

10/2/95

Mr. Bulgin



IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA#25/94

REGINA vs

CORVIN DIXON

3520/93 POSSESSION OF COCAINE WITH INTENT TO SUPPLY

3521/93 POSSESSION OF COCAINE WITH INTENT TO SUPPLY

JUDGMENT

John Furniss Esq. for the appellant
Samuel Bulgin Esq. for the Crown

Schofield J.

Corvin Dixon was convicted on two counts of possession of cocaine with intent to supply contrary to section 3 (1) (m) of the Misuse of Drugs Law. He is alleged to have sold cocaine to United States Drug Enforcement Officers on two separate days in July 1993. The appellant says there was a mistake in his identification, that the officers must have mistaken him for his brother, and that he was elsewhere at the time the alleged offences took place.

The appeal must succeed and the learned Crown counsel rightly so concedes. At the commencement of his judgment the learned Magistrate



considered the burden of proof and reminded himself that the burden of proof lay on the Crown. He correctly reminded himself of the standard of proof in a criminal case. He went on to say:

"Where a defence is run, as happened in this trial, a defence of alibi, it need only be established on the standard of proof applicable of civil cases, and that the Court need only be satisfied on a balance of probabilities that it is more probable than not that the defendant was elsewhere than at the locus in quo on the 20th and 22nd July 1993."

That was a fatal misdirection. The legal burden throughout remained with the Crown (see Archbold Criminal Pleading Evidence and Practice 1992 at paras 4-391 to 4-393). The misdirection tainted the whole of the learned Magistrate's judgment and it is impossible to say that no miscarriage of justice was caused by the burden of proving his alibis being shifted to the defendant.

Should I order a retrial? Clearly these are allegations of serious offences although they involve street peddling of cocaine rather than allegations of substantial supply; and did not merit the two consecutive five year prison sentences handed down by the learned Magistrate.

The alleged offences occurred over 18 months ago and witnesses will have to testify as to their recollection of the identity of the alleged seller of the drugs. Sentence was passed on 21st March 1994 almost eleven months ago. It will take several weeks, possibly a matter of months, to organize a new trial and there are witnesses from overseas.



In all the circumstances I do not think it is in the interests of justice to remit the matter for retrial.

The appeal is allowed, the convictions recorded against the appellant are quashed and the sentences set aside.

Dated this 10th day of February, 1995.



D. Schofield
Judge

