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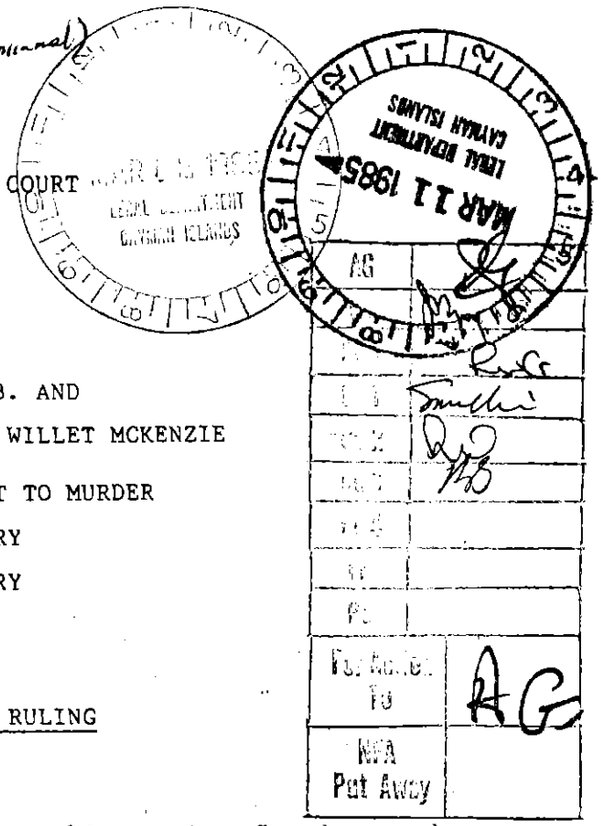
(Criminal)



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

CASE NOS. 1725/84, 1754/84 & 221/85

IND. NO. 6/85

REGINA V. T. E. B. AND
HAZMAN WILLET MCKENZIE

1725/84 - ATTEMPT TO MURDER
1754/84 - BURGLARY
221/85 - BURGLARY

REASONS FOR RULING

When this matter came before the Court this morning, I made a number of rulings the effect of which was to decline to exercise jurisdiction in respect of the juvenile B. I said I would subsequently give my reasons.

The indictment against B, who is a juvenile, contained 3 counts.

Two of these were for burglary - the separate burglaries of the rooms of a Mr. Weakley and of a Mrs. Dorothy Wilson at the Holiday Inn on 30th October, 1984. In both cases, he was jointly charged with Hazman McKenzie, who has pleaded guilty on both charges and has now been dealt with.

The third count which was against B alone, was for the attempted murder of Mrs. Wilson in her room.

B. had entered pleas on all 3 charges, but after considering the matter, I am satisfied that the only one in which this court had jurisdiction when this morning's proceedings began was the charge of burglary of Mr. Weakley's room.

Once a child reaches 8 years of age, he may be held responsible for criminal conduct, and once he turns 12, he will be held responsible for such conduct. But while he remains a juvenile, that is under the age of 17,

special provisions govern the way in which he can be dealt with. The general criminal law, which is found largely in the Penal Code and the Criminal Procedure Code applies to everyone who has attained the age of criminal responsibility, but in the case of persons under seventeen, the general law must be read subject to the further requirements of the Juveniles Law.

A number of consequences flow from this. Juveniles are normally to be dealt with separately from adults (see section 12 of the Juvenile Law). By section 9, courts dealing with juveniles are to take into account certain general considerations relating to them. Section 10 requires a parent to be present, and section 11 requires that notice must be given to a probation officer who is to investigate and report. The procedure in a court dealing with a juvenile is laid down by the Law, and publicity of the proceedings is restricted by section 13.

Section 14 empowers a court to deal in a number of ways with a juvenile who has been found guilty of an offence. These are nearly all sanctions that are designed specifically for juveniles, as opposed to adults, and I think it is fair to say that the section is intended to set out the standard, or normal, ways of dealing with juvenile offenders. They do not include imprisonment.

