

1 IN OPEN COURT
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS
3

24-11-05

4 SCA NO: 6/04
5 CASE NO: 1786/02(1-3)

6 BEFORE: The Honourable Madam Justice Levers

7 BETWEEN:

8 DONALD KNIGHT

Appellant/Defendant

10 AND:

11 THE ATTORNEY GENERAL

Respondent/Applicant

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14 APPEARANCE:

15 Counsel for the Appellant: Mr. Lee Freeman of Broadhust Barristers

16 Counsel for the Respondent: Ms. Leslie Bates of the Legal Department
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18 HEARD: 11th November 2005

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JUDGMENT



Levers J.

The Appellant in this matter Mr. Donald Knight was charged with:

1. Being concerned with possession of cocaine with intent to supply,
contrary to section 3 of the Misuse of Drugs Law;

- 1 2. Being concerned in possession of cocaine, contrary to section 3(1)
- 2 3. Being concerned in the importation of cocaine, contrary to section
- 3 3(1) (a); and
- 4 4. Doing an act tending and intending to pervert the course of justice,
- 5 contrary to the Common Law.

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7 The accused was convicted initially on 14th November 2002 and on an

8 appeal a retrial was ordered. He was subsequently tried in 2004 and was

9 convicted by a magistrate on the 11 March 2004. He now appeals on the

10 following grounds:

- 11
- 12 1. That the Appellant was not offered the opportunity of a trial by Jury
 - 13 despite the offence falling within Category B and therefore being
 - 14 triable on indictment or with the consent of the Prosecution, and
 - 15 accused, triable summarily.
 - 16 2. That the Summary Court had no jurisdiction to hear the case and the
 - 17 proceedings are a nullity.
 - 18 3. That the credibility of Emily Scott, an alleged accomplice of Mr.
 - 19 Knight was the central issue in this case and that the magistrate failed

1 to warn herself of the dangers of convicting under the uncorroborated
2 testimony of an accomplice.

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4 Regrettably, the appeal grounds are more in the form of skeleton arguments
5 and I have reproduced what I think are, in fact, the grounds of appeal. The
6 Appellant also appeals against sentence. Although not much was said in
7 that context, at the appeal I will give the sentence due consideration as well.

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9 Appeal Against Conviction

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11 The facts in this case are quite simple. One Ms. Scott was apparently
12 approached in Jamaica to bring drugs on behalf of the Appellant. The
13 Appellant is alleged to have sent money to Uriah Thomas who purchased
14 Ms. Scott's ticket and gave her the drugs to swallow, in order to bring it to
15 Cayman for the Appellant. The Appellant went to meet Ms. Scott at the
16 airport. He denies any knowledge of the drugs, he denies paying for her
17 ticket, and he denies that he asked anybody to import the drugs for him.
18 There is also an allegation that the Appellant interfered with the witness in
19 the police cells and promised to look after her children if she denied any
20 knowledge of his involvement in the importation.

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2 The Appellant is charged with being concerned together with the Ms. Scott.

3 The charge reads: "being concerned in the importation". There is no doubt

4 that importation standing on its own is a category B offence and cannot be

5 tried summarily without the consent of the prosecution and the accused.

6 (See section 60 of the Misuse of Drugs Law). It is apparently now quite

7 common for a charge of "being concerned in importation" to be tried

8 summarily, on the basis that specific reference is not made to the charge of

9 "being concerned" in section 60. Mr. Freeman on behalf of the Appellant

10 argues that this cannot be an accurate interpretation of the law. Section 60

11 (1) of the Misuse of Drugs Law states:

12

13 "Notwithstanding any other section of this Law
14 where a person is charged with any offence of
15 selling, dealing in, distributing, supplying,
16 dispensing, storing, issuing a prescription for,
17 administering, importing, exporting, producing or
18 attempting, contrary to section 3(1) which relates
19 to a controlled drug that is a hard drug, then such
20 offence shall be deemed, for the purpose of
21 determining the mode of trial, a category B offence
22 in accordance with section 5 of the Criminal
23 Procedure Code (1995 Revision)."

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1 It is my view that the submissions made by Mr. Freeman in regards to this
2 aspect of the appeal, is persuasive. The essence of joint responsibility for a
3 criminal offence is that each defendant shares the intention to commit the
4 offence and took some part in it, however great or small so as to achieve that
5 aim. That must therefore mean that each one individually is guilty of
6 importation and the words being concerned together added to a charge does
7 not magically change the essence of the charge nor the elements that the
8 Crown has to prove against an individual.

9

10 This is further confirmed by the law itself, section 60 (1) of Misuse of Drugs
11 Law states, "that any offence of importation" and it is my view that the
12 accused in this matter should have been given an election as it is a Category
13 B offence. The election not having been given, the trial is a nullity. As far
14 as the charge for which he was convicted, contrary to 105 (b) of the Penal
15 Code, namely interfering with the witness, that too is a Category B offence
16 under the First Schedule of the Criminal Procedure Code (1995 Revision)
17 and the accused should have been given a chance to elect on this. Therefore,
18 that trial too is a nullity.

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1 What is left is the possession of cocaine with intent to supply and possession
2 simpliciter.

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4 The Crown in response to the Grounds of Appeal has not responded on the
5 question of the election. What they do however say is that that learned
6 Magistrate warned herself as to the dangers of convicting on the
7 uncorroborated testimony of the accomplice. That maybe so, but on a
8 careful review of her judgment, it is clear that the charges of which she
9 found him guilty are the importation charge and the being concerned in the
10 possession with intent to supply. She also found him guilty of interfering
11 with the witness. The charge of being concerned with the possession of
12 cocaine simpliciter was subsumed in 3. I have already held that on the
13 charge of being concerned in the importation of cocaine, and the charge of
14 interfering with a witness, the accused should have been given the right of
15 election and therefore the trial was a nullity. This now leaves the charges of
16 possession with intent to supply and possession simpliciter.

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18 On a perusal of the judgment it appears that the learned Magistrate
19 addressed her mind to the elements of importation and not possession

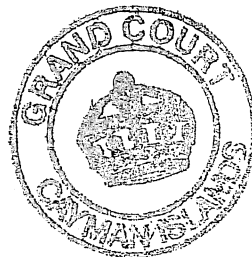
1 independently. This would be a case of constructive possession and it would
2 be necessary for the Crown on this charge to prove/and establish control. In
3 those circumstances, the learned Magistrate would need to reduce her
4 findings to writing, on the elements the Crown needs to establish. The
5 Judgment indicates a finding of importation and consequently a finding of
6 possession. If the Appellant was acquitted of importation, possession could
7 not stand. Therefore, I am of the opinion that the appeal on these charges
8 should be allowed.

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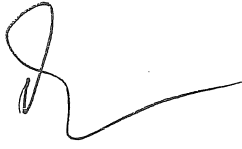
10 I now have to consider the question of a retrial. I bear in mind that the
11 accused in this case has already done some three years and that this is the
12 third trial that he will face. However, it is my view that the seriousness of
13 the charges and the public interest demands that a retrial be ordered. I
14 therefore order a retrial on all of the charges in which I have allowed the
15 appeals. The charges on which I have declared the trial a nullity are left to
16 the Prosecution to make whatever decision they deem appropriate, *if indeed*
I have the power, I order a retrial.

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18 Dated this *2* day of November 2005



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A handwritten signature in black ink, consisting of a stylized 'R' followed by a long horizontal stroke.

2 Judge of the Grand Court

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