



**IN THE CAYMAN ISLANDS COURT OF APPEAL ON
APPEAL FROM THE GRAND COURT OF THE CAYMAN
ISLANDS CRIMINAL DIVISION**

**CICA (Criminal) Appeal No. 0007 of 2020
IND No. 0050 of 2017
SC No. 02851 of 2017**

BETWEEN:

DENCLE VIC BARNES JR

Appellant

- and -

HIS MAJESTY THE KING

Respondent

BEFORE: **The Rt Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Michael Birt, Justice of Appeal**

Date of Hearing: **19 April 2024**

Appearances: **Appellant in person
Mr. Scott Wainwright of the Office of the Director of Public
Prosecutions for the Respondent**

Date of Hearing: **19 April 2024**

**Transcript of
Oral Judgment:** **19 April 2024**

**Approved for
Release:** **09 May 2024**



JUDGMENT

FIELD, JA

1. Mr Dencle Vic Barnes applies in person for leave to appeal conviction.
2. The background is as follows. On the 18th of May 2022, following a trial in the Grand Court before Acting Justice Carter and a jury, Mr Barnes was convicted on all four counts on the indictment.
3. Count 1 charged an offence of illicit drug trafficking contrary to section 19(2)(a) of the Misuse of Drugs Law (2017 Revision). Count 2 charged an offence of possession of an unlicensed firearm contrary to sections 15(1) and (5) of the Firearms Act. Count 3 charged an offence of possession of an unlicensed firearm contrary to sections 15(1) and (5) of the Firearms Act. And, finally, Count 4 charged an offence of possession of an unlicensed firearm in the form of ammunition contrary to sections 15(1) and (5) of the Firearms Act.
4. On the 8th of June 2022, Mr Barnes was sentenced on count 1 to five years' imprisonment, on count 2 to 14 years' imprisonment, on count 3, 14 years' imprisonment, and on count 4, five years' imprisonment. The sentences were ordered to run concurrently. The total sentence was therefore one of 14 years.
5. The case that was presented at trial by the prosecution can be summarised in this way: At about 5:15 am on the 21st of May 2020, the police attended the beach area at the rear of Buena Vista Condos on the Shamrock Road, Grand Cayman. They observed a 28-foot Jamaican style canoe and there was a number of large fuel bottles along the beach. There were also several bags both on the beach and on the vessel. When searched, these were found to contain a total of approximately 69.7 pounds of ganja.
6. A black handbag was also discovered on the beach which contained a .357 caliber Magnum revolver, a .25 calibre semi-automatic pistol and 61 rounds of ammunition.



7. Shortly after about 10:10 am on that day, a man by the name of Andrew Beckford flagged down a marked police vehicle in the vicinity of the Spotts Dock along Shamrock Road. Mr Beckford informed the officers that he had earlier run from the police, and he wanted to hand himself in. He said he had arrived earlier that day along with another male on the boat in question that had come from Jamaica.
8. Mr Beckford was conveyed to the Cayman Islands Detention Centre and arrested. A cell phone was recovered from him.
9. He was interviewed under caution on two occasions. He told the police that the person with whom he had travelled from Jamaica on the canoe was called Vic Barnes. During the course of the second interview under caution, he took part in a photo spread identification procedure and positively identified Mr Barnes as the man to whom he had referred to as Vic Barnes. Mr Beckford went on to state that he had met Mr Barnes in Jamaica and they had agreed together to transport ganja from Jamaica to the Cayman Islands. When he arrived at the point of departure in Jamaica, the canoe was already fully laden. He and Mr Barnes had travelled together via canoe from Jamaica to Grand Cayman.
10. Mr Beckford told the police he was fully aware of the ganja, but he said he was not aware at all of the firearms and ammunition.
11. Mr Beckford pleaded guilty to the ganja offences and not guilty to the firearms offences. He gave evidence for the prosecution at the trial of Mr Barnes and in general terms he gave evidence in line with the account that he had given to the police in interview.
12. At the trial of Mr Barnes, the prosecution also relied on DNA evidence and telephone evidence. As to the DNA evidence, an energy drink bottle was recovered from the canoe and Mr Beckford gave evidence that the applicant had been drinking from such a bottle on the journey from Jamaica to Cayman. A DNA profile matching that of the applicant was recovered from the mouth of the bottle. It was matched to a DNA sample that had been taken from Mr Barnes in the course of another investigation in 2017. It was said by the prosecution that it was 170 trillion times more likely that the DNA found on the bottle



originated from Mr Barnes than from an unknown person unrelated to him.

13. In support of his application for leave to appeal, Mr Barnes has produced copious documentation. He has also worked hard investigating what he understands to be the relevant legal principles and has produced a large number of citations from, and copies of, decided cases. He has also pointed out to the court the provisions in what he contends are relevant pieces of legislation.
14. It seems to the court that the principal grounds of appeal that are advanced by Mr Barnes are as follows. First he says that in breach of the Judges' Rules, he was never arrested or charged, and this put him at a disadvantage when he was visited by one of the investigating officers, Mr Mendez, because when he declined to consent to any conversation with the officer without legal representation, he was denied the opportunity to put forward representations on his own behalf that the police could have followed up, that would have led either to him not being charged or being acquitted.
15. With respect to Mr Barnes, we find that there is no proper basis to this ground of appeal. It is plain that he was arrested and cautioned and, accordingly, we find that this ground is not sufficient to support his application.
16. The second ground might be called the defective indictment ground. As we understand it, Mr Barnes contends that the offences with which he was charged were triable summarily and therefore ought to have been tried within six months from the date when there was sufficient evidence against him to justify proceedings, whereas the offences were tried on indictment after this six month limitation period. In our judgment, the offences with which he was charged were plainly triable on indictment and at a time more than six months after he was arrested.
17. Mr Barnes's third ground of appeal is that the issue of knowledge as it relates to the crime of possession was never properly investigated and dealt with in the course of the investigation or at the trial. He rightly contends that for a person to be criminally in possession of whatever the legislation names in its provisions, in this instance drugs,



firearms and ammunition, that person must have knowledge that the item is within his custody or possession. It is his case that the Crown never established that he was aware that the firearms were in the bag found by boat by the police and were accordingly in his possession.

