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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
BEFORE THE HON. SIR JOHN SUMMERFIELD C.B.E. Q.C. J.P.
CHIEF JUSTICE
ON THE 12TH DAY OF AUGUST 1983

APPEAL No. 12 of 1983.

TYRONE ANTHONY SUDEEN
V
REGINA

Mr. Marcus for appellant
Mr. Martin for respondent.

The appellant was convicted of the offences of unlawfully importing and unlawful possession of ganja. He was sentenced to 4 years imprisonment and $8000 (or 6 months in default) for the offence of importation and 3 years imprisonment and a fine of $500 (or 3 months in default) for the offence of possession. The amount of ganja involved was 7½lbs in five packages. He appeals against conviction and sentence. One observation can be made at this stage. The sentences were ordered to run concurrently. That was clearly right with regard to the substantive prison sentences as the offence arose out of the same facts. However, as to the sentences in default of payment of fines there can be no incentive to pay them if sentences run concurrently with each other and with the substantive sentences of imprisonment.

The ganja was imported on a flight from Jamaica concealed in a false bottom in a suitcase in the possession of the appellant who tried to clear it through Customs. There was no dispute about those facts. The only real issue was whether the appellant had knowledge of the illicit contents. The learned Magistrate applied his mind directly to that issue and concluded, on the totality of the evidence, that the

appellant knew that the ganja was in his possession.

Knowledge can be inferred from the surrounding circumstances. Those circumstances can now be analyzed.

The appellant gave evidence on oath. That evidence was substantially the same as an earlier voluntary statement made under caution to a Police Officer and recorded shortly after he was apprehended at the airport. A familiar story unfolded. The appellant stated that a person, Vincent Haye,whom he knew and who claimed to be a businessman in Cayman met the appellant at the Pegasus hotel in Kingston and asked the appellant if he would like to come to the Cayman Islands for the Easter holiday. The appellant told Haye that he did not have any money just then. Haye told him not to worry; that he (Haye) would pay for a ticket and give him a suitcase. The same day Haye gave the appellant the suitcase and money to buy an air ticket. Just over a week later the appellant made the journey to these Islands with the suitcase which resulted in his apprehension. There was no explanation as as to what was to happen to the suitcase on arrival here or about any arrangements to meet Haye or anyone else on arrival. On arrival here the suitcase had the appellant's clothing in it together with a bun and some wine. If the suitcase was going to be handed over to someone here then the appellant would not have had one for his clothes for the return journey.

As the appellant's clothing was in the suitcase he no doubt packed it. There is no suggestion otherwise. On opening the suitcase the thickness of the top and bottom would have been apparent. The Customs Officer who opened the suitcase at the airport noticed this feature. He said the top and bottom were "very unusually thick". The weight of the ganja brought in was 7½lbs. That would appreciably have increased the weight and would have put any reasonable person on notice of concealed matter increasing its weight. The appellant

himself said it weighed 15 lbs or more when given to him. That is very much more than its empty weight now that the ganja has been removed as an examination discloses.

Those facts are sufficient to justify the inference that the appellant knew of the ganja concealed in the bottom of the suitcase or that something illicit was concealed there or, at least, that he "deliberately shut his eyes to an obvious means of knowledge by refraining from making enquiries the result of which he may not care to have" - R v Cyrus Livingston 1952 6 JLR 95 at p 99. It follows from his finding that the learned Magistrate rejected the contention of the appellant that he was unaware of the concealed contents. The version of events put forward by the appellant was an implausable one except in so far as those events were part of a plan to assist in the importation of ganja into these Islands.

That deals with the grounds of appeal which go to the substance of the case, in particular, grounds 3, 4 and 10.

There were additional grounds of appeal based on technicalities. Most of these related to the evidence identifying the vegetable matter concealed in the bottom of the suitcase as ganja.

A certificate, Ex. 6, in terms of section 6 (2) of the Misuse of Drugs Law was introduced by a Police Officer giving evidence for the prosecution. There was no objection to its admission at the time. That Police Officer went on to testify that he had (more than three days before the trial) served a copy of the certificate on the appellant. Later, in re-examination, he said that he could not recall serving a copy of the certificate; that he had served notice.

