



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

5 **SCA No: 347/2020**

7 **WHENDELL STEWART**

8 **Appellant**

11 **v.**

14 **REGINA**

15 **Respondent**

19  
20 **Appearances:** **Mrs. Lee Halliday-Davis of Bradys, Attorneys for the**  
21 **Appellant**  
22  
23 **Mr. Scott Wainwright for the Crown/Respondent**  
24  
25 **Before:** **Justice Marlene I. Carter (Actg.)**  
26  
27 **Summary Court Appeal Hearing:** **30 June 2022**  
28  
29 **Appeal Decision** **2 August 2022**  
30

31 **HEADNOTE**

32 ***Criminal Law – s.32 of the Court of Appeal Law – Appeal against conviction – DNA evidence -***  
33 ***Magistrate’s conclusions from the evidence.***

35 **JUDGMENT**

36  
37 1. On 4 February 2021, after trial, the Appellant was convicted by Magistrate McFarlane of  
38 possession of a controlled drug with intent to supply, contrary to section 31 of the Misuse of  
39 Drugs Act (2017 Revision). The Appellant was found to have been in possession of 17 rocks of  
40 crack cocaine with intent to supply. The Appellant was sentenced to a term of seven years  
41 imprisonment.



1       **The Facts**

2       2.       On 19 February 2020, the Appellant, who is a Guyanese national, attended the CBC Enforcement  
3       Unit and was arrested on suspicion of overstaying. While at the Enforcement Unit the Appellant  
4       was searched and found to be in possession of a key to 189 Lemuel Circle in Northward, Bodden  
5       Town.

6       3.       The Appellant was taken to that location and during a search of a bedroom, (in which the  
7       Appellant ultimately accepted during interview that (i) his belongings, including a red and black  
8       suitcase, had been kept since he arrived in the Cayman Islands, and (ii) he slept in occasionally), a  
9       plastic bag containing a white residue was discovered on a dresser together with a quantity of  
10      other similar bags. A black scale with a trace of white powder on it was also found on that same  
11      dresser in that bedroom. At the foot of the dresser, a red and black suitcase which the Appellant  
12      also accepted during his interview belonged to him, was searched. In that suitcase, a number of  
13      identity and travel documents in the Appellant's name were also discovered. At trial, the  
14      Appellant did not dispute that the white residue was cocaine.

15     4.       A black sock containing a clear plastic bag which had within it 17 rocks individually wrapped in  
16      foil was found in the lining of the Appellant's suitcase. A field test of one of the rocks conducted  
17      by Assistant Director Campbell at the scene, confirmed that it was cocaine.

18     5.       Prior to the search of 189 Lemuel Circle, customs officers also searched a Mitsubishi SUV  
19      vehicle that the Appellant drove to the CBC Enforcement Unit prior to his arrest. A green pouch  
20      seen inside a pair of blue and white sneakers which were in the passenger foot well of the  
21      Mitsubishi SUV was found to contain 18 rocks, individually wrapped in foil. It was not disputed  
22      by the Defence at trial that all 18 individually wrapped rocks were cocaine.

23     6.       The Appellant was arrested and denied knowledge and possession of the cocaine.



1 7. This appeal does not relate to the sentence imposed by the Magistrate. The appeal is concerned  
2 with the Learned Magistrate’s decision upon conviction. It is submitted by the Appellant that the  
3 Magistrate erred in law in the way in which she approached the DNA evidence in the case and in  
4 particular the issue of the possibility of secondary transfer as it relates to that DNA evidence.

5 8. The Grounds of appeal were as follows:

6 **(i) *The Magistrate failed to take the evidence of transfer of DNA into account***

7 9. In written submissions counsel for the Appellant expanded on this ground as follows:

8 (a) *“In this case, there was a very high likelihood of secondary transfer*  
9 *because the search of the property was conducted without the officers*  
10 *not changing their gloves between the handling of the items seized.”*

11 (b) *“All of the items seized by officers were at significant risk of*  
12 *contamination because of the methods employed by the CBCO officers,*  
13 *particularly their failure to inspect exhibits in a sterile environment.”*

14 10. The Appellant contends that the DNA evidence as presented by the prosecution was tainted, that  
15 there were no protocols followed with regard to the handling of materials upon which the DNA  
16 evidence was found.

