

*Appeal dismissed 2.6.83
DPT
2/6/87.*

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN

BEFORE THE HON. SIR JOHN SUMMERFIELD CBE QC CHIEF JUSTICE

on the 12 May 1983.

Case No. 1211-1212/83

Appeal No. 7/83

HOWARD EVERTON GREEN

V

REGINA.

Mr. N. Levy for appellant
Mr. T. Scarborough for respondent.

JUDGMENT

The appellant arrived by air from Jamaica on the evening of 1 July 1982 for a visit and presented a yellow bag and a suitcase for inspection by a customs officer. The customs officer started to examine the suitcase. On lifting some clothing he suspected a false bottom and called over a police constable to examine the suitcase further. The police officer took the appellant to the search room for a search.

At the bottom of the suitcase was a piece of ply wood. On lifting the ply wood covering the false bottom vegetable matter was found which was later, on analysis, found to be ganja.

The police officer showed the vegetable matter to the appellant and asked him if he knew what it was. The appellant said: "No." He was then arrested for importation and possession of "vegetable matter resembling ganja" and cautioned. He replied: "a

friend gave it to me to give his sister".

The ganja was in four packets and weighed four pounds.

The only real issue was whether the appellant had knowledge of the presence of the ganja in the suitcase at the relevant time.

The appellant gave evidence at his trial. He claimed that he was given the suitcase ^{by his friend} to bring here - together with four tins of

Milo - for that friend's sister. He denied all knowledge of the ganja. Apparently he was going to bring his clothes here in the yellow bag.

But on receiving the suitcase he claimed that he took his clothes out of the bag and put them in the suitcase and then put the tins of Milo in the bag and brought them both here. If he was going to hand the suitcase over to the friend's sister here then, presumably, he would have to return with the clothing in the bag. So the manoeuvre before coming here appears suspect, at least. It is more in keeping with an attempt to conceal the false bottom covered with plywood. That plywood must have made the appellant suspect something illicit in any event. The customs officer appears immediately to have suspected a false bottom. That, too must have been apparant to the appellant. Furthermore, the amount of ganja, four pounds, must have given to the weight of the suitcase an obviously suspect factor.

The learned acting Magistrate formed the view that the appellant had co-operated with the friend and his sister in a plan to import the ganja. In my view there was adequate evidence to justify that conclusion.

The appeal against conviction is dismissed.

The appellant also appealed against the sentence of 2 years imprisonment and a fine of \$5000 or six months in default for the offence of possession and a similar penalty for the offence of importation, but the sentence in default of payment to run concurrently with the substantive terms of imprisonment to run concurrently in the event that that took effect. It is conceded that the fine on the possession conviction should be nominal for the reasons given by this

court on several occasions. Accordingly it is reduced to \$25 simpliciter.

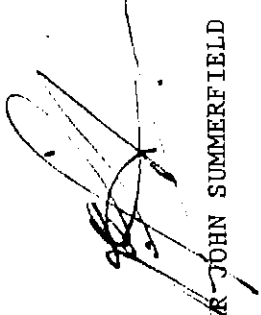
The gravamen of the complaint against sentence was that the same acting magistrate had passed a much more lenient sentence about the same time involving possession and importation of no less than 52½ pounds of ganja - the sentence being only five months imprisonment and fines of \$4000 and \$200. It was argued that the disparity gave rise to justifiable feelings of injustice, resentment and improper discrimination. There can be no doubt about the force of that submission and courts must aim at some degree of uniformity and justify any disparity in sentences imposed. There, are, of course, good reasons why offenders are treated differently, but it should be made apparent why that is so and why it is right to do so, e.g. because of a plea of guilty, contrition, age, health, restitution, previous convictions and other factors affecting assessment of sentence.

In the case brought to the attention of the court involving 52½ pounds of ganja it would appear that the persons carrying it merely landed here for refuelling for an onward journey and were exposed more or less accidentally. The ganja was not intended for these Islands whereas the ganja in this case was.

With all due respect, my view is that it is immaterial where the ganja was destined for or how the culprits were exposed. Other countries must be protected from the dangers of controlled drugs as much as this country. In my opinion the sentence imposed in the case cited was wholly disproportionate to the gravity of the offence and completely out of line with sentences normally imposed in such circumstances. It should not be allowed to create a precedent or in any way become a guide. While recognising the reaction of the appellant to the disparity, his sentence was very

much in line with the normal limits and less than that imposed on some in similar circumstances. There are no grounds from my intervention.

Save for the variation mentioned above the appeal against sentence is dismissed.



SIR JOHN SUMMERFIELD

2 June 1983.