

C.A. Criminal Law - Possession of ganja, taking steps preparatory to exporting ganja, dealing in ganja

Whether case to answer - whether verdict reasonable and can it be submitted by counsel

Appeals dismissed

JAMAICA

IN THE COURT OF APPEAL

To Case referred to.

R.M. CRIMINAL APPEAL NO: 94/88

BETWEEN: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Downer, J.A.  
The Hon. Mr. Justice Gordon, J.A. (Ag.)

R. v. SKIRVY POWELL  
HENRY LEWIS

G. Soutar & D. Thompson for Appellants

Miss V. Bennett for Crown

28th September, 1988

CAMPBELL, J.A.:

The appellants were convicted on the 24th of May, 1988 for the offences of possession of ganja, taking steps preparatory to exporting ganja, dealing in ganja. They were each sentenced to a term of imprisonment of 9 months - in respect of possession of ganja, a fine of \$50,000.00 or six months imprisonment at hard labour for the offence of taking steps preparatory to exporting ganja, and a further fine of \$50,000.00 or six months imprisonment at hard labour for dealing in ganja.

The offences arose out of an incident which took place on the 20th of February, 1988. The facts as given in evidence by the Crown witness Cons. Eric Watson, were that on the 20th of February, 1988 about 8.00 p.m., he was on duty at the departure area of the

Norman Manley International Airport, dressed in plain clothes. He noticed two blue suitcases on a scale at the Ajas checking-in counter. As a result of certain information which he elicited from the agents and from an airport worker he kept the two suitcases under observation. At about 10.00 p.m., that night he saw Lewis the second appellant approach the departure area with his trolley, place the two suitcases from the Ajas counter on to his trolley and push the trolley about 8 chains down to the arrival area. Lewis left the interior of the Airport and placed the two suitcases on the corridor in the area where JUTA transport parks. Watson followed Lewis down to this area unobserved and about 15 minutes after Lewis had taken the suitcases on to the corridor, he saw the first appellant Mr. Powell approach Lewis on foot on to the corridor and on reaching Lewis said:

"A soon come, I'm going for the car."

Powell retraced his steps and about five minutes thereafter, he saw a blue Ford Escort 1658 AA drive up in front of a van in which he the police officer was secreting himself while observing what was taking place. He said on this occasion when Powell came up, he raised his hands to Lewis and said, "Me soon come." Powell reversed the car, Lewis then took the two suitcases which were on the corridor, move them further down into the arrival area and placed them among other luggage belonging to arriving passengers. Lewis then walked away to about 24 feet and was pacing the corridor. About 10 minutes after, Watson saw Powell return with the Escort Car. He parked it near to the kerb side, Powell came out of the car, opened the trunk and without any conversation Lewis moved straight to the trunk of the car and placed one of the suitcases therein. Powell shut the trunk of the car, Lewis then took the other suitcase and placed it on the back seat of the car.

Watson then approached Lewis, Powell and a passenger who was in the car, namely one Miss Green in respect of whom nothing further need be said. On approaching Lewis and Powell, the officer informed them that he suspected that drugs were in both suitcases in the car and he would like to search the car and the suitcases. His evidence is that Powell's reaction was to laugh. Powell kept spinning around. Lewis said nothing. The officer asked Powell to open the trunk, Powell made no attempt to do so. He Powell was advised by someone who came along to co-operate with the police. There was another police officer who was nearby. His assistance was sought by this witness and with his assistance the two appellants were taken together with the car in which the suit cases were, to the police post which was nearby. In the presence of these appellants the suitcases were opened. A pair of pliers was used to cut the wire that bound the two zipper-rings of the suitcases. When the suitcases were opened, they were found to have therein packets of ganja masked with masking tape and a sponge with powder of a high perfume. The appellants were asked if they knew what the contents were. The evidence is that the appellant Powell again laughed. Lewis said it was ganja. They were then cautioned. Powell said to the officer:

"How you do this to me, and me know you."

Lewis said:

"Is a man give me fi carry down."

They were informed of the offences allegedly committed. Arising out of this incident they were arrested and charged with possession of ganja, taking steps preparatory to exporting ganja and also dealing in ganja. They appeared before the Resident Magistrate's Court in respect of these offences. The crown witness was throughly cross-examined to show that from the point he said he was observing, it was impossible for

him to have seen what he said he saw. It was suggested to him under cross-examination that neither appellant was doing anything which differed from what they legitimately were entitled to do because in the case of Lewis, he was lawfully entitled to do as he did by virtue of his employment as a red cap porter, and in the case of Powell it was lawful for him as a person to use his car to transport persons from the airport as a sideline. At the close of the case for the prosecution learned attorneys for both appellants submitted that there was no case to answer. The learned Resident Magistrate ruled, in our view quite correctly, that there was a case to answer in respect of each accused.

