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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE**

INDICTMENT NO: 69-71/2019



THE QUEEN

v.

**SANDRA MILENA WOODMAN (nee VASCO PINEDA)
ANDRÉ CAROLL WOODMAN**

Appearances: Ms. Toyin Salako for the Crown

Mr. Oliver Grimwood of Barton Attorneys for the Defendants

Before: Justice Marlene I. Carter (Actg.)

Judge Alone Trial: 14th, 15th and 17th September 2020

Verdict: 12th October 2020

HEADNOTE

*Criminal Law – Proceeds of Crime Law (2017 Revision)
- Attempting to Remove Criminal Property – Inferences –
Trial by Judge Alone*

VERDICT JUDGMENT



1 1. The defendants are before the Court on an Indictment that contains one count as follows:

2 Statement of Offence:

3 *Attempting to Remove Criminal Property, contrary to s.133(a) of the*
4 *Proceeds of Crime Law (2017 Revision)*

5 Particulars of Offence:

6 *Sandra Milena Woodman (nee Vasco Pineda) and André Carroll Woodman,*
7 *on the 3rd day of August 2018, within the jurisdiction of the Cayman Islands,*
8 *attempted to remove criminal property, namely cash in the approximate*
9 *amount of US\$9,500.00 from the Islands.*

10

11 2. The Defendants elected trial by Judge Alone pursuant to s.129 of the *Criminal Procedure*
12 *Code* (CPC) of the Cayman Islands.

13

14 **THE LAW ON JUDGE ALONE TRIALS**

15 3. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a
16 Judge in a Judge Alone trial. In *K. Richards v R*¹ Rowe JA, stated:

17 *“When a trial judge sitting alone has advised himself to the applicable*
18 *principles of law, and given himself any necessary warning, he must indicate*
19 *clearly in his judgment his reasons for acting as he did in order to*
20 *demonstrate that he has acted with the requisite degree of caution in mind*
21 *and has therefore heeded his own warning. No specific form of words is*
22 *necessary for this demonstration, what is necessary is that the Judge’s mind*
23 *upon the matter should be clearly revealed.”*
24

25 4. In *Randy Martin v R*² Mottley JA stated as follows:

26 *“A judge sitting in a criminal case without a jury, in rendering his decision*
27 *and giving his reasons for so concluding is not required to review every fact*
28 *and to detail each argument on which the prosecution and defence rely as if*
29 *he were summing up to a jury. The judge must set out the conclusion reached*
30 *and make clear the reasons for arriving at that conclusion. He is required to*
31 *have regard to any difficult or unusual points of law and to show how those*
32 *points of law has in any way impacted the conclusion that he has reached.”*
33

¹ 2001 CILR 496

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)

1 5. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that
2 Defendants are guilty of the offence for which they are charged on the Indictment. There is
3 no burden on a Defendant to prove that he or she is innocent. The Defendants have no
4 obligation to prove that they are not guilty, or to explain the evidence offered by the
5 Prosecution.

6
7 6. I will not review every single detail of the evidence, but I will address my mind to the
8 important or prominent aspects of the evidence in deciding the critical issues in this case. I
9 will not decide every single point that has been raised – only such matters that will enable me
10 to determine whether the charges on the indictment have been proved.

11
12 7. I remind myself that I must have regard to the whole of the evidence that has been presented
13 at trial and form my own judgment about that evidence. The questions of fact at issue on this
14 trial are for me to determine.

15
16 8. I must consider all of the evidence in this case against each defendant separately and, if after
17 having done so, I have any reasonable doubt as to whether either of the Defendants is guilty
18 or not, I must resolve that doubt in favour of that Defendant and find him/her not guilty of the
19 offence for which he/she is charged.

20
21 9. On the other hand, if having considered the evidence I am satisfied so that there is no
22 reasonable doubt in my mind, and I am sure of the guilt of either of the Defendants, then it
23 will be equally my duty to find him/her guilty as charged.

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1 **THE EVIDENCE AT TRIAL**

2 10. Section 34(1) of the *Evidence Law* (2019 Revision) allows for Proof by formal admission and
3 states:

4 *“Subject to this section, any fact of which oral evidence may be given in any*
5 *criminal proceedings may be admitted for the purpose of those proceedings*
6 *by or on behalf of the prosecutor or defendant, and the admission by any*
7 *party of such fact under this section is, as against that party, conclusive*
8 *evidence in those proceedings of the fact so admitted.”*
9

10 11. Pursuant to s.34(1) of the *Evidence Law* a Statement of Agreed Facts was introduced into
11 evidence. Within the Statement of Agreed Facts at paragraphs 12 i - xx of this Judgment is a
12 chronology of the relevant facts between the 12th June 2018 and the 2nd August 2018 which
13 led to the defendants being before the Court.

14
15 12. The Statement of Agreed Facts:

16 i. By letter dated 12th June 2018, Andre C Woodman sent a letter to the Visitor’s
17 Visa Department, concerning an application for a visitor’s visa for Enith
18 Yolanda Vasco Pineda. Within the letter Andre C Woodman indicated that he
19 would like to invite Ms. Vasco Pineda for a vacation to the Cayman Islands
20 from the 8th July 2018 through to the 29th July 2018.

21 ii. An application form for a Cayman Islands Visa – General Visitor, was
22 submitted on behalf of Ms. Vasco Pineda, a Colombian national.

23 iii. Ms. Vasco Pineda had not previously travelled outside of Colombia and had
24 not previously visited the Cayman Islands.

25 iv. At the time of submitting the application Ms. Vasco Pineda, intended stay
26 was for 3 weeks and her intended arrival date in Grand Cayman was the 8th
27 July 2018.

28 v. As part of the application Ms. Vasco Pineda was asked the following
29 questions and provided the following answers:





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- Q 6.10 How much money is available to you for your stay in the Cayman Islands?
A 6.10 “On my sister & husband expenses”
Q 6.11 Who is paying for your trip?
A 6.11 “My brother in law and sister”

vi. A copy of Ms. Vasco-Pineda’s passport was submitted as part of the application. The passport shows the following:

Nationality: Colombian
Date of Birth: 2 November 1969
Date of Issue: 3 May 2018
Date of expiry: 2 May 2028

- vii. The application is signed Enith Y Vasco and dated the 26th June 2018.
viii. Ms. Vasco-Pineda arrived in Grand Cayman on the 18th July 2018 and was due to depart on the 17th August 2018.

