

On the following day, 21 October, a flight from Jamaica arrived. On it were the second appellant and Sorugh. The second appellant was seen leaving the plane carrying a radio which appeared to be the same one as the one he had been seen taking to Jamaica the day before. On leaving the plane the second appellant handed the radio to Sorugh and she carried it into the Customs area. She checked through Immigration with the second appellant behind her. Thereafter, they appeared to separate. As a result of a discussion between Sgt. Blake and a customs officer, Sorugh was taken into the police station at the airport. She still had the radio. On being questioned she disclaimed the radio and pointed to the second appellant, who was then being cleared by customs, as the owner. She then went up to the second appellant and handed it back to him. He was apparently not very keen to receive it back and placed it on the floor near a wall in the customs area. This was apparently near the place where passengers claim their baggage.

Sorugh went back to Sgt. Blake and told him that she had returned the radio.

The second appellant cleared his baggage (he was bringing two boxes of lobsters for the first appellant) and removed his effects but left the radio where he had placed it. He took the boxes of lobsters outside. Careful observations were being made of his movements. A taxi drove up to where the boxes of lobsters were. It was driven by the first appellant. In the taxi were also the first appellant's son and a female passenger. Sorugh was still in the airport police station at this time.

The first appellant got out of the taxi and the boxes of lobsters consigned to him were placed in the trunk of the taxi. The first appellant got into his taxi and drove it 40 - 50 feet and parked it abreast a building. The time was then about 8.30 p.m. and not many people were around. The first and second appellants and the female passenger were then seen talking "in a huddle". After that the first appellant was seen to enter the Customs building. He was away for

about 2 to 4 minutes and came back out. Shortly afterwards the group met together as before. They separated and the first appellant was seen going back into the Customs building. He was there for a while and came back out again. On each of these occasions he was empty handed. He must have entered the Customs building a third time because Sgt. Blake who was watching this happen moved to the North East side of the building and saw the first appellant going towards the exit door with the radio in his hand - the radio which had been left by the second appellant near the baggage claim area in the Customs building. Sgt. Blake asked the first appellant who had given him permission to remove the radio. His reply was that someone had sent it for his son and he had been asked to pick it up. Sgt. Blake told him that he suspected that it contained dangerous drugs and that he wished to search it. He invited him to the Police Station in the airport building. Sgt. Blake also gave instructions for the second appellant to be brought to the police station in the airport building.

When the two appellants and Sorugh were in the Police station Sgt. Blake opened the radio in their presence. The first appellant was behind Sgt. Blake; the second appellant and Sorugh were on chairs. Sgt. Blake found vegetable matter resembling ganja, packed in several packets, in the radio. He placed this vegetable matter in heat sealed envelopes. He weighed it. When he turned to tell the three about the contents he discovered that the first appellant had disappeared. He showed it to the second appellant and Sorugh. Both denied knowing anything about it. Sgt. Blake called for Police assistance to detain the first appellant. While making ready to leave for the main Police station with the other two the first appellant appeared and was asked to accompany them to the main Police Station. There the radio was completely taken apart. The contents were shown to the first appellant. He said he knew nothing of its contents. They were all arrested and cautioned.

Before the radio was picked up by the first appellant there was an incident involving the second appellant and a flight ramp attendant, Minzette. As Minzette was going through Customs the second appellant asked Minzette if he had seen a radio inside. He said he had. The second appellant then asked him if he could get it outside for him because it had 2 lbs "of good weed inside" and he would receive one half. Minzette did not answer. He returned inside the Customs building, put down his cart and went out again to the bar area. As he was about to go in the second appellant approached him again. He was about to say something to Minzette when a Customs officer came up and the second appellant walked away.

The vegetable matter found in the radio, was later identified as ganja. It weighed 1½lbs.

That evidence was accepted by the learned trial Magistrate. The learned trial Magistrate also rejected the explanations given on oath by the two appellants.

On that evidence there can be no doubt that the second appellant was aware of the ganja concealed in the radio. There can be no doubt that he imported it into these Islands and was in possession of it here. There can be no justification for interfering with his conviction.

