

IN THE COURT OF APPEAL

GRENADA

Magistrate's Criminal Appeal

No. 20 of 1972

Between: CLEO PETERS Appellant

and

COMMISSIONER OF POLICE Respondent

Before: The Honourable the Acting Chief Justice

The Honourable Mr. Justice St. Bernard

The Honourable Mr. Justice Louisy (Ag.)

G.E.D. Clyne for Appellant

D. Lambert, D.P.P. for Respondent

1972, September 6

JUDGMENT

CECIL LEWIS, C.J. (Ag.)

The appellant was convicted on the 31st August, 1971 of being in possession of cannabis sativa L. He was fined \$150 and ordered to undergo 2 months' imprisonment if he failed to pay the fine in 2 months.

The facts out of which this appeal arises are that on the 16th of May, 1971 an acting Inspector of Police, Adonis Francis accompanied by Corporal James, Detective Hazzard and Woman Police Constable Williamson went to the Caribana Restaurant armed with a warrant to search the premises. The appellant who was the proprietor of the restaurant had taken over the management thereof about a year before from two Americans, Bryan Hardman and Margaret Craig. They had previously conducted a bar, restaurant and night club on the premises which are approximately 300 feet from a place called Yacht Services. The premises consist of three floors - a ground floor, a centre floor and a top

floor. While a storeroom on the second floor was being searched, Corporal James found a State Express cigarette box on the top of a meter. Sergeant Belmar, Sergeant Horsford and the appellant, were present when the box was found. The box was opened and it was found to contain fragments of herbs and seeds. It was handed to Sergeant Francis who was also there. Sergeant Francis asked the appellant how the "cigarette box got into the storeroom". He said he didn't know. He also asked him when was he last in the storeroom, and he said on Thursday. He further asked him "who all have access to the storeroom" and he replied "his sisters and his friends who assist him." Sergeant Francis then told the appellant that he would be charged with having dangerous drugs in his possession.

The other policeman, Police Constable Hazzard, in the appellant's presence found a small cardboard box in the speaker of a radiogram which was in a corner upstairs, i.e. on the top floor. This was an abandoned speaker which had been on the premises before the appellant took them over, and it had been there since the previous persons were in possession of the premises. Corporal Hazzard opened the small cardboard box and this too was found to contain herbs and seeds which were shown to the appellant. The contents of the State Express cigarette box and the cardboard box were taken to Trinidad by Corporal James where they were examined by one Gerald Popplewell, a chemist attached to the Foods and Drugs Division of the Trinidad & Tobago Police Force. He found that they contained small quantities of cannabis sativa L.

/The question...

The question which arises in this case then, is whether or not the appellant was in possession of the cannabis sativa L. He was asked to account for the presence of the cannabis found on the premises and he denied all knowledge of the drugs being on his premises. When he was asked about the cardboard box found in the speaker of the radiogram he said that one John Parks who usually comes to the restaurant leaves his things there. Counsel for the respondent submitted that by this remark the appellant was asking the magistrate to infer that John Parks was the one who had left the cannabis there. However, the magistrate did not indicate in his decision that he drew this inference, and when Parks gave evidence he denied putting the small cardboard box in the speaker of the radiogram.

The appellant gave evidence and said that he knew nothing about the cannabis sativa, that he in fact did not know cannabis sativa L, that he took over the place in June 1970 and he knew there were many people from the yachts, the yacht basin nearby and other places who frequented his premises, and to his knowledge none of his customers ever "had any mairjuana" on his premises. He also stated that the box containing the marijuana was found in a "dilapidated speaker case" which was situated in the right hand corner of the building upstairs and from the time he took over the building he had nothing to do with the speaker, he had no occasion to go to it at any time and he had no knowledge of what was in it. Before the Police came, he said, he had no occasion to go to or look into the speaker and he never knew that the box was there. As regards the cigarette box which was found downstairs in the storeroom he did not know it was there and he did not see where the police took it from but he was told it was found over a fuse box.

/Under.....

Under cross examination he admitted that when he took over the place it was partly furnished and that the speaker was there at the time. He admitted that part of the room in which the speaker was found was cleaned by his employees. It is a big open room, and his helpers cleaned up the room just to within about a foot from the speaker. He was never there when his helpers were cleaning the room, he did not know whether the sweepers swept near the speaker but they informed him that they did not go near the speaker. However they did collect the shoes, sweaters, jackets, and other articles which any member of the public may have left in the room and dumped them inside the speaker case.

Mr. Clyne for the appellant submitted that this evidence was not sufficient for the magistrate reasonably to find that the appellant was in possession of cannabis. He contended that he was not in exclusive possession of the premises as members of the public had access thereto, and that in any event the small quantities of cannabis sativa L which were found on the premises may well have been left there by the previous persons who were in occupation thereof.

Counsel for the respondent has argued to the contrary. He submitted that the mere fact that the appellant was in possession of the restaurant and was in control thereof would make him liable and that he should be held to be in possession of the cannabis because, in so far as the speaker case was concerned his helpers swept near to it and so they had access thereto. It is quite true that the appellant's servants swept the floor in the vicinity of the speaker but there is nothing to show that the appellant himself had access to the speaker case either exclusively or at all, there is no evidence /that....

that he knew of the presence of the cannabis sativa L either in the speaker case or in the cigarette box which was found over the fuse box. Moreover there is nothing to show that he was in exclusive possession of the rooms or the places in which the dangerous drugs were found. It is clear that being a restaurant, members of the public had free access to it and anyone could have put the cannabis sativa L in the speaker case. In so far as the storeroom was concerned other persons - members of his family and members of his staff- used it and it would be dangerous to say that in these circumstances the appellant was in exclusive possession thereof. Each case must be decided on its own facts and on the particular facts in this case it seems to me that it would be unsafe to say that the defendant was in possession of these articles. In the final analysis the meaning of possession must depend upon the context in which the word is used. The Prosecution will have to show affirmatively a possession by the appellant with knowledge. This they have failed to do, and I would therefore allow the appeal, quash the conviction and set aside the sentence.

Costs awarded to the appellant in the sum of \$50.00.

P. Cecil Lewis
CHIEF JUSTICE (Ag.)

ST. BERNARD, J.A.

I agree.

H.I. St. Bernard
JUSTICE OF APPEAL

LOUISY, J.A. (Ag.)

I agree.

Allan Louisy
JUSTICE OF APPEAL (Ag.)