3 August 2018

- ix. Ms. Vasco Pineda arrived at Owens Roberts International Airport on the 3rd August and checked in with Cayman Airways. Ms. Vasco Pineda was issued with a boarding pass for a flight to Havana, Cuba.
x. The Customs Narcotics Enforcement Teams [“CNET”] along with the Customs Canine [“K9”] Unit were on patrol in the departure lounge and baggage area of the airport.
xi. Ms. Vasco-Pineda was paged and asked to attend at the Cayman Airways counter. Upon attendance at the Cayman Airways counter she was informed that the K9 had interest in her person and that Customs Officers were going to conduct a body search.
xii. Ms. Vasco-Pineda was asked whether she had any contraband on her person to which she replied “No”. It was then explained to Ms. Vasco-Pineda that contraband includes firearms, drugs and money. Ms. Vasco-Pineda then indicated that she had money in her possession. When asked where, she stated in her panty.
xiii. Ms Vasco-Pineda told the officers the money was for a deposit for an apartment in Columbia.
xiv. Ms. Vasco-Pineda was photographed [Exhibit 1].
xv. The cash removed from Ms. Vasco-Pineda’s waist totaled USD9,500. The USD9,500 was made up 66 USD100 bills and 58 USD50 bills.



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Police search

- xvi. Officers attended the home address of Andre and Sandra Woodman’s home address namely 189 Lemuel Circle to execute a search warrant.
- xvii. During the search the following items were seized:
 - a) 4 glass jars with traces of ganja from the kitchen cupboard;
 - b) 8 empty glass jars;
 - c) Black “Taylor” scale with white residue;
 - d) Black “Weigh Max” scales from the dining room table;
 - e) Small traces of ganja on the inside toilet and floor area of the master bathroom;
 - f) Receipt books.
- xviii. Photographs were taken of the items seized *in situ* [Exhibit 2].
- xix. The black “Taylor” and the black (Weight Max) scales were forensically examined. Tarces of cocaine were found on both scales.

Arrest

- xx. Sandra Woodman and Andre Woodman were both arrested as a result of the items found at the address.

Financial Evidence

- xxi. By letter dated 26 January 2018 to Cayman National Bank [“CNB”] Andre Woodman stated that he was self-employed earning a salary of USD3,000 per month from his business ‘*Ride with Us Water Sports.*’
- xxii. Andre Woodman holds two personal accounts with CNB. Between April and August 2018, the total cash deposited into these two accounts was USD1,507 and the total cash withdrawal was USD825.
- xxiii. On the 26th January 2018, Andre Woodman opened a business account for “*Ride With Us Watersports.*” The Account Opening Form requires estimates of likely account usage and at the time of opening the following information was provided:

| | |
|----------------------------|------------------------|
| Total Monthly deposits: | Estimated at KYD14,000 |
| Total Monthly withdrawals: | Estimated at KYD6,000 |
| Total Annual Deposits: | Estimated at KYD68,000 |
- xxiv. The source of the funds was listed as Merchant Terminal Business Sales.
- xxv. Since the opening of the business account the largest cash withdrawal in cash, was for USD1,600.

- 1 xxvi. Sandra and Andre Woodman have a mortgage of KYD220,000.
 2 Between April 2018 to August 2018 Sandra and Andre Woodman made
 3 a total of KYD7,138 towards their mortgage.
 4 xxvii. The below table summarises the financial material obtained during the
 5 investigation:

| | |
|---|--------------|
| <u>Account Name: Andre Woodman T/A Ride With Us Watersports</u> | |
| Account No: 02234453 | |
| Type of account: Commercial Savings USD | |
| Cash withdrawals from 12 April 18 to 24 September 2018 | USD18,291.71 |
| Account No: 02234453 | |
| Cash deposits | Zero |
| Account No: 02234453 | |
| Merchant Credit 27 March 2018 to 24 September 2018 | USD18,780.71 |
| <u>Account Name: Andre Woodman T/A Ride With Us Watersports</u> | |
| Account No: 012-55253 | |
| Type of account: Commercial Savings KYD | |
| Cash withdrawals 2 February 2018 to 3 August 2018 | KYD 7925 |
| Account No: 012-55253 | |
| Cash deposits | KYD249.75 |
| Merchant Credit 2 February 2018 to 3 August 2018 | KYD 3771.89 |
| <u>Account Name: Andre Caroll Woodman</u> | |
| Account No: 012-55703 | |
| Type of account: Personal Savings KYD | |
| Cash withdrawals | KYD825 |
| Account No: 012-55703 | |
| Cash deposits: | KYD1,487 |
| <u>Account Name: Andre Caroll Woodman</u> | |
| Type of account: Personal Savings USD | |
| Account No: 022-34696 | |
| Cash withdrawals | USD100 |
| Account No: 022-34696 | |
| Cash deposits | USD100 |

- 6
- 7 Notebooks of business activity
- 8 xxviii. Notebook Exhibit DB1d/svp covers the period of 22nd November
 9 2016 to 21st February 2017. This documents USD\$47,528 of
 10 sales.
 11 xxix. Notebook Exhibit DB1c/svp covers the period of 22nd May 2017
 12 to 2nd October 2017. This documents USD\$53,379 of sales.
 13 xxx. Notebook Exhibit MM2a covers the period of 23rd April 2018 to
 14 2nd August 2018. This documents USD\$49,691 of sales.



1 xxxi. The cumulative total sales documented in these notebooks
2 amounts to USD150,598.

3 Charges

4 xxxii. Ms. Vasco-Pineda was charged with possession, concealing and
5 removing criminal property. On the 19th December 2018, the Crown
6 entered a *nolle prosequi*, Ms. Vasco Pineda was thereafter discharged.

7 Character

8 xxxiii. Miss Sandra Woodman is a woman of good character.”

9
10 **THE CASE FOR THE PROSECUTION**

11
12 13. The Prosecution’s case is that the Defendants were engaged in criminal activity - the supply
13 of controlled drugs. They attempted to remove criminal property, namely \$9,500.00 USD in
14 cash from the Cayman Islands.

15
16 14. The prosecution alleges that the Defendants jointly financed a trip to the Cayman Islands for
17 Ms. Enith Yolanda Vasco-Pineda - the sole purpose of which was for her to remove criminal
18 property from the Cayman Islands.

