

BARABDOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Criminal Appeal No. 32/1996

BETWEEN:

PATSY PATRICIA JORDAN

(Appellant)

AND

THE QUEEN

(Respondent)

Before: The Honourable Mr. Justice George C.R. Moe, Chief Justice (ag.), The Honourable Errol DaC. Chase and The Honourable Mr. Justice Colin Williams, Justices of Appeal

July 2, 1997

August 17, 2000

Mr. T. Estwick and Mr. K. Best for Appellant

Mr. O. Springer for Respondent

DECISION

On July 31, 1996, the appellant was convicted on the single count of an indictment charging that sometime between the 12th day of October, 1994 and the 13th day of October 1994, in the parish of St. Michael, she stole 27 boxes of Trental tablets, belonging to the Crown in right of its Government of Barbados. She was sentenced the same day to one year imprisonment and on the 27th August, 1996, she was granted bail

in the sum of \$5,000 with two sureties in like sum.

Essentially, the evidence led by the prosecution in support of the Crown's case against the appellant was to the effect that on October 13, 1994, the appellant was found in possession of 27 boxes of Trental tablets, a quantity which was the same as that discovered missing from the stock of drugs in the Pharmacy at the Sir Winston Scott Polyclinic on the morning of October 13, 1994.

The circumstances giving rise to the charge against the appellant are disclosed by the evidence of the following witnesses.

Lennox Prescod, the then Director of the Barbados Drug Service, testified that on October 12, 1994, he had a conversation with Shevonne Bynoe-Clarke, a clerical officer at the Polyclinic, and that during the conversation he instructed her to check the stock of drugs in the Pharmacy. On the following day, October 13, 1994, he was informed of a situation which resulted in his making a report to the Police.

Shevonne Bynoe-Clarke testified that on October 12, 1994, after the pharmacy was closed at 6 p.m., she did a physical check of the pharmaceutical drugs in the pharmacy with the assistance of the pharmacist in charge, Trevor Richards, on the instructions of the Director. They found the quantity of the drug Trental to be 123 boxes and this quantity was later recorded on the stock card, dated and signed. After making the pharmacy secure, she and Richards left together.

On her return to work on the morning of October 13, 1994, she continued checking the stock and discovered that the quantity of the drug Trental which she had checked the evening before was then 103 boxes; she drew the discrepancy to the attention of Mr. Richards who gave her certain instructions and she later spoke to the Director, Mr. Prescod about the matter. She made further enquiries from the pharmacists on the staff to ascertain whether or not any Trental prescriptions were dispensed by them. The stock card showed that a quantity of 20 boxes of the drug had been issued, but there was no signature to the transaction. Enquiries of the pharmacists, Mr. Richards, Ms. Watson and Ms. Hunte as to whether they had made any alterations to the stock card indicated they did not. She further testified that the appellant was at work on October 13, but she could not recall whether she had made any enquiries of the appellant as to what was on the stock card. She concluded her testimony in chief as follows:

"On the 13th she (the appellant) left earlier in the morning to go to the Barbados Drug Service. She returned about 10 minutes after and left again after 11.00. She left with her netball bag and her pocket bag. The netball bag is a blue background flowered bag with brown handles. I did not see her come back. The only person who can dispense is Mr. Richards. I did not send her anywhere on the 13th October to deliver Trental tablets. The value of the missing tablets was over \$1 500. The boxes have a white background with red writing. I was shown the boxes at the police station. I made statement re the boxes. I gave no one permission to take those boxes."

She later identified a bag which was marked "Ex C" as the netball bag that the

appellant had left the Clinic with on October 13, 1994.

In her evidence under cross-examination, Bynoe-Clarke indicated that when the appellant took up her bag she did not hear her say "wait this bag very heavy" and she did not respond "you forget I tell you that I gine put something in there for you to carry by Cave Shepherd for Ian". She further testified that she knew Ian but she did not introduce him to the appellant as her cousin two weeks before October 13, 1994; nor did she ever give the appellant Clusterel cough syrup to take to Ian.

