

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HELD AT GEORGE TOWN, BEFORE HIS LORDSHIP, SIR JOHN SUMMERFIELD, C.B.E. Q.C.
ON TUESDAY the 7th FEBRUARY, 1978.

REGINA V. CLINTON HENRY
Mr. K.B. Brandon for Appellant
Mr. D. Ritch for Respondent

ON APPEAL

JUDGMENT

The appellant was convicted of the offence of unlawful possession of a controlled drug, namely, ganja contrary to section 3 (1) (1) ^(1c) of the Misuse of Drugs Law, 1973 and sentenced to 18 months imprisonment with hard labour. He appeals against conviction only.

He was originally charged also with the offence of selling a controlled drug but that charge was dismissed at the conclusion of the Prosecution's case.

The grounds of appeal are :

- "1. The judgment is contrary to law.
2. The evidence is such that the learned magistrate ought not to have convicted the accused.
3. The Prosecution police officers were deemed and always have been agents provocateurs, they have never ceased in this prosecution from beginning to the end to be agents provocateurs, and their evidence was tainted and at best, unreliable, and such as not to have been accepted as witnesses of credit by the Court.
4. The evidence of possession was unsatisfactory, and it was not proven that he had exclusive possession as laid down in the celebrated leading case of Regina v. Clarice Elliott reported at 6 Jamaica Law Reports at page 173."

On the morning of the 24th May, 1977 police officers set a trap for the Appellant. Two newly recruited police officers in plain clothes went to the appellant's residence. An Inspector in charge of the operation remained out of sight some distance away. One of the two constables spoke to the appellant outside his house. Their versions of the conversation differed in some respects, but this did not undermine the learned magistrate's confidence in their testimony. The substance of the conversation was ^{that} the police officer who spoke told the appellant he would like to buy some ganja from him. The appellant replied that he did not sell ganja. He asked the police officer who

told him he was selling ganja. He was told that a man named Elvis had. He asked if it was a man, Elvis, who worked at the airport and was told that that was so. He then said that he did not really sell weed but he had a little that his sister had brought for him. He told the police officer to wait. He went into his house. After a while he came out again. Both police officers were then at the side of the house and saw the appellant going to another old house at the back. The appellant went into this old house (which was not fenced off from the one in which he lived) and remained in it for about 5 - 8 minutes before coming out again. That old house was about 20 - 25 feet from his residence.

He called over the police officer who had spoken to him and handed him 5 brown wrapped papers. The police officer opened one and saw that it appeared to contain ganja; and the contents of all 5 wrappings were later identified as ganja. The police officer then gave the appellant a \$10.00 note.

There was a further exchange about related matters which does not carry the case further one way or the other. The two police officers then left and joined the Inspector. They handed over the packets of ganja and a dollar change received. The same two police officers and the Inspector together with other police officers then went to the appellant's house.

The Inspector went into the appellant's room where he was lying on a bed. The Inspector told him that he had a warrant to search his premises and that the appellant had just sold a police officer 5 sticks of ganja. The Inspector cautioned him. The appellant replied that he had not sold anybody any ganja. The Inspector indicated the two officers concerned through the window telling the appellant that they were the two officers to whom he had sold ganja. The appellant said it was the first time he had seen them.

A search was commenced in the house. The Inspector found 5 x \$25.00 notes, 2 x \$5.00 notes, 2 x \$1.00 notes and 2 x US \$5.00 notes. The \$10.00 note used in the earlier transaction was never found and no ganja was found in the house.

The two police officers involved in the earlier transaction then came inside and, in the presence of the appellant, showed the Inspector a building which they said was the building the appellant had come from prior to handing over the five packets. The appellant said nothing. They then proceeded to the old building the police officers had seen the appellant coming from and began a

search. The search lasted about half an hour or so and was ^{conducted} ~~conducted~~ in the presence of the appellant. One of the police officers then pulled out a newspaper parcel from an old car seat and handed it to the Inspector who opened it, showed it to the appellant and told him it contained ganja. The appellant said he knew nothing about it. That ganja was the subject matter of the possession charge.

The old house in which the ganja was found had had a family living in it until about 4 - 5 weeks before this incident. Others had access to it.

The appellant who gave evidence, said his old bus seats were in that old house.

The learned magistrate very properly dismissed the charge relating to the sale of ganja on the basis that it was an offence procured by an agent provocateur - Brannan v. Peek 1947 2 All E.R. 572.

It was urged on behalf of the appellant that it was not shown that the appellant had exclusive possession of the old house - others had access. That is true, but one must look at the evidence as a whole, in particular the appellant's conduct, to determine whether he was exercising possession and control over the ganja found in the old house. Exclusive possession would be a factor to take into account, but its absence does not necessarily mean that other evidence relating to possession cannot be relied on.

It was also urged that there was no direct evidence that the ganja found in the old house was the source from which the appellant got the original 5 packets. This must, of course, be a matter of inference from the evidence as a whole.

The main thrust of the argument on behalf of the appellant, however, was that the conduct of the agent provocateur, the evidence procured thereby, ^{fairly} the possession charge also and the evidence relating thereto; and that the learned magistrate should have dismissed the possession charge on the same grounds that he relied on for dismissing the charge of selling, there being no break in the chain of events, the charges being based on substantially the same evidence.

The main basis for the decision in Brannan v. Peek is that the agent provocateur by his conduct procured or incited the commission of an offence which otherwise would not, or might not, have been committed. That was very relevant to the charge of selling, but has no relevance to the charge of

possession. The evidence points to the fact that the appellant was already in possession of the ganja when the two police officers came to his house, that he had already committed and was still committing the offence of possession when they procured the sale of packets, and thereafter when they left.

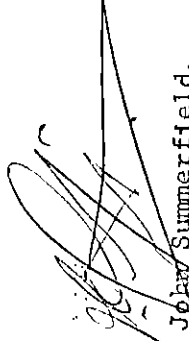
It would have been otherwise if, because of the incitement by the police officers, the appellant had thereupon procured a quantity of ganja and thus became in possession of it. But that was not the case.

The learned magistrate accepted the evidence for the prosecution as he was entitled to do.

He disbelieved the evidence of the appellant. He reached the conclusion that the prosecution had proved that the appellant was knowingly in control of the ganja having actual knowledge of its presence in the deserted old house. He had no doubt that it was kept there by the appellant.

On the evidence before him I cannot say that that was an unreasonable conclusion to reach. It would, indeed, appear to be the only reasonable inference to draw from the evidence as a whole.

The appeal is dismissed.


Sir John Summerfield,
Chief Justice,
1st March, 1978.