IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. 2004 HCV 1435

CORAM: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE DUKHARAN
THE HONOURABLE MR. JUSTICE HIBBERT

IN THE MATTER of an Application by Donovan Williams in a writ of Habeas Corpus Ad Subjiciendum

A N D

IN THE MATTER of the Extradition Act

BETWEEN	DONOVAN WILLIAMS	APPLICANT
A N D	THE COMMISSIONER OF CORRECTIONAL SERVICES	1ST RESPONDENT
A N D	THE DIRECTOR OF PUBLIC PROSECUTIONS	2ND RESPONDENT

A N D

SUIT NO. 2004 HCV 1438

IN THE MATTER OF THE EXTRADITION ACT

A N D

IN THE MATTER OF AN EXTRADITION ORDER IN RESPECT OF LEEBERT RAMCHARAN MADE BY THE RESIDENT MAGISTRATE FOR THE PARISH OF SAINT ANDREW

A N D

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF HABEAS CORPUS AD SUBJICIENDUM

A N D

IN THE MATTER OF THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL 1962

BETWEEN	LEEBERT RAMCHARAN	CLAIMANT
A N D	THE COMMISSIONER OF CORRECTIONAL SERVICES	1ST DEFENDANT
A N D	DIRECTOR OF PUBLIC PROSECUTIONS	2ND DEFENDANT

Frank Phipps Q.C., Wentworth Charles and Miss Kathryn Phipps for the Applicant DONOVAN WILLIANS.

Lord Anthony Gifford, Q.C., Hugh Thompson, Miss Linda Wright and Miss Saverna Chambers for the Applicant LEEBERT RAMCHARAN.

Patrick Foster, Miss Analiesa Lindsay and Miss Carlene Larmond for the Commissioner of Correctional Services.

Mrs. Georgiana Fraser for the Director of Public Prosecutions.

Heard: May 9, 10, 11, 12, 13, and October 6, 2005

WOLFE, C.J.

I have had the benefit of reading the judgment of Hibbert J. and I agree entirely with his reasoning and the conclusion he has arrived at.

I would therefore order that the applications of Donovan Williams and Leebert Ramcharan be dismissed.

DUKHARAN. J,

I have also read the judgment of Hibbert, J and I agree with his reasoning and conclusion. I will therefore order that the applications of Donovan Williams and Leebert Rancharan be dismissed.

HIBBERT. J,

Consequent on the request for extradition made by the Government of the United States of America, Donovan Williams and Leebert Ramcharan were on the 7th June, 2004 committed to custody by His Honour, Mr. Martin Gayle, Senior Resident Magistrate for the Corporate Area Criminal Court to await extradition for their trial in the United States

of America for the offences of (1) Conspiracy to import a mixture and substance containing cocaine into the United States and (2) Conspiracy to possess with intent to distribute in the United States of America a mixture and substance containing cocaine.

Accompanying the request for the extradition of each Applicant was a bundle of documents under the seals of the Department of State and the Department of Justice. These were received in the Ministry of Foreign Affairs and Foreign Trade on the 28th April, 2004. Each bundle contained an affidavit of Joseph A. Cooley, Special Assistant United States Attorney for the Southern District of Florida, sworn to on the 19th April, 2004, before Peter R. Palermo, United States Magistrate Judge for the Southern District of Florida. Exhibited to this affidavit are two other affidavits which are relied on to provide the evidence in support of the offences for which the Applicants were charged. The first, Exhibit D was that of Dennis Hocker, a Special Agent employed to the Drug Enforcement Administration outlining his investigations in the case against the Applicants. The other, Exhibit E, was a copy of an affidavit sworn to on the 2nd April, 2004 before Theodore Klein, United States Magistrate Judge for the Southern District of Florida. This copy affidavit had the name and signature of the affiant obliterated.

In the affidavits of Joseph Cooley and Dennis Hocker, this affiant was described as a confidential informant. In his affidavit he gave an account of his meeting and having drug dealings with the Applicants.

On the 11th May, 2004 two similar bundles were received by the Ministry of Foreign Affairs and Foreign Trade. Each contained an affidavit of William H. Bryan, III, Assistant United States Attorney for the Southern District of Florida, sworn to on the 5th May, 2004, before William C. Turnoff, United States Magistrate Judge for the Southern

District of Florida. Exhibited to this affidavit is the affidavit of Alexander Young which was also sworn to before William C. Turnoff on the 5th May, 2004. To this affidavit he signed the name "Young .Duffis". He also gave an account of his drug dealings with the Applicants.

The Applicants now apply for the issue of writs of habeas corpus seeking their release from custody.