Trevor Richards recalled that at about 6.30 p.m. on October 12, 1994, he and the clerical officer, Bynoe-Clarke were stocktaking and that she recorded on the stock card 123 boxes of Trental. He locked the pharmacy and kept the key. He further testified that on the following day, October 13, he got to work close to 9 a.m. and the clerical officer spoke to him and he discovered that the stock card which they left showing 123 boxes the evening before was now showing 103 boxes. As a result, he and Ms. Bynoe-Clarke rechecked the stock in the storeroom and found that they were only 103 boxes. They then checked the dispensary area and found that there was only one box there. On the evening before 8 boxes were there. In total the boxes missing from the storeroom and the dispensary were 27. Thereafter, he had a conversation with the Director of the Drug Service, Mr. Prescod, and later in the day about 1.10 p.m. while on the way to his car in the car park at the Polyclinic, he saw the police. What transpired at that point appears in this portion of his testimony:

" I saw about 3 men approach the Polyclinic van which had 2 members of staff in it, namely Ms. Patsy Jordan and Ms. Marina Watson. I went closer and heard one of the men say they were police officers and they asked the accused to come to them or with them. One of the men asked her to open the bag she was carrying. It was a flowered bag, bluish in colour. She opened the bag. The bag contained 2 plastic bags and one of the officers asked me in the presence of the accused if I recognised the contents of the bag. I told them they were the same type of drugs missing from the pharmacy: Trental. The accused said that she had some medicine to take to somebody. They were counted in my presence and in the presence of the accused.

They were 27 boxes all marked Trental tablets. They were the property of the Barbados Drug Service, the property of the Crown. The price per box was \$61.76 per box. They asked Ms. Jordan to accompany them. She went with the police and

I went back to the pharmacy."

Trevor Richards further testified that the duties of the appellant did not include delivering drugs anywhere, that only a pharmacist could dispense drugs, that it was illegal for a pharmacist to delegate the dispensing of drugs to anyone, Trental is a prescription drug and that he did not give anyone permission to dispense or remove those

boxes from the premises. He also testified that the appellant was at work on October 13, 1994 and that it was about 1.10 p.m. when she left for lunch.

He indicated that he had initialled the boxes sometime on October 13, and that he would recognised the bag. He identified Ex "C" as the same bag the appellant had and indicated that it contained 2 plastic bags and it had his initials on it.

The plastic bags were marked Ex "B" 1 and 2, and the boxes of Trental tablets were marked A1 to 27.

In his evidence under cross-examination, Richards indicated that he heard when the police asked the appellant to open her bag and that she opened it and the police showed him the contents of the bag i.e 2 plastic bags. He further testified that when the police officer showed him the boxes and he saw a box marked "Trental" he expected the contents to be "Trental".

Police Constable Charles Cumberbatch testified that as a result of information received he went on duty with P.C. Forde to the Sir Winston Scott Polyclinic. On arrival he had a conversation with Trevor Richards, thereafter he conducted certain investigations. At about 1.10 p.m. he saw the appellant leaving the polyclinic, she was carrying a multi- coloured bag which was bulky and he approached the appellant and spoke to her. He further testified as follows:

"I told her that we were Police Officers in plain clothes investigating a report to the Police by Trevor Richards, the Head Pharmacist, that sometime on the said day someone had stolen 27 boxes of Trental tablets valued at \$1,667 .52, the property of the Crown from the said Polyclinic. I then asked the accused what she was carrying in the bag and she replied: "I got some medicine in here that somebody gave me". The accused then open said bag in the presence of P.C. Jordan (sic), Trevor Richards who had just joined us and I then untied the 2 plastic bags and I noticed that the bag contained several boxes. I further examined the boxes and noticed that together they were 27 boxes of Trental tablets. I then asked the accused to give an account for being in possession of the tablets and cautioned her. She replied: "I carrying these for Ian that does work at a Pharmacy."

