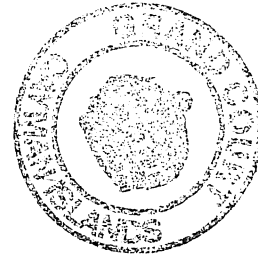


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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA. 56/99

25/04/02
13.03.01

GARY OWEN MULLINGS
V
REGINA



For the Appellant: Mr. Peter Polack
For the Crown: Mr. Samuel Bulgin, Solicitor General

Before Sanderson, J.
April 25, 2001

ORAL REASONS

This is an application by the accused now appellant, Gary Owen Mullings in Summary Court Appeal 56/99 for an order that his counsel, Mr. Polack be entitled to inspect the original exhibits that were introduced at trial. The exhibit in question was alleged to be cocaine. Apparently it was weighed and labelled and presented an exhibit at trial.

Mr. Polack relies on Section 173 of the Criminal Procedure Code which provides;

“On an appeal by motion, the appellant, on serving written notice on or giving oral notice to the Summary Court of his intention to appeal, and on entering into recognisances as aforesaid shall be entitled to receive with all convenient speed a copy of the evidence taken by the Court in the case, and also a copy of the conviction, order or judgment made or given. A copy of the evidence and of the conviction, order or judgment shall also be supplied by the Summary Court to the respondent as soon as the appellant has complied with the requirements of section 167.”

Mr. Polack says that as this was evidence taken before the Magistrate that he is entitled to inspect it for the purpose of examining the labels and seeing if there are any discrepancies between the label when compared to the evidence offered at trial or, whether or not there are discrepancies with respect to the weight of the cocaine.

Firstly I observe that the section only entitles an appellant to a copy of the evidence taken. It does not entitle him as a right to inspect original exhibits.

Secondly Mr. Bulgin has indicated that he does not object to Mr. Polack examining the exhibit in question, provided that the request is made through the Legal Department so that its representative may attend at the inspection.

Mr. Polack argues that the exhibit is in the possession of the Court and that it should be the Courts Administration Officer who makes arrangements

for the inspection of the exhibit and that if the Officer feels that it is appropriate he may notify the Crown Counsel.

However, in this case the Crown has offered to make any exhibit available to Mr. Polack provided that notice is given to the Crown.

I conclude that that is a reasonable position given that this is still a proceeding that is ongoing, in the sense that there has been appeal.

Accordingly, I direct that should Mr. Polack or any appellant in the future have any request to inspect or copy an exhibit that he write to Crown Counsel involved in the case so that Crown Counsel can make appropriate arrangements for the inspection and/or examination of any exhibit. If the Crown refuses then an application may be brought.

I note in passing that if Mr. Polack's interpretation of the Section was correct, then an appellant who was unrepresented by counsel would be entitled to call upon the Courts Officer, that is Mr. Beckett, to produce the original sample of cocaine and allow the individual appellant to come in to the premises and inspect it without the Crown being notified or being

present. This surely cannot be the intention of the legislature when it drafted Section 173. It could not have intended to allow an individual appellant access to the cocaine or other drug without making that request directly through the Crown.

Accordingly, I direct that Mr. Polack make any request to inspect exhibits to the Crown Counsel's office.

DB Sanderson J

D. Sanderson
Judge of the Grand Court

25th April, 2002

