

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **SCA #: 4-6/2020**

5 **Case Nos. 03675/2016, 00728/2017 & 02851/2017**

6 **Possession of Cocaine with Intent to Supply x2**

7 **Possession of Cocaine**

8 **Being Concerned in the Possession of Cocaine w/Intent to Supply**

9 **Being Concerned in the Possession of Ganja w/Intent to Supply**

10
11 **WAYNE CARLOS MYLES**

12
13 **v.**

14
15 **REGINA**



16
17
18 **Appearances:**

Appellant In Person

19
20 **Ms. Kerri-Ann Gillies for the Respondent**

21
22 **Before:**

Justice Roger Chapple (Actg.)

23 **Heard:**

24 **12th November 2020** (on this date the
25 Appellant provided written Skeleton
26 Argument)

27 **4th December 2020** (Appellant's oral
28 submissions heard)

29
30 **6th January 2021** (Respondent's written
31 submissions previously presented.
32 Respondent's oral submissions heard.)
33
34

35 **HEADNOTE**

36 ***Criminal Law – Appeals (against Conviction and Sentence) from the Summary***
37 ***Court to the Grand Court***

38
39 **JUDGMENT**

40 **ON APPEALS AGAINST CONVICTION AND SENTENCE**
41
42
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45
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1 1. The Appellant, Wayne Carlos Myles, pleaded not guilty to, but was convicted of,
2 four charges as follows:

3 i. Possession with intent to supply 1.88 grams of cocaine on 15th June 2016
4 at the Lone Star parking lot;

5 ii. Possession with intent to supply 3.89 grams and 0.765 grams of cocaine
6 on 2nd February 2017 at North Church Street;

7 iii. Being concerned in the supply of cocaine between 10th October 2014
8 and 15th June 2016;

9 iv. Being concerned in the supply of ganja between 10th October 2014 and
10 15th June 2016.

11 2. The Summary Court trial took place over a number of days from August 2018 to
12 June 2019 before Magistrate Kirsty-Ann Gunn. She gave her verdict judgment on
13 12th June 2019 and her sentence judgment on 30th January 2020. The Appellant was
14 sentenced to a total term of imprisonment of 13 years.

15 3. Wayne Myles now appeals to this court against his convictions and against the
16 sentences imposed.

17 4. At his trial, the Appellant was represented by Mr Alex Davies. Thereafter, for the
18 sentencing hearing he was represented by Mr Oliver Grimwood. He has represented
19 himself throughout this appeal.



His grounds of appeal are contained in two lengthy documents, dated 30th September 2020 (although signed on 8th October 2020) and 3rd December 2020. I have described the Appellant's written submissions as lengthy.

The first document, entitled “consolidated skeleton arguments and affidavit”, runs to 37 pages and 146 paragraphs; the second 23-page document (“further skeleton arguments and affidavit”) contains 98 paragraphs. The submissions contained therein are wide-ranging and, at times, I confess, difficult to follow. On several occasions broad statements of principle appear, but are not then applied to the facts and circumstances of this case. Several of the legal principles set out have no relevance to or bearing upon the facts and circumstances of this case.

It is neither necessary nor practical in the course of this judgment to deal with every point raised by the Appellant. I have nevertheless considered everything raised by him, both in his written documents and in his oral submissions in the course of this appeal. The principal submissions he makes now are based upon the matters of law argued before the learned Magistrate, contending that she erred in law in the rulings she made. He also contends that his convictions were against the weight of the evidence, to the extent that no reasonable tribunal could have been satisfied so as to be sure of his guilt, on any of the charges. Further, the Appellant now complains of his “misrepresentation” at the lower court – that is to say, the alleged failings of Mr Davies in the course of the trial. The Appellant was particularly aggrieved at the way in which Mr Davies handled the Respondent’s application to amend the “being concerned in the supply” charges to extend the period during which the Appellant was said to have been concerned in the supply of illicit drugs.



1 8. I also have the advantage of written submissions, dated 2nd December 2020 from Ms
2 Kerri-Ann Gillies on behalf of the Respondent, who appeared in the court below
3 only after conviction. She did not conduct the trial.

