

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

3 **S.C.A. #23/03**

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6 **BETWEEN:**

7 **GEORGE WESLEY JEFFERSON**

8 **APPELLANT**

9  
10  
11 **AND:**

12 **THE QUEEN**

13 **RESPONDENT**

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15  
16 **Appearances:**

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18 **On behalf of the APPELLANT: Mr. Douglas Schofield of Appleby Spurling Hunter**

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20 **On behalf of the RESPONDENT: Mr. Scott Wilson**

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23 **Before:**

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26 **Hon. Justice Henderson**

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29 **Heard:**

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31 **May 28, 2004**

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34 **JUDGMENT**

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37 **Henderson, J.**

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40 The Appellant George Wesley Jefferson was convicted in Summary Court of the offence  
41 of being in possession of approximately two kilograms of cocaine with intent to supply;  
42 he was sentenced to imprisonment for 14 years. He says the learned Magistrate erred in

1 law by failing to make any reference in her reasons for judgment to a statutory reverse  
2 onus provision.

3

4 The case against Mr. Jefferson was built almost entirely upon the evidence of an  
5 accomplice – Patrick Shannon Ebanks. Mr. Ebanks testified that he went with the  
6 Appellant and Deborah Jefferson, a cousin of Mr. Ebanks, to Cayman Brac on two  
7 occasions for the purpose of buying cocaine. On their second trip, the three conspirators  
8 purchased about two kilograms of cocaine and transported it to Grand Cayman for the  
9 purpose of reselling it there. The evidence of Mr. Ebanks described in detail an illegal  
10 plan in which all three people were fully involved.

11

12 If Mr. Ebanks was found to be telling the truth, there could be no question that each of  
13 the three conspirators had the requisite knowledge of the cocaine they were smuggling  
14 and the requisite intent that it be resold to other purchasers on Grand Cayman.

15

16 When a customs officer opened a bag Mr. Jefferson was carrying at the Grand Cayman  
17 airport, he found the cocaine hidden in a pair of pants. Mr. Ebanks testified that Deborah  
18 Jefferson had wrapped the cocaine up in these pants and placed it in the bag. He said Mr.  
19 Jefferson was present at the time, and the blue jeans were probably his.

20

21 Mr. Ebanks was cross-examined extensively. His credibility was challenged.

22

1 George Jefferson and Deborah Jefferson both gave evidence under oath in their defense.  
2 They denied the truth of what Mr. Ebanks was saying and testified, in essence, that it was  
3 Mr. Ebanks who purchased the cocaine and attempted to smuggle it through the airport  
4 on Grand Cayman for resale. Their case was that Mr. Ebanks told them he had buried the  
5 cocaine on Cayman Brac and would return later in a boat to pick it up; actually, he had  
6 secreted the cocaine in the bag, but George and Deborah Jefferson did not know that.

7  
8 The learned Magistrate gave extensive reasons for judgment. Clearly, to convict  
9 Mr. Jefferson, the learned Magistrate would have to be sure that Mr. Ebanks was telling  
10 the truth and sure that Mr. Jefferson was not. In addition, she would have to be sure that  
11 Deborah Jefferson was lying.

12  
13 The learned Magistrate warned herself correctly of the dangers of acting upon the  
14 evidence of an accomplice, which Mr. Ebanks clearly was, and of the need to treat his  
15 evidence with caution and to search for independent corroboration of it. She gave  
16 extensive reasons for coming to the conclusion that she was sure Mr. Ebanks was telling  
17 the truth and that George and Deborah Jefferson were lying.

18  
19 On a prosecution of this sort, it is open to the Crown to rely upon a reverse onus  
20 provision in appropriate circumstances. That provision is found in section 9 of *The*  
21 *Misuse of Drugs Law*, and reads:

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23

1 “9 (1) without prejudice to any other provision of this law ...

2  
3 (b) where it is proved beyond reasonable doubt that a person had in his  
4 possession or custody or under his control anything containing a  
5 controlled drug, it shall be presumed, until the contrary is proved, that  
6 such person was in possession of such drug;...