The appellants thereafter each gave sworn testimony. That of Lewis was that, by virtue of his seniority as a Red Cap Porter, he was not on any strict shift, he said he could chose the shift which he wanted and on the night in question, he went on duty at about 10.00 o'clock. He said that though his duties and/or his station was not at the departure area he was, while standing at a place near the entrance to the post office, approached by a gentleman who on coming to him, pat him on his shoulder and asked him to follow. They passed through two doors into the departure area. The gentleman showed him two suitcases and asked him to take them down to the arrival area and to get a private car for him as he, the gentleman could not afford JUTA fare. The gentleman also asked him to take care of the luggage as he, the gentleman had to make a phone call and that he, the gentleman on returning will take good care of him the porter. He gave evidence that he took the suitcases on his trolly and placed them on the pavement at the arrival area but what he says which is different from the version of the crown is that when Powell came along, he had a long conversation with Powell. He told Powell that he could not go with

Powell as was previously planned because he was awaiting some passenger from British Airways. Further, that he told Powell that he had a person who was in need of transportation and he invited Powell to utilize the car in taking this gentleman home with the suitcases. Though the gentleman was present, he anticipated his return and in the meantime put the suitcases in Powell's car. He admitted that when the police came along he did say, at some stage, in the interrogation that the contents of the suitcases "resemble ganja." He denied that he said to the Police that it was a man who had given him the suitcases to carry down for him. This in a nutshell is the evidence of Mr. Lewis. Mr. Powell for his part, said that there was an arrangement that he should pick up Lewis at the Airport on the Saturday night. He arrived at the airport and Lewis told him about a gentleman who was in need of transportation and that it was in such circumstances that the suitcases were placed in his car. He admitted that he used the words "How do you do this to me, and me know you," but he said that he was not addressing the police officer, he was addressing Lewis. In effect, what he is saying is that he was putting the blame on Lewis for involving him and his car with suitcases which contained ganja. He admitted that he did say to Lewis "A soon come, I'm going for the car." In substance what the defence is saying is that each was doing something which legitimately he was entitled to do, there was nothing in the circumstances which put them on suspicion that the suitcases did contain ganja and that even at the end of the case, the facts in evidence were such that it would be unreasonable and in fact was unreasonable for the learned Resident Magistrate to have made adverse findings against them resulting in their conviction. We have

ourselves considered the evidence, we have heard submissions from Mr. Soutar both in respect of the no-case submission and on the other ground, that the verdict was unreasonable and cannot be supported by the evidence. His submission thereon is that the sole eye witness was discredited, whereas each of the appellant's testimony as to how he was in physical possession of the exhibits was straight forward, prima facie lawful and reasonable and therefore the conviction was wrong. We at the end of such submissions were satisfied that the findings of the learned Resident Magistrate were fully justified on the facts based largely on the conduct of Lewis in the circumstances which exhibited themselves, and in the case of Mr. Powell, both his conduct and what he said when he was arrested. Dealing with Mr. Lewis we found that the circumstances of the suitcases not being marked or otherwise addressed, that it was secured in a very peculiar way, that he Mr. Lewis on his own admission was not stationed in the departure area, that he gave evidence not suggested to Watson which the Resident Magistrate rightly rejected, namely that some gentleman went with him to the departure area and pointed out the luggage with a request for him to convey the luggage, his denial that he placed these two pieces of luggage among arriving passengers luggage, his denial that he said to the police officer that the luggage had been given to him by a man to carry down. These pieces of evidence amounting to denials of the crown's version which we see no reason why he should deny were such that the learned Resident Magistrate was entitled to draw the inference that these untruths coupled with the circumstances in which he dealt with the two suitcases were such that she could further infer that he knew that they contained ganja. The learned Resident Magistrate was correct in our view in accepting the evidence of the police officer as to how Lewis behaved in the circumstances and even though he was

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a Red Cap Porter his conduct in relation to these two suitcases was such that it could be considered as outside what one would consider the normal duty of a Red Cap Porter stationed at the departure area which would be the removal of luggage from the kerb side to the processing area and quickly to return outside to secure further engagement. In the case of those in the customs area the duty would be to move things outside to the kerb side and immediately to return in the customs area to secure further engagement. In this case we have a Red Cap Porter holding luggage for about a half an hour, luggage which was unaddressed, luggage which if one accepts the evidence of the crown witness which the magistrate did accept and which we say she was entitled to accept, he took from the departure area not accompanied by any passenger. No one was seen to accompany him to point out the luggage. The irresistible inference from the evidence was an arrangement between himself and Powell. There was no reason in our view why, if his version is correct, he could not have put the luggage outside the departure area and secure transportation for this gentleman of whom we are unaware, there is no reason why the luggage should have been taken down to the arrival area and at the end of its progression, placed among arriving passengers luggage so to belie the true situation namely, that it was luggage taken from the departure area which had been lying there from 8.00 p.m., and could be considered as abandoned luggage which, if Lewis took up he properly should have taken to the Police Post. In relation to Powell, his conduct negatived innocence. He passed down the corridor and without prior conversation indicated to Lewis that he will soon return with the car. He returned and told Lewis he would be back in a few minutes. Finally he returned and without any conversation in relation to the luggage, he came out of the car,



opened his trunk and accepted the luggage therein and also allowed one suitcase to be placed on the backseat of the car. The acts coupled with his further conduct namely his prevarication and reluctance in giving the police officer a search when he was told by the police of the latter's suspicion further proved his knowledge of the contents of the suitcase. His conduct at the police post when he was confronted with the contents of his suitcases, his words to the police officer namely "How you do this to me, and me know you", showed clearly that Powell knew of the suitcases and of their contents namely that they contained ganja. The learned Resident Magistrate was correct in finding that the statement made by Powell was addressed to the police officer and not to Lewis. In the circumstances, having regard to these pieces of evidence there was in our view, adequate evidence which was before the learned Resident Magistrate both as to the physical fact of possession in Lewis and Powell and also evidence from which could be inferred that they each had knowledge that the contents of the suitcases was ganja. In the circumstances we find no merit in the appeal, the appeal of each appellant is accordingly dismissed, the convictions and sentences affirmed. The sentence of imprisonment for nine months is however ordered to commence from the date of conviction.