CAYMAN ISLANDS

IN THE COURT OF APPEAL

CAYMAN ISLANDS CRIMINAL APPEAL No. 10/83

BEFORE: The Hon. Mr. Justice Zacca, President
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Carey, J.A.

R. v. WINSOME RUDDOCK

Mr. F. Phipps, Q.C., and Mr. Peter Polack for the appellant.

Mr. A. Smellie for the Crown.

November 28, 29, 1983;
& June 11, 1984

PRESIDENT:

On November 29, 1983, we allowed this appeal, and made an order that the conviction should be quashed and set aside the sentence. We promised to put our reasons into writing and this we now do.

This is an appeal from the decision of the Grand Court whereby the appellant's conviction for unlawful possession of ganja was upheld. The appellant was convicted in the Summary Court and sentenced to 9 months imprisonment and a fine of $1,000 or 3 months imprisonment in default. On the appeal before the Grand Court the sentence of imprisonment was varied to a term which allowed her immediate release. The fine and imprisonment in default remained.

Three grounds of appeal were argued:

(1) That the verdict of the learned Magistrate was unreasonable and cannot be supported having regard to the evidence.....

(2) The certificate of the Medical Laboratory Technician which had been admitted in evidence to prove that the prohibited article was ganja was inadmissible for that purpose.....

(3) The learned Magistrate convicted the appellant because he rejected her defence and thereby applied the wrong onus of proof.

It may be convenient to deal with the grounds of appeal in the order in which they were argued.

At the trial before the magistrate a certificate under the hand of an officer holding herself out to be a medical laboratory techician of the George Town Public Hospital was tendered in evidence pursuant to s. 6 (2) of the Misuse of Drugs Law in order to prove that the vegetable matter was ganja.

Counsel for the appellant submitted that before such a certificate could be admissible there must be proof before the court that such a laboratory technician had been appointed for the purpose by the Governor. Since there was no such proof the certificate was inadmissible. Section 6 (2) as amended by Law 10 of 1982 states:

> "Notwithstanding the provision of any other law, a certificate purporting to be under the hand of the C.M.O., a qualified chemist, a qualified medical laboratory technician or any other person appointed by the Governor in that behalf either specially or generally, stating or certifying that a given substance has been analyzed or examined and stating the result of such analysis or examination, shall be admissible in evidence in any prosecution under this law and, in the absence of evidence to the contrary, shall be proof of the statements contained therein as to the foregoing matters and any other matter specified therein concerning the substance analyzed or examined or the analyst or examiner thereof, and no evidence shall be required by the court as to the signature or qualifications of the person purporting to have signed the certificate."

Prior to the amendment s. 6 (2) stated:

> "A certificate under the hand of the C.M.O. or of a qualified chemist or a qualified medical laboratory technician appointed by the Governor in that behalf either specially or generally shall be prima facie evidence of whether or not any given substance, therein identified and referred to, is a controlled drug specified in such certificate; or whether or not any given specimen of urine indicates that the person giving such specimen has recently consumed any controlled drug."

The learned Chief Justice in construing s. 6(2) (as amended by Law 10 of 1982) and comparing it with the original s. 6 (2) at page 2 of his judgment said:

> "Before the amendment it was necessary for the medical laboratory technician to be appointed for the purpose by the Governor before the certificate became admissible, It was argued that this Court should look to the Parliamentary history of this legislation in order to resolve what, it was urged, was an ambiguity in the amendment.
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> "The amendment introduced significant changes. In my view, it is straightforward and clear in its intent and meaning. On the plain ordinary meaning a certificate under the hand of a qualified medical laboratory technician is admissible. It is not necessary that he or she be appointed by the Governor for the purpose. It is necessary for "any other person" to be appointed by the Governor for the purpose before a certificate under his or her hand becomes admissible.
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> "The amendment sets out a list of persons whose certificate is admissible, without any specific appointment for the purpose, namely the Chief Medical Officer, a qualified chemist and a qualified medical laboratory technician. For this purpose there is no distinction between a qualified medical laboratory technician and the Chief Medical Officer or a qualified chemist. Either all those have to be appointed or none of them i.e. the words "appointed by the Governor" govern the whole list or only "any other person". Clearly they govern only "any other person". It would be pointless to enumerate a person and a class of persons if they too had to be