Constable Cumberbatch's further testimony is that in the presence of P.C. Forde and the appellant he showed Trevor Richards the 27 boxes of Trental tablets and asked him what he could say about them and Richards replied: "These are the same tablets that missing from the Pharmacy." He then asked the appellant if she heard what Trevor Richards had said and under caution the appellant replied: "I am going to show you the man that gave me these."

The evidence is that while at the Criminal Investigation Department, Constable Cumberbatch informed the appellant in the presence of W.P.C. Waldron of her right to counsel and that she replied: "I ain't got nothing to hide so I ain't want no lawyer." Cumberbatch's further evidence is that he asked the appellant whether she wanted to give a statement in connection with the matter and cautioned her to which she replied "yes". He then recorded her statement in writing.

The statement which was admitted in evidence after the holding of a voir dire reads as follows:

"Last Monday Shavone Bynoe-Clarke the Clerical Officer who work at the Clinic with me told me that she have something for me to give Ian for her. Shavone introduced me to Ian about two weeks ago. She told me she wanted me to give Ian later in the week. Shavone telephone me last night and told (me) to bring to work my netball bag to carry the thing for Ian. This morning I went to work at about 7.30. Sometime later I went over to the Drug Service and Shavone came over there and told me that she had the things for Ian in the storeroom. We went back into the clinic Shavone and I put the two plastic bags with the things in my netball bag. I knew that the plastic bags contain some kind of medication but I do not know what type. About 1.10 p.m. as I was leaving for lunch I took up my netball bag with the medication and as I was leaving Shavone told me to meet Ian by Cave Shepherd, he gine be waiting there to collect the things. This is the second time Shavone gave me medicine to give Ian. About two weeks ago Shavone gave me 50 Paramol Tablets and two 100 ml. of Tuscosed to give Ian and I meet him opposite Cave Shepherd and gave them to him. A couple days after I met and gave Ian the medicine. Shavone gave me three hundred dollars and told me to take it. I asked Shavone what the money was for and she told me take it and buy

whatever I feel like. I gave the three hundred dollars to Ricky."

At the close of the prosecution's case, the appellant elected to give evidence from the witness stand. She testified to the effect that on October 13, 1994, she got to work at about 8.15 a.m. Sometime after she left the Polyclinic and went to the Drug Service in Jemmotts Lane to deliver some drugs for transfer to Maurice Byer Polyclinic. When she

was returning from the Drug Service she met Shevonne Bynoe-Clarke who asked her to accompany her back to the Drug Service to collect some supplies for the Polyclinic. On their way back to the Polyclinic, Bynoe-Clarke said to her: "Patsy don't forget you are dropping a parcel to my cousin Ian for me when you are ready to go with the van driver ... he would be by Cave Shepherd by the cosmetic section by the door waiting." The appellant's further testimony is that Bynoe-Clarke indicated that she had put the parcel in the appellant's netball bag. According to the appellant's evidence she had carried the netball bag to work that day to have the zip and the bag repaired at the Fairchild Street Market and had left it on top of the Polyclinic counter next to her handbag when she went

to the Drug Service. When she came back from the Drug Service she never got the chance to go back to her desk because she was asked to help out in the front and she was the only drug attendant assisting the Pharmacists.

The appellant's testimony further indicated that she had worked at the Polyclinic for over a year, that she had been into the cubicles in the storeroom area where medication is kept on the shelves and that she had seen Trental there. At lunch time she went and took up her bag; it felt heavy and she said to Shevonne:

"Wait, what you put in here, my bag is very heavy and you fix my zip too."

