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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
ON 17TH JANUARY 1983

BEFORE THE HON. SIR JOHN SUMMERFIELD, C.B.E., Q.C., CHIEF JUSTICE

CASE NO. 1215/82
APPEAL NO. 20/82

ELVIN PAUL EBANKS

V

REGINA

Mr. N. Levy for appellant
Mr. J. Martin for respondent

JUDGMENT

This is an appeal against conviction only for the offence of unlawful possession of a controlled drug, namely ganja.

The first ground of appeal, namely, that the verdict is unreasonable and cannot be supported by the evidence or, alternatively, that the verdict is unsafe can be disposed of fairly briefly.

There was ample evidence before the learned acting Magistrate, including evidence of admissions by the appellant himself, which, if believed, fixed the appellant with possession of the offending material and knowledge of what it was. As the learned acting Magistrate observed in his reasons for decision, it was a relatively simple case. It is plain that he accepted the prosecution evidence and rejected that of the appellant where it was in conflict. That, so far as this court is concerned, is an end to the matter.

Learned counsel for the appellant went through the evidence for the prosecution and forcefully drew attention to several discrepancies and inconsistencies. No case comes before these courts without its fair share of discrepancies and inconsistencies. It is for the magistrate or the jury

to evaluate those aspects and decide if the truth on the essentials nevertheless emerges. The appellate court will intervene only rarely and in well defined circumstances. Here the discrepancies and inconsistencies could not be said to go to the root of the case and the admissions of the appellant leave no doubt that the trial magistrate's findings were correct.

The more important ground of appeal is the second one which reads:

> "2. The Learned Acting Magistrate erred in that he did not allow or permit the Appellant or his Attorney to address the Bench in relation to the evidence adduced in the case before he pronounced that he found him guilty and convict him.".

I need not deal with the third ground as that overlaps the second one and can only be concerned with sentence against which (a lenient one on any view) there is no appeal.

This ground came about by a regretable misunderstanding on the part of the learned acting Magistrate. This is apparent from the record, the relevant part of which reads:

> "Accused returns to dock and sits. Neither counsel rise to address. GUILTY: 1 day and $800.00 or 6 months.
> Levy rises - says he wasn't allowed to address - told he may do so if he wishes. Says he doesn't wish to.".

It is obvious that the trial Magistrate had formed the opinion that neither counsel wished to address him and, therefore, he proceeded with his decision. The learned acting Magistrate has a busy practice in the criminal courts and would have well understood the procedure which is common in all jurisdictions stemming from the British system of administering justice and is set out in section 69 of the Criminal Procedure Code.

There can be no doubt whatever that the accused person or his counsel is entitled to address the court at the conclusion of his case before the decision thereon (and, following conviction, on sentence) and a deliberate denial of that right would be grounds for intervention by this court. It should also be pointed out that learned counsel for the appellant did not contribute to the misunderstanding. It was not "his turn" to address the court. It was for counsel for the prosecution to address first if so minded.

However, misunderstanding there was which the trial Magistrate tried

to set aright by inviting an address after he had realised that there had been a misunderstanding. Learned counsel for the appellant declined that invitation. He argued on this appeal that the trial Magistrate was then functus officio and had no power to reverse his decision at that stage.

In my view, having discovered the omission caused by the misunderstanding the trial Magistrate could have reversed his decision if persuaded so to do. He had not risen. He had not released control of the case. And if he had, in fact, changed his mind after being addressed the practical effect would have been that the appellant would have been acquitted. A more cogent argument is that he would have been unlikely to have changed his mind. It was, after all, a case which turned entirely on fact and the credibility of witnesses and it would not be surprising if the trial Magistrate had fairly strong provisional views on those after hearing all the evidence.

Two cases cited can be distinguished without much difficulty. They are R.v. Great Marlborough Street Magistrate ex parte Fraser 1974 Crim. L. R. 47 and R. v. Middlesex Crown Court ex parte Riddle 1975 Crim. L. R. 731. In both those cases, in which the appellate court intervened, there was a deliberate denial of the right to address the court at the appropriate stage. There can be no doubt that that amounts to a denial of natural justice and warrants intervention by the appellate court.

Much nearer to the present case is the case of Rex v. Daisy Campbell 1946 J.L.R. 45 in which section 283 (2) of Chapter 432 of the Jamaica Laws (similar in purport to section 69 (1) of our Criminal Procedure Code) was considered. The meat of the decision in that case is succinctly set out in the headnote as follows:

> "On the trial of an indictment in the Resident Magistrate's Court, the Solicitor of the accused has the right to address the Court at the close of the evidence. Chapter 432, section 283 (2). Waiver of this right should be clear and unambiguous, and a note thereof should be made by the Resident Magistrate. As it appeared that the failure of the Solicitor for the appellant to exercise his right to address the Court at the trial of the appellant in the Resident Magistrate's Court may have been due to a misunderstanding between the Solicitor and the Resident Magistrate, and in consequence, the appellant may have been deprived of a right which may have had some effect on the ultimate decision, a new trial was ordered.".

I respectfully agree with that decision which is, in any event, binding on this Court as a decision of the Court of Appeal. Learned counsel for the

appellant argued that that case is on all fours with this one. In my view it is clearly distinguishable.

Here the trial Magistrate endeavoured to rectify his omission caused by misunderstanding. He did in fact give the defence an opportunity to address him and could have effectively changed his mind in the light thereof, albeit that one must concede that the likelihood was not very promising having regard to the nature of the case and the admissions to a police officer which no doubt influenced the trial Magistrate. It was counsel for the defence who declined the invitation to rectify the apparent error. Had he availed himself of the opportunity he might have been on stronger ground in arguing that the trial Magistrate had adhered to a decision prematurely determined (had it turned out that way). But defence counsel cannot say he was denied the opportunity of being heard. I do not accept that he can take advantage of a pure misunderstanding which the trial Magistrate did his very best to remedy as soon as he realised that there had been one. He should have accepted the invitation and taken it from there.

Examining the case as a whole I cannot see any miscarriage of justice and am of the view that there has been no denial of natural justice.

Accordingly, the appeal is dismissed and the decision of the Magistrate's Court is affirmed.

SIR JOHN SUMMERFIELD.

18th January 1983.