2002

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*Privy Council Appeal No. 53 of 2001*

**The Attorney General for the Cayman Islands** *Appellant*

*v.*

**Carlyle Rudyard Roberts** *Respondent*

FROM

## THE COURT OF APPEAL OF THE CAYMAN ISLANDS

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 21st March 2002

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*Present at the hearing:-*

Lord Bingham of Cornhill
Lord Steyn
Lord Hope of Craighead
Lord Hutton
Lord Rodger of Earlsferry

*[Delivered by Lord Hope of Craighead]*

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1. This is an appeal by the Attorney General for the Cayman Islands against a decision of the Court of Appeal of the Cayman Islands (Zacca P, Georges and Collett JJA) on 23 November 2000 which allowed an appeal by the respondent, Carlyle Rudyard Roberts, against his conviction on 7 December 1999 after trial in the Summary Court for possession of cocaine with intent to supply, contrary to section 4(1)(m) of the Misuse of Drugs Law, Law 13 of 1973 (revised 1995). His conviction had been upheld on appeal by the Grand Court. The Court of Appeal gave reasons for its judgment on 23 February 2001.

2. The respondent appeared in the Summary Court before the magistrate, Her Honour Margaret Ramsay-Hale, on two charges. The first, which was left on the file, was that on 14 May 1998 he had in his possession a quantity of cocaine being more than 2 ozs,

contrary to section 4(1)(k) of the Misuse of Drugs Law. He went to trial on the second charge, the particulars of which were in these terms:

> "Carlyle Rudyard Roberts on Thursday 14th May 1998 at West End, Cayman Brac, had in his possession whether lawfully or not, with intent that it be supplied, whether by himself or some other person and whether in the Islands or elsewhere, to another person, a controlled drug, namely Cocaine being more than 2 ozs."

The trial began on 6 July 1999. It continued on 16 and 17 November 1999. On 7 December 1999 the Magistrate convicted the respondent of possession of cocaine with intent to supply. On 25 January 2000 she sentenced him to eleven years imprisonment.

The evidence at the trial

3. The witnesses who gave evidence for the prosecution at the trial were three police officers of the Drugs Task Force who had conducted a search at the respondent's house in Cayman Brac on 14 May 1998. They were accompanied by a police dog named Tasso which had been trained to detect drugs. The police officers were Detective Sergeant Kenton Ebanks, Detective Sergeant Gillyard McLaughlin and Detective Constable Davis Scott, who was the dog handler. They spoke to having found a box hidden under the grass in the yard area of the premises which contained a white substance resembling cocaine in powder form. The respondent was present at the time of the search. He was arrested and cautioned. In reply he said "That stuff wasn't hidden, I put it there to get rid of it". He was taken to Cayman Brac Police Station, where the white substance was heat sealed and labelled Tasso 1A in the respondent's presence. It was also "field tested" there and tested positive for cocaine. On 17 May 1998 the respondent was interviewed in the presence of his lawyer. He made no reply to the questions that were put to him.

4. DS Ebanks said that on 30 June 1998 he submitted Tasso 1A to a laboratory in Miami for analysis and that he had received a Misuse of Drugs Law certificate from the laboratory. Evidence was then led from him without objection that the certificate certified that the exhibit labelled Tasso 1A was cocaine. He identified the certificate, which was also an exhibit in the case. It contained the following statement by the laboratory technician who had received the sealed package marked Tasso 1A and signed the certificate:

"I opened the sealed package and examined the contents which proved to be:
(result) Cocaine Hydrochloride
(weight) 1043g (percentage) N/A."

5. DS Ebanks completed his evidence on 6 July 1999. The trial was then adjourned until 16 November 1999 when the prosecution case was concluded. DS McLaughlin said that the substance in the box appeared to be a kilo of cocaine. DC Scott said that the substance appeared to him to be cocaine in powder form. The respondent's counsel Mr H. Delroy Murray did not challenge the evidence of any of the prosecution witnesses as to the nature of the substance which was in the box. He made no submission that there was no case to answer at the end of the prosecution case. On 17 November 1999 the respondent gave evidence. He denied dealing in drugs. He also denied saying that the stuff was not hidden and that he had put it there to get rid of it. He said that he did not know how the drugs got onto his property and that they were not his. He also said that following his arrest and interview he had not been served with any documents.

