

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES CRIMINAL APPEAL No. 223/65

Before: The Hon. Mr. Justice Henriques - Presiding
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Actg.)

REGINA VS. KENNETH HANSE

Mr. M.S. Tenn for the Appellant
Mr. C.B.F. Orr for the Crown

31st January, 1966

WADDINGTON, J.A.,

The appellant was convicted in the Resident Magistrate's Court for the parish of Kingston on the 12th of October, 1965, on two informations, the first charging him with being unlawfully in possession of ganja, on which he was sentenced to imprisonment for 18 months at hard labour, and the second with being unlawfully in possession of a pipe for use in connection with the smoking of ganja, on which he was sentenced to 6 months imprisonment at hard labour, concurrently.

The case for the Crown, briefly, was, that on Sunday the 19th of September, 1965, at about 3.00 p.m., Cons. Stewart accompanied by other police constables went to an unoccupied premises at the corner of Stephen Lane and Water Lane in Kingston. On arrival, they saw a man sitting on a wall surrounding the premises. That man shouted something and jumped off the wall into Stephen Lane, and as the constable went over the wall he saw the accused and several other man running from a shed on the premises. The men ran in different directions and the appellant was seen to be carrying a green travelling bag in his left hand whilst he had another object in his right hand. The appellant was chased and caught and it was discovered that the object in his right hand was a chillum pipe. The bag that he had in his left hand was opened and in it was found a quantity of slips of brown and white paper, also a quantity of small brown paper packets, thirty packets in all,

/which, ...

which, when opened, were found to contain vegetable matter which was subsequently analysed by the Government Analyst and found to be ganja. The Government Analyst also found that the pipe which was found in the possession of the appellant contained ganja.

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In his defence, the appellant stated that he had gone to those premises on that day to purchase fish, and he was waiting for the fishing boat to come in. A lot of other men were there, and whilst waiting, the police came and he saw the men start to run. He said that a body of men bounced him down, held on to him, they draped him in his back, to use his term, which we understand means holding him in his back, and kicked him in his chest. He said that they took him to a house that was locked up on the beach and there they found the bag which the constables had stated earlier in their evidence had been found in his possession. He alleged that the police gave him some more blows and told him that he should tell them to whom the ganja belonged, and they eventually took him to the police station where they again administered more blows to him. One of the constables, Stewart, he said, butt him in his face and gave him more blows.

Evidence was given on behalf of the defence by Dr. John Adams who said that he examined and treated the appellant on the 22nd of September. He said that the appellant had given him a history of being beaten on the 19th of September, and on examination he found that he was suffering from tenderness over both temporal mandibular joints. The chest showed a scratch one inch in length over the inner end of the left clavicular. That he experienced pain in the breast bone, on coughing, and on his left arm, around the elbow joint, there was a quarter inch abrasion which was surrounded by painful swelling, one inch in diameter, and that just above the left wrist joint, there was a tenderness and swelling of the tissues. The injuries to the chest, the doctor said, were consistent with being kicked in the chest, whilst the others were consistent with being hit by some blunt instrument like a fist. The

/doctor ...

doctor was of the view that the injuries were consistent with having 780
been received on the 19th, as they were not fresh, and in cross-
examination, he said that they could have been received on the 20th,
and he ended by saying that he did not regard the injuries as
severe.

Mr. Tenn, on behalf of the appellant, has submitted that
the credit of the police witnesses in this case should be of the
greatest importance and that their credit was severely impeached, and
in support of this submission he cited the case of R.v. Sylvester
Cassells, which was a judgment delivered in this Court on the 17th
of February, 1965. It appears at page 81 of the Judgment Book.
In that case, Lewis, J., in delivering the judgment of the Court,
after referring to the facts of the case, said:

" In the opinion of the Court the gravamen of the
"ground of appeal taken is not so much that the verdict
"was unreasonable - because undoubtedly there is evidence
"to support it - but that it was unsafe. In cases of
"this nature the credit of the police officers is of the
"highest importance, and to support a conviction upon
"the credit of police witnesses which has been so gravely
"and successfully impeached on a matter which was vital
"to the whole case is something that this Court feels
"itself unable to do."

It is to be observed that in the Cassells' case the appellant
had received injuries which the doctor described as being severe.
The doctor had come to the conclusion that the appellant had been
severely beaten. It is also to be observed that the injuries from
which the appellant in that case suffered, were received on the same
day as that on which he was arrested by the police, and that the
police when asked to explain the injuries to the appellant, said
that the appellant had told them that he had sustained those in-
juries through having fallen down, and the doctor was clearly of the
opinion that all the injuries could not have been received in a fall.

It also ...

It also appears that the jury in the Cassells' case accepted the evidence of the appellant as to the manner in which the injuries were sustained, but nonetheless had found that he had been seen cultivating the ganja plants in respect of which he had been charged. The injuries in the instant case were, on the contrary, not severe injuries. Indeed they appeared to have been minor superficial injuries. Furthermore, the doctor was of the opinion that whilst the injuries were not fresh, they could have been inflicted on the 20th, that is to say, the day after the appellant had been arrested, and the doctor had not in fact seen the appellant until the 22nd. In these respects therefore, this case can be clearly distinguished from the Cassells' case.

In our view, it cannot be said in the instant case that the evidence of the police officers had been "gravely and successfully impeached." It may very well be that the learned trial judge had rejected the evidence of the appellant that he had received the injuries on the 19th. That being so, it is our view that there was sufficient evidence in the instant case on which the learned trial judge could have come to his finding of guilt and we can see no reason to interfere with the conviction. The appeal is therefore dismissed.