In relation to the Applicant Williams the following grounds were relied on:

1. That the Learned Resident Magistrate erred in law in admitting into evidence a document purporting to be the Affidavit of a person whose name and signature had been obliterated, and in not holding that such document was inadmissible because:-

    (a) it was not certified by any person to be the original document containing the testimony or a true copy of that original, as is required by section 14 (2) (a) of the Extradition Act; and/or

    (b) on its face it was not an original document or a true copy thereof, since the name and signature of the deponent had been obliterated on the document tendered to the court

2. That the learned Resident Magistrate erred in law in not holding that the evidence of the confidential informant was not admissible in evidence and/or should have been rejected by him in the judicial exercise of his discretion, no reason having been given to him as to why the said person's name was withheld.

3. The learned Resident Magistrate erred in law in admitting into evidence an affidavit purporting to have been made by Alexander Young, but bearing the signature 'Yong Duffiz', and in not holding that the said affidavit was inadmissible it was not certified by any person to be the original document containing the testimony or a true copy of that original, as is required by section 14 (2) (a) of the Extradition Act.

4. The learned Resident Magistrate erred in law in admitting into

evidence a photograph of the Applicant, and in not holding that such photograph could not be admissible to prove that the Applicant was the person referred to by either (a) the person whose name and signature had been obliterated, or (b) Alexander Young, because:

(a) it was not certified by any person to be the original document containing the testimony or a true copy of that original, as is required by section 14 (2) (b) of the Extradition Act;

(b) the affidavits of the said deponents did not sufficiently or at all identify the document which was exhibited as being a document which they had been shown.

5. The learned Resident Magistrate erred in law in permitting the affidavit of Alexander Young to be admitted after Counsel for the Second Respondent had been specifically requested to disclose whether or not he was or was not the same individual as the confidential informant and after Counsel had said the he was unable to say one way or the other, and in not holding that in the premises it was procedurally unfair and/or unjust to the Applicant to admit the said Affidavit.

6. The Learned Resident Magistrate erred in law in not holding that the affidavit of AlexanderYoung was so worthless that it should not be relied on, because:

(a) if Alexander Young was not the person whose name and signature had been obliterated, he had copied into his affidavit such large portions of that person's evidence that the allegations in the affidavit would be incapable of belief;

(b) if Alexander Young was the person whose name and signature had been obliterated, he had added to his previous affidavit substantial new allegations against the Applicant, such as were designed to improve the case for the Requesting State, without giving any explanation and/or reasons as to why these allegations had been omitted from the previous allegations; and in the premises he was plainly a witness of convenience.

7. The learned Resident Magistrate erred in law in ordering the

Extradition of the Applicant on Count 2 of the Indictment, which was described in the Authority to Proceed as conspiracy to possess with intent to distribute in the United States of America a mixture and substance containing cocaine, and in not holding that such offence was not an offence under Jamaican law.

8. The learned Resident Magistrate erred in law in ordering the Applicant to be extradited for offences which are not offences capable of being committed in Jamaica, they not being indictable offences within this jurisdiction. It is submitted that the Authority to Proceed failed to identify to the Resident Magistrate equivalent offences within this jurisdiction.

9. That the Evidence adduced before the learned Resident Magistrate taken at its highest, did not prove that the Applicant had been party to an agreement to possess cocaine or to import it into the United States of America.

Ramcharan, in his application, replicated grounds 1-7 relied on by Williams and added the following grounds:

8. On or about 1st June 2004 the President of the Requesting State designated the Applicant as a **'kingpin'** pursuant to the Foreign Narcotics Kingpin Designation Act of the Requesting State, being an Act which applies only to non-nationals of the Requesting State. By reason of the said designation, which is a matter of public record in the Requesting State the applicant would be denied a fair trial in the Requesting State by reason of;

(a) prejudice caused by such designation in the minds of potential jurors, and (b) the hindrance imposed by the said Act upon the Applicant's ability to choose and remunerate Counsel of his choice.

9. The said designation was made after the President had been advised by (inter alia) the Department of Justice which was responsible for overseeing the prosecution and request for extradition of the Applicant, and by the United States Drug Enforcement Administration whose agents were responsible for the investigation of the Applicant's case. By reason of the said designation and the participation of the said agencies in advising that it be made, this Honourable Court should conclude that the accusation against the Applicant has not been made in good faith

> in the interest of justice, but in a manner calculated to deny the Applicant a fair trial, and that it would therefore be unjust and/or oppressive in all the circumstances to extradite the Applicant.

At the commencement of this hearing Mrs. Fraser, on behalf of the Director of Public Prosecutions applied to the Court to have additional evidence admitted under **section 11 (4)** of the Extradition Act. Section 11 of the Act deals with applications for habeas corpus and subsection (4) states.

> (4) On any such application the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 7 or under Subsection (3) of this section.

Section 7 of the Act imposes general restrictions on extradition and section 11 (3) provides for the discharge from custody of an applicant if any of the circumstances set out in paragraphs (a) to (c) exists.