Shevonne said to her "that is the same parcel I told you of." The appellant also testified that she did not have time to open the bag because the van driver was hurrying her up to go to lunch. While in the van with the driver, three policemen came to the van. Constable Cumberbatch, whom she had known before that day, asked her if she was Patsy Jordan and told her he wanted to have a word with her. She got out of the van with both bags and went to the car with Constable Cumberbatch who told her that they were police officers and he wanted to look into her bag. While in the car she opened the bag and her further testimony is as follows:

"Inside my bag I saw a plastic bag tied. I opened it and there was another bag tied. I opened it and saw what appeared to Trental. The things were not taken out at that time. Only me went to the police car. P.C. Cumberbatch asked me to come with him to central which I did. He took me inside a room at the Criminal Investigation Department. No other person was inside this room. P.C. Cumberbatch was asking me where I got the contents from. I told him that Shevonne is who ask me to take the contents to her cousin. I told Cumberbatch come and let us go down by Cave Shepherd and let me show you the person. He said I am nothing to do with the person I am something to do with you because I found you with them. He told me I have to give a statement and I told him I was not giving a statement. ..until I had an attorney present. "

The appellant indicated that while she was at the police station her husband spoke to her on the telephone and asked what happened that she was at the station and she told him she did not know. She also indicated that the police took out the boxes from her bag and showed her.

After speaking to her husband Constable Cumberbatch told her that she had to give a statement, he was going to make sure that her husband was charged with obstructing justice because he had told her not to give a statement. The threat affected her since she had no intentions of giving a statement. The appellant also gave evidence alleging other acts of misconduct on the part of the police officers in obtaining the statement which she signed.

Maria Watson gave evidence on behalf of the defence. Her testimony is that on October 13, 1994 she was going to town and the appellant told her that she was going home in her lunch hour. They got into a van which was parked outside the main entrance to the Polyclinic. A gentleman approached the van, asked for Patsy Jordan and she got out of the van. They waited a bit and then the van driver dropped her to town. She had seen the appellant with the bag before she got into the van... she saw it in her hand. To the best of her knowledge, the appellant did not do favours for Mrs. Bynoe-Clarke. On the 13th the appellant was working in the Pharmacy booth behind the cubicle and she was sitting beside her. There was a cubicle behind her with a shelf and the Trental is kept there along with a number of other drugs.

Her evidence in re-examination is that the appellant told her she was going home for lunch and she did not mention anything about the Fairchild Street Market.

Having abandoned a number of grounds, counsel for the appellant was granted leave to argue the following grounds:

"10. the learned trial Judge erred in law when he declined or refused to ask for or order the 27 boxes (if they were 27) or any boxes of Trental Tablets to be opened in the Court with the result that the learned trial Judge, counsel for the crown nor counsel for the defence never saw whether the boxes in Court contained the tablets for which the appellant was charged for stealing or contained any tablets or anything capable of being stolen or appropriated at all;

9. that the verdict of the jury is, in all the circumstances of the case and in particular taking into consideration ground 5, unsafe or unsatisfactory and should be set aside;

5. the learned trial Judge misdirected the jury and, as a result, prejudiced the case for the defence in that when it was put to him by both counsel for the defence in the presence of counsel for the crown that the Foreman of the jury on the first day of the trial was heard by two persons who were named to His Lordship saying, during the morning adjournment that, counsel for the defence is talking too long that he is getting a headache and is hungry or words to that effect. The said words having been overheard by two persons who reported the same to counsel for the defence and the same was reported to the learned trial Judge and the names of the said two persons who so heard the Foreman having been given to him, took time to consider the said report instead of discharging the jury continued the trial and named counsel who made the report to him in the presence of the jury and thereby prejudiced the jury against the defence.

11. the sentence imposed is excessive."

Ground 10

Counsel for the appellant contends that there was no proper identification of the 27 boxes of Trental allegedly stolen from the polyclinic, that pages 19 and 20 of the record do not indicate that Mr. Prescod identified the boxes of Trental, that there was no evidence to indicate that the 27 boxes were the property of the Crown and that there was no nexus between the things produced in Court and the taking of the things from the appellant.

