

Don Douglas J.
19/11/96

IN THE GRAND COURT OF THE CAYMAN ISLANDS
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
 SCA #34/95

BETWEEN: Douglas Gibson

APPELLANT

AND: The Attorney General

RESPONDENT

For the Crown - Mr. Adam Roberts
 For the Defendant - Mr. John Furniss

BEFORE HARRIS CJ

REASONS

Douglas Gibson was convicted by the summary court of possession of ganja with intent to supply and was sentenced to eighteen months imprisonment with six months suspended.

He appeals against his conviction and sentence on the following grounds -

"1. The learned magistrate erred in finding that the evidence of Ellen Joy Williams, an accomplice was reliable, truthful and believable to an extent where he

convicted the appellant.

2. That the evidence deduced by the crown did not in any event support the findings of guilt against the appellant.

3. That the learned magistrate failed to recognize nor consider the inconsistencies in the evidence of the other crown witnesses and viewed on their own and in particular when set against the evidence of Miss Williams.

4. That the sentence in any event was manifestly excessive."

It is convenient to consider grounds 1 and 3 together.

The appellant was tried together with one Beaver Smith. Miss Williams was the principal witness against both. Her evidence against Smith was corroborated in important respects by one Roy Conolly, but his evidence did not implicate Gibson in any way. It is important to record at this point that the passage at the end of the record of his evidence in chief which refers to him seeing Gibson at the material time is acknowledged by both sides to be inaccurate.

As far as Gibson is concerned the Crown's case rests entirely on the evidence of Williams who is undoubtedly an accomplice. Indeed, she was convicted of possession of ganja with intent to supply in relation to the events to which her evidence in the present case relates.

That evidence, so far as it is relevant to this appeal, was this. The two defendants came and asked her to go and buy a ticket at the airport. Gibson said that he could not carry her to the airport as he

did not want anyone to see her with him. So she and the two defendants went in a van to a park in School House Road, George Town and there they found Roy Conolly. Gibson himself said that she should call Roy and she did so and he came. Smith asked Conolly if he could take Miss Williams to the airport. Gibson took out \$600 from his pocket and gave it to Smith to give to her. He also gave her a piece of paper with the flight number and instructions about going from Miami to the Turks and Caicos Islands.

She said that Gibson was in his van on the side of the road and all three of them, Smith, Gibson and herself, were there. Conolly was parked in his truck and both she and Smith got out of the van and Conolly came across to where they were. She was positive that it was Smith who asked Conolly to carry her to the airport, and apart from saying that the handing over of the \$600 and the piece of paper by Gibson took place at the park, she did not relate them in point of time to the transaction with Conolly.

Conolly's evidence was that he saw Smith and his sister Williams at the park on the 8th July 1993 and that Smith spoke to him and asked him to take Williams to the airport to buy a ticket. He did so for an agreed price of \$15.00. From the airport he took her to her mother's house in Prospect and on arrival saw Beaver Smith by the door. She had a conversation with Smith and asked Conolly to wait for her and take her back to the airport. At the airport she was inside for about fifteen minutes and came out with what looked like an airline ticket in her hands. She asked Conolly to take her back to her mother's

house in Shedden Road, George Town.

Cross-examined by Smith he reiterated that it was Smith and Williams who came to him in the Park, not three people. He did not see Smith give Williams any money. On that basis it was argued that there was a clear conflict between the evidence of Conolly and the evidence of Williams about money being given by Gibson to Smith to hand on to Williams. But the fact that one witness says something happened and another witness says that he did not see it, does not create a conflict if there is some explanation for that state of affairs. Williams evidence to the effect that Gibson did not want to be seen in her company and remained in the van throughout is an explanation which it was open for a judge of fact to accept.

There was more in the evidence of Williams which implicated Gibson. It related to a conversation after the suitcases were checked in when she said that Smith told Gibson that the two suitcases which she had taken to the airport had got "burst" and she said that was not true, she had checked them in. Gibson told her that as she had the ticket she might as well take the trip, gave her \$100 and said he was taking a flight the same day.

There were discrepancies in the evidence of Williams, in particular about the exact amount of money she had received and exactly how it had been handed over. But if her evidence is to be believed, it is only consistent with Gibson being the controlling hand and paymaster in this enterprise and knowing that the suitcases which Williams took

and checked in at the airport contained ganja.

The appellant's complaint is that the Magistrate should have dealt with this expressly in his judgment, and should also have dealt separately with Smith and Gibson and referred expressly to Gibson's defense which was simply that he was not there and had not been involved in the matter at all.

The magistrate's judgment was very brief. He reminded himself of the burden and standard of proof and also warned himself of the dangers of convicting any defendant on the evidence of accomplice, in this case the evidence of Ellen Joy Williams. He drew no distinction between Gibson and Smith in this, or indeed in any other respect save to say that the evidence against each was somewhat different. He did however immediately follow that by saying that it was necessary to carefully evaluate all the evidence, both for the Crown and the defence before reaching any conclusion and to give the defendants the benefit of any reasonable doubt. At no point did he make any separate analysis of the evidence against Smith and Gibson, or refer to the respective defences.

His conclusion is expressed as follows -

"I have reviewed very carefully all the evidence and I have found in particular that Ellen Joy Williams is a reliable and truthful witness and I accept and rely upon her evidence to the point where I am satisfied beyond reasonable doubt that the defendants are guilty as charged."

I said in my brief extempore judgment that although the Magistrate

could with advantage, have given his analysis of the evidence in detail he did indicate that he had considered the points which he was under a duty to consider. The essential issue was whether or not he should regard Ellen Joy Williams as a credible witness. He decided that he should, having shown that he had warned himself of the danger of doing so. That was a reference to the warning which he in fact gave himself which was of the danger of convicting any defendant on the evidence of an accomplice. Inherent in that warning is the proposition that the accomplice's evidence is uncorroborated, as it was in the case of Gibson.

The magistrate is not under a duty to look for truth in all aspects of accomplice evidence. Common sense must be applied to assessing the value of an accomplice's evidence no less than to any other. The magistrate in this case believed the evidence of Williams in its essential particulars, as he was entitled to do and by necessary implication disbelieved the defence of Gibson. On my independent review of the evidence adduced by the Crown, I find no fault with this, or with the finding of guilt based on proof of possession.

With regard to the sentence, the court accepted that, notwithstanding the conviction based on possession, Gibson "played a peripheral role more of being concerned in the possession of ganja" and reflected that in his sentence. It was in no way manifestly harsh and excessive.

It was for these reasons that I dismissed the appeal.

19th November 1996


G.E. Hurre
Chief Justice