

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Criminal Appeal No. 11 of 2000

BETWEEN:

ANDRÉ PIERRE TRUDEAU HALL *Appellant*

AND

THE QUEEN *Respondent*

**BEFORE: The Honourable Colin A. Williams, the Honourable Frederick L.A. Waterman,
Justices of Appeal and the Honourable E. Garvey Husbands, Justice of Appeal (Acting).**

2006: March 1

The Appellant in person.

Mr. Eli Edwards for the Respondent.

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DECISION

INTRODUCTION

[1] The appellant, André Pierre Trudeau Hall, was charged on an indictment containing the following six counts:-

- (1) the unlawful importation of 25.04 kilograms of cannabis contrary to section 4(3) of the Drug Abuse (Prevention and Control) Act, Cap. 131 ("the Act");
- (2) the unlawful importation of 23.4 kilograms of cocaine contrary to section 4(3) of the Act;
- (3) being in unlawful possession of 25.04 kilograms of cannabis contrary to section 6(2) of the Act;

- (4) being in unlawful possession of 23.4 kilograms of cocaine contrary to section 6(2) of the Act;
- (5) trafficking in a controlled drug namely 25.04 kilograms of cannabis contrary to section 18(4) of the Act;
- (6) trafficking in a controlled drug namely 23.4 kilograms of cocaine contrary to section 18(4) of the Act;

[2] On 11 May 2000 the appellant was convicted before a judge and jury on all the counts. On 15 May he was sentenced on the first count to 20 years' imprisonment and fined \$500,000 in 60 days and to a 20 year term of imprisonment in default of payment; he received a like sentence on the second, third and fourth counts; and on the fifth and sixth counts he was sentenced to 25 years' imprisonment. All the sentences were to run concurrently.

THE PROSECUTION CASE

[3] The prosecution case was that on 9 August 1999, about 5.00 p.m. the appellant arrived in Barbados at the Grantley Adams International Airport on Air Jamaica flight 091 from Jamaica. From that flight two unclaimed suitcases were left in the baggage hall. Sergeant Cecil Watson went from Oistins Police Station to the Airport to carry out investigations and spoke to a customs officer, Harcourt Marshall. Marshall then went to the conveyor belt and retrieved the two suitcases, one a blue suitcase and the other a black suitcase each bearing on its tag the name André Hall. Marshall cut off the locks from the suitcases and opened them in the presence of Sergeant Watson, Constable Griffith and Gaynel Corbin, a passenger agent at Caribbean Aircraft Handling, baggage agents for Air Jamaica. Marshall gave evidence that he saw seven packages in the black suitcase which were wrapped in plastic. He examined the packages and found a white substance which he suspected to be cocaine. In the blue suitcase there were nine packages. They contained a vegetable matter which he suspected to be cannabis. He labelled the packages and handed over the suitcases and their contents to Sergeant Watson after completing a transfer certificate and a seizure receipt.

[4] Mark Sergeant, Forensic Scientist attached to the Forensic Sciences Centre of the Attorney General's Chambers, gave evidence that he received from Sergeant Watson one blue Air Express suitcase which had an Air Jamaica tag with marking JM 411179 which bore the name André Hall and the date 9 August. The suitcase contained nine compressed packages with transparent plastic covering and weighed 25.03 kgs. He analysed the contents of the packages which contained the vegetable matter and found that there were seeds, crushed leaves and stalks of the plant Genus Cannabis from which the resin had not been extracted.

[5] Mark Sargeant said that he also received from Sergeant Watson one black suitcase which had an Air Express label, a tag marked JM 411180, Air Jamaica, the name André Hall and the date 9 August. The suitcase contained seven compressed packages weighing 23.4 kgs. These packages, he said, contained a white substance which, when analysed, was found to contain cocaine hydrochloride.

