27/4/1984

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
BEFORE THE HON. SIR JOHN SUMMERFIELD CBE QC JP CHIEF JUSTICE

CASE NOS. 1369 - 1370/83

APPEAL NO. 47/83

25th April 1984

NORMAN GRANT AND MANFORD GARTNER

V.

REGINA.

IMPORTATION OF GANJA

POSSESSION OF GANJA

Appellants present in person unrepresented.
Mr. Scarborough for respondent.

JUDGMENT

Some time in the early evening, after darkness had fallen, of the 23rd September 1983 the yacht Splashy Brita called Port Security with a request for permission to come in as it was having trouble. There was a conflict of evidence as to how the yacht identified itself but no finding of fact was made on that aspect. There was a conflict of evidence as to the reason for coming in to Grand Cayman (she was originally bound for Miami) but there was no finding on that aspect. It may be observed that if there was a sinister purpose for the visit here the captain would be unlikely to announce the visit to Port Security at that time of night.

On board the yacht were the two appellants and one, Lane, who was tried with the two appellants on the same charges but acquitted. The appellant Gartner was part owner and the captain of the yacht. The appellant Grant, a taxi driver, was a friend of the appellant Gartner. He was learning to sail and was a general factotem on board. Lane was, principally, the navigator earning his passage to Miami in order to fly back to England from there.

The yacht, a 27 foot motor sailer, was given permission to come in and, about half an hour later, did so. The appellant, Grant, was at the stern. There was a conflict as to which of the other two was at the wheel and which was at the bow. No

finding was made on that.

The appellant, Grant, was seen to be handling a line at the stern. He appeared to drop something from the stern into the water which floated with the line attached. A Port Security officer on the dock took one end of a rope tied to the dock and threw it on the floating cord, drew it towards him and picked it out of the water. The cord was nylon cord. Attached to the nylon cord was a plastic bottle with a crack in it. In the plastic bottle was a dark liquid substance which apeared to be tar.

That substance was later analysed and found to be ganja, better known in that condition as hash oil, 10 lbs in weight.

At no time that night was either appellant or Lane confronted with the plastic bottle with the tarry substance. On the wheel, on a sheet to the boom, at the top of the transom, inside and outside, and by a nearby stanchion were found smudges of a similar tarry substance. Scrapings were taken and analysed. They also turned out to be ganja. That was additional evidence that the plastic bottle had come from the yacht.

It is noteworthy that there was an examination of the tarry substance by the Port Security Officers, and some discussions as to its nature. None knew what the substance was but it was decided to call the Police and this led to the further investigation. The three members of the crew were then charged with unlawful possession and unlawful importation of ganja.

There was some evidence that the value of the 10 lbs of hash oil was US$250,000 but that turned out to be hearsay evidence and should be disregarded. There was no relevant evidence of the value and no finding as to its value was made.

It should be emphasised that this case is very different from those where large quantities of ganja are found in a hold of a small ship. In those cases the obvious inference is that at least the captain must be aware of its presence. That plastic bottle of hash oil could have been in the possession of any member of the crew without either of the others being aware of its presence. One does not know where it was brought from before it was dropped overboard. It is significant that, before leaving Jamaica, Lane insisted on a search of the boat

for contraband. The appellant Gartner, as captain, agreed. A thorough search revealed nothing illicit. The plastic bottle must have been brought on board surreptiously after the search.

The onus was on the prosecution to prove beyond all reasonable doubt that the appellant, Gartner, knew of the presence of the hash oil on board, knew its nature or, at least, believed it to be illicit or turned a blind eye to the obvious. If that was proved, constructive possession could be inferred even though actual possession was in another crew member, and he would certainly be guilty of aiding and abetting the importation.

The learned Magistrate said it was difficult to believe that the captain did not know of its pressence. She added that the circumstances pointed to a joint enterprise between the two appellants. She gave the benefit of a doubt to Lane. Unfortunately no findings of fact to support those conclusions in relation to the appellant, Gartner, were recorded. I have carefully considered the submissions of learned counsel for the respondent and, while conceding that there is room for suspicion, perhaps even grave suspicion, I remain unconvinced that the evidence before the learned Magistrate, even if every conflict is resolved against the appellant, Gartner, leads to a proper or acceptable inference that the appellant, Gartner, knew of the presence of the ganja on board his vessel. The evidence simply does not support that conclusion.

The appeal of the appellant Gartner must, therefore, be allowed. The convictions are quashed and the sentences are set aside. The order for forfeiture of the boat must also be set aside. It is so ordered.

The case against the appellant, Grant, is on an altogether different footing. He was seen to drop the plastic bottle over the stern of the boat. He was trying to dispose of it. His suspicious conduct also reveals his guilty knowledge. He exercised actual dominion over the plastic bottle and its contents.

There was ample evidence before the learned Magistrate to justify his findings in relation to the appellant, Grant. His appeal against conviction is dismissed. Having regard to the quantity of ganja involved the sentences are in line with those usually imposed in similar cases. However, as both offences arise out of the same facts it is normal to make the fine for the offence considered the lesser one a nominal one. Accordingly, the fine

for the conviction for unlawful importation is reduced to $25.00. The sentence of 3 years imprisonment and a fine of $5000 or 6 months imprisonment in default for the offence of unlawful possession remains as does the concurrent sentence of 3 years imprisonment for the offence of unlawful importation.

SIR JOHN SUMMERFIELD

27th April 1984.