JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL No. 30 of 1973

BEFORE: The Hon. Mr. Justice Luckhoo, President (ag.).
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Grannum J.A.(ag.).

R. v. RUDOLPH DUJOY

W.B. Brown for the appellant.

H. Downer for the Crown.

17th May 1973, 31st July 1973

EDUN, J.A.:

At the conclusion of the hearing of the appeal, we dismissed the appeal and affirmed the conviction and sentence. We promised to put our reasons in writing. We do so now.

The appellant Dujoy and Weston Henry were jointly charged with the possession of ganja. Constable Fred Johnson, a witness for the prosecution, said that on October 2, 1972, he was in front of the Palisadoes police station, with Corporal Cotterell, when he noticed a white Vauxhall car drive towards the police station. The driver who was Henry parked it under a tree about one and a half chains away. The appellant was in the front seat beside him. He kept the car under observation. He saw the car then drive off towards the airport and stop about a chain from the terminal building. He and Cotterell followed. Henry came out, so too the appellant. Henry opened the trunk of the car with a key and took out a suitcase. The appellant removed a similar suitcase from there. The appellant signalled to a porter who came up and put both suitcases on a trolley. The appellant then opened the left rear door of the car and removed a similar suitcase. None of the three suitcases had any labels.

Johnson said he approached both defendants, identified himself and asked Henry what was in the three suitcases. Henry said, "Ask Dujoy the car belong to him." The appellant could have heard the question. Johnson then asked the appellant the same question. The

appellant replied: "Is a job the brother got to take the suitcases." Johnson then asked both of them the name and address of the man who gave them the job and both defendants said they did not know. The police detained them and took them with the three suitcases to the police station.

At the station, Johnson searched the appellant and found in his right side trousers pocket two small keys and with one of them he opened all three suitcases in the presence of both defendants. In each of them, vegetable matter resembling ganja was found. Johnson then arrested them, charged them with the unlawful possession of ganja and cautioned them; they made no statement. An analyst's certificate tendered in evidence disclosed that the suitcases had 52 lbs., 53 lbs. and 51½ lbs, each of ganja. Corporal Cotterell gave supporting evidence for the prosecution.

The appellant in his defence, said that on October 2, 1972, as a result of what Henry told him, he agreed with one Charlton to carry the three suitcases to the airport. Charlton paid him $20 and gave him the keys and asked him to deliver them to one Michael Scott. He never knew what was in the suitcases until they were opened by the police. The appellant was convicted, fined $600 and in default to serve 3 months imprisonment with hard labour and in addition to serve two years imprisonment at hard labour. Henry did not appeal.

Learned attorney for the appellant submitted that as against conviction there was no evidence of possession in the appellant of the ganja found in the suitcases and therefore, the verdict was unreasonable and could not be supported having regard to the evidence. As against sentence he submitted that it was manifestly excessive. We did not call upon learned attorney for the Crown to reply.

In considering the facts and circumstances of the case the learned Resident Magistrate was entitled to conclude that -

(a) there was no man named Charlton who employed defendants to "handle" the suitcases, and

(b) there was no man named Michael Scott to whom the suitcases were to be delivered.

On this aspect of the case, there was evidence from the prosecution that when both defendants were asked the name and address of the man who gave them the job to "handle" the suitcases, they said they did not know.

When, however, both the appellant and Henry came to give evidence in February 1973, the names of Charlton and Michael Scott cropped up. The learned Resident Magistrate had also seen and heard the witnesses; he had in view of the submissions of learned attorney for the defence to consider whether or not the defendants were merely physically handling the suitcases. We have no reason to hold that the learned Resident Magistrate in finding that both defendants were jointly in dominion and control of the suitcases, misdirected himself: see Hobson v Impett (1957) 41 Cr. A.P. 138. So far as their knowledge of the contents of the suitcases is concerned, if the Magistrate disbelieved the defence concerning Charlton and Michael Scott, then the appellant, in particular must have known of the contents therein as the keys which opened all three suitcases were found on him.

As regards sentence, we saw no justification for interfering. For the reasons stated we dismissed the appeal, and affirmed the conviction and sentence.