19.2.82

In the Grand Court of the Cayman Islands

Held at George Town on 16 February 1982

Before the Hon. Mr. W. Hercules, Acting Chief Justice

Appeal No.3/82

DUCAN EBANKS V. REGINA

Mr. McField for appellant

Mr. Furniss for the Crown

JUDGMENT

The facts in this case are so clear that I need not go into them.

The evidence upon which the Learned Magistrate concluded that a prima facie case of possession of this unlicensed revolver was cogent and uncontradictory. On the evidence before the Court the Learned Magistrate could have come to no other finding, and it was correct for him to call upon the defendant for his defence.

Counsel for the defence rested his case upon a submission of no case to answer and informed the Court that he relied upon that submission and proposed to call no evidence. Thereupon the Learned Magistrate convicted the defendant and imposed the penalty from which he has appealed.

Section 66 of the Criminal Procedure Code upon which the Magistrate acted, in addition to the facts before him, is in the following language: -

> "If at the close of the case for the prosecution the the court considers that, subject to any fresh matter which might be revealed in the conduct of the defence, the prosecution case has been established, the court shall, if no defence is offered, convict the accused, but, if the court considers that the prosecution has not established its case and the accused offers no defence, or submits that there is no case to answer, the court shall acquit the accused.".

Counsel for the appellant has submitted that the accused should not have been called upon to answer the prosecution's case, because, inter alia, there was : -

(a) Lack of evidence of possession.

(b) No evidence that the revolver was under his control.

(c) No evidence that the defendant was shown the place where it was found.

(d) Contradictory evidence.

Counsel for the appellant abandoned his appeal against sentence and proceeded to argue against conviction only.

The only authority adduced by the appellant was the Barbados case of Belle v. Commissioner of Police,reported in Vol.18 of the West Indian Law Reports at page 1.

I agree with the submission of Learned Crown Counsel that the instant case is easily distinguishable from that case and is not germane to the present case.

Counsel for the appellant has submitted that no prima facie case was made out before the Learned Acting Magistrate of possession of this revolver by the defendant, either acutal or constructive.

As regards (a) the word possession imports a degree of knowledge on the part of a person alleged to possess, because, as Lord Morris said, when considering the meaning of the word , in Warner v. Metropolitan Commissioner of Police - 52 Cr. Appeal Reports at P. 403:-

> "The question revolves itself into one as to the nature and extent of the mental element which is involved in "possession" as that word is used in the section now being considered. In my view, in order to establish possession the prosecution must prove that an accused was knowingly in control of something in circumstances which showed that he was assenting to being in control of it; they need not prove that in fact he had actual knowledge of the nature of that which he had.".

The Learned Magistrate seems to have had no doubt that all

the elements necessary to prove possession were present in the evidence of the two prosecution witnesses. Further P. C. Rivers swore that:-

> "I saw him throw something away. I saw the object. I saw the object hit the wall and heard a sound from it hitting the wall. I got out with a flashlight and walked to where I saw the object drop and I found a raven .25 automatic pistol..... I went direct to the spot. The only thing at that spot was the pistol.".

The learned Magistrate, if he believed the evidence of this constable and all indications are that he did, rightly came to the conclusion that the defendant, had not only possession but control of this weapon.

As to (c), this proposition is trite, and should be rejected. The defendant was within 25 feet at all material times of where the revolver was found, and was in a position to observe all that transpired.

Counsel for the appellant has submitted here, as before the Magistrate, that there was no case for his client to answer.

In a practice note handed down to Magistrates on the 9 February 1962, Lord Parker C.J., in dealing with no case submissions, instructed Magistrates in the following manner. He said inter alia : (1 A.E.R. 1962 - P448)

> " A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict it.
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> Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is no case to answer.".

I can find nothing in these proceedings which might suggest

even the slightest deviation from the practice notes handed down by the Learned Chief Justice, and in the procedure as laid down in section 66 of the Criminal Procedure Code.

In the final analysis, I find that there was a clear and cogent case for the defendant to answer. A very strong prima facie case had been made out against him. There was sufficient credible evidence before the Learned Magistrate upon which the accused might have been convicted.

Accordingly the appeal is dismissed and the conviction is upheld and confirmed by this Court, with costs to the Respondent in the sum of $50.00

W. HERCULES
19th February 1982