That undermined the admissibility of the certificate and, over objections of defence counsel, the prosecution called Mrs. Gomez, the medical laboratory technician who had issued the certificate. Mrs. Gomez gave oral evidence of the contents of the five packages at the time she had received them from the Police Officer concerned. She told the court that they contained ganja, 7½lbs in all. She identified

her signature on the packages. The chain in the handling and custody of the five packages taken from the suitcase was complete, unbroken. There is nothing in the complaint that Mrs. Gomez was given the packages to identify them and her signature on them. That is normal practice. There is nothing in the contention that she should have examined the contents in court to determine whether they were ganja. Her evidence was directed to the nature of the substance she examined in the packages when they were first given to her by the Police Officer concerned.

Mrs. Gomez's evidence was complete in itself and the effect of it was, if accepted (and there was no suggestion that the substance she initially examined was not ganja), taken with chain of handling, to identify the substance concealed in the suitcase carried by the appellant as ganja.

Grounds 1, 2, 5, 6, 7 and 8 attempted to impugn this evidence and the procedure adopted.

It is clear that the certificate was inadmissible, as it turned out, because of the apparent irregularity in not complying with section 6 (3) of the Misuse of Drugs Law. This was apparent to all concerned.

It was perfectly in order for the prosecution to try to rectify the situation by calling the same medical laboratory technician to give oral evidence of the examination of the contents - or any other qualified person who could identify the nature of the vegetable matter taken from the suitcase. The presence of a certificate does not preclude the calling of its author, if that is considered desirable for any reason, or one or more other experts in this particular field. A cerfificate under section 6 is merely a convenient method of proving the nature of articles or matter connected with a prosecution under the Misuse of Drugs Law. It does not shut out oral evidence whether or not that

evidence covers the same ground. Mrs. Gomez was not trying to validate her certificate; she was giving oral evidence concerning vegetable matter she had examined. When she identified her signature it was for the purpose of identifying the packages she had examined. The discretion given to the court under section 6 (4) does not fetter the prosecution (or defence) in calling such expert witnesses relevant to the case being tried as it considers fit.

To deal briefly with another ground urged in relation to the notice served on the appellant, Ex.7, I need only say that it is a normal canon of construction for a reference to any section of a Law to be construed as a reference to that section as amended from time to time.

In my view there is nothing of substance in any of the grounds relating to the certificate or the evidence of Mrs. Gomez identifying the vegetable matter concerned as ganja.

Complaint was also made of the fact that a Police Officer, who was not present throughout the taking of the voluntary statement under caution by the appellant, Ex.5, signed as a witness at the conclusion of the statement - ground 9. That Police Officer was merely witnessing the signature of the appellant and the officer who recorded the statement. It was a means of identifying the statement; nothing more. There is no substance in this ground. Furthermore, the point was not raised at the trial and no objection was taken to the admission of the exculpatory statement in evidence.

Turning now to the sentence, it is certainly severe, but it is not outside the limits of sentences for this quantity of ganja. Deterrent sentences are called for until this trafficking is curbed.

However, without increasing the sentence, some variation is necessary to cure the anomoly adverted to earlier.

The sentence of imprisonment for the offence of importation

is reduced to 3½ years. The fine and sentence in default for that offence remains unchanged, namely, $8,000 or 6 months imprisonment in default.

The sentence of imprisonment for the offence of possession remains unchanged, namely,3 years. The fine for that offence is reduced to a nominal $25 simpliciter to take account of the fact that the two offences arise out of the same facts.

The sentence of 3½ years and 3 years will run concurrently. The sentence of 6 months in default of payment of the fine of $8000, if that occurs, will run consecutively to the other two concurrent sentences.

Save as indicated the appeal against conviction and sentence is dismissed.

SIR JOHN SUMMERFIELD

Dated the 2nd day of September 1983.