IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M-157 OF 2002

BEFORE: THE HON. MR. JUSTICE HORACE MARSH

THE HON. MISS JUSTICE GLORIA SMITH

THE HON. MR. JUSTICE LLOYD HIBBERT

IN THE MATTER OF AN EXTRADITION ORDER IN RESPECT OF EDMON RANCE MADE BY THE RESIDENT MAGISTEATE FOR THE CORPORATE AREA HOLDEN AT HALF-WAY-TREE

A N D

IN THE MATTER OF THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL 1962

BETWEEN	EDMOND RANCE	APPLICANT
A N D	THE COMMISSIONER OF CORRECTIONAL SERVICES	1ST RESPONDENT
A N D	THE DIRECTOR OF PUBLIC PROSECUTIONS	2ND RESPONDENT

Lord Anthony Gifford, Q.C. and Hugh Thompson instructed by Gifford, Thompson and Bright for the Applicant.

Miss Ingrid Mangatal and Miss Katherine Francis instructed by Director of State Proceedings for the first Respondent.

Mrs. Georgiana Fraser and Herbert McKenzie for the second Respondent.

HEARD: 4TH FEBRUARY & 11TH JUNE 2003

Hibbert, J

Edmund Rance the Applicant herein, seeks his release from custody, having been committed thereto, by His Honour Mr. Martin Gayle, Resident Magistrate for the Corporate Area, to await his surrender to the United States of America to stand trial for the offence of Conspiracy to possess with intent to distribute cocaine. In his application the Applicant relied on the following grounds:

1. That there was no evidence before the learned Resident Magistrate which was sufficient to show that the Applicant had at any time entered into an agreement to possess cocaine.
2. That evidence that the Applicant agreed to possess something which he believed to be marijuana was not sufficient to show that he had agreed to possess cocaine.
3. That to show that the Applicant was guilty of the offence of conspiracy to possess cocaine in the circumstances of this case the prosecution needed to show that his alleged associates had imported cocaine; but there was no such evidence.
4. That in particular there was no evidence that the material analysed and found to be cocaine by the analyst was material which was connected to the alleged conspiracy.
5. That the prosecution relied on statements made by alleged co-conspirators in the absence of the Applicant at a time when they

had been arrested and were no longer acting in furtherance of the alleged conspiracy, which evidence was inadmissible.

6. That by reason of the foregoing the learned Resident Magistrate erred in law in holding that there was sufficient evidence on which he could properly order the extradition of the Applicant.

In summary it is contended that although there is evidence to suggest that the Applicant conspired to possess marijuana there is no evidence to make out a prima facia case of conspiracy to possess cocaine, as evidence of a conspiracy to possess marijuana cannot be used to make out a case of conspiracy to possess cocaine.

The United States of America, the Requesting State herein, in the request for the extradition of the Applicant relied primarily on the affidavits of James Cain, Catherine Churchill and Anthony Miller to provide the evidence to establish a prima facia case. Cain, an agent with the United States Drug Enforcement Administration (D.E.A.), having received information concerning the trafficking of narcotics, pursuant to an order issued by a judge placed an electronic tracking device on a marine vessel Nipentuck. Consequently he ascertained that the vessel travelled to Cuba, Jamaica, the Bahamas and arrived in Florida on 17th August, 2000. Later that day he went to a pier in West Palm Beach where members of the United States Custom Service boarded the vessel, found 1,075 kilograms of cocaine and arrested Bill Horwood. Horwood co-operated with the authorities and delivered forty-one (41) packages purported to contain cocaine by arrangement to Wayne Hudgin who placed them in a mini van to await pick up. This led to Hudgin's arrest. He also co-operated with the authorities and gave information which led to the arrest of Anthony Miller. Before the arrest of Miller, however, Cain observed

the Applicant and his brother approach the mini van in which the forty-one (41) packages were placed and removed them and placed then in a car. The Applicant and his brother were then arrested. During an interview the Applicant stated that he was being paid by Miller to pick up the van and transport it to another location. He also stated that he "knew the bags were illegal product" and thought that "maybe it was marijuana". Cain further stated that on August 30, 2000 he assisted in packaging the 1,075 kilograms of cocaine in designated evidence boxes which were subsequently handed over to the Drug Enforcement Administration (D.E.A.) Southeast Laboratory Evidence Technician.

