

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 SCA No: 0002/2020  
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6  
7 LYNDEN DWAYNE WALTON  
8

9 v.  
10

11 REGINA  
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14 **Appearances:**

15 **Mr. Keith Myers of Philip Ebanks Attorneys**  
16 **for the Appellant**

17 **Mr. Kenneth Ferguson for the**  
18 **Crown/Respondent**  
19

20 **Before:**

**Justice Marlene Carter (Actg.)**

21 **Summary Court Appeal Hearing:**

**6<sup>th</sup> April 2020**  
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26 **HEADNOTE**

27 *Criminal Law – s.32 of the Court of Appeal Law – Appeal against conviction –*  
28 *Magistrate’s inferences from the evidence.*  
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31 **JUDGMENT**  
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1           1.       On August 5, 2019 at about 12:10 P.M. the Appellant was seen riding a bicycle and  
2                    was apprehended by the Police in relation to an unrelated matter. A search was  
3                    conducted under the *Misuse of Drugs Law* and a small Crest mouthwash bottle with  
4                    contents resembling crack cocaine was found in the front pocket of his pants and which  
5                    was later identified as over three hundred pieces of crack cocaine weighing  
6                    14.4g/0.5oz. He was also found with a substantial amount of cash – CI\$1,330.00 –  
7                    consisting of 13 \$100.00 notes, 1 \$25.00 note and 5 \$1.00 notes.

8           2.       The Appellant was subsequently charged with Possession of Cocaine with Intent to  
9                    Supply, Possession of Cocaine simpliciter, Possession of Criminal Property and Failing  
10                  to provide a specimen of urine for laboratory testing. He pleaded guilty to two of the  
11                  charges: Possession of Cocaine and Failing to provide a specimen of urine for  
12                  laboratory testing. A trial proceeded on the charges of Possession of Cocaine with  
13                  Intent to Supply and Possession of Criminal Property charges.

14          3.       At trial the Appellant’s interview under caution, conducted on the day following his  
15                  arrest, was admitted into evidence. During the interview the Appellant accepted that  
16                  the Police Officer seized the cash from him and asserted that these monies were from  
17                  his iguana culling exercise. He did not mention any other source of this funds and  
18                  denied that the Police Officer took any crest bottle containing cocaine from him at the  
19                  time.

20          4.       Other salient aspects from the interview are summarized in the learned Magistrate’s  
21                  Notes of Evidence set out a paragraph 11(a)-(l) of her Judgment as follows:

- 22                  “a)        *He was not shown the bottle of cocaine. Denied ever having the Crest*  
23                            *bottle or seeing ii before.*  
24                  b)        *He had not consumed cocaine in a while, not in the last week. But had*  
25                            *within the last month of July.*  
26                  c)        *Over the years he has spent a lot of money on cocaine.*

- 1 d) *He did not have any cocaine on him when stopped.*  
2 e) *He had more than \$1300 on him.*  
3 f) *He gets paid every two weeks.*  
4 g) *Last pay was two weeks ago and he receives \$200 every two weeks for*  
5 *culling.*  
6 h) *Since October of last year he collected a lot of money.*  
7 i) *He had a truck which he used to do other work, but not anymore.*  
8 j) *He does iguana culling now, or begs his mother.*  
9 k) *"I am not selling cocaine. I didn't have no crack cocaine."*  
10 l) *"I use powder or crack, however I get it to get high."*  
11

12 5. The Appellant first admitted possession of this cocaine at trial when he asserted that he  
13 had the drugs in his possession for personal use.

14 6. At trial, the Crown led evidence from the Deputy Director of the Department of  
15 Environment that between November 15, 2018 and August 1, 2019 the Appellant was  
16 paid by Cornwall Consulting in several tranches totaling \$6,189.00. For the period  
17 June 2019 to the last payment on August 1, 2019 – four days before the Appellant was  
18 held – he received \$755.00.

19 7. The Appellant also asserted at trial, for the first time, that some of the monies found on  
20 him were from payments that he had received from Foster's Food Fair for agricultural  
21 produce that he and his girlfriend had sold to Foster's and from the sale of a truck that  
22 he used to own that he had used to do landscaping jobs.