6. On 25 January 2000 the respondent gave notice of appeal to the Grand Court against his conviction and sentence. His grounds of appeal against conviction were that the verdict was unreasonable in the light of the evidence and that the magistrate had failed to appreciate discrepancies in the evidence of the prosecution witnesses. But before the appeal was heard the respondent changed his legal representatives. This led to the filing of supplemental grounds of appeal. They drew attention for the first time to an alleged error of law by the magistrate in admitting the certificate of analysis into evidence and to alleged defects in the certificate. The respondent's attorneys also submitted a request for an amendment to the magistrate's notes of evidence to the effect that during his cross-examination DS McLaughlin was asked if the analysis certificate was served on the defendant and that he replied no. In reply the magistrate stated that according to the record and her own recollection DS McLaughlin was not asked if the certificate of analysis was served on the defendant, and that no objection was made to the document being tendered in evidence.

The Misuse of Drugs Law

7. Section 7 of the Misuse of Drugs Law contains the following provisions about the admissibility in evidence of certificates of analysis:

> "(2) Notwithstanding any other law, a certificate purporting to be under the hand of the [Chief Medical Officer], a qualified chemist, a qualified medical laboratory technician or any other person appointed by the Governor in that behalf either specially or generally, stating or certifying that a given substance has been analysed or examined and stating the result of such analysis or examination, shall be admissible in evidence on any prosecution under this Law and, in the absence of evidence to the contrary, shall be proof of the statements contained therein as to the foregoing matters and any other matter specified therein concerning the substance analysed or examined or the analyst or examiner thereof, and no evidence shall be required by the court as to the signature or qualifications of the person purporting to have signed the certificate.
>
> (3) No certificate shall be received in evidence unless the party intending to produce it has given to the other parties three days notice of such intention and has furnished with such notice a copy of the certificate.
>
> (4) Where it is considered necessary or advisable, the court may require the attendance of the person under whose hand the certificate was issued to give evidence on oath."

8. Section 2(1) of the Misuse of Drugs Law provides that in that Law "controlled drug" means a drug listed in the First Schedule. Among the substances and products listed in paragraph 1 of Part I of the First Schedule is "Cocaine". Part I of the First Schedule also includes the following:

> "2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 not being dextromethorphan or dextrorphan.
>
> 3. Any ester or ether of a substance for the time being specified in paragraph 1 or 2 not being a substance for the time being specified in Part II of this Schedule.

4. Any salt of a substance for the time being specified in any of paragraphs 1 to 3.

5. Any preparation or other produce containing a substance or produce for the time being specified in any of paragraphs 1 to 4."

The appeals

9. The supplemental grounds of appeal in the Grand Court set out eight grounds, which included the following:

"1. That the Learned Magistrate erred in admitting the certificate of analysis – exhibit 3 into evidence in breach of the strict requirement of section 7(3) of the Misuse of Drugs Law.

2. That the Learned Magistrate erred in law in admitting the certificate of analysis – exhibit 3 into evidence.

3. That the Learned Magistrate erred in law in admitting the certificate of analysis in breach of the requirement of section 7(2) of the Misuse of Drugs Law."

A further supplemental ground of appeal was later filed in substitution for ground 2 in these terms:

"The Crown failed to establish an essential ingredient of the offence charged in that there was no evidence adduced that the substance, the subject of the charge, was cocaine. The purported certificate asserted that the substance was cocaine hydrochloride. There was no evidence that this substance was a controlled drug as defined in the Law."

10. The respondent's appeal to the Grand Court was heard by Graham J. He granted an application by the Crown to admit as fresh evidence an affidavit by Dr David Schudel, a forensic scientist employed in the Cayman Islands Forensic Science Laboratory, in which he stated that cocaine hydrochloride is one of the forms of cocaine sold on the streets and that it is a salt of cocaine which is included in paragraph 4 of Part I of the First Schedule to the Misuse of Drugs Law as a controlled drug. The reason given for the application was that it was intended to deal with the respondent's point that, while the information in the charge alleged possession of "cocaine", the certificate described the substance which was submitted for examination as "cocaine

hydrochloride". The judge said that this was a purely technical matter which could cause no prejudice to the respondent.

