

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 2868-70/88
CORAM: Harre J.

BETWEEN: VERNON LESTER EBANKS
AND: REGINA
Appellant in person.
For the Crown: Ms. J. Conolly.

JUDGMENT

On 19th January 1989 Vernon Lester Ebanks received sentences of 12 months imprisonment for consumption of cocaine ; 3 months for escaping lawful custody; and 3 years for possession of cocaine. All these sentences were concurrent, and arose out of incidents which took place on 16th August 1988. He also received a consecutive sentence of 6 months imprisonment for an unrelated offence of theft.

In his Notice of Appeal Ebanks referred only to the general ground that the sentence for possession was harsh and excessive and that there were others who got lesser sentences for possession with intent to supply. However, in a letter presented to the Court at the hearing he set out additional grounds as a basis for an appeal against the drug related convictions.

Ebanks was not represented at the trial. He complains that he did not know in advance the substance of the prosecution evidence, and had no communication with Crown Counsel in that regard. That is something about which he has no valid complaint. Clearly he is entitled to know the substance of the charges against him and to have an opportunity to answer them. He does not suggest that he did not, nor is there anything in the record to suggest that he did not.

I turn therefore to the other matters relating to his conviction with which I must consider in more detail. He raises these on the basis of section 7(1)(b) of the Misuse of Drugs Law (Revised).



It reads as follows -

"Where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person was in possession of such drug."

On this he says the following -

"There is an alleged conversation between the dramatis personae at the time of my arrest that evidently disallowed for the contrary to be proved. Before section 7 (1)(b) could be applied, however, it is first necessary for the prosecution to prove not only that I was at the relevant time in possession but also that the prosecution must give the necessary strict proof of the identity of the controlled drug in exhibit as that to which the DEA analysis certificate relates before any reliance upon section 6(2) of the Cayman Islands Misuse of Drugs Law."

The accused was found to have been in possession of six rocks of cocaine, five of which were wrapped in gold coloured cigarette paper and the other one in a silver coloured paper. If I understand him correctly he is not complaining, in the passage which I have quoted above, that he was not given the opportunity of attempting to displace the section 7(1)(b) presumption - an obviously hopeless task in the circumstances - but that the question of his having to do so does not arise because it was not proved beyond reasonable doubt that he had in his possession anything containing a controlled drug. He is saying that the necessary standard of proof of connection between the substance in his possession and the substance analysed and produced in court has not been met.

For the prosecution to succeed it must satisfy the Court beyond reasonable doubt that the sample analysed was that recovered by the police constable. It must also satisfy the Court that the certificate produced related to that sample. Failure in either of these respects makes the analyst's certificate valueless in evidentiary terms.

The following is an extract from the Magistrate's record of



the evidence of Police Constable Ebanks, the officer who arrested the accused.

'As soon as we had the defendant in the station, I took the six cocaine rocks and placed them in a clear plastic exhibit bag in his presence. I heat-sealed in the accused's presence. (Witness shown item) These are the exhibits, the cocaine; the \$1 bill; the beer can. I later transported the items to the Drug Squad office in George Town. I later received certificates for the cocaine, showing that the six items were in fact cocaine base. The certificate for the can came back negative. This is the certificate in relation to the cocaine. The cocaine is exhibit I.'

The analyst's certificate refers to the label which was on the package when he received it on 25th August 1988 as follows -

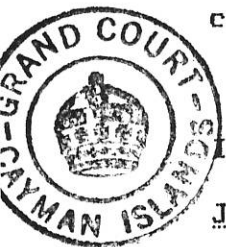
'I received a sealed package which was intact upon delivery to me. The sealed package was identified by a label which was marked as follows -

ROYAL CAYMAN ISLANDS POLICE FORCE

POLICE STATION	<u>WEST BAY</u>
DATE SEALED	<u>16.8.88</u>
TIME SEALED	<u>9.30PM.</u>
ACCUSED	<u>(1) VERNON LESTER EBANKS (2) TOM JERRY EBANKS</u>
ITEM REF#	<u>S.E.I.</u>
SEALING OFFICER	<u>PC.S. EBANKS #107</u>

It then describes the contents as being 0.488 grams, 88% cocaine base.