23 8. On November 14, 2019 the Appellant was found guilty of Possession with Intent to  
24 Supply and Possession of Criminal Property. The Appellant was sentenced to a period  
25 of 8 years' imprisonment for the Possession with Intent to Supply charge. In addition,  
26 \$750.00 of the \$1,330.00 seized was ordered forfeited as proceeds of criminal conduct.

27 9. The Appellant advanced two main grounds of appeal.

28 10. The first ground stated:





1        *“The mere fact that the Appellant had a crest bottle with over 300 rocks, the total*  
2        *weight being that of ½ of an ounce of Cocaine base, is not evidence of any intent to*  
3        *sell any Cocaine.”*

4                The first ground continued:

5                *“The Appellant contends that in the circumstances of this case having taking (sic)*  
6                *the Appellant as a drug user who uses cocaine on a regular basis a ½ an ounce is*  
7                *not an amount that in the makeup of the Appellant is conducive with that of selling*  
8                *drugs.”*

9        11.        The second ground concerned the monies that were found to be Criminal property. It  
10        was submitted that the Appellant had *“very little costs associated with everyday*  
11        *expenses as the Appellant was (sic) received State Aid for his rent. The Appellant (i)*  
12        *undertakes Iguana culling in many many locations (ii) Supplies Coconut water and*  
13        *other items to Fosters (iii) and Landscape gardening.”*

14                The argument was that he could legitimately have earned the monies that were found  
15        on him and, also, that *“the Appellant had \$1330 on him cash, that being 13 x \$100 bills*  
16        *in a clip that could be locked down (wallet like) and \$30 dollars in a money clip. ... the*  
17        *\$1330 was in large notes, not small notes that is akin to selling and receiving the cash*  
18        *from a drug deal.”*

19        12.        On this appeal the Appellant does not dispute the facts as found by the learned  
20        Magistrate but instead invites the court to find that the Magistrate did not draw the  
21        proper inferences from those facts which led to the conclusions that she made that the  
22        Crown had proved its case to the requisite standard.

1 13. The Learned Magistrate at paragraphs 20 and 21 of her Judgment clearly identified the  
2 issues in the case. She stated as follows:

3 *“In this case there are two salient undisputed facts in relation to the arrest of the*  
4 *defendant by the police on an outstanding warrant:*

5 a) *He had a crest bottle with 300 rocks/crack cocaine in it with a*  
6 *weight of ½ ounce or 14.4 grams.*

7 b) *He had CI\$1330 cash on his person.*

8 *The defendant's case is that the cocaine was all for his personal use, and that the*  
9 *cash was all from legal means.”*

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12 14. The Magistrate referred to the authority of *Waldron v R*<sup>1</sup> wherein the Cayman Islands  
13 Court of Appeal set out the following:

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15 *“...the grounds of appeal reduce to this: that the Chief Magistrate was not*  
16 *entitled to take the view, at the close of the prosecution case and from the*  
17 *evidence of the Crown alone, that she was satisfied beyond reasonable*  
18 *doubt (subject to any further matters which might be revealed if the*  
19 *appellant adduced evidence) that he was in possession of the drugs with an*  
20 *intent to supply. That could be said to raise two questions of law -*  
21 *although neither are in fact raised by the grounds of appeal: (a) whether it*  
22 *can ever be inferred from evidence as to the quantity of the drugs alone*  
23 *that possession is consistent only with an intent to supply; and (b) whether,*  
24 *if so, the quantity in this case was such that no magistrate, properly*  
25 *directing herself, could draw that inference.*



26 *“The answer to the first of those questions is plainly "Yes," It is impossible*  
27 *to hold that there could never be a case where the quantity of drugs*  
28 *(however large) did not compel the inference that possession was*  
29 *consistent only with an intent to supply. In response to the second*  
30 *question, we would be content to assume that there could be cases in*  
31 *which the quantity of drugs was so small that no magistrate, without other*  
32 *evidence pointing to an intention to supply, could not rationally reach the*  
33 *conclusion that he or she was satisfied beyond reasonable doubt that*  
34 *possession was consistent only with an intent to supply.”*

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<sup>1</sup> (2011) (2) CILR 354

1           15.     The Magistrate found in relation to the cocaine:

2                     *“In relation to the cocaine I make the following findings:*

3                             (i)     *I find that the quantity alone in this case would have been*  
4   *sufficient to find possession with intent to supply.”*

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6           16.     However, the Learned Magistrate did not simply rely on that authority to convict the  
7                     Appellant of Possession with Intent to Supply Cocaine, although that authority would  
8                     have supported her. The record shows that she carefully considered the Defence case.  
9                     The Appellant’s defence was that the cocaine was for personal use. If, after  
10                    consideration of the defence case, the Magistrate was in any doubt that the cocaine  
11                    found was for personal use only, it would have been incumbent on her to find the  
12                    Appellant not guilty of Possession of Cocaine with Intent to Supply.