17 (a) *“The DNA forensic examiner concluded that secondary transfer is a real*  
18 *risk in the way that the exhibits were seized.”*

19 (b) *“The DNA samples were not sufficient to be separated. There was no*  
20 *indication of whether the DNA attributed was a major contributor to the*  
21 *sample obtained”.*

1 (c) *“The absolute risk of the DNA in this case being transmitted by secondary*  
2 *disclosure makes this conviction unsafe.”*

3  
4 **(ii) *The conviction was against the weight of evidence.***

5 11. In written submissions counsel for the appellant expanded on this ground as follows:

6 (a) *“There is no supporting evidence relating to supply. The phones seized*  
7 *from Whendel Stewart were not downloaded to retrieve messages.*

8 (b) *There was no evidence that Whendel Stewart had supplied anyone with*  
9 *cocaine on the island. In addition, the usual paraphernalia associated*  
10 *with the supply of drugs is not present.*

11 (c) *Whendel Stewart provided a complete account explaining why he visited*  
12 *the island during the interview. No evidence has been submitted that*  
13 *undermines his account.*

14 (d) *No evidence was disclosed relating to the download of the phones seized*  
15 *from Whendel Stewart. Phone downloads usually provides abundant*  
16 *evidence of drug dealing.*

17 (e) *Steven Ebanks was arrested on the 23<sup>rd</sup> February 2020 in the exact*  
18 *vehicle; during the search of the vehicle, a cigarette box containing a*  
19 *quantity of crack cocaine wrapped in foil wraps and a pipe. He*  
20 *subsequently pleaded guilty to possession and consumption of cocaine. It*  
21 *is clear that Mr Ebanks had the means to obtain foil-wrapped cocaine*  
22 *from a source not relating to Mr Stewart. Whendel Stewart was in custody*  
23 *when the wraps found in the vehicle were seized.*



1           (f)       *The failure of Border Control to investigate Ms Solomon should cause*  
2                    *great concern.*

3           (g)       *The Learned Judge, in this case, sought to rely on the evidence relating to*  
4                    *the key that was found in his possession to support her decision. She*  
5                    *concluded that he lied. It is unclear if she had directed herself in line with*  
6                    *the direction relating to lies in Regina v Lucas.*

7           (h)       *Photograph 8 of bedroom 2 shows that room before CBCO officers*  
8                    *searched it. The scale and plastic bags were not present”*

9    12.       In conclusion Counsel for the Appellant submits: *“the learned judge was wrong to conclude that*  
10                *the evidence presented by the prosecution was sufficient to prove this case to the required*  
11                *standard.”*

12   13.       In reply the Respondent submitted that there is no proper basis in law or fact for the Court to  
13                disturb the conviction.

14   14.       Counsel for the Respondent submitted that the Magistrate’s approach the court to the DNA  
15                evidence could not be criticized and that the issue of secondary transfer was properly considered  
16                and discounted. For the Respondent it argued that this court must consider that this was not a  
17                case where the sole evidence against the Appellant was DNA on a moveable object. Further and  
18                in any event, there was clear supporting evidence before the Magistrate on the prosecution’s case  
19                at trial.

20   15.       The following were advanced by the Respondent as being properly considered by the Learned  
21                Magistrate in her assessment of the other evidence in the case, evidence which was properly  
22                found to be supportive of the DNA evidence:



1  
2 “(i) At the time of his arrest, the appellant was in possession of the key for the  
3 premises in which the drugs were located;

4 (ii) The appellant attempted to mislead the authorities as to the reason for his  
5 being in possession of that key;

6 (iii) The appellant, even on his own account, had access to the premises in  
7 question;

8 (iv) The defendant’s DNA was not only present on the drugs themselves but on a  
9 black scale (TC1-WS) found in close proximity to the drugs themselves;

10 (v) The Court was entitled to, and did, by virtue of section 149 of the Police Law  
11 (2017 Revision), draw an adverse inference against the appellant, based  
12 upon his failure to give evidence.”

