

COPY

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

SCA #27 OF 2011

EDUARDO SWABY-GUITTEREZ

- VS -

REGINA

Reasons for Judgment delivered by The Honourable

Mr. Justice Henderson on Friday, June 29, 2012,

at George Town, Grand Cayman.

APPEARANCES:

For the APPELLANT:

Mr. P. Polack

For the RESPONDENT:

Mr. K. Ferguson

1 Grand Court commenced on Friday,
2 June 29, 2012 at 10:01 a.m.

3
4 Ruling by Henderson, J.

5
6 The appellant Eduardo Swaby-Guitterez
7 appeals from his conviction in the Summary
8 Court on a charge of possession of cocaine with
9 the intent to supply.

10 A number of points were taken, some of
11 which lacked any merit, but the Crown concedes,
12 and I agree, that there was merit in this
13 point. A quantity of drugs were found in a
14 console in a car which was parked outside a
15 building. That car at the material time was
16 owned by the defendant. At the material time,
17 the defendant had the keys to that car in his
18 possession or custody. They may have been
19 hanging on a peg inside the building but they
20 had been placed there apparently by the
21 defendant. Certain items such as scales and a
22 knife were found in the building and some white
23 powder was observed on the knife.

24 The Learned Magistrate misconceived the
25 evidence. There was a trace of cocaine found

(SCA #27/11 2012JUNE29 kam)

1 on the knife but the Learned Magistrate was
2 focused upon certain white particles which were
3 found on a table and she inferred from the
4 evidence, incorrectly, that the particles found
5 on the table had been analysed and proved to be
6 cocaine. She used that inference as part of
7 her reasoning for convicting the defendant for
8 possession of the cocaine which was in the car.

9 The Crown concedes that the Learned
10 Magistrate erred in her appreciation of that
11 aspect of the evidence. I am satisfied that
12 she did and I am further satisfied that the
13 conviction for possession of cocaine with
14 intent to supply must be set aside as a result
15 of the error.

16 There is, however, a core body of evidence
17 which supports a conviction for the included
18 offence of possession of cocaine, often
19 referred to as "simple possession". The
20 defendant owned the car. He had custody of the
21 keys. The defendant called evidence to suggest
22 that he did not know the cocaine was in the
23 car. He called two witnesses who presented an
24 explanation for how the cocaine got there. The
25 Learned Magistrate believed none of that

(SCA #27/11 2012JUNE29 kam)

1 evidence. She had the witnesses before her.
2 She weighed their credibility and found it
3 lacking.

4 In these circumstances, there is a body of
5 evidence which would support a conviction for
6 the lesser included offence and so, having set
7 aside the larger conviction, I will substitute
8 for it a conviction of simple possession of
9 cocaine; that is to say, the cocaine which was
10 in the car. The amount of cocaine in the car
11 was 21.6 grams -- roughly half an ounce.

12 It is necessary for me at this point to
13 impose sentence on the simple possession
14 conviction so I will hear you on that subject.

15
16 ...(submissions heard)...

17
18 Given the fact that the sentence must be
19 imposed for simple possession of 21.6 grams of
20 cocaine, the fact that the defendant has served
21 seven and-a-half months in jail means he has
22 served any sentence which would have been
23 imposed upon him. I will sentence you today to
24 imprisonment for seven and-one-half months but
25 time served will be taken into account.

(SCA #27/11 2012JUNE29 kam)

1 We will adjourn.

2
3 (Court stands adjourned at 12:50 p.m.)

(SCA #27/11 2012JUNE29 kam)

REPORTER'S CERTIFICATE

Certified correct to the best of my
skill and ability dated the 26th day of
June, 2014.


Karen Ann Myren