

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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4 INDICTMENT NO: 69-71/2019
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7
8 THE QUEEN
9

10 v.
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12 SANDRA MILENA WOODMAN (nee VASCO PINEDA)
13 ANDRE CAROLL WOODMAN
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18 Appearances:

Ms. Toyin Salako for the Crown

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20 Mr. Oliver Grimwood of Barton Attorneys for the
21 Defendants

22 Before:

Justice Marlene I. Carter (Actg.)

23 Judge Alone Trial:
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14th September 2020
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28 HEADNOTE

29 *Criminal Law – Attempting to Remove Criminal Property*
30 *- Trial by Judge Alone – Application to exclude evidence.*
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35 RULING ON APPLICATION TO EXCLUDE DRUG EVIDENCE
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1 **APPLICATION**
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3 1. The defendants have applied to exclude evidence of any reference to the trace amounts of cocaine
4 found on each of two scales seized from the defendants' premises upon search of those premises
5 on the 3rd of August 2018 in the execution of a search warrant.
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7 2. The application is made pursuant to s.40 of the *Evidence Law* which states:

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9 *"Nothing in this section derogates from the power of a court in any criminal*
10 *proceedings to disallow evidence otherwise admissible which, in the opinion of*
11 *such court, would, if allowed, operate unfairly against an accused person."*
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14 3. Counsel for the defendants submits that upon the allegation of possession of criminal property,
15 the sole count on the indictment, the Crown relies on several bases upon which to prove its case
16 one of these being that Mr. and Mrs. Woodman are involved in the sale of drugs for profit, and
17 the cash seized, it is likely, represents that profit.

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19 4. Counsel submits that: *"It is axiomatic that simple possession of a drug would not generate profit."*
20 Counsel pointed to the fact that the offences that the defendants face in the summary court which,
21 pursuant to s.88A of the *Criminal Procedure Code* (2019 Revision), were committed to the Grand
22 Court 'on the back of the indictment' include allegations of simple possession of ganja, and
23 possession with intent to supply ganja. There are also charges relating to the traces of cocaine and
24 the Crown have chosen to reflect that criminality by a charge of simple possession.

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26 5. Counsel submits that, because neither defendant faces any charge of Being Concerned in the
27 Supply of Cocaine, it is implicit in the charging decision that there is no evidential basis for
28 alleging that either was involved or concerned in the intended sale of cocaine.
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1 6. He submitted that the evidence of cocaine on the scales does not go to inform the trier of fact
2 about the core issue in the case, that issue being whether the cash represents the benefit of criminal
3 conduct, in this case, profits from the sale of drugs. For this reason, counsel contends that the
4 evidence of the traces of cocaine is not relevant, and, that to invite the trier of fact to conclude that
5 the traces could only be from the preparation of cocaine for sale for profit was only to invite
6 speculation.

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8 7. Counsel went further to state that the evidence of the traces of cocaine would not assist in
9 establishing the likely origin of the cash seized and, that it provides only scant evidence to support
10 any assertion that hard drugs were being sold for profit.

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12 8. Crown Counsel in response noted that the defendants are before this court charged only with the
13 1 count on the indictment and invited the court to consider that the s.88A charges are not at the
14 back of the indictment for this court to determine whether they have been proved or not. In this
15 regard, Crown Counsel noted that the Summary charges are not a pre-requisite to the Indictment
16 being filed and therefore the nature of those charges should not now concern this court.

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18 9. Crown Counsel submitted that the court would be asked to consider all of the items found at the
19 premises in order to determine whether there was sufficient evidence for an inference to be drawn
20 that these generated profits and, ultimately, whether the money seized derived from criminal
21 conduct, was criminal property.

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24 **COURT'S CONSIDERATIONS**

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26 10. It is clear to this court that in order to determine whether a proper inference could be drawn that
27 the monies seized were the proceeds of the sale and supply of drugs, the court should consider
28 that two scales were seized and that each bore traces of cocaine.



1 11. I do not find the fact that the defendants were not charged with the offences relating to the supply
2 of cocaine – that is, either Being concerned in the supply of cocaine or Possession of Cocaine with
3 intent to supply cocaine - has much bearing on the relevance or admissibility of the evidence of
4 the two scales seized and the traces of cocaine found thereon. The decision not to bring charges
5 of offences relating to the supply of cocaine against the defendants in the Summary Court is not a
6 relevant consideration in relation to whether this evidence of the scales and cocaine traces, which
7 is otherwise admissible, would operate unfairly against these defendants in relation to the single
8 count on the Indictment.

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10 12. As Counsel for the defendants has submitted: The test of admissibility is relevance. The court is
11 being asked to find whether the Crown has presented sufficient evidence that the monies seized
12 are the product of criminal conduct - proceeds of the supply of drugs. The evidence that the
13 defendants seek to exclude concerns drugs and equipment associated with drugs by dint of the
14 traces of cocaine found thereon.

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16 13. I find that that evidence is relevant. I do not find that there is any prejudice that could be attached
17 to that finding that would operate unfairly against these defendants. Defence submissions relating
18 to the danger of speculation arising from the inability of the trier of fact to properly appreciate
19 distinctions between admissibility of such evidence, the weight to be attached to it and the manner
20 in which it may be used in furtherance of the Crown's case, are considerably lessened by the
21 absence of a jury in this case.



1 14. Accordingly, the application to exclude the evidence of the two scales and the traces of cocaine
2 found thereon is denied.
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Dated this 14th day of September 2020.

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Madam Justice Marlene I. Carter
Judge of the Grand Court (Acting)