

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

BEFORE THE HON THE CHIEF JUSTICE

ON THE 12TH FEBRUARY 1993

SCA 115/92

DAVIS PATRICK LAWRENCE

V

REGINA

Mr. John Furniss for the appellant
Ms. Lorna Dilbert for the Crown

JUDGMENT

On the 28th of November 1991 the appellant was in custody in relation to another drug related matter on which he had been arrested the previous day. Whilst he was in custody the appellant was taken to his residence where a search was conducted.

Three police officers - Det. Sgt. Melford Brown Det. Const. Michael Montague and P/C Earle White were present during the search, when all agree, as indeed does the appellant himself, that a vitamin bottle containing cocaine was found in the vicinity of a washing machine in an annex to the main residence. The appellant admitted that the bottle was for his dogs but denied in his interview and subsequently that he had anything to do with the contents. As the area where the bottle was found was readily accessible to other people the Crown acknowledged that without more they would not have had a strong case. However, there is more. All the police officers gave evidence, in versions which differed in detail only, of an exchange between Sgt. Brown and the appellant after the bottle with its contents had been found. The effect of their evidence was that Brown had asked the appellant whether that was all and the appellant had replied "that's all" or words to similar effect. Moreover, some pieces of foil paper were also found in the bottle and when the appellant was asked what some pieces of foil paper which were found were for he said that they were to wrap cocaine.

Those are the statements in the nature of admissions which are in evidence. At all times thereafter the accused denied making them.

The Grounds of Appeal were as follows:

- "1. The learned Magistrate was wrong in law when he found that the appellant had possession, care and control of the particular bottle which contained cocaine.
2. That on the evidence there was a reasonable inference that items found were placed there by another individual whilst Mr. Lawrence was in police custody.
3. That the presumption was rebutted by the circumstances of the case and the evidence given by the appellant."

Obviously the question put to the appellant and the answer which he gave at the time of the search are crucial in relation to this appeal. The appellant's answers belies his subsequent assertions of ignorance about the contents of the vitamin bottle. However, the admissibility of the question and answer were challenged in the appeal, though not at the trial, on the ground that a caution was not administered to the appellant before the question was asked.

The fact that a person is in custody in relation to one charge does not in itself preclude questioning him about some other offence. That does not, of course, detract from the requirement that a caution should be given as soon as the police officer has evidence which would afford reasonable grounds for suspecting that the person interrogated has committed an offence. It stands to reason that at an earlier stage a considerable amount of questioning must be permitted and answers encouraged, although they cannot be compelled, for if this were not so a great deal of crime would go undetected. Ultimately the admissibility of a confession is a matter for the discretion of the judge, considering, as he must, whether it was voluntarily made. The onus is on the prosecution to prove that the admission was voluntary and in my view the evidence for the Crown does that in this case.

The appeal against conviction for possession of cocaine with intent to supply is dismissed. With regard to the sentence, the appellant did admit that he earned \$366 - \$400 per week. He will not be doing tht for a while. There was no other enquiry as to the appellant's means and in default of that I must consider the fine of \$2000.00 or 4 months imprisonment in default of payment excessive. Some fine is mandatory and in those circumstances the Court on this appeal will permit itself a degree of speculation from the whole surrounding circumstances shown as to what this appellant is likely to be able to pay. I substitute a fine of \$1000.00 with 1 month's imprisonment in default of payment.



G. E. Harre
Chief Justice

16th April 1993