
THE CROWN

V

DAVE GRAY

BEFORE: - The Hon Mr Justice Robert A Shuster - CRH

Mr C Mason on behalf of the Crown.

Mr A Forbes on behalf of the defendant

Hearing date on submission of no case to answer – 24th FEB 2016 @15.10

Ruling on submission of no case to answer – 25th FEB @ 09.15

RULING ON SUBMISSION OF NO CASE TO ANSWER
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1. On Wednesday 24th Feb 2016 the prosecution closed its case in the prosecution of Dave Gray for drug related offences. In this case the defendant has been charged by the police on an information alleging four [4] offences involving unlawful possession of controlled drugs and conveying prohibited material into HMP Grand Turk on Wednesday 25th Feb 2015; precise details of the charges are shown in the information detailed below.
2. The Court notes that the information in file CR 11 / 2015 had been properly signed by the prosecution; and the court notes the information currently before the court is dated 15th Apr 2015. Our file indicates the matter came before a Plea and Directions hearing last year; and no challenge has been made as to either the substance or the validity of the information.
3. At the close of the prosecution case on Wednesday the 24th Feb 2016; counsel for the defendant; Mr Ashwood Forbes indicated he wished to make a submission of no case to answer; as is the defendants legal right. In short Mr Forbes acting on behalf of the defendant; requested the matter in respect of any controlled drugs; alleged to have been found in the HMPGT prison officer's bathroom on 25th Feb 2015 be withdrawn from the jury at this stage of the proceedings; because Counsel says there is no direct evidence linking the defendant to the finding of those drugs in the prison officers bathroom.
4. Defence Counsel conceded there might well be a case for his client to answer, in respect of a quantity of controlled drugs found in his baggage when searched in the office on the first floor at HMP when he was questioned by his superiors on the afternoon of 25th Feb 2015.

5. In a submission of *no case to answer*; the appropriate test has been succinctly laid out as follows - in the leading case:-

R v Galbraith 73 Cr App R 124 per Lord Lane LCJ

[1] If there is no evidence that the crime alleged has been committed by the defendant, then there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness, or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence taken at its highest is such that a jury properly directed could not properly convict upon it, then it is his duty, upon a submission being made - to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability or other matters which are generally speaking within the province of the jury, and where on one possible view of the facts there is evidence upon which a jury could properly come to a conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

6. *There will of course as always in this branch of the law; be borderline case; and Appellant Courts have said that they can safely be left to the discretion of the trial judge.*

There are four [4] charges against the defendant

Count One

INTRODUCTION OF UNAUTHORIZED ARTICLES INTO HER MAJESTY'S PRISON- *contrary to section 10 of the Prison Ordinance; Chap 18.03. Particulars: - that you on Wednesday 25th February 2015 at Her Majesty's Prison Grand Turk had conveyed a controlled drug namely cannabis an unauthorized article into Her Majesty's Prison.*

Count two

POSSESSION OF A CONTROLLED DRUG – *contrary to section 6 (2) of the Control of Drugs Ordinance; Chap 03.14. Particulars: - that you on Wednesday 25th February 2015 at Her Majesty's Prison Grand Turk while in the office did unlawfully have in your possession a certain controlled drug; namely cannabis.*

Count three

POSSESSION OF A CONTROLLED DRUG WITH INTENT TO SUPPLY IT – *contrary to section 6 (3) of the Control of Drugs Ordinance; Chap 03.14 Particulars: - that you on*

Wednesday 25th February 2015 at Her Majesty's Prison Grand Turk while in the office did unlawfully have in your possession a quantity of controlled drugs namely cannabis with intent to supply the same to another.

Count four

POSSESSION OF A PROHIBITED ARTICLE INTO HER MAJESTY'S PRISON—
contrary to section 11 (a) of the Prison Ordinance; Chap 18.03. Particulars: - that you on Wednesday 25th February 2015 at Her Majesty's Prison Grand Turk did unlawfully had in your possession a controlled drug namely cannabis a prohibited article.

Defence submissions

7. At the close of the prosecution case on Wednesday 24th Feb 2016; counsel for the defendant indicated he wished to make a submission of no case to answer [as is the defendants legal right] requesting that portion of the matter relating to the finding of two [2] packets of the drug cannabis; allegedly found in the prison officers bathroom at HMP on the date in question; be withdrawn from the jury at this stage of the proceedings; Counsels submission was after hearing the evidence from six [6] live prosecution witnesses and also the contents of two witness statements read into evidence by consent.
8. The defence submission is that the evidence adduced by the Crown so far in this case in relation to the four [4] substantive charges against the defendant, fail to meet the required standards at this stage of the proceedings, as the defence say there has been no evidence adduced before the Court in relation to establishing the essential elements of the offences charged in relation to the finding of two [2] packets of controlled drugs in the bathroom; and as such defence counsel say a jury properly directed; could not properly convict the defendant on the evidence as it stands.
9. The defence argue there has been no direct evidence adduced by witnesses for the prosecution; to the effect that the accused was either found [or seen] in possession of either of the two [2] packets of cannabis; labelled exhibits FF2 & FF3; and weighing 30.1 and 20.7 grams respectively; allegedly found in prison officer's bathroom on Wednesday 25th Feb 2015 after the defendant; as a member of a prison escort team when he arrived at HMP Grand Turk from escorting two prisoners and the drugs were brought to the attention of the arresting officer sometime after the defendant had been arrested in the prison office by police officers at HMPGT and he was being placed into police vehicle.
10. The defence concede the items FF2 & FF3 [the drugs weighing 30.1 and 20.7 grams] found in the prison officers bathroom were on examination found to be controlled drugs of class B namely cannabis; but they say the drugs were not placed in the bathroom by the defendant. On the other hand evidence was adduced however; by the prosecution to the effect that the defendant had