In the course of his summation the learned trial Judge reviewed the essential features of the evidence that was led before him and turning to the evidence of the pharmacist in charge of the polyclinic, Mr. Trevor Richards, he directed the jury at pages 6, 7 and 8 of the record as follows:

"The next witness was Trevor Richards. He confirmed what Mrs. Bynoe-Clarke told us about leaving 123 boxes of Trental in the pharmacy on the evening of the 12th and on the following day he said Mrs. Bynoe-Clarke brought it to his attention that the stock-card they left showing 123 boxes were now showing 103. As a result they rechecked the stock and he told you that on the evening of 12th there were 8 boxes of trental in the dispensing area and of those eight there was only one there on the morning of the 13th so that makes a total of 20 missing from the store area and 7 missing from the dispensing area. He said sometime about 1.10 on the 13th, he was going to his car in the car park and he said about three men approached the polyclinic van which had two members of staff in it, namely Miss Patsy Jordan and Miss Marina Watson. He went closer and he heard one of the men say that they were police officers and they asked the accused to come with them and one of the men asked her to open the bag she was carrying. Now he said she opened the bag and the bag contained two plastic bags and one of the officers after looking into the bag asked me in the presence of the accused if I recognised the contents of the bag. I told him they were the same type of drugs missing from the pharmacy -Trental. The accused said she had some medicine to take to somebody. They were counted in my presence and in the presence of the accused. There were 27 boxes all marked Trental tablets."

The learned trial Judge then reminded the jury of the evidence of P.C. Charles Cumberbatch as follows (page 7 of record):

"He said that on the 13th October, 1994 as a result of information received he went on duty with P.C. Forde to Sir Winston Scott Polyclinic. He said that on arrival they were met by and had a conversation with Mr. Trevor Richards and as a result they conducted certain investigations and at about 1.10 p.m. he saw the accused Patsy Jordan leaving the said polyclinic via the front entrance carrying a multi-coloured bag. He also noticed that this bag was bulky.

P .C. Forde and I approached the accused and I told her that we were police officers in plain clothes investigating a report made to the police by Trevor Richards that sometime on the said day, someone had stolen 27 boxes of trental tables valued at \$1,667.52 cents the property of the Crown from the said polyclinic. I then asked the accused what she was carrying in the bag and he recorded her reply in his notebook and he referred to his notebook and told you that the accused said:

"I got some medicine in here that somebody gave me."

The learned trial Judge continued:

"Now this is important because you will recall that the accused tells us that she didn't know what was in the bag until she opened it."

The learned trial Judge then referred to the evidence of Trevor Richards and directed the jury as follows (page 7 of record):

"Now this is what Trevor Richards told us..."The accused said that she had some medicine to take to somebody."

So he supports P .C. Cumberbatch that the accused said it was medicine. Cumberbatch said she said "I got some medicine in here that somebody gave me". The accused then opened the said bag in the presence of P .C. Forde and I, and Trevor Richards who had just joined us. I then untied the two plastic bags and I noticed that the bags contained several boxes. I further examined the boxes and noticed that together there were 27 boxes of Trental tablets. I then asked the accused to give an account for being in possession of the tablets and cautioned her and she replied:

"I carrying these for Ian that does work at a pharmacy."

In the presence of P.C. Forde and the accused, I showed Trevor Richards the 27 boxes of Trental tablets. He said:

"These are the same tablets that missing from the pharmacy."

I then asked the accused if she heard what Trevor Richards had said, cautioned her and she replied:

"I am going to show you the man that gave me these".

As to the submission that there was no evidence indicating that the 27 boxes of Trental were the property of the Crown and that Mr. Prescod did not identify the 27 boxes of Trental, the record discloses that in the course of his evidence, Trevor Richards said at page 28: "They were 27 boxes all marked Trental tablets. They were the property of the Barbados Drug Service, the property of the Crown. I initialled the boxes sometime on the 13th. I would recognise the bag."

