CAYMAN ISLANDS

IN THE CAYMAN COURT OF APPEAL
CAYMAN ISLANDS COURT OF APPEAL NO. 46/88

BEFORE: THE HON. PRESIDENT
THE HON. MR. JUSTICE TELFORD GEORGES, J.A.
THE HON. MR. JUSTICE HENRY, J.A.

REGINA
VS.
DOROTHY JOY ROBINSON
158/88 POSSESSION OF COCAINE.
159/88 POSSESSION OF COCAINE WITH INTENT TO SUPPLY.

Mr. John Furniss for the Appellant
Mr. Robert Sheehan for the Crown.

19th April, 1989.

GEORGES J.A. :

The appellant appeared to answer two charges - being in possession of cocaine and being in possession of cocaine with intent to supply. She was convicted of both charges and was sentenced to concurrent terms of imprisonment of eighteen months and two years respectively on each charge. Her appeal to the Grand Court was dismissed.

The evidence against the appellant was that of three police officers who kept under observation for about half an hour, part of the premises which she occupied. They were cross-examined to elicit admissions that their vantage point was not particularly well chosen in that there was partial obstruction by a fence and by some bushes. Photographs were tendered so that the trial magistrate would have been able to reach a conclusion as to the effectiveness of the vantage point.

In essence the police officers testified that on three occasions in the space of half an hour they saw the appellant walk to an area near the outside toilet of the premises between the toilet and the fence. There she bent down and appeared to be digging. She was on the spot for a minute or less. Then she returned with her fist clenched.

Having noticed this they went to the appellant and informed her of their observations. They went in her company to the spot to which they and seen her go. Sergeant Brown dug in that area for some five minutes and found a plastic bag and a bottle containing a substance which proved on later analysis to be cocaine.

The appellant at the close of the case for the prosecution elected not to give evidence relying on a submission that on the evidence led, an irrestible inference could not be drawn that the appellant was in possession of the substance recovered by the police.

Mr. Furniss has argued before us that the vantage point was unsatisfactory. Clearly the trial magistrate did not so find and it is not possible to say that this finding could not be supported.

He submits that the police officers should have posted an observer to the front of the house who could have noted what the appellant did on her return to the building. The police explain that they did not do this because they feared that the appellant might have been alerted. This explanation was found acceptable.

He pointed out that had the appellant handled the objects received particularly the bottle which had an orange screw cap finger-prints should have been left on it which could have been identified. The object had been recovered only minutes after the appellant, on the police version, was likely to have handled it. The observation has merit. Proof of the appellants fingerprints on the objects recovered would have made the case uncontestable but it does not follow that failure to prove that they were, makes it impossible to draw an irresistible inference of possession.

Mr. Furniss noted that the appellant supplied a sample of urine which was negative for drugs. There was evidence that there was no dirt on her fingers when she was questioned. Had she just shortly before been digging in the sandy area where the bottle and the plastic bag were recovered, there should have been evidence of dirt on her hands.

These arugments are not without merit. In our view, however, they cannot prevail. The fact is that the police officers from their vantage point saw the appellant go to the area on three occasions and bend as if digging. In her question and answer interview the appellant had denied having gone there during the period when the police officers testified that they had seen her go there. The trial magistrate was however entitled to accept the testimony of the officers in preference to the denial at her interview.

Having noticed these visits the police immediately went to the area visited, and on a fairly superficial search found the items containing the drugs. The trial magistrate was entitled to conclude that her presence in that area on three occasions in the preceding half hour was not mere coincidence but supported the irresistible inference that she had knowledge of the fact that the objects were in the area.

We are accordingly satisfied that the conviction was in law quite proper on the circumstancial evidence produced and not contraverted.

Accordingly the appeal was dismissed.