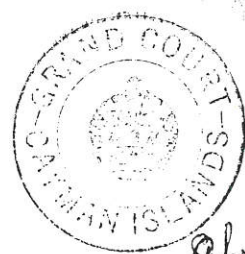


5-7-2000



*Cheryl
please see.
S.M.
22/7.*

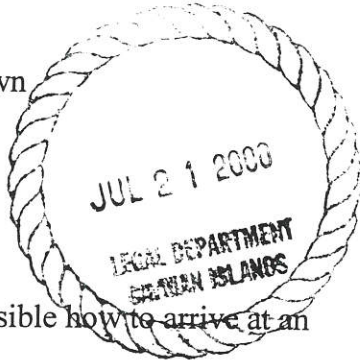
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2 IN CHAMBERS
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4 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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6 CICA: 49 OF 1999

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9 BETWEEN: ATLEE EBANKS APPLICANT

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11
12 AND: REGINA RESPONDENT

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15 **Appearances:**
16 Mr. Keith Collins of Keith Collins for the applicant
17 Mr. Adam Roberts and Miss Cheryl Richards for the Crown



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21 **RULING**

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23 In the absence of a proper transcript of the trial it is impossible how to arrive at an
24 accurate basis for determining whether there are arguable grounds for appeal.

25 One matter – that of the paper knife proffered to the jury by the learned trial judge for use
26 by them in their room over Counsel’s objections and which was not properly admitted as
27 an exhibit – is of particular concern now.

28 While there is no absolute prohibition against such an exercise at the invitation of the
29 judge, the case law suggests that it is wrong to ask the jury to conduct experiments in
30 their room where what takes place cannot be tested by cross - examination.

31 See R v Higgins; R v Maggs; R v Stewart and Suppleton

32 That ground of appeal, which relates to the count of A.O.A.B. Harm of the indictment
33 may well be arguable.

1 However that does not assist the appellant in relation to the Aggravated Burglary Count
2 upon which the sentence of 3 years imprisonment was imposed - the longest sentence.

3 I have heard what Mr Collins had to say about that Count, but these are arguments which
4 must have been put to the Judge and Jury in the trial. They are to the effect that the
5 defendant was a co-tenant of the premises with the complainant and was entitled to enter
6 the premises.

7 There is clear authority that despite a claim to access such as the appellant may have had,
8 if his entry was in fact barred; forced entry with intent to assault would constitute the
9 offence: R v Jones [1996] 1 WLR 672.

10 Much depends on how that aspect of the matter was summed up to the jury. There is
11 nothing before me now to suggest that it was otherwise than properly left to the jury.

12 As to the matter of the alleged prejudicial outbursts of the complainant in her testimony;
13 suggesting a psychiatric predisposition to violence on the part of the appellant -: this
14 occurred under cross – examination notwithstanding careful discussions beforehand with
15 a view to preventing such evidence from being given and there were, from what Mr
16 Robert tells me, careful consideration given to how the matter should be left to the jury.
17 He says the judge carefully directed the jury according to the approach agreed with
18 Counsel.

19 Such outbursts can properly be dealt with by careful directions to the jury and do not
20 necessarily require that a jury be discharged.

21 Again, in the absence of the transcript of the summing-up I am unable to take a view
22 myself on whether this matter was properly left to the jury or whether it could constitute a
23 proper ground for appeal.

1 In summary, the appellant has made out one clearly arguable ground of appeal – that in
2 relation to the paper knife – but which, as it relates to the overall indictment, would not, it
3 seems to me even if it succeeds, necessarily result in the conviction as a whole being
4 quashed.

5 There are other important convictions on other discrete and serious counts.

6 The solution that occurs to my mind is to ensure that this appeal is heard as soon as
7 possible in the next session of the Court of Appeal which commences next month.

8

9 I have put in motion the steps necessary to ensure that the official transcript will be ready
10 and to advise the President that this matter be treated with priority as the appellant has
11 been and will continue to be in custody until the appeal is heard.

12 For all the foregoing reasons the application for bail pending appeal is refused.

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18 ANTHONY SMELLIE
19 CHIEF JUSTICE

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21 DATED THE 5TH DAY OF JULY 2000

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