

The Hon C.J. Sir Denis Malone

IN THE CAYMAN ISLANDS COURT OF APPEAL,
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CRIMINAL APPEAL. CICA CRIM. #13 OF 1991

BEFORE: THE RT. HON. MR. JUSTICE P. TELFORD GEORGES P.C., J.A.
THE HON. MR. JUSTICE JAMES S. KERR J.A.
THE HON. MR. JUSTICE KENNETH C. HENRY J.A.

ISAAC ROY SPENCER v. REGINA

Appeal against conviction and sentence

1st and 2nd August, 1991

The Appellant in person
Miss Lorna Dilbert for the Respondent

GEORGES J.A.

The appellant was charged along with Delroy Thomas and Delroy White with two offences of importation of ganja contrary to section 3(1) A of the Misuse of Drugs Law 13 of 1973. The particulars of the first charge alleged that the three men between January 1 and January 8, 1990 had, without lawful excuse, in the vicinity of the Tortuga Club, East End, Grand Cayman imported a controlled drug namely ganja being more than a pound. The particulars of the second charge alleged that they had imported the ganja into Cayman Brac on January 8, 1990 the amount being less than an ounce.

The appellant pleaded not guilty and was tried alone. A careful review of the evidence is needed to appreciate the nature of the case made out against the appellant.

Detective Sergeant Rankine testified on January 10, 1990 he saw the appellant, White and Thomas at Cayman Brac Police Station. Inspector Conolly was present. He interviewed the appellant. The record of the interview was tendered. In effect the appellant told a story of a fishing trip to Baumer's Reef from Jamaica. There had been two boats - a large one and a small one, both his. They had fished for a day and a half at the Reef and then had set out

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to return to Jamaica. The small boat in which he was travelling with White and Thomas had run into difficulty. Their flashlight failed and they could not see the compass to steer. They had turned back hoping to find the larger boat but had failed to do so. Their supply of gas was limited so they decided to drift. They had drifted for some 8 days and had eventually sighted land which proved to be Cayman Brac. They had survived on sea grass, crabs, small fish and small shrimp. Appellant denied ever having reached Grand Cayman.

After the interview Detective Sergeant Rankine conveyed the men to Grand Cayman. There Thomas told him something, apparently not in the presence of the appellant. As a result Detective Sergeant Rankine drove to a spot near the Tortuga Club where 13 bales were discovered containing vegetable matter which on analysis was found to be marijuana. Spencer, White and Thomas had been taken to the vicinity of the Tortuga Club where the bales were and had been arrested there.

The appellant was again interviewed by Detective Sergeant Rankine on January 11, 1990. He succinctly stated the content of the interview when he stated that the appellant denied everything. He stated that White and Thomas had pleaded guilty to importation and had each been sentenced to three years imprisonment.

Constable Casey Conolly was stationed at Cayman Brac. On January 8, 1990 he visited the bay at which the appellant, White and Thomas had arrived. He searched the canoe which was about 25 feet long and found traces of vegetable matter resembling ganja in different areas of the bottom of the canoe. He confirmed Detective Sergeant Rankine's evidence that Delroy Thomas had taken them to an area near Tortuga Club where the bales of marijuana had been found. Inspector Connor confirmed the interview with the appellant and the discovery of the ganja.

Delroy Thomas was then called as a witness. He testified that he, White and two other men had brought the bales in a long boat to Grand Cayman on December 17, 1989 and then had gone back to Jamaica. They had then gone on a fishing trip with the appellant and another man and this had ended up in Cayman Brac.

His evidence was stopped. Detective Sergeant Rankine was called to testify and he produced a witness statement signed by Thomas which contradicted the evidence Thomas had so far given. Thomas was recalled. He agreed that he had given a statement saying that the appellant had been involved and explained that he had done so because the police had promised that they would have allowed him to go home if he involved the appellant. The contents of the statement were not true.

Delroy White also denied that the appellant was in any way involved in the importation of the ganja into Grand Cayman. His statement to the police involving the appellant was produced and he explained that he had made it because the police had promised to let him go home if he involved the appellant.

Inspector Conolly was recalled to say that when he showed the appellant the traces of vegetable matter found in the bottom of the boat the appellant replied that he had no knowledge of what it was or how it got there.

The appellant gave evidence^{and}/essentially repeated the account he had given in his first interview to Detective Sergeant Rankine.

It becomes clear on this review that there was not a scintilla of evidence connecting the appellant with the entry into Grand Cayman of a boat bearing bales of marijuana.

In his judgment the trial magistrate quite correctly placed no weight on the evidence of Thomas and White.

He found that it had been proved as a fact that White had imported the ganja into Grand Cayman between January 1 and 8, 1990. No such evidence had been led. There was evidence that Thomas and White had pleaded guilty to an importation of marijuana. As the judge of the Grand Court correctly pointed out the magistrate erred in taking into account the guilty pleas of Thomas and White. An admission can only be evidence against the person making it. The prosecution, of course, clearly understood this. They called White and Thomas, expecting them to confirm on oath the statements they had given the police. This they failed to do, denying to the prosecution essential evidence of a vital link.

The Grand Court judge thought that there was independent evidence justifying the conviction. He mentioned the traces of marijuana at the bottom of the boat and the fact that one of the men who admittedly travelled in the same canoe with him took the police to the spot where the marijuana was. There was nothing, however, to establish that the journey in the course of which the marijuana was transported was the journey on which the three men were together. That was the evidence Thomas and White were to supply. In the absence of their evidence there was no evidence to establish that link and it was a vital link. No prosecutor would have contemplated proceeding with the case without the evidence of Thomas and White.

There are grave grounds for suspicion. The appellant's story may well have been a tissue of lies but convictions must be based on the strength of the case made out by the prosecution not by the transparent weakness of the defence put forward.

The appeal must accordingly be allowed, the conviction set aside and the sentence quashed.

The appellant's appeal with respect to the importation of traces of ganja into Cayman Brac was allowed in the Grand Court.