

4-11-2010

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

3 INDICTMENT NO: 50/09

4  
5 THE QUEEN

6  
7 V

8  
9 CASSANDRA BODDEN

10  
11 **Appearances:**

**For the Crown:**

**Crown Counsel, Ms. Trisha Hutchinson**

**Defence Counsel:**

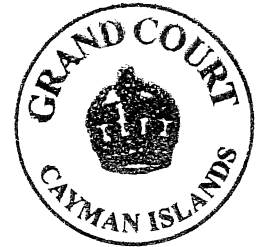
**Mr. Ben Tonner of Samson and McGrath**

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17 **Before:**

**Hon. Mr. Justice Charles Quin**

18 **Heard:**

**1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> November 2010**



19  
20 **NO CASE SUBMISSION RULING**

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23 1. Mr. Tonner, counsel on behalf of the Defendant, Cassandra Bodden, made a no-  
24 case-to-answer submission based on the classic dicta of Lord Lane in *R v.*

25 *Galbraith* [1981] 1 W.L.R 1039 and 73 Cr. App. R. 124 CA which states:

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27 *“(1). If there is no evidence that the crime alleged has been committed by the*  
28 *defendant there is no difficulty – the Judge will stop the case. (2). The*  
29 *difficulty arises when there is some evidence but it is of a tenuous character,*  
30 *for example, because of inherent weakness or vagueness or because it is*  
31 *inconsistent with other evidence. (a) Where the Judge concludes that the*  
32 *prosecution evidence, taken at its highest, is such that a jury properly*  
33 *directed could not properly convict on it, it is his duty, on a submission being*  
34 *made, to stop the case. (b) Where, however, the prosecution evidence is such*  
35 *that its strength or weakness depends on the view to be taken of witness’s*  
36 *reliability, or other matters which are generally speaking within the province*  
37 *of the jury and where on one possible view of the facts there is evidence on*  
38 *which the jury could properly come to the conclusion that the defendant is*  
39 *guilty, then the Judge should allow the matter to be tried by the jury.”*  
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1 Mr. Tonner also relies on s.137 of the Criminal Procedure Code which states:

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3 *“When the evidence of the prosecution witnesses has been concluded the*  
4 *court may, before or after considering any statement or hearing any evidence*  
5 *of the accused, invite first the prosecution and thereafter (at its discretion)*  
6 *the defence to address it upon the question of whether there is sufficient*  
7 *evidence before the court to warrant conviction of the accused, or any one or*  
8 *more of several accused of the offence charged or any relevant offence and*  
9 *if, either before or after the address by the defence, it considers there is no*  
10 *such evidence it shall discharge the accused concerned and enter a verdict of*  
11 *not guilty with respect to such accused.”*  
12  
13

14 2. Mr. Tonner’s submission is on both limbs. First, that there is no evidence that the  
15 crime alleged has been committed by the Defendant, and therefore the Court  
16 should stop the case. Second, the evidence is of a tenuous nature because of its  
17 inherent weakness or vagueness, and therefore, the Crown’s evidence, taken at its  
18 highest, is such that a jury, properly directed, could not properly convict upon it.  
19 Therefore it is the Court’s duty, according to counsel for the Defence, to stop the  
20 case.

21  
22 3. Mr. Tonner submits that there is not sufficient evidence to prove that Cassandra  
23 Bodden imported the gun and the ammunition as set out in Counts 1 and 2 of the  
24 Indictment.

25  
26 4. Mr. Tonner submits that there is no evidence of knowledge on the part of the  
27 Defendant and therefore the case cannot safely be left to the jury.

28  
29 5. The Defendant’s counsel relies on the Grand Court decision of Justice Graham in  
30 *R v. McCafferty* 2000 CILR 177 where he states at page 180 line 5:

31

1                   *“I have to construe the word “import” without the benefit of a definition of*  
2 *that word in the relevant section of the law (s.2 is the definitions section). I*  
3 *have to keep in mind the basic proposition in relation to the construction of*  
4 *penal legislation, which is that mens rea is only to be excluded by the express*  
5 *provisions of the legislation or as an irresistible conclusion from the terms of*  
6 *the Law taken as a whole.”*

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9                   Justice Graham continued by quoting Lord Reid who stated in the House of  
10                   Lords decision in *Sweet v. Parsley* [1970] A.C. 132, 53 Cr. App. R. 221 at page  
11                   181 line 40:

12  
13                   *“Our first duty is to consider the words of the Act; if they show a clear*  
14 *intention to create an absolute offence, that is the end of the matter. But such*  
15 *cases are very rare. Sometimes the words of the section which creates a*  
16 *particular offence make it clear that mens rea is required in one form or*  
17 *another. Such cases are quite frequent. But in a very large number of cases*  
18 *there is no clear intention either way. In such cases there has for centuries*  
19 *been a presumption that Parliament did not intend to make criminals of*  
20 *persons who were in no way blameworthy in what they did. That means that,*  
21 *whenever a section is silent as to mens rea, there is a presumption that, in*  
22 *order to give effect to the will of Parliament, we must read in words*  
23 *appropriate to require mens rea.”*

24  
25  
26                   6. Justice Graham continued and stated:

27  
28                   *“I respectfully adopt the words of Lord Reid ... I therefore conclude that the*  
29 *prosecution must establish the appropriate mens rea in order to establish the*  
30 *guilt of the accused in this Indictment.”*

31  
32                   7. Accordingly, Justice Graham held at page 177:

33  
34                   *“Since the word “import” was not defined in the Firearms Law and the*  
35 *legislature had not indicated by clear words in s.3 an intention to create an*  
36 *offence of strict liability, mens rea was a necessary element of the offence of*  
37 *importing a firearm without a permit. As a matter of policy, it was to be*  
38 *presumed that the legislature did not intend to criminalize unintentional*  
39 *behaviour unless it expressly so provided or that intention was irresistibly to*  
40 *be inferred from the Law as a whole.”*

1 8. Mr. Tonner points out that the relevant provisions in the 2008 Firearms Law are  
2 the same as the provisions in the Firearms Law of 1998 which Graham J.  
3 examined carefully in *McCafferty*.

4  
5 9. In addition Mr. Tonner argues that the Misuse of Drugs Law has explicitly  
6 reversed the burden of proof on to the Defendant, but the Legislators have not  
7 amended the Firearms Law in a similar manner.

8  
9 10. Mr. Tonner submits that the Crown cannot show that the Defendant knew the  
10 package had firearms and ammunition in it.

11  
12 11. Mr. Tonner argues that the highest that the Crown case can be put is that the  
13 Defendant, Cassandra Bodden, imported contraband or illicit substances, but the  
14 Crown cannot prove that the Defendant knew that the contents were firearms and  
15 ammunition. Therefore the Defendant's counsel submits that there is insufficient  
16 evidence to allow a jury, properly directed, to find Cassandra Bodden guilty of  
17 either Count, and the Court should not let the case go to the jury.

18  
19 12. The Crown relies first on the Exhibits, secondly on the Defendant's conduct, and  
20 thirdly, on the Defendant's answers to Customs Officers Tina Campbell and Don  
21 Parsons.

22  
23 13. Crown counsel frankly concedes that the evidence is that the Defendant was in  
24 Cayman at the relevant time the package was sent from Miami, and further, that  
25 there is no direct evidence that she bought the items in the package. However, the  
26 Crown argues that the Court should examine and analyse the Exhibits, the

1 conduct of the Defendant, and the questions and answers of the Defendant to the  
2 questions posed by the Customs Officers Campbell and Parsons.

3

4 14. Exhibit 1 is the CayTrans document in which Cassandra Bodden is named as the  
5 exporter and the consignee. She is the exporter through Malvar Shipping in  
6 Miami, and she is the consignee in Cayman, with her telephone number and post  
7 office box on the exhibit.

8

9 15. Exhibit 1 also contains the Dock receipt which shows that Walmart sold the item  
10 to Cassandra Bodden and then shipped it to Cassandra Bodden.

11

12 16. There is the Walmart receipt for an FJ Cruiser which reveals that it was  
13 purchased for \$249.00, again, with Cassandra Bodden's name and post office and  
14 telephone number on the receipt.

15

16 17. Finally, there is the CayTrans receipt, again made out to Casssandra Bodden.

17

18 18. The evidence is that the Defendant received a call from Tamara Coulson at  
19 CayTrans, who said, "...we have a shipping document for you," to which the  
20 Defendant responded that she would call back Ms. Coulson on Monday.

21

22 19. In addition, Police Officer Laws received a telephone call from the Defendant.  
23 He is a friend of the Defendant. He said that she told him that there was a  
24 package at the airport and that it was a toy from the United States. He advised her  
25 to call the police station if she were suspicious, or speak to WPC Officer Wanda  
26 Nixon.

1 20. The Defendant called Police Constable Brandon Phillips and asked him for  
2 Wanda Nixon's phone number. Mr. Phillips advised the Defendant not to pick up  
3 the package, as she would be liable for it.

4  
5 21. The Defendant then telephoned WPC Wanda Nixon on the 26<sup>th</sup> April 2009. WPC  
6 Nixon asked the Defendant, "*Did the courier company say where it was from*  
7 *who it was from or what it is,*" and the Defendant replied that it is from Walmart  
8 and it's a toy.