13 16. In any event the Respondent contends that “there is no rule of law that a case cannot properly be  
14 left to a jury solely on the basis of the defendant’s DNA on an article left at the scene of a crime,  
15 but whether it will be appropriate to do so will depend upon the particular facts of the case.”

16 **Ground (i) – the DNA evidence.**

17 17. The DNA evidence<sup>1</sup> considered by the Learned Magistrate in this case came from several items,  
18 described as the key exhibits [**“the key exhibits”**]. These were items seized and submitted to the  
19 Cayman Islands Forensic Science Laboratory (“CIFSL”) for analysis. This analysis was  
20 conducted by Ms. Tanzillo-Swarts. The key exhibits were marked as: **TC1-WS, TC2-WS, TC4-**  
21 **WS, LH1B-WS** and **LH1D-WS**. Also submitted for examination to the CIFSL were buccal  
22 swabs from the Appellant as well as from Andre Woodman and Steven Ebanks.

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<sup>1</sup> See paragraphs 12 – 22 of the Verdict Judgment.

1 18. I have not set out the results of the analysis verbatim here. Instead, I have adopted the Learned  
 2 Magistrate’s very helpful table which summarised the findings relating to each of the key exhibits  
 3 in a clear format as it related to the Appellant. The table details the 8 DNA profiles obtained from  
 4 various parts of the key exhibits. The results conclude that the Appellant was not excluded as a  
 5 possible contributor to any of these DNA profiles. 6 of the 8 DNA profiles obtained  
 6 demonstrated a high likelihood ratio, the basis of such being that a greater likelihood ratio  
 7 corresponds with the probability that a person or persons other than an accused, randomly  
 8 selected from the Cayman Islands population, has this same profile. The smaller that probability,  
 9 the greater the likelihood that the DNA profiles in question came from the same person.

10

<b>Exhibit</b>	<b>Item</b>	<b>Provenance</b>	<b>Likelihood Ratio</b>
<b>TC1-WS</b>	1 clear plastic bag with traces of white substance	Bedroom in 189 Lemuel Circle	320 <i>assuming 4 contributors</i>  <b><i>Andre Woodman could not be excluded as a contributor<sup>2</sup></i></b>
<b>TC2-WS</b>	1 black scale	Bedroom in 189 Lemuel Circle	5.5 million <i>assuming 3 contributors</i>  <b><i>Andre Woodman and Steve Ebanks were excluded as contributors</i></b>
<b>TC4-WS</b>	1 black sock containing a clear plastic bag with 17 foil wrapped packs of cocaine	Bedroom in 189 Lemuel Circle	870,000 (outside sock) <i>assuming 3 contributors</i>
			70,000 (inside sock) <i>assuming 3 contributors</i>

<sup>2</sup> Emphasis in bold reflect the conclusions of the analyst regarding Andre Woodman and Steve Ebanks in relation to each of the key exhibits, superimposed on the Table by this Court

Exhibit	Item	Provenance	Likelihood Ratio
			2.9 trillion (plastic bag) <i>assuming 3 contributors</i>
			53 billion (foil packages) <i>assuming 2 contributors</i> <b><i>Andre Woodman and Steve Ebanks excluded as contributors</i></b>
<b>LH1B-WS</b>	8 foil wrapped packages containing cocaine	green pouch found inside blue and white sneakers located in Mitsubishi SUV	81 trillion <i>assuming 2 contributors</i> <b><i>Andre Woodman and Steve Ebanks excluded as contributors</i></b>
<b>LH1D-WS</b>	10 foil wrapped packages containing cocaine	white tissue paper inside green pouch found inside blue and white sneakers located in Mitsubishi SUV	9.2 billion <i>assuming 2 contributors</i> <b><i>Andre Ebanks and Steve Ebanks excluded as contributors</i></b>

