

Douglas J
27-1-97

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

S.C.A. # 22/96

BETWEEN: Regina

PLAINTIFF

AND

: Gordon Allan Russell Panton

DEFENDANT

TAKING OF LOBSTERS IN A REPLENISHMENT ZONE

For the Crown: Mr. Stephen Bonnar

For the Defendant: Mr. Lloyd Samson

HARRE CJ

JUDGMENT

The facts will sufficiently appear from what I am about to say. The appeal by the Attorney General was brought on two grounds. They were -

1. The Learned Magistrate erred in law in failing to have regard to Regulation 9 of the Marine Conservation (Marine Parks) Regulations 1986;
2. The judgment of the learned Magistrate was inconsistent and on the evidence it was not open to the Learned Magistrate to acquit the Respondent while convicting the Respondent's Co-Defendants.

Regulation 9 there referred to reads as follows -

“In the case of the contravention of any of these Regulations in circumstances which involve the use of a boat, all persons in the boat at the time of the contravention shall be deemed to be responsible therefore and shall be liable for the contravention as principal offenders.”

The Magistrate made the following findings of fact as to which he said that he was satisfied beyond reasonable of doubt on the evidence adduced. The defendants at the material time were in an aluminum boat powered by an outboard engine in the Replenishment Zone ID off Finger Cay, Rum Point, Grand Cayman within Cayman waters, indeed the defence admits that this was so.

That the boat was driven by Mr. Hubbell and stopped at three locations. At the first and second locations Messers. Panton and Martinez entered the water wearing masks, snorkels and fins and at the third location, only Mr. Panton entered the water while Mr. Martinez remained in the boat with Mr. Hubbell.

That Mr. Ebanks (a Marine Park Enforcement Officer) observed the defendants through a pair of binoculars from a vantage point on land when they were upwards of half a mile distance from him. No evidence was given of the field of vision, clarity and magnification of the binoculars and they were not produced in evidence.

That Mr. Ebanks saw Mr. Panton and Mr. Martinez in the water with what appeared to be hook -stick, (sic) and at the second location saw that brown lobsters were placed aboard the boat.

That whilst the defendants were at the third location, Mr. Ebanks and Mr. Yates (a Fisheries Officer) motored to them in Mr. Ebanks' boat at speeds of up to 70 miles an hour, that as Mr. Ebanks came to a stop in his boat, Mr. Hubbell threw overboard

from the defendants' boat eight lobsters. They fell into the sea and disappeared from view.

That Mr. Yates , in the presence of the defendants and on the instructions of Mr. Ebanks brought up to him two injured lobsters and a yellow hook-stick. And although he was in the water for about twenty minutes, Mr. Yates brought nothing else to the surface in an area where the depth of water is about seven feet. That in the defendants boat was found a brown hook-stick.

That there is no evidence that the yellow hook-stick recovered by Mr. Yates was identical to the yellow hook-stick allegedly used by Mr. Panton. That apart from any other activity in the water, Mr. Panton was searching for a lost anchor at all three locations and that whilst he was so engaged, he was not well placed to know precisely what his companions were doing.

Then a little later in the judgment he said this.

“On the evidence before it, the Court is satisfied beyond reasonable doubt that Mr. Martinez placed lobsters on board the aluminum boat at the second location, in the presence of Mr. Hubbell who motored with them to the third location and at the third location, on the arrival there of Mr. Yates, Mr. Hubbell threw the lobsters back into the sea.”

He then found Mr. Martinez and Mr. Hubbell guilty as charged and acquitted Mr. Panton. Mr. Panton was the only one of the trio in the boat to give evidence. It was unequivocally to the effect that they did not spear any lobsters that day and had none

on the boat. The Magistrate rejected that in convicting Martinez and Hubbell. His acquittal of Panton clearly was based on the conclusion that his robust denial of any wrongdoing was based on his ignorance of what was going on. That was not how the defence case had been put, but that does not preclude the court from considering it. The court should look for any possible defence to a charge arising from the evidence and refer to it, even though the defence has not been relied upon by the defending advocate. I am taking that observation from paragraph 4 - 379 of the 1997 edition of Archbold, page 459. On the ordinary criminal burden and standard of proof of which the Magistrate elaborately reminded himself, I would not be disposed to interfere. But the Magistrate in coming to a verdict of reasonable doubt did not deal with Regulation 9 which puts an evidential burden on the defendant, though it does not in my view, create an absolute offence. That regulation was not referred to at any point in the trial, which is not surprising in view of the nature of the defence.

There is, on the record no indication that a point of law which could have affected the view of the Magistrate on the burden and standard of proof was considered. One cannot be sure of what the Magistrates' view might then have been, and indeed from the record one may surmise that Mr. Panton's demeanour must have been particularly impressive to him. In view of all that I think that it would be wrong to send the case back with a direction to convict. Nevertheless, the verdict is one with which the Court should interfere to the extent of ordering a retrial of Mr. Panton and that is the order which I make. The matter will be remitted to the Summary Court for that purpose.



G. E. Harre
Chief Justice