IN THE CAYMAN ISLANDS COURT OF APPEAL

Criminal Appeal No. 37 of 1999
SCA No. 20 of 1999

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

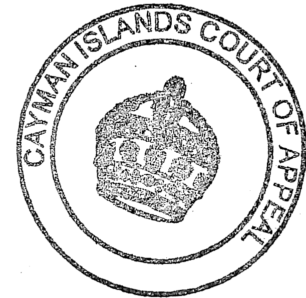
BRYAN HERBERT GAYLE

Appellant

BEFORE: The Rt. Honourable Mr. Justice Edward Zacca, President
The Rt. Honourable Mr. Justice Telford Georges, Justice of Appeal
The Honourable Mr. Justice Ira Rowe, Justice of Appeal

Mr. John Furniss instructed by Collins Broadhurst & Furniss for the Appellant.
Mr. Anthony Akiwumi for the Respondent Crown.

November 16th 1999



REASONS FOR JUDGMENT

ROWE, J.A.

The Appellant and Carlyle Nation were members of the Island Special Constabulary Force in Jamaica in 1985 and were both stationed at Harmon Barracks, Kingston. They knew each other and were sometimes assigned for duty together. Mr. Nation went on to become a member of the Jamaica Constabulary Force and at the time of the Appellant's trial, Mr. Nation was a member of the Cayman Islands Police Force and was stationed at Bodden Town, in Grand Cayman.

On November 29th 1997, the Appellant arrived in Grand Cayman from Jamaica. At the Owen Roberts International Airport he was selected for further examination by Customs Officers and was taken to the Hospital to be X-rayed. In his pocket was found a substance labelled "Lomotil", which the Officers knew to be a laxative but which the Appellant told them be used to improve his sexual performance. At the Hospital the Appellant made a desperate attempt to escape but was caught and overpowered by the Customs Officers. The X-ray of his stomach showed that there were foreign substances in his abdomen. A liquid, "Clean Prep", was administered to the Appellant and in the course of the night he had numerous bowel movements in which he passed 47 pellets. Police Officers not only kept a written log of each bowel movement of the Appellant but took photographs of him as be passed fecal matter and retrieved the pellets therefrom.

Immediately after the Appellant had tried to escape from the Hospital, he was cautioned by Officer Burlington. While the Officers sat with the Appellant he explained to them why he had swallowed the 47 pellets. He said that he had lost his job as a policeman in Jamaica, that his baby's mother had kicked him out of the house and that he had nowhere to live. The Appellant said he had started smoking crack, that things were hard in Jamaica and that he needed money. When asked by the Police Officers what the pellets which he had swallowed contained, the Appellant replied "Cocaine". The Appellant subsequently gave a recorded statement in which he said that he did not know that the pellets contained cocaine but that he was asked to take "drugs" to Cayman which he believed to be cocaine and he was offered $2,000.00 to carry the drugs.

In conversation with the Police Officers at the Hospital, the Appellant suggested to them that they should make the cocaine disappear so that there would be no evidence against him. Ridiculous as this suggestion might appear, the pellets which the Appellant passed and which were so carefully

documented by the Police disappeared from the room in which the Appellant was handcuffed to his bed. There was a moment when a single Police Officer was guarding the Appellant and he left the room momentarily to get a porter to take the Appellant to X-ray. While the Appellant was in the X-ray room it was discovered that the 47 pellets had disappeared. Immediate and thorough searches provided nothing. However, Constable Nation provided the explanation. He testified that he saw the Appellant at the Police Lock-up and anxious to know what the Appellant was doing there, the Appellant told him that the prosecution had no case against him as they did not have the pellets which had come from his body. The Appellant explained to Constable Nation how he was able to retrieve the 47 pellets which had been left unguarded when the Constable went for the porter and had flushed them down the toilet. The mystery of the disappearing pellets, was solved.

