

27.7.94

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA 72/93

27-07-94

ERNIE MARSEE WALTON vs REGINA

Mr. Graham Hampson for Appellant
Mr. William Helfretch for the Crown

JUDGMENT

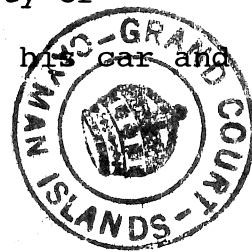
Schofield J.

Ernie Marsee Walton (the appellant) was convicted, after trial, of possession of ganja with intent to supply, contrary to Section 3 (1) (m) of the Misuse of Drugs Law.

The facts of the case, as related by the one prosecution witness, are straightforward and not in dispute. The appellant smokes four or five cigarettes of ganja daily. His father lives in Cayman Brac and the appellant visits him quite often.

It was his intention to go to Cayman Brac for a three weeks visit from Saturday the 6th February 1993. At about 3:50 p.m. on that day he went to the airport to check if there was a seat available on the late afternoon flight. The appellant left his motor car unlocked at the drop-off area of the airport and went to the check-in counter.

Police and Customs officers observed the appellant and immediately approached him and asked to search him. They took him to a ticket office, searched him and found, inside his briefs, a small packet containing 7.6 grams of ganja. That was enough for twenty or twenty-five cigarettes. The appellant was then taken to his car and



his overnight bag was taken from it. Before the bag was removed the appellant said "I have some more herb in a bottle in there". Indeed, under his clothes was discovered a large juice bottle containing 0.8 lb of ganja. A urine sample was taken from the appellant which proved positive for ganja.

The appellant freely admitted possession of the two quantities of ganja and consumption of the drug. He denied that the larger quantity of ganja found in his bag was with intent to supply. He testified that just before he went to the airport he had struck a deal for purchase of the ganja at a price of \$250, which was about \$200 less than the going rate for that quantity. As he is a heavy user he took advantage of the deal. He intended to check at the airport if there was a seat for him on the Cayman Brac flight and then take his car home rather than leave it for three weeks at the airport. He would then hide the bottle of ganja and get a lift or a cab to the airport. When he went to the airport he could not leave the bottle for all to see in his car because the bottle was clear, so he put it out of sight in his bag .

The appeal against conviction raises one issue only. Were the circumstances of the appellant's possession of this bottle containing 0.8 lb of cocaine such that the learned Magistrate was correct in inferring that the appellant had the ganja with intent to supply. Had there been but a small quantity in the appellant's bag then a conviction for this offence would not have resulted , and a conviction for simple possession would have been appropriate. However, we are here concerned with an amount which the learned Magistrate calculated would last this appellant some forty weeks.

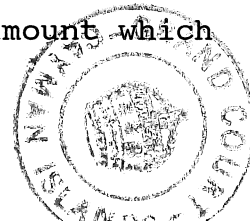


In some cases, where an individual is in possession of large quantities of a drug, the amount of drug in his possession may and without more, in itself be enough from which the Court may be entitled to infer that he intends to supply it. In this case we are not concerned with such a large quantity as, in itself, to raise that inference in the case of a person who, being in possession of it, admits to being a heavy user. We must look at the circumstances surrounding his possession to find whether, in addition to the quantity, they drive the court to an irresistible inference that there was an intent to supply.

The learned Magistrate found that the appellant's explanation that he intended to hide the bottle containing ganja at or near his home, did not have the ring of truth. He found that the appellant, being a heavy smoker, had insufficient ganja on his person to meet his own needs for three weeks in Cayman Brac. He clearly needed more, and the extra would come from the bottle found in the car. This, says counsel for the appellant, is inconsistent with a finding that

the appellant intended to supply the ganja because it is a finding that the appellant intended to use the drug himself. I do not think that was what the learned Magistrate was saying. Clearly the amount of ganja found on the appellant's person was at most sufficient to last him one week.

He was to be three weeks in Cayman Brac. It is more likely that he intended to take the ganja in the bottle with him to meet the remainder of his needs. Nonetheless there was enough ganja in the bottle to last him nine months. From all these circumstances the learned Magistrate found that he intended to supply that amount which



was not for his own use.

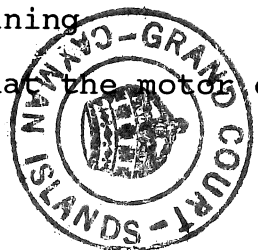
The appellant says that shortly before he was due to go to the airport he was offered a large quantity of ganja at a bargain price. Even if a readily saleable commodity such as ganja is offered at a bargain price one has to ask oneself whether a purchaser would be willing to purchase some nine months supply of the commodity. And that itself raises all kinds of questions not answered by the appellant, such as availability of cash with which to purchase it, whether the commodity stores easily and at what risk to the purchaser. None of this is transferring any burden of proof onto the appellant; it is simply an attempt at an analysis of his explanation.

The ganja was found in his bag under some clothes. If, as he says, he merely pushed the bottle into his bag so that it was not apparent to an observer looking into the car, one could have expected it to be on top of his clothes.

From the totality of circumstances, including the amount of drug found in his possession, this Court is driven to the same conclusion as the learned Magistrate: that the appellant's possession of the ganja in the bottle was with intent to supply.

The appellant was sentenced to serve twelve months imprisonment, nine months of which were suspended. He was also fined \$500. That portion of the sentence of imprisonment which was to be served immediately has been served already. No appeal has been made against the sentence of imprisonment or the fine.

In addition to those sentences the learned Magistrate ordered forfeiture of the motor car in which the bottle containing the ganja was found. The learned Magistrate found that the motor car



was used to facilitate the commission of the offence (see Section 15 (2) Misuse of Drugs Law.) There was insufficient evidence upon which the learned Magistrate could make a finding that the motor car was being used to "render easier" "promote" or "help forward" (see the Shorter Oxford English Dictionary, Vol.1) the appellant's possession with intent to supply the ganja. The ganja was merely in the vehicle in advance of, the appellant's intended supply at an unknown time and at an unknown place. This was an incidental use of the vehicle.

The appeal succeeds only to the extent that the order for forfeiture of the appellant's motor car is set aside.

Dated 27th July, 1994


D. Schofield

Judge