It is however apparent from section 17 (2) that a court can in its discretion, where a juvenile who has attained 14 years is charged with an indictable offence, order him to be detained for a specified period. In other words, it has this alternative open to it in such cases, instead of the usual range of remedies under section 14. Where the court makes an order under section 17 (2), the juvenile becomes liable to be detained in such place (including a prison) and on such conditions as the Governor directs. While he is so detained, he is deemed to be in legal custody.

Then there is the question (which is what is in point in this case) as to which court has jurisdiction to try a juvenile for a criminal offence.

Section 2 of the Juvenile Law, which is the interpretation section, defines "court" to mean any court sitting to try a juvenile. At an earlier stage in these proceedings, in chambers, it had been suggested to me that this itself is sufficient to give the Grand Court jurisdiction in this case. I do not think that is so. One does not expect to find a provision conferring something as fundamental as jurisdiction in an interpretation clause. If it is clear then the legislature did intend a definition in an interpretation clause to confer such jurisdiction, then the courts would give effect to it. I do not think however that was intended by the legislature in this case.

Section 8 (3) of the Law says that a court sitting to try a juvenile offender must consist either of -

(a) a Magistrate; or

(b) three justices of the Peace, of whom one must be a woman.

This provision seems to be curiously placed. The preceding sections (after the preliminary sections and section 3 are concerned not with the trial of juveniles for offences but with the care of juveniles. The preceding subsections of the same section are not concerned with juveniles charged with offences.

In my view, section 8 (3) is intended to lay down the requirement nevertheless that juveniles are to be tried for offences before a Magistrate or Justices of the Peace. I can see no other meaning in the subsection.

There is one important exception to this rule. It explains why in this case B. had come before the Grand Court.

Where a juvenile is charged jointly with an adult for any criminal offence, the Grand Court may under section 3 of the Juveniles (Joint Trial with Adults) Law order that they shall be tried together. In making such an order, the Grand Court has to have regard both to the welfare of the juvenile and to the necessity of doing justice. To achieve these ends,

the Grand Court may impose terms and conditions of the trial and these must in my view relate to the first consideration, i.e. the welfare of the juvenile because I do not believe that the law is in any way intended to reduce the ordinary constitutional rights of adults.

What happened in the present case was that the Police originally charged the juvenile B. and McKenzie jointly with the burglary in Mr. Weakley's room and with attempted murder. The Crown applied to me, in chambers, to authorise a joint trial. At that stage they were the only charges. The basis of the application for a joint trial in the ordinary way was that the prosecution was alleging that the juvenile B. played a leading part in the attempted murder, the interests of justice could not be preserved by separate trials because the allegations could only be considered properly in a joint trial, and having regard to the gravity of the offences it was manifestly a proper case for a joint trial.

On 30th November last year, in chambers, I ordered a joint trial on those two charges, subject to certain conditions.

Two things subsequently happened. The first was that when the Crown prepared its indictment for trial in this court, after the committal proceedings, it amended the attempted murder charge to one solely against the juvenile B.

It is the prerogative of the Attorney General to determine what counts he will lay and against which persons, and from the papers I could understand why he decided in the event not to proceed with the attempted murder charge against McKenzie.

The consequence of that decision, however, as Mr. Smellie recognised, was that I no longer have jurisdiction to try B. on that charge. The only basis on which I could have ordered such a trial was that he was jointly charged with McKenzie, and that the trial was necessary to do justice. There were two sides to that issue. One was that the full extent of B's involvement might not be canvassed adequately, or conveniently, unless he

was charged with McKenzie. The other was that the limits, if any, of his involvement might not be established unless his co-defendant were tried with him. In other words, a joint trial might not only be in the overall interests of justice; it might in fact be immediately in the juvenile's own interests. But in any event, once the Crown decided to proceed on the indictment only against the juvenile, the whole basis for my order of 30 November as to a joint trial on the attempted murder charge went. So far as the second burglary charge was concerned, in respect of the entry of Mrs. Wilson's room, the position can be put more briefly. It was, simply, that the Grand Court had never ordered a joint trial on that charge. When I made the order for joint trial on 30th November, this charge of burglary had not been laid. My order related specifically to the other two charges.