> "appointed for the purpose. It would have been sufficient for the provision to provide simply that the certificate of any person appointed by the Governor for the purpose would be admissible. The reference to the Chief Medical Officer and the other classes of persons would be quite unnecessary. The clear meaning and intention is that persons other than those listed have to be appointed by the Governor for the purpose. There is no significance to be attached to the use of the phrase "any other person" instead of "a person". Either fits in with the construction I believe to be the correct one. "

We need only state that we think the construction placed on the amended section by the Chief Justice is correct and agree with his reasoning and conclusions. We are therefore of the view that the certificate was admissible without further evidence as it purported to be under the hand of a qualified medical laboratory technician.

The next ground of appeal which was argued was that the learned Magistrate convicted the appellant because he rejected her defence and thereby applied the wrong onus of proof. In his submissions counsel relied on a passage in the Magistrate's reasons for decision at page 1 where he said:

> "From her demeanour and the variation in her story I held that she was not a witness of truth. I therefore accepted the version given by the Constable, which clearly led to a strong inference that she knew that the ganja was there. "

It was argued that it was because the Magistrate rejected the evidence of the appellant that he accepted the evidence of the Constable. In reviewing reasons for decision we must look at the reasons as a whole. The use of the words "I therefore accepted" by the Magistrate cannot be looked at in isolation. In our view it does not indicate and we do not hold that the Magistrate was applying the wrong principles in considering the onus of proof. The Magistrate made clear findings later in his reasons and we are of the view that he applied the correct principles as to the onus of proof in considering the evidence.

We now turn to consider the submissions which were made with respect to the ground of appeal which was that the verdict of the Magistrate was unreasonable and cannot be supported having regard to the evidence. It will be necessary to set out the facts in some detail.

On May 2, 1983, the appellant who occupied the top apartment of a two story building had a heated row with the landlord's wife in the appellant's apartment. Both the landlord and his wife had access to the lower apartment and they also occupied a house next door. The wife, Mrs. Andrews, accused the appellant of having an affair with her husband. Mrs. Andrews used violence on the appellant and the husband, Mr. Andrews, intervened. During the quarrel some of the appellant's property were scattered.

The appellant had to leave the apartment but in the evening returned to get some clothes. The landlord, however, prevented her entering the apartment. She then returned to a house in Northside where she spent the night.

On May 3, 1983, in the morning, the police received information and a search warrant was obtained to search the appellant's apartment for ganja. The inescapable inference being that the information came from the wife, Mrs. Andrews. The learned Chief Justice was of this view. In his judgment at page 6 he said:

> "One cannot discount the possibility that the information emanated in some way from the jealous wife and, indeed, one must resolve that possibility in favour of the appellant."

To continue the narrative, at about 12.30 p.m. the police officer went to Northside where he saw the appellant. Again it would seem that the information that she was at Northside must have come from Mrs. Andrews. The appellant was informed that she was suspected of having ganja in her apartment and that there was a search warrant to search her apartment.

The appellant was taken to her apartment where the door was found to be locked. Apparently the appellant had not brought the key with her but she was able to open a window and the door was then unlatched. The police then searched her apartment. In a drawer in the appellant's bedroom was found a plastic bag which contained ganja. On the ganja being discovered the appellant stated that it had been planted. Before setting out the facts concerning the circumstances under which the ganja was found, it may be appropriate at this stage to note the following facts. The police later searched the landlord's house next door and found a knife with traces of ganja on it. Bits of ganja were also found on the staircase leading to the appellant's apartment. Evidence that the landlord's wife, Mrs. Andrews, was charged with possession of ganja subsequent to the trial of the appellant was received as additional evidence by the learned Chief Justice on the hearing of the appeal.

