumstances, both appellate Courts found that had the witness been called at the trial his evidence would not have assisted the appellants in any way.
- [20] In Stinchcombe the appellant was a lawyer who had been charged with criminal breach of trust, theft and fraud for allegedly appropriating money from a client. A former secretary of the appellant was a Crown witness at the preliminary inquiry where she gave evidence which was apparently favourable to the appellant. Prior to trial this witness was interviewed by the police and a tape-recorded statement was taken. During the trial she was again so interviewed and a written statement obtained by the police. Crown counsel informed the defence counsel of the existence but not the content of both statements, and requests for their disclosure were refused. On the third day of trial, defence counsel learned conclusively that this witness was not going to be called to testify by the prosecution as she was not considered worthy of credit. The witness refused to be interviewed by the defence and she was not called by the defence after a request for disclosure was denied by the trial judge. An appeal on the disclosure issue was allowed by the Supreme Court of Canada and a new trial, at which the statements should be produced, was directed.
- [21] The Supreme Court of Canada in Stinchcombe v R pronounced that:
 “In indictable offences the Crown had a legal duty to disclose all relevant information to the defence” : [1992] LRC (Crim) at 68g.

“... The material to be disclosed included not only that which the Crown had intended to introduce but also that which it had not. All statements obtained by the prosecution from persons who had provided relevant information were to be disclosed to the defence regardless of whether or not they were going to be called as Crown witnesses”: [1992] LRC (Crim) at 69b.

“The obligation to disclose was not an absolute one, but was subject to the discretion of crown counsel to exclude what was clearly irrelevant, to withhold the identity of persons to protect them from harassment or injury and to enforce the privilege relating to informers” : [1992] LRC (Crim) at 69c.

“The prosecution also retained a discretion in respect of the timing of the disclosure where an early disclosure would impede the completion of an investigation and delayed disclosure would be preferable. The discretion of Crown counsel was, however, reviewable by the trial judge, such review to be initiated upon application by counsel for the defence. Disclosure of all relevant information was to be the general rule unless the Crown could bring itself within an exception to the rule”: [1992] LRC (Crim) at 69d.

“ While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant”: [1992] LRC (Crim) at 76g.

“... the system will also profit from early disclosure as it will foster the resolution of many charges without trial, through increased numbers of withdrawals and pleas of guilty. The obligation to disclose will be triggered by a request by or on behalf of the accused. Such a request may be made at any time after the charge. Provided the request for disclosure has been timely, it should be complied with so as to enable the accused sufficient time before election or plea to consider the information”: [1992] LRC (Crim) at 78e.

“No distinction should be made between inculpatory and exculpatory evidence” : [1992] LRC (Crim) at 78h.

[22] That being the state of the law pertaining to the issue before this Court, it is now necessary to examine and make “an assessment of the facts of the particular case as against the

general standards of fairness prescribed by the Constitution”: Franklyn and Vincent v R (1993) 42 WIR 262 at 268a. The Court must consider the totality of the circumstances of the particular case in order to determine whether the duty of disclosure has been breached.

[23] In his affidavit filed in opposition to the Claimant’s in these proceedings, the learned Director of Public Prosecutions (DPP) contends that the prosecution was under no obligation to disclose to the defence Alex Martin’s statement which had been given to the police. Among the reasons given for this view, extracted from the learned DPPs Affidavit in Reply as well as from the submissions of counsel for the Defendant, are that:

- (1) Alex Martin was never called as a witness for the prosecution at the preliminary inquiry or at trial;
- (2) the Claimant knew that Alex Martin was present at the scene of the alleged crime and that he was in a position to see what had happened;
- (3) Alex Martin was believed to be a relative of the Claimant;
- (4) the DPP was of the view that Alex Martin was “at all times an employee available to give evidence on the Claimant’s behalf” (paragraph 10 of the DPP’s Affidavit in Reply filed herein on 13 February 2004);
- (5) the statement was considered to be incriminatory of the accused/Claimant William Martin;
- (6) the statement by Alex Martin was not considered to be inconsistent with any statement made by him, as he never testified as a witness, nor was the statement considered to conflict with any other evidence; and
- (7) “it is not likely that the proposed evidence of Alex Martin would lead to a different result from that which was followed in the former (*sic*) trial, having regard to the other available evidence” (from page 7 of the Defendant=s Written Submissions filed herein on 2 April 2004).

[24] After a preliminary inquiry, on 7th February 2000 the learned presiding magistrate found that the prosecution had not made out the charge of attempted murder but that the

evidence established a *prima facie* case of Assault Occasioning Actual Bodily Harm. The Claimant was committed to stand trial on this charge at the next sitting of the assizes. In or about May 2000 this trial ended in a hung jury. After a second trial, on 22 June 2001 the Claimant was convicted of common assault and fined \$15,000.00 or in default two years imprisonment. The fine was paid and an appeal by the Claimant was later dismissed by the Court of Appeal.