11. The judge rejected the respondent's criticisms of the way the magistrate had dealt with and analysed the evidence. As for the grounds of appeal regarding the certificate, he observed that the certificate was produced in evidence by DS Ebanks, that there was no record of any objection and that there was no dispute whatsoever at the trial about its admissibility. He said that it was clear from the notes of evidence and the terms of the magistrate's judgment that the matters of controversy for her to resolve were questions as to the credibility and reliability of the police and of the respondent. He noted that not only were no submissions made at the trial as to the admissibility of the certificate but there was no submission of no case to answer at the close of the Crown case. He rejected the submission that this exhibit was wrongly received in evidence at the trial. He held that there were no grounds for interfering with the magistrate's decision. No submissions were made to him in respect of sentence.

12. The respondent filed as his grounds of appeal in the Court of Appeal all the grounds which were before Graham J in the Grand Court together with a further ground which was in these terms:

> "9. That the Learned Grand Court Judge erred in admitting the affidavit of Dr David Schudel into evidence."

13. The Court of Appeal decided that it was necessary for it to deal only with the three grounds of appeal relating to the certificate and with that relating to the affidavit of Dr Schudel. In regard to the certificate it held, following *Nicoletta v The Queen* 1990-1991 CILR 152, that the statute requires strict proof of the service of the notice on the respondent and that if these requirements are not met the certificate is not admissible. As there was no proof that the requirements were met in this case, it held that the certificate ought not to have been admitted in evidence and that the respondent's appeal must succeed on this ground. It also held, following *Hydes v The Queen* 1980-1983 CILR 335, that the magistrate was in error in convicting the respondent for the offence of being in possession of cocaine as there was no evidence before her that cocaine hydrochloride was either cocaine or a salt of cocaine. As for Dr Schudel's affidavit, it held that the Grand Court judge was wrong to admit this evidence as it went to the heart of the prosecution's proof, gave the Crown a second chance to prove its case and was evidence

which would have been available at the hearing before the magistrate.

The issues in this appeal

14. The issues with which their Lordships have been asked to deal in this appeal are directed to the three grounds on which the Court of Appeal allowed the respondent's appeal to that court and quashed his conviction. They are:

(i) whether the certificate was properly admitted in evidence by the magistrate;

(ii) if so, whether there was sufficient evidence to entitle the magistrate to conclude that what was in the possession of the respondent was a controlled drug, namely cocaine; and

(iii) whether Dr Schudel's affidavit was properly admitted in evidence by the Grand Court.

15. It should be noted that their Lordships have not been asked to consider any of the other grounds of appeal with which the Court of Appeal found it unnecessary to deal in view of its decision that there was no evidence before the magistrate on which the respondent could properly have been convicted of any offence.

Admissibility of the certificate of analysis

16. There is no doubt that it was necessary for the Crown to prove to the required standard that the substance which was in the box found hidden in the grass in the yard area of the respondent's house was the controlled drug cocaine. This is not a matter that can safely be left to views formed on visual inspection by police officers, however experienced. The best evidence is that of a duly qualified chemist or laboratory technician who has examined the substance in a laboratory and submitted it to analysis. It was for the purpose of obtaining such evidence that Tasso 1A was submitted to the laboratory in Miami by DS Ebanks. The result was set out in the certificate which he produced in evidence.

17. Section 7 of the Misuse of Drugs Law lays down, in subsections (2) to (4), a procedure which enables a certificate purporting to be under the hand of a qualified chemist or qualified medical laboratory technician to be admitted in evidence as proof of the result of the analysis or examination stated in the certificate, provided the party intending to produce it has given to the other parties three days notice of his intention to do so and

subject to the power of the court to require the attendance of the person under whose hand the certificate was issued to give evidence on oath where this is considered necessary or advisable. These provisions are designed to achieve two things. The first is to avoid the inconvenience and expense of requiring chemists or technicians to attend court and give evidence in person in all cases about the results of their inspection or analysis. The second is to preserve the right of the accused to insist upon their attendance so that he can challenge any of the matters stated in the certificate. They follow a familiar pattern. It has for a long time been recognised that, while it is essential for the prosecutor to establish these matters, they are rarely in dispute at the trial. In most cases their proof is a formality. Equally it has been recognised that proof by this means may be resorted to only where the accused does not wish to challenge the facts alleged in the certificate.