9  
10 22. The Crown submits that the jury can draw an adverse inference as to how the  
11 Defendant knew that the package was from Walmart and how she knew it was a  
12 toy. This, the Crown submits, is evidence that the Defendant knew all about the  
13 package, because Tamara Coulson's evidence is that she had not mentioned any  
14 of these facts to the Defendant.

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16 23. The Crown also relies on the fact that the Defendant was strongly advised by  
17 three separate police officers not to pick up the parcel and not to accept  
18 responsibility. The Crown therefore asks why, when confronted with this advice,  
19 did the Defendant continue to collect the package?

20  
21 24. The Crown submits that the Defendant pursued the matter with "dogged  
22 determination" to collect the package despite strong advice to the contrary, and  
23 this, the Crown submits, is something from which the jury may draw an adverse  
24 inference.

25

1 25. The Crown points to the fact that the Defendant told PC Phillips that she  
2 recognized the handwriting and therefore felt happier about the package.  
3 However, in her interview with the police she said she is not sure if the  
4 handwriting on the CayTrans paperwork was David Lyons' or not.

5  
6 26. It is clear that in her second conversation with Tamara Coulson the Defendant is  
7 given more information and then ultimately she is handed the four documents  
8 which show her to be the purchaser, the consigner and the consignee, and that she  
9 ultimately shipped the package to herself in Grand Cayman.

10  
11 27. The Defendant is then given the telephone number and the name of Sharnia at the  
12 Port Authority, although this time it was apparent, from Tara Ebanks' evidence,  
13 that the package is now flagged for inspection. This document has Sharnia's  
14 name and number. The Defendant was supposed to speak to Sharnia to clear the  
15 package.

16  
17 28. The Crown submits, why, when the Defendant is given the name and the  
18 telephone number of the person to go through the official channels, does she seek  
19 the assistance of two other people, whose names had not been provided?

20  
21 29. Again, the Crown submits that it is very possible that the jury could draw an  
22 adverse inference from this evidence.

23  
24 30. In addition, the Crown asks why would David Lyons send an expensive gift for  
25 his daughter to the Defendant, particularly in light of the fact that the evidence is  
26 that the Defendant had no way of contacting David Lyons, did not know where

1 he was, did not have a number, and yet he entrusts the Defendant with his  
2 expensive gift for his daughter.

3

4 31. In summary, the Crown submits that there are several adverse inferences which  
5 can make the jury come to the conclusion that Cassandra Bodden knew it was not  
6 only a toy from Walmart, but also that it was firearms and ammunition, and that  
7 is why the Defendant tried to avoid the official channels.

8

9 32. At the same time the Crown submits that the jury can draw an adverse inference  
10 from the evidence that, despite strong advice from three separate police officers,  
11 the Defendant demonstrates dogged determination to get the package.

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13 33. Having reviewed all the evidence presented before the Court I cannot say that  
14 there is no evidence that the crime alleged has been committed by the Defendant.

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16 34. I respectfully adopt the dicta of Lord Justice Moses *R v. Jabber* [2006] EWCA  
17 Crim 2694 where he stated:

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19 *“The correct approach is to ask whether a reasonable jury, properly*  
20 *directed, would be entitled to draw an adverse inference. To draw an adverse*  
21 *inference from a combination of factual circumstances necessarily does*  
22 *involve the rejection of all realistic possibilities consistent with innocence.*  
23 *But that is not the same as saying that anyone considering those*  
24 *circumstances would be bound to reach the same conclusion. That is not an*  
25 *appropriate test for a judge to apply on the submission of no case. The*  
26 *correct test is the conventional test of what a reasonable jury would be*  
27 *entitled to conclude.”*

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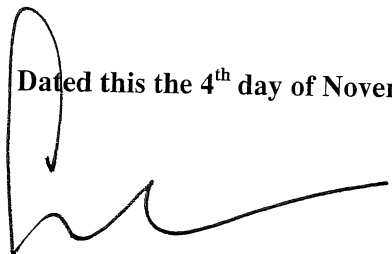
29 35. When I examine the prosecution evidence I cannot state that the evidence taken  
30 at its highest is such that a jury, properly directed, could not properly convict

1            upon it. In fact, the facts drawn to my attention and the reasonable inferences that  
2            can be drawn from those facts are, I find, matters for the jury to consider. In fact,  
3            if I were to find otherwise I could be criticised for usurping the function of the  
4            jury.

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6            36. Accordingly, I reject the Defendant's application of a no-case submission, and  
7            find that there is a case for the Defendant to answer that should go to the jury.

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Dated this the 4<sup>th</sup> day of November 2010



Hon. Mr. Justice Charles Quin  
Judge of the Grand Court

