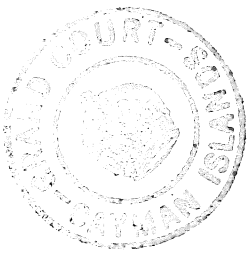


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA. 100/92



RODNEY DEXTER MILLER
GARVIN RICARDO BROWN

V.
REGINA

For the appellant: Mr. Graham Hampson of Paget-Brown, Quin & Hampson
For the Crown: Mr. Adam Roberts, Crown Counsel

JUDGMENT

On the 30th June 1992 both appellants were convicted before the Summary Court for the offences of possession of cocaine and refusing to provide a specimen of urine for analysis.

The determination of their appeals is largely a matter of fact.

The arrests and charges arose from an incident which occurred on 9th September 1991 between 8:30 p.m. and 9:00 p.m. at Old Man Bay, Northside, Grand Cayman.

At that time a Chevrolet Malibu motor car, being driven by the appellant Miller and in which the appellant Brown was the passenger was stopped by a police car as it was in the process of exiting the parking area at the playing field at Old Man Bay.

The police car was occupied by police constables Hyre and Evans who at the trial testified to suspicions they had formed based on information received about the appellant Miller, as the reason for their interception of his Malibu motor car.

The officers testified that the appellants' car was stopped and that in the course of searching the vehicle a cigarette packet was found by

Constable Hyre between the front seats and in it were two foil wrappings containing white substance resembling cocaine.

While he was searching the car and before Constable Hyre found the cigarette packet, the appellant Brown had directed his attention to it by asking "can you pass me those cigarettes?"

It was in response that Constable Hyre took the packet and exercised the precaution of searching it. Hyre stated that he said to Brown "before I pass you the cigarettes I am going to search it, I want you to witness."

Evidence was given that both appellants were invited around to where Constable Hyre was standing to witness his search of the packet.

The appellant Miller's response to the discovery of the foil wrappings was the accusation to Hyre "you put it there".

While Constable Hyre was in the process of unwrapping one of the two foil wrappings the appellant Miller grabbed it from him and put it in his mouth but not before Hyre observed what he described as a white powder substance some of which Hyre said fell onto his finger during the brief contest. Constable Evans described what he saw as cocaine but "like rock mashed up", not "actually powder". This discrepancy has been cited by Mr. Hampson in aid of his submissions but any discrepancy in this regard must also be viewed in the light of the appellant Miller's later testimony that the wrapping contained "white powdery substance."

The other wrapping was secured and eventually analysed and found to contain 0.57mg of cocaine.

The wrapping which Miller grabbed was never recovered but the evidence is that it appeared, of the two wrappings, to have contained the larger portion.

The appellant Miller admitted to grabbing that wrapping and to putting it and the contents in his mouth but maintains he did so out of a sense of frustration and anger at the realisation that the officers were creating a frame-up as he had never seen the wrappings before and knew that Officer Hyre must have planted them.

Miller testified that he later spat out the wrapping and contents but the officers' evidence was that he appeared to swallow them.

Both appellants maintain that when the officers arrived and recovered the packet it contained nothing but cigarettes of which they had both earlier partaken during the day. Miller stated in cross-examination he had bought them and Brown that he had been smoking from them that day.

Both appellants refused to provide urine samples when later required to do so at the police station.

Mr. Hampson submitted that certain aspects of the evidence tended so much to support the accounts of the appellants that their evidence should have been accepted by the learned magistrate in preference to that of the officers.

He argued that the acknowledged reaction of the appellant Miller to Constable Hyre that "you put it there" at being confronted with the foil wrappings, was consistent only with the appellants' story that they were framed.

So too he argues should be the effect of discrepancies between the officers as to whether the substance in the wrapping was powder or solid; as to whether, as Hyre said, some fell during the brief contest from the opened wrapper onto his finger or as Evans said, onto Hyre's thumb; and as to whether Hyre betrayed his and Evans' real objective that night by equivocating in his answer (during his testimony) to the suggestion that they had told the appellants, upon stopping them; that they were searching for a drunk driver in a different Malibu motor car and had stopped them in error.

Mr. Hampson also referred to the evidence of the appellants in which they alleged that Constable Hyre had tauntingly asked the appellants "were you frightened guy?s" after saying that the finding of the packet was "a false alarm". The appellants testified it was only after the wrappings had been put back into the packet and taken out a second or third time that one was opened and shown to contain the substance.

Mr. Hampson submitted that any conclusion that such words were used must in such a context lead to the inference that the wrappings were not found as alleged and that the officers had been taunting the appellants with the threat of a frame-up right there at the scene.

