

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 15/89

BEFORE: The Hon. Mr. Justice Carey, P. (Ag.)  
The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Forte, J.A.

R. v. ALFRED PRENDEGAST

T. Tavares-Finson & Dr. Paul Ashley for Appellant

Samuel O. James for Crown

October 11, 1989

CAMPBELL, J.A.

The appellant was convicted in the Resident Magistrate's Court for the parish of Saint Andrew on the 23rd day of March, 1989 for the offences of possession of ganja, dealing in ganja, exporting ganja and trafficking in ganja. He was sentenced to terms of imprisonment and to fines with imprisonment in default of payment of the fines. The ground of the appeal filed on his behalf is that the verdict is unreasonable and cannot be supported by the evidence. We allowed Mr. Tavares-Finson to make submissions in respect of this ground, even though it was not properly constituted having regard to practice direction of this court. The substance of Mr. Tavares-Finson's submission was that the evidence at best amounts to a high degree of suspicion. The learned Resident Magistrate he said, relied on circumstantial evidence and/or drew inferences which were not inescapable. In the course of his submission he with commendable frankness indicated that he could not pursue his submissions any further because there were certain pieces of evidence which

were so much against the appellant, that the inference to be drawn therefrom, viz. that the appellant did not take the container to the Jamaica Biscuit Company's premises which inference the learned Resident Magistrate drew could not be faulted.

It is not necessary to state in detail the facts of the case, the appellant said that one Mr. Allen of Newport Customs Broker telephoned him and requested him to secure a container and proceed to the Jamaica Biscuit Company because that company had need for such a container. He proceeded to the wharf. All the procedures for obtaining the container had already been effected by Mr. Allen. The appellant drove the container at about 3.00 o'clock in the afternoon on January 22, 1988 and deposited the same at the Jamaica Biscuit Company premises. As against his evidence is the evidence of the Security Guard who was on duty at the material time who said, no container entered, and no container left the compound of the company on that day. This witness said that, if any such container had entered the premises, it would have been appropriately logged by him and he did not make any such entry. He is not allowed to sign for containers nor is any other security guard entitled to do so. The further evidence given by the appellant is that having deposited the container on the 22nd of January, 1988, he returned to the company to take the container back to the wharf for export procedures to be effected. On the Monday morning he saw the container on the roadway. He said he hooked it up and he took it to the wharf. It is remarkable that he did not appear surprised to see the container on the roadway. What is important is that he admits he is the person who took the container to the wharf. There was however evidence before the learned Resident Magistrate that no container was on the roadway near to the Jamaica Biscuit Company's factory. In the light of this evidence, the issue

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which the learned Resident Magistrate had to consider and determine was who had possession of the container between 3.00 p.m. on Friday the 22nd of January, 1988 and Monday 25th of January, 1988 when it was driven by the appellant to the wharf. He drew the conclusion, correctly in our view, that at all material times, the container was in the possession of the appellant. This container was sealed, it was exported to Miami, and on reaching there, it was found to contain ganja with certain packages of Jamaica Biscuit Company biscuits which in relation to the packaging and the stamping, indicated that such were not export products, they were for the home market. Again, one pauses here, and consider what would be the irresistible inference to be drawn from the fact of finding ganja in the container. We are of the view that, the irresistible inference to be drawn which was correctly drawn by the learned Resident Magistrate is that the appellant who had possession of the container which on the evidence had been examined, prior to delivery to him and had been found to contain nothing incriminating, was the person who had placed or caused to be placed therein the ganja which was found in Miami.

We consider that the findings of the learned Resident Magistrate were not merely justified, but amply justified having regard to the evidence which was before him. Accordingly we find no basis on which he could be faulted, nor can any reasonable argument be mounted that the verdict was unreasonable and could not be supported by the evidence. The appeal is accordingly dismissed, the conviction and sentences are affirmed.