19
20 15. The prosecution alleges that it was a calculated effort on the part of both Defendants to ensure
21 that the \$9,500.00 was not detected by Customs Officers. This is evident from the following
22 facts:

- 23 i. Not sending the money through the safest means, namely, via wire transfer;
- 24 ii. the manner in which the money was concealed; and
- 25 iii. the denominations of the cash were deliberate and to assist in avoiding
26 detection.



1 16. The prosecution does not dispute that the Defendants operated a business at the relevant time.
2 However, the prosecution submits that, derived from the facts of this case, there is an
3 irresistible inference that the \$9,500 USD was derived in part or wholly from crime, namely
4 the selling of drugs.

5
6 17. The Prosecution submitted during the course of the trial that:

7 *“The items seized are not in dispute. Where the items were found is not in*
8 *dispute. That the cash originated from these defendants is not in dispute. The*
9 *manner in which the property was attempted to be removed from the Cayman*
10 *Islands is not in dispute [and] neither [is] the amount of the money seized [in*
11 *dispute]. The issue for determination is whether the \$9,500.00 USD*
12 *originated from criminal conduct and was criminal property.”*

13
14 18. Much of the factual evidence on which the prosecution relies is set out in the Agreed Facts
15 above. As a result, the only witness called to give evidence at trial on behalf of the prosecution
16 was Officer Khalesiah Barboram.

17
18 **EVIDENCE OF OFFICER BARBORAM**

19 19. The salient aspects of Officer Barboram’s testimony were as follows.

20
21 20. Officer Barboram is attached to Financial Investigation Unit. She was called to Owen Roberts
22 International Airport on the 3rd of August 2018 in relation to the suspect Enith Yolanda Vasco-
23 Pineda. She was present when Vasco-Pineda was searched, and the \$9,500.00 USD recovered.
24 She was also present when a search warrant was executed at the home of the defendants and
25 when the defendants were subsequently arrested. She was present when each of the
26 defendants was interviewed under caution.



1 21. With respect to the second Defendant, Andre Woodman Officer Barboram confirmed that she
2 made checks with various banks to find out whether Mr. Woodman was a client of the banks
3 as he stated in his interview under caution. Officer Barboram's evidence is:

4 *"I made checks with the Credit Union. The account was closed. The*
5 *account at Scotiabank was only a mortgage account. The account at*
6 *Royal Bank was closed since 2015."*

7
8 22. Under cross examination Officer Barboram agreed that her investigation focused on the period
9 between April 2018 and August 2018 based on her understanding that April was the start date
10 of the business account and that cash was withdrawn from that account during that period of
11 time. She stated that she understood that the monies \$9500.00 USD was stated as being from
12 the business account at CNB.

13
14 23. Counsel for the defendants referred Officer Barboram to a passage in the record of interview
15 of the defendant Sandra Woodman at page 9 of 25:

16 *"KB: What can you tell me about the cash that was in her [Vasco-Pineda]*
17 *possession?*

18 *SW: It was my cash with my husband that we been saving. From our*
19 *business on the beach.*

20 ...

21 *KB: Did you get it from the bank. Did you withdraw it from the bank?*

22 *SW: Some money we can, we take it from the bank some is from savings*
23 *that we put up.*

24 *KB: Where do you store that savings?*

25 *SW: Home"*

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27 24. Counsel questioned whether the officer understood from that passage that the monies
28 were from both the bank and from monies saved at the home. Her response was:

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“What it was, was that prior to those questions, prior to the bank account being opened that they would save the monies at home. That was my understanding. I focused on withdrawals from the bank account.”

25. Officer Barboram also stated that she focused on the receipt books seized from the defendants’ home.

“I did go through the notebooks, but they don’t spell out anything, the receipt books were used for payments received.

...

I did go through the notebooks, but I could not say what they were. [There were] no indications of what the numbers were, [whether they were] from receipts issued to persons who would have made payments. I could not interpret the notebooks so I did not add them up because I could not see what they referred to. I did compare the Notebooks to the Receipt books, some of which I saw dates that corresponded to the receipt books. There was some correlation between the two books.”



INTERVIEWS UNDER CAUTION

26. The defendants were both interviewed under caution and transcripts of those interviews were entered by the prosecution as evidence in this case. During the course of those interviews each of the defendants answered only some of the questions put to them by the officers conducting the interviews.

27. The defendant André Woodman answered only questions relating to his sister in law, her visit to the Cayman Islands and those pertaining to his business. He offered no comment to all other questions not pertaining to those areas.

28. The defendant Sandra Woodman also answered only questions pertaining to her sister’s visit, - that is, relating to asking her sister to take the monies to Columbia.

1 Defendant Sandra Woodman also answered questions pertaining to the business
2 “Ride with Us Watersports”.

3
4 29. Neither defendant gave an account for the drugs or other details sought by the
5 officers conducting the interviews.

6

7 **THE DEFENDANTS**

8 30. At the close of the Prosecution’s case each of the defendants elected to give evidence
9 on oath.

10

11 31. I remind myself that I must assess the evidence of each defendant in the same
12 objective and dispassionate manner as I would any witness for the prosecution. I
13 remind myself that if I don’t accept the evidence of either of the defendants that I
14 cannot convict a defendant because I do not believe his account. I must return to the
15 prosecution’s case to look for evidence that the prosecution has proved its case to
16 the requisite standard before I can find a defendant guilty. If the Crown’s evidence
17 does not reach that standard so that I am sure of a defendant’s guilt, then my verdict
18 must be not guilty.



19

20 32. As I assess the evidence presented by the prosecution against defendants, the
21 evidence must be assessed against each defendant separately, the burden being on
22 the prosecution to prove its case to the requisite standard against each defendant.

23

24 33. The Statement of Agreed Facts at paragraph 33 states that the first defendant is a
25 person of good character. I remind myself that good character is not a defence to the
26 offence for which she is charged but it is relevant in two ways. First, the defendant
27 has given evidence and her good character is a positive feature which I should take
28 into account in her favour when considering whether I accept her evidence.

1 Secondly, the fact that the Defendant has not offended in the past may make it less
2 likely that she acted as the prosecution alleges in this case.