4
5 **THE RESPONDENT'S CASE AT TRIAL**

6
7 ***Possession with intent to supply cocaine on 15th June 2016***

8
9 9. Police officers arrested the Appellant in the car park behind the Lone Star bar. He
10 was seen to be standing by the open driver's door of a BMW motor vehicle. The
11 Appellant was searched. Officers recovered a Samsung Galaxy 6 Edge Plus mobile
12 phone and a black card holder containing five Ziploc bags. Those bags contained a
13 white powder. Subsequent analysis of that powder confirmed it to be cocaine (total
14 weight 1.88 grams). CI\$475 and US\$200 cash were found in the glove compartment
15 of the motor vehicle. Following interview, at which the Appellant made no comment
16 to the questions asked of him, he was released on bail.

17
18 ***Possession with intent to supply cocaine on 2nd February 2017***

19
20 10. Police officers on duty in North Church Street saw the Appellant emerge from a
21 BMW motor vehicle and head towards Rackham's Bar. The Appellant's behaviour
22 appeared to the officers to be suspicious. During the course of a search at the scene,
23 three wraps of white powder were found concealed within the lining of his shoes.
24 Analysis confirmed the white powder was cocaine (4.655 grams).



Being concerned in the supply of cocaine /ganja between 10th October 2014 and 15th June 2016

11. The Respondent's case here relies substantially upon material downloaded from the Galaxy phone seized on 15th June 2020 and a detailed analysis of that material carried out by Ms Joanne Delaney, an Intelligence Analyst working with the Royal Cayman Islands Police Service (RCIPS). Having considered all that material and particularly WhatsApp and SMS messages, Ms Delaney concluded that:

- i. The mobile phone was properly attributable to the Appellant; and
- ii. The material demonstrated that the Appellant was a street dealer, involved in the supply of both cocaine and ganja.

12. As to attribution, in addition to the admitted fact of his possession of the phone on 15th June, Ms Delaney took several matters into account including:

- i. The email account associated with the handset was waynemyles.ky@gmail.com;
- ii. The phone user account was in the name of Jason Myles;
- iii. A number of photographs of the Appellant were stored on the phone;
- iv. A number of photographs of the Appellant's BMW were stored on the phone;
- v. The details contained in a receipt stored on the phone, included the name Wayne Myles, the number of the phone and an email address djromeo1404@yahoo.com



vi. Other documents retrieved in the course of the investigation established, according to Ms Delaney, a connection between that email address and the Appellant;

vii. Birthday greetings were sent to the handset on the Appellant's birthday (14th April). That date also supported the connection between the Appellant and the "djromeo1404" email address;

viii. The Facebook account associated with the phone was linked to the djromeo1404@yahoo.com email address.

13. Ms Delaney explained in the course of her evidence the factors which had driven her to conclude that the user of the phone was involved in the supply of both cocaine and ganja. She had used her knowledge and experience, acquired over the years she had spent as an Intelligence Analyst to interpret a number of words and expressions used in the world of drug supply to denote the type and quantity of the drug. She relied, *inter alia*, on a number of schedules she had prepared to explain in detail her conclusions, summarised at paragraph 42 of the Magistrate's verdict judgment.

THE APPELLANT'S CASE AT TRIAL



14. The Appellant gave evidence at his trial. He agreed that he had been arrested, as police officers described, on both 15th June 2016 and 2nd February 2017, and that on both occasions he was in possession of cocaine. However, that cocaine was for personal use only. He did not intend to supply it to anyone else. He explained that the five Ziploc bags of cocaine found on 15th June had earlier been left in his car by a colleague. The Appellant decided that he would keep the cocaine for his own future use. The cash found in the BMW motor vehicle had earlier been withdrawn from the bank in order to pay his rent. As for the cocaine in his possession on the 2nd February,

1 he said he had purchased it earlier for \$200 in order to help him party at the weekend.
2 Having nowhere else to store the wraps, he placed them in his shoes. He said that
3 the pockets in the linings of his shoes in which the wraps were found had not been
4 deliberately created but were merely the result of wear and tear – he, having had
5 the shoes for some time.



7 15. He accepted that he had the Galaxy phone with him on 15th June and that this was
8 seized by the police. He gave evidence that the phone did not belong to him, but was
9 simply on loan to him for “promotional purposes” in the course of his employment
10 as promotions manager of Vic’s Bar. He explained that he did not have exclusive
11 use of the phone. He estimated that between 12 and 15 people a day had access to it.
12 Others used the phone for various purposes, including purchasing goods on eBay,
13 using PayPal. The email and other accounts included in the data download were
14 nothing to do with him. He denied ever sending any messages from the phone,
15 whether via WhatsApp, SMS or any other means. He was unable to recall if he had
16 ever noticed any incoming messages whilst he was in possession of the phone.
17 Whatever may appear from an analysis of the data on the phone, in response, the
18 Appellant made clear that he had not been in any way concerned in the supply of any
19 drugs. He was a drugs user, not a dealer.

