



**IN THE SUPREME COURT OF BERMUDA  
APPELLATE JURISDICTION  
2010 No. 1**

**BETWEEN:**

**LYNDON RAYNOR  
(Police Sergeant)**

**Appellant**

**- and -**

**KENNITH CLIFTON BULFORD**

**Respondent**

Cindy Clarke for the Appellant; and  
Saul Froomkin QC for the Respondent.

**JUDGMENT**

**INTRODUCTION**

1. This is the prosecutor's appeal against the respondent's acquittal by an acting Magistrate on 6<sup>th</sup> January 2010 on a charge of having in his possession equipment fit and intended for use in connection with the misuse of a controlled drug contrary to section 9(2) of the Misuse of Drugs Act 1972<sup>1</sup>. The equipment concerned was five pieces of PVC pipe, which were found under the bed in a locked room occupied by the respondent.

2. On Friday 19<sup>th</sup> March 2010 I dismissed the appeal<sup>2</sup> and, because the matter turned on a point of principle, promised written reasons, which I now give.

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<sup>1</sup> Case No. 09CR00742

<sup>2</sup> On the same date I dismissed an appeal by Mr. Bulford against his conviction on a second charge of permitting the misuse of a controlled drug in premises occupied by him, contrary to section 13(1) of the Misuse of Drugs Act 1972, but allowed his appeal against sentence to the extent that I substituted 6 months immediate imprisonment for the one year imposed by the learned Magistrate. I gave oral reasons at the time which were recorded on the CourtSmart recording system.

3. The evidence was that the PVC pipes were large and about 3 to 4 feet long, and had caps, enabling them to be sealed. They were subsequently examined by the government analyst, who washed out the insides of four of them with a solvent, and found traces of Cocaine in three of them. A long-serving police officer gave expert evidence that PVC piping was used by drug dealers to conceal drugs by burying or submerging in water. Based on that evidence it was the prosecution's case that the pipes had been used to store drugs, and so were equipment fit and intended for use in connection with the misuse of a controlled drug.

4. The offence is created by section 9 of the Misuse of Drugs Act 1972 ('the Act'), which provides:

**“Possession of pipe, equipment or apparatus**

9 (1) No person shall have in his possession any pipe, equipment or apparatus fit and intended for use in connection with the misuse of a controlled drug or the preparation of any such drug for misuse.

(2) Subject to section 29, it is an offence for a person to have in his possession a pipe, equipment or apparatus in contravention of subsection (1).”

5. I am told that this provision is particular to Bermuda and that there are no authorities from other jurisdictions to assist me in its interpretation. That point was made in the leading local case of Burgess v Plant (Crim. App. No. 14 of 1981), where the Court of Appeal said:

“At this stage it is appropriate to remind oneself of the purpose and scope of the Misuse of Drugs Act. It is designed to curb the misuse of drugs for the protection of the community and individuals comprising it from the sinister dangers posed by uncontrolled drug abuse to health and welfare. It is broad in scope and stringent in its measures to combat this deadly menace to society. To that end it prohibits, inter alia, the use, sale, supply, import, export, manufacture and preparation of a controlled drug save as otherwise expressly permitted under the Act. Section 9 carries the matter a stage further in curbing drug abuse by its prohibition directed towards drug related apparatus. This provision is not to be found in the United Kingdom Misuse of Drugs Act which was the model on which the local Act was based and so this court cannot look to the United Kingdom authorities to assist in its interpretation. No case law from any other jurisdiction has been found either. It is clear that this provision has been grafted on to the United Kingdom model (it is suggested that it is taken from a Hong Kong law) to strengthen the local Act in its overall purpose.”

6. The issue on this appeal was essentially whether the use of something to store a drug amounted to its use “in connection with the misuse” of that drug. The respondent’s argument, which I accepted, was that this limb of section 9 should be limited to equipment fit and intended for use in the taking of a drug. That primarily turns upon the definition of ‘misuse’ in section 1(2) of the Act, which provides:

“(2) References in this Act to misusing a drug are references to using it otherwise than as authorized by or under this Act by taking; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human by smoking, inhaling, ingesting or injecting it or any other form of self-administration, whether or not involving assistance by another.”