The Appellant was unrepresented at trial. He had dispensed with two Legal Aid attorneys who had been assigned to him. He was convicted for the offence of possession of a controlled drug, to wit, cocaine in an amount exceeding two ounces, in violation of section 4(1)(m) of the Misuse of Drugs Law (1995 Revision) and sentenced to 9 years imprisonment. His appeals against conviction and sentence to the Judge of the Grand Court were dismissed. Before us Mr. Furniss advanced one substantial ground of appeal which was the same point taken by the Appellant at trial.

It was urged upon us that the Crown failed to prove that the Appellant had possession of cocaine, in that the Crown failed to establish the identity of the drug with sufficient certainty and that the admissions of the Appellant were insufficient for the Magistrate to find that there was a case to answer. It was submitted that in the absence of expert evidence that the substance which the Appellant had swallowed was cocaine, he could not be found guilty of the full offence of

possession of cocaine. The Court's attention was drawn to the unreported case of R. v. Kevin Georgehall Wright in which a substance when field tested appeared to be cocaine but when tested by an expert chemist it was shown to be starch.

The law seems to be fairly well settled as to the manner in which a court should treat admissions by a defendant on a matter of law. In Bird v. Adams, 1972 Crim. L.R. 174, Lord Widgery, C.J. said that there were many instances where an admission made by a defendant on a matter of law in respect of which he was not an expert was really no admission at all, but if in all the circumstances, the defendant had sufficient knowledge of the circumstances of his conduct to make his admission at least prima facie evidence of its truth, a submission of no case was properly rejected. In that case the defendant had 15 tablets which he admitted was L.S.D. and that he had been peddling it. In the later case of R. v. Chatwood et al (1979) 70 Cr. App. R. 39, 43, the Court of Appeal reaffirmed the principle in Bird v. Adams, supra. Forbes J, said:

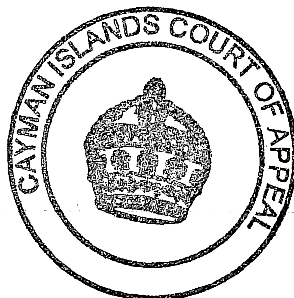
> "If a man admits possession of a substance which he says is a dangerous drug, if he admits it in circumstances like the present where he also admits that he was peddling the drug, it is of course possible that the item in question was not a specific drug at all but the admission in those circumstances is not an admission of some fact about which the admitter knows nothing. This is the kind of case in which the defendant certainly had sufficient knowledge of the circumstances of his conduct to make his admission at least prima facie evidence of its truth and that was all that was required at the stage of the proceedings at which the submission to the justices was made."

In our opinion, it is not an absolute requirement in a prosecution for an offence of possession of a controlled drug under the Misuse of Drugs Law that in every such case the prosecution must provide expert evidence that the substance was the particular drug charged. Where the defendant has made admissions as to the nature of the substance in his possession and the surrounding circumstances are such as to clearly show that he had actual knowledge of the nature of the

substance, there is prima facie evidence that the substance in his possession was the drug of which he made the admissions. This Appellant certainly ingested and brought into the Cayman Islands 47 pellets which the Police Officers described as resembling in size and packaging the process by which cocaine is packaged and swallowed for export. The Appellant stated to the Police that he was a user of crack cocaine, that he was to be paid US$2,000.00 for transporting the pellets to Grand Cayman and he deliberately destroyed the 47 pellets thereby making it impossible for them to be tested by any expert witness. The Appellant carried with him a laxative which would facilitate his passing out of the pellets and he tried to escape from the Police before his abdomen could be X-rayed. He was a trained Police Officer and he made suggestions to the prosecuting officers to cause the substance in his body to disappear and so to avoid prosecution. There was in our view abundant evidence on which the Magistrate could overrule his no case submission. The Appellant elected not to give evidence and he was rightly convicted. We found no merit in the ground of appeal argued on his behalf and dismissed the Appeal for the reasons contained herein.

Zacca, P.

Georges, J.A.



Rowe, J.A.