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THE SALIENT ASPECTS OF THE DEFENDANT SANDRA WOODMAN’S EVIDENCE

34. The First Defendant, Sandra Woodman, has worked with her husband in their business, *Ride with Us Watersports*, for approximately 9 years. The business is concerned with the rental of jet skis, banana boat, snorkeling fins and equipment, chairs & umbrellas to tourists. Mrs. Woodman described that the defendants opened a business account with Cayman National Bank because without it they were unable to accept payment by credit card and they lost sales if customers could only pay with cash. Most of their customers are tourists and payments would be in US dollars. When she was paid in cash, she would save the cash at home. She did not put it in the bank because she preferred to have it at home so “*I would know how much I have.*”

35. She related that Receipt books and notebooks detailed different activities. The receipt books related to bookings for jet-ski rentals. The notebooks set out the monies received in respect of each of the jet-skis, the periods it was rented for and the dates of the rentals. She stated that the notebooks do not say whether the transaction was cash or card. What she would do at the end of each day was to print a report from the credit card machine and deduct that from the total for the day as set out in the notebook, to account for the amount of cash sales. She stated that the notebook entries were not only in respect of the jet-skis but for payment for the rental of all the other equipment as well.



1 36. Later in cross examination the defendant stated that the note book would not
2 correlate with the bookings in the receipt book because, if a customer sought to rent
3 a jet-ski and there was one immediately available, there was no need to note a
4 booking for a later time in the receipt book.

5
6 37. Mrs. Woodman stated that from the time the business started it was only closed
7 completely on one occasion when the Covid-19 caused them to close. She related
8 that when monies went into the business account from credit card sales, they would
9 withdraw that money from the account and keep it at their home.

10 38. She gave evidence of the household expenses: Mortgage, Electricity, Water,
11 Groceries, Internet and Phone and also monies for maintenance for the 2nd
12 Defendant's son. These totaled CI\$2550.00 per month. She stated that she and her
13 husband were planning to buy an apartment in Columbia which cost approximately
14 \$35,000.00 USD.

15
16 39. Mrs. Woodman's evidence relating to the money found concealed on the person of
17 Ms. Vasco-Pineda was:

18 *"I knew she would be transporting the money like that. I told her to do*
19 *that. Because she has diabetes. She was taking 3 planes. Here to*
20 *Havana, Havana to Panama and Panama to Columbia and I was scared*
21 *she would misplace my money so I tell her its better you put it inside*
22 *there."*

23
24 40. The defendant stated that she was concerned that someone may follow Ms. Vasco-
25 Pineda because she was coming from an international flight and grab her bag and
26 suitcase in Columbia. She related:

27 *"I was concerned about Columbia and Cuba too. They steal everything*
28 *you have in your suitcase sometimes. I say that because it happened to*
29 *me..."*

30





1 41. She related that she did not transfer it by the use of MoneyGram or through the bank
2 because MoneyGram had a maximum transfer of \$1500.00 USD and she would have
3 had to pay tax on that as well as a transfer fee. Also, she stated that she did not
4 transfer the money via MoneyGram because the exchange rate for a USD to
5 Columbian peso that MoneyGram paid was less than she would receive if she took
6 the money to the bank in Columbia. She said:

7 *"I gave her in cash so I could get more money when she exchanged it
8 for me."*

9
10 42. With respect to the items seized at the home of the defendants at Northward the
11 defendant said:

12 *"I guess I knew that there was ganja inside those jars. I smoke [ganja]
13 so maybe I put it there to save it and when I finish smoke, I maybe forget
14 to clear the jar."*

15
16 43. With respect to the ganja on the inside of the toilet bowl the defendant said:

17 *"Maybe I sit to prepare my cigarette [spliff] and went there."*

18
19 44. With respect to the scales the defendant said:

20 *"I use powder cocaine on special occasions, and I weighed it in the
21 scale. Special occasions are when I feel like, not a party. I weigh it
22 because I want to know the amount of what I am buying ... I was not
23 involved with the selling of any type of drug. I earn my money working
24 for the business from the beach."*

25
26 45. In relation to her No comment answers on interview the defendant said:

27 *"I answered no comment [to the questions in relation to drugs] because
28 my previous attorney, this was the advice he gave me to not answer ...
29 He also said that about the household expenses. He told me just answer
30 in reference to the money otherwise no comment. I followed that advice
31 because he was my lawyer."*

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Cross examination

46. The defendant admitted that she takes drugs. She said:

“I smoke ganja and I take cocaine sometimes.”

47. She also admitted that she would store drugs, the ganja, in the jars found at the premises. She related:

“If I buy a portion, I put it there [in the jars] to make it keep fresh and when I want to smoke, I take it up and roll.”

48. She denied that the jars were there because she and her husband were involved in the drug business or that the jars were there to store ganja for onward sale. She denied that she was a drug dealer, sold drugs to a third party, given drugs to a third party or seen her husband sell drugs.

49. She stated that she knew it was important to tell the Police that she did not sell drugs:

“I did tell them where the money came from. I don’t know how they can suggest I am a drug dealer if they don’t find drugs.”

50. In answer to Crown counsel she maintained that she did not answer certain questions because of advice from her attorney and further stated:

“What was the difference in telling the Police I do not sell drugs. I explained [to the Police] that the money was not from drugs but from the business.”

51. With regard to the traces of cocaine found on the scales the defendant stated that she had recently taken cocaine. She denied that she sold cocaine. She explained that there was cocaine on both scales found at the premises:



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“Because when I buy a dose, I just put it on my scales, either one I find first.”

52. She related that the weighing of the drugs was to ensure that the person that she was buying it from was not taking advantage of her. She weighed it to ensure that she got the right value for her purchase. She said:

“The purpose of the scale was to weigh cocaine once I purchased it. When I purchase it, whichever scale is close is what I use.”

53. She agreed that both scales were on open display when the police searched the premises and stated that this was because she had used drugs like two days before the search. She further related that:

“One is for when I buy ganja and one is for cocaine. The larger one is for ganja and the smaller for cocaine. This is how I organize myself. I need to weigh it because I want to know what I buy.”

54. When counsel asked why she needed two, the defendant’s response was:

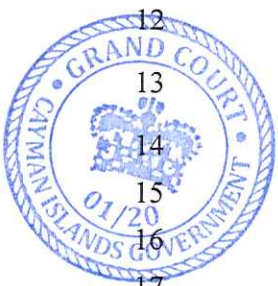
“Why not I can even have three if I want to put my stuff on scales.”