On hearing the application we found that the additional evidence sought to be admitted was not relevant to the exercise of our jurisdiction under section 7 or section 11 (3) of the Act, hence we refused the application.

The challenges to the validity of the committal order may be classified under the following heads:

(i) The Authority to proceed

(ii) Authentication

(iii) The exercise of the Resident Magistrate's discretion

(iv) The sufficiency of evidence

(v) The Kingpin designation

Authority to Proceed

In **ground 7, and ground 8** of Williams' application the Applicants contend that the Resident Magistrate had no jurisdiction to conduct the committal proceedings because the Authorities to Proceed issued by the Minister of Justice was invalid as it failed to specify the offences for which the Applicants were charged, in terms of Jamaican law. They further contended that the description of the offences in terms of the law of the United States was fatal and consequently the committal by the Resident Magistrate in relation to the offences specified in the Authorities to Proceed was also invalid.

Section 8 – (1) of the Extradition Act states:

> 8.- (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance of a request made to the Minister by or on behalf of an approved State in which the person to be extradited is accused or was convicted".

Acting on this provision, the Minister on the 30th April, 2004 issued to the Resident Magistrate for the Corporate Area his Authorities to Proceed indicating that each Applicant " .... .is accused of the extradition offences of (1) Conspiracy to import a mixture and substance containing cocaine into the United States, (2) Conspiracy to possess with intent to distribute in the United States of America a mixture and substance containing cocaine, and (3) Attempting to import into the United States a mixture and substance containing cocaine, subject of an indictment (Case No. 04-20065 C.R. – Seitz)

filed on 30th January, 2004 in the United States District of Florida, and a Warrant of Arrest issued on the 30th January, 2004 by order of the above Court, within the Jurisdiction of the United States of America".

Mr. Charles who argued these grounds on behalf of the a Applicants relied on the following authorities:

i) **The Government of the United States of America v. Bowe** [1989] 3 All E.R. 315

ii) **In re Nielsen** (1984) The Law Reports 606 and

iii) **Cooper v. Antigua and Barbuda (Attorney General)** [2003] E.C.S.C.J. No. 3.

With all due respect to Mr. Charles I fail to see how the third case cited by him is of any relevance to the grounds. In relation to the other two cases it should be noted that:

(a) none of these addressed the point under consideration and

(b) the extradition proceedings were conducted under the 1870 U.K. Extradition Act.

Nielson's case concerned the magistrate's view that he was bound to discharge the accused unless "the offences in English law and ... .Danish law are substantially similar in concept".

In Bowe's case what was being considered was whether or not Conspiracy to import dangerous drugs was an extradition offence.

Section 26 of the 1870 Act defines an "**extradition crime**" as ".....a crime which if committed in England or within English jurisdiction, would be one of the crimes

described in the first schedule to this Act." As a consequence of this the practice developed whereby the order to proceed listed the offences in the schedule for which the magistrate could commit.

In Alain Charron v. Government of the United States of America and Another (2000) 1WLR 1793 the consequences of a departure from the usual practice was considered. Mr. Clive Nichols representing the Government of the United States of America, at page 1800 submitted that the only requirement in the Bahamian Extradition Act of 1994 was that the Minister should issue an authority to proceed and that there was no requirement that the magistrate should be furnished with a list of charges. He further submitted that the affidavits and the exhibits before the magistrate made abundantly clear the nature of the charges against the applicant and that the failure to furnish a list of charges created no risk of injustice to him.

The court of appeal accepted this submission, Carey J.A stating:

> "There has existed in England a practice of supplying the fugitive with a schedule giving particulars of the offences charged formulated according to English law. That practice has been adopted in this jurisdiction and was recognized as a 'respectable practice' in a decision of the President, then Gonsalves – Sabola C .J. sitting in the Supreme Court on 16th May, 1991. He expressed himself thus: 'Furnishing the magistrate with a schedule of charges is respectable practice and has, in a normal way, been adhered to in this case. It served the purpose of channelling the magistrate's mind to the particular charges under the Bahamian Law appropriate to the evidence adduced to establish the Bahamian offences set out in general terms in the order to proceed.....'
> In the instant case, this process was not followed. But This [applicant] was aware of the charges and he also was served with the depositions on which the charges were based. Instead of stark particulars, the [applicant] has an embarrassment of riches. In these circumstances it is to the highest degree really absurd to suggest that

> the [applicant] had been denied a proper opportunity to meet the case which was being put forward.

