

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.2 OF 2001

BETWEEN:

TREVOR PHILLIP

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Dane Hamilton for the Appellant
Mr. Keith Thom for the Respondent

2001: November 14;
2003: January 28.

JUDGMENT

[1] **REDHEAD J.A:** The Appellant was convicted on 29th day of May, 2000 for the offence of unlawful possession of a controlled drug with intent to transfer. He was fined \$200,000.00 in default of two years imprisonment.

[2] The case for the prosecution was that acting on information received P.C. Philmore Patrick, P.C. Sheppard Alie and Corporal Eustace Cabral proceeded to Indian Creek at about 10.00 am. On Saturday, 13th November 1999 in two unmarked vehicles and carried out a stake out.

- [3] The evidence led by the prosecution was that at about 6.05 am a white Nissan double cab pickup registration No.P4695 arrived close to where the police officers secreted themselves in the bushes.
- [4] According to the testimony of Constable Patrick the pickup passed about 10 feet from where he was, it was being driven by the Appellant with one Deon Wyllie in the vehicle. This witness testified that it was bright at the time and he was able to see clearly.
- [5] He said that about 6.15 am he heard the sound of an engine from a boat coming from the direction of the beach. He was then about 75 yards from the parked pickup. Meanwhile, the Appellant and Wyllie had alighted from the pickup and were standing in front of it.
- [6] The boat engine having stopped, four men were observed ten minutes later approaching the Appellant and Wyllie. The six men appeared to have had a conversation, shook hands, left the vehicle and walked through the swamp towards the beach and disappeared. The evidence revealed that fifteen minutes later all six men returned carrying several containers with them, the Appellant and Wyllie each carrying a 'whitish' nylon bag and another was carrying a maroon bag. The containers were then placed in the back of the pickup truck while the two nylon bags and the maroon bag were placed on the ground at the side of the pickup truck. There was a conversation between the men and the bags were opened. The men again shook hands and two of them returned towards the direction of the swamp.
- [7] The Appellant, Phillip and the other man, Richards took up the bags and secured them in the mangrove swamp. Upon returning to the pickup the three men removed their trousers and shoes which were then muddy and placed them in the back of the pickup and then drove off until they were intercepted by the Officers who were waiting in ambush.

- [8] Corporal Cabral told the Appellant and the other two men that he had observed their activities and informed them of his suspicions that they were in possession of controlled drugs.
- [9] Corporal Cabral took Richards back into the mangrove area to retrieve the bags. On their way the sound of a boat engine drew the attention of the police towards the beach where they observed a blue cigarette boat sailing away with at least three men.
- [10] Constable Patrick said he fired warning shots in an attempt to stop the boat but without success. Corporal Cabral then told Richards that he suspected that he had entered Antigua and Barbuda illegally and cautioned him. He replied that they had come from St.Maarten and they had stopped to buy gas to go back to St. Vincent.
- [11] A search of Richard's person revealed a St. Vincent and the Grenadines Passport taped securely to his body. Richards was then taken back to the swamp area where he was first observed together with the others placing the bags in the bushes.
- [12] A search of the area revealed two white nylon bags and a maroon traveling bag which the police alleged were the same bags they had seen the Appellant and the other two men hide in the bush earlier.
- [13] Richards and the bags were taken to where the Appellant and the other men were left by the pickup truck. There the bags were opened and several packages were observed and wrapped in tape similar to that which secured the passport around the body of Richards. When the packages were checked they were found to contain vegetable matter resembling cannabis.

- [14] The men were cautioned by Corporal Cabral and told that they were seen placing the bags in the bushes.
- [15] The Appellant denied any knowledge of the drugs. He had earlier said that he was given a job to buy petrol for the men.
- [16] The substances were subsequently analyzed by government analyst and found to be the illegal drug cannabis. The Appellant gave evidence an oath before the Magistrate. He maintained throughout that he was given a job to buy gas for the men. He said that he is a self-employed truck driver.
- [17] On 13th November at about 4.45 am Deon Wyllie came to his home and told him that he just got a job to carry some gas. He left with Wyllie and drove to the beach in search of them where they were seen by the police.
- [18] The Magistrate said that having examined all the evidence he found the prosecution's case proved beyond reasonable doubt and convicted the Appellant and the other two Defendants.
- [19] The Appellant has appealed to this Court against his conviction and sentence. Three grounds of appeal are filed on behalf of the Appellant:
- [1] the learned Magistrate erred in law and in fact in finding that the Appellant had the requisite knowledge and control of the said drugs as such was the possession of the same;
 - [2] the decision cannot be supported by the evidence;
 - [3] the sentence is too severe.
- [20] Mr. Hamilton, learned Counsel for the Appellant submitted that the evidence revealed that the Appellant was merely assisting in removing the drugs. He argued that could never be enough to ground possession in the Appellant.

[21] Learned Counsel further argued that joint possession must be established. He contended that knowledge is not enough. The Appellant may even have known the contents of the bag to be drugs. But according to Mr. Hamilton's argument he was merely assisting bearing in mind that the Appellant's purpose for being on the scene was for buying and transporting gasoline.

[22] Mr. Thom, learned Counsel for the Respondent submitted that arising from the conduct of the Appellant at Indian Creek the learned Magistrate was correct in finding that the Appellant had the requisite knowledge and control of the drugs and as such was in possession of the same for the following reasons:

- [1] that he had ably assisted the men in carrying the bag through the swamp and secreting them;
- [2] that prior to the bags being secreted he had participated in examining the contents of the bags and as such had the requisite knowledge of their contents prior to their secretion and was at the time in actual possession of the drugs;
- [3] that he was at the time of his apprehension in constructive possession of the drugs;
- [4] that possession need not be exclusive - Archbold 36 Edition paragraph 2096.

[23] Mr. Thom also submitted that there was ample evidence which is capable of belief and which the Magistrate must have believed in finding the Appellant guilty of possession of a controlled drug with intent to transfer. I agree with the submissions of Mr. Thom.

[24] The Appellant was convicted on 12th February 1998 of possession of cocaine and was fined \$8,000.00 in default 9 months imprisonment.

[25] The learned Magistrate had this before him. For that reason I am of the view that the sentence is not too severe.

[26] The appeal is dismissed, the conviction and sentence of the learned Magistrate are affirmed.

Albert Redhead
Justice of Appeal

I concur

Sir Dennis Byron
Chief Justice

I concur

Ephraim Georges
Justice of Appeal [Ag.]