

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 31/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

REGINA

VS.

MICHAEL MCGOWAN

Robin Smith for appellant

Miss Vinnette Grant for the Crown

June 6, 1988

WRIGHT, J.A.:

On the 18th of June, 1987, the appellant Michael McGowan was convicted in the Resident Magistrate's Court, Kingston on two charges: one for possession of ganja and the other for attempting to export ganja and was sentenced to serve three years imprisonment at hard labour and in addition to pay a fine of \$1,000 or six months imprisonment at hard labour consecutive to the three years if the fine is not paid for the possession of ganja. For attempting to export ganja, the sentence was imprisonment at hard labour for three years and in addition to pay a fine of \$10,000 or six months imprisonment at hard labour consecutive to the sentence of three years if the fine is not paid. From these convictions and sentences the appellant now appeals.

2.

The single ground of appeal that has been filed really is against the verdict, saying that "the verdict was unreasonable having regard to the evidence". It really is not a ground contemplated by our law, however, the Court in its indulgence allowed Mr. Smith to make his submissions.

The case discloses a rather ingenious method of getting around the law. On the day in question someone attended at the Norman Manley Airport and booked in without any luggage and was assigned Seat 18F on flight 930 Eastern Airlines. Nearing departure time, a gentleman came back with his travel document showing that he had been assigned Seat 18F and then presented two suitcases to be checked on. According to the evidence of Miss Marcia McDonald, the Customer Service Agent, Eastern Airlines, the voucher on which the baggage ought to have been entered had already been detached and forwarded to the accounting office so that there was nothing on which she could record the baggage which was now presented. However, from the ticket jacket with the boarding pass which he presented she was able to write off the flight and seat number 18F for the baggage check. She saw him write on the prepared tag his name and address which he then put on the two suitcases and placed the two suitcases on the scale. She stapled the baggage checks to the ticket jacket which she handed back to him. The baggage was sent for loading on to the aircraft and she advised him to rush to board the flight. Significantly, she said no other person who had previously checked in came to her that day.

Police Constable Orville Mattis from the Canine Division was on that day on duty with his Narcotics Detective dog 'Jay', checking out luggage for ganja and Jay alerted him to these two suitcases on which the officer saw the name Michael McGowan. At that time Mr. McGowan was on his way to board the aircraft which had been delayed some twenty minutes. The officer contacted the

3.

appellant, Mr. McGowan, who identified himself as such and then he was taken away with the two suitcases which he denied were his. Indeed, when he was contacted by the officer he said he had no baggage and he did not check in any baggage at all. He was then taken to the police station at the Norman Manley Airport and handed over. The suitcases were checked and both had only ganja in them. The officer had to get the suitcases opened by himself because the appellant said he had no keys for them. The appellant was arrested and charged for possession of ganja and attempting to export ganja. When he was cautioned he said "They are not my suitcases and I did not check in any baggage at all". And this was the defence that he maintained that he had nothing to do with these suitcases, he had not checked in any and so obviously he could not assist despite the connection by the seat number, the flight number and the handwriting of Miss McDonald who had copied his seat number onto the tag. He maintained that he was not the person.

Mr. Smith contends that what is wrong about the case is that Miss McDonald was not called to make a visual identification of the appellant. From the findings of the learned Resident Magistrate we can see no defect. The connecting link with the appellant is clearly traceable from the evidence and it would have made no difference if Miss McDonald had been asked to identify the appellant, and had even failed to do so because the written evidence spoke so strongly.

We see no reason for interfering with the conviction and bearing in mind the attitude of the legislature in increasing considerably the penalties for possession and exporting of ganja, with which we are in agreement, in the face of the great injury currently being done to the country by persons who persist in defying the law, the sentences imposed on this appellant cannot be said to be excessive.

For these reasons the appeals are dismissed and convictions and sentences affirmed.