55. The defendant denied that she attempted to throw or flush ganja down the toilet when she heard that her sister was arrested.

Vasco-Pineda’s visit

56. The defendant agreed that she had made all arrangements and paid for her sister to visit to Grand Cayman including paying for her ticket and visa and also for her passport.

57. She described that the monies to buy the property in Columbia were to have been paid directly to the seller and that the agreement for the sale of that property was only a verbal agreement. She agreed that the seller could confirm that the agreement



1 had been entered into for the purchase of the apartment in Columbia. However, she
2 stated that since her sister's arrest she had not spoken to the seller because the seller
3 did not hold the apartment for her. She agreed that she could have related this to the
4 Police but stated:

5 *"I did not tell the Police because the Police should not be concerned to*
6 *know what I am going to do with my money."*

7
8 58. The defendant agreed, when it was suggested to her that the safest way to transport
9 the monies would have been through the bank but maintained that she would lose a
10 lot of money if she utilized the bank. When it was suggested to the defendant that
11 she deliberately brought her sister to the Cayman Islands in order for her to remove
12 money without declaring it she responded:

13 *"No, I invite her so she could have a vacation."*

14
15 59. She reiterated that she did not answer some of the questions put to her because

16 *"I had explained it already. It was not illegal. I made my money from*
17 *the beach."*

18 60. When it was suggested to the defendant that if the monies were from legal sources,
19 she would not have asked her sister to conceal it she replied:

20 *"I would still tell her because I want to save my money. I don't want to*
21 *get it lost."*

22
23 ***Re-Examination***

24
25 61. Mrs. Woodman confirmed that the scales were only used to weigh her drugs, no
26 other purpose.

27
28 62. She stated that she did not understand what a money mule was at the time of the
29 incident to enable her to answer the question posed on interview.

30



1 THE SALIENT ASPECTS OF THE DEFENDANT ANDRE WOODMAN'S EVIDENCE

2
3 63. Mr. Woodman testified that he had operated his business *Ride with Us Watersports*
4 since 2015. He confirmed that the business operated between Monday – Thursdays.
5 He stated that the business account was opened because of the number of clients
6 wanting to pay by credit card and that he began to use it for the business in April
7 2018 when they received it from the bank. He related that the monies from the
8 business account were usually withdrawn and put with the cash that he and his wife
9 kept at home, that is, cash collected from the business at the beach. He stated with
10 regard to the cash:

11
12 *“The cash from the business, we take it home at the end of every day*
13 *rather than deposit it because we are saving money and we have bills to*
14 *pay also.”*

15
16 64. He related a similar reason to that given in evidence by his wife, that they decided
17 that it was best to send the monies to Columbia with his sister-in-law rather than via
18 MoneyGram because MoneyGram could only send up to \$1,500 USD per month and
19 there was the difference in interest rates, government taxes and fees to be considered.
20 He related that they would get less via MoneyGram than when they exchanged it in
21 Columbia.

22
23 65. He stated in relation to the notebooks that they were not used when he first began
24 the business but when the business expanded from chairs and umbrellas to jet-skis
25 they were used then. He stated that apart from the notebooks in evidence there were
26 other notebooks created to cover other periods, however those notebooks were lost
27 because they were left in a vehicle that was no longer in use and no longer in his
28 possession.

1 66. With respect to the items seized at the home of the defendants at Northward the
2 defendant said that the 4 jars with traces of ganja material found in them were used
3 by him to store marijuana so that the marijuana would not get dry and remain fresh.

4
5 67. In answer to question by his counsel whether he could say how ganja traces were
6 found on the rim of the toilet bowl in the master bedroom, Woodman stated that it
7 could have got there when he rolled a spliff and then got up and brushed the sticks
8 and seeds inside the bowl to flush it.

9
10 68. He was aware that cocaine was weighed on the scales found at the premises because
11 he had seen his wife weighing it, *“to make sure she was getting her money value.”*

12
13 69. He denied that the monies sent with his sister-in-law were the proceeds of selling
14 any form of drugs. He stated that he did not have a lawyer present during his
15 interview by the police, but he had spoken to an attorney prior to the interview. He
16 stated that his attorney instructed him to answer ‘no comment’ to questions about
17 drugs or anything that had nothing to do with the money. He followed as his attorney
18 had instructed.

19
20 ***Cross Examination***

21
22 70. The Defendant Andre Woodman stated that all monies collected from the business
23 would be kept at the home. On Friday they would withdraw the monies that were
24 made on the credit card machine from the bank, and from this they would put aside
25 monies for the apartment in Columbia. He could not recall the exact date that they
26 began to save for that purpose but estimated that it could have been a year ago. He
27 was aware that his wife was speaking to someone back and forth about the apartment.

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71. He admitted that he had previously sent money via MoneyGram to Columbia and Honduras safely. He said the monies were being sent by his sister-in-law packaged in that way because:

“We were worried because if she had a handbag and she comes out of the airport someone could snatch it so my wife suggested if she had it in her waist the money would not get misplaced.”

72. He agreed that the safest way to send money would be via the bank. He stated that it was a legitimate concern in his mind that his sister-in-law could be mugged or robbed on her way to Columbia. He agreed that he could have reduced that risk by not having her travel with the money, however, he disagreed that he was content to transfer the money through her because he knew it was obtained through criminal conduct.

73. In relation to the items found at the defendant’s home Mr. Woodman denied that he bought marijuana in bulk and stated that he would buy \$10.00 portions of different varieties and therefore the need for different jars so that they did not get mixed up. He was adamant that *“any drugs found in the house was for personal use, in order for me to smoke it.”*

74. He stated the scales were not only for weighing cocaine and that one of them was for

“when I buy marijuana to weigh it and the next was for my wife to weigh whatever she wants to do with it...I had two sets of scales for weighing of drugs whenever we purchased drugs to make sure we get our money’s worth.”

75. In relation to the monies found on Ms. Vasco-Pineda, the defendant stated that the business earns on average about \$2000.00 per day.

1 76. He agreed that the monies [\$9,500.00] were all of their savings and that it had taken
2 them some time to save that amount. He said:

3 *"I say it was obtained through legitimate business. It take us about a*
4 *year to save. I would risk sending the money in that way because I*
5 *trusted my sister-in-law and every dollar counts. I don't want to send it*
6 *and lose a penny."*

7
8 77. He stated that the monies were hidden because the point of sending the money in
9 that way was to keep it safe and avoid someone being able to detect it if they were
10 going to rob her.