1

2 19. The Magistrate detailed: *“The analysis concluded that the Defendant’s DNA profile was present*  
3 *on all the key exhibits with a relatively high likelihood ratio in all but one of them. However, due*  
4 *to the complexity of the DNA profiles obtained from the exhibits, all of which were partial,*  
5 *multiple source profiles, it was not possible to reliably separate it into components (i.e., major,*  
6 *minor or trace). Therefore, it could not be determined for example, whether the Defendant is a*  
7 *major contributor to the DNA profiles obtained.”*



1 20. It is clear that the Magistrate noted: *“There was no indication of whether the DNA attributed was*  
2 *a major contributor to the sample obtained”*<sup>3</sup>.

3 21. At paragraph 35 of the Verdict Judgment the Magistrate set out the Appellant’s case at trial  
4 regarding the DNA evidence:

5 *“As I understood it, the Defendant’s case was essentially that he had no*  
6 *knowledge or possession of the cocaine found, and any of his DNA found on the*  
7 *key exhibits could only have gotten there by way of secondary DNA transfer (i.e.,*  
8 *his DNA was transferred from one object to another, via an intermediate*  
9 *object/person) given the failure of the CBC Officers to change their gloves at any*  
10 *point when they were conducting the search and subsequently handling the*  
11 *relevant exhibits, and the fact that his DNA was found on moveable items in*  
12 *locations where it is possible that other persons came into contact with these*  
13 *items.”*

14 22. The Learned Magistrate stated the issues relating directly to the DNA evidence:

15 *“The central issue in this case is the overall value of the DNA evidence on which*  
16 *the prosecution seek to rely and is the principal basis upon on which the*  
17 *prosecution brings its case against the Defendant.*

18 23. A number of relevant authorities were brought to the Magistrate’s attention from the England and  
19 Wales Court of Appeal regarding the issue of secondary DNA transfer and its potential impact on  
20 DNA evidence. The authorities considered: *R v Tsekiri* [2017] EWCA Crim 40; *R v Lyndon*  
21 *Jermaine Lewis* [2018] EWCA Crim 1101); *R v Killick* [2020] EWCA Crim 785, and *R v Jones*  
22 [2020] EWCA Crim 1021

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<sup>3</sup> One of the matters referred to by Counsel for the Appellant at Ground 1 of the Grounds of Appeal.

1 24. The Magistrate’s analysis of the DNA evidence in the instant case and her application of the  
2 general propositions about the overall efficacy and reliability of DNA evidence, particularly when  
3 it is the sole evidence against the Appellant gleaned from those authorities are noted at  
4 paragraphs 42 - 48 of the Verdict judgment. The Appellant has not challenged the Magistrate’s  
5 analysis of the various relevant authorities.

6 25. Having concluded that there was an absence of expert evidence which expressed the actual  
7 likelihood of secondary transfer, and that the DNA evidence still had some value, the Magistrate  
8 accepted that the impact of these factors was that the weight to be attached to the DNA evidence  
9 in such circumstances may be diminished.

10 “41. .... *Bearing in mind the guidance derived from the English Court of*  
11 *Appeal authorities, I accept that there is no evidence that the Defendant was a*  
12 *major contributor of the DNA, and each of the key exhibits were readily*  
13 *moveable items. I am also bound to accept that there was no expert evidence*  
14 *about exactly how the Defendant’s DNA profile was deposited on the exhibits*  
15 *in question.*

16 42. *Further and perhaps more substantively, Ms Tanzillo-Swarts could not*  
17 *discount the possibility of secondary transfer as an explanation for the*  
18 *presence of the Defendant’s DNA on the key exhibits, particularly given the*  
19 *possibility that the CBC Officers whilst searching the Defendant’s suitcase*  
20 *may have transferred DNA from the Defendant’s clothes onto a pair gloves*  
21 *which were continually used without being changed to photograph and seize*  
22 *the relevant exhibits.*

23 .....