7. The interrelation between that definition and section 9 of the Act was considered by the Court of Appeal in Burgess v Plant (*supra*) who said:

“It will be noted that this section relates to the possession of two distinct types of “pipe, equipment or apparatus”, namely, those “fit and intended for use” in connection with the misuse of a controlled drug and those “fit and intended for use” in connection with the preparation of a controlled drug for misuse.

“The meaning of misuse of a controlled drug is defined in section 1(2) of the Act in the following terms:

“(2) References in this Act to misusing a drug are references to using it otherwise than as authorized by or under this Act by taking; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human by smoking, inhaling, ingesting or injecting it or any other form of self-administration, whether or not involving assistance by another.”

“The charge is therefore concerned only with articles fit and intended for use in connection with the misuse of a controlled drug. Misuse is confined to taking (as defined). Two sets of articles specified in the charge are, therefore, not properly within the ambit of the charge as laid. One set is the one relating to cigarette cases for holding cigarette papers. Their use is in connection with the storage or carriage – not “taking” as defined. The other set is the one relating to the cigarette machines. Their use is in connection with “preparation” – the other leg of section 9 – and not “taking”. These articles are, therefore, irrelevant to the charge but may well have significance in the context in which the articles properly specified in the charge were found.”

8. In my judgment the decision in Burgess v Plant decided the point<sup>3</sup>, and is binding authority for the proposition that the application of section 9 of the Act is limited to equipment fit and intended for use in connection with the taking of drugs (or the preparation of drugs for taking) and does not extend to equipment for use in connection with the storage of drugs. That is enough to dispose of this appeal, but there are three additional points that can be made in support of the respondent's contention.

9. First, the section appears to contemplate equipment for taking drugs, because the list of prohibited things begins with "pipe" (which in the context plainly means a pipe for smoking and not the sort of pipe involved in this case). That fortifies the conclusion that "equipment or apparatus" refer to things of a similar nature, namely things for taking drugs.

9. Second, section 33 of the Act introduces various presumptions, including the following:

**"Presumptions relating to places used for drug misuse**

33 (1) Whenever any pipe, equipment or apparatus fit and intended for use in connection with the misuse of a controlled drug is found in any premises or place it shall be presumed, until the contrary is proved, that such premises or place is used for the purpose of misusing a controlled drug."

That reinforces the link between the equipment and the taking of drugs. It is noteworthy that this statutory presumption does not extend to equipment fit and intended for use in connection with the preparation of drugs (which is the other limb of section 9). That suggests that the presumption is based on the perfectly rational inference that if you find equipment for taking drugs in premises you can presume that such premises are used for the purpose of taking drugs. But the statutory presumption does not extend to inferring that if you find equipment for the *preparation* of drugs in premises then drugs are consumed there. It would, therefore, be odd indeed if equipment for use in the connection with the misuse of drugs could extend to include storage containers, because if it did the statutory presumption would

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<sup>3</sup> That decision was also referred to in the later Court of Appeal case of Simons v R (Crim. App. No. 3 of 1985), upon which the Respondent also relies, but the most that can really be said about that case is that the Court simply repeated the statutory definition of 'misuse' without further addressing the point, the case turning upon the way the particulars of the offence were framed.

apply to premises in which storage containers were found, but not to premises in which equipment for preparation was found.

10. Third, if the draftsman of section 9 had wanted it to apply to anything used in connection with drugs, he knew how to achieve that. Thus, when it comes to forfeiture, the power to forfeit is expressed in the widest terms:

**“Forfeiture**

37 (1) A court may (whether or not any person has been convicted of such offence) order to be forfeited to the Crown —

(a) any money or thing (other than premises, a ship exceeding two hundred and fifty gross tons or an aircraft) which has been used in the commission of or in connection with an offence under this Act;”

The expression there employed is “used in the commission of or in connection with an offence”. That would have been sufficient and apt to catch storage equipment, but that is not the expression used in section 9.

11. For those reasons I consider that section 9 of the Act is limited to equipment either fit and intended for actually taking drugs or fit and intended for preparing drugs to be taken. It does not extend to equipment for the storage of drugs, and so, taking the Crown’s case at its highest, did not extend to the PVC pipes found in this case. I therefore dismissed the Crown’s appeal.

Dated this 31st day of March 2010

Richard Ground  
Chief Justice