18. The use of this procedure for the admission of hearsay evidence is not confined to legislation relating to controlled drugs. It is familiar in the context of offences of driving or attempting to drive a motor vehicle on a road while unfit to drive through drink or drugs where the driver has been required to provide a specimen of breath, blood or urine for analysis. But there are many other cases where legislation provides that sufficient evidence of routine matters may be provided by means of a certificate: see, for example, the offences listed in Schedule 9 to the Criminal Procedure (Scotland) Act 1995 and section 280 of that Act. Common to all these cases is the fact that the person who has signed the certificate may be called upon to give evidence in person at the trial if the accused objects to the admission of his evidence by means of a certificate.

19. In the present case there was no evidence that notice of the prosecutor's intention to produce the certificate was given to the respondent as required by section 7(3) of the Misuse of Drugs Law or that the respondent had been furnished with a copy of the certificate before the trial. The respondent himself denied having been served with any documents when he came to give evidence. On the other hand he was represented at the trial by counsel. There is no doubt that it would have been open to him to object to the production of the certificate on the ground that it had not been demonstrated by the Crown that the requirements of section 7(3) had been satisfied. But he did not do so. The certificate was produced and its contents were referred to in evidence without objection. The question is whether the magistrate was wrong to admit that evidence in these circumstances.

20. What section 7(3) does is to lay down a statutory condition for the admission of the certificate in evidence as proof of the statements which it contains. But the proper time at which to object to the admission of a certificate under section 7(2) on the ground that the requirements of section 7(3) have not been satisfied is at the trial. An exception may be made in cases where the defendant is unrepresented. It would be unreasonable to expect the unrepresented defendant to be aware of the procedure for notice to be given, or of the need to object to the admission of the certificate if the statutory condition for its admissibility has not been satisfied, unless his attention has been drawn to these matters by the magistrate. Where he is represented however the position is quite clear. All objections to the admissibility of evidence in summary proceedings should be stated at the trial. This rule of practice is widely recognised. It is given statutory expression in section 192(3)(b) of the Criminal Procedure (Scotland) Act 1995. It provides that, where the accused had legal assistance in his defence, no conviction in summary proceedings shall be set aside in respect of the competency or admission or rejection of evidence at the trial in the inferior court unless such objections were timeously stated at the trial. The rule of practice operates in the public interest, as it ensures that all such objections are dealt with before the case for the prosecution is closed while any defects of that kind that have arisen in the evidence may still be capable of being remedied.

21. This rule was applied by the Court of Appeal in *R v Banks* [1972] 1 WLR 346. In that case the appellant was charged with driving a motor vehicle on a road having a proportion of alcohol in his blood which exceeded the prescribed limit. A constable produced without objection a certificate of analysis which showed that the proportion of alcohol in a sample of the appellant's blood was above the prescribed limit. At the close of the prosecution case it was submitted that there was no case to answer as service of the certificate on the appellant not less than seven days before the trial as required by the statute had not been proved. It was held that as the objection was not made before the close of the case for the prosecution the appellant had waived the requirement as to service which was laid down in the statute.

22. Giving the judgment of the court in *R v Banks*, Lawson J said this at pp 351H-352B:

> "We think it important to observe that the object of the proviso to section 2(2) of the [Road Traffic Act] 1962 is

only that the powder which was in the appellant's possession was morphine but also that it was not morphine in the permitted form. The need for accuracy in the certificate is just as great in the case of a prosecution for unlawful possession of the controlled drug cocaine, but the complication which is present in the case of morphine does not arise here as there is no permitted form of cocaine.

35. The Court of Appeal decided to follow *Hydes v The Queen* 1980-1983 CILR 335. In that case, as in this, the appellants were charged with unlawful possession of cocaine and the substance in their possession was identified at the trial as cocaine hydrochloride. A defence submission of no case to answer was overruled and the appellants were convicted. The magistrate's decision was reversed on appeal by the Grand Court. Summerfield CJ held that the court could not take judicial notice of the fact that cocaine hydrochloride was a salt of cocaine and was therefore a controlled drug within the meaning of paragraph 4 of Part I of the First Schedule to the Misuse of Drugs Law. At p 339 he said:

> "I could not be sure in my own mind that cocaine hydrochloride falls within any of the categories specified in the First Schedule. All one can say from general knowledge is that it would appear to be a compound resulting from the combination of hydrochloride acid with cocaine. What the resultant compound constitutes is beyond the range of general knowledge."