1           50. *Although I must accept that the failure of the CBC Officers to change gloves*  
2           *when handling each key exhibit may have had an impact on the scientific*  
3           *integrity of the exhibits, there was no evidence led by the Defence regarding*  
4           *the extent to which the DNA evidence was undermined (i.e., from a different*  
5           *expert), nor could Ms Tanzillo-Swarts give any indication of the likelihood*  
6           *that secondary transfer did in fact occur in each instance the key exhibits*  
7           *were handled by the CBC Officers.”*

8   26.   I am satisfied that the Learned Magistrate (a) had within her contemplation the fact that the DNA  
9           analysis gave no indication of whether the DNA attributed to the appellant was as a major  
10          contributor to the sample obtained (b) recognised that each of the key exhibits was a moveable  
11          item (c) took the evidence of transfer of DNA into account (d) considered carefully the likelihood  
12          of secondary transfer in coming to her verdict and (e) accepted that there was a risk of secondary  
13          transfer from the evidence presented in this case. She concluded from the evidence that the  
14          analyst was unable to provide any information about when the Appellant’s DNA was deposited  
15          unto any of the key exhibits nor could the analyst state with any certainty about the likelihood of  
16          secondary transfer.

17   27.   At paragraphs 43 - 47 of the Verdict Judgment the Magistrate recorded her analysis of factors in  
18          the case brought by the prosecution against the Appellant. The salient aspects of that analysis are  
19          set out here:

20                   (i) *“Despite the Defendant providing little more than a bare denial*  
21                   *about the black sock with the drugs found in his suitcase during his*  
22                   *interview, I have considered that a possible explanation for the*  
23                   *presence of the Defendant’s DNA on the sock is secondary transfer*  
24                   *by way of unchanged gloves as accepted by Ms Tanzillo-Swarts.*



1                   (ii) *In considering the question of whether there was any geographical*  
2                   *association between the offence and the Defendant in this case, the*  
3                   *Defendant accepts that he occasionally slept at 189 Lemuel Circle*  
4                   *where his suitcase was kept. However, I am doubtful that this is a*  
5                   *factor which by itself supports the prosecution case because the*  
6                   *Defendant is not, as I understand it, denying that the DNA is his,*  
7                   *but takes issue with the mechanism of transfer (i.e., that he did not*  
8                   *at any time come into direct contact with the drugs in question). In*  
9                   *those circumstances, the question of proximity takes matters no*  
10                  *further when the scientific evidence is unable to confirm how the*  
11                  *DNA was deposited onto the article in question.*

12                  (iii) *I also considered and kept in mind that unlike the English*  
13                  *authorities where the accused's DNA was found on one or two*  
14                  *items this Defendant's DNA was obtained from several moveable*  
15                  *items, the majority of which indicated a high likelihood ratio in*  
16                  *respect of Defendant's DNA.*

17                  .... *it is open for me as a tribunal of fact, notwithstanding Ms*  
18                  *Tanzillo-Swartz' inability to comment on the likelihood of*  
19                  *secondary transfer, to consider whether secondary transfer is the*  
20                  *likely explanation for each instance that the Defendant's DNA was*  
21                  *found on an exhibit, particularly in circumstances where the*  
22                  *Defendant's DNA was found on several items.*

23                  (iv) *I was nonetheless bound to accept given the relevant authorities*  
24                  *that if the Defendant's DNA was the sole evidence in this case, he*



1                    *would have been entitled to an acquittal at the close of the*  
2                    *prosecution case. However, this is not a case where the*  
3                    *Defendant's DNA was the sole evidence considered.*

