1981

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
ON JULY, 1981
BEOFRE 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 -

It is well established that mere presence at the commission of an offence or being a witness thereto does not make the person present or the witness a party to the offence as a principal in the second degree or otherwise. It must be shown that he was acting in concert with the principal offender; that he was aiding or assisting or encouraging the principal in the commission of the offence. This is abundantly clear from the cases cited, namely, R. v. Wright, Horsham and Graham 12 J.L.R. 1485, R. v. Coney 1881 8 Q.B.D. 534 and R. v. Allan 1963 2 All E.R. 897.

It was urged that there was no evidence that the appellant and the principal offender set out on a joint enterprise to steal from this or any other car. They were returning from a fishing expedition. And it was argued that the appellant's presence at the theft was merely accidental when the principal offender deviated from their then intended purpose (to return home and clean the fish they had caught). To this the answer is that the community of purpose to commit an offence can be formed at any time before it is committed. It is not necessary that the two persons should have started out with the intention of stealing from cars. Their common purpose could have come into being when temptation came their way. Whether they were acting in concert is a question of fact usually to be inferred from all the surrounding circumstances. Here, the verbal exchange between the two persons, the appellant's conduct in general, and in particular, the fact that he was keeping a look out (having turned off the road with his colleague and taken up a position about 8 feet from the bus) and riding off immediately a police officer made his presence known are sufficient to justify the inference that the appellant was acting in concert with the principal offender.

It was also urged that there was no evidence that the appellant did anything to aid or assist the principal offender. In my view, there was evidence that the appellant was acting as the look-out and was also encouraging the principal offender in their joint enterprise.

The learned Magistrate came to the firm conclusion that on the totality of the evidence that the appellant was acting in concert with the principal offen[illegible] In doing so he impliedly rejected the version put forward by the appellant. In my view the learned Magistrate was entitled to reach that conclusion of fact on the evidence before him.

It was urged that no weight should be placed on the fact that the appellant rode off on his cycle at a fast speed when the police officers appeared because one of the police officers had pointed a gun at Powery and fired a shot from it; and that to make a hasty escape in those circumstances was only natural. It was the appellant who who said in his evidence that P. C. Blake had a gun "and pointed it at Dugmore. He fired a shot from it."

All that need be said about that is this. If there had been such an incident it would have been the one that would have stood out more clearly in the mind than another when giving instructions to counsel. Neither police officer who gave evidence mentioned anything about a gun or about one being fired and the appellant's assertion was not put to either police officer in cross-examination. Further, as already observed, it is clear that the learned Magistrate impliedly rejected the appellant's version of events.

A second ground of appeal alleges that the trial was unsatisfactory, resulting in a denial of justice, in that defence counsel was refused an adjournment he had applied for on the ground that he needed more time to prepare the defence. The sequence of events was as follows.

The appellant was arrested following the commission of the offence on 28th January 1981. He was held in custody until he was brought before the learned Magistrate on the following morning, 29th January. On being arraigned he pleaded not guilty. He was asked if he wanted an attorney. He replied "No". On the application of the prosecution the trial proceeded for the purpose of taking the

evidence of the complainant, the visitor, who was leaving the island the next day. He gave his evidence and was cross-examined by the appellant. The appellant was again asked if he wanted an attorney. He replied: "Yes". The trial was then adjourned until 2nd February, the appellant being placed on bail until that date.

On 31st January the appellant instructed an attorney, Mr. Panton, who appeared with the appellant on 2nd February. Before the trial resumed Mr. Panton learned from prosecuting counsel that the complainant had already given evidence. Mr. Panton then said he would object to the course the trial had taken. He said he would ask for an adjournment because he was busy. He was granted leave of absence by the court for one hour during which time he took further instructions from the appellant. As a result he decided to ask for an adjournment to prepare the defence.

On the case being called on for hearing Mr. Panton applied for an adjournment on the following grounds:

> "a) That the Court was proceeding with undue haste to try a matter of so serious a charge, in that the defendant was not legally represented when the Court proceeded to take the evidence of the Complainant,
>
> b) That I had not seen the evidence, and would not be able to cross examine on it, and
>
> c) That I needed more time to prepare my defence in the light of the information I had received only that morning from Mr. Furniss that the evidence of the complainant had already been taken.".

The learned Magistrate thereupon read to Mr. Panton the evidence of the complainant. He also explained that, initially, the appellant had said he did not want an attorney but that after the complainant's evidence had been taken he expressed the wish to have one and that the hearing had then been adjourned. Mr. Panton pressed his application for an adjournment but this was refused and the trial proceeded.

The evidence of the complainant was purely formal. In essence it was to the effect that he had left about $35.00 in U.S. and

C. I. currency in his pants pocket before going diving and that, on his return, it was missing. He did not implicate the appellant in any way. The appellant appears to have asked the the only questions relevant to the defence he put forward and received favourable replies. An adjournment would not have assisted as this witness had by 2nd February left the Island. It was not in issue that the appellant's colleague had stolen the money. His defence was that he was in no way an accessory to that theft.

Although every care must be taken to avoid prejudicing an accused person, it is inevitable that the trial of cases involving visitors as complainants must take place with some expedition; certainly that part relating to the taking of the visitor's evidence.

The appellant could have instructed his attorney two days earlier than he chose to do so. He knew that the trial would proceed on 2nd February. Counsel for the defence had, in my opinion, sufficient time to prepare the defence in what was a straightforward, uncomplicated case. The defence case was put in full to the remaining prosecution witnesses. None of that defence was relevant to anything the complainant visitor had to say.

In my view, the appellant was in no way prejudiced by the refusal to grant an adjournment. No specific prejudicial consequence has been alleged.

The appeal is dismissed.

SIR JOHN SUMMERFIELD.

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