11 78. With respect to his responses on interview: When it was suggested to the defendant
12 that if he had provided the police with all the information that they requested the
13 matter could have been cleared up he said:

14
15 *"We did [provide them with the information] when they came to search,*
16 *we told them we operated a company, have a licence, have books and*
17 *stuff and everyone knows I work on the beach. What more explanation*
18 *should I have to give?"*

19
20 79. He stated that the police were directed to the books by him and his wife during the
21 search of the house.

22
23 80. When it was put to him that he did not mention the notebooks during the interview
24 he said:

25 *"They already had the notebooks. I did not have to mention it. They*
26 *took them for a reason."*

27
28 81. When asked why he did not deny selling drugs he replied:

29 *"I was guided by my lawyer to say no comment if it did not have*
30 *anything to do with the money."*

31



- 1 82. He denied that he did not answer questions in the interview pertaining to the jars
2 because he and his wife had not decided what they were going to say.
3
4 83. He denied that the monies apart from the \$9500.00USD given to his sister-in-law
5 was payment for her to act as a money mule.
6
7 84. I have considered all of the defendants' evidence. I remind myself that if I do not
8 believe either of the defendants' accounts, I cannot convict a defendant simply
9 because I do not believe his account. I must go back to consider the prosecution case
10 in its entirety in order to determine whether I am satisfied of the elements of each
11 offence beyond a reasonable doubt.

12 **THE LAW**

- 13 85. The defendants are charged with attempting to remove Criminal Property, contrary
14 to s.133 of the *Proceeds of Crime Law* (2017 Revision) ("the Law"). This section
15 reads:

16 "A person commits an offence if he -
17 (a) conceals criminal property;
18 (b) disguises criminal property;
19 (c) converts criminal property;
20 (d) transfers criminal property; or
21 (e) removes criminal property from the Islands."



- 22
23 86. "Criminal Property" has the meaning assigned thereto by s.144 (3) of the Law
24 which reads:

25 "Property is criminal property if -
26 (a) it constitutes a person's benefit from a criminal conduct or it
27 represents such a benefit (in whole or part and whether
28 directly or indirectly); and
29 (b) the alleged offender knows or suspects that it constitutes or
30 represents such a benefit,
31 and includes terrorist property."

32
33

1 87. I remind myself that I must look to find whether the evidence presented by the Crown
2 proves all the elements of the offence to the requisite standard with respect to each
3 defendant before I can find the defendant guilty of the offences charged on the
4 indictment. I remind myself that a defendant has nothing to prove.

5
6 88. The prosecution must satisfy the court of the following elements of the offence
7 beyond a reasonable doubt.

8
9 i. That the defendants are guilty of criminal conduct, specifically the
10 supply of controlled drugs;

11
12 ii. That the monies seized are criminal property, being the benefit of that
13 criminal conduct; and

14
15 iii. That the monies seized, being criminal property, the defendants
16 attempted to remove this criminal property from the Cayman Islands in
17 this case, through Vasco-Pineda.

18
19 89. **The first element** - Are the defendants guilty of criminal conduct, specifically the
20 supply of controlled drugs?

21
22 i. The prosecution evidence in support of this element of the offence
23 comes from the items found at the defendants' residence:

- 24 (i) 4 glass jars with traces of ganja
25 (ii) 8 empty glass jars
26 (iii) 2 Black scales with white residue found to be traces of
27 cocaine
28 (iv) Traces of ganja found on the inside toilet and floor area of
29 the master bedroom.

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ii. The prosecution also prays in aid of this element, the manner in which the cash was concealed on the person of Vasco-Pineda. The prosecution alleges that if these monies were from a legitimate source that the defendants would not seek to remove all of their earnings in this manner and that this was an attempt to ensure that the monies were not detected by Customs. The prosecution therefore states that the court can find from this evidence that these actions support their case that the defendants were engaged in criminal conduct, the supply of drugs.

90. **The second element** - That the monies seized are criminal property, being the benefit of that criminal conduct.

i. The prosecution submits that if the court finds that the evidence establishes that the defendants were involved in the supply of drugs, the court can find that the monies seized is are criminal property - being profits from the supply of drugs. The prosecution argues that the monies are the benefit of criminal conduct based upon the inference that they ask the court to draw from the circumstances of the case, the concealment of the monies and the traces of drugs, scales and jars found at the defendants' residence. As stated by the Crown: "... *in the circumstances of this case ... there is an irresistible inference that the money was derived in part or wholly from crime, namely the selling of drugs.*"

ii. Counsel for the prosecution submitted that "*The Crown does not dispute that the Defendants had a business.*" The evidence from the Statement of Admitted facts confirms the following:



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- a) That the second defendant held two personal accounts at CNB. There were no significant deposits or withdrawals from these account between April and August 2018.
- b) A business account was opened in January 2018 for “*Ride with us Watersports*” with the source of funds for that account being “Merchant Terminal Business Sales.” No significant monthly cash withdrawals were made from that account.
- c) The notebooks of business activity showed cumulative total sales from these notebooks to amount to USD150,598. The notebooks covered three non-consecutive periods: 22nd November 206 to 21st February 2017, 22nd May to 2nd October 2017, and 23rd April to 2nd August 2018.

91. **The third element** -That the monies seized, being criminal property, the defendants attempted to remove this criminal property from the Cayman Islands through Vasco-Pineda.

- i. The evidence in support of this limb, is that Vasco-Pineda was about to leave the jurisdiction when she was stopped by Customs and the indication by Vasco-Pineda that she was given the monies by the defendants to take to Columbia. The defendants have each admitted having knowledge of and asking Vasco-Pineda to take the monies to Columbia

COURT’S ANALYSIS

92. Neither of the defendants deny that the items found at the residence were theirs. They both admitted in evidence that they were users of drugs. Mr. Woodman

1 admitted that he used ganja and Mrs. Woodman admitted that she occasionally used
2 both ganja and cocaine.

3
4 93. They both offered explanations for the traces of ganja found in 4 jars at the residence,
5 stating that the jars were used to keep the ganja “fresh” and that they were also used
6 for storing sauces made by Mrs. Woodman.