As matters stood at the outset this morning, B's plea in respect of the count of burglary of Mr. Weakley's room was good, but his pleas on the other count of burglary and the attempted murder charge were nullities.

In his submissions to me this morning, Mr. Smellie, agreeing that I was then lacking jurisdiction to deal with the attempted murder charge, invited me to cure the matter by granting his application to amend the court to include McKenzie as a joint defendant on it.

Mr. Alberga, for B., also favoured this course, for the reason that it would be better for this court to deal with B. on a charge of this gravity. Mr. Ritch, for McKenzie, did not feel able to consent to the application.

It would have been surprising if he had. While I understand the concern of counsel to have the charge dealt with in this court, I do not think it would have been at all right to grant the application to amend the third count in this way for reasons which were clearly procedural rather than substantive. McKenzie's interests should not be subordinate to consideration of procedural convenience. Accordingly I have refused this application.

In relation to the second count, i.e. of burglary of Mrs. Wilson's room, Mr. Smellie submitted that even though this charge had not been the subject of the order of 30th November for joint trials, it arose out

of the evidence brought in support of the other two charges, and that where a decision had been taken by this Court in principle to order joint trials, subsequent charges that clearly arose out of the transaction could properly be laid before this Court. He referred to the unreported case of R. v. Dundas, an 1976 English Court of Appeal decision, which is referred to in the 41st Edition of Archbold's Criminal Pleading Evidence and Practice at page 75, in support of this proposition.

Mr. Alberga submitted that the count could not be brought without an order of the court, but he also expressed the view that I could remedy the matter by making an order authorising a joint trial on this count as it was in my power to do so and the matter was before this court.

It is not entirely clear from the report of Dundas in Archbold that the subsequent count could be laid without the sanction of the court. So far as Cayman Islands law is concerned, I think there are two distinct elements to be considered. The first, undoubtedly, is that the Attorney General may bring proceedings against whomsoever he thinks fit. The second is that a juvenile cannot be tried for an indictable offence in this court unless a Judge so orders. The one does not mean that the condition of the other need not be complied with.

The order I made on 30th November related specifically to the first and third counts. I made it in consideration of the two charges as they then stood. I agree that I might now, by taking appropriate steps, give myself jurisdiction on the second count by ordering that B. should be tried jointly on it with McKenzie. It would involve setting aside B's plea and re-arraigning him but I think that could be done.

But the matter goes deeper than that. The joint attempted murder charge was the major factor that led to the making of the order of 30th November.

Burglary is of course a serious enough matter, but if I had been asked only to order a joint trial for that offence, I would certainly have looked at it in a rather different light and I have my doubts that I would have made such an order.

Also, now that this court is without jurisdiction on the attempted murder charge, I see little point in exercising jurisdiction on the lesser charges of burglary; I think in fact that it could lead to complications and that it is better that one court should deal with B. in respect of all the charges.

For these reasons, having held that there was as matters stood no jurisdiction to deal with the second count, I also decided not to take steps to acquire that jurisdiction. By the same token, I saw no point in continuing to deal with the first count of burglary, on the basis of the order for joint trial made on 30th November, and so, Mr. Alberga not objecting, I have revoked that order in relation to that count and set aside all the pleas by B. in this court, my intention being that on all charges he should fall to be dealt with by the juvenile court. It may be for consideration, given the seriousness of the attempted murder charge, whether that court should not on this occasion be that of the Magistrate.

D. Hunn.

Judge
11th March, 1985.