AJM 23.6.82
Appeal

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
BEFORE THE HON. SIR JOHN SUMMERFIELD C.B.E., Q.C.

ON 13TH MAY 1982

Case No.266/81

JEFF DOUGLAS

V

REGINA

Mr. Frank Phipps Q.C. (with him Mr. DeLisser and Mr.W.W.Connolly) for appellant

Mr. John Martin for respondent

JUDGMENT

The appellant was convicted of the offence of unlawful possession of ganja and was sentenced to 18 months imprisonment and a fine of $1,200. or 3 months imprisonment in default. He appeals against conviction only.

The principal ground of appeal is in the following terms:

> "That the learned Magistrate failed to disqualify himself during the hearing of the case notwithstanding the fact he admitted that during the case after Inspector Rankin had given evidence, he used the following words, "I know Inspector Rankin well. He is not the sort of person who would say something happened when it did not.".

It would appear that, throughout the trial, relations between the learned Magistrate and learned defence counsel were less than cordial and that the latter was at the receiving end of biting judicial comment. Happily I am not called upon to pronounce on the overall effect of those comments on the fair conduct of the trial but I do feel constrained to observe that its impact was most unfortunate. Such an atmosphere places a heavy strain on all concerned with the administration of justice and, unless deftly handled, the appearance of justice being done can suffer. Indeed, the main ground of appeal argued before this court was that the

appearance of justice having been done had been destroyed by the remark of learned Magistrate in relation to the principal prosecution witness.

That witness was Inspector Rankine. Without his evidence the evidence for the prosecution would not have supported a conviction. His credibility was, therefore, critical to the prosecution case. He was cross-examined at some length. According to an unchallenged affidavit filed, in the course of that cross-examination, presumably in response to an attack on Inspector Rankine's credibility, the learned Magistrate remarked:

> "I know Inspector Rankin well he is not the sort of person who would say something happened when it did not".

In consequence, the appellant formed the opinion that the learned Magistrate had there and then made up his mind to accept Inspector Rankine's evidence before hearing any evidence for the defence. He, therefore, spoke to his attorney and, as a result, basing his submission on that remark, learned counsel for the defence submitted, at the close of the prosecution case, that the learned Magistrate should disqualify himself and order a new trial.

This submission was unsuccessful. The learned Magistrate proceeded to hear the defence evidence and the conviction ensued.

In this small community it is inevitable that persons will come before the courts in one capacity or another who are known to the Magistrate or Judge to a greater or lesser extent. They may be seasoned offenders who make fairly regular appearances in consequence of their specialty. They may be witnesses with specialist training who appear regularly, such as doctors, or witnesses from a specialised branch of the Police Force who handle a particular type of police work such as officers on traffic duties and officers in the drug squad. Some will become known to the Magistrate or Judge not only because of regular appearances in court but because of

social contact in community, religious and other affairs. If the Magistrate or Judge had to recuse himself merely because he knows a particular witness or party, in some capacity or another, then the machinery of justice here would soon come to a grinding halt. The size of the community and its free inter-communication makes it impossible for a Magistrate or Judge to isolate himself from those who may appear before him as a party or witness.

When this happens the Magistrate or Judge must conscientiously decide whether in the circumstances he can approach his task with an open mind, free from any bias and recuse himself if he feels that he cannot. Equally important in such unavoidable circumstances the Magistrate or Judge must manifestly appear to be approaching his task with an open mind, free from any bias.

Quite clearly, the remark by the learned Magistrate transgressed the second principle. There can be no doubt that it left the impression that he had accepted the evidence of the principal witness before the cross-examination of him had been concluded and before he had weighed the other evidence in relation to it, particularly that for the defence. One can well understand that an accused person would feel that anyone who heard the remark would, at that stage, have little doubt about the outcome of the trial. The appearance of justice being done was destroyed.

It may well be that the learned Magistrate knew from experience that Inspector Rankine was a truthful and reliable witness. But he still had a duty to keep an open mind and to be seen to be doing so. Even an honest witness can be mistaken or sometimes suffer a lapse in his recollection.

That unfortunate lapse on the part of the learned Magistrate must be fatal to the conviction. The several cases cited leave no alternative. They were R v Dudley Peters RMCA 155/77 d/d 19/1/78, Campbell v Gwelph (1963) 8 JLR 143, R v Haigh (1981) CLR 263

R v Spiteri (1981) CLR 419. While each case must turn on its own particular facts the underlying principle is very clear.

If I had power to do so I would order a re-trial in this case. However, as I read section 172 of the Criminal Procedure Code I am not empowered to do so. The power to order a retrial must be specifically spelled out in the legislation concerned. It is not buried in general words empowering a court to make such other order as it may consider just.

The second ground of appeal was based on a technical defect in the overt qualifications of the signatory to a certificate purported to be admissible under section 6 (2) of the Misuse of Drugs Law. One would not wish a case of this nature to turn on a technicality but, as it is, I do not have to consider this point. However, a defect there undoubtedly was - not only in the pro forma certificate but probably also in the Gazette Notice relating to Mrs. Gomez. These are matters now within the knowledge of the learned Attorney General and, no doubt, will be attended to.

For the foregoing reasons the appeal is allowed, the conviction quashed and the sentence is set aside.

SIR JOHN SUMMERFIELD

23rd June 1982.