[6] Sergeant Watson gave evidence that after he had finished his investigations at the Airport he took possession of the suitcases and left the Airport to carry out further investigations. As a result, about 11.00 p.m. on 9 August he went to Melbourne Apartments, Black Rock, St. Michael and whilst there he saw the appellant André Hall and identified the other police officers and himself to Hall as police officers in plain clothes. He told Hall he was carrying out investigations into a criminal matter where a suitcase containing nine packets of vegetable matter suspected to be cannabis was found at the Airport at 5.45 p.m. that day and also a suitcase containing seven packages suspected to be cocaine. He told him that both suitcases bore the name André Hall and he had reason to believe he was the same André Hall and cautioned him and he said:

“I come from Jamaica for a vacation”. He then asked Hall to accompany them to Oistins Police Station where further investigations would be carried out and Hall replied, “Alright officer”. At Oistins Police Station he reminded the appellant of his right to consult with a lawyer at any time during the investigation and he replied, “God is my lawyer”.

When shown the nine packages of vegetable matter and asked what he could say about them and cautioned, Hall replied, “a friend asked me to check in that ganga”. When shown the black bag and told by the Sergeant that he suspected the white substance in each package to be cocaine and asked what he could say about them and cautioned him, Hall replied, “O God, that cocaine ain't mine. I only had to check in the suitcase. Somebody at the Airport was to move that”. And when asked if he wanted to give a written statement in connection with the matter under investigation, Hall said “No I can't say nothing else”.

THE DEFENCE

[7] The appellant elected to make an unsworn statement from the dock in which he said:

“Morning Sir, my name is Andre Pierre Trudeau Hall, I am twenty-seven (27) years of age. I live in Jamaica.

My address Rose Heights District, Montego Bay, St. James, Jamaica. I am a higgler salesman back home. I do buy and sell for my living. I arrived here in Barbados on the 9th August, 1999 on an Air Jamaica flight JM091 which had arrived in Barbados at approximately 5.15 p.m. After clearing immigration I went over to the Customs Hall. While in the Customs Hall awaiting luggage I did not see any of my luggages. I spoke to a porter which was at the conveyor belt. I turned to him and said I did not see my luggage (bag). He ask me if I am sure that I checked any luggages. I said yes. He said to me that I must go and clear Customs and call Air Jamaica in the morning. After clearing Customs I catch an airport taxi. I told the taxi driver to take me to the hotel that was listed on my ticket jacket. He asked me how long I am here for. I said five (5) days. He replied to me saying, “this hotel is too expensive,” so he can take me to a guesthouse which is more cheaper. We ended up at Melbourne Apartments, Black Rock. While I checked into the apartment I went to Kentucky just across the way to buy some food. While there I eat the food, I went back to the apartment. I saw two men in my apartment. I asked them what they are doing in my apartment. They asked me if I am Andre Hall. I said yes. They turned to me and said they are police in plain clothes and they want me

