Mr [illegible] 16·4·93

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

ON 26th March 1993

SCA 17/92 &
SCA 62/92

EVERARD D HYDES

V

REGINA

Mr. Graham Hampson	for the appellant
Mr. Adam Roberts	for the Crown

JUDGMENT

Leave was given for these two appeals to be heard together. It was submitted on behalf of the appellant that both involved a deliberate attempt by the police to "get" him. I will deal first with appeal #17/92 which is the less simple of the two. The first ground of appeal is that the learned Senior Magistrate erred in finding that the discrepancies in evidence between the police officers were not of significance.

That evidence does present some curious features. It is not in dispute that Woman Police officer General was sent to the appellant's premises in an undercover capacity on the morning of 10th May 1991 in order to obtain a quantity of ganja from him. As was acknowledged by the Crown, their case lives or dies on the strength of W/P/C General's evidence. Before she gave evidence, another police officer, Constable McLaughlin did so. In his evidence in chief, he described how she was sent to the appellant's residence to obtain a controlled drug and returned and presented him with a parcel of what resembled ganja wrapped in a brown paper substance. In cross-examination he was questioned about times relating to the operation and it was only on re-examination that it came out that

W/P/C General had made two visits to the house in her undercover capacity. When it was W/P/C General's turn to give evidence she described these two visits in much more detail.

I attach no particular significance, although I was invited to do so, to the fact that P/C/McLaughlin was the first prosecution witness. He was certainly not the main witness who could speak at first hand of the alleged transaction but it was he who had sent W/P/C/General on her errand and he was also a participant in the events which followed the alleged transaction. In my view the failure to bring out the fact that there were two visits in the examination in chief could have been no more than an oversight. The fact that the answer was brought out in a direct question in re-examination, without any intervening adjournment, must be an indication that Crown Counsel was already in possession of instructions that there were two visits by W/P/C General. Witnesses are supposed to answer questions which are put to them. And they are often rebuked for seeking to do more. P/C Mclaughlin did not seek to do so in his examination in chief and the omission of his reference then to there being two visits in itself leads me to no adverse conclusion about the nature and quality of the prosecution case.

The next point raised in the appeal concerned Rizzler Cigarette paper. P/C Mclaughlin said that the search had been executed on the residence of Mr. Hydes, the appellant, where "a box of Rizzler Cigarette papers were found, resembling the two of which was given to W/P/C General". He could not, of course, say from his own knowledge what was given to W/P/C General. He was not present during the exchanges between her and the appellant. In the event, W/P/C General did not, herself, make any connection between Rizzler paper and what she said had been handed to her.

The learned and experienced Senior Magistrate clearly did attach significance to the finding of what he described as a huge packet of Rizzler in the appellant's premises. He says that it "ties into Mr. Hydes being able to supply a little spiff mostly wrapped up

for those who liked to partake". Nowhere, however, does he make a finding that what was supplied to W/P/C General was wrapped in Rizzler paper. What he was saying however, admittedly rather obliquely, was that the Rizzler paper in the quantity it was created suspicion and that this, coupled with the W/P/C's evidence, which he believed, satisfied him to the requisite standard of proof.

In the end it remained unclear from the record just how the packet alleged to have been passed by the appellant was wrapped. P/C McLaughlin refers, at one point, to Rizzler paper and at another to a brown paper substance. W/P/C General does not really address the matter of wrapping. It is clear from the way the Rizzler paper was tendered as an exhibit by P.C. McLaughlin that it must have been the paper found by him in the house and not anything in which the ganja had been wrapped.

In the light of all this the evidence about the finding of brown paper bags in the house does not really take the matter further one way or the other.

