10.11.78

In the Grand Court of the Cayman Islands
Held at George Town
On 3rd November 1978
Before His Lordship, Sir John Summerfield, Q.C., C.B.E.

Appeal No.19 of 1978

Mr. Hill for appellant
Mr. Ritch for respondent.

Regina v Royce Ebanks - Appeal

JUDGMENT

The appellant was convicted of the offence of having in his possession, without lawful excuse, a controlled drug, namely ganga, and sentenced to 18 months imprisonment together with a fine of $1000. or 6 months imprisonment in default. He appeals against conviction only.

The grounds of appeal are three :

(i) That the Prosecution failed to discharge the burden of proof on it;

(ii) That the verdict is unreasonable and against the weight of evidence;

(iii) That inadmissible and prejudicial evidence was admitted.

The essence of the Prosecution case was that a Police party raided the appellant's home at Frank Sound North Side at about 3 a.m. on 5th June 1978 and there found a considerable quantity of ganja in the appellant's possession.

The Police party consisted of Police Constables Hall and Ebanks, both of whom gave evidence for the Prosecution, Police Constables Rankine and Echinique. They went as a group to the appellant's house and surrounded it. They found the lights in the front bedroom on and the curtain ajar. While at the front door Constable Hall looked through a crack in the curtain and saw a dark green garbage bag made up in the shape of a square parcel. He also saw the appellant, a woman and child in bed and another girl whom he recognised as Andrea Cranston, who also gave evidence for the Prosecution and a cousin of the appellant, lying on the floor (Andrea herself, however, said that she was sleeping in the back room).

Constable Hall knocked and called for the appellant.

He knocked about five times. Others in the party were also knocking on other parts of the dwelling. There was no initial response. After about eight to ten minutes the accused responded from the living room saying: "OK man you had me frightened why didn't you say so all the time". Constable Hall had knocked and said: "Police, open the door, we want to search for drugs".

Constable Ebanks was able to give some information about what occurred

during part of that eight to ten minutes. He was at the front of the house and knocked on a window. There was a response from a female inside and a short conversation with her. This would tie in with Andrea Cranston's evidence that she told the appellant that the Police were outside and wanted to come in. According to Constable Ebanks he then went to the south side of the building and shone his torch through the window and saw the appellant dodge behind a radio. There was a conversation. He saw the appellant walk to a room on the east side. He then saw two females, one carrying a child, go into another room and shut the door behind them. He heard the sound of paper being handled and what appeared to be a toilet flushing three times. He then saw the appellant walk to the front door.

The door was opened. Constable Hall entered with Echinique. Constable Hall asked the appellant where the occupants of the house were and the appellant replied that his wife was in the ~~bedroom~~ bathroom using it. It should be noted that while the police party was still outside he too had heard the toilet flushing several times.

The bathroom door opened and the appellant's wife, Andrea Cranston and a little baby came out of it. At the time those persons and the appellant were the only persons in the house.

Constable Hall entered the bathroom and in there saw what appeared to be vegetable matter resembling ganja on the floor and in the toilet bowl. He looked back and said to the appellant "Royce come here". The appellant came and looked down in the bowl and flushed the toilet. Constable Hall cupped the vegetable matter on the floor with his hand, picked it up, wrapped it in paper and put it in his pocket. The vegetable matter so retrieved turned out to be .05 gms of ganja.

The appellant walked out of the bathroom into the living room section. Then Constable Hall heard Constable Rankine, who was in the living room where the appellant was, say: "Hall, he ran". Constable Hall went into the living room. There he saw the parcel, which he had earlier seen from outside in the bedroom, behind a red chair, between the wall and the chair. It was pointed out to him by Constable Ebanks. It had therefore obviously been moved to that point during the eight to ten minutes while the police party were outside trying to gain admission.

Constable Hall noticed that it was a dark green garbage bag, containing clear plastic with vegetable matter resembling ganja with silver tape around it. The appellant was nowhere to be seen. The party went outside to look for him without success. Constable Hall also shouted for him. The appellant returned and entered the house about five to ten minutes later. Constable Hall showed him the parcel.

