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



SCA # 125/92

BETWEEN

SHANNON LEE GRAVES

APPELLANT

AND

REGINA

RESPONDENT

Mr Graham Hampson for the appellant
Mr Adam Roberts for the respondent

JUDGMENT

The appellant was convicted on the 11th of August 1992 on 3 charges. Those to which he pleaded not guilty and in respect of which he now brings this appeal were possession of ganja with intent to supply and being engaged in smuggling. The particulars of that latter charge alleged that Graves and one Berkel at George Town Dock were found in possession of a vessel designed or adapted to be used for smuggling or concealing goods. The goods in question, some 435 lbs of ganja, were the subject of the charge of possession with intent to supply.

A witness for the prosecution, Customs Officer Walton, gave evidence that while he was in Jamaica he saw the yacht, "Jezebel" and had a conversation with the appellant who told him that his next call would be the Cayman Islands. Walton saw the boat here a few days later and his suspicions were aroused because it had been represented on arrival that the vessel had come from Key West Florida, and not from Jamaica. A search was carried out and ganja was found in a concealed compartment. In giving that brief account of the discovery of the major quantity I have left out certain events which are important in the appeal. Before the major find two small quantities of ganja were found. One was in a shirt pocket, the other in a freezer. The two Customs officers who gave evidence for the

Crown both said that during the course of the search the appellant was asked if there was any more ganja on board. Both testified that Berkel said to the appellant that they "might as well tell the customs officer where its at because they are going to find it any way," and the appellant replied to the effect "Tell them if that's what you think you should do". Both officers say, and the learned Magistrate accepted, that this exchange took place after the finding of the second of the small quantities of ganja in the freezer and it was consequently a reference to the large quantity in the hidden compartment and an indication beyond doubt that the appellant knew of that. The appellant denies this and says that the exchange took place after the finding of the first small quantity in the shirt and was a reference to what was in the freezer and that he knew nothing of the secret compartment or its contents. That has been the position which he has maintained throughout. He says that, to borrow the words which he himself said he used to the Customs Officers, "he was just along for the ride". Both officers say that what they heard was not that but "I'm just a lone rider". In that connection the point was made for the appellant that it was intrinsically more likely that he had said he was just along for the ride and that if both officers said, incorrectly, that he had used the rather curious phrase "I'm just a lone rider" it was an indication that they had collaborated in putting together their story. That is indeed one possible explanation. Another is that both officers did mishear the appellant, who is an American. The third explanation is that the appellant did indeed say "I'm just a lone rider" and that is what both officers heard. That is what the learned magistrate accepted and it must be observed that "I'm just along for the ride" would also have been a rather strange observation from the owner of the boat in which the ride was being taken.

The appellant's evidence was that he had purchased the vessel in late February 1992, a matter of weeks before arriving in Grand Cayman. He had by then paid \$6,000 against the total purchase price of \$28,000. He had no sailing experience at all at that time. He, Berkel and one Dudas then set forth on a trip to the Bahamas where

the idea was put to the appellant that they should then go to Jamaica. In Jamaica Dudas left the boat and returned to U.S.A. The Appellant maintained that the boat must have been loaded without his knowledge while he was asleep and that the packages were concealed in such a way that he had no idea that they were there. He admitted that he had filled out the entry forms for the Cayman Islands falsely indicating that the vessel had come from Key West but said that he had been told how to do this by Berkel and that the reason for the falsehood was that they had heard that they would be hassled in the Cayman Islands if they acknowledged they had come from Jamaica. He also admitted that he had seen Berkel throw overboard the papers with which they had left Jamaica. Some more now needs to be said about Berkel. When he and the appellant were first apprehended he was interviewed by the police and implicated the appellant. By the time of the trial, after being in jail with the appellant for several months, he had changed his story and gave evidence for the defence confirming the appellant's testimony that the ganja had been loaded upon the boat without his knowledge. This justifies the description "self-confessed liar" which the learned Magistrate gave to Berkel. I cannot fault the conclusion that his evidence was worthless.

The appellant is saying that on the totality of the evidence, he did rebut the presumption under S 7 (1) (b) of the Misuse of Drugs Law on the balance of probabilities.

It is complained against the learned Magistrate that he did not adequately consider the appellant's explanation of the false documentation; nor does he deal specifically with the appellant's version of the conversation about showing the Customs officers the rest of the ganja, nor indeed the defence evidence given generally by Berkel.

He did not deal, it is true, with each and every one of the individual items of evidence. But what he was saying about the evidence as a whole is perfectly clear. He regarded the appellant and Berkel as a pair of liars and where their evidence conflicted with

those of the Crown witnesses he accepted the latter. The view which the magistrate took was simply that the defence was utterly implausible. In that circumstance it seems to me that a minute assessment of the balance of probability is pointless.

The Court was being asked to believe that the appellant, with no sailing experience, bought a boat on which he paid only \$6,000.00 down, with some \$22,000.00 left to pay, takes on Berkel, who himself said that he had only 2 months sailing experience, and Dudas, and sets off for a pleasure trip round the Bahamas without apparent means of support. On impulse he accepts the suggestion to go to Jamaica and thence to the Cayman Islands, having learnt enough about sailing in the meantime to feel confident about making the trip from Jamaica to Cayman without Dudas. If that were true, and the trip to Jamaica to collect ganja was a predetermined plan laid without his knowledge, his refusal, as owner, to go on to Jamaica would have ruined it. Between Jamaica and Cayman genuine records are thrown overboard by Berkel with the appellant present, and false ones filled out by the appellant. And while the vessel was under way in the vicinity of Jamaica, it is said, 287 packets of ganja weighing 435 lbs were loaded on to this 36 foot vessel while its innocent owner slept through the whole affair, with the storage compartment being so deftly concealed at the end of it that he, a carpenter, noticed nothing. It is much more likely that the carpenter was on the trip to do that very work. In addition, an aspect of Berkel's evidence which is completely implausible is that he "framed" the appellant within hours of his arrest because he did not want to serve time alone.

The appellant did not begin to rebut the presumption under S 7 (i) (b) of the Misuse of Drugs Law. Indeed, it was scarcely necessary to invoke it. As I indicated on 28th May, the appeal against conviction was dismissed. As to sentence, the 5 years period of imprisonment cannot be said to be excessive and stands in a correct relationship to that passed on Berkel following his guilty plea.

The reasons why Berkel chose to give his implausible testimony at the appellant's trial are unknown. In any event it was done with the connivance of the appellant. Both were, to that extent, equally involved in wasting the Court's time. There is no reason to alter the relationship of the sentences because of that. So the 5 year sentence stands and the stay of the order for forfeiture of the vessel 'Jezebel' is lifted. The forfeiture order is a heavy financial penalty in itself, in which Berkel does not share. Such record of the financial means of the appellant as there is suggests that he cannot pay the fine of \$1000 which was also imposed. Indeed that was submitted on his behalf. I will assist the appellant to the extent of quashing the fine. I think that the forfeiture and the fine, which were both imposed on conviction on the charge of being engaged in smuggling, produce an excessive penalty.



G. E. Harre
Chief Justice.

11th June 1993.