In the end the Court was faced with a simple decision. Whether to conclude that the evidence as a whole, including the evidence of the appellant and his wife, showed an elaborate, wicked though poorly executed plot by the police to frame the appellant or that the essential element of W/P/C General's evidence was true in that the appellant did supply ganja to her, albeit without payment, after he had concluded that she was a safe person to supply,

As regards sentence, 6 months immediate imprisonment is on the high side but I can find no fault with the Magistrate's conclusion that this type of supply does warrant immediate imprisonment. The learned Magistrate did take into consideration that the appellant had not had a drug offence since 1985 and that the amount supplied was very small. I cannot say that the sentence was wrong in principle and it would not be right for me to interfere with it.

The appellant's refusal to submit to a urine test was not justifiable in view of the finding which the learned Magistrate made and which I have confirmed and therefore the 3 months concurrent sentence for that offence will stand also. The appeal is dismissed and the sentences are affirmed.

I now turn to SCA #62/92 which arises from another charge of refusing to provide a urine sample.

The appellant was arrested together with one Oswald Grant, who was released without charge, on the morning of 23rd July 1991. The visit to the appellant's house and his arrest were the sequel to information which had been given to Sgt. Gooding of the R.C.I.P. by Sgt. Brad Ebanks who had carried out observation of the premises with other police officers during the previous night. The cross-examination of Sgt. Ebanks threw some doubt on what he and his colleagues could actually have seen.

The only issue in this case is whether Sgt. Gooding arrested the appellant on a reasonable suspicion that he had committed an offence under the Misuse of Drugs Law. Once again bad faith by the police is alleged. It was submitted that the appellant was a target and that is the reason why he and not the other individual who was in the yard and who acted suspiciously was not proceeded against. The reason for that was never explained but I do not regard it as in itself being evidence of bad faith by the police.

In <u>R v McLaughlin and Burke</u> Collett C.J. dealt on a case stated by the Attorney-General with the question of a suspicion arising from information given to one police officer by another. He drew this distinction between reasonable suspicion and prima facie proof - that prima facie proof consists of admissible evidence but suspicion can take into account matters that could not be put into evidence at all.

Collett C.J. went on to say this:

> "In the light of those observations it is no answer to say of evidence which leads an officer to suspect the

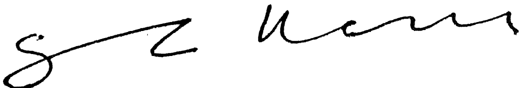
> commission of an offence that it is based entirely on hearsay. The purpose of that evidence is not to show that the defendant committed the offence as suspected but rather to show that the officer's suspicion was a reasonable one".

That does not, of course, absolve the Court from considering the quality, as opposed to the source, of what the officer was told and deciding whether it was the basis for a reasonable suspicion. It is not a question of assessing how the evidence fared in court but whether at the time the information was passed on it was the basis for a reasonable suspicion. Factors such as the anonymity of the officer imparting the information and his failure to arrest an individual on the occasion he is alleged to have observed him might be factors leading a court to the conclusion that the suspicion was not reasonable.

In this case Sgt. Ebanks explained why no arrest was made at the time of his own observations. He said that the police and customs officers who were making the observations were there because of an ongoing operation and were not supposed to let the appellants know that they were in the area.

It is the reliability of the source at the time the information is imparted which is a relevant factor in the assessment of the reasonableness of the suspicion, and I am very mindful of a danger inherent in this situation. An informant could tell a story to a police officer which carried sufficient conviction at the time to ground a reasonable suspicion yet the informant concerned could subsequently be entirely discredited and the story on which the suspicion was based found to be entirely untrue. But in this case Sgt. Gooding was given information by a police colleague of the rank of Sergeant who had been accompanied by others in the Police Force and Customs Department. That information was that the appellant had been observed the previous evening smoking what in the view of Sgt. Ebanks was ganja. Unless I conclude, which I emphatically do not, that Sgt. Gooding was party to a conspiracy to "get" the appellant I find that the suspicion

which led to his calling for the urine sample was a reasonable one and consequently the refusal to provide that sample was unlawful. The conviction and sentence are affirmed and the appeal dismissed.



G. E. Harre
Chief Justice

16th April 1993.