

24/5/10
Cooke

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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3
4 BETWEEN: HAROLD EDWARD QUEST

Indictment No: 6/09

5
6 AND: REGINA

Appellant

Respondent

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9 Coram: The Hon. Mr. Justice Cooke

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11 Appearances: Ms. Lucy Organ for the Appellant
12 Ms. Nicole Tyson-Petite for the Crown

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14 Heard: 21st May 2010

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17 JUDGMENT

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20 1. The appellant was on the 26th February 2009, convicted of charges including (a)
21 importation of a controlled drug (ganja) contrary to section 3 (1) (a) of the
22 Misuse of Drugs Law (2000 Revision) and (b) possession of cannabis (ganja)
23 with intent to supply contrary to section 3 (1) (a) of the Misuse of Drugs Law
24 (2000 Revision).

25
26 2. The genesis of these charges was the discovery of what has been designated a
27 Jamaican canoe in the waters in the vicinity of South Sound, Grand Cayman.
28 This was on the 29th September 2008 and the sighting was at about 6:30 am. At
29 about that same time PC Caputo, acting on information, intercepted the appellant
30 on the South Sound Road. He was "soaking wet". The canoe had a cargo of
31 some 192 lbs of ganja. At his trial, the appellant admitted that articles which
32 belonged to him were found on the canoe. However, his stance was that those
33 articles had been placed there prior to his boarding the canoe which by prior

1 arrangement was to take him to Mexico. From there he intended to enter the
2 United States of America. He had left St. Ann in Jamaica by canoe and had been
3 in Grand Cayman since Friday 25th 2008 staying with a friend “Derrick Fuller”
4 awaiting the arrival of the craft to take him to Mexico. The Jamaican canoe with
5 the ganja was not the one which had transported him to Grand Cayman.
6 Unfortunately, for him, his trip to Mexico was frustrated as the canoe
7 encountered difficulties and he had to return to shore. His efforts, along with
8 others on board to extricate the canoe from the reef were unsuccessful. He knew
9 nothing about the ganja on board the canoe.

10
11 3. The appellant’s contention on appeal was stated in the following terms:

12
13 2.1 *It is submitted that there was no evidence upon which Magistrate Nova*
14 *Hall could conclude so that she was sure that the defendant imported*
15 *ganja into the Cayman Islands. It is further submitted that there is no*
16 *evidence upon which Magistrate Nova Hall could conclude that the*
17 *Appellant was in possession of the ganja or indeed had any intention to*
18 *supply it.*
19
20

21 4. For convenience, I will categorise the complaints as (a) the importation ground
22 and (b) the possession ground. Counsel for the appellant conceded at the start of
23 her oral presentation that failure in respect of the importation ground presaged a
24 similar result as regards the possession ground. I will deal, firstly with the
25 importation ground.

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27 5. It was submitted that:

28 *“There is no evidence that the ganja in question was imported into the Cayman*
29 *Islands”.*
30

1 Some evidence pertaining to this issue may be thus listed:
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- 4 (i) The Jamaican canoe was within the jurisdiction of the Cayman Islands.
5 (ii) On this canoe were strapped packages of ganja. Some of these packages
6 were readily visible on board – others were in a hatch. The amount as
7 stated earlier was not miniscule.
8 (iii) The canoe had a built-in compartment for fuel storage. There were also
9 drums containing fuel.
10 (iv) Attached to the canoe were two “Yamaha” outdoor motors to provide
11 propulsion.