He said that the magistrate had failed to advert his mind to the fact that the substance identified in the certificate was different from the one specified in the charge.

36. Summerfield CJ did not have the advantage of being able to consider *R v Greensmith* [1983] 1 WLR 1124, as the judgment in that case was not delivered until later in the same year. Had he done so he would have observed that the decision in that case that the word "cocaine" as used in paragraph 1 of Part I of the Schedule is a generic word which includes both direct extracts from the coca leaf and whatever results from a chemical transformation was based not upon judicial knowledge but upon a construction of the wording of the Schedule. Their Lordships consider that it is now within judicial knowledge, even if it was not in 1983 when the point was being considered by Summerfield CJ, that cocaine hydrochloride is a form of cocaine. But in any

event it is clear from the wording of the Schedule that, while paragraphs 2 to 5 of Part I of the Schedule deal separately with the various substances that can result from chemical transformations of the substances and products listed in paragraph 1, the generic word "cocaine" in paragraph 1 includes all the substances that can result from chemical transformations of cocaine within its ambit.

37. In their Lordships' opinion therefore the statement in the certificate that the contents of the sealed package proved to be cocaine hydrochloride was sufficient to entitle the magistrate to find that it had been proved that the substance which was in the respondent's possession with intent to supply was the controlled drug cocaine. As the drug in question in this case was cocaine which is a controlled drug in all its forms, it was not necessary for the certificate to state that the substance referred to in it as cocaine hydrochloride, which is a form of cocaine, was a controlled drug.

The affidavit

38. It follows from what has just been said that there was no need for the Crown to rely on Dr Schudel's affidavit to prove that the substance referred to in the certificate as cocaine hydrochloride was a controlled drug. Had it been necessary to do so however their Lordships would have held that Graham J was right to grant the Crown's application to admit this evidence.

39. Section 177 of the Criminal Procedure Code (1995 Revision) provides:

> "On an appeal by motion, the court may draw inferences of fact from the evidence given before a Summary Court, and, subject to the due notice having been given as hereinbefore mentioned, may hear any further evidence tendered by the appellant, and may take and admit, if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law."

40. For the respondent Mr Bueno QC submitted that it was not open to Graham J to admit this evidence as the respondent had not tendered any further evidence in support of his appeal. But it is open to the Grand Court under this provision to admit "such other evidence as it may require". Although Graham J dealt with

> twofold: first, to let the defendant know precisely what is alleged as to the alcohol content of the specimen; and, secondly, to provide a sufficient opportunity to enable him, by requiring the analyst to be called, to challenge the relevant allegation. It is clear that if the defendant's complaint at the hearing is that he is ignorant of that aspect of the prosecution's case, or that he has had an insufficient opportunity to challenge the contents of the certificate, he is under an obligation to object to the admission of the contents of the certificate before it is put in evidence."

At p 352D-E he added these words:

> "The saving of time, expense and confusion which will result in future cases in no way endangers the rights of an accused charged with an offence under section 6 of the Act of 1960, or one under the Road Safety Act 1967, who wishes to challenge the contents of the analyst's certificate, or prejudices the fair trial of such offences where, for practical reasons, including the volume of these offences and the limited number of qualified analysts, the prosecution desires to rely on the contents of analysts' certificates, which are in fact rarely challenged. In the exceptional case of such a challenge, the accused person remains, in our view, amply protected by the law."

23. He found support for this view in *Grimble & Co v Preston* [1914] 1 KB 270, which was a decision of the Divisional Court on a case stated following the appellants' conviction of an offence under the Sale of Food and Drugs Act 1899. The summons which had been served upon them was not accompanied by a copy of the analyst's certificate, as required by the Act. But no objection was taken to the leading of oral evidence on its contents from the analyst, as the law then required, until after the close of the prosecution case. The magistrates overruled the objection, and their decision was upheld on appeal. It was held that, although the defect could not be cured by amendment or adjournment because the certificate could no longer be served with the summons, the solicitor for the appellants had waived the objection by his conduct.