visited the staff bathroom on his arrival back from his escort detail at HMPGT immediately prior to him going upstairs and being questioned and searched; by his supervisors at the prison Officers Grant and Sutton; under the authority of section 40 of the TCI Prison Ordinance.

11. Defence counsel submit that in the absence of any direct evidence against the accused; then the prosecution's case is circumstantial at the very best. However learned defence counsel failed to point out to the Court; that where the prosecution case relies on circumstantial evidence [as he argues] it is necessary for the trial judge to give the jury following two directions:-

[1] To find the accused guilty, his or her guilt must not only be a reasonable inference, it must be the only inference which can be drawn from the circumstances established by the evidence; and

[2] If the jury considers that there is any reasonable explanation of those circumstances which is consistent with the innocence of the accused, they must find him or her not guilty R v Hodge [1838] 168 ER 1136

12. The defence argued in the case at bar that there is a distinct lack of evidence of who placed the drugs in the bathroom. They say the Crown have not presented the jury with any facts in support. They say there is no testimony from anyone that the accused placed drugs inside the bathroom. There is no confession there is nothing. They say the Crown are simply saying that the mere presence of cannabis in the bathroom leads to the inescapable conclusion that the accused is guilty. The Court is of the opinion that inferences are the remit of the jury after hearing all of the evidence including any witnesses for the defence.

Further representations

13. In order to prove their case against the defendant; the defence say the prosecution must make the jury sure that it was the defendant who did the acts complained of in the information preferred before the Court. The defence claims in their SNCA that there is no direct evidence against his client. They argue no sensible or reasonable inference can be drawn; that the accused is or was in fact the person who placed illicit drugs in the prison bathroom on the date in question.
14. The Court points out the wording of the information before the Court; which clearly sets out the basis / substance of the charges against the defendant.
 - 1) **Count one** - the prosecution must prove that at HMP the defendant **CONVEYED** – a controlled drug into HMP. No actual weight of any controlled drug is alleged and there is no indication of where the drugs were found. Matter for a jury.

- 2) *Count two* - the prosecution must prove that at HMP the defendant while in the office [prison office] did unlawfully have in his possession a controlled drug namely cannabis. Matter for a jury.
 - 3) *Count three* - the prosecution must prove that at HMP the defendant while in the office did unlawfully have in his possession a controlled drug with intent to supply the same to another. Matter for a jury as to his intention]
 - 4) *Count four* - the prosecution must prove at HMP the defendant while in the office unlawfully had in his possession a controlled drug namely cannabis; and cannabis was / is a prohibited article in a prison. Matter for a jury if cannabis is a prohibited article in a prison.
15. During the trial the prosecution called / read into evidence; a total of six [6] prosecution witnesses it also received a number of exhibits - by consent.

Conclusion - ruling

16. *I have carefully considered all that has been said to me by learned defence counsel on behalf of his client in his SNC submitted via oral representations yesterday afternoon. I have also reviewed the prosecution evidence so far again; I have also reviewed the exhibit bundle and re-read all pages of my trial notes pages 78-117*
17. *After considering the prosecution's evidence so far, this is NOT one of those cases which could "rightly be known as a borderline case" In the courts respectful view applying the principles enunciated in the celebrated case of R v Galbraith; as the trial judge; and after considering certain of the legal arguments in the 2007 case of Barry George v the Queen and on hearing submissions and having had sight of relevant case law in Canada's Supreme Court Court's and cases in the United Kingdom and the Commonwealth on NCS – the Court must allow this matter to proceed further - for all the facts to be determined by the jury on the guilt or the innocence of the defendant on each of the four charges when they consider the evidence on each count separately.*
18. *There is NOT an absence; and there is NOT a distinct paucity of reliable direct evidence against the accused who is before the Court in respect of four [4] offences today. The law is quite clear where the trial judge comes to the conclusion [as I do today] that the prosecution evidence taken at its highest is such that a jury properly directed; could properly convict on one or more of the charges before it; then it is the trial judge's duty upon a submission being made – to reject the NCS and allow the case to continue.*
19. *The evidence reveals that there WAS / IS IN FACT - some direct evidence against the accused; and because some "questionable unlawful material" was found in the defendant's possession inside HMPGT; and because various*

witness have in fact identified the accused as being the person responsible for bringing a quantity of controlled drugs of some weight into HMP then the case must proceed to determination.

20. It would in my respectful view be quite wrong for the case to be withdrawn from the jury at this state of the proceedings. There is in my view a case to answer on each of the charges as drafted in the information in file CR11-2015 and I so order. The Court thanks counsel for their submissions. The defence will now be put to their election before the jury.



SHUSTER J
JUDGE OF THE SUPREME COURT