

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO. 3/09**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A.**

**CHESTER SHEDDEN v R**

**Appellant in person**

**Ms. Kamar Henry for the Crown**

**12<sup>th</sup> May 2009**

**ORAL JUDGMENT**

**PANTON, P.**

1. The appellant Mr. Chester Shedden was convicted in the Resident Magistrate's Court for the Corporate Area, Criminal Division on the 21<sup>st</sup> day of December 2007 of the offences of possession of ganja and dealing in ganja. He was sentenced to pay a total fine of \$4,200.00 or 3 months imprisonment. In respect of possession of ganja he was fined \$1,400.00 or 3 months and in respect of dealing in ganja he was fined \$2,800.00 or 3 months at hard labour. Both fines have been paid.

2. The convictions were recorded by Her Honour Mrs. Georgianna Fraser, who after a trial which spanned from the 1<sup>st</sup> of November 2007 to the date of conviction, gave detailed findings of fact.

3. The circumstances here indicate that the appellant who was a Correctional Officer SSG1 was seen by Mr. Allman Lloyd Petrie, who was acting as an overseer at the Tower Street Adult Correctional Centre, to pass into the facility in the region of a cell, a bag containing 23 packages of ganja.

4. The case, as it turned out, was a straight one of whether the learned Resident Magistrate believed Mr. Petrie or not. Mr. Petrie gave evidence that he had been employed as a Correctional Officer for some 32 years and had been stationed at the Tower Street Adult Correctional Centre since 1993. He said that on the 12<sup>th</sup> of February 2007, a date he said he recalls vividly, he was sitting in the overseer's office when he saw the appellant dressed in what Mr. Petrie described as unfamiliar dress in that he had on a blazer sweat suit top coloured grey and blue. He said it was unfamiliar because it is not the dress code. The dress code is grey pants and grey shirt or tunic. When he saw the appellant, he was about a distance of 15 feet from him. Where he Mr. Petrie sits he can see the wicket gate and the arch. He saw Mr. Shedden come through the wicket gate and because of how he was dressed he became suspicious knowing that the weather was hot at the time. So, what he Mr. Petrie did was to come out of his office swiftly and he stood under the arch and watched Mr. Shedden. He said he

saw Mr. Shedden with a black "scandal bag" in his hand and he saw him push the "scandal" bag through the grill. This took place Mr. Petrie said at Section F North. This section is a high security section of the prison that houses inmates. He shouted at Mr. Shedden by saying "Don't throw anything over the section you know." He said Mr. Shedden was startled, turned his head, looked at him and shoved the bag through the grill onto the section. He, Mr. Petrie, called for the key for the area and an officer came with the key, and the lock was pulled. He said he had been focusing on the bag all this while and he went to retrieve the bag with the appellant standing nearby and in the bag was this package taped up with brownish coloured tape. He opened it and there were little packages in there taped up like the size of little soaps. It was then he noticed the 23 packages. Eventually, the police were contacted and the appellant was arrested.

5. The appellant gave evidence denying that he had this bag and indicated that he had seen the bag but that it was being maneuvered while on a stick held by a prisoner and that he, the appellant, had nothing to do with it. The appellant at the trial advanced a reason for Mr. Petrie to have given evidence of this nature against him saying that there had been an incident sometime earlier when he and Mr. Petrie had exchanged harsh words and he was of the view that Mr. Petrie is not one who had any admiration for him and in fact Mr. Petrie held malicious feelings against him.

6. The appellant called witnesses from within the facility who were present at the time of his apprehension, one of whom indicated that he had seen him

come through the gate but had noticed nothing unusual about him. The learned Resident Magistrate in her findings of fact, said that it was significant that none of the witnesses called by the appellant had physically searched the appellant as they ought to have done on his re-entry into the institution. She found that one witness Mr. Ellis was less than frank with the court and that his evidence seems to be coloured by his dissatisfaction with Mr. Petrie's failure to consult him as to what actions were to be taken against Mr. Shedden after he had been apprehended.

7. The Resident Magistrate accepted Mr. Petrie's evidence that he saw Mr. Shedden with the bag in his hand and that he then rid himself of it. She found no merit in the submissions made in relation to there having been several confrontations between the appellant and Mr. Petrie. She said that she found Mr. Shedden was someone who had demonstrated himself to be a "slacker", a truculent and insubordinate individual with little respect for authority and discipline.

8. On the other hand, she accepted the evidence as presented by the prosecution as being cogent and in particular she accepted the evidence of Mr. Petrie. She found him to be a very credible witness, a man who appears to be conscientious on the job and in the words of his co-worker Mr. Ellis, who gave evidence on behalf of the appellant, a disciplinarian. Mr. Petrie's evidence was clear and convincing when he said he saw Mr. Shedden after his re-entry into the

institution going in a direction away from his assigned area. He observed he was dressed in clothing that was unusual and that this was what caused him to follow him. She accepted that he saw the appellant with a black plastic bag in his hand and that he called out to him, and that the appellant pushed the bag through the grill on to the section where the high security prisoners were housed.

9. Having reviewed the evidence and the findings, we, notwithstanding the plea made by the appellant in person before us and his repetition of the circumstances that he gave to the Resident Magistrate at trial, see no reason to do anything other than to dismiss the appeal and to affirm the conviction and sentences; and so we do.