On the facts so far related the learned Chief Justice came to the conclusion at page 7 of his judgment:

> "On those bare facts one could not discount the possibility that ganja had been planted by the jealous wife as a means of revenge. One would have to resolve that possibility in the appellant's favour. "

However, the Chief Justice went on to say:

> "The circumstances surrounding the search, the finding of the ganja and what followed thereafter give rise to a different conclusion as an irresistible inference."

We now set out the facts concerning the circumstances surrounding the search and what followed thereafter.

A closet in the dining room of the appellant's apartment was first searched. Some paper bags were seen in the closet. The appellant was told to remain there and watch the search. As the police officer attempted to search the bags the appellant was seen to turn towards the right hand side of the bedroom where there was a chest of drawers. On being asked why she had left when she had been asked to stand. She made no reply. The appellant

was taken back to the sitting area and told to stand there. As the police officer started to pull out the bags, she again ran to the bedroom. The police officer stated that he became suspicious anddecided to search in the area where she had run. The appellant was standing near to the police officer who then pulled out the top back drawer and as he did so, the appellant remarked, "See it there, somebody put that on me". In the drawer was seen a plastic bag containing vegetable matter resembling ganja. The police officer showed the plastic bag to the appellant and told her that it was ganja. The appellant then said, "I saw when you found it, but I did not put it there". She was told that she was being arrested for possession of vegetable matter resembling ganja. She then asked him his name and he told her. She then said, "I am asking you to destroy it". She was told that this could not be done and then she said, "How much do you think that amount would weigh". The police officer told her he did not know and she asked what was the sentence for that amount of ganja.

The appellant in her defence explained her reason for going towards the bedroom. On the first occasion she realized that some of her jewellery were missing. She had stated that she saw her trinket box and handbag emptied and thrown in the passage which led to the bedroom. On the second occasion she had gone to the bedroom for a cigarette.

The learned Chief Justice after considering the facts came to the following conclusion:

> "The learned Magistrate clearly rejected her explanation about going to the bedroom for a cigarette. He was clearly entitled to infer guilty knowledge of the presence of ganja where it was found from that evidence. She could not have known of the location of the ganja if it had been planted there without her knowledge. He was justified in concluding that she placed it there. She obviously still had dominion and control over it as she did over her other possessions still in the apartment.

"It had not been abandoned.

"In my view the learned Magistrate had no alternative but to find her guilty as charged on that evidence. "

It is to be observed that the Magistrate did not have the additional evidence of Mrs. Andrews being charged for ganja before him. Additional evidence that Mrs. Andrews was convicted for the charge of possession of ganja which was not before the Chief Justice was considered by this court.

In our view the learned Magistrate (not having the additional evidence before him) did not give serious consideration to the vital question of whether or not the ganja had been planted by Mrs. Andrews. The learned Chief Justice in his judgment clearly saw this as an important issue in the case, but was of the view that the circumstances of the search and what followed thereafter was enough to justify the irresistible inference of the guilt of the appellant.

In our view what followed after the discovery of the ganja cannot be said to be an irresistible inference of guilty knowledge on the part of the appellant. Her immediate reaction was that the ganja had been planted and the questions which she asked are as consistent with her concern and fear as to the consequences of such a "plant".

The evidence of the wife's jealousy, accusations, attack on the person of the appellant, the traces of ganja on the knife, the bits of ganja found on the staircase, the absence of the appellant from the apartment on the night of the quarrel, and the obvious report to the police by the wife, and her subsequent conviction for possession of ganja, would far outweigh the evidence relating to the circumstances surrounding the search.

Considering the evidence as a whole, we cannot agree that the evidence indicated by the learned Chief Justice showed an irresistible inference of guilty knowledge. The only

reasonable inference to be drawn from the evidence is that there is a strong possibility of a plant of the ganja by Mrs. Andrews.

In the circumstances, the court is of the view that having regard to the entirety of the evidence, the verdict of the learned Magistrate was unreasonable and cannot be supported.

It is for these reasons that we allowed the appeal, quashed the conviction and set aside the sentence.