This passage was approved by the Privy Council when Lord Hutton who delivered the judgment of the Board stated at page 1800:

> " Their Lordships considered that the Court of Appeal was right to hold that the applicant had suffered no injustice by reason of the magistrate (and the applicant himself) not having been furnished with a list of charges"

Section 8 of the Jamaican Act is similar to the provisions in the Bahamian Act relating to the order to proceed and also contains no requirement for the Minister to furnish a list of charges. In the instant cases the Applicants were furnished with copies of all the documents relied on by the United States and were therefore well aware of the charges against them and the evidence to be tendered in support of those charges, hence I find that no injustice was done.

The only question left to be resolved is:- Are the offences extradition offences? In section 2(1) of the Act extradition offence is defined as ".....an extradition offence within the meaning of section 5."

Section 5 (1) of the Act states:

> 5.- (1) For the purposes of this Act any offence of which a person is accused or has been convicted in an approved State is an extradition offence if –
>
> (a) .....
>
> (b) in the case of an offence against the law of a treaty State –
>
> i) it is an offence which is provided for by the extradition treaty with that State and
>
> ii) the act or omission constituting the offence, or the equivalent act or

> omission would constitute an offence against the law of Jamaica if it took place within Jamaica..."

Article II of the Extradition Treaty entered into between Jamaica and the United States of America states:

> 1. An offence is an extraditable offence if it is punishable under the laws of both contracting parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment.

Once, therefore, the Resident Magistrate is satisfied, on the basis of the evidence presented before him, that the acts, if done in Jamaica, would constitute an offence punishable by imprisonment for a period of more than one year he is entitled to commit the fugitive to custody to await his surrender providing there are no other legal bars to prevent this.

For the reasons stated these grounds must fail.

Authentication

The Applicants further contend in **grounds 1, 3 and 4 (a)** that the document said to be an affidavit of a confidential informant and the affidavit of Alexander Young were inadmissible into evidence as they were not duly authenticated as required by the Extradition Act, **section 14** of which states:

> 14.- (1) In any proceedings under this Act, including proceedings on an application for habeas corpus in respect of a person in custody under the Act-
>
> (a) a document, duly authenticated, which purports to set out testimony given on oath in an approved state shall be admissible as evidence of the matters stated therein;
>
> (b) a document, duly authenticated which purports to have been received in evidence, or to be a copy of a document so received in any proceedings in any approved State shall be admissible

in evidence; and

(c) .....

(2) A document shall be deemed to be duly authenticated for the purposes of this section-

(a) in the case of a document which purports to set out testimony given as referred to in subsection (1) (a) if the document purports to be certified by a judge, magistrate or officer of the Court in or of the approved State in question or an officer of the diplomatic or consular service of that State to be the original document containing or recording that testimony or a true copy of that original document.

(b) in the case of a document which purports to have been received in evidence as referred to in subsection (1) (b) or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been so received and

(c) .....

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the approved State in question.

At the committal proceedings the bundles of documents received on the 28th April, 2004 were admitted into evidence as exhibit 5B in respect of the request for the extradition of Donovan Williams, and as exhibit 5A in respect of Leebert Ramcharan. Each bundle was secured by one gold and one red ribbon. The first document in each bundle bears the seal of the Department of State affixed over the gold ribbon. It states:

I certify that the document hereunto annexed is under he Seal of the Department of Justice of the United States of America, and that such Seal is entitled to full faith and credit.

In testimony whereof, I, Colin L. Powell, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Assistant Authentication Officer, of the said Department, at the city of Washington in the District of Columbia, this 23rd day of April, 2004

/S/ Colin l. Powell
Secretary of State

By /S/ ?
Assistant Authentication Officer
Department of State.

The second document in each bundle bore the seal of the Department of Justice affixed over the red ribbon and states:

I certify that Lystra G. Blake whose name is signed to the accompanying paper, is now and was at the time of singing the same, Associate Director, Office of International Affairs, Criminal Division , U.S. Department of Justice duly commissioned and qualified.

In witness, whereof, I John Ashcroft, .Attorney General of the United States, have hereunto caused the Seal of the Department of Justice to be affixed and my name to be attested by the Director of Deputy Director, Office of International Affairs, Criminal Division, of the said Department on the day and year first above written.

/S/ John Ashcroft
Attorney General

By /S/ Lisa Burnett
Director/Deputy Director of
International Affairs, Criminal Division.

The third document in the bundle states:

> *I, Lystra G. Blake, Associate Director Office of International Affairs, Criminal Division, United States Department of Justice do hereby certify that attached hereto and prepared in support of the U.S. request for the extradition of Everett Donovan Williams a/k/a..... from Jamaica is the original affidavit of Joseph A. Cooley, Special Assistant United States Attorney for the Southern District of Florida, sworn to on April 19, 2004 before Peter R. Palermo, United States Magistrate Judge for the Southern District of Florida, with supporting documents.*
>
> *True copies of the original documents are maintained in the official files of the United States Department of Justice in Washington D.C.*

23 April, 2004
Date

/S/ Lystra G. Blake
Lystra G. Blake
Associate Director
Office of International Affairs
Criminal Division
U.S. Department of Justice.