It had a tear in it and Constable Hall told him it was vegetable matter resembling ganja. He arrested the appellant and cautioned him. The appellant said nothing. The vegetable matter in that parcel turned out to be 50 lbs. of ganja.

The appellant was taken to the Police station in Georgetown and was charged with this offence. At the Police station the appellant told Constable Hall that he wanted to speak to higher ranking officer. Superintendent Cruickshank was present and/constable left the appellant with him.

With regard to the interview, part of Superintendent Cruickshank's evidence under cross examination is recorded by the learned Magistrate in question and answer form thus:

"Q: Did the Defendant ask you whether he spoke if it would do any good?

"A: Any answer I gave would be detrimental to your client."

He went on to say in cross examination that the appellant told him there was more ganja to be found. He could not recollect if the appellant had told him 5 more bales but conceded that he could have done. Superintendent Cruickshank did, however, say that the appellant did not tell him that he had done nothing wrong and wished to speak to his lawyer - this presumably in answer to a leading question under instructions.

Under re-examination Supreintendent Cruickshank said that, when the appellant requested to see him, the appellant wanted to do a deal with him. The appellant asked him whether, if he gave the names of others who had ganja from the ship, he would drop the charges against him and let him go. Superintendent Cruickshank told the appellant that he would make no deal with him, that he was being charged and that any information he could give would be helpful. It would appear that as a result of information given several further raids were made with negative results.

The learned magistrate believed and accepted that evidence as given by the Prosecution witnesses. The appellant at the trial admitted that he was in possession of the 50 lb parcel of ganja. It was never in issue at the trial or on this appeal that he was in possession of that parcel.

Quite clearly that evidence standing on its own, as accepted by the learned magistrate, would fully establish the charge as laid.

The appellant sought to show that he had lawful excuse for the possession of that 50 lbs of ganja and that was the principal issue at the trial.

In essence, the appellant's case was that he had been assisting the Police in recovering ganja which had been illegally landed from a yacht, the Catalina. After an initial excursion in which five bags had been recovered, he said that he was approached by a Police Constable Greenridge to make a further excursion; that he had reluctantly taken part in this second excursion and that he and Constable Greenridge, accompanied by two others including one Charlie Rankine, who gave evidence for the defence, went and recovered a further parcel of ganja, the one that is the subject matter of the charge. That parcel got torn on the return journey and the appellant and Constable Greenridge put it in the bags in which it was later found by constable Hall. The appellant then claimed that on returning home they took the parcel from the car and placed it in his house and, that, after taking water, Constable Greenridge and the others left, Constable Greenridge telling the appellant that he was tired and asking him if he could leave it there until morning when he would pick it up on his way to George Town and make a report.

It was later that morning that P.C. Hall found the parcel in the appellant's house.

That explanation was rejected by the learned Magistrate. The inherent implausibility of it is manifest. Constable Greenridge lived nearby, had a car and it is inconceivable that in the course of his duty he would ask a civilian to tend a parcel of 50 lbs of ganja, a main exhibit in any prospective case, for which he would have been responsible, unless it was part of an illegal plot with the parties acting in concert. And if he had done such a foolish thing innocently it is inconceivable that the arrangement would not have been brought to the attention of the Police authorities before any prosecution of an innocent person so assisting the Police. Be that as it may, it was a matter essentially for the learned Magistrate to determine the credibility of the defence witness and whether the explanation raised any reasonable doubt in his mind. On this issue the learned magistrate was categorical in his reasons, completely rejecting the defence evidence. He had the advantage of observing and hearing the witnesses before reaching this conclusion.

That being so the case reverted to the position adverted to earlier where the Prosecution evidence coupled with the appellant's admission of possession, as accepted by the learned Magistrate, fully established the charge as laid.

