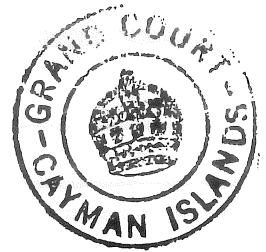


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA#49/93



4-03-94

Wra
CLIFTON MATTHIAS RINGROSE v. REGINA

Mr. Murray with Mr. Garcia for the appellant
Mr. Helfrecht for the Crown

JUDGMENT

Schofield J.

The appellant was convicted after trial of an offence of working without a gainful occupation licence, contrary to Section 30(1) of the Caymanian Protection Law. He appeals against his conviction on four grounds.

In the first ground of appeal the appellant maintains that the charge was defective in that it disclosed no offence at law.

The charge reads:

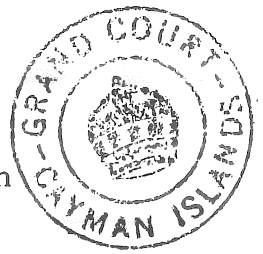
"Working without a gainful occupation licence, contrary to Section 30(1) of the Caymanian Protection Law."

The particulars read:

"Clifton Matthias Ringrose in Grand Cayman on dates between the 1st day of November, 1991 and the 8th day of May, 1992 you were engaged in employment by Island Rock Limited without having been licensed in that behalf by the Caymanian Protection Board."

The relevant portion of Section 30(1) of the Caymanian Protection Law reads as follows:

"30. (1) Whoever engages in any gainful occupation in contravention of any of the foregoing provisions of this Part or fails to comply with any condition or limitation



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contained in any licence is guilty of an offence:" (Proviso does not apply).

Seven sections precede Section 30 in Part IV of the Law. The appellant could engage in gainful occupation in contravention of only one of these sections, namely Section 24. This reads:

"24. Save as otherwise provided by this Law, no person of non-Caymanian status shall be gainfully occupied in the Islands unless licensed in that behalf by the Board."

Counsel for the appellant argues that it was essential for the charge to indicate that the appellant was alleged to be of non-Caymanian status. He argues that one can only be convicted of the offence with which the appellant was charged if one falls within a certain category of persons and it is essential for the charge to state the category to which one belongs. I could see the force of that argument if the Law created several categories of persons some of whom required gainful occupation licences and some of whom did not. Let us say, for example, that all Europeans and Africans were required to obtain a licence to work, but citizens of other countries were not. In that case it could be argued that the charge ought to contain the information of which country the person charged was alleged to be a citizen. However, the Caymanian Protection Law, for the purposes of the provisions under consideration, created two categories of persons; those with Caymanian status who did not require a licence to work and those of non-Caymanian status who did require a licence to work. It is inherent in the nature of the charge that the appellant was alleged to be of non-Caymanian status.

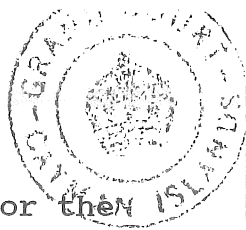
The two cases cited by the appellant's counsel do not assist him. R. v. Brown (1963) 5 W.I.R. 394 and R. v. Gray (1965) 8 W.I.R. 272 were both cases under the Jamaican Vagrancy Law in which offences could be committed in one of a number of locations. The tenor of the cases is that it is necessary to specify with particularity the location in which the offence is alleged to have been committed.

In the instant case the charge set out sufficient detail for the appellant to know precisely what he was facing. There was no ambiguity in the allegations in the charge and there is no merit in this ground of appeal.

The trial of the appellant was joined with the trial of Island Rock Ltd. which was charged with employing the appellant without having a gainful occupation licence in that regard. At the end of the trial the appellant was convicted of the offence he faced and Island Rock Ltd. was acquitted. It is argued in the second ground of appeal that these verdicts are inconsistent.

