

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN

BEFORE HIS LORDSHIP, SIR JOHN SUMMERFIELD, CHIEF JUSTICE.

7th February, 1978.

REGINA VS. ALGIE LEE WATLER

ON APPEAL

JUDGMENT

This case turns on a straightforward finding of fact. In the course of a search for ganja at the appellant's home, of which he had been informed, the appellant was seen by a police officer to throw two paper packets over a fence by the root of a birch tree. That police officer told another police officer, in the presence of the appellant, to search by the root of the birch tree where the appellant had been seen to throw the two packets; and the latter recovered two paper packets containing vegetable matter which was later identified as ganja - 1.69 gms. That is sufficient to fix the appellant with possession and guilty knowledge by his conduct.

In evidence the appellant denied throwing away the two packets, but his evidence on this was rejected by the learned magistrate.

The magistrate was entitled to accept the evidence of the police/officer who saw him do so and despite the lengthy grounds of appeal and argument directed to this finding of fact I cannot say that it was not supported by evidence or unreasonable. It was essentially a matter for assessment of credibility.

It was urged that the police officers' powers of observation were unreasonable in that they all said there was only one door on the north side of the appellant's house and no door on the west. There was credible evidence that they were wrong on these points. But nothing turns on it and it was not material to the case. It was obviously not a matter that they would be directing their attention to and I do not see how such an inaccuracy can undermine the magistrate's assessment of credibility. Attention was drawn to other minor discrepancies and discrepancies in the evidence of the kind one inevitably finds in any case - the distance separating persons and structures, the exact position of any person at any particular point in time, the precise language used on any occasion and the like. These, again, are questions for the magistrate to weigh in assessing the

reliability of a witness. In my view there was nothing in them to justify intervention by this Court.

Another larger quantity of ganja was found in a dog kennel on the appellant's premises, but the learned magistrate made no finding thereon adverse to the appellant. He convicted only in respect of the small quantity in the two packets thrown away by the appellant.

The appeal against conviction is dismissed.

With leave the appellant appealed against sentence also.

He is 32 years of age and a first offender. The amount involved was only 1.69 gms. as the larger quantity in the kennel must be disregarded

The learned magistrate erred in that the law obliges him to both fine and imprison a person convicted of unlawful possession of ganja. He sentenced him to one year.

One must take account of the fact that the appellant has had this matter hanging over his head for over a year awaiting the outcome of his appeal. He served five days of his sentence before being released on bail pending appeal. One must also take account of sentences normally passed in this sort of case involving only a small quantity.

Learned Crown Counsel fairly conceded that the sentence imposed was severe.

In all the circumstances I think that the correct sentence is a sentence of imprisonment equal to the period already served (no further period therefore to be served) plus a fine of \$1,500 or 12 months imprisonment in default, consecutive to the period already served, and the order of the magistrate is varied accordingly. To that extent the appeal succeeds but is otherwise dismissed.

The appellant has one week in which to pay the fine

SIR JOHN SUMMERFIELD
13th February, 1978.