

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

SCA #27/96

STEVE ERROL REID

**1796/93 POSSESSION OF GANJA WITH INTENT TO
SUPPLY**

1798/93 POSSESSION OF GANJA

**TRANSCRIPTION OF MURPHY J'S ROUGH NOTES OF
ORAL REASONS FOR DECISION IN SUMMARY COURT
APPEAL SCA# 27/96**

**I will not attempt a full recitation of the evidence generally. I will deal
specifically with the grounds raised.**

**I am grateful to all counsel for their extremely able and helpful submissions, in
particular Mr. Phipps who raised with ingenuity everything that could usefully
be said on behalf of the appellant. Notwithstanding that, in the end I have
decided with little hesitation that this appeal must fail.**

**This is an appeal concerned largely, if not totally, with facts, not law . Simply
put, in my view, there is more than adequate evidence in this record to found the**

conviction for possession with intent to supply, in respect of the contents of both sacks of ganja.

I make one thing clear at the outset. This is in response to the appellant's counsel's submissions that the learned Magistrate's reasons were flawed in some respects by a lack of clear "findings", such as whether the substance was in the "possession, custody or control" of the appellant. (This is rather dubious, as this is really a conclusion of law.) I say at once that I accept that it is always open to me to come to my own legal conclusions on the basis of the evidence on the record.

**1. NO FACTUAL NEXUS LINKING THE SUBSTANCE FOUND WITH THE
SUBSTANCE EXAMINED.**

I have looked extremely carefully at the totality of the evidence. I have considered counsel's submissions. The question of a nexus is largely a matter of fact. I conclude that there was ample evidence for a finding of a nexus between the substance found and the substance examined by the expert. The learned Magistrate was right to find there was such a nexus. The nexus was clear on the totality of the following evidence:

The evidence of D.C. Harvey taking possession and the later evidence of D.C. Harvey at 67 of the record, the evidence of the analyst Gomez, and exhibits 10 and 11 (referring to RH 1 and RH 2).

Exhibits 10 and 11 (whether copies or originals) I accept as part of the chain - clearly a necessary part of the chain . I am of the view that it was proper for the learned Magistrate to consider them.

I reject the submission that the Magistrate should only have considered either the viva voce evidence of Gomez or her certificates but not both. I know of no legal basis for that submission.

The error of the date of the examination, in the Harvey evidence, is not fatal in view of the totality of the evidence which I regard as establishing beyond reasonable doubt that what was recovered was what was analysed.

The apparent absence of direct evidence that Harvey actually labelled the vegetable matter evidence as RH 1 and RH 2 is not in my view fatal given the totality of the evidence.

There was evidence that D.C. Harvey took the substance found to Gomez and that she analysed it in his presence and that the result was recorded on exhibits 10 and 11 which were admitted into evidence through him. That process generated exhibits 10 and 11. Gomez gave viva voce evidence of the analysis

reflected in exhibits 10 and 11 and identified exhibits 10 and 11 as her certificates. Both witnesses identified the same certificates. That is sufficient to constitute a nexus. Evidence of how the “RH 1” and “RH 2” notations got onto the certificates is not necessary in my view.

Making a link in this way does not conflict with the principle in Dilbert v. R. [1988-89] CILR N-9 in my view . The important consideration is that the link be clear beyond any reasonable doubt , and I conclude that it is here.

I expressly do not take into account the appellant’s alleged admission at the scene. It is not necessary to do so. The identification of the substances as ganja was made without the appellant’s admission.

GROUND 2 AND 3

I simply say that on a review of the totality of the evidence I have no hesitation in concluding that there was more than ample evidence upon which the learned Magistrate could conclude, on the criminal onus, that the appellant was in possession of both sacks and their contents, within the meaning of the relevant statutory provisions and in particular paragraphs (b) and (d) of subsection 10 (1) of the Misuse of Drugs Law. On my review of the evidence, and notwithstanding the able arguments of Mr. Phipps, I have no lurking doubts on that score.

Again I expressly decline to consider the alleged admission at the scene, as on the view I take of the evidence it is not necessary to do so.

The appeal as to conviction is dismissed. It follows from my upholding the finding as to possession of two sacks that the appeal as to sentence cannot succeed.

Murphy J.

Judge of the Grand Court