13           17.     In her consideration of the evidence, the Appellant’s reaction when first apprehended  
14                    with the cocaine, his answers in interview and his evidence at trial, she found that these  
15                    were all riddled with inconsistencies. The most glaring of these were highlighted by  
16                    the Magistrate at paragraph 23(c) to (g) of the record as follows:

17                             “c)     *He was inconsistent in his evidence as to where he purchased, from a*  
18   *regular or not from his normal place.*

19                             d)     *His denial and failure to acknowledge the finding of the Crest bottle with*  
20   *the cocaine in the interview is contradicted by his own evidence and how*  
21   *his case was presented.*

22                             e)     *His attempts to explain his inconsistencies that he was "so high" is*  
23   *rejected as coming very late in the trial and on cross-examination. Further*  
24   *the Court had an opportunity to view the interview and he was not*  
25   *obviously "high" to the court.*

26                             f)     *He was incapable of keeping up with his different versions e.g. he stated*  
27   *he had not had cocaine since July, yet he was "so high" when he was*  
28   *arrested.*





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g) *Another example of his inconsistencies was when he said he purchased in bulk and that this amount would have lasted him two to three months, yet he told the Court that he last purchased a rock like this just weeks before."*

18. This was a careful and full consideration of the Appellant's case. The Magistrate was obviously not satisfied that the Appellant's evidence was consistent with his being only a user. She was satisfied that his inconsistent account did not raise doubt on the prosecution case such as to lead her to find that the prosecution's case did not meet the requisite standard.

19. On the matter of the monies being criminal property, the Magistrate set out her findings at paragraph 24 of her judgment. Again, the Appellant's inconsistent evidence was of some concern to the learned Magistrate. While she accepted that the Appellant's living expenses were virtually nil because he received public assistance, and that he was legitimately employed for a period leading up to his arrest, she rejected his assertion that he had saved his money in his wallet and had changed up smaller notes for the larger notes found. She noted specifically at paragraph 24(c) - (f) of her judgment:

*"In relation to the \$1330 found on the defendant, in large bills thirteen one hundred bills, I have reminded myself that the Crown must prove to the requisite standard that the money were the proceeds of criminal conduct and no other reasonable explanation is possible. I find as follows:*

- a) ...
- b) ...
- c) *I reject that he has any other legitimate business enterprise whereby he is an "employer" as he states.*
- d) *I note his inconsistencies with his interview, what he said under caution when first arrested and then now at the trial, which expanded under cross-examination. It started out as begging his parents and iguana culling up to the interview. At Court it went from that to include selling*



1 produce, then in cross-examination being a legitimate employer and  
2 working really hard from 9 to 5.

3 e) I find that the defendant had no income shown since at least the 13th of  
4 July which was approximately \$200. On his own evidence he had  
5 purchased a "rock" about this size just weeks before. He gives large  
6 amounts of money to his seven year old nephew.

7 f) The evidence is inconsistent and is difficult to follow or grasp.”

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9 20. She concluded at paragraph 24(g):

10 “g) Accordingly, I find that at least a portion of the money were the proceeds  
11 of his criminal conduct and I have generously apportioned it half of the  
12 amount found on him being \$750.”

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14 21. She rejected the Appellant’s evidence that he was only a cocaine drug user and that all  
15 of the monies that he was found in possession of was from legitimate sources. Counsel  
16 for the appellant submitted that the Magistrate did not fully consider the import of the  
17 fact that the monies recovered on the appellant were in large denominations. He  
18 submitted that this was not consistent with the appellant being a supplier of drugs,  
19 selling cocaine in small portions. This court is satisfied that a Magistrate hearing many  
20 cases involving drugs and the supply of drugs would have had this factor in her mind.  
21 The fact that the money was found in large denominations does not in and of itself  
22 mitigate against the Magistrate’s findings. Taken as a whole, together with the  
23 Magistrate’s consideration of all of the evidence in this case, this matter alone would  
24 not in any event have been sufficient for this court to interfere with the Magistrate’s  
25 findings.

