

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

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6 **IND. NO. 63 OF 2011**
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10 **REGINA**

11
12 **V.**

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14 **SEAFORD SINCLAIR LABORDE**
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19 **Appearances:** **Mr. Michael Snape of the Office of the Director of Public**
20 **Prosecutions for the Crown**
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22 **Ms. Margeta Facey-Clarke of Facey-Clarke & Associates**
23 **for the Defendant**

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26 **Before:** **Hon. Justice Henderson**
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29 **Heard:** **August 23, 2013**
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2 **JUDGMENT**
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5 1. The appellant Seaford Sinclair Laborde appeals from his conviction in the
6 Summary Court on a charge of possession of cocaine with intent to supply.
7 The sole issue on this appeal advanced in oral argument was a submission
8 that the conviction is unsafe or unsatisfactory. The written argument
9 advanced on the appellant's behalf takes two further points which I will
10 address in due course.
11

12 2. The arrest of the appellant resulted from an undercover operation in George
13 Town. Detective Constable Aselton testified that on the day in question he
14 was posing as a tourist in the area of the Digicel office in George Town. A
15 number of cruise ship passengers were in town. He observed the appellant
16 seated on a bench outside the Digicel office. Immediately to the appellant's
17 right on the bench was a charcoal-coloured plastic shopping bag. There was
18 another man sitting on the arm rest of the bench and sitting to the immediate
19 left of the accused, according to Constable Aselton.
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21 3. The Constable went on to say that the appellant had his right hand on top of
22 the shopping bag. The Constable offered the opinion that the appellant

1 appeared to be in control of the bag. He said:

2
3 "His hand was right on the canvas bag but he was not
4 grasping it. It was very close to his right leg. The bag was
5 on Mr. Laborde's right side".
6

7 Then he said:

8
9 "The individual on the arm rest was sitting on his right side".

10 That contradicts the assertion he had made earlier.

11 He said:

12
13 "Mr. Laborde had nothing seated on his right".

14
15 I take it that means "no one".
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19 4. The undercover Constable walked up to Mr. Laborde and asked if
20 Mr. Laborde knew where the Constable could get some ganja. Mr. Laborde
21 replied no. The Constable then asked him about "blow" (cocaine).

22
23 "He looked at me and went 'huh' as if he did not understand
24 what I was asking. I went on further to say I was looking to
25 score some coke. He indicated he wanted me to stay right
26 where I was with him. He told me verbally to stay there".
27

28 5. The officer elaborated. He said that as he first approached Mr. Laborde he
29 saw him looking around, watching pedestrians and vehicles passing by his
30 location. He appeared to be serious or apprehensive. At one point he took
31 his right hand off the bag completely.

32
33 6. Returning to the narrative he said that after the brief conversation in which



1 he, the officer, indicated that he was looking for cocaine, Mr. Laborde smiled
2 and put his hand back on the bag, palm down. At this point, two police
3 officers pulled up in an unmarked police vehicle. Despite the fact they were
4 in plain clothes, one officer had a police badge in plain view and they had the
5 police radio on in the unmarked vehicle.

6
7 7. Constable Aselton, who was watching Mr. Laborde closely at this point, says:

8 "I could see his eyes and they got very wide. He almost
9 appeared to stop breathing. He was holding his breath. He
10 immediately stood up. He left the bag on the bench and he
11 whispered in my ear 'walk with me'. I said 'sure' as I wanted
12 to stay with him to prevent him from escaping".
13



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15 8. The officer said the only person he saw touching the bag was Mr. Laborde.
16 He said Mr. Laborde looked frightened when he saw the officer whose badge
17 was visible.

18
19 9. In cross-examination, he said Mr. Laborde had his hand on the bag three
20 separate times while the officer was watching. He also said at one point that
21 Mr. Laborde's arm was resting on the bag.

22
23 10. A second officer, Detective Constable Maxwell, also gave evidence. He
24 observed Mr. Laborde and Detective Constable Aselton walking away
25 quickly as Maxwell approached. He confirmed that Mr. Laborde appeared to
26 be "very nervous".

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11. After Mr. Laborde was arrested at the scene he was cautioned and told he was under arrest for the offence of possession of cocaine and possession of cocaine with intent to supply. He replied: "I do not know anything about any drugs".

12. Maxwell also gave an additional bit of evidence about seeing Mr. Laborde earlier but the Learned Magistrate (wisely, I think) disregarded that bit of evidence because of its ambiguous (or, perhaps, unreliable) nature. I will do the same.

13. There was a second man in the area. Detective Constable Patella walked to this second man who was not far from the bench I have described and engaged the second man in conversation. Patella asked if the man knew "where a fellow could get some weed or ganja". Patella was, of course, acting as an undercover officer at the time and disguised as a tourist. The man replied: "No, I have crack if you want". Patella replied: "Crack or powder?" and the man then said to him "powder". The man continued: "I'm from the ship. What ship are you on? I will get it to you". That evidence was led by the Crown but it would appear that the defence wished to have the evidence on the record as the inference to be contended for was that the cocaine in the bag could have been in the possession of this second man.

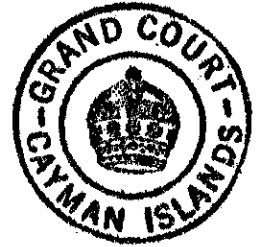


1 14. The bag was tied in a knot at the top and in addition to the cocaine it
2 contained a number of cling films or what were described as see-through
3 wrappers. I should have said earlier that the bag, upon analysis, proved to
4 contain some 34 ounces of cocaine.

