

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 77/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA VS. SYLMORE DAWKINS

Mrs. P. Benka-Coker for appellant

Mrs. Lorna Errar-Gayle for the Crown

January 15 and March 5, 1990

MORGAN, J.A.:

The appellant was tried in the Resident Magistrate Court, St. James, by Her Honour Miss Kay Beckford for three breaches of the Dangerous Drugs Act, firstly, possession of ganja, secondly, taking steps preparatory to exporting ganja and, thirdly, dealing in ganja. He was found guilty on each charge and fines of \$15,000, \$50,000 and \$38,000 with alternatives of six months hard labour respectively on each were imposed. On the third charge there was an additional sentence of six months imprisonment and this sentence was ordered to run consecutive to the sentence on the first charge. After hearing submissions, we dismissed the appeal and we now put our reasons in writing.

The appellant was a detective corporal of police then stationed at Ocho Rios but living at Richmond, St. Mary.

On the early morning of June 9, 1988, acting corporal of police Orville Mattis, along with his sniffer dog "Caesar"

was on narcotics duty at the Eastern Airline baggage chute at the Sangster International Airport when Caesar sniffed out a burgundy suitcase destined for Miami on flight 990. Corporal Mattis intercepted this piece of luggage and on inspection observed that it bore the name of the appellant. At the gate, on his way to the aircraft, the appellant claimed the said suitcase. Acting corporal Mattis identified himself to the appellant and told him of Caesar's conduct. They went to the Security Section together and on his request the appellant opened the burgundy suitcase. Acting corporal Mattis saw in it ten metal tins, hermetically sealed, with labels marked "Grace Aroma Fresh Roasted and Ground Coffee". Acting corporal Mattis shook a tin and heard something solid shaking inside so he opened it with a knife and found among some ground coffee, a taped package. All tins were then similarly cut open; nine of them had taped packets and one, only, had all ground coffee. In the shoulder bag the appellant was carrying, acting corporal Mattis found two similar tins with taped packets. There were in all twelve tins and eleven packets. He opened all packets in the presence of the appellant, saw vegetable matter resembling ganja, and told him it was ganja. The appellant said he bought the tins from a shop, then said he had a bill and produced it to substantiate that he had bought them. This bill was returned to him. Acting corporal Mattis, when cross-examined, said the appellant said "he bought it or something like that".

The Government Analyst confirmed that the packages contained ganja.

In his defence the appellant said he had a brother who was seriously ill in Miami and he was travelling there to visit and stay with him. The previous evening (i.e. 8.6.88) at about 6 to 7:00 p.m., while on his verandah at Richmond,

St. Mary, talking with his landlord, a Mr. Wynter, one Austin Thomas, whom he knew before, drove up and asked him if one Winston Blake had called and asked him to "take up something" for him. He answered "Yes" and Austin handed to him a brown paper bag in which he saw three bottles of rum and twelve tins of Grace coffee. He handed the bag and contents to his wife who was packing his luggage.

Winston Blake was his good friend who migrated to Miami in 1986 but they were not in regular contact. Winston had called him the night before (i.e. 7.6.88) and asked him if he could bring up "something" for him and he had agreed to do so. He, however, had not called Winston to inform him that he was going up to Miami and he was unable to say how Winston knew he was travelling to Miami at that time.

He said he had told Corporal Mattis the same story at the time he was shown and told that ganja was in the tins and that he honestly thought that the man had bought them at a shop, but that it was only after he had spoken to his wife on the telephone that he knew of the bill, found it, and showed acting corporal Mattis who refused to take it. He never told acting corporal Mattis that he had bought them. Corporal Mattis said, however, that it was after he found the ganja, the explanation was given, and the bill produced, that appellant requested and was allowed to telephone his wife.

Mr. Wynter, a Justice of the Peace and a deacon at his Church, recalled the incident when he was with the appellant, on the night prior to his arrest, and saw a gentleman hand over a paper bag to him, in the manner as related by appellant. This evidence was accepted by the Resident Magistrate.

There is no dispute that eleven tins contained ganja, that they were in the physical custody of the appellant

who was about to embark on a plane for Miami. The only issue was whether there was sufficient evidence from which the inference could be drawn that he had knowledge that they contained ganja.

The learned Resident Magistrate, having stated that she accepted the evidence for the Crown and found that the Crown witnesses were not discredited, found the following facts on this issue:

- (a) That the tins in the luggage were placed there to the knowledge of the defendant.
- (b) Defendant showed the bill to Corporal Mattis before he made the telephone call to his wife.
- (c) That the weight of the ganja exceeded eight ounces and it was packed in the coffee containers to avoid cursory detection in any inspection - but once the cans were handled the solid substance could be felt in the cans.

She drew the inference that:

- (a) The defendant procured the tins.
- (b) At the time the tins were placed in his luggage the defendant knew that they contained ganja.

The submission on the hearing before us was based on the supplemental ground of appeal, Ground 2, which reinforced Ground 1, which was finally abandoned -

"Further, the learned Resident Magistrate's finding of fact that the tins were delivered to the appellant in the manner both he and his witness claim, is inconsistent with her conclusion that the appellant procured the tins one of the bases on which she sought to support her conclusion that the appellant knew that the substance in the coffee tins was ganja. that there was insufficient evidence from which the Learned Resident Magistrate could infer that the appellant had the necessary "mens rea" required in law to constitute his having committed the offences as charged and so warrant his conviction for the said offences."

Eleven tins of coffee were found with ganja. These same tins were part of twelve tins which the Magistrate found that when first accosted the appellant gave as an explanation that he bought them and then substantiated that fact with a bill. It is these same tins which he had his wife put in his suitcase which he said, in his defence, were given to him in the presence of a Justice of the Peace by one Austin to give to Winston. The clear inference, on those findings, is that the appellant must either have requested those tins or he must have given them to someone and that he received them back from Austin well knowing that ganja was now in them. We see no inconsistency in those findings. This factor had to be considered with other factors and in particular, the number of tins, the request from Winston who was not told of the appellant's visit to Miami yet was able to telephone him from Miami the previous night for his assistance in bringing "something" for him.

The totality of the evidence was sufficient, in our view, to allow the learned Resident Magistrate to draw the inference she did, and to conclude, from all the circumstances, that the appellant knew that ganja was in the coffee tins. This she was entitled to do - D.P.P. vs. Wishart Brooks 12 J.L.R. p. 1374. We think that such inferences as she drew were justified.

We, therefore, dismissed the appeal and affirmed the several sentences imposed by the Resident Magistrate.