20
21 16. The Appellant called two witnesses at trial - Mr Rudy Myles, Regional Fraud
22 Manager for FLOW (telecommunications provider) and Ms Weatherall, a data
23 analyst employed by Zentek Forensic Ltd. Mr Rudy Myles gave details of the
24 registered owners of the SIM card found in the Galaxy phone – during the relevant
25 period. He said one was Adrian Boddin. Ms Weatherall explained, principally, that
26 WhatsApp can be sent from a variety of devices, but will appear on all synchronised
27 devices; that another device can be connected to a handset by Bluetooth (although

1 for such a connection to be active, the devices must be in reasonably close physical
2 proximity, up to perhaps 30 metres); and that “spoofing” – that is to say hacking into
3 another device – is a known practice, although there is no evidence that the Galaxy
4 handset was in fact spoofed.



6 THE GROUNDS OF APPEAL

7
8 17. As I have already mentioned, it is not practical in the course of this judgment to refer
9 to each and every argument contained within the Appellant’s very detailed
10 documents, although I have, I repeat, considered them all at length. As I have said,
11 some of the Appellant’s submissions are simply not relevant to the facts of this case
12 at all. By way of example, complaint is made that the Magistrate did not direct
13 herself, in accordance with the case of **Turnbull**, about the dangers of identification
14 evidence (paragraph 4 onwards in the further skeleton arguments). The answer to
15 that of course is that this was not a case which relied upon disputed visual
16 identification evidence. Contrary to what I think is suggested, the evidence of DC
17 Mendez that the Appellant went by the name of Beanie is not identification evidence
18 in the **Turnbull** sense. The main grounds of this appeal are as follows:

- 19
20 i. that the Magistrate erred in concluding that Ms Delaney was an expert,
21 since she did not have sufficient qualifications, experience or expertise
22 either in analysing/interpreting telephone data or in deciphering street
23 terms used in the purchase and supply of drugs. Further, she was biased,
24 since she was employed by the Royal Cayman Islands Police Service;
25
26 ii. that the WhatsApp/SMS messages analysed by Ms Delaney were
27 hearsay evidence and thus should not have been relied upon;

- 1 iii. that the Magistrate was wrong to conclude that the “being concerned”
2 charges were not statute barred. The Samsung phone, the data from
3 which formed the principal evidence in respect of these charges, was
4 seized on 15th June 2016. The charges were not laid until 30th May 2017
5 – long outside the 6-month time limit specified in s.78 of the ***Criminal***
6 ***Procedure Code*** 2013;
7
8 iv. that in any event, the delay in commencing proceedings on those charges
9 was such as to amount to an abuse of the process of the court. The
10 Magistrate should thus have stayed the proceedings;
11
12 v. that the Respondent’s application for leave to amend the “being
13 concerned” charges by extending the period of offending up to the date
14 of the Appellant’s arrest on 15th June 2016 should have been refused;
15
16 vi. that the Magistrate erred in concluding that she had jurisdiction to try
17 those charges. The Appellant had earlier been convicted in the Grand
18 Court of a conspiracy to supply drugs during the same period as that in
19 which he was alleged to have “been concerned” and was acquitted upon
20 another such count said to have taken place within the same period. The
21 doctrine of *autrefois* convict /acquit should then have been a successful
22 plea in bar of trial of those charges;
23
24 vii. that no certificates of purity were produced in respect of the drugs with
25 which the Appellant was said to have been concerned (in relation to the
26 third and fourth counts), without which no conviction could properly
27 have been recorded.
28



1 18. I have been greatly assisted in the determination of this appeal by the comprehensive
2 record of the Summary Court proceedings provided by the Magistrate, in which she
3 summarises the evidence placed before her and gives detailed reasons for her various
4 rulings and conclusions. It is right that this Court pays tribute to her for her industry,
5 clarity and transparency. She has provided three helpful and comprehensive
6 documents: (i) reasons for rulings, (ii) verdict judgment and (iii) sentence ruling.