Katherine Churchill, a forensic chemist, employed by the Drug Enforcement Administration Southeast Laboratory stated that she, on the 10th October, 2000, examined the 1,075 kilograms of cocaine which was seized on the 17th August, 2000 and found it to be cocaine hydrochloride.

In his affidavit Anthony Miller stated that he became involved with Wayne Hudgin to smuggle narcotics into the United States of America. On August 17, 2000 he met with the applicant whom he knew to be a distributor of cocaine for one of the co-conspirators. He stated that the Applicant told him that Hudgin was bringing the "stuff" in and that he, the Applicant was going to receive the "stuff". He further stated that on August 18, 2000 he met with Hudgin who gave him information about the mini van. He later gave a set of keys to the mini van to the Applicant and told him that there were two bags in the van.

Lord Gifford, Q.C. for the Applicant hinged his submission on the decision in R v. Siracusa (1990) 90 Cr. App. R. 340. He relied on a passage in the judgment of O'Connor. L.J. at page 350 where the learned Judge stated:'-

> *"We have come to the conclusion that if the prosecution charge a conspiracy to contravene section 170 (2) of the Customs and Excise Management Act by the importation of heroin, then the prosecution must prove that the agreed course of conduct was the importation of heroin. This is because the essence of the crime of conspiracy is the agreement and in simple terms, you do not prove an agreement to import heroin by proving an agreement to import cannabis"*

A fortiori it was submitted proof of an agreement to possess marijuana cannot provide proof of an agreement to possess cocaine.

He then examined the evidence placed before the Resident Magistrate in the affidavits of James Cain and Anthony Miller. He submitted that as Cain did not actually board the Nipentuck he cannot properly speak to what was found on board. Accordingly there could be no link between the cocaine analysed by Katherine Churchill and the conspiracy involving the Applicant. It was also submitted that the alleged admission made by the Applicant to Cain does not amount to an admission of an intention to possess cocaine.

Touching on the affidavit of Miller, Lord Gifford, Q.C. submitted that Miller's assertion that he knew the Applicant to be a distributor of cocaine was inadmissible as it was hearsay. He, therefore, in summary submitted that although the evidence shows the Applicant's involvement in illegal drugs there was no evidence to make out a prima facia case that the acts agreed to be done by the Applicant involved cocaine.

On behalf of the second Respondent, Mrs. Fraser whose submissions were adopted by Counsel for the First Respondent urged on the Court that the assertion made by Miller that he knew the Applicant to be a distributor of cocaine must be given its ordinary meaning as there was nothing to suggest that what he said he knew was what he

was told. She further submitted that the scope of the agreement can be ascertained .from the affidavit of Miller and that the scope of the operation of which he was a part involved illicit drugs generally, and as a result, possession of cocaine was not outside the scope of the agreement with the Applicant.

Relative to the affidavit of Cain she submitted that the words 'maybe it is marijuana' does not show that the agreement was limited to marijuana but involved illicit narcotics generally.

Having examined the affidavit of James Cain I cannot accept the submission of Lord Gifford, Q.C. that because he did not board the Nipentuck .he cannot speak to what was found aboard. He clearly stated that he was present at the pier where the Nipentuck was docked at the time when the vessel was boarded and the cocaine found. Further he assisted in placing the cocaine in evidence boxes and was present when they were handed over for analysis. Neither can I accept the submission that the use of the words 'maybe it is marijuana' means that the Applicant had only agreed to possess marijuana. In my opinion there words show the contrary. In my view they show an intention to possess illicit drugs generally, marijuana being one, and that in an assessment of all the evidence, possession of cocaine must have also been in the contemplation of the Applicant. This view is further supported by the evidence of Miller who "knew Edmund Rance to be a distributor of cocaine". I find these words to be an assertion of fact and can find nothing to support the suggestion that they are inadmissible hearsay.

Accordingly, I find that there was sufficient evidence before the Resident Magistrate to make out a prima facia case against the Applicant for the offence of

Conspiracy to possess with intent to distribute cocaine. I would therefore dismiss this application.

Marsh J,

Having had the privilege of reading the judgment of my brother Hibbert J, I am in agreement with his views and find accordingly.

Smith J,

Having had the privilege of reading the judgment of my brother Hibbert J, I am in agreement with his views and find accordingly.