

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No: 31 of 2008

Ind. No. 35/08A

C#7345/07

*Liberal*

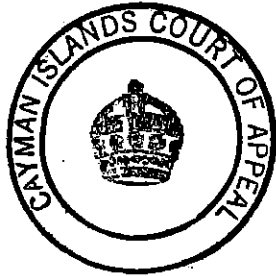
*9/9/09*

BETWEEN

HER MAJESTY THE QUEEN

APPELLANT

-and-



BRANDON LIBERAL

RESPONDENT

BEFORE:

THE RIGHT HON. SIR JOHN CHADWICK, P.  
THE HON. E. MOTTLEY, J.A.  
THE HON. G. VOS, J.A.

Appearances: Mr. John Masters, Crown counsel, for the Appellant and Mr. George Keightley of Mourant for the Respondent.

Heard: 26<sup>th</sup> August, 2009

Judgment delivered: 9<sup>th</sup> September, 2009

REASONS FOR JUDGMENT

Mottley, J.A.

1. The Respondent, Brandon Liberal, together with Aaron Crawford, was charged on an Indictment containing two counts. Count 1 alleged that they, together with others unknown, on 6 April 2007, unlawfully assaulted David Allan Harniman causing him actual bodily harm. In count 2, they were charged, also with others unknown, with causing actual bodily harm to Kristi Ingham on the same day. Both offences were alleged to have taken place at the Royal Palms parking lot on the West Bay Road.

which alleged that the judge had erred in law by directing the jury to return a verdict of not guilty on count 1.

6. In revisiting his earlier ruling the judge said:

"In respect of count 1, I am just going to read a portion here from Archbold, which has concerned me... Let me just tell you in my own words, firstly, what I understand this passage to be saying, that the ... there was once in common law a requirement where two persons jointly charged and where the Crown alleged that they were acting in ... jointly, that where one was acquitted that it was required that the other would be acquitted."

7. The judge then went on to refer to a passage from *R v. Longman and Cribben, 72 Cr. App. R. 121* where at p 124 the Court of Appeal stated:
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"When a trial judge is faced with the task of directing a jury in a case of this sort, where the charge is that A and B conspired together but with no one else to commit crime, he will, as in other cases involving two defendants, as a general rule, have to tell the jury that they must consider the evidence against each defendant separately. Where the strength of the evidence against each is markedly different, usually (as in the instant case) because A has confessed and B has not, he should then go on to explain that because there is that difference in the evidence against each, the jury may come to the conclusion that the prosecution have proved beyond reasonable doubt against A that A conspired with B, but have not proved against B that any such conspiracy existed.

head. The judge was clearly concerned with the fact that the prosecution had discontinued the case against Crawford on count 1 and was now seeking to have the jury convict Liberal of assaulting Harniman causing him actual bodily harm. After considering the law as set out above in the case, *Longman and Cribben*, the judge considered that to leave count 1 to the jury would result in an inconsistent verdict of finding Liberal guilty when the case against Crawford, who had admitted injuring Harniman, had been discontinued.

10. The concern again surfaced when the judge reminded crown counsel that he had not "addressed the issue of an inconsistent verdict." The judge pointed out to crown counsel that in the cautioned statement Crawford had admitted that he had struck Harniman in his head. The judge then went on to point out to counsel what Crawford had said:

"So in respect of that, he is saying directly that I am the one who is responsible for that. ~~The prosecution – the Crown has gone ahead and offered no – and has~~ laid the stage for the jury to return a verdict of not guilty in respect of that. How can I – and this is what I'm saying. How can it be just and fair to say to this other man who is there, has not done the major act – because you know what it takes to prove that: either that he did it directly or he was acting in concert with others. This other man compensated (sic) it and you have said he's not guilty and he's gone, so how now can we properly make it not inconsistent when this man hasn't done anything?"

11. This shows that the judge had entirely misconceived the prosecution's case against Liberal. Count 1 alleged that Liberal and Crawford, together with others unknown, had assaulted Harniman causing him actual bodily harm. While the judge was correct in concluding that Crawford in his interview, admitted throwing a stone which struck

This would not have been applicable in any event as four persons were involved in this attack.

14. For the reasons set out above, the judge made an error of law which entitles the prosecution to appeal pursuant to section 28(1) of the Court of Appeal Law. Under section 28(2) this Court is given a discretion to allow the appeal if it appears to the Court that the acquittal of the respondent by the judge ought to be set aside on the ground of a wrong decision of the law.

15. This however does not mean that the appeal should be automatically allowed. In disposing of the appeal, regard must be had to the Privy Council decision of *The State v Brad Boyce Privy Council Appeal No. 51 of 2004*. In accepting submissions on behalf of the State that certain rulings by a judge were erroneous in point of law, their Lordships indicated that it did not mean that the appeal would be automatically allowed and a new trial ordered. Lord Hoffman, giving the judgment of the Board at paragraph 26, expressed doubt that:

"...Parliament could have intended that in every case in which the accused had been acquitted as a result of an error of law by the judge, the Court of Appeal would be bound to allow the appeal."

His Lordship indicated that:

"...if the Court of Appeal considers that there was an error of law but that there should not be a new trial, it should correct the error but then simply dismiss the appeal and leave the acquittal standing."