26 22. The Appellant submitted that the Magistrate, in making the inferences that she did,  
27 both with regard to the quantity of cocaine being enough to infer supply, and as to the  
28 monies being criminal property, had not fairly resolved any doubt that she may have

1 found in the Appellant's favour. However, it is clear to this court that this was as a  
2 result of the Magistrate finding that she had no reasonable doubt after consideration of  
3 the Crown's case and of the Appellant's evidence. The Magistrate did address her  
4 mind directly to this matter at paragraph 25 of her judgment where she stated:

5 *"When everything is considered, I have reminded myself that the defendant must be*  
6 *given any doubt which I may have as to the charges. At the end of the trial I have*  
7 *found nothing which has provided any doubt. Accordingly, I find beyond a*  
8 *reasonable doubt, that the Defendant is guilty of the offences:*

9 a. *I find that the quantity alone in this case would have been*  
10 *sufficient to find possession with intent to supply.*  
11 *However, the cash found on him also supports my*  
12 *findings.*

13 b. *I find that there is no reasonable explanation to support*  
14 *the large quantity of cash found on him. Accordingly, I*  
15 *find a portion of it as being the proceeds of his criminal*  
16 *conduct of selling cocaine."*



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18 23. In *Dougmore Wright v R*<sup>2</sup>, Henderson J noted in relation to appeals by way of motion  
19 before the Grand Court:

20 *"It is clear from these provisions that a Grand Court judge sitting on an appeal by*  
21 *motion from the Summary Court is not restricted to a consideration of whether*  
22 *some specific error of law or fact is found in the judgment under appeal. Nor is the*  
23 *appeal confined, on matters of fact, to a determination of whether there was*  
24 *sufficient evidence in the Court below to place the conviction within the ambit of*  
25 *reasonableness. On the contrary, a judge of this Court may draw inferences of fact*  
26 *from the written record of the evidence given in the Summary Court (in addition, of*  
27 *course, to the inferences it may draw from any fresh evidence admitted on the*  
28 *appeal). Having drawn its own inferences of fact from the evidence, the Grand*  
29 *Court must then determine whether the weight of the evidence is sufficient to*  
30 *uphold the conviction.*

31 *It cannot, however, be thought that (absent a re-hearing) a judge of the Grand*  
32 *Court is in as good a position as the judge appealed from to assess the credibility*  
33 *of the witnesses. It is right that a degree of deference should be accorded to the*  
34 *findings of the magistrate, who was able to observe the demeanour of the*  
35 *witnesses, as long as she has instructed herself correctly on the applicable law."*

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<sup>2</sup> SCA # 2/03

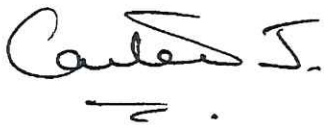
1 24. I find no fault with the Magistrate's instruction to herself on the applicable law. The  
2 Magistrate was entitled to find the facts that she did from the evidence presented by the  
3 Prosecution and from the Appellant's own evidence. There is nothing in the record to  
4 cause this court to have concerns about the Magistrate's assessment the evidence of the  
5 Crown's witnesses or of the Appellant. In this case, where much turned on the Learned  
6 Magistrate's observations of the demeanour of the appellant and her conclusions on his  
7 credibility, the degree of deference to be given to the Magistrate by this court cannot  
8 be understated.

9 25. The Magistrate was best placed and, in law, entitled to make the inferences that she did  
10 in this case. The inferences drawn from the facts were proper and followed from a fair  
11 and balanced assessment of the facts presented in this case. Having rejected the  
12 Appellant's evidence, the Magistrate was satisfied that the charges were proved on the  
13 Crown's evidence to the requisite standard beyond a reasonable doubt.

14 26. The appeal against conviction is dismissed.

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Dated this the 7<sup>th</sup> April 2020



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**Carter J**  
**Acting Judge of the Grand Court**