7
8 **ANALYSIS**



9 ***The evidence of Ms Delaney:***

10 19. The admission into evidence of material downloaded from mobile phone handsets
11 and SIM cards in these courts is nowadays entirely commonplace. Valuable
12 evidence, whether for prosecution or defence, often emerges from downloaded data.
13 Such data can provide direct evidence of a defendant's involvement in criminal
14 activity. Very often that data adds to circumstantial evidence in a case, that is to say
15 a number of individual pieces of evidence, the cumulative effect of which is to drive
16 the tribunal of fact to a sure conclusion. Some, but by no means all, of Ms Delaney's
17 evidence amounted to expert evidence, inasmuch as she was giving evidence of
18 matters within her own area of knowledge and expertise which were outside the
19 knowledge and experience of the tribunal of fact. The Magistrate correctly identified
20 at paragraph 17 of the Reasons for Rulings those parts of Ms Delaney's evidence
21 that properly fell under the heading of expert evidence.

22
23 20. Whether any particular witness is competent to give expert evidence is a question of
24 law for the judge to decide, as a matter of admissibility¹. As to this, the Magistrate
25 properly considered Ms Delaney's qualifications and extensive experience, gained
26 over many years. Once it is determined that the evidence is admissible, "the rest is

¹ ***R v Silverlock*** [1894] 2 QB 766

1 merely a question of its value or weight”². The Magistrate applied the correct
2 principles and her conclusion that Ms Delaney did have the necessary expertise
3 cannot be faulted.

4
5 21. It does not follow from the mere fact that Ms Delaney is employed by the RICPS
6 that she was biased. It certainly does not disqualify her from giving evidence, as the
7 Appellant submits. There is no reason to suppose that the Magistrate did not bear in
8 mind, when assessing the weight properly to be given to her evidence, that she was
9 employed by RCIPS.



10
11 22. The Appellant’s submissions were directed particularly to the admissibility of Ms
12 Delaney’s evidence as to what particular words and phrases were likely to mean, in
13 the context of drug dealing. Complaint is made that she “*had no field experience*
14 *with drug users, pricing structures, purchases or quantities in regards to drugs*
15 *subculture*”³. Ms Delaney readily conceded that “I don’t deal directly with addicts
16 or victims or offenders at all.” She explained that she had, nevertheless, gained
17 considerable experience in the course of her work in similar cases with the
18 terminology used in illicit drugs transactions. The fact that she had no “field
19 experience” goes, if anything, to weight rather than to admissibility. In *Nguyen*⁴, the
20 New South Wales Court of Criminal Appeal held that a police officer with
21 considerable experience in investigating the supply of prohibited drugs, and who was
22 a native speaker in the language in which a number of intercepted telephone calls
23 had taken place between alleged drug dealers, could properly give evidence of
24 considerable cogency that persons engaged in drug dealing often speak to each other
25 in code; that certain particular words and expressions which are commonly used in

² *Ibid*

³ Paragraph 20 of Combined Skeleton Arguments and Affidavit

⁴ 173 A. Crim. R. 557 [2007] NSWCCA 249

1 such conversations are commonly used by drug dealers to refer to drugs; and that
2 these words and expressions, as used in the intercepted conversations, could refer to
3 drugs. However, he (or she) could not give opinion evidence that as a matter of fact
4 the words used did refer to drugs.

5
6 23. There is nothing in the hearsay point the appellant seeks to argue. The WhatsApp
7 and SMS messages from third parties are admissible to show the context of the
8 replies attributable to the Appellant, rather than to prove the truth of the contents of
9 the incoming messages. This is rather like a police interview with a suspect; the
10 important evidence is what the suspect says, rather than the questions asked,
11 although these are plainly admissible to give context and meaning to the reply.

12 ***The time limit for bringing the “being concerned” charges***
13

14
15 24. Section 78 of the ***Criminal Procedure Code*** 2013 provides as follows:

16 *“Except where a longer time is specially allowed by law, no offence which is*
17 *triable summarily shall be tried by a Summary Court unless the charge or*
18 *complaint relating to it is laid within six months from the date on which evidence*
19 *sufficient to justify proceedings came to the actual or constructive knowledge of*
20 *a competent complainant.”*
21

22 25. The question for determination was then, when did, in the particular circumstances
23 of this case, *“evidence sufficient to justify proceedings came to the actual or*
24 *constructive knowledge of a competent complainant.”*



25
26 26. As noted above, the evidence supporting the “being concerned” charges was
27 essentially the material downloaded from the Samsung Galaxy. The phone was
28 locked when it was seized; the police did not, at that stage, have the technical
29 wherewithal to unlock it. A recent software update made it possible to unlock the
30 handset and download some but not all of the material on 17th August – certainly not

sufficient material to justify proceeding on the “being concerned” charges. Authorisation was later obtained to send the handset away in order for a full download to be carried out. That full download was received on 1st December 2016.

