

25.2.94

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

SCA #21/92

AVE MONIQUE STACEY WATLER v. REGINA

Mr. Furniss for the appellant
Mr. Helfrecht for the Crown



JUDGMENT

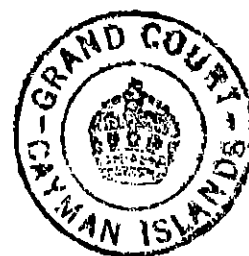
Schofield J.

Beaver McKay Smith and the appellant, Ave Monique Stacey Walter, shared a room in a house in Marina Drive, Prospect, Grand Cayman. The appellant was taken into police custody on the 16th June, 1991 and the house she lived in was raided. Rocks of cocaine and a small quantity of ganja were found in different parts of the house. Smith was in his room and a search of it revealed utensils used in the preparation of cocaine. The appellant and Smith were charged jointly with another occupant of the house, one Tony Allen Wright, with possession of cocaine with intent to supply and possession of cocaine. All three accused persons were acquitted of those offences. However, Smith and Wright were convicted of failing to provide a urine specimen, and Smith was further convicted of offences of possession of ganja and possession of a utensil used in the preparation of a controlled drug. Watler was not convicted on any charge in the trial.

Inside the closet in the appellant's room was found a shirt, the pocket of which contained CI\$960 and US\$30. At the end of the trial the learned Magistrate ordered forfeiture of this amount and it is against that order that the appellant appeals.

The only possible statutory provision under which the order for forfeiture could have been made was section 16 (1) of the Misuse of Drugs Law which, as revised and amended, reads:

"16 (1) Notwithstanding and not in derogation of section 16A, but subject to subsection (2), where a person is convicted of an offence against this Law, and the Court by or before which he is convicted is satisfied that any monies or any other thing relate to or have been acquired due to or as a result of the offence, the Court shall order that such monies or other thing be forfeited to the Crown or dealt with in such other manner as it may direct."



Clearly the learned Magistrate determined that the money belonged to Smith. So much is clear from his remarks on sentence and was it a reasonable determination to make on the evidence before him. Smith testified that the money was his. He had said in an interview with the police that the money belonged to the appellant, but in his testimony he said that it had been given to him by the appellant. The appellant did not claim the money as hers at the trial. She did not testify or make representations about the money at the end of the trial. She had told the police, in an interview the record of which was exhibited at the trial, that the only money she had in her room was small change.

Nevertheless it was not open to the learned Magistrate to order forfeiture of the money even if it belonged to Smith. Smith was convicted of three offences, namely failing to give a urine specimen, possession of ganja and possession of a utensil used in the preparation of a controlled drug. It was not possible for the money found in Smith's room to relate to or have been acquired due to or as a result of any of the three offences of which Smith was convicted. In the circumstances therefore the learned Magistrate has no power to order its forfeiture, under section 16 (1) supra or any other statutory provision for that matter, and learned Crown Counsel so concedes.

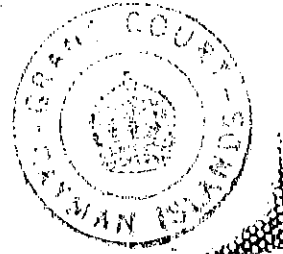
On the setting aside of this order the Court must determine to whom the money is to be returned. If there is any contest in that regard the proper course may be to remit the matter to the Magistrate for him to make a determination. In the event that is unnecessary. Although the appellant did not claim the money as hers at the trial, she now does. Smith is represented by the same Counsel as the appellant and, with the assistance of Counsel, appealed against his conviction and sentence in this case. That appeal was decided on 18th June, 1993, when Smith abandoned the appeal against his convictions and did not pursue his appeal against the order for forfeiture. He clearly does not now lay claim to this money. Wright, the third accused, never did.

In making my inevitable order to set aside the order for

forfeiture of the CI\$960 and US\$30.⁴ I shall also make the only other order available to the Court, that the money be returned to this appellant.



Judge



Dated this 25th February, 1994