[25] Alex Martin never testified as a prosecution witness although he had given a written statement to the police prior to the preliminary inquiry in which, among other things, he said: On 8th December 1998 he was employed by the Claimant as a heavy-duty operator. He drove the Claimant's backhoe to a piece of land which the Claimant assigned him to clean. The land was not accessible without driving into a yard with a house. Urcil Peters came out of the house and repeatedly voiced objection to the backhoe being driven over his land. Alex Martin stopped the backhoe with the engine running. The Claimant then told Alex Martin to give him the backhoe, and began to drive it towards the land to be cleaned.

[26] Alex Martin's statement to the police continued:

“... there was an old table in the path that the backhoe was travelling towards the vacant land. Then Wills began to push the old table out of the backhoe path. The man who at this time was standing inside the yard saw Wills moving the table and suddenly rush in front of the table and held onto it. The backhoe was still in motion when the man rush to hold the table. The man got in the path of the moving backhoe and the table, then he slide and fell and the table drop on one of his foot. The man got up and went inside the house and I heard him telling somebody inside the house to call the Police”

[Underlining added here and in the following two paragraphs].

[27] In his deposition which was put into evidence before this Court by the learned DPP, the virtual complainant Urcil Peters said that the backhoe driver had told him that his name

was Pilgrim, the name of another employee of the Claimant. Peters further testified therein that while he was leaning on the workbench in his yard the Claimant “jumped into the backhoe and started it and rushed right into the yard. He drive the backhoe in a rush towards me. I could not move from where I was. If I had moved I would have been killed. I positioned my palms on the bench and raised my body upwards. My feet were off the ground else the backhoe blade in front would have cut my feet off. The shovel of the backhoe picked me up together with the bench and started to move with me and the bench. I scrambled for life. I was frightened. I fell down from the bench and fell in the shovel of the backhoe. The backhoe stopped. I tried to hold onto something. The backhoe eased back, stopped and I was dumped from the shovel at the side of my house The shovel was about 4 feet in the air when I was dumped ... I scrambled to get out of the way of the backhoe. I could not talk. The defendant eased back the backhoe and picked up the bench with the shovel of the backhoe, and went further down into the yard. I started to shout for help. My wife and my niece came and assisted me off the ground. They took me into the house”

- [28] Under cross-examination Urcil Peters further said: “The bench did not fall on me ... The shovel was about 4 feet in the air when I was dumped.”
- [29] The deposition of the prosecution witness Yusoma Mannix appears to echo very closely the evidence of the virtual complainant Urcil Peters. While Alex Martin’s written statement to the police does not exculpate the Claimant from involvement in the events leading to Urcil Peters’ injury, it clearly contrasts in material respects with the evidence of witnesses who did testify for the prosecution. Some of the areas of difference pointed to by the Claimant’s counsel are underlined by me in the extracts set out earlier in this judgment.
- [30] “It is beside the point for the Crown to argue that the material in the statements, so far from helping the defence, was damaging”:
per Lord Lowry delivering the judgment of the Privy Council in Berry v R (1992) 41 WIR 244 at 257h.

[31] In Berry's case the Privy Council allowed the appeal and remitted the case to the Court of Appeal for either an order of acquittal or an order for a new trial. One of the reasons for the decision was the failure to furnish certain statements to the defence. The case against the accused Berry was considered to be strong and the Court said:

“But, unless the proviso can be invoked, one must adopt the maxim that the more difficult (short of impossibility) is the defending advocate’s task, the more vital it is that he does not labour under an unfair disadvantage. Had the statements been supplied, the defence could have planned their campaign, prepared a more effective cross-examination, been ready to object, if challenging admissibility, and been prepared to let the judge and jury see the statements if that course appeared to offer prospects of success.”

[32] This extract, and the actual decision allowing the appeal in Berry, illustrates that the prosecution withholds disclosure at its peril.

[33] I accept that the learned DPP honestly held the views articulated herein as reasons why disclosure of Alex Martin’s statement to the defence was not necessary. Although reasonably held, the view that Alex Martin was “at all times an employee available to give evidence on the Claimant’s behalf” is not borne out on the admissible evidence put before this Court.

[34] The Claimant in his affidavits filed in this matter denied that he is related to Alex Martin and further stated on oath that the date of the alleged offence was Alex Martin’s first, and last, day working for the Claimant’s company. The Claimant also stated that his attempts to locate Alex Martin in an effort to have him testify were unsuccessful. In the DPP’s affidavit the prosecution expressed a similar difficulty, although Alex Martin’s witness statement given to the police contained a telephone number and a detailed address.