A similar certification also appears in the bundle in relation to Ramcharan. Following this certification is the affidavit of Joseph Cooley in which at paragraph 23 he states:

> *I have attached hereto the affidavits of individuals that provide sworn testimony that establishes and summarize the proof of Leebert Ramcharan's a/k/a .....and Everett Donovan Williams' a/k/a ..... criminal activity in violation of the laws of the United Stated of America in the Indictment described above.*
>
> *Attached are the affidavits of :*
>
> *a. Special Agent Dennis Hocker .....*
>
> *b. Confidential Informant (C.I.) :.....*
>
> *c. Glenford Buckle: .....*
>
> *d. Marcia Dunbar: .....*

These affidavits are attached to the affidavit of Joseph Cooley as Exhibits D, E, F and G.

The two similar bundles received on the 11th May, 2004 were admitted into evidence as Exhibits 6A and 6B.

The question as to whether or not bundles of documents, similar to those in this case, were duly authenticated arose in the applications for writs of habeas corpus by Lester Coke and Richard Morrison. In the judgment of the Full Court – **Lester Coke and Richard Morrison v. The Superintendent of Prisons – General Penitentiary and the Attorney General** (1991) 28 JLR 365, Clarke, J. at page 376 stated:

> " I also hold the view that under section ..., a single official seal of the appropriate Minister may authenticate all the documents in a composite bundle to which the seal relates and of which it forms a part. This is in keeping with the purpose and scheme of the section which, as already

> noted, does not require each affidavit to bear on its face separate certifications, or where applicable, does not require separate oaths of a witness to authenticate each relevant document. Looking at each bundle in the instant case it is manifest that the seal of the United States Attorney General as well as that of the Secretary of State embraces, and gives authenticity to, with the aid of the ribbons emanating beneath the seals and passing through them, every document including the affidavits in each bundle.
> The affidavits in each bundle were in my judgment duly authenticated as required by section 15 and so were admissible evidence under section 14 for the magistrate to consider whether committing the applicants to prison under section 10 of the Act would be justified"

In **Prince Anthony Edwards v. The Director of Public Prosecutions and the Director of Correctional Services** (1994) 31. JLR 526 the same point again arose. Downer J.A. who delivered the judgment of the Court of Appeal, having examined the certification of the Secretary of State, at page 529 stated:

> "The reference is made to the document hereunto annexed being under seal of the Department of Justice. But it is clear from the method of sealing that the documents are properly regarded as a document".

Downer, J.A. further examined the certificate of the Attorney General and the Certification by Deputy Director, Office of International Affairs, Criminal Division. In this Certification, she having certified that the attached affidavit was that of the Assistant United States Attorney, listed all the exhibits attached thereto and described those affidavits which contained the evidence against Edwards as original affidavits sworn to before Notaries Public.

Downer, J.A then concluded at page 531:

> "So these documents were certified by a district Judge, a notary public, an officer of the court and authenticated by two Ministers of the requesting state,. namely, The Attorney General of the Department of Justice and the Secretary of State".

Both Mr. Charles on behalf of Williams and Lord Gifford, Q.C. on behalf of Ramcharan sought to distinguish Edwards' case from the instant case. They submitted that because the Certifications of Lystra Blake did not itemise the exhibits attached to the affidavits of Joseph Cooley and so did not indicate whether the affidavits of the confidential informant and Alexander Young were originals or true copies, this rendered the Certifications defective and so did not cover these affidavits. I find no merit in this submission as the words "with supporting documentation" must include all exhibits attached to the affidavits of Joseph Cooley and William Bryan III.

The affidavit of Joseph Cooley refers to the affidavit of individuals. An examination of the affidavit of the confidential informant clearly shows that it is a copy, and is certified by the Clerk of the U.S. District Court, Southern District of Florida "to be a true and correct copy of the document on file". The affidavit was sworn to before Theadore Klein, United States Magistrate Judge Southern District of Florida. Reference therefore, by the Clerk to "the document on file" could, in my view, only be a reference to the original affidavit of the confidential informant.

It was further submitted that the affidavit of the confidential informant could not be deemed to be either an original or a copy as in the copy supplied the identify of the affiant has been obliterated. It is quite clear from the document that a person, described in the affidavits of Joseph Cooley and Special Agent Dennis Hocker as a confidential informer personally appeared before Judge Theodore Klein and gave his testimony on oath. I cannot therefore agree that the obliteration of the identity in the copy supplied would change it from being a copy of the original.

I therefore find that the affidavit attached to the affidavit of Joseph Cooley and marked Exhibit E was duly certified.

