

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

MacKeigan, C.J.N.S.; Hart and Pace, JJ.A.

BETWEEN:

MURDOCK ROBERT CRANSTON)	Craig M. Garson and
)	L. W. Scaravelli
Appellant)	for appellant
)	
- and -)	
)	
HER MAJESTY THE QUEEN)	James D. Bissell
)	for respondent
Respondent)	
)	
)	Appeal heard:
)	September 19, 1984
)	
)	Judgment delivered:
)	September 28, 1984
)	
)	
)	

THE COURT: Sentence appeal dismissed per reasons for judgment of MacKeigan, C.J.N.S.; Hart and Pace, JJ.A., concurring

MacKEIGAN, C.J.N.S.:

The appellant Cranston has applied for leave to appeal from a sentence of seven years' imprisonment imposed by Mr. Justice Merlin Nunn, after trial and conviction by a jury, on a charge that he did:

"...at or near Halifax in the County of Halifax, Nova Scotia, on or about the 19th day of October 1981 did unlawfully have in his possession a narcotic, to wit: Cannabis Resin [hashish], for the purpose of trafficking, contrary to Sec. 4(2) of the Narcotic Control Act."

The evidence resulting from R.C.M. Police surveillance showed:

Donald Kelly and Gary Randall rented a Chevrolet Malibu on October 19, 1981. They drove it to the Lord Nelson parking lot at Halifax. Kelly met the appellant next door at the Y.M.C.A. The police meanwhile had searched the Malibu and found no drugs.

Cranston, leaving Kelly and Randall, then drove the Malibu alone to Scotia Square parkade. He left the Malibu, which the police found then contained 52 pounds of hashish. Cranston later returned to Scotia Square in a black Dodge with Kelly whom he dropped off. Cranston drove the Dodge next door to Chateau Halifax where he met Kelly in the lobby. Kelly and Randall returned to Scotia Square and drove the Malibu to another level of

the parking garage. The police then arrested the three men, seized the hashish and charged each with possession of a narcotic for the purpose of trafficking.

The 52 pounds, about 23,300 grams, of hashish could have been sold at retail at between \$10.00 and \$15.00 per gram. It thus had "street value" of between \$230,000.00 and \$350,000.00.

Randall in 1982 pleaded guilty and was sentenced to 18 months' imprisonment. A first offender; he was characterized as a mere "carrier" who drove the Malibu because Kelly had lost his driving license.

Kelly pleaded not guilty and was tried before a judge and jury. He was convicted and sentenced by Mr. Justice Nunn to six years. His application for leave to appeal that sentence was dismissed by this Court on January 30, 1984 (S.C.C. No. 00930). The trial judge's remarks on sentencing Kelly appear to have taken into account Kelly's two previous convictions for drug offences in 1974 and 1977 for which he had received six months and twelve months, but also the fact that at that time Cranston had been convicted at a previous trial and had been sentenced to three years.

This Court had set aside Cranston's first conviction at a previous trial because the reverse onus

provision used had violated the Charter of Rights and Freedoms. It ordered a new trial of Cranston, which resulted in the sentence now before us on this appeal.

Cranston, forty-four years old, had no previous criminal record except conviction in 1980 for income tax evasion for which he had been fined \$2,500.00. He was married and had four children. Evidence on sentencing, supported by letters from many prominent persons, showed that he was a very successful, hard-working business man and athlete, with a fine reputation for leadership and community service. Mr. Justice Nunn in imposing the sentence under appeal remarked:

"Just as those who wrote on your behalf expressed surprise at your present predicament, I must say that it surprises me that one so conscious of physical fitness, and so involved with both your own family and other young people, would be involved with this particular trade [in narcotic drugs]"

Cranston's counsel on this appeal ably argued that the seven-year sentence was clearly excessive and that it was beyond the range of sentences imposed by Nova Scotia courts for similar offences, by similar offenders, with far greater quantities of the drug or with prior drug convictions. He emphasized that the sentence imposed on Cranston was in his submission entirely inconsistent with the six years imposed on Kelly, who had had prior

drug convictions. He argued that the trial judge in sentencing Cranston overemphasized deterrence and ignored rehabilitation and reform, and had wrongly treated Cranston's fine general reputation as a negative factor.

These arguments do not persuade me that Mr. Justice Nunn erred in principle or that Cranston's sentence was excessive. Their major premise is that Cranston's offence was similar to those committed by others convicted in Nova Scotia who have been involved in trafficking in marijuana or hashish. This premise is not true.

I agree with counsel for the Crown that this case was unique among reported cases in Nova Scotia in the quantity of hashish involved, a form of the marijuana drug; much more concentrated and valuable than the cannabis involved in most marijuana cases. Here we have 52 pounds, which translates at the consuming level into 23,300 grams. This quantity and the circumstances in which it was found mark Cranston not as a petty trafficker or even a large retailer or wholesaler of the drug, as Kelly may have been, but as a prime supplier who may have well participated in importing the drug. The transaction with Kelly was clearly carefully planned and suggestive of past experience in clandestine trafficking on a large scale.

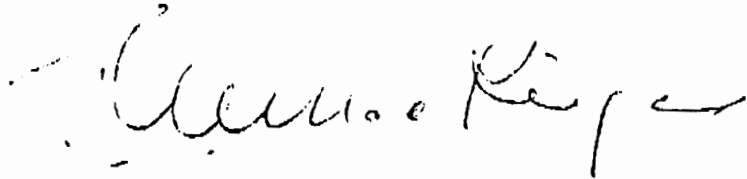
I can identify no closely similar offender among the numerous Nova Scotia cases discussed by counsel. Perhaps somewhat alike in being "big-time operators" are those involved in Carr and Robson v. The Queen (1976), 15 N.S.R. (2d) 465 (N.S.C.A.), and R. v. Erven (1977), 21 N.S.R. (2d) 653 (N.S.C.A.), who variously received seven years and five years for involvement in trans-shipment of large quantities of the drug destined for eventual distribution in central Canada and the United States.

I repeat the caveat I uttered in R. v. Fifield (1978), 25 N.S.R. (2d) 407 (N.S.C.A.) at pp. 410-411:

"Certainly sentences are not, and should not be, closely proportionate in their length to the quantity of marihuana involved. The quantity is important in helping show the quality of the act or the probable category of trafficker--the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler, or the big-time operator. The categories respectively have broad and overlapping ranges of sentence into which the individual offender must be appropriately placed, depending on his age, background, criminal record, and all surrounding circumstances."

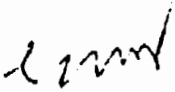
Here I must say that in my opinion the sentence under appeal was not excessive. I agree with Mr. Justice Nunn that the appellant's fine but hypocritical reputation masking "big-time" operation in a nefarious trade increases rather than reduces the enormity of the offence.

Application for leave to appeal may be allowed,
but the appeal from sentence should be dismissed.

A handwritten signature in cursive script, appearing to read "Clarence Kiper".

C.J.N.S.

Concurred in -

Hart, J.A. 

Pace, J.A. 