In considering the sufficiency of this evidence I have referred to James O. Dilbert v. R (Summary Court Appeal 72/88). That case concerned a sample of urine, and the Court considered and distinguished the English case of James Martin Tremlett v. Richard Fawcett, an unreported decision of a Divisional Court of the Queens Bench Division. That also concerned a urine sample. I shall not



repeat the analysis of the English case. The distinction between it and Dilbert was described by the Grand Court as follows -

"The distinction between Tremlett and the present case is that nowhere in our record of proceedings is there evidence from Detective Constable Webster as to what he wrote on the label of the container. In Tremlett those details were precisely given in evidence. In the present case whilst the sealed package delivered to the laboratory in Palm Beach was identified by a label which contained information which corresponds to what one would expect to find on a label made out in the case, against this appellant nowhere in the evidence do the prosecution elicit in what manner Detective Constable Webster actually labelled the container. The Court is left to assume that the contents of the label as received by the chemist are the same as the contents of the label as completed by the officer. That is an assumption which the Court is not entitled to make."

Ebanks case both exhibits in court

In the present case the constable does not say in so many words what he wrote on the label. Indeed he does not say in so many words that he labelled the heat-sealed container at all. What he has done instead is identify the heat-sealed package in Court, duly labelled, as being the one to which he referred. It is Exhibit I in the case. I have had an opportunity to look at it. It bears a label precisely corresponding to that described on the certificate and contains a small quantity of a white substance, together with pieces of silver and gold coloured paper answering the description of the wrappings which was given in evidence. That is the distinction between Dilbert and the present case. The Court was not simply left to make assumptions on the basis of a certificate. It had before it a labelled and sealed transparent package, the contents of which were identified by two police officers in court as being what they had recovered during the course of the incident on 16th August 1988. There was, in addition to the evidence of PC Ebanks, evidence from Sgt. Goodings to that effect.

Dilbert case - only certificate in court

It would be coincidence upon coincidence upon coincidence if the substance and wrapping received for analysis and exhibited in evidence were anything other than that which was recovered by the police officers on 16th August. The contrary was sufficiently proved.

The appeal against conviction accordingly fails.

I now turn to the appeal against sentence. The appellant says that recent convictions for possessions of larger amounts of cocaine with intent to supply have led to shorter prison sentences than that imposed on him for simple possession. He has no record of conviction for supplying any drug, although he admitted 3 drug related convictions.

As in previous cases, the Court has been helped by a list made available by Crown Counsel showing sentences passed on drug offenders in 1987 and 1988. It bears out the appellant's contention that his sentence is markedly out of line with sentences passed in apparently similar circumstances. Indeed Crown Counsel pointed out two of them to me. One involved possession of 0.191 grams of cocaine by a man with two previous drug convictions. The sentence was 10 months imprisonment. The other related to possession of 0.130 grams by a man with 6 previous convictions unrelated to drugs. The sentence was 2 years imprisonment, with 12 months suspended.

The appellant was in possession of a larger amount of cocaine, 0.488 grams but it was still a small amount. The learned Magistrate expressly found that it was for his own use and not for supply. The 3 years sentence is in line with those passed for possession of considerably larger amounts with intent to supply and I consider it manifestly excessive for this offence of simple possession. I reduce it to a sentence of 18 months imprisonment, concurrent with the sentences of 12 months imprisonment for consumption and 3 months for escaping lawful custody. The consecutive sentence of 6 months imprisonment imposed in respect of charge 2465/88 which concerned a theft committed on another occasion, remains.


G.E. Harre

Judge

23rd March 1989