William Bryan III in his affidavits at paragraph 6 states – Exhibit 1 is the affidavit of Alexander Young. The submission that the absence of the word original in this description is fatal, finds no favour with me. An Examination clearly shows that the affidavit of Alexander Young is an original affidavit. I therefore find that this affidavit was properly certified.

It was further argued in **ground 4 (a)** that the photographs of the applicants attached to the affidavit of the confidential informant were not certified as required by section 14(2) (b) of the Extradition Act.

I accept the submissions of the Attorneys representing the Respondents, relying on the cases of **Coke and Morrison v. Superintendent of Prisons and Another, Edwards v. Director of Public Prosecutions and another** and **Oskar v. Government of Australia and Others** [1989] LRC 301 that not every document contained in the bundle need to bear a certification on its face. These photographs are exhibited to the affidavit of the confidential informant who attests that they are true photographs of the persons he met and dealt with and whom he knew as Donovan Williams and Leebert Ramcharan. I accept therefore that these photographs need no further certification to be either originals or true copies of the originals.

The challenge to the admissibility into evidence of the documents placed before the Resident Magistrate, on the ground that they were not duly authenticated also fails.

Exercise of the Resident Magistrate's discretion

In **ground 2** the Applicants submit that the Resident Magistrate ought to have exercised his discretion by rejecting the testimony of the confidential informant as no reason was given for withholding his identity. That this confidential informant appeared before a United States Magistrate Judge, declared his identity and gave sworn testimony, has, however, not been challenged.

Mr. Charles on behalf of Williams as well as Miss Lindsay for the First Respondent and Mrs. Fraser for the Second Respondent relied on the decision of the Full Court in **Regina V. Director of Public Prosecutions and Director of Correctional Services, exparte Vivian Blake** (1996) 33 J.L.R 299. The Attorneys for the Respondents also relied on the Court of Appeal decision in that case, (unreported) SCCA 107/96

Although **section 10 (1)** of the Extradition Act requires the magistrate to:

> .....hear the case in the same manner, as nearly as may be, as if he were sitting as an examining justice and as if that person were brought before him charged with an indictable offence committed within his jurisdiction.

there are significant differences between extradition proceedings before a magistrate and committal proceedings (preliminary examinations)

The differences were recognized in **Kindler v. Canada (Minister of Justice)** (1991) 84 DLR (4^{th}) 438 where McLachlin, J delivering the majority judgment of the Supreme Court of Canada, at page 488 said:

> "While the extradition process is an important part of our system of criminal justice, it would be wrong to equate it with the criminal trial process. It differs from the criminal process in purpose and procedure and most importantly, in the factors which renders it fair. Extradition procedure, unlike the criminal procedure is founded on the concepts

of reciprocity, comity .and respect for differences in other jurisdictions".

In Blake's case the identities of the two main witnesses for the prosecution were withheld and they adopted the names John Doe I and John Doe 2. Mr. Ramsay, Q.C. who represented Blake relied on the judgment of Lord Diplock in **Attorney General v. Leveller Magazine Ltd. and Others** [1970] 1 All E.R 748 in which he approved the action of a magistrate in committal proceedings in refusing to allow a witness to depose who requested that his name should not be disclosed to anyone.

Having stated at page 749 that:

> ".....in criminal cases at any rate, all evidence communicated to the court is communicated publicly".

he went on to add:

> However, since the purpose of the general rule is to serve the ends of Justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament had made some statutory derogation from the rule".

This passage was referred to with approval by Forte, J.A. in Blake's case at page 17-18. He also made reference to the judgment of Evans, L .J **in Regina v. Taylor** [1994] TLR 484 in the Court of Appeal in England. Evans L. J, having agreed-

> ".....that it was a fundamental right of a defendant to see and know the identity of his accusers, including witnesses for the Crown, which should only be denied in the rare and exceptional circumstances".

opined that the matter was pre-eminently one for the exercise of the judges' discretion and referred to five (5) factors, relevant to the exercise of the discretions.

For the purpose of these applications, I will deal with two of these factors,

2. The evidence must be sufficiently relevant and important to make it unfair to make the Crown proceed without it.

There can be no doubt that the evidence of the confidential informant is relevant and is of such importance as to make it unfair for it to be omitted.

4. The Court must be satisfied that there would be no undue prejudice to the Accused , although some prejudice was inevitable even if it was only the qualification placed on the right to confront a witness as accuser.

One of the main differences between extradition hearings and preliminary examinations concerns the presentation of evidence before the magistrate. At preliminary examinations the Crown is required to call witness to give ***viva voce*** evidence and the accused or his attorney is entitled to cross-examine each witness. In extradition hearings section 14 of the Extradition Act makes duly authenticated documents admissible in evidence. I have neither seen nor heard of any case in Jamaica in which the requesting state did not rely on these provisions. In the circumstances the accused fugitive would never be offered the opportunity to confront his accuser until he appears at trial. It cannot therefore be said that the Applicant would be unduly prejudiced.