27. The Magistrate discussed this question and her reasoning at length in paragraphs 25 to 50 of her Reasons for Rulings, concluding that the relevant date was 1st December 2016, the date on which Ms Delaney received a full download from the phone – and thus the charges were laid in time. The Magistrate’s approach to this question and her resolution of it were, it seems to me, entirely appropriate. She reviewed and took into account all relevant authorities. Plainly time did not begin to run as from the date of seizure of the Samsung phone. The prosecution had no ready means of accessing the data on that date. The Magistrate properly directed herself as to the meaning of constructive knowledge, citing a number of authorities, correctly concluding that “*the court has to consider what knowledge [the prosecution] might reasonably have been expected to acquire*”⁵. As was observed by Pill, LJ in ***Letherbarrow v Warwickshire County Council***⁶,

“Knowledge, in my judgment, involves an opportunity for those with appropriate skills to consider whether there is sufficient information to justify a prosecution.”

28. A degree of pragmatism and realism has to be applied to the question of what knowledge a prosecutor might reasonably be expected to acquire. The decision as to whether a complete download of all material contained within a handset and SIM card should be obtained involves balancing the cost against the likely value of the material, the obtaining of budgetary approval and so on. It is, it seems to me, arguable that time began to run sometime after 1st December as, although on that date Ms

⁵ ***Platt v BRB (Residuary) Ltd*** [2014] EWCA Civ 1401

⁶ [2015] EWHC 4820



Delaney was in possession of the downloads, the material she had to consider was substantial – it included 30,000 messages.

29. Albeit in one sense the prosecution could be said to have constructive knowledge on that date, no competent prosecutor could have analysed, still less mastered, that material for some time thereafter. The Magistrate’s decision that the “being concerned” charges were brought within the time specified in s.78 of the ***Criminal Procedure Code*** 2013 was in my judgment correct, albeit that I would, I think, have concluded by a more generous margin.

Abuse of process of the court by reason of delay

30. The argument here is that the delay in obtaining a full download of the phone was such as to constitute an abuse of the process of the court. This argument misunderstands the fundamental principles upon which the court exercises its jurisdiction to stay proceedings as an abuse of process of the court. The power is to be exercised very sparingly. The starting point is that it is the duty of the court to try the cases properly brought before it. A full download was obtained within 6 months of the phone being seized and proceedings for the “being concerned” charges were brought within a year of the defendant’s first arrest on 15th June 2016. It is plain beyond argument that a fair trial of these charges was possible. If there was anything that could properly be described as delay, it could not begin to be said to be “unconscionable.” The facts and circumstances of this case come nowhere near anything that could properly be suggested to amount to an abuse of the process of the court.



1 *The granting of leave to amend the dates of the “being concerned” charge -*
2 *Autrefois acquit/convict*

3
4 31. These two grounds of appeal can properly be considered together. It is a basic
5 principle that leave to amend a charge can and should be given, no matter how late
6 in the proceedings, if – but only if - that causes no injustice to the accused⁷. If there
7 is anything in the *Autrefois* acquit/convict point, leave should not have been granted.
8 If that point is without substance, no injustice would be caused by the amendment.

9
10 32. The Appellant’s submissions here rely upon his trial in the Grand Court upon two
11 allegations of conspiracy to supply cocaine. The dates of those conspiracies fell
12 within the period, as extended by the application for leave to amend, during which
13 the Appellant was alleged to have been concerned in the supply of cocaine - the
14 subject matter of these proceedings. The two conspiracies, with one Alex Ebanks,
15 were restricted to supplies of cocaine on two specific dates – 31st August and 22nd
16 September 2015. The Appellant was convicted by a jury of the first conspiracy and
17 acquitted of the second.