12 It would seem incontestable that the craft was equipped for an illicit seafaring
13 excursion. Applying the most generous approach there were two possibilities.
14 Either the canoe had reached its destination or had just been loaded in preparation
15 for an outward voyage. The fact that at least one of the packages was ripped
16 revealing its contents of ganja would seem inconsistent with a recent loading as
17 any such damage, I imagine, would have been repaired. Further local knowledge
18 is to the effect that ganja is not cultivated in the Cayman Islands at least not to
19 the extent whereby there could be such a substantial amount as was found on the
20 canoe.
21

22
23 6. The Learned Magistrate rejected the account of appellant as to his presence in
24 Grand Cayman as she had: “*difficulty with the inconsistencies in the defendant’s*
25 *testimony*”. It is unnecessary for me to list these inconsistencies as there is no
26 challenge that there was any error in having no regard to the appellant’s

1 explanation. On board the canoe were the appellant's shoes and his atlas entitled
2 "Phillips Certificate Atlas for the Caribbean". As to this (the atlas) the Learned
3 Magistrate made a critical finding. This was:

4
5 *"I find that the defendant had an atlas on board the boat because he was*
6 *in charge of navigating the boat".*
7

8 The Learned Magistrate also made another very significant finding in these
9 terms:

10
11 *"The only evidence about the origin of the boat establishes that it came*
12 *from Jamaica. From these findings I conclude and find as a fact that the*
13 *ganja was imported from Jamaica on the single boat in the case, which*
14 *boat was navigated by the Defendant".*
15

16 The appellant sought to criticize the first sentence in the excerpt just reproduced.

17 The stricture was stated to be that the fact that the canoe was "Jamaican" did not
18 mean that it must have come from Jamaica. In my view the word "origin" as
19 used in this passage is not descriptive but rather to specify the point of departure
20 of the canoe. "The only evidence" came from the appellant when he said he had
21 left from St. Ann in Jamaica on the previous Friday.

22 Having made these findings to which the Learned Magistrate was entitled there
23 was clearly an importation within the meaning of that charge and the appellant
24 was complicit in that exercise. A verdict of guilty was inevitable in relation to
25 the possession with intent to supply charge, as the Learned Magistrate said:

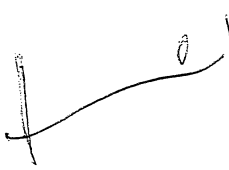

26
27 *"The quantity of ganja excludes the possibility that it was for any other purpose*
28 *other than supply".*
29

30 I therefore dismiss the appeal against convictions.

1 7. The appellant was sentenced to 4 years imprisonment in respect of charge of
2 possession with intent to supply. This the appellant complains is excessive. The
3 Learned Magistrate convicted the appellant on various charges. In respect of one
4 charge she made no finding. It is imperative that there must be a verdict in
5 respect of each charge which is preferred. Further it is not permissible that after
6 conviction the Magistrate can determine that "*No separate penalty ordered*".
7 The underlying basis for these two comments is that without coming to a verdict
8 and imposing a sentence, the proceedings before the Court in respect of a
9 specified charge will not have come to finality. Of course what I have just said
10 is subject to section 41 of the Penal Code (2007 Revision) which exceptionally
11 provides for the discharge of an offender in specified circumstances without
12 pronouncing a verdict of conviction nor imposing the sentence allowed by law in
13 respect of the charge(s). In this case on the charge of importation no penalty was
14 imposed. The maximum sentence for possession with intent to supply is 7 years.
15 Reviewing the criminal activity of the defendant in a global way it is not my
16 view that 4 years is manifestly excessive. I therefore dismiss the appeal against
17 sentence.

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Dated 24th May 2010



Hon. Justice Cooke
Judge of the Grand Court (Actg)



24/5/10

Cooke

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2 United States of America. He had left St. Ann in Jamaica by canoe and had been
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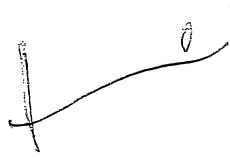
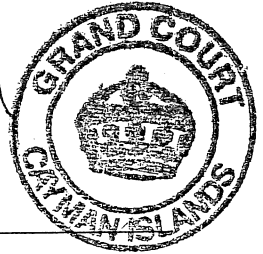
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24 Dated 24th May 2010

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Hon. Justice Cooke
Judge of the Grand Court (Actg)