9.3.79. Poon-Jowtay.

In the Grand Court of the Cayman Islands
Held at George Town on 20th July 1979
Before His Lordship, Sir John Summerfield, C.B.E., Q.C.
Cr. Appeal 13 of 1979

Keith Brown
v
Regina

Mr. Marcus instructed by Mr. McField for appellant
Mr. Ritch for respondent

JUDGMENT

This is an appeal against conviction and sentence for two offences against the Misuse of Drugs Law, one for the unlawful importation of ganja contrary to section 3 (1) (i) (a) and the other for the unlawful possession of ganja contrary to section 3 (1) (i) (k). The appellant was sentenced to five years imprisonment and a fine of $6000. or 6 months imprisonment in default for the possession and was admonished and discharged for the importation.

The appellant arrived on a flight from Jamaica with a suit case, a box and a drum. A police officer on the same flight became suspicious of the drum and invited the appellant into an office at the airport to search his luggage. Nothing was found in the suitcase or box but, on cutting a hole in the side of the drum, the police officer found vegetable matter resembling ganja therein. He showed it to the appellant and told him that it resembled ganja. He then arrested and cautioned the appellant for importation and possession of ganja. The appellant replied: "I bought the drum in the market in Jamaica for $170.". The vegetable matter was later identified by the Medical Laboratory Technician as "marihuana (ganja) as defined in the [Misuse of Drugs] Law" weighing 10½ lbs.

The appellant gave evidence on oath denying any knowledge of the contents of the drum. He gave an involved story of how he came to bring the drum into these Islands at the instance of an entertainer (whose name he gave to the Police only as David) who worked in these

Islands. The appellant said that he paid $170 for the drum on the understanding that the entertainer would reimburse him this sum in these Islands so that he could buy spares for his van with the money. He was going to be the guest of this entertainer for 2 weeks. He had been given the name and address of the entertainer on paper but had mislaid it.

The learned Magistrate rejected outright the appellant's explanation of how the drum came to be in his possession and his assertion that he was unaware of its contents.

The main thrust of the appeal was directed at the certificate of the Medical Laboratory Technician based on ground 3 of the additional grounds of appeal, namely:

> "That the evidence contained in the Certificate of the Government Analyst was insufficient to establish the Statutory Requirement necessary, namely that what was tested was the plant known as Cannabis Sativa L. and that there was any resin obtained from or detected in that plant."

Reference was made to the definition of Indian hemp in the United Kingdom Misuse of Drugs Act 1971 which confines that material to the flowering or fruiting tops of the pistillate plant known as Cannabis sativa L from which the resin has not been removed. It was stressed that the resin is the dangerous element at which the legislation is aimed and accordingly that the definition of Indian hemp in the United Kingdom legislation should be equated with, or used as a basis for construing, ganja within the meaning of the local law.

I have no hesitation in rejecting this submission. Ganja is clearly defined in paragraph 14 of the First Schedule to the Misuse of Drugs Law in the following terms:

> ""ganja" includes all parts of the plant known as Cannabis Sativa L. and any resin obtained from that plant, but does not include medical preparations made from that plant in accordance with a licence granted under this or any other Law;"

[redacted]

[redacted]

It was further argued that the certificate was defective because it merely referred to "marihuana (ganja)" and made no reference to the plant cannabis sativa L as contained in the definition. There is no mention of marihuana in the First Schedule but it is clear from the certificate that the vegetable matter was ganja "as defined by the [Misuse of Drugs] Law" which is sufficient to identify its nature for the purpose of the First Schedule and section 6 of the Law.

A further argument was directed at section 6 of the Law which provides that the certificate is merely prima facie evidence, not conclusive evidence, of whether or not a substance identified therein is the controlled drug specified in it..

[redacted]

In Cross on Evidence 4th Ed. p. 27 there is an extract from the judgment of Stratford J.A. in R. V. Jacobson and Levy 1931 App. D 466 at p. 478 (a report which appears to be unavailable in the library) to the following effect:

> "'Prima facie evidence' in its usual sense is used to mean prima facie proof of an issue, the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus."

In a note to the same passage the learned author observes:

> "When used in statutes, prima facie evidence usually bears the meaning attributed to it by Stratford J.A. [in the above passage]".

I have no doubt that that is the case in section 6 of the Misuse of Drugs Law.

The remaining grounds of appeal challenge directly or indirectly the learned Magistrate's findings on fact. It is suggested that he should not have rejected the appellant's version in the absence of evidence to the

contrary. It was further contended that as the issue of knowledge was pecularly within the knowledge of the appellant it was wrong for the learned magistrate to disbelieve him on that issue. It was also contended that the prosecution did n ot challenge the appellant's testimony in cross examination.

As to all the remaining grounds of appeal I can only say that there was sufficient evidence on the record to entitle the learned Magistrate to draw the inferences he did on the vital issue of knowledge and so reach the conclusions he came to. He was entitled to reject the appellant's evidence without giving any reason and so take account of the fact that an untrue explanation had been advanced. Even had he accepted the appellant's version, it is difficult to see how anyone who had dealt with the drum as he alleged would not have suspected it to contain illicit substance. One would have thought that the fact that it contained 10½ lbs of matter unconnected with the construction of a drum must have discernibly affected the weight of the drum and aroused suspicion. The record shows that the appellant was challenged by the prosecution on the vital issue of knowledge. It was open to the learned magistrate to draw a proper inference from the evidence before him and I do not see how he could reasonably have come to any conclusion other than the one he did.

As to sentence there is no doubt that it is severe. However 10½ lbs. of ganja was involved, an amount clearly indicating that there would be subsequent distribution. Personally,I would have treated the importation more severely than the possession. Nevertheless the overall effect is the same. It is arguable that the law required a fine and imprisonment on the importation charge as well and that the admonition and discharge was ultra vires. However, the overall sentence is in line with that given in similar cases involving similar quantities of ganja. The object is to deter handling of large quantities.

I can see no ground for varying the sentence.

The appeal is dismissed.

SIR JOHN SUMMERFIELD
Chief Justice
26th July, 1979.