The following note then appears at page 28 of the record:

"Witness is shown Exhibit "C" and says, this is the same bag the accused had. It contains 2 plastic bags. My initials are on it. Plastic bags marked Exhibit "B" 1 and 2, boxes marked A1-27."

In his directions to the jury in relation to the boxes of Trental, the learned trial

Judge said:

"Now Cumberbatch said that the bag contained 27 boxes of Trental tablets -that is what he said. Because the defence is suggesting to you that we haven't opened them and you don't know what is inside of those boxes, but this is the evidence of Cumberbatch, that the bag contained 27 boxes of Trental tablets and he told us he was producing 27 boxes of Trental tablets, and that these boxes have been produced in evidence and it is open to you when you retire if you want to check it for yourselves, you are at liberty to take it with you. The Crown was quite prepared to leave it there with Cumberbatch's evidence and to ask you to accept Cumberbatch's evidence that there were the 27 boxes of Trental tablets, but it is there and you are at liberty to take it with you and check for yourselves."

The accused herself said just before the end of the cross-examination (page 43):

"First noticed something in my bag when I went to take it up to go to lunch. Shevonne told me she put something in my bag... The police found the boxes in my bag but I didn't put them there. ..yes, Ms. Bynoe-Clarke planted drugs in my

bag."

In our view, there was ample evidence on which the jury could find that the 27

boxes all marked Trental tablets found in the possession of the appellant on October 13, 1994 were the property of the Barbados Drug Service and that they were those that were missing from the stock at the Sir Winston Scott Polyclinic on the morning of October 13, 1994.

There is therefore no substance in this ground of appeal. Nevertheless, we consider that we should comment on the Trial Judge's invitation to the jury, if they wish, to open the boxes of Trental when they retired in order to check the contents. It is our view that, if the jury accepted the invitation, the jury would be privy to evidence that neither prosecution nor defence counsel was able to deal with, contrary to the well-established rule against a jury considering any new evidence after they have retired. But, as we have stated already, there was ample evidence on which the jury could return the verdict that they did, so we have no difficulty in applying the proviso to overcome any irregularity involved in the Trial Judge's invitation to the jury.

Ground 9

The evidence relied upon to support the Crown's case was that 27 boxes of Trental tablets were missing from the stock of drugs at the Sir Winston Scott Polyclinic on the morning of October 13, 1994, that 27 boxes of Trental tablets were also found in the appellant's possession at about 1.10 p.m. the same day and that the appellant made oral statements and gave a written statement to account for her possession of those 27 boxes.

In summing up the case to the jury, the learned trial Judge instructed them as to the law relating to the offence as charged, the burden and standard of proof and the presumption of innocence. As to the appellant's sworn evidence, he instructed them how they should assess and weigh that evidence. No complaint is made as to the Judge's treatment of these matters.

As regards the oral and written statements, he directed the jury as follows:

"Now concerning the oral statements attributed to the accused, you must first ask yourselves whether those statements were in fact made and if you are satisfied that they are made, then you must consider what do these words mean? What do these oral statements mean? (page 10 of the record)."

Before reviewing the sworn testimony of the appellant, the learned trial Judge told

the jury:

"...The accused gave sworn evidence and you have to consider and assess the evidence of the accused with the same judgment and in the same way that you consider and assess the evidence for the prosecution and determine what credit or

what weight you will attach to it (page 11 of the record)."

Earlier in his summation, while reviewing the evidence of P.C. Cumberbatch, he

said at page 9 of the record:

"Now I read that cross-examination in full because the accused when she was in the witness box made some very serious allegations against P. C. Cumberbatch. Allegations of indecent behaviour on his part towards her. You will recall those allegations and none of those allegations were put to P. C. Cumberbatch. No suggestion was put to him that he did anything indecent towards the accused. That is why I have read you his cross-examination in full."

