

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
ON JULY, 1981
BEFORE THE HONOURABLE SIR JOHN SUMMERFIELD
CRIMINAL APPEAL NO: 7 of 1981.

ENRIQUES RANKINE V. REGINA

Mr. J. Martin for the Crown
Mr. O.L. Panton for the defendant.

JUDGMENT

This is an appeal against an order for the forfeiture of a Honda motor cycle made under section 14 (2) of the Misuse of Drugs Law 1973 following conviction for unlawful possession of a controlled drug, namely ganja, contrary to section 3 (1) (i) (k) of that Law. At the conclusion of the hearing I allowed the appeal and stated that reasons would be given later. Those reasons follow.

The appellant had been seen riding along Walker's Road on his Honda motor cycle by Two Traffic Police Officers driving along the same road. They came up behind the appellant and noticed that he looked worried. The appellant thereupon took a packet from his pocket and threw it to the ground while still driving. One officer got out of the patrol car and recovered the packet. They pursued and caught the appellant and then confronted him with the packet, opened. It contained vegetable matter which turned out to be ganja, 2.3 grams in weight. He was arrested, cautioned and charged. The police officers seized the motor cycle, presumably under section 14 (1) of the above Law.

At his trial the appellant pleaded guilty and the above facts were outlined by the prosecution. Following the record of facts recited the record reads as follows:-

"Defendant tells Court that he has nothing to say.
Crown Counsel applies for forfeiture of vessel used for transportation.

Sentence 5 Days Imprisonment
Fine \$300.00 or 6 Months to Follow if Fine Unpaid.
Honda Cycle No: 4303, Ordered forfeited to the Cayman Islands Government".

The appellant was not represented at his trial.
Subsections (2) and (3) of section 14 of the Misuse of Drugs Law read as follows:-

" (2) Where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any vessel which was in his possession or under his control at the time of his apprehension -

(a) has been used for the purpose of committing or facilitating the commission of such offence; or

(b) was intended by him to be used for that purpose; the court shall order the forfeiture to the Crown of such vessel.

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after the offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection".

It will be noted that the appellant had the offending ganja on his person and not in any part of the motor cycle. The mere fact that the ganja is on a convicted person's body does not necessarily mean that the vessel he was found in or was travelling in was not "used for the purpose of committing or facilitating the commission of" the offence of possession. Each case will turn on its own facts (bearing in mind section 14 (3)) and the proper inference to be drawn from those facts. On the facts outlined in this case it is open to question whether the motor cycle was so used. The riding of the motor cycle could well have been coincidental to the possession of the ganja, not in any way associated with that possession. It might be argued that section 14 (3) applies although the facts as outlined do not appear to point irresistably to the conclusion that the appellant was trying to avoid apprehension or detection by his use of the motor cycle.

It may safely be assumed that the appellant (unrepresented) was not aware that there was such an issue. He was not invited to make any representations thereon.

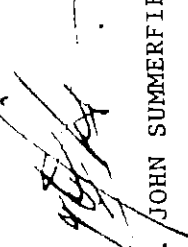
More important, it does not appear from the record that the learned Magistrate applied his mind directly to this issue.

Section 14 (2) requires the trial court to be satisfied that any vessel in the accused's possession or under his control at the time of apprehension had been used for the purpose of committing or facilitating the commission of the offence (or was intended by him to be used for that purpose). That means that the court must direct its mind to that issue and reach a finding on it. The burden and degree of proof would correspond to that in any other criminal Law.

Where there is a trial the court can reach its conclusion on the issue on the evidence before it. Where there is a plea of guilty I do not think that the court can rely only on the facts outlined by the prosecutor (particularly when the accused is unrepresented), unless the accused admits the facts outlined and they point clearly to a conclusion supporting forfeiture under section 14 (2). ~~The~~ accused can be asked if he admits that his vessel was so used (if the facts outlined suggests that to be the case). If he does not admit it then the question becomes a triable issue, with evidence led by both sides if they so wish, and a decision made.

Here the learned Magistrate appears merely to have responded to an application by the prosecution. There was no admission made by the appellant and no finding on the issue was reached on evidence.

For the foregoing reasons the appeal was allowed and it was ordered that the motor cycle be restored to the appellant.


STR. JOHN SUMMERFIELD.