18. Mr Barnes was tried before a jury. The judge summed up to the jury the elements necessary for the counts alleging possession of the firearms and the ammunition to be established to the requisite standard of proof, and the jury convicted on those counts. In these circumstances, we find that there is no arguable basis for the contention that there was a mistrial in respect of these possessory counts.
19. The next ground goes to the identification evidence. As has already been related, there was a photo spread identification procedure undertaken by Mr Beckford during his interview under caution on the day of his arrest. Mr Beckford had previously named the individual with whom he had travelled in the canoe as Vic Barnes, and he gave a description of that individual.
20. He was shown 12 images of similar looking individuals and he positively identified Mr Barnes as the man who had accompanied him in the canoe.
21. The provision of the descriptions that Mr Beckford gave, along with the showing of the images, was audio and video recorded as part of the interview, and of course the recording was disclosed to the applicant and his counsel prior to trial.
22. The way in which this photo spread identification was conducted was challenged in the course of the trial, it being contended that various provisions in the applicable Code D of the Police and Criminal Evidence Act (PACE) had not been complied with. The judge held that the Code had been breached in the following respects: (i) Mr Beckford was not told that the suspect (Mr Barnes) may or may not be amongst the photographs or that if he (Mr Beckford) could not make an identification he should say so, or that he should not make an identification before he had viewed twelve photographs; (ii) no record was kept of the showing of the photographs on forms provided for the purpose to detail anything said by



Mr Beckford about any identification or conduct of the procedure; (iii) if proper efforts had been made to ascertain Mr Barnes's availability, these could have ensured his attendance during the identification procedure.

23. However, the trial judge held, as she was fully entitled to do, that Mr Barnes had not been denied basic fairness. She therefore ruled that the identification evidence was admissible and we find that there is no arguable basis for contending that this ruling should be set aside.
24. The next ground of appeal is that the DNA evidence linking Mr Barnes to the bottle found on the boat was flawed and ought not to have been admitted into evidence. It was contended on behalf of Mr Barnes at the trial that the earlier swab taken in 2017 with which the match had been made with the swab taken from the bottle had not been taken with his written consent. It was accepted on behalf of Mr Barnes that his consent had been given, but it was accepted by the prosecution that the requirement that there be a written record of the consent had not been complied with contrary to section 37(2) of the Police Act. It was also contended at the trial that there had been no record that Mr Barnes had been informed, before the 2017 sample had been taken, that there might be a random search.
25. In addition, it was further submitted that the 2017 sample should have been destroyed under section 39 of the Police Act because there was no evidence that the applicant was convicted on the same matter for which the swab had been collected. Finally, it was contended that there was no evidence of a chain of custody in respect of the 2017 sample.
26. The judge held in a careful ruling on these submissions that the consent had not been confirmed in writing and, accordingly, under section 37(14) that procedural requirement had not been complied with. However, the learned judge took into account section 37(18) of the Police Act that provides that a non-intimate sample taken contrary to the prescribed procedure will not render the non-intimate sample evidence as inadmissible. The judge was also satisfied that there was evidence that there had been a sufficient chain of custody in respect of the 2017 sample.



27. As to the contention that the earlier sample should have been destroyed, the judge found, on ample evidence, that Mr Barnes had been convicted of an offence for which he had been arrested during the course of which the 2017 sample had been taken.
28. In our judgment, there are no sustainable grounds of challenge to the judge's decision that the DNA evidence should be admitted.
29. The next ground of appeal is that the judge erred in refusing an application made on Mr Barnes's behalf after the prosecution's case had been heard that there was insufficient evidence to go to the jury. It is true that the ruling given by the judge was in somewhat brief terms. The key part of her ruling dismissing the no case submission reads as follows: "We have the evidence of Mr Beckford and prima facie the evidence of Mr Beckford points to Mr Barnes being involved with him in this importation. The court has heard the evidence of Mr Beckford in terms of what he said transpired, how it all came about, and all going towards identification of Mr Barnes. Mr Beckford was cross-examined. This is not a case where the evidence has been so controverted that the court finds that it is evidence which can be ignored or would be ignored by the jury. Quite apart from the evidence of Mr Beckford and quite important in this case are the telephone records which seek to support the fact that Mr Barnes was in Jamaica at the relevant time and as well there is DNA evidence which prima facie puts Mr Barnes connecting him to the bottle which was recovered from the vessel".
30. In our judgment, there is no sustainable ground for challenging this ruling made by the judge.
31. As the court has indicated, there has been a great deal of material provided by Mr Barnes. We have identified as best we can the grounds of appeal that emerge from this material and we discern no other ground that is being relied upon.
32. As related above, we are of the clear view that none of the proposed grounds of appeal has any prospect of success and accordingly this application for leave to appeal conviction must be and is refused.