The main argument on behalf of the first appellant was that the evidence did not justify the conclusion that he knew or had reason to believe that the radio contained the illicit substance. What goes through a person's mind, in the absence of an admission, can only be inferred from what he does or says in the context of the circumstances at the time. While the first appellant was not a party to the incident with Minzette, that incident demonstrated that the second appellant knew that ganja was in the radio. It was a result of a "huddle" with persons, including the second appellant, that the first appellant made his first sortie into the Customs building. If, as the first appellant claimed, the second appellant told him that his (the first appellant's) son in Jamaica had sent him the radio, he must have thought it very

suspicious that the second appellant had not brought it through customs with the lobsters he was bringing for the same consignee. Further, why did the first appellant not claim the radio on the first sortie into the Customs building - or even the second? He denied more than one sortie but the learned Magistrate found otherwise. Why, again, did he just pick it up and make for the exit door without Customs permission? He claimed that he cleared the taking of the radio with a Customs official but that is at variance with the prosecution evidence which the learned Magistrate accepted. It would appear also that the asserted clearance with a Customs officer was not put to the prosecution witnesses in cross-examination. In his own evidence the first appellant said that he just picked the "cassette" up. It was not addressed to him. There was nothing to identify it as coming from his son. How could he have known that it was that particular one that had been consigned by his son except from what the second appellant had told him - the person who had brought it in and who declined to clear it?

From the first appellant's conduct in the circumstances prevailing the learned trial Magistrate was justified in concluding beyond all reasonable doubt that the first knew that the ganja was in the radio when he took possession of it. That would support the charge of unlawful possession.

There remains the question/whether the first appellant of was a party to the importation with prior knowledge i.e. knowledge acquired before it came into these Islands as opposed to knowledge acquired at the airport from e.g. the second appellant. Unfortunately, the learned trial Magistrate did not address his mind to this vital aspect on the importation charge. On this aspect so much could have depended on his assessment of the evidence of the defence witnesses, including that of the two appellants. Had he specifically adverted to this aspect there would have been evidence, subject to his assessment of the credibility of the witnesses, to support a

conclusion by the learned Magistrate that the first appellant had prior knowledge and was a party to the importation. It might also have been the case that the learned Magistrate would have found otherwise or have given the benefit of the doubt to the first appellant. For this reason, and this reason alone, I think it would be unsafe for this Court to uphold the conviction for importation in relation to the first appellant. Had there been more detailed findings of fact, instead of a general finding, then this Court could draw its own inference. But, as it is, that would not be a safe course in the light of the generalisations appearing in the learned Magistrate's reasons. It could well have been the case that had^{he}/applied his mind to the matter in the light of his assessment of some of the defence witnesses that he might have concluded that the first appellant's knowledge was acquired after the radio had been imported - or at least given him the benefit of the doubt on that issue.

For these reasons I allow the appeal in relation to the conviction for the offence of importation. That conviction is quashed and the sentence thereon is set aside.

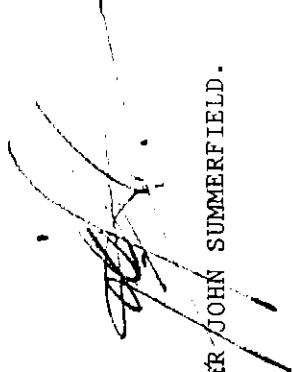
The appeal in relation to the conviction for the offence of unlawful possession is dismissed.

As to sentence in relation to the first appellant, the sentence imposed for the offence of unlawful possession was 5 months imprisonment and a fine of \$500 or one month to follow if the fine is unpaid. That is a very lenient sentence in the circumstances of this case despite all the mitigating circumstances, albeit a first offence. However, as the learned trial Magistrate appears to have been influenced by the factors relating to the first appellant's health I have decided not to interfere despite the fact that it appears unduly lenient.

As to sentence in relation to the second appellant, no such corresponding mitigating factors apply. It seems a tragedy that he finds himself in this predicament. In presenting his appeal he demonstrated that he was a very articulate, literate and intelligent

person whose talents could have been put to good use. He was clearly the prime mover in the commission of this offence and deserves a severe sentence. The 1½lbs. of marijuana was obviously not for personal use. The fine imposed in relation to the offence of possession (\$2,500 or 6 months to follow in default) should, for the reasons given by this court on several occasions, be reduced to a nominal fine. Accordingly, it is altered to a fine of \$25 simpliciter.

Save as set out above, the appeals against sentence are dismissed.



SIR JOHN SUMMERFIELD.

9th June 1983.