7
8 94. They both denied being involved in the supply of drugs, insisting that any drugs
9 found was for personal use and that the scales found at the residence were used for
10 weighing the drugs that they purchased. The fact that the amount of each drug found
11 was only traces of ganja and of cocaine does not in itself raise any inference to
12 support the supply of drugs.

13
14 95. The evidence of the defendants when they were cross examined was that they
15 dropped Vasco-Pineda to the airport for her flight to Columbia and had not returned
16 to their home before the Police arrived to execute a search warrant and telephoned
17 them to return to the house. There was no opportunity for concealment. It is therefore
18 of note that although scales and traces were found at the house and prominently so,
19 that is, on the dining table and in the kitchen of the home, there were no other
20 paraphernalia found at the house of the kind that would support the defendants being
21 involved in the supply of drugs, to bolster the prosecution’s case. This is a factor to
22 be considered given the inference that the court is being asked to draw with regard
23 to the defendants and the supply of drugs.

24
25 96. With regard to the concealment of the drugs by Vasco-Pineda: Each of the
26 defendants offered an explanation, which was consistent one with the other, for why
27 the monies were being transported to Columbia in the way in which it was by Vasco-
28 Pineda. Each of the defendants admitted to having full knowledge of the fact of her



1 concealment of the monies. The first defendant assisted Vasco-Pineda with the
2 concealment.

3
4 97. The prosecution asks this court to infer that the concealment of the monies was in an
5 effort to conceal the monies from customs because it was inconceivable to suggest
6 that if these funds were from a legitimate source that they would seek to remove all
7 their savings in this way. The prosecution offered in support of this inference the
8 fact that the defendants admitted in evidence that in transferring the monies
9 concealed in Vasco-Pineda's undergarments they were not sending the money
10 through the safest means, namely via wire transfer; that they never had any intention
11 of sending the money to Colombia in any other way and that the denominations of
12 the cash to avoid detection was deliberate.

13
14 98. After careful consideration of all of these factors I do not find that taken as a whole
15 they lead to the irresistible conclusion that the prosecution submits. The defendants
16 each offered an explanation for their actions with regard to the monies. Mrs.
17 Woodman stated in evidence that she was concerned that someone may follow Ms.
18 Vasco-Pineda because she was coming from an international flight and grab her bag
19 and suitcase in Columbia. She related:



20
21 *"I was concerned about Columbia and Cuba too. They steal everything*
22 *you have in your suitcase sometimes. I say that because it happened to*
23 *me..."*
24

25 99. She related that she did not transfer it by the use of MoneyGram or through the bank
26 because MoneyGram had a maximum transfer of \$1500.00 USD and she would have
27 had to pay tax on that as well as a transfer fee. Also, she did not use MoneyGram
28 because of the exchange rate for a USD to Colombian peso that MoneyGram paid

1 was less than she would receive if she took the money to the bank in Columbia. She
2 said “*I gave her in cash so I could get more money when she exchanged it for me.*”

3
4 100. Mr. Woodman also gave a similar explanation for the concealment of the monies.
5 He agreed that the safest way to send money would be via the bank. He stated that
6 it was a legitimate concern in his mind that his sister-in-law could be mugged or
7 robbed on her way to Columbia. He agreed that he could have reduced that risk by
8 not having her travel with the money, however, he disagreed that he was content to
9 transfer the money through her because he knew it was obtained through criminal
10 conduct.

11
12 101. I do not find that the explanation from the defendants is implausible. Many
13 international travelers conceal monies about their person in order to avoid being
14 robbed. I find that it is a reasonable conclusion which could be drawn from the
15 account given by the defendants that the monies were concealed in order to avoid
16 detection, not by Customs but for the reasons offered by the defendants, that is, to
17 prevent Vasco-Pineda from possibly being mugged or robbed during her journey to
18 Columbia.

19
20 102. Significantly, the prosecution has presented no evidence to contradict this
21 explanation. The defendants first gave this explanation for concealment of the
22 monies in their records of interview. If there are two reasonable conclusions that
23 can be drawn from accepted facts and one of these conclusions favors the defendant,
24 then that is the conclusion that this court must draw. I find that the fact of the
25 concealment of the monies does not support the Crown’s case that the defendants
26 were involved in the supply of controlled drugs.



1 103. With respect to the second element that the prosecution must prove. The
2 prosecution's case is that the amount of the monies considered together with the
3 drugs and scales found at the defendant's home and the manner of concealment of
4 the monies lead to an inference that the money was derived in part or wholly from
5 crime, namely the selling of drugs.

6
7 104. In order to draw such an inference with regard to the monies, this court must be
8 satisfied of its relevance to that issue [the selling of the drugs]. In order to do so, the
9 court must determine:



- 10 i. Whether it accepts or rejects any innocent explanation for it [the monies]
11 advanced by the defendants; and
- 12 ii. if there is any possibility of the money having been in the defendants'
13 possession for reasons other than drug dealing.

14
15 105. The prosecution did not present any evidence to counter the explanations offered by
16 the defendants relating to how they accumulated the monies. The explanation given
17 by the defendants during interview was that the monies were from their business.
18 The defendants have provided notebooks which they allege show their earnings over
19 various periods including the period immediately before their arrest. The bank
20 details for the business account support their evidence that they only used the
21 business account for credit card deposits.

22
23 106. The prosecution did not challenge what was set out in the notebooks and what the
24 defendants testified that the figures represented. These appear as part of the
25 Statement of Agreed Facts. While Counsel for the prosecution questioned the
26 defendants about the expenses which they stated that they incurred each month,
27 again the prosecution did not provide any evidence to this court that would cause
28 this court to reject the defendants' accounts altogether about the accumulation and

1 source of the monies. There is, on the agreed facts, evidence to support a possibility
2 that the monies were in the defendants' possession for reasons other than drug
3 dealing.

4
5 107. The explanation offered by the defendants is a reasonable conclusion that can be
6 drawn from the fact that the business was the source of the monies. The inference
7 that the supply of drugs was the source of the monies is weakened by the evidence
8 of the defendants' earnings from their business. The prosecution submitted that the
9 defendants' outgoings were approximately \$6600.00 per month. Taking the Agreed
10 Facts as stated at paragraph 12 – xxviii - xxxi above, the notebook entries document
11 that the defendants earned USD 49,691.00 of sales over a 3 ½ month period between
12 23rd April to 2nd August 2018. These earnings would amount to \$14,197.43 per
13 month from which their outgoings could be paid with surplus monies for savings.

