

COPY

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

SCA #57 OF 2002

DONALD KNIGHT

VS

REGINA

Reasons for Judgment delivered by THE HONOURABLE

MR. JUSTICE HENDERSON on Friday, August 1, 2003,

at George Town, Grand Cayman.

APPEARANCES:

For the APPELLANT:

MR. S. DICKSON

For the RESPONDENT:

MR. S. WILSON

1 COURT COMMENCED ON FRIDAY,
2 AUGUST 1, 2003 AT 4:19 P.M.

4 RULING BY THE COURT:

6 THE COURT: The appellant, Donald Knight,
7 appeals from his convictions in the Summary
8 Court on charges of being concerned with the
9 importation of cocaine and interfering with a
10 witness. He was sentenced to 15 years.

11 A number of points have been taken by his
12 counsel on this appeal, but I need deal with
13 one only.

14 The principle evidence against Knight was
15 given by one Emily Scott. She testified that
16 she was recruited in Jamaica to swallow cocaine
17 and bring it through Cayman Customs. She said
18 that she had two phone calls while she was in
19 Jamaica with a man who identified himself as
20 "Donald Knight". He said that he worked at
21 Ropers doing janitorial work in the Cayman
22 Islands. She said she had never met the man.

23 She went on to recount how when she
24 arrived at the airport on Grand Cayman Island.
25 She was arrested. Later, while in the holding

1 cell area of this courthouse, she heard the
2 same voice that she had heard on the telephone
3 and recognised that voice. The voice she heard
4 in the holding cell area was that of the
5 defendant, Donald Knight.

6 There was some other evidence given by
7 Miss Scott which implicated Knight.

8 Mr. Knight gave evidence at trial and
9 denied having any knowledge that Miss Scott was
10 importing cocaine. He said that he went there
11 at the behest of a friend who proposed to have
12 a liaison with Miss Scott. The friend was
13 married, so the friend recruited Mr. Knight to
14 pick her up at the airport and bring her into
15 the country. He did not reveal in his evidence
16 at trial who this friend was, where he lived,
17 or any other identifying details. The friend
18 was never called as a witness.

19 The difficulty is this: Miss Knight was
20 clearly an accomplice. It is well established
21 as a rule of law that where a judge is sitting
22 with a jury he must warn the jury in clear and
23 uncertain terms that it is dangerous to convict
24 on the uncorroborated evidence of an
25 accomplice. He must then go on to advise the

1 jury of which pieces of evidence might be
2 viewed by them as corroborative of the
3 accomplice's testimony.

4 Corroboration must be independent of the
5 accomplice. For obvious reasons, an accomplice
6 cannot corroborate her own evidence. One must
7 look for independent supporting or confirming
8 evidence. None of what I have just said is
9 controversial.

10 This was a trial before a learned
11 Magistrate sitting without a jury. She is
12 experienced in the criminal law and can be
13 assumed to have a good command of basic
14 principles, such as those I have just
15 articulated.

16 However, it appears to be the law in this
17 jurisdiction that a magistrate who is called
18 upon to weigh the evidence of an accomplice
19 must expressly warn herself, in the course of
20 giving reasons for judgment, of the rule I have
21 just described. As I interpret the relevant
22 authorities, failure to warn oneself in that
23 manner is an error of law.

24 I draw that conclusion from three cases.
25 In Helner v R, 1984 CILR 171, Chief Justice

1 Sommerfield of this court noted with
2 disapproval that, in the judgment under appeal
3 from the Summary Court, there was no reference
4 to the proper approach to the evidence of an
5 accomplice or any search for evidence which
6 could be treated as corroboration. He repeated
7 that observation, again, towards the end of his
8 judgment, and then said (at page 178):

9 "One would have expected a
10 plausible explanation of the
11 conflicts, inconsistencies and
12 improbabilities adverted to
13 above to justify reliance on
14 those accomplice witnesses as
15 being truthful and reliable."