Towards the end of his summation the learned trial Judge said at page 18:

"I will now put to you the case for the defence: The case for the defence as far as this statement is concerned is that it is not a voluntary statement, that she was forced by the police officer to sign it. Well of course if you believe that or if you are in doubt about it, well then of course you wouldn't pay any regard to that at all, if you think she was forced to sign it or if you are in doubt about it, then of course you will pay no regard to it whatsoever.

The case for the defence further is that the first time she discovered what was in that bag was when P.C. Cumberbatch told her to open it. So somebody, perhaps Bynoe-Clarke, put or planted those drugs in her bag and she just feels that this bag is very heavy, but she doesn't know what is in it and she said: "Chevon (sic) what is this you put in my bag, my bag very heavy, and Shevonne said: "You remember I told you I have something for you to take to Ian?" So she is innocently carrying that bag when the police approached her. Again of course if you believe that or if you are in doubt about it, well then of course you will have to find her not guilty. That is the case for the defence. If you are left in a state of reasonable doubt, you would have to find the accused not guilty."

In our view, the learned trial Judge dealt adequately in his directions to the jury with the issues raised in support of the defence and we therefore find no merit in this ground of appeal.

Ground 5

This ground relates to all incident which had occurred during an adjournment of the trial and which was drawn to the attention of the learned trial Judge in Chambers by counsel for the appellant and to the way in which the learned trial Judge dealt with the matter in open Court.

The submission is that having been made aware of the incident, the failure of the learned trial Judge to discharge the jury and to discontinue the trial was such as to produce a likely prejudice to the appellant's case being accorded a fair trial.

At page 24 of the record, the following appears:

"Judge's Note:

Mr. Atwell informed me in Chambers before resumption this morning that he was told by the accused that last Friday after the adjournment she overheard the foreman of the jury saying that Mr. Atwell was slow and boring. I informed the jury on resumption that Mr. Atwell had informed me that the accused had told him that she overheard one of them talking about the case, and reminded them of the caution I usually give them. It had been agreed in Chambers with Mr. Atwell that this is what I would say to the jury. Miss Babb for the Crown was present."

No contention is raised as to the correctness of the foregoing note and it therefore reflects the agreement reached with counsel as to the way in which the matter should have been disposed of. In any event, the alleged remarks seemed to have been directed at the style adopted by counsel in presenting the case for and on behalf of the appellant, and had nothing to do therefore with the merits or final outcome of the trial.

In our view, the statement by the learned trial Judge to the jury that:

"Mr. Atwell had informed me that the accused had told him that she overheard one of them (emphasis added) talking about the case...

could hardly be a sufficient ground to warrant a discharge of the jury in the light of all the evidence that was before the Court or to have prejudiced the chances of the appellant of a fair trial.

The ground of appeal fails.

In the result, the Court having found no substance in any of the grounds argued against the appellant's conviction, the appeal against conviction fails and the conviction is accordingly affirmed.

Ground 11

Counsel contends that, given the circumstances, the sentence is excessive and should be varied by this Court.

At the time of her conviction and sentence, the appellant had no criminal convictions recorded against her, and she was sentenced to a term of imprisonment for one year to run from July 31, 1996. On August 27, 1996, she was granted bail in the sum of \$5,000 with two sureties in like sum.

The record of trial discloses that the appellant would have been aged 37 at about the time of conviction and that she was the mother of 6 children. She had been suspended from her employment as a Drug Attendant with the Barbados Drug Service and placed on half-pay, presumably pending the outcome of her trial. According to the record, the Court also made a restitution order in relation to the 27 boxes of Trental tablets.

In the light of all the circumstances, we are of the view it was harsh to impose a term of imprisonment and that a fine of \$2,500 should be substituted.

The fine is payable within 6 months from today's date, in default the appellant shall serve a term of imprisonment for 6 months.

Chief Justice (ag.)

Justice of Appeal Justice of Appeal