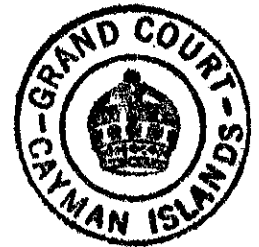
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6 15. Mr. Laborde's cabin on board the ship on which he was working was
7 searched but nothing incriminating was found. Nothing incriminating was
8 found on his person either.

9
10 16. Mr. Laborde himself gave evidence. He denied ever having had cocaine in
11 his possession. He testified that he is a person of good character with no
12 criminal record. I note in passing that the Learned Magistrate instructed
13 herself correctly on both limbs of the good character direction.

14
15 17. Mr. Laborde said that he was sitting on the bench around the corner from the
16 Digicel store conversing on the telephone with his family back home in St.
17 Vincent. He said a man by the name of Shem Charles, whom he knew from
18 the ship, was leaning over on the left-hand side of the bench. Mr. Laborde
19 said when he sat on the bench he did not notice anything about it and in
20 particular did not see the bag on the bench or anywhere else. Mr. Laborde
21 said that he sat in such a way that his back was turned to the right-hand side
22 of the bench; in other words, given the way in which he was sitting, given the
23 orientation in which he was sitting, he would not have seen the bag which



1 would be at his back. Mr. Shem Charles was to his left leaning over the
2 bench and Mr. Laborde was having some conversation with Shem Charles.
3 He said when the tourist, ie., the undercover officer, approached him and
4 asked did he have any ganja, Mr. Laborde replied "no". He was then asked
5 "Do you have any white powder, any cocaine?" Mr. Laborde says he did not
6 reply to that although he gave the man a curious look. At this point
7 Mr. Laborde quickly got up off the bench with his phone in his right hand
8 and started to walk towards Shedden Road. He wished to get away from the
9 tourist, who was annoying him and interrupting his cell phone conversation.
10 Mr. Laborde said that officer Aselton is not telling the truth when he quotes
11 Laborde as saying "wait there" or when he quotes Laborde as saying "walk
12 with me". Those things were never said.



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14 18. The Learned Magistrate gave very full reasons for judgment. She began by
15 instructing herself correctly on the matters in issue and in particular upon the
16 elements which must be proved in order to establish possession. She then
17 engaged in a full review of the evidence, after which she addressed the
18 question of the respective credibility of Detective Constable Aselton and the
19 defendant. She gave detailed reasons for disbelieving the defendant. Her
20 conclusion was that he was not telling the truth on those points where his
21 evidence was contradicted by that of Aselton. She accepted the evidence of
22 Aselton as truthful and reliable. As I said earlier, she instructed herself in
23 accordance with the usual good character warning and she made some

1 findings on the demeanour of the defendant as he gave evidence. She, of
2 course, has had the advantage, which is denied to me in this Court, of seeing
3 the defendant give evidence and observing his demeanour. She then made
4 her findings of fact, which do not betray any error in law. Indeed, none has
5 been suggested in oral argument.

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7 19. The Magistrate saw the witnesses, observed their demeanour and gave very
8 full reasons for disbelieving the evidence of the appellant and accepting that
9 of the police officers, principally Aselton. She disregarded a bit of evidence
10 from Detective Constable Maxwell. She instructed herself carefully and fully
11 of the law. I can find no error on the Magistrate's assessment of credibility. I
12 am satisfied that her decision on that element is not unsafe.

13
14 20. Was the evidence of the police officers sufficient to prove possession? The
15 appellant sat very close to the bag and was seen to rest his right hand on it.
16 He acted apprehensively. When Aselton said he wanted to "score some
17 coke" the appellant said "stay there," which indicates a degree of willingness
18 to, at the very least, continue that conversation. The appellant smiled and
19 rested his hand on the bag, suggesting he was in control of it at that moment.
20 When he saw Detective Constable Banks, his eyes got very wide and he
21 appeared to be holding his breath. He whispered "walk with me" to the
22 undercover police officer. He left the bag on the bench and walked quickly
23 away, suggesting that he wished to leave the area and get away from the bag.



1 That, in turn, suggests that he knew the bag contained something of an illegal
2 nature.

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4 21. Collectively, these facts provide a reasonable basis for the Magistrate's
5 conclusion that this appellant was in possession of the bag. If he was not in
6 actual physical possession of it, the evidence provides a reasonable basis for
7 concluding that he was in constructive possession, either alone or jointly with
8 one or more other persons.

9
10 22. The Magistrate concluded that the essential elements of possession-custody,
11 control and knowledge-were present. Her conclusion was not unsafe. It was
12 within the realm of reasonableness given the evidence she had heard.

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14 23. Two further points are raised by this appellant in his written submission to
15 the Court. First, he argues that the drug was never shown to him after his
16 arrest and this was a breach of his article seven right to a fair trial. No
17 authority was cited for this broad proposition. Upon arrest the appellant said
18 he did not know anything about any drug so from that point on it seems to me
19 there would have been little point in showing him the drug which had been
20 found. There is no merit in that first argument.

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22 24. Secondly, the written argument submits that the police failed to invite the
23 appellant to witness them placing cocaine into the sealed package before they



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sent it off for analysis at the laboratory. This is said to have been an error which is fatal to the conviction. No authority was cited for that proposition. In my view, there is no legal requirement for a procedure of that sort.

25. For these reasons the appeal from conviction is dismissed.

Dated this 23rd day of August, 2013

Henderson, J.

Henderson, J.
Judge of the Grand Court