to accompany them to the police station. While in he apartment, they search my apartment, search my luggage, take my documents, and my money from me. I asked them what is this all about. They said to me just now you may find out. They took me to the station and charged me for marijuana and cocaine. Sir, I am an honest person, I do buy and sell for my living with the latest in name brand clothing, woodcraft and cosmetics. I don't have my business card it is at the prison, but Sir, I am happily married also with a wife and a bouncing baby girl. Sir, I came here in Barbados. This is my second trip. I came here in January 1999 with some married couples. Sir, they told me that business i n Barbados with buy and sell could be good for me. So I pack two big bags myself with woodcarvings, ready to wear clothes and T Shirts. Sir, I explain myself to the officers on more than one occasion. I also made a number of requests to have a phone call to Air Jamaica in which they said to me you are under arrest and you are not entitled for a phone call. I made another request the following day. The officers turned to me and say I am mad. Sir, they charge me for cocaine ganja, marijuana. I should say and to this present day these are the suitcases they are charging me for. It is only the other day I know that. Sir, in my experience of travelling as a salesman, this is not the first problem I have had with Air Jamaica. I have a similar problem like this at Nassau, Bahamas. My bag and a next passenger's luggage. I was in Nassau, went to the Customs here to clear my bag only to find out that the name tag is not my name tag and my name tag is on a different passenger's luggage. Sir, I don't have no need to sell drugs. I am happy with my business that I have at home. I also own a reggae jam band which I do contract with hotels in Negril, Jamaica so there is no need for me Sir to import drugs here in Barbados and don't have no business place. It is not something I can walk with downtown. So I am always trying to keep the youths in my community away from drugs and these charges have cause me great distress. I keep telling the police officers that I did not check in any drugs. When I handed in my ticket my baggage claim tags were on the ticket jacket. Sir, if you were supposed to come to Jamaica you would see me in my daily living with clothes in my hands on the streets or you will see me over by my shop. Sir, there is no need for me to import drugs in Barbados. I would not want to jeopardize my freedom and it is not every Jamaican is a drug mule. I personally work for what I want. I have my mother who depends on me, a wife and a daughter. So Sir, there is no need for me to take drugs to Barbados in which I don't know anything about. In everything I do Sir, I do it honestly in the sight of JAH. So there is no need for me to take drugs to your beautiful country. I think personally that I think Barbados need to crack down more on Air Jamaica because they have put me in a position where only God alone knows what might happen. That's it Sir."

- [8] The appellant's defence in respect of all the counts was that he knew nothing whatsoever about the alleged offences. The two suitcases recovered from or near the conveyor belt were not his luggage. He denied that he made any of the oral statements which the police officers attributed to him. The whole case against him was a fabrication. That the luggage tags placed on the suitcases were removed by someone unknown and placed on the two suitcases that were in the customs area.

GROUND OF APPEAL

- [9] The appellant filed four grounds of appeal. Grounds 2, 3 and 4 were argued together. The grounds were as follows:

- 1) the sentence is excessive;
- 2) the verdict of the jury in respect of each count was manifestly unsafe and unsatisfactory under all the circumstances of the case;
- 3) the trial judge misdirected the jury by his failure to direct himself and the jury that the two pieces of luggage checked in at the Sangster International Airport together weighed 45 kgs. whilst the suitcases in question each weighed in excess of 48 kgs;

- 4) the trial judge erred in law in that he failed to point out to the jury any of the glowing contradictions, discrepancies and inconsistencies found in the evidence.

[10] The appellant's main complaint related to the discrepancy appearing in the evidence of Cecil Weekes, Air Jamaica's Security Manager at Sangster International Airport in Montego Bay who gave evidence that the appellant was the passenger seated at 24C on the aircraft and that his two bags together weighed 45 kgs. This evidence was at variance with evidence of Mark Sargeant who stated that the drugs in the blue suitcase weighed 25.03 kgs., and those in the black suitcase weighed 23.4 kgs. At page 12 of the record the trial judge told the jury how they should deal with discrepancies in the evidence. There is no substance in this ground. In our view there was ample and substantial evidence connecting the appellant with the offences which the jury accepted. The jury's verdict cannot be considered unsafe and unsatisfactory. In the result, the appellant's appeal against conviction is dismissed.

[11] Complaint is made in ground 1 that the sentences imposed by the trial judge are excessive. In the opinion of this Court, persons who participate in criminal offences involving drugs must expect a long period of imprisonment, if caught. However, since the third, fourth, fifth and sixth counts contain an element of possession, we are of the view that by virtue of section 22(1) of the *Interpretation Act, Cap. 1*, the sentences imposed in respect of the third and fourth counts ought to be discharged. Accordingly, the order of this Court is that:

- (a) the sentences on the first, second, fifth and sixth counts are affirmed;
- (b) the sentences are to run concurrently six weeks from the date of conviction;
- (c) the sentences in respect of the third and fourth counts are discharged.

Justice of Appeal

Justice of Appeal

Justice of Appeal (Ag.)