4 28. I am satisfied that the Learned Magistrate gave the Appellant the benefit of any doubt regarding  
5 secondary transfer, geographical location or proximity to the key exhibits, and also the effect of  
6 any of the keys exhibits being moveable items as required by the law and authorities. I am also  
7 satisfied that the Learned Magistrate was correct in her approach, having taken these matters into  
8 account, in her examination of the other evidence presented by the prosecution. She was alert to  
9 the principle, in line with the authorities, that where secondary transfer cannot be ruled out and  
10 the DNA was the sole evidence against the suspect, such evidence would *“likely be insufficient*  
11 *without more to satisfy a tribunal of fact as to the issue of guilt.”*

12 29. She found however that there was in this case *“other circumstantial evidence over and above the*  
13 *DNA evidence, which itself was obtained from not one but several items connected with the*  
14 *crime.”* The Learned Magistrate was correct to find, in line with the authorities, that the fact of  
15 real risk of secondary transfer does not mean that the prosecution case could not be found proved.

16 30. The Learned Magistrate cannot be faulted on the law and her application of the law on the DNA  
17 issue in this case.

18 31. This ground of appeal fails.

19  
20 **Ground (ii) - The conviction was against the weight of evidence.**

21 32. Once the Learned Magistrate had come to the conclusion that the DNA evidence still had some  
22 value, though diminished, for the prosecution case, she then moved on to a detailed consideration



1 of the other evidence presented by the prosecution. The Magistrate relied upon the following as  
2 providing support to the prosecution case:

3 (a) The strong inference that the Appellant was dealing in cocaine,

4 (b) the deliberate lie told by the Appellant about the key used to access the premises  
5 at 189 Lemuel Circle, and

6 (c) the adverse inference to be drawn from the Appellant's failure to give evidence at  
7 trial.

8 33. Certainly, a lack of evidence will directly impact a finding of guilt where such evidence is  
9 essential to the elements of the offence which must be proved in a criminal case. However, this  
10 court cannot speculate on whether evidence, not before the court, may have also assisted the court  
11 at trial. The Appellant submits on this appeal that: *"There is no supporting evidence relating to*  
12 *supply; The phones seized from Whendel Stewart were not downloaded to retrieve messages;*  
13 *There was no evidence that Whendel Stewart had supplied anyone with cocaine on the island; In*  
14 *addition, the usual paraphernalia associated with the supply of drugs is not present."* Also, *"The*  
15 *failure of Border Control to investigate Ms Solomon should cause great concern."*

16 34. This court must assess whether there was evidence presented at trial sufficient for the Magistrate  
17 to draw the conclusion that she ultimately came to in this case, that the Crown had proved its case  
18 to the requisite standard, despite the lack of the aspects of evidence as highlighted by the  
19 Appellant.

20 35. The Magistrate accepted the evidence of Assistant Director Campbell that the Appellant sought to  
21 mislead her regarding the key to the house where the drugs were found. She was entitled as the  
22 trier of fact to do so. This court is careful to accord the Learned Magistrate a degree of deference  
23 on matters such as that assessment of one of the main prosecution witnesses.



1 36. The Magistrate clearly demonstrated at paragraph 48 of the Verdict Judgment why she found that  
2 the Appellant's actions were commensurate with guilty knowledge on his part of the drugs being  
3 present and a strong inference of his dealing in cocaine. The Magistrate was best placed and, in  
4 law, entitled to make the inferences that she did on this issue. The inferences drawn from the facts  
5 were proper and followed from a fair and balanced assessment of the facts presented and accepted  
6 by the Magistrate.

7 37. Similarly, the Magistrate dealt fairly with the issue of secondary transfer of the DNA evidence  
8 referred to in Ground 1 of this appeal and applied the applicable law.

9 38. The Learned Magistrate was entitled to draw an adverse inference from the Appellant's failure to  
10 give evidence at trial pursuant to section 149 of the Police Act, once she was satisfied that there  
11 was other evidence on the prosecution's case to support the diminished DNA evidence.