The Crown's case was that the appellant had worked as a disc jockey at the Island Rock Night Club, without a gainful occupation licence. The evidence for the prosecution consisted of documentary exhibits recovered from Island Rock Ltd. showing that three payments had been made by cheque to the appellant and records of interviews conducted by an Immigration Officer called Garfield Wong with the appellant and with a Miss Thelma Turpin of Island Rock Ltd. In the interview of the appellant Mr. Wong asked him if he had ever worked at Island Rock Night Club as a disc jockey and the appellant is recorded as saying he worked there as a disc jockey and a technician. Miss Turpin told Mr. Wong that she contacted a firm called High Tech because the music and lighting system at the Night Club would malfunction. She entered into an agreement with High Tech, for whom the appellant worked on a gainful occupation licence, which firm provided the appellant to look after the equipment at night when it was in use. That, basically, was the defense of both defendants, producing a written agreement between Island Rock and High Tech whereby the latter would provide the appellant's services to the former.

Although the two defendants were tried together the learned Magistrate was under a duty to consider the case against and for each one independently. Although he arrived at apparently inconsistent verdicts these verdicts are legally supportable. Against the Island



Rock Ltd. the Crown produced only the evidence of payments by the company to the appellant. Against the appellant there was proof of those payments together with his own admission, under caution, that he worked as a disc jockey. This admission was not, of course, evidence against Island Rock. In the circumstances, therefore, the evidence against the appellant was stronger and it was possible to give Island Rock Ltd. the benefit of the doubt whilst convicting the appellant, inconsistent as that may seem to the lay man.

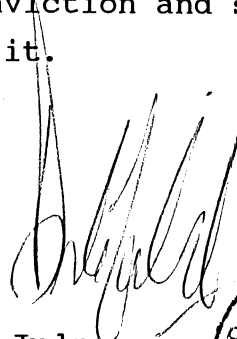
In his note on sentence the learned Magistrate remarked: "I cannot be satisfied what-if anything-Mr. Ringrose was actually paid for his work as a D.J." The third ground of appeal argues that this remark is inconsistent with a finding of guilt on the part of the appellant because it demonstrates doubt in the mind of the Magistrate that the appellant was paid anything for working as a disc jockey. Proof of such payment was an essential part of the Crown's case and needed to be proved. I shall deal with this ground of appeal and the final ground, which basically challenges the veracity of the Crown's case, together.

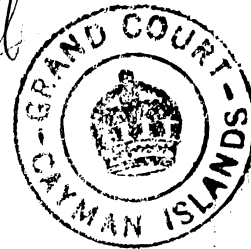
Learned Crown Counsel would have me find that the words "if anything" in the learned Magistrate's note on sentence are an aberration and he asks me to regard them as a slip which should not detract from his clear finding of guilt of the appellant. I would find that submission easier to accept - and it is a submission which requires me to find that the learned Magistrate did not mean what he wrote - if there had been a specific determination in the judgment that the appellant was paid to work as a disc jockey. As it is the learned Magistrate concentrated on the voluntariness of the interview in coming to his decision.

One other matter concerns me and is relevant to consideration of the fourth ground. In his judgment the learned Magistrate remarked: "Evidence of one co-defendant is not evidence against another co-defendant." That clearly is an incorrect statement of law. The testimony of one defendant must be assessed both for and against a

co-defendant where it touches that co-defendant. Again learned Crown Counsel asks me to find that the learned Magistrate did not mean what he wrote; that he meant that the extra-judicial admission of the appellant was not evidence against Island Rock Ltd. I am far from sure that such is the case. If, as I fear, the learned Magistrate ignored Miss Turpin's testimony in the case of the appellant he was ignoring testimony which fell to be put in the balance in the appellant's favour. Furthermore, although the learned Magistrate makes passing reference to the evidence of Dominic Ebanks, a disc jockey at the Island Rock night club, who testified that the appellant did not work as a disc jockey there, it is far from apparent from the judgment that he gave such evidence in favour of the appellant the weight it deserved.

All in all I consider the conviction of the appellant is unsafe and I accordingly quash such conviction and set aside the order for conditional discharge made upon it.


Judge



Dated this 4th day of March, 1994