16 In the result, His Lordship allowed the
17 appeal.

18 In Bertolino v R 1990-91 CILR 112, Chief
19 Justice Harre of this court addressed the same
20 question. At page 115 he said this:

21 "The question of what are the
22 minimum requirements of a
23 judgment was considered by Chief
24 Justice Collett and Justice
25 Schofield in their judgment

1 dated September 29th 1988 in
2 *Smith v R.* They reviewed
3 sections 51, 52, 71 and 72 of
4 the Criminal Procedure Code, and
5 concluded that as a minimum the
6 judgment of a Summary Court
7 should, as well as complying
8 with the requirements of section
9 52 of the Criminal Procedure
10 Code, set out the point or
11 points for determination, the
12 decision thereon, and the
13 reasons for decision. Obviously
14 a simple case will warrant a
15 simple judgment, but it must
16 contain as a minimum the three
17 elements just set out."

18 (In *Smith* there were no reasons given at
19 all by the Summary Court. And in support, if
20 support is needed, of the principle that they
21 should be given, I refer briefly to a decision
22 of the Court of Appeal of Trinidad & Tobago in
23 *Aqui v Pooran Maharaj*. It was there held that
24 "Although no statutory provision
25 expressly required a magistrate

1 to state the reasons for his
2 decision, the practice of doing
3 so had grown up and been adhered
4 to over the years so that it was
5 now properly regarded as a rule
6 of law. It was now a
7 fundamental principle of justice
8 that parties to litigation were
9 entitled to know the reasons for
10 decisions of a court of law."

11 His Lordship then cited *Helner* and quoted
12 from that judgment. He then continued in this
13 vein.

14 "If there are conflicts,
15 inconsistencies and
16 improbabilities, they must be
17 shown to have been considered
18 and dealt with. This is not to
19 say that a trial judge must make
20 explicit findings on every
21 disputed piece of evidence. If
22 it is clear that he has the
23 evidence in mind, it suffices
24 for him to state his final
25 conclusion."

1 A little later on, though, he said:

2 "But, if within the broad issue
3 of credibility, there is a
4 narrower issue which has to be
5 determined, and shown to have
6 been determined, before the
7 broad issue can be said to have
8 been fairly tried, that issue
9 must be expressly dealt with in
10 the judgment."

11 In my view, that last sentence I have
12 quoted from *Bertolino* aptly describes the
13 present situation.

14 The broad issue before the learned
15 Magistrate was the credibility of Emily Scott.
16 The whole case turned on that. Mr. Knight
17 could not be convicted unless the Magistrate
18 was sure that Scott was telling the truth and
19 that Knight was lying.

20 The narrower issue, within that broader
21 issue, which had to be determined first, before
22 a conclusion could be reached on the broad
23 issue, was the question of corroboration.

24 Since Scott was an accomplice, it was dangerous
25 to convict on her uncorroborated evidence. The

1 narrow question of whether there was any
2 independent credible evidence to support,
3 confirm or corroborate Scott's evidence had to
4 be decided before the ultimate issue of her
5 credibility was adjudged.

6 Chief Justice Harre dealt with this again
7 in Nicoletta v R 1992-93 CILR 225. At page 229
8 he said this:

9 "The learned Magistrate did find
10 that McLean fell into the
11 category of an accomplice but,
12 it was submitted, failed to warn
13 himself properly, or at all, of
14 the danger of acting on his
15 uncorroborated evidence. In my
16 view, when an experienced
17 magistrate expressly refers to
18 the status of a witness as an
19 accomplice, it can safely be
20 inferred that he is saying that
21 for a reason and is aware of
22 what the implication of that
23 finding is. The important thing
24 is to ascertain, looking at the
25 evidence as a whole, whether he

1 heeded the warning which is
2 implicit in the finding."