7 (d) where it is proved beyond reasonable doubt that a person is in any way  
8 concerned in carrying, removing, harbouring, keeping, concealing,  
9 handling, or dealing in any manner with anything containing a controlled  
10 drug, it shall be presumed, until the contrary is proved, that such person  
11 knew that such drug was contained in such thing;...”

12  
13  
14 In *Logan v. R.* 1992-1993 CILR 304, The Court of Appeal described the effect in law of  
15 these two presumptions: where it is proved beyond a reasonable doubt that the defendant  
16 had actual possession of an illegal drug, it is to be presumed that he had the requisite  
17 degree of knowledge, and was thus in possession in law of the drug, unless he proves, on  
18 the balance of probabilities, his lack of knowledge.

19  
20 Mr. Jefferson argues that this reverse onus provision, where it may have application to  
21 the case under consideration by a magistrate, must be articulated by her in her reasons for  
22 judgment. He invokes a line of authority requiring magistrates to warn themselves  
23 expressly in their reasons for judgment of situations where it is dangerous to convict for  
24 one reason or another: see *Ebanks v. R.* 1988-89 CILR 162 (Grand Court); *Bertolino v. R.*  
25 1990 -91 CILR 112 (Grand Court); *Richards v. R.* 2001 CILR 496 (Court of Appeal);  
26 and *Knight v. R.* (unreported) S.C.A. 57 of 2002 (Grand Court).

27  
28 The authorities cited deal with the sorts of warnings a magistrate must give herself in her  
29 reasons for judgment concerning the danger inherent in eye witness identifications, the

1 danger of convicting on the uncorroborated evidence of an accomplice, and other similar  
2 warnings. There is no indication in the authorities cited to me that a magistrate must  
3 demonstrate in her reasons for judgment her own understanding of a provision which can,  
4 in some circumstances, free the Crown of the need to prove affirmatively that the  
5 defendant had knowledge of a drug found in his custody.

6

7 It might be thought that, if a magistrate overlooks such a provision when rendering her  
8 decision and convicts the defendant anyway, no injustice could have occurred. In such a  
9 case, it cannot be argued that the Magistrate has overlooked some dangerous aspect of the  
10 evidence or frailty within it. What she has done is fail to apply a provision which, if  
11 brought to bear upon the factual situation before her, would have assisted the Crown. By  
12 overlooking the provision, she has put the Crown to a higher standard of proof than might  
13 have been necessary.

14

15 There is no hint in the learned Magistrate's relatively lengthy reason for judgment that  
16 the Crown invoked the reverse onus provision or sought to rely upon it in any way.

17 There is no suggestion the learned Magistrate took it into account. Both counsel and the  
18 Court approached the case as if the Crown, to succeed, had to prove beyond a reasonable  
19 doubt that Mr. Ebanks was telling the truth and that George and Deborah Jefferson were  
20 lying. No one argued that, if the learned Magistrate doubted the veracity of Mr. Ebanks,  
21 she could still convict if she also disbelieved George and Deborah Jefferson.

22

1 In these circumstances, there is no merit in the argument that the learned Magistrate had a  
2 positive obligation in law to advert to the reverse onus provision, to articulate her  
3 understanding of it, and to explain how she was applying it to the evidence before her. I  
4 prefer to leave for another day the question of whether that would have to be done where  
5 the Crown is expressly invoking and relying upon a reverse onus provision. All I need  
6 say, to dispose of the present case, is that there is no need to do it where the Crown has  
7 refrained from claiming any support or assistance from such a provision.

8

9 For these reasons, the appeal from conviction is dismissed.

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11 There was a third ground in the Notice of Appeal dealing with a distinction between  
12 being concerned with possession of cocaine on Cayman Brac and having knowing  
13 possession of the same cocaine later on Grand Cayman. No argument was presented on  
14 this ground so I will say nothing further about it.

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16 Dated this        day of June, 2004

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19 Henderson, J.  
20 Judge of the Grand Court

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