24. The Court of Appeal were not referred to *R v Banks*. They were referred to *Nicoletta v The Queen* 1990-1991 CILR 152 in which Harre J held in the Grand Court that, as the prosecution had not satisfied the court that there had been proper service of

the notice and the analyst's certificates, there was no properly admissible evidence that the appellant had been in possession of cocaine. But in that case the appellant's attorney alleged that the notice and the two certificates of analysis had not been served, and he objected to their being admitted in evidence before he had had an opportunity to cross-examine the police officer who said that he had attempted to serve the documents. As Harre J said at p 155, the exchanges between the magistrate and defence counsel were quite explicit on the point. It is clear from this exchange, which is narrated in the judgment at pp 155-157, that defence counsel objected to the admission of the first certificate as soon as the witness was asked to refer to it, and that he renewed his objection as soon as the witness was asked to refer to the second certificate. As their Lordships have already observed, no such objection was taken in the present case.

25. Mr Bueno QC for the respondent relied strongly on a number of Canadian cases which were cited to Harre J in *Nicoletta v The Queen* and were regarded by the judge in that case as persuasive: *R v Braithwaite* (1972) 6 CCC (2d) 257; *R v Bowles* (1974) 16 CCC (2d) 425; *R v Tunke* (1975) 25 CCC (2d) 518; and *R v Bolton* (1977) 36 CCC (2d) 109. Their Lordships accept that these cases tend to support his argument that, as the prosecution did not lead evidence of compliance with the statutory condition, the certificate ought not to have been received in evidence. But the thrust of the English authorities is so clear and the rationale for the English and Scottish practice is so obvious that they do not find it helpful to rely on cases from another jurisdiction, bearing in mind also that the legislative provisions with which they were dealing were different from those which are relevant here.

26. Zacca P said, in the reasons which he gave for the judgment of the Court of Appeal in this case at p 6, that in the opinion of the court the requirements of the statute required strict proof of service of the notice and that if these requirements are not met the certificate is not admissible. But their Lordships can find nothing in the wording of the statute which indicates that a certificate is not admissible in evidence if the other party takes no objection to it on the ground that the requirement of three days' notice has not been satisfied.

27. In *Tobi v Nicholas* (1987) 86 Cr App R 323 it was held that a certificate by a doctor that a blood sample has been taken from an accused person with consent, which is admissible under section

10(4) of the Road Traffic Act 1972 (now re-enacted as section 16(4) of the Road Traffic Offenders Act 1988) "only if" a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing, was not admissible where that had not been done and that no purported waiver of objection by the defence could make the certificate admissible. Glidewell LJ dealt with the objection to the admissibility of the doctor's certificate on the ground that the wording of the statute specifically says that the document or certificate is admissible only if a copy of it has been served as required by the subsection in this way at p 331:

> "In my judgment that point is well-founded. The phrase 'admissible in evidence only if' means what it says. If the requirements of the subsection have not been complied with, the document as such is not admissible evidence, and if it is not admissible then no purported waiver of objection by counsel for the defendant can make it admissible."

28. In *Louis v Director of Public Prosecutions* [1998] RTR 354 the decision in *Tobi v Nicholas* was distinguished as the point at issue in that case was not that the certificate had not been served but that it had not been signed. However Simon Brown LJ said at pp 363-364 that the effect of what is now section 16(3) of the Road Traffic Offenders Act 1988 is clear: "It renders inadmissible in evidence any certificate not served upon the defence at least seven days before the hearing".

29. Section 7(3) of the Misuse of Drugs Law does not say that a certificate of which three days notice has not been given is inadmissible. What it says is that such a certificate shall not "be received in evidence". This wording is to be contrasted with that in section 7(2), which provides that a certificate of the kind referred to "shall be admissible in evidence". It is perhaps unfortunate that decisions as to whether or not certificates are admissible in evidence where no objection has been taken to their admissibility should depend upon the fine detail of words used in the statute which lays down conditions which must be satisfied before they can be received in evidence. But their Lordships must take the wording of the statute as they find it, and they can find nothing in the wording of section 7(3) of the Misuse of Drugs Law which compels them to hold that the certificate in this case, to which no objection was taken at the trial, was inadmissible.

