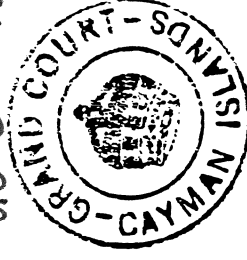


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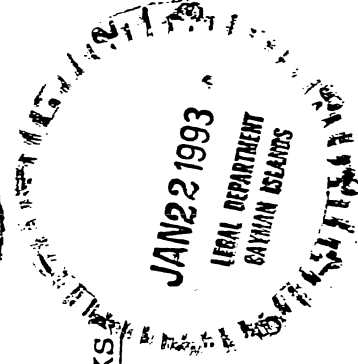


IND. 53/91

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

REGINA V. DEXTER EBANKS & SHARLEEN EBANKS

Mr. Archie and Mr. Roberts for the Crown
Mr. Henriques QC and Mr. Nicole for Dexter Ebanks
Mrs. Levers and Mr. Hampson for Sharleen Ebanks




RULING

Schofield J.

Objection has been taken by the defence to the admissibility of four groups of evidence. The decision on one group, referred to as the "Avocado documents" (at pp. 115 to 122 of the bundles), must be deferred until the Crown interviews a witness who has not yet arrived on the Island to see the extent to which he can speak to the documents and their contents.


Documents 176 to 203 relate to a company called Rosepine Investments. It is argued for the defence that there is no apparent connection between Rosepine and the charge in the indictment. The Crown answers that by saying that Francisco Cabrera, the person named in the indictment as the alleged drug trafficker, was a director of Rosepine and there is evidence that money passed through Rosepine to Dexco, the company of which the accuseds were directors. The Crown alleges that Dexco was the vehicle through which funds flowed to the Brittany Bay property which is referred to in the indictment. In those circumstances the Rosepine Investments' documents are relevant to the charge in the indictment and are admissible.

Objection is taken to the evidence of John Oswald McLaughlin whose statement alleges that he was asked by one of the accuseds to put his name to the documentation of a vessel which the



accused said he was buying. The indication was that this was an attempt by that accused to distance himself from apparent ownership of the vessel. It is argued that there is no connection with the property known as Brittany Bay which is mentioned in the indictment, and the vessel referred to by the witness McLaughlin. However the Crown has pointed to the statement of Benny Holzhausen, a Special Agent with the U.S. Inland Revenue Service, who says that the initial deposit on the purchase of the vessel was paid for by Francisco Cabrera and that other payments for it came from him. This evidence goes to prove a financial connection between Cabrera and the accused, and a desire by the accused to hide his involvement therein. Such evidence is relevant to the indictment and is admissible.

Objection is taken by the defence to the admission of a further group of documents which are at pages 137 to 141 and 146 to 175 of the bundle. These documents are the judgment of the United States District Court of the Southern District of Florida, Miami Division, convicting Francisco Cabrera on his own plea of "guilty" to seven counts of importation of marijuana in excess of 1000 kilograms, seven counts of possession with intent to distribute marijuana and one count of filing a false personal tax return, together with the indictment upon which those convictions are based and the plea agreement leading up to the judgment. Section 12 of the Evidence Law does not render these documents admissible. That provision merely sets out the procedure by which, or the circumstances under which, certain documentary evidence may be admitted where the original document itself is admissible. Section 12 does not go to the principle of admissibility of the original document. At common law a judgment in personam is no evidence of the truth either of the decision or of its grounds between strangers, or a party and a stranger (see Hollington v. F. Hewthorn and Co. Ltd. [1943] K.B. 587). Although that decision has been superseded by statute in England and although the decision has been criticised (see, for example, Hunter v. Chief Constable of West Midlands [1981] 3 All ER 727,



per Lord Diplock at p. 734), it has not been upset by subsequent judicial authority. I have given careful consideration to Hollington and to the criticisms of the decision. I am not bound by the decision, but am persuaded that in the present case the reasoning behind the decision must be followed. In Hollington the Court of Appeal had to consider whether to admit evidence in a civil action for negligence of a conviction for careless driving before a Magistrate's Court. Such conviction was held to be inadmissible principally on the ground that the decision of the Magistrates was no more than an expression of their opinion as to the guilt of the accused and as such was irrelevant in the civil trial. In the present case the Crown has to prove, as a starting point, that Francisco Cabrera obtained proceeds from drug trafficking. I do not consider that a conviction of Cabrera before a United States Court for importation and distribution of drugs can be relevant in this Court to prove his involvement in drug trafficking. If the conviction was entered after trial it is merely the opinion of a jury, or a majority of the members of a jury, as to his involvement in drug trafficking. Let us move slightly away from the strict legal position on the admissibility of opinion evidence and take a more practical look at the relevance of evidence of convictions entered in other jurisdictions. This Court may have a favourable view of the objectivity of American Judges and the innate common sense and sense of justice of American jurors. But can the same be said of all judicial systems? What of convictions entered in Courts in countries where the ordinary civil systems of justice have broken down and decisions are made by military tribunals? How could the Court begin to distinguish between the relevance of a decision from one jurisdiction and the relevance of a decision from another?

The fact that a plea of guilty is entered does not affect the position, for the admission of a fact by a third party cannot be evidence against the accused before the Court.

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It is right and proper that any evidence tendered to this Court which adversely affects the accuseds must be available for challenge by the accuseds. If the conviction, indictment and plea agreement were tendered in evidence the accuseds would be stuck with evidence the very basis of which could not be the subject of cross-examination.

For these reasons I disallow the admission of documents 137-141 and 146-175.


Judge



Dated this 20th day of January, 1993