The court is entitled to take cognizance of the dangers associated with being a confidential informant operating within an international illegal drug network. In all the circumstances, therefore I do not find that the learned Resident Magistrate improperly exercised his discretion in admitting into evidence the affidavit of the confidential informant.

In **ground 5** the Applicants submit that the magistrate ought to have refused to admit into evidence the affidavit of Alexander Young because the Crown Counsel said he

was unable to say whether or not the confidential informant and Alexander Young were one and the same person. They argue that this made it unfair and/or unjust for the magistrate to admit it into evidence.

If the confidential informant and Alexander Young are one and the same person, as may reasonably be inferred, then the identity of the confidential informant would no longer be unknown. If they are different persons then they would be providing evidence, supporting each other, about the activities of the Applicants. I, therefore fail to see how this non disclosure could be said to be procedurally unfair and/or unjust.

For the reasons stated these grounds must also fail.

Sufficiency of evidence

Before a magistrate can commit a person to custody to await his extradition , he must be satisfied that the person arrested is the same person whose extradition is sought. Exhibited to the affidavit of the confidential informant are photographs of the Applicants, identifying them as the persons he dealt with and whose names were given as Williams and Ramcharan.

In ground 4 (b) the Applicants submit that there is no sufficient evidence that these were the photographs shown by Special Agent Hocker. I fail to see how this submission could properly be made. In paragraph 12 of the affidavit of the confidential informant he states that Dennis Hocker showed him two sets of photograph and he identified the one attached to his affidavit as Exhibit I as that of Ramcharan and the one attached to his affidavit as Exhibit 2 as that of Williams.

In ground 6 the Applicants contended that the magistrate ought to have rejected the evidence of Alexander Young as being worthless. They argue that if he was not the confidential informant, he copied his affidavit, and if he was the confidential informant he added to his original affidavit without giving reasons for his previous omissions.

It is the duty of a magistrate in both preliminary examinations and extradition hearings to determine whether or not, on the basis of the evidence adduced before him, a prima facie case has been made out. The approach to be taken by the magistrate has been set out in many judgments.

In **R. v. Governor of Pentonville Prison ex parte Osman** [1989] 3 All E.R. 701, Lloyd L.J. stated at page 721:-

> "In our judgment it was the magistrate's duty to consider the evidence as a whole and to reject any evidence which he considered worthless. In that sense it was his duty to weigh up the evidence. But it was not his duty to weigh the evidence.
> He was neither entitled nor obligated to determine the amount of weight to be attached to any evidence or to compare one witness with another. That would be for the jury at trial".

In **Lloyd Brooks v. Director of Public Prosecutions** 31 JLR 16 at the Privy Council their Lordship held:

> "Questions of credibility, except in the clearest of cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at trial".,

In my view therefore the learned Resident Magistrate acted correctly in relying on the evidence of Alexander Young.

In **ground 9** Mr. Charles on behalf Williams submits that taken at its highest, the evidence adduced against Williams was not sufficient to make out a prima facie case against him in relation to the charges for which he was committed to custody to await his

surrender. This also I find to be without merit. An examination of the affidavits of the confidential informant and Alexander Young reveal allegations of a drug dealing network of which they were a part and of which Williams was also a part. It was further alleged that Williams would receive, in Jamaica, cocaine from Colombia and then transship it to the United States of America, in keeping with his involvement.

For the reasons stated these grounds must also fail..

The Kingpin designation

By virtue of the Foreign Narcotics Kingpin Designations Act (the Kingpin Act) which was signed into law on the 3rd December, 1999 in the United States of America Leebert Ramcharan, among others, was on the 1st June, 2004 designated a foreign narcotics trafficker. This designation has given rise to grounds 8 and 9 of the Ramcharan application.

Even where a requesting state provides admissible evidence, which establishes a prima facie case, there are still restrictions on extradition. Section 7 of the Extradition Act provides:

> 7.- (1) A person shall not be extradited under this Act to an approved state or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, the court of committal, to the Supreme Court or an application for habeas corpus or to the Court of Appeal or an appeal against a refusal to grant a writ of habeas corpus-
>
> (a) that the offence of which that person is accused or was convicted is an offence of a political character, or
>
> (b) that the request for extradition, though purporting to be on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
>
> (c) that he might, if extradited, be denied a fair trial or punished, detained

or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or

(d) that the offence of which that person is accused is statute barred in the approved State that has requested his extradition; or

(e) that his extradition is prohibited by any law in force in Jamaica.

The provision at paragraph (c) echoes Article II 2 (c) of the Extradition Treaty entered into between Jamaica and the United States of America. It states:

2. Extradition shall also not be granted if:

(a) .....