3 I do not think the passage I have just
4 quoted gives enough comfort to the Crown on
5 this particular appeal to save the conviction.
6 I note that Chief Justice Harre was dealing
7 with a case where an experienced Magistrate
8 expressly refers to the fact that a witness is
9 an accomplice without, however, spelling out
10 all of the implications which flow from that.
11 Here, in her extensive reasons for judgment,
12 the learned Magistrate did not at any point
13 refer to the fact that Emily Scott is an
14 accomplice. The learned Magistrate may well
15 have been aware of that. She made extensive
16 findings of fact from which it must have been
17 obvious that Scott was an accomplice, but she
18 did not, in her reasons for judgment, say so.

19 Moreover, the learned Magistrate did not
20 at any point in her judgment focus upon the
21 dangers that flow from accomplice evidence.
22 She did not deal with such questions as Scott's
23 motivation for testifying. She did not advert
24 to the fact that Scott has not yet been
25 sentenced and, at the point of giving evidence,

1 had a potential sentence of many years
2 imprisonment hanging over her head.

3 I think this case has to be distinguished
4 from *Nicoletta*. It falls within the class of
5 case described by Chief Justice Harre in
6 *Bertolino*.

7 The learned Magistrate erred in law when
8 she failed to identify expressly Scott's status
9 as an accomplice and state the need for a
10 search for corroboration, coupled with some
11 sort of recognition that it is dangerous to
12 convict on the uncorroborated evidence of an
13 accomplice. That means I must set aside the
14 conviction.

15 The remaining question is whether there
16 should be an acquittal entered or a new trial
17 ordered.

18 The criteria to be considered on this
19 aspect have been set out succinctly and clearly
20 in *Bertolino*, *supra*. Chief Justice Harre
21 identified them in these terms:

22 C) Among the factors to be
23 considered in determining
24 whether or not to order a new
25 trial are: 1) the seriousness

- 1 and prevalence of the offence,
- 2 2) the expense and length of
- 3 time involved in a fresh
- 4 hearing.
- 5 3) the ordeal suffered by an
- 6 accused person on trial.
- 7 4) the length of time that will
- 8 have elapsed between the offence
- 9 and the new trial.
- 10 5) the fact that, if it be so,
- 11 that evidence which tended to
- 12 support the defence on the first
- 13 trial would not be available at
- 14 the new trial.
- 15 6) the strength of the case
- 16 presented by the prosecution."

17 That list is not exhaustive.

18 The present case involves one which is
19 very serious indeed, and depressingly prevalent
20 in this jurisdiction.

21 The expense and length of time involved in
22 a fresh hearing are not, in my view, of any
23 great consequence. There was only one witness
24 of real substance called at the trial. That
25 was Emily Scott.

1 The ordeal suffered by an accused person
2 is item three on the list. I must take that
3 into account, and I do.

4 The length of time that will have elapsed
5 between the offence and the new trial here is
6 now considerable. That, however, may work
7 against the Crown, rather than against the
8 accused, as it tends to diminish the acuity of
9 the recollection of Miss Scott.

10 The fifth factor is that evidence which
11 tended to support the defence on the first
12 trial would not be available at the new trial.
13 I have not been told of any such evidence.
14 Indeed, it may be that at the new trial
15 Mr. Knight will be able to locate the man that
16 he says arranged to have him meet Ms. Scott.

17 Finally, I must consider the strength of
18 the case presented by the prosecution. Because
19 there will be a new trial, it would be
20 inappropriate for me to say much about that. I
21 am, however, satisfied that the prosecution
22 presented a case of reasonable strength.

23 These factors clearly tip the balance in
24 favour of a new trial, rather than an
25 acquittal.

1 My order is that the convictions are set
2 aside and a new trial is to be held in the
3 Summary Court on both charges.

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6 (PROCEEDINGS CONCLUDED AT 4:52 P.M.)
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9 Henderson, J.

10 THE HONOURABLE MR. JUSTICE HENDERSON
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