

~~Mr. P. P. P.~~
16.4.93

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

BEFORE THE HON THE CHIEF JUSTICE

SCA 116/92

KENNETH RAYAL WATLER

V

REGINA

Mr. John Furniss for the appellant
Mr. Adam Roberts for the Crown

JUDGMENT

The only issue pursued in this appeal is that relating to the evidence of smoking by the appellant. That issue, as put by the defence, was described in the judgment of the learned Magistrate as follows:

- "(a) that on the evidence the Court ought to hold that the defendant had engaged in smoking cigarettes in the period between his arrest and the conduct of the breath test,
- (b) that the degree of smoking proved, is material and has consequently rendered certificate exhibit 1 inoperative or, at the lowest has cast a reasonable doubt on its validity".

The Magistrate did say that he noticed the discrepancy which emerged from the Crown's case on the issue of smoking but considered it in the context of the other evidence in the case and had no difficulty in ruling it immaterial having regard to the unanimity of the Crown's evidence on other important aspects of the case.

The evidence for the Crown was given by P/C Garcia and P/C Redden. The appellant gave evidence on his own behalf and called Sgt. Derek Elliot as his witness.

The appellant's evidence was that he smoked a

cigarette at the scene of his arrest on suspicion of driving whilst intoxicated, another in the police van whilst he was being taken to George Town Police Station and another when he stepped outside the police station while he was waiting to take a breath test. He said that only about 5 or 7 minutes elapsed between the time of his last smoke and the test.

None of the police officers confirmed the appellant's account. P/C Redden said he travelled on the bus with the appellant to the Police Station (which the appellant denied) and that at all material times between the arrest and the breath test the appellant was in his company and at no time did he observe him smoking.

Much was made in the appeal of the Magistrate's observation that he had noted the discrepancy which emerged from the Crown's case on the issue of smoking. He did not specify what that was. If (and I can find no other) it concerned the relationship between P/C Redden's evidence that he was in the appellant's company throughout and did not see him smoking and Sgt. Elliott's evidence that the appellant came to the vehicle with a cigarette, lit it and brought it into the vehicle, I do not think that it is significant. Sgt. Elliott told him to extinguish it, and he did. It was a fleeting incident which P/C Redden might well have missed. What is more important is that Sgt. Elliott's evidence entirely contradicts that of the appellant who said that he had smoked on the bus journey with Sgt. Elliott's permission.

The breath tests at the Police station were being conducted by P/C Garcia that night. He said that a breath test was conducted on the appellant at 1.12 a.m. and that a reading showing that he was over the legal limit by 37mg of alcohol in 100ml of blood was obtained. He was cross-examined about the procedures relating to smoking before a breath test and said that if he had seen the appellant smoking while waiting a test

he would have kept him under observation for 20 minutes before conducting it. He did say that he had observed him from 12.40 a.m. until 1.12 a.m. when the test was conducted.

The learned Magistrate chose to accept the evidence of the Police officers rather than that of the appellant and I find nothing at all to criticize in that. The whole evidence about smoking, apart from the momentary incident when he lit up on getting into the bus, came from the appellant himself. It was contradicted throughout by all the police officers, even Sgt. Elliott who was called by the defence.

The appeal is dismissed.



G. E. Harre
Chief Justice

16th April 1993.