

Legal



ORIGINAL
1994

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA #52/93

FRANK ALLEN McFIELD v. REGINA

Mr. Furniss for the appellant
Ms. Agard for the Crown



JUDGMENT

Schofield J.

Frank Allen McField ("the appellant") was convicted on 7th June, 1993, after trial of an offence of possession of cocaine with intent to supply, contrary to Section 3(1)(m) of the Misuse of Drugs Law (Revised).

The evidence in the trial came from three police officers, Detective Constables Harvey and Montague and Detective Sergeant Brown. They testified that they were on mobile patrol at about 6:15 p.m. on 25th September, 1992 in a place known as East off Shedden Road, George Town, when they saw the appellant driving a hired motor car in the opposite direction. He was carrying a male passenger. When the appellant saw the officers he appeared nervous and although he was signalled to stop he tried to squeeze past the unmarked police vehicle. The police vehicle blocked his exit and a search was carried out by D.C. Montague. A razor blade and drawing pin were recovered from the dashboard of the hired car.

When D.C. Harvey asked the appellant to witness a search of the trunk of the car the appellant walked a little way off, cursing. He refused to witness the search which revealed, together with his child's school bag, a radio, battery and other items, a matchbox which contained thirteen foil wrappers containing a total of 2.509 grams of cocaine of 90% purity.

The appellant was arrested and searched and a total of \$308 was found on him.

In an interview conducted at Central Police Station the next day by D.C. Montague, the record of which was admitted without objection, the appellant accepted that he was the hirer of the car he was driving, that no one else had been into the trunk of the car that day, and that the items in the boot other than the match box containing the cocaine belonged to him. When he was asked why he was reluctant to witness the search of the boot and why he walked off a little way from the car, the appellant said:

"Because I was pissed off already because I told you where I was coming from."

A urine sample was taken from the appellant and analysis of it proved positive for cocaine and ganja. The appellant pleaded "guilty" to charges of consuming cocaine and consuming ganja.

The appellant elected not to testify.

The appellant's counsel argues that the conviction for



possession with intent to supply cocaine is unsafe because of the emphasis placed by the learned Magistrate in his judgment on the presence of a drawing pin and razor blade, which could be paraphernalia for use in connection with drugs, and on the finding of a fairly large amount of money in the appellant's possession. It is argued that these items of evidence could be innocently explained, and it was an error for the learned Magistrate to draw inferences adverse to the appellant from them.

The presence of a drawing pin and razor blade in the appellant's car took the case against him no further. We know he had consumed both cocaine and ganja previous to his arrest. It was not explained to the Court how these items could be used in connection with drugs and whether their use would be in connection with the consumption or supply of cocaine or of ganja. Furthermore, the amount of money on the appellant's person could be innocently explained, and was innocently explained by him in his interview with D.C. Montague. I have sympathy with Counsel's submission that the learned Magistrate erred in putting these two items of evidence in the balance against the appellant.

Be that as it may, the remainder of the evidence against the appellant was overwhelming, and on my independent assessment of it properly results in his conviction. The appellant displayed nervousness when he saw the police officers. He showed a marked reluctance to have anything to do with the search of the trunk where the cocaine was found. He was the only person with access

to the trunk and the trunk contained other items which he acknowledged were his. The appellant must have known the cocaine was in the trunk and must have been in possession of it.

The quantity was such that it could not have been for his own consumption. The charge was proved beyond a reasonable doubt.

As to sentence the appellant received a 3 year term of imprisonment for the possession with intent to supply charge and concurrent sentences of six months imprisonment for consumption of cocaine and three months imprisonment for consumption of ganja. He had, on the 3rd February, 1993, received a sentence for being concerned in the possession of cocaine with intent to supply which was reduced on appeal to two years imprisonment. The three year total sentences for these matters were expressed to run consecutively to that earlier sentence. In addition, the appellant was fined \$500 and the cash found on him of \$308 was ordered to be forfeited.

The order for forfeiture of the money was unlawful. It is well settled that such forfeiture can only be ordered if the money found on an offender related to or was acquired due to or as a result of the particular offence he was charged with. As no actual sale was proved or alleged the \$308 in this appellant's possession cannot have related to or have been acquired due to or as a result of his possession of the 13 foil wrappers of cocaine found in the trunk of his car. I set aside the order for

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forfeiture. Instead, I order that the \$308 be applied towards the fine of \$500 and order that if the balance of \$192 be not paid before his release date then he serve a further 14 days imprisonment in default of payment thereof.

The sentences of imprisonment were legal and appropriate. The appellant has a bad record in which drugs offences figure largely. He has now clearly moved into the supply side and he and his kind must expect severe deterrent sentences for such conduct. He committed two serious offences within a space of months and must face the penalty for his offences.

To the extent I have indicated only does this appeal succeed.


Judge

Dated this 31st day of March, 1994