The officers denied those particular exchanges took place but Hyre agreed that when the foil wrappings were discovered and even before unwrapping them, he had, from his experience, formed the suspicion that they contained illicit drugs. It was in that context he maintains that he then said "you guys are under arrest" and further that "you look frightened, guys. Come and witness as I open the foil paper."

That was the invitation to the appellants to gather round to witness the search. In that context if the officer's evidence was accepted, the placing of the appellants under arrest prior to opening the foil wrappings and the observation that they appeared frightened (as the officers testified they appeared) would not have been outside the bounds of proper police conduct.

Having considered the points advanced on appeal I am unable to accept Mr. Hampson's submission that the factors identified from the evidence must operate to raise doubt so as to render the convictions unsafe and unsatisfactory.

The learned magistrate was well placed to consider all of these essentially factual issues and there appears no basis for holding that his assessment of them was wrong.

The learned magistrate could well conclude that the appellant Miller's utterance "you put it there" was merely brazen and self-serving bluff at being confronted with the evidence.

His immediate grabbing and swallowing of the wrapping and contents was a reaction which the learned magistrate properly regarded as consistent only with guilt.

While Constable Hyre stated he could not remember whether he or Constable Evans had made mention of searching for a drunk driver as the reason for stopping the appellants in the first place, Constable Evans was clear that no such thing was said.

It was open to the learned magistrate to conclude that rather than equivocating on this issue, Constable Hyre simply did not recollect.

As to the discrepancy between the officers on the nature or consistency of the contents of the wrapping, the learned magistrate was correct in finding very little could turn on that in light especially of the appellant Miller's later admission that there was a white powdery substance in the wrapping which he grabbed and placed in his mouth.

Miller also admitted in his evidence that some of the substance fell from the wrapping onto Hyre's finger as he opened it. There was therefore no real basis for finding a material discrepancy between the evidence of the two officers on that score.

As to the sequence of events that night, so far as the appellant Brown is concerned; his answers to questions put in his cautioned interview put the lie to much of what he asserted in his evidence at the trial. In his interview he admitted among other things to seeing the discovery by Hyre, of at least one of the wrappings from within the cigarette packet.

The foregoing were the main issues of fact raised for consideration on

the appeal and I find they present no sufficient basis for regarding the convictions as unsafe or unsatisfactory.

I also find that the learned magistrate was correct in concluding that in law both appellants were in possession of the packet and of its contents and I adopt Mr. Roberts' submissions in that regard.

On the Crown's case the evidence was that the car being driven by Miller contained the packet between the two front seats. His reaction was the attempt to destroy the evidence contained in the wrappings. That reaction betrayed Miller's knowledge of the contents.

As to the appellant Brown, he attempted to secure the packet by his diversionary and disarming request to the police officer to pass it to him. In so doing he clearly exhibited some dominion over the packet and its contents.

At the very least that evidence would have justified at the end of the Crown's case, the raising of the statutory presumption in Section 7 (1) (b) of the Misuse of Drugs Law against both appellants.

Miller's evidence after the close of the Crown's case about the purchase of the cigarettes and the use of the packet during the day and Brown's evidence in which he admitted knowledge of the packet, only served to strengthen the inference of knowledge of the contents.

The conviction of the appellants on the charges of possession of cocaine is confirmed and their appeals against conviction dismissed.

Further, it follows that the convictions for refusing must also be upheld as from the circumstances found to have been proven, the officers were entirely justified in requiring the specimens and the appellants would have had no proper basis for refusing.

When account is taken of the appellants' previous convictions for possession and consumption of drugs, for the purposes of sentence, I

am of the view that the sentences imposed were neither wrong in principle nor manifestly harsh or excessive.

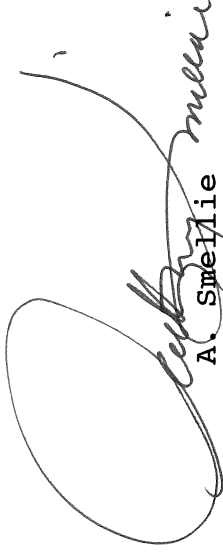
In Miller's case the learned magistrate imposed a sentence of 6 months imprisonment for possession of cocaine and nine months imprisonment for refusing, concurrent.

One would have expected the more severe penalty to have been imposed for the offence of possession of cocaine.

However the learned magistrate may rightly have felt that Miller's attempt to destroy the evidence by swallowing it exacerbated the offence of refusing.

In any event I see no reason to interfere. The appeals against sentence are also dismissed.

22nd October 1993



A. Smellie

Judge