18
19 33. Having been tried by the Grand Court upon those two charges, the Appellant’s
20 argument continues, he cannot again be tried for essentially the same offence. If one
21 conspires to supply cocaine, essentially one is “being concerned” in the supply of
22 cocaine. The Magistrate’s reasoning in rejecting these submissions is to be found at
23 paragraphs 54-59 of her Reasons for Rulings. She correctly directed herself upon the
24 general principles of *autrefois* convict/acquit in accordance with the leading case of
25 *DPP v Connolly*⁸. The crucial point here, as the Magistrate recognised, is that, albeit



⁷ *R v Smith & Others* (1950) 34 Cr. App. R 168, *R v Johal and Ram* (1972)) 56 Cr. App R 348

⁸ [1964] AC 1254 HL

1 charged as conspiracies to supply, the reality was that the two Grand Court counts
2 each involved just one supply on a specific day.

3
4 34. The allegation of “being concerned” the subject matter of these proceedings, on the
5 other hand, was plainly put forward as a continuing offence, extending over a lengthy
6 period.

7
8 35. The Crown’s allegation, fairly and squarely, was that the Appellant was a persistent
9 and regular supplier of drugs throughout the period charged, as evidenced principally
10 by the downloaded material and what was said to be a list of drugs transactions found
11 at his home.

12
13 36. Thus, he was never, in the Grand Court, in jeopardy of conviction of continuing drug
14 supply over a substantial period.

15
16 37. That being so, the suggestion that the Grand Court verdicts operated as a bar to the
17 Appellant’s trial upon the much wider ranging and more serious allegation of “being
18 concerned” over a long period with the supply of cocaine was rightly rejected by the
19 Magistrate, although as she observed, if convicted, the sentence exercise should take
20 account of the sentence passed by the Grand Court for a supply within the “being
21 concerned” period.



22
23 ***The absence of “certificates of purity”***

24
25 38. This submission erroneously elevates a method of proving that a substance was in
26 fact a controlled drug provided by the ***Misuse of Drugs Act*** (the production of a
27 certificate) to a requirement for the nature of the substance in question to be proved
28 in this way. Needless to say, it is pre-requisite to a conviction upon each of the
29 charges faced by the Appellant that the prosecution proves, so that a court feels sure

1 of it, that a controlled drug is involved. There are many ways in which the Crown
2 can seek to prove that – the production of a certificate, pursuant to s.7 of the *Misuse*
3 *of Drugs Act* is one of those ways it can seek to do so, but that is not say that the
4 Crown is obliged to go about things in that way.

5
6 39. Here, the Crown, as it was entitled to do, relied upon circumstantial evidence to
7 establish that the Appellant was dealing in controlled drugs - inviting the court to
8 conclude that there was no other reasonable or proper inference possible from all the
9 evidence placed before the court.

10
11 ***Convictions against the weight of the evidence***

12
13 40. I turn now to deal with the more general and wide-ranging submissions that these
14 convictions were against the weight of the evidence and that no reasonable court
15 could have been sure, on all the evidence, of the guilt of the Appellant. In doing so,
16 I have taken into account the complaints made by the Appellant of Mr Davies’
17 handling of the case. There is no merit in his principal complaint in this regard, that
18 is to say that Mr Davies’ objection to the proposed amendment of the “being
19 concerned” charges was not more strident, since no injustice could properly be said
20 to be occasioned by the amendment and it was therefore both proper and in the
21 interests of justice that the amendment be granted. More generally, despite the
22 Appellant’s complaints of the way in which Mr Davies conducted the case, all
23 relevant and admissible evidence, including that of the Appellant, was fairly and
24 squarely before the Magistrate for her consideration.



1 41. The Crown’s case relied upon both direct and circumstantial evidence. The
2 evidence, taken as a whole, constituted strong evidence against the Appellant on
3 each of the four charges he faced. The Appellant elected to give evidence – and did
4 so at some length. The Magistrate summarised his evidence at paragraphs 59 to 82
5 of her verdict judgment and discussed it in detail in her analysis, starting at paragraph
6 96. Her conclusion, with which this court agrees, that the Appellant’s account “was
7 fraught with contradictions” is unsurprising.

8
9 42. The Magistrate was entitled to reject the evidence of the Appellant. She had the
10 considerable advantage of seeing and hearing from all the witnesses – including,
11 most importantly, the Appellant. She correctly directed herself as to all matters of
12 law. Her analysis of the evidence is clear and unimpeachable. An appellate court
13 should only disturb the findings of the first instance judge regarding the credibility
14 of witnesses in rare cases in which it was certain that the trial judge must have been
15 mistaken⁹. Contrary to the Appellant’s submissions, his convictions were entirely
16 in accordance with the weight of the evidence and there is no reason to fear that they
17 are unsafe. The appeals against conviction are dismissed.



