

21.5.93

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

SCA #130/92

REGINA V. MAY ZENA HOLNESS

Appellant in Person
Mr. Roberts for the Crown

JUDGMENT

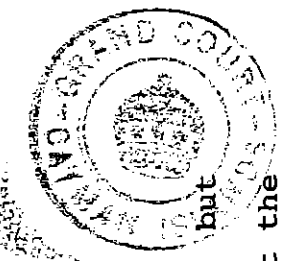
Schofield J.

May Zena Holness ("the appellant") was convicted after trial before the learned Senior Magistrate of possession of ganja with intent to supply, contrary to Section 3 (1)(m) of the Misuse of Drugs Law. She now appeals against the conviction and the sentence imposed upon the conviction of two years imprisonment six months of which was suspended.

Donald Roy Malcolm is a painter with the Public Works Department of the Cayman Islands Government. In the afternoon of the 18th June, 1992, he was painting the house of the Director of Prisons, which is outside the prison compound but adjacent to the prison fence. He testified that he was approached by the appellant who asked for the Director. When he told her the Director was not there she walked away from him toward the prison fence. A car drove up and the appellant walked back towards Malcolm. Inside the car were two prisons officers, one of whom was Winston Williams. When Williams got out of the car and called to the appellant to ask what she was doing she returned quickly to within ten feet of Malcolm, rummaged in her handbag, pulled out a green parcel and threw it under a tree.

The prisons officers, said Malcolm, rushed to the appellant,



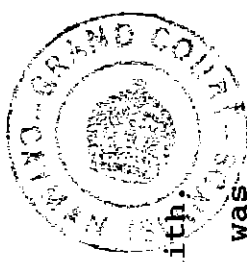


asked her what she had thrown down and she said, "nothing." The officers did not apprehend the appellant at that stage, but searched under the tree and found the parcel. They then left the yard.

When cross-examined Malcolm said he told the prisons officers that the appellant had thrown down the parcel before they found it. The appellant was carrying an umbrella which she left by the garage and which she picked up on her way from the fence and before she went off.

Winston Williams testified that he was on his way back to the prison from the Director's office when he saw the appellant in the Director's yard. It is uncertain from his evidence whether he was on foot or in the vehicle for at one stage in his cross-examination he said he was walking and another stage that he was "on" the vehicle. Be that as it may his testimony was that he called the appellant and asked her what she was doing there. She said she wanted to see the Director and he told her to go the prison if she wanted to see him. The appellant walked away and when she reached the corner of the house she reached into her handbag, pulled something from it and threw it across the fence under some trees. The officer met the appellant in the driveway and told her not to go back there again. He was joined by another prisons officer called James and they searched under the tree. James picked up a greenish parcel wrapped in tape. Inside the parcel was a vegetable matter, which proved on examination to be 30 grammes of ganja, and a stone.

The prisons officers took the parcel to the Principal Officer at the prison, called the police and James went off to apprehend the appellant. He brought her back to the prison. When Police Constable Davis arrived at the prison he found the appellant had been detained. He re-arrested her and took possession of the parcel and contents. The next day P.C. Davis interviewed the appellant under caution. In that interview she admitted she



visits a friend of hers at Northward Prison called Joel Smith. She denied that she was in the Director's yard but said she was on the road. She also denied speaking to the painter or taking a package out of her bag and throwing it under a tree.

The appellant testified that she went to the prison on the 18th June, 1992, to carry some goods for an inmate together with an accompanying application form. She had been told by the Director to give the form to him in person but she was told the Director was not at the prison. As she went back she saw a man in the Director's yard so she went to ask him if the Director was there. While she was talking to him she saw a car and Williams stood by the car door talking to a person inside the car. Williams told her to go to him and met her near the gate. When he asked her what she was doing she told him about the application form. He said that the Director's office is not at his private residence and he told her to leave. She said she had the application form in her hand and she produced it to Court.

The appellant went on that as she got up the road she discovered she had left her umbrella behind, so she went back to collect it. Williams asked her what she had returned for and she saw they were looking around the place. She left and had reached the end of the road before a car drove up to her. She denied having the package of ganja with her that day. She denied throwing anything down.

The appellant tendered substantial written submissions which I have gone through very carefully. She complains that the record of the interview she gave to the police contains no written caution and no warning to the appellant that she may secure the services of an attorney. However before the learned Senior Magistrate the appellant was represented by an attorney and no objection was taken to the admissibility of the interview record when it was tendered in evidence. There was no challenge to the validity of the interview as an exhibit when the police



officer tendering it was cross-examined. And when one looks at question 4 of the interview where the appellant was asked why she was looking for the Prisons Director at his private residence and her answer:- "I don't have nothing to say." - it is clear that the appellant knew she did not have to answer the questions put. The appellant also suggests that the presence at the interview of Prisons Officer James, who apprehended her, in some way affected the admissibility of the interview record. There is nothing to show that the presence of James affected the voluntariness of the interview. I am satisfied that the record of interview was properly admitted in evidence. That interview contained several statements which were in clear contradiction of the appellant's testimony. The appellant's explanation that the presence of James at the interview affected her attitude to it and led to her telling several lies to the police officer clearly does not have the ring of truth about it.

There were discrepancies in the evidence of the prosecution witnesses. Malcolm, the painter, said he told Officer Williams that the appellant threw the package down before the package was found whereas Williams said it was afterwards. We are uncertain whether Williams arrived on the scene in or on a car or on foot. It does seem odd that Williams waited until he had found and opened the package before he sent James off after the appellant instead of apprehending her on the spot. Williams gave an explanation for this, that he was nervous of a confrontation with the appellant, which shows him, a prisons officer, to be rather less than robust.

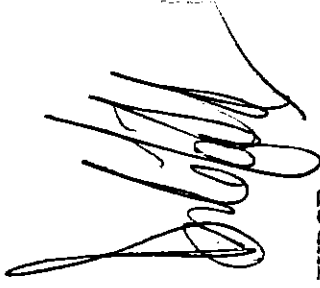
The learned Senior Magistrate noted these discrepancies and oddities in the evidence. He considered them in a careful judgment, after seeing and hearing the witnesses and the appellant. He was satisfied beyond doubt that the appellant did throw the package containing ganja under the tree. He also carefully considered whether the evidence was sufficient to prove an intent to supply on the part of the appellant. The amount of

ganja together with the method of packaging, with a stone to give it weigh, and the proximity of the appellant to the prison fence led him to conclude that the appellant meant to supply a prisoner or prisoners with it. That, to my mind, is an irresistible finding.

The case against the appellant was overwhelmingly proved.

The sentence of two years imprisonment with six months suspended was legal and appropriate. Although the appellant has a young family left behind in Jamaica, this was a serious offence of its kind and one which called for a deterrent approach to sentence.

The appeal is dismissed.




JUDGE

Dated this 21st day of May 1993