14
15 108. The sales recorded in notebook entries between 22nd November 2016 to 21st February
16 2017 was USD\$47,528.00. For the period 22nd May 2017 to 2nd October 2017 the
17 notebooks record USD\$53,379.00 in sales. From these records it appears that the
18 defendants' earnings from the *Ride with us Watersports* business were consistently
19 at a level to meet their financial obligations and also allow for savings.

20
21 109. The fact of and amount of the monies do not therefore lend support to the
22 prosecution's case against these defendants. The prosecution is unable to rule out
23 that the source of the monies was the defendants' business. The onus is on the
24 prosecution to refute this evidence. On the evidence before the court there is no
25 irresistible inference that the monies were from the supply of drugs.

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1 **FURTHER INFERENCES**

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110. The prosecution alleges that, from the evidence presented, this court can also draw an adverse inference from the failure of the defendants to answer questions put to them when they were interviewed by the Police after arrest. The prosecution submit that the defendants did not provide a full explanation as to the source of the monies found on Ms. Vasco-Pineda during the course of their interviews and therefore invite the court to find that this was because they knew that their answers would not stand up to scrutiny or that they had not yet decided what story they were going to tell.

111. The prosecution’s case is that both Defendants at the time of interview understood why they were arrested, that is, that the police believed that the money seized from Ms. Vasco Pineda was in whole or in part from the proceeds of selling drugs.

112. The prosecution also submit that the defendants both understood that if they provided a full explanation as to the source of the funds not only would that result in the release of Ms. Vasco-Pineda permitting her to travel home to Colombia, but also would result in the release of their ‘savings.’ Notwithstanding this they failed to answer questions that they could properly have answered, namely: Details of their living expenses; details of the apartment they stated the money was for in Columbia; a Denial of dealing drugs, and the use to which the jars were put as well as the scales.

113. The prosecution asks this court to find that it was reasonable for the defendants to have provided an explanation and that the explanation provided with regard to their business, was general and insufficient.





1 114. Each of the defendants was cautioned before the interviews were conducted. During
2 the trial each defendant gave evidence of the matters to which the prosecution has
3 referred above which were not mentioned during the interviews. Each of the
4 defendants has stated in evidence that after speaking to their attorney they answered
5 the questions as he directed them.

6
7 115. Mrs. Woodman stated:

8 *"I answered no comment [to the questions in relation to drugs] because*
9 *my previous attorney, this was the advice he gave me to not answer ...He*
10 *also said that about the household expenses. ... He told me just answer*
11 *in reference to the money otherwise no comment. I followed that advice*
12 *because he was my lawyer."*

13
14 116. In cross examination she maintained that she did not answer certain questions
15 because of advice from her attorney and further stated:

16 *"What was the difference in telling the Police I do not sell drugs. I*
17 *explained [to the Police] that the money was not from drugs but from*
18 *the business."*

19
20 117. The evidence of Mr. Woodman was that he did not have a lawyer present during his
21 interview by the police, but he had spoken to an attorney prior to the interview. He
22 stated that his attorney instructed him to answer 'no comment' to questions about
23 drugs or anything that had nothing to do with the money. He followed as his attorney
24 had instructed.

25
26 118. In determining whether to conclude that the only reason that the defendants failed to
27 answer these questions during interview was because they knew their answers would
28 not stand up to scrutiny and/or they had not yet decided what story they were going
29 to tell, I must be satisfied that the defendants could each reasonably have been
30 expected to mention the facts relating to the three matters above, that the only
31 sensible explanation is the one that the prosecution offers, and that the prosecution's



1 case was so strong that it clearly called for an answer by each of the defendants. I
2 cannot convict a defendant based on such a conclusion, if I accept it, but I can take
3 it into account as some additional support for the prosecution's case and when
4 deciding whether the evidence from the defendants about these facts is true.

5
6 119. Where as in this case the defendants have given evidence that he/she did not answer
7 questions on the advice of their attorney, I remind myself that even if I accept this
8 evidence, this does not automatically prevent me from drawing any conclusion from
9 his/her silence, as a person given legal advice still has the choice whether to accept
10 or rejects such advice. In determining whether an adverse inference should be
11 drawn, a court must consider all the relevant circumstances existing at the time that
12 the defendants were questioned.

13
14 120. In this case each of the defendants responded to questions during the interviews to
15 provide information relating to the source of the monies found on Ms. Vasco-
16 Pineda. This was at the heart of the information that the police sought during the
17 interview and what the defendants clearly understood or believed to be the reason
18 that they were being questioned. The interaction between Mr. Woodman and the
19 interviewing officer was as follows:

20 "SA [interviewing officer]: What can you tell me about the circumstances
21 which lead to your arrest?

22 AW: I guess what lead to the search warrant is
23 because I gave my sister-in-law some money to
24 take to Columbia, and she was stopped, and
25 you guys thought it was criminal property..."

26
27 121. I do not find, in the circumstances of this, case that each of these defendants should
28 each reasonably have been expected to mention the further facts relating to their
29 living expenses, details of their intended purchase in Columbia or their drug use.

1 122. I do not find that the prosecution's case was so strong that it clearly called for an
2 answer by him/her.

3
4 123. I accept their evidence that they took the advice of their attorneys with regard to what
5 questions to answer and which not to during their interviews.

6
7 124. I am not satisfied that any conclusion should be drawn against either of these
8 defendants. Consequently, there is no additional support for the prosecution's case
9 to be derived from the failure of the defendants to answer questions in interview.

10

11 **CONCLUSION**

12

13 125. Taking all of the facts and evidence into account, I find that the burden on the
14 prosecution to satisfy this court beyond a reasonable doubt of each of the elements
15 of the offence has not been met.

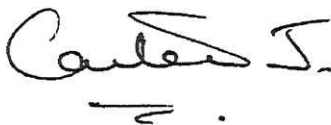
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17 126. After full consideration of all of the evidence I am not sure of the prosecution's case
18 against either of these defendants and I find each of them Not Guilty of the offence
19 of Attempting to Remove Criminal Property.

20

21 **Dated this the 12th day of October 2020.**

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**Madam Justice Marlene I. Carter
Judge of the Grand Court (Acting)**