- [35] In the circumstances of this case, particularly my findings stated in paragraphs [29], [33] and [34] of this judgment, fairness to the accused required that the statement of Alex Martin should have been provided to the defence, notwithstanding that the prosecution did not intend to call him as a Crown witness.
- [36] On behalf of the Defendant it was submitted that this Court ought to use its discretion pursuant to the proviso to section 18 of the Constitution and decline to exercise its powers to grant redress under section 18 because “adequate means of redress for the contravention alleged are or have been available” to the Claimant by way of a further appeal to the Privy Council in London. This submission is rejected. Given the factors of geography, cost and delay when compared with access to a Court which sits daily in Antigua and Barbuda, it would neither be reasonable nor just for this Court to hold on such a basis that it is “satisfied that adequate means of redress are or have been available to the person concerned under any other law” (see the proviso to section 18 of the Constitution).
- [37] In Franklyn & Vincent v R (1993) 42 WIR 262 at 271e the Privy Council explicitly approved: “the views of Forte JA expressed in the Court of Appeal of Jamaica in R. v Bidwell (1991) (unreported) where he indicated that ‘facilities’ could include a statement of a particular witness and added that ‘facilities’ must relate to anything that will be required by the accused in order to aid him in getting his defence ready to answer the charge.
- [38] I accordingly hold that the prosecution’s failure to disclose Alex Martin’s statement to the defence was a breach of the prosecution’s duty of disclosure. This breach infringed the Claimant’s rights guaranteed by sections 15 (1), 15 (2) (c) and 15 (2) (e) of the Constitution.
- [39] It was said from the Bar table without contradiction that the Claimant’s first trial ended in a hung jury. Counsel for both parties also agreed that the Claimant’s conviction was for

Common Assault whereas his trial included a charge of Assault Occasioning Actual Bodily Harm and his initial arrest and charge was for Attempted Murder.

[40] As in the case of Berry v R, this Court does “not feel able to say that the jury would *inevitably* have convicted, if the defence had been furnished in advance with the statement[s] in question” Berry is authority which refutes the submission of counsel for the Attorney General that the relevant test is whether it is *likely* that the proposed evidence of Mr Alex Martin would lead to a different result having regard to the other available evidence.

[41] In the premises, this Court hereby grants and orders, pursuant to the jurisdiction conferred by section 18 of the Constitution of Antigua and Barbuda:-

- (1) A declaration that the failure of the prosecution to disclose the statement of the witness Alex Martin to the defence either prior to or at the preliminary inquiry or the trial before a judge and jury rendered the trial and conviction of the Claimant at the May 2001 Assizes unfair and in violation of the minimum standard of a fair trial guaranteed by section 15 (1) of the Constitution of Antigua and Barbuda.
- (2) A declaration that the failure of the prosecution to disclose the statement of the witness Alex Martin to the defence either prior to or at the preliminary inquiry or the trial before a judge and jury was a violation of the Claimant’s right guaranteed by section 15 (2) (c) of the Constitution of Antigua and Barbuda to “be given adequate time and facilities for the preparation of his defence.”
- (3) A declaration that the failure of the prosecution to disclose the statement of the witness Alex Martin to the defence either prior to or at the preliminary inquiry or the trial before a judge and jury was a violation of the Claimant’s right guaranteed by section 15 (2) (e) of the Constitution of

Antigua and Barbuda to “be afforded facilities ... to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution.”

- (4) In light of the foregoing Declarations granted, the conviction recorded against the Claimant on 22 June 2001 is hereby set aside, and the fine of \$15,000.00 paid by the Claimant pursuant to the said conviction is ordered to be repaid to the Claimant by the Government of Antigua and Barbuda.
- (5) The Defendant is ordered to pay the Claimant his Costs of these proceedings in the sum of \$15,000.00.

[42] As a result of prosecution non-disclosure and the Orders granted above in these proceedings, the Claimant has had set aside a criminal conviction for an alleged offence of which he may quite possibly have otherwise been properly found guilty. If accepted by a jury, the evidence of Urcil Peters and Yusoma Mannix painted a picture of the Claimant behaving in an arrogant and heavy-handed manner towards 70-year old Urcil Peters, who by all accounts was simply seeking to assert his legal rights on 8th December 1998. While it is not for this Court, in exercising its constitutional jurisdiction, to adjudge the Claimant’s guilt or innocence of the offence with which he was charged, the foregoing circumstances are regarded as some of the several relevant considerations which may be taken into account when determining what orders would be “appropriate for the purpose of enforcing or securing the enforcement of” the Claimant’s fundamental rights pursuant to section 18 of the Constitution.

[43] Justice would not be served by this Court awarding any further remedy to the Claimant beyond those granted above. In particular, this Court declines to award any damages to the Claimant in the circumstances of this matter. In addition to

the circumstances mentioned in the foregoing paragraph, another relevant consideration in this regard is that this Court has decided not to order a retrial of the charge of which the Claimant was found guilty by the jury. Such a retrial order is one of the options open to a Court exercising constitutional redress jurisdiction pursuant to section 18. Some of the reasons for it not being appropriate to order a retrial in this matter are that:

- (a) it is not proposed to award damages to the Claimant in these proceedings;
- (b) the initial charge was one of attempted murder but this charge was reduced to one of assault occasioning actual bodily harm by the learned magistrate after the preliminary inquiry;
- (c) the first trial ended in a hung jury;
- (d) at his second trial the jury convicted the Claimant of common assault only; and
- (e) the Claimant was arrested on the original charge on 12th December 1998.

[44] Judgment is hereby entered in favour of the Claimant accordingly.

J EMILE FERDINAND
High Court Judge (Acting)