There were ample grounds on which the learned magistrate could test the credibility of the appellant's evidence. For example, there was the appellant's

conduct at the relevant time. Furthermore, the appellant denied that the Police found anything on the bathroom floor in his presence or that he flushed the toilet in their presence. He denied that the bale was first in the bedroom before it was placed behind the chair in the living room. He denied that Constable Hall could have seen it in his bedroom. He said that he told Superintendent Cruickshank that he had done nothing wrong and that he wanted to speak to his lawyer. He denied trying to make a deal with Superintendent Cruickshank. All this was in direct conflict with the evidence of the Police officers that the learned magistrate accepted.

Learned counsel for the appellant placed reliance on the case In re Bramblevale Ltd. 1970 1 Ch 128 and, in particular, on the principle that a lie by an accused person does not affirmatively set up any fact to the contrary. No one quarrels with that proposition or any of the principles enumerated in that case. However, in my view, it has no bearing on the propositions sought to be advanced in this case.

Here the Prosecution case, coupled with the appellant's admission, established every ingredient of the charge he faced. He sought to show that there was lawful excuse for his possession.

That was rejected and, therefore, destroyed any basis for any lawful excuse for the possession and the learned Magistrate could only revert to the evidence already accepted which established the charges in its entirety. That is a very different position from that obtaining in Bramblevale's case.

It was said that the Prosecution should have called Constable Greenridge to negative the defence put forward by the appellant. One can think of several reasons why he was not called. In the first place he had no part in the raid on the appellant's house where the parcel of ganja was found. Nothing emerged from the prosecution evidence, or from the cross examination of the prosecution witnesses, to suggest that the defence would be that Constable Greenridge left the parcel with the appellant for safe custody. Nothing appears on the record that the appellant ever indicated to the Police before his trial that he was asserting that Constable Greenridge had left the parcel of ganja with him for safe keeping. One cannot infer anything adverse to him because he declined to say anything on being cautioned. But there was the later interview at his own request with Superintendent Cruickshank in which he volunteered to do a deal. One would have thought that, at that stage, he would have revealed Constable Greenridge's alleged part if there was any truth in it. Indeed the offer to do a deal is at variance with any lawful excuse for the

possession
~~prosecution~~ on the lines he alleged.

It would have been open to the Prosecution, at the end of the defence case to seek leave to call evidence in rebuttal if they saw fit. It does not follow that leave would necessarily have been given. The Prosecution was not obliged to take that course. They were entitled to rely on their assessment that the defence evidence had been discredited and was unworthy of belief, thus leaving their case with all essential ingredients of the charge fully established.

There remains the ground of improper admission of prejudicial evidence. This was said to be the evidence of the Defence witness, Charles Rankine, in answer to questions from the Bench which emerged as follows:

> "I did not tell Cacho that Greenridge had given the Defendant the ganja to keep for him, because my father had told me not to give any statement until the Police had told him who had informed about his having a bale of ganja in his house."

This related to ganja not concerned with the charge.

In my view that evidence is admissible. It goes to the credibility of that defence witness and to the credibility of the defence version which one would have expected this witness to reveal to protect the appellant at the earliest possible time. The suggestion that it was prejudicial to the witness because it suggested that he, the witness, had a bale of ganja in his house does not in my view have any merit for the basis this ground of appeal as put forward.

It has been submitted by learned counsel for the respondent that quite apart from the 50 lb parcel of ganja, the ganga found in the bathroom is sufficient in itself to support the charge.

The learned Magistrate made no specific findings with regard to that small quantity of ganja, although he accepted the evidence of the prosecution. What inference the learned Magistrate may have drawn with regard to the appellant's conduct in relation to that small quantity of ganja, I am unable to say.

It is sufficient that there was ample evidence to support the conviction on the charge laid in relation to the 50 lb parcel of ganja and that the learned Magistrate came to to the only reasonable conclusion on the basis of his findings.

The appeal is dismissed.

SIR JOHN SUMMERFIELD
10 November 1978.