30. For these reasons their Lordships consider that Graham J was right to reject the submission that the certificate was wrongly received in evidence at the trial. The point is a simple one which does not require a detailed examination of the law of waiver. A defendant who is represented at his trial will be taken to have given up the right to object to the admission of a certificate in evidence if he allows the evidence to be led without objecting to it on the ground that the requirements of section 7(3) were not satisfied.

Cocaine and cocaine hydrochloride

31. The particulars of the offence with which the respondent was charged stated that the controlled drug which was in his possession with intent to supply was cocaine. The certificate stated that the contents of the sealed package marked Tasso 1A proved to be cocaine hydrochloride. It did not state that the substance known as cocaine hydrochloride was a controlled drug. The respondent does not suggest that the charge was defective because it did not identify the substance more precisely. His argument is that the evidence against him was defective because the certificate should have contained a statement that the substance which the respondent was charged with possessing was a controlled drug within the meaning of section 2(1) of the Misuse of Drugs Law. He points to the fact that it was in order to meet this argument that the Crown applied for Dr Schudel's affidavit to this effect to be admitted as fresh evidence.

32. In *R v Greensmith* [1983] 1 WLR 1124 it was held by the Court of Appeal that the word "cocaine" when used in Part I of Schedule 2 to the Misuse of Drugs Act 1971 is used in the generic sense so that it includes the specific forms, derivatives or preparations of it which come within the wording of paragraphs 2 to 5 of Part I of the Schedule. As Lawton LJ put it at p 1127:

> "It follows that 'cocaine' can be a natural substance or a substance resulting from a chemical transformation; but both substances are cocaine. In our judgment the word 'cocaine' as used in paragraph 1 is a generic word which includes within its ambit both the direct extracts of the coca leaf, the natural form, and whatever results from a chemical transformation. Paragraphs 2 to 5 of Part I of the Schedule, in our judgment, deal with the various kinds of substance which can result from chemical transformations. It is significant that in each of these paragraphs what is referred to is a chemical form 'of a substance specified'.

> What sections 2 and 5(3) are dealing with are 'substances or products'. This case is concerned with the substance 'cocaine' which may have a number of forms but they are still cocaine."

33. The Court of Appeal reached the conclusion in *R v Greensmith* that the word is used in its generic sense after examining the wording of the Second Schedule to the 1971 Act. The wording of that Schedule is reproduced in the First Schedule to the Misuse of Drugs Law. Paragraph 1 of the Schedule identifies "the following substances and products" as controlled drugs. Included in the list of these substances and products are "coca leaf" and "cocaine". Part IV of the Schedule, which sets out the meaning of certain expressions used in the Schedule, defines the expression "coca leaf" as meaning the leaf of any plant of the genus Erythroxylon from whose leaves cocaine can be extracted either directly or by chemical transformation. A description of how cocaine is converted by chemical transformation into the white powder form in which it is usually distributed, which is usually cocaine hydrochloride, has been provided by the Drug Enforcement Administration of the US Department of Justice and is available on the internet: www.usdoj.gov/dea/concern/cocaine.htm; see also Bucknell and Ghodse, *Misuse of Drugs*, 2nd edition (1991), para 3.21. The substance which is produced by use of this technique is easy to distribute, and it is easy to convert by the removal of the hydrochloride into the form known as crack cocaine which can be smoked. The definition of the expression "coca leaf" in Part IV of the Schedule shows that the expression "cocaine" in paragraph 1 of Part I includes the substance which is produced by extracting it from the leaves and converting it into powder form as cocaine hydrochloride.

34. The question is whether the terms of the certificate were sufficiently precise to entitle the magistrate to hold that it had been proved that the respondent was in possession of cocaine. The Court of Appeal in this case noted that the need for absolute clarity in the terms of the analyst's certificate was emphasised by Lord Mackay of Clashfern in *R v Hunt (Richard)* [1987] AC 352, 378G. But the appellant in that case had been charged with unlawful possession of the controlled drug morphine. The question which arose there was due to the fact that it is an offence to possess morphine in one form but it is not an offence, in terms of a regulation made under the Misuse of Drugs Act 1971, to possess it in another form. The prosecution failed to prove not