12 39. The following relates to other submissions of the Appellant in support of Ground (ii):

13 (a) ***“Steven Ebanks was arrested on the 23<sup>rd</sup> February 2020 in the exact vehicle; during the***  
14 ***search of the vehicle, a cigarette box containing a quantity of crack cocaine wrapped in foil***  
15 ***wraps and a pipe. He subsequently pleaded guilty to possession and consumption of***  
16 ***cocaine. It is clear that Mr Ebanks had the means to obtain foil-wrapped cocaine from a***  
17 ***source not relating to Mr Stewart. Whendel Stewart was in custody when the wraps found***  
18 ***in the vehicle were seized.”***

19 This evidence was before the Magistrate at trial for her consideration. The fact of Steven  
20 Ebanks' conviction for drug offences did not diminish the weight of the evidence found  
21 proved against the Appellant. The Magistrate distinguished the fact of conviction of another  
22 defendant from her contemplation of the evidence against the Appellant. She was entitled to



1 do so. On this appeal the question for the court is whether there was sufficient evidence  
2 against the Appellant for the Magistrate to have found the Appellant guilty.

3 40. (b) *The Learned Judge, in this case, sought to rely on the evidence relating to the key that*  
4 *was found in his possession to support her decision. She concluded that he lied. It is*  
5 *unclear if she had directed herself in line with the direction relating to lies in Regina v Lucas.*

6 There is no obligation on a trier of fact to relate or decide every disputed point raised at trial.  
7 The Magistrate has demonstrated in her clear analysis of the evidence the evidence upon which  
8 she made her finding concerning the appellant having lied about the key found in his  
9 possession.

10 The Lucas direction is necessary *“In circumstances where a defendant’s lies might be used by*  
11 *the jury as corroboration of guilt, the Lucas direction therefore seeks to promote a coherent*  
12 *process of reasoning: adopting that reasoning, a jury will know that, even if satisfied that the*  
13 *defendant has lied on a particular issue, it must not jump to the conclusion that he is guilty;”*<sup>4</sup>

14 In *R v Thompson*<sup>5</sup> the Caribbean Court of Justice noted: *“a judge sitting alone and without a*  
15 *jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal*  
16 *principle or the handling of evidence. This is in fact language that belongs to a jury trial (with*  
17 *lay jurors) and not to a bench trial before a professional judge where the procedural dynamics*  
18 *are quite different (although certainly not similar to those of an inquisitorial or continental*  
19 *bench trial).”*

20 In *Randy Martin v R*<sup>6</sup>, Mottley JA stated as follows: *“A judge sitting in a criminal case without*  
21 *a jury, in rendering his decision and giving his reasons for so concluding is not required to*

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<sup>4</sup> [2021] EWCA Crim 1013 at paragraph 52

<sup>5</sup> [1977] NI 74

<sup>6</sup> CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)



1 *review every fact and to detail each argument on which the prosecution and defence rely as if*  
2 *he were summing up to a jury. The judge must set out the conclusion reached and make clear*  
3 *the reasons for arriving at that conclusion. He is required to have regard to any difficult or*  
4 *unusual points of law and to show how those points of law has in any way impacted the*  
5 *conclusion that he has reached.”*

6 In any trial presided over by a professional judge, as was the Learned Magistrate in this case,  
7 the tribunal must be given that necessary latitude referred to by the authorities above. In any  
8 event, in this case the clear elucidation by the Magistrate of her reasons for coming to the  
9 finding that she did regarding the appellant’s lies does not raise concern in this Court.

10 41. Ground 2 of the appeal is also dismissed.

11 42. Having considered the notes of evidence and the verdict judgment in this case, I find no fault with  
12 the Magistrate’s instruction to herself on the applicable law. The Magistrate’s assessment of the  
13 evidence of the Crown’s witnesses and of the Appellant’s case was fair and the inferences drawn  
14 from that evidence are sufficient in this case to uphold the conviction.

15 43. The appeal against conviction is dismissed.

16  
17 **Dated this the 2<sup>nd</sup> day of August 2022**

A handwritten signature in black ink, appearing to read "Carter J.", with a horizontal line underneath.

18  
19 **Carter J**  
20 **Acting Judge of the Grand Court**