JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 181/66

Before: The Hon. Mr. Justice Henriques, Presiding
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Eccleston

R. v. ANTHONY SMITH

Mr. R.C. Rattray for the Appellant
Mr. C.F.B. Orr for the Crown

September 26, 27 and
December 19, 1966.

WADDINGTON, J.A.,

On the 27th of September, 1966, we dismissed this appeal and promised to put our reasons in writing at a later date. We now do so.

The appellant was convicted in the Resident Magistrate's Court for the parish of Clarendon on the 9th of June, 1966, of the offence of being unlawfully in possession of ganja, contrary to section 7(c) of the Dangerous Drugs Law, Cap. 90, and sentenced to imprisonment at hard labour for 18 months. The case for the Crown was that on the 24th of February, 1965, Detective Constable Esrick Grant and two other constables acting in pursuance of a search warrant under the Dangerous Drugs Law, searched the premises of the appellant at Osborne Store in the parish of Clarendon. The premises consisted of a shop and, some distance away, a room where the appellant lived. Under a counter in the shop, was found a carton containing several brown paper packages which contained ganja. On being shown the contents of some of these packages and told that it was ganja, the appellant said nothing. The search party then went to the room of the appellant - about 1½ chains from the shop - where the door of the room was opened by the appellant with a key which he took from a pocket of his trousers. On the floor under a bed in the room, a large

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brown paper parcel was found, which, on being opened, was found to contain ganja. The appellant, when told that the contents resembled ganja, said: "Uno carry me gwan, uno catch me good this time." The appellant was then arrested and charged with being in possession of ganja.

It was suggested to Constable Grant in cross-examination, that no ganja had been found in the shop or the room of the appellant, but that the ganja had been found in the buttery of a kitchen about one chain from the appellant's room. Constable Grant denied this suggestion. It was also suggested to Cons. Grant that in a case tried in the same Court in 1962, in which five persons were charged with being in possession of ganja, he had admitted having found only one parcel of ganja in a car but had divided the parcel into five separate parcels, so as to connect each accused with a separate parcel. Cons. Grant denied this suggestion.

In his defence, the appellant gave sworn evidence in which he denied that any ganja was found in his shop or in his room. He said that after the Police searched his shop and his room and found nothing, they went to a buttery and searched it and brought from the buttery a carton box which they showed him and said: "This is ganja." He told them that he did not know the box as he had not put it there and that he did not know anything about it. He also denied that he had said to the Police, "Uno carry me gwan, uno catch me good this time." He said that there is a track leading through his yard, which people use, and that it passes near to the kitchen and buttery, and that there was no secure door to the kitchen or buttery.

The defence called as a witness, Mr. Justice Shelley who, in 1962, was the Resident Magistrate who had tried the case in respect of which the suggestion referred to above, as to the dividing of a parcel of ganja into five separate parcels, was made to Constable Grant and which he denied. In the course of his

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examination-in-chief, Mr. Justice Shelley was asked the following question -

> " In the course of his evidence, did Constable Esrick Grant say, 'I can't explain the disparity in weights given by the Analyst. Some of the vegetable matter out of No. 2 envelope was put in another parcel. It was divided but not equally. The division was made at the Station that same night. Having made the division I made two different parcels, one was sealed and sent up under name of Michael Rose, the other was sealed and sent up under name of Linval Smith. That is exhibit 1.' "

Objection was taken on behalf of the Crown to this question on the ground that it was irrelevant to the issue and inadmissible, and, after arguments on both sides, the learned Resident Magistrate upheld the objection and excluded the evidence.

Only one ground of appeal was argued on behalf of the appellant, i.e. -

> "The learned Resident Magistrate erred in law in rejecting as inadmissible the evidence of Mr. Justice Shelley which went to the credit of Constable Grant and the root of the defence that Grant had in a previous case admitted dividing a parcel of ganja to establish a nexus which the defence said he was doing in the instant case by attempting to establish that the ganja was found in the accused's shop and room rather than in the buttery where the accused said it was found. "

It was submitted on behalf of the appellant that the evidence sought to be adduced was relevant and would affect the credit of the witness Grant by showing whether he was a person who should be believed. In support of this submission, counsel cited the following cases:-

Meagoe v. Simmons, 3 C.& P. 75; 172 E.R. 330

Mawson v. Hartsink & Ors. (1802) 4 Esp. 102; 170 E.R.656

R. v. Burke (1858) 8 Cox's C.C. 44

.....Toohey v./

Toohey v. Metropolitan Police Commissioner [1965] 1 All E.R. 506

For reasons to which I will refer later, it is unnecessary to review any of these cases in detail.

Counsel for the Crown submitted that the evidence sought to be adduced was inadmissible on the grounds that it was irrelevant and was evidence on a collateral matter which did not come within any of the exceptions to the admissibility of such evidence. In support of this submission, he cited the case of Atty.-Gen. v. Hitchcock (1847) 1 Ex. 91.

The general rule governing the subject of the admissibility of evidence is, that all evidence which is sufficiently relevant to the issue before the Court is admissible, and all that is irrelevant or insufficiently relevant should be excluded. There are, of course, exceptions to this general rule, and evidence which is logically relevant is sometimes excluded for various reasons, e.g. hearsay or opinion evidence, and, generally, having regard to the paramount function of the Court to ensure that justice is fairly administered. On the other hand, with the exception of certain statutory provisions, and evidence tending to show bias or partiality or a general reputation for untruthfulness, evidence which is not logically relevant is never admissible. The question as to the relevancy of a particular bit of evidence to an issue before the Court is, of course, a question of degree dependent on the particular facts of the case, and consequently, cases cited in support of submissions for or against the admissibility of evidence are not as a rule helpful, except where it is possible to extract some principle of law from the case. For these reasons I have found it unnecessary to review any of the cases cited in argument.

The evidence which it was sought to adduce in this case was for the purpose of impeaching the character or credit of Constable Grant by showing that he had acted improperly in a

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previous case tried in 1962, in which five accused persons were charged with the offence of being in unlawful possession of ganja. The fact that the witness may have acted improperly on that occasion was, in our view, quite irrelevant to the issue before the Court in the instant case. Constable Grant, in cross-examination, had denied the suggestion of improper conduct which had been made to him, and in our view, his answers were conclusive of the matter. This was not a case in which it was sought to tender independent evidence to contradict the witness in respect of a previous inconsistent statement in accordance with the provisions of sections 17 or 18 of the Evidence Law, Cap. 118, nor was it sought to show that he was biased or had a general reputation for untruthfulness. In our view, therefore, the evidence which it was sought to adduce was irrelevant and inadmissible, and the learned Resident Magistrate was quite right in excluding it. For these reasons, we dismissed the appeal.