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IN THE GRAND COURT OF THE CAYMAN ISLANDS

SCA NO: 8/2002

BETWEEN:

GARFIELD SILBURN

17-04-03

Appellant

AND:

THE QUEEN

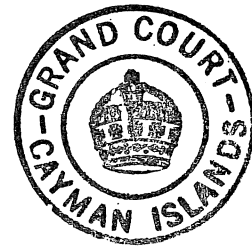
Respondent

APPEARANCES:

Counsel for the Appellant: Mr. Aiolfi

Counsel for the Respondent: Mrs. Smith-Andalcio

HEARD: April 11, 2003



REASONS FOR JUDGMENT

Levers J.

The appellant was convicted of four counts of possession of an unlawful drug contrary to the *Misuse of Drugs Law* (2000 Revision). He was charged with (1) possession with intent to supply (cocaine), (2) possession of a controlled drug (ganja), (3) consumption of a controlled drug (ganja) and (4) possession of a controlled drug (cocaine). He pleaded guilty to consumption of a controlled drug (ganja) (Count 3) and was sentenced to six months imprisonment.

He now appeals against his convictions. Evidence was led on Counts 1, 3 and 4, but he was found guilty of 1, 2 & 3, as 4 was subsumed in 1. He was given

concurrent sentences of five years on all three counts. He challenges his convictions on the following ground: -

1. The learned Magistrate erred in law in that she failed to properly consider the alternative possible inferences before drawing the adverse inference against the accused that he was in possession of all the drugs.
2. The learned Magistrate erred in fact in that there was insufficient evidence to draw such an inference
3. The learned Magistrate erred in law and in fact that the defendant was not a consumer of cocaine and therefore drawing an inference of intent to supply.

Mr. Lawrence Aiolifi in his attempt to advance what he regarded as the merits of this Appeal concentrated his efforts on the lack of evidence as to possession, the existence of discrepancies and inconsistencies in the evidence presented by the Prosecution. He criticized the learned trial judge for not dealing adequately with these features of the prosecution's case and also for not making a proper assessment of the evidence that was presented.

THE PROSECUTION'S CASE

On Sunday, the 4th November 2001, Officers of the Uniform Support Group observed vehicle registered # 63818, a blue Toyota Corolla, driven by the accused, turning into Horizon Auto parking lot in George Town, Grand Cayman.

The accused was wanted for questioning on an unrelated case to these charges with which he was convicted and which are the subject matter of this Appeal.

As officers got along side of the accused vehicle, it is alleged he sped off to the rear of the premises and collided into several vehicles. It is then alleged that the defendant exited his vehicle from the right side (under the watchful eye of three officers) and was searched. There was a passenger in the car Richard Hydes, who was also asked to get out of the car and was searched. The accused was searched and nothing of significance was found on the accused. However, on the drivers side of the car (inside the vehicle) a parcel resembling vegetable matter was found. Also at the scene, under the car were discovered two packages. One wrapped in yellow paper and another in white. The one in yellow paper subsequently, was found to be cocaine, the one in the white plastic to be ganja.

As a result of this, the accused and the passenger were taken to Central Police Station and detained.

On the 6th November 2001, the accused was cautioned and he admitted the ganja in the car as being his but denied possession of the packages of ganja and cocaine found outside the car. A urine sample was taken which proved negative.

On the 8th November 2001, he was formally charged for possession of ganja, possession of cocaine with intent to supply and possession of cocaine.

Witnesses for the prosecution included three police officers namely Kim Ramoon, Andre Tahal and James Collins. All three officers were consistent in confirming that they did not see the accused throw anything as he was getting out of the car. Their evidence was in conflict as to where the packages were found. There was evidence that Mr. Ramoon found the two packages approximately 3 to 4 feet under the car. However, Mr. Tahal saw one package almost under the car and one two feet away from the door on the driver's side. The only other witness for the prosecution was Richard Hydes, who did not place the drugs in the possession of the accused. However, he appeared to have told the police officers previously "I saw Garfield going into his pocket like he was hiding something. Garfield got out of the car and I saw him throw down something. In Court he said "I said to the police that when he was getting out of the car like he was panicking and feeling for something but I don't know what it was that is the truth." He was treated as a hostile witness by the prosecution and under cross-examination, he denied saying anything about "Garfield throwing the drugs on the ground or anything like that". He further stated that "it was only after the police put further things to him that he said that he saw Garfield throwing the drugs on the ground".

The submission of no case to answer was made. The learned trial judge ruled that there was a case to answer.

THE DEFENCE

The Appellant, Garfield Silburn gave evidence and as he did from the time of his arrest, readily admitted to the drug in the car being his but he denied knowledge or being in possession of the drugs outside of the car. In cross-examination he was tested fairly aggressively however there was no suggestion put to him that he had thrown anything outside the car when he was alighting from the car.

THE JUDGMENT

The learned trial Judge in coming to the conclusion as to the guilt of the accused in her Reasons for the decision states that the issue before the Court arising from these facts is whether the drugs found outside are proven to have been thrown there by the defendant, so as to fix him with their possession. She deals with the question of the inconsistencies highlighted by the defense in the no case to answer submissions and then states that there was no allegation or suggestion made by the defense that the drugs were planted on the scene or that the cocaine alleged to have been found in one of the packages was put there by the police, or that there was no suggestion made to the crown witness, Richard Hydes that the drugs were, in fact, his.

There is no onus on the defense to put any allegation or suggestion as to how the drug got there.

In examining the prosecution's case the learned Magistrate is of course entitled to draw an inference from the evidence presented. In the instant case the inference drawn by the learned magistrate were that:

- (1) Possession was established beyond a reasonable doubt by the mere fact that the packages were similarly packaged;
- (2) She appears to have been satisfied so that she felt sure that the defendant was the person who throw those packages on the ground as the packages were found near to where he stood outside the car;
- (3) She further finds that the defendant's conduct supports the inference of possession to be drawn from the proximity of the drugs to the defendant; and
- (4) That although she warns herself as to Richard Hydes being a hostile witness, she feels sure that the defendant's possession and the inference from the evidence to be drawn as to possession is supported by the evidence of Richard Hydes when he says that the accused was panicking and feeling for some thing in his pockets.

I disagree.

Having carefully considered the evidence and the Reasons for Judgment and the manner in which the learned judge addressed her mind to the issues and to the

inferences drawn from the evidence, I agree with the submissions of Mr. Lawrence Aiolfi that there was insufficient evidence on which the magistrate could come to the irresistible inference and finding that this appellant was in possession (control) of the drugs outside the car. The appeal is accordingly allowed on Counts 1 and 2. The convictions on the counts are quashed.

Dated this 17th day of April 2003



P. Levers
Judge of the Grand Court