(b) .....

(c) The person sought it by reason of his race, religion, nationality, or political opinions, likely to be denied a fair trial or punished, detained or restricted in his personal liberty for such reasons.

These provisions clearly show that in order for an applicant to succeed in reliance on them, he must show not only that he might or is likely to be denied a fair trial but also that this likely denial is a result of his race, religion, nationality or political opinions.

Whereas ground 8 addresses the issue of fair trial, there is no assertion that the likely denial of a fair trial would be as a result of the Applicant's race, religion nationality or political opinions. That these two factors must co-exist in order for an applicant to succeed in reliance on these provisions may be seen in **Fernandez v. Government of Singapore** [1971] 2 All ER 691 in which it was claimed that a fair trial was likely be denied because of his political opinions, **Re Hagan and Another** (unreported), The Times 28 December, 1992 C.O/1179/91 where religion was the stated reason and **Richard Daley v. The Superintendent of Prisons – General Penitentiary and the**

Director of Public Prosecutions (1995) 32 JLR 14 where nationality was the stated reason.

During the hearing of this application most of the time spent on this ground was taken up with the examination of affidavits submitted on behalf of Ramcharan and the Respondents, and submissions dealing with whether or not the Applicant might be denied a fair trial. Lord Gifford Q.C., however, submitted that this likely denial of a fair trial would be as a result of the nationality of the Applicant. He sought to support this by stating that the kingpin designation can be made only in relation to persons who are not nationals of the United States of America.

I would regard this notion of nationality as fanciful. To my mind, in order to rely on nationality, the Applicant would have to show that he might be denied a fair trial because he is a Jamaican. This he has failed to do. It is quite clear that the designation did not come about because of his nationality but because of his perceived involvement in the trafficking of narcotics. I find support for this in the judgment of the Bahamas Court of Appeal delivered by Ganpatsingh, J.A. in **The Government of the United States of America and the Superintendent of Prisons of the Commonwealth of the Bahamas** (unreported) Common Law Appeal No. 48 of 2004. In that case Samuel Knowles who was also designated a kingpin sought a writ of habeas corpus on the ground that if extradited he would be denied a fair trial by reason of his nationality. At paragraph 14 of the Judgment Ganpatsingh J.A. states:

> "It does seem to us that the respondent's designation has come about not because of his nationality but as a result of his alleged criminal activities against the laws of the United States. In short, the designation appears to have been a consequence of his perceived criminality by the U.S. authorities and not as a consequence of his nationality".

Having found that the kingpin designation was not based on nationality, I need not embark on an in depth analysis of the evidence presented in respect of fair trial. Having examined the evidence, however, I am of the view that on the basis of the elaborate jury selection process in the United States the Applicant, if extradited would be afforded adequate protection against an unfair trial. Further I find from the evidence put forward that he would not be deprived of the opportunity of retaining an attorney of his choice. This ground in essence concerns pre trial publicity which is an issue to be dealt with in the trial process. Accordingly this ground also fails.

In **ground 9** the Applicant claims that the accusation made against him was not made in good faith and in the interest of justice. Section 11(3) of the Extradition Act provides another avenue for the grant of a writ of habeas corpus. It states:

> (3) On any such application the Supreme Court may, without prejudice to any other power of the Court order the person committed to be discharged from custody if it appears to the Court that –
>
> (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
>
> (b) by reason of the passage of time since he is alleged to have committed the offence or to have become unlawfully at large, as the case may be; or
>
> (c) because the accusation against him is not made in good faith in the interest of justice,
>
> it would, having regard to all the circumstances, be unjust or oppressive to extradite him..

This ground is by no means new and was considered in **Re Arton** [1896] 1 Q.B. 108 in response to which Lord Russell C.J. at page 114 said:

> " It has been pointed out by myself and my learned brothers during the argument that this is in itself a very grave and serious

> statement to put forward and one which ought not to be put forward except upon very strong ground; it conveys a reflection of the gravest possible kind, not only in the motives and actions of the responsible Government, but also impliedly upon the judicial authorities of a neighbouring friendly Power".

In Blake's case (supra) a similar ground was raised, In dealing with it Forte, J.A. said:

> "This allegation must be determined on the presumption that countries that enter into extradition treaties for the return of prisoners or suspects from one country to another, for the purpose either for ensuring the imprisonment of the convicted person, or the trial of the fugitive, do so honourably and with sincere intentions of acting according to the terms of the treaty. Consequently, any such allegation must be put forward on very strong grounds".

What therefore is the basis on which the Applicant relies?. This ground is based on the fact that the kingpin designation was made after the request for extradition was made. I fail to see how this ground could be sustained on that basis and it was not surprising therefore, that this ground was not pursued.

The applicants, having failed on all grounds, the applications for writs of habeas corpus are therefore refused.