18
19 ***The appeal against sentence***

20
21 43. The Magistrate sensibly started the sentencing exercise she was required to perform
22 with the charge of being concerned in the supply of cocaine, since this was the most
23 serious of all the charges of which the Appellant was convicted. It was in respect of
24 that charge that Ms Delaney returned to the witness box to give further evidence as
25 to the interpretation of material downloaded from the Samsung Galaxy phone. The
26 Magistrate, although recognising that precision was impossible, accepted Ms

⁹ *R v Crawford* [2015] CILR 128

Delaney’s conclusion that at a conservative estimate, the Appellant had “*supplied 413 grammes/14.5 ounces of cocaine over a two-year period to 49 customers.*” This was a legitimate way in which to approach matters although it should be remembered that the “being concerned” charge alleged a period of 20 months (October 2014 to June 2016) rather than two years.

44. The Magistrate further concluded that the Appellant was a street dealer effectively running his own business, supplying users, and, from time to time, buying in bulk to replenish his supplies. This was, in the view of this court, entirely justified on the evidence.

45. The Magistrate properly recognised that despite the fact that they were issued almost twenty years ago, the ***2002 Statement on Tariffs and Guidelines for Sentencing Certain Offences*** remain the starting point when considering sentencing in cases such as this¹⁰.



46. According to those guidelines:

“The tariff for a first such offence, involving less than 2 ounces of cocaine or less than 4 grammes of cocaine base without mitigating circumstances, will be eight (8) years. For offences involving 2 ounces or more of cocaine without mitigating circumstances the tariff will be 10 – 12 years. Fifteen (15) years or more will be imposed where such an offence involves substantial importation or dealing in any way... We would define substantial importation or dealing with any transaction involving several ounces or kilo quantities.”

47. The Magistrate’s conclusion that the appropriate sentencing bracket was then 10 - 12 years was clearly correct.

¹⁰ ***R v Millwood*** Criminal Appeal 30 of 2014

1 48. Having concluded that the appropriate sentence was one of 11 years' imprisonment,
2 she then ordered that the sentence upon the charge of possession with intent to supply
3 cocaine on 15th June 2016 should be served concurrently. This was clearly
4 appropriate, given that it fell within the period covered by the "being concerned"
5 charge. Similarly, it was right to order that the sentence for being concerned in the
6 supply of ganja during the same period should be served concurrently. It was also
7 obviously right that these sentences were ordered to run concurrently with the
8 sentence the Appellant was serving following his conviction of conspiracy to supply
9 in the Grand Court.

10 49. The offence of possession with intent to supply cocaine on 2nd February 2017 could
11 not properly be regarded as part and parcel of the same criminality. This offence
12 was committed whilst on bail for possession with intent to supply cocaine, a
13 substantial aggravating feature. It demonstrates persistence. His arrest in October
14 2016 had not deterred him. Subject to totality, a consecutive sentence was then
15 appropriate.

16 50. This court should vary a sentence imposed by the court of first instance if and only
17 if the sentence was unjustified in law, founded upon a wrong factual basis, based
18 upon matters which should not have been taken into account, or was manifestly
19 excessive or wrong in principle¹¹. In sentencing exercises such as this, when a court
20 is dealing with a number of offences, it is important to stand back and look at the
21 total sentence passed, in order to consider whether it is appropriately reflects the
22 overall offending and all the aggravating and mitigating circumstances. The
23 sentences passed by the Magistrate were, in the view of this court, altogether
24 appropriate, being in accordance with the relevant guidelines. There were no reasons
25 appropriate, being in accordance with the relevant guidelines. There were no reasons
26 appropriate, being in accordance with the relevant guidelines. There were no reasons

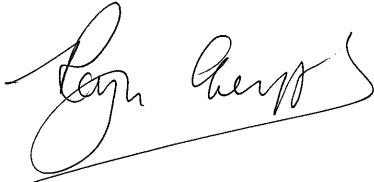
¹¹ *Edwards, McBean, Barnes and Dixon v R* [2001] CILR 334



1 in this case to depart from those guidelines. The sentences were neither wrong in
2 principle, nor manifestly excessive.

3
4 51. The appeal against sentence is also dismissed.

5
6
7 **Dated this the 29th July 2021**

A handwritten signature in black ink, appearing to read 'Roger Chapple', written over a horizontal line.

8
9 **Justice Roger Chapple**
10 **Acting Judge of the Grand Court**