1988 December 12

(SAVVIDES, HADJITSANGARIS, BOYADJIS, JJ.)

CHRISTOS VASILIADES,

Appellant,

v.

THE POLICE,

Respondent.

(Criminal Appeal No. 4960).

Evidence — Hearsay — Marks and labels written on containers of articles in the possession of accused — Hearsay, if offered to establish the identity or nature of such articles.

Evidence — Admissions in the form of opinion by accused relating to identity or nature of articles in containers in his possession — If opinion based on marks and labels written on the containers, the admission is of no more evidential value than the inscription itself — If, however, the opinion is an informed opinion, it constitutes prima facie evidence as to the identity or nature of the articles.

The appellant was convicted for the offences of selling controlled pharmaceutical preparations without a marketing licence, contrary to sections 5(1) and 31 of the Drugs (Control of Quality, Supply and Prices) Law, 1967.

The preparations were produced as exhibits in the trial. The label on Exhibit 1 described the tablets as «Iron Supplement plus Vitamin C a Rich Source of Natural Iron» in capital letters, and the label on Exhibit 2 had the following inscription, i.e. «Cod Liver Oil Containing Natural Vitamin A and Natural Vitamin D».

Vitamins and antianaemic preparations are included in the list of pharmaceutical preparations. There was evidence that iron is an antianaemic drug, but there was no scientific analysis of the exhibits for the purpose of proving that the substances corresponded to the inscriptions in the aforesaid labels.

In the witness box the appellant admitted that the exhibits contained iron and vitamins.

The evidence showed that the appellant is well conversant with

foodstuffs and vitamins. His knowledge as to the contents of Exhs. 1 and 4 was not limited to the fact that they contained vitamins but it was extended to the exact proportion of vitamins contained in each substance.

The appellant had himself placed the order with the English manufacturers for the import of the tablets, Exhs. 1 and 4 with the specifications and contents with which they finally arrived in Cyprus and were cleared from the Customs and carried to his store. He then sold them as a nutricious suppplement of food.

This is an appeal from appellant's conviction. Counsel for the appellant argued, inter alia, that the inscriptions on the Exhibits constituted inadmissible hearsay evidence and that appellant's admission was of no more evidential value than the inscriptions themselves.

Held, *dismissing the appeal:* (1) Evidence concerning marks and labels written on containers of articles in the possession of the defendant is inadmissible as hearsay if it is offered for the purpose of establishing the identity or the nature of the articles.

(2) An admission in the nature of an opinion or belief, made by a person regarding the identity or nature of such articles is of no more evidential value than the marks and labels themselves if it is derived solely from the aforesaid marks or labels.

(3) If, however, the expressed opinion concerning the identity or nature of the articles is an informed opinion because the person expressing it has sufficient knowledge of relevant background circumstances so as to be able to form an opinion, an admission in respect thereof provides at least prima facie evidence as to the identity or the nature of the goods.

(4) In the circumstances of this case the opinion of the appellant was an informed opinion.

Appeal dismissed.

Cases referred to:

Patel v. Comptroller of Customs [1965] 3 All E.R. 593;

Comptroller of Customs v. Western Lectric Co. Ltd. [1965] A.C. 367;

Bird v. Adams [1972] Crim L.R. 174;

R. v. Chatwood and Others [1980] 1 All E.R. 467;

R. v. Wells [1976] Crim. L.R. 518.

Appeal against conviction.

Appeal against conviction by Christos Vassiliades who was

convicted on the 28th November, 1987 at the District Court of Larnaca (Criminal Case No. 8069/87) on one count of the offence of selling controlled pharmaceutical preparations without a marketing licence contrary to sections 5(1) and 31 of the Drugs (Control of Quality, Supply and Prices) Law, 1967 (Law No. 6/67) and was sentenced by Arestis, D.J. to pay £30.- fine and was further bound over in the sum of £200.- for two years to observe the provisions of the said Law and Regulations.

A. Yiorkadjis, for the appellant.

A. Angelides, Senior Counsel of the Republic for the respondent.

Cur. adv. vult.

SAVVIDES J.: The judgment of the Court will be delivered by Boyadjis, J.

BOYADJIS J.: On 20 October 1987, at the District Court of Larnaca, the appellant Christos Vasiliades pleaded not guilty to the offence of selling controlled pharmaceutical preparations without a marketing licence contrary to sections 5(1) and 31 of the Drugs (Control of Quality, Supply and Prices) Law, 1967, hereinafter referred to as the «Law» for convenience purposes.

The pharmaceutical preparations which the appellant was alleged to have marketed were produced at the trial before the Court below and were marked as Exhs. 1 and 4. The appellant is an importer and seller on wholesale and retail basis of health food for the last 7 years and he has admitted that in the usual course of his business he had importance and sold a quantity of the aforesaid exhibits to the supermarket owned and run by Metro Foods Ltd., at Larnaca, from where the two exhibits were ultimately purchased by P.W.1 Nicos Xeros, an inspector of pharmacies. Exh. 1 is a vial containing 50 tablets. There was a marking on the outer surface of the vial written by the manufacturers in England describing the tablets as «Iron Supplement plus Vitamin C a Rich Source of Natural Iron» in capital letters. Exh. 4 is a vial containing 100 tablets and the inscription thereon was to this effect: «Cod Liver Oil Containing Natural Vitamin A and Natural Vitamin D» also in capital letters. None of the exhibits was analysed with a *view of ascertaining scientifically whether they do contain the* vitamins or the iron stated on the aforesaid markings. Prosecution witness Xeros, who is a druggist, expressed the opinion that iron is an antianaemic drug. In his statement to the Police, the appellant stated that he knows since 1985 that health food containing

vitamins have been declared controlled pharmaceutical preparations and that the Customs Authorities forbid their import. He added that Exhs 1 and 4 formed part of an old stock which he had imported before 1985 though he sold them to Metro Foods Ltd. in 1986. In the witness box, the appellant admitted that Exhs. 1 and 4 contain iron and vitamins, i.e. what is stated on their respective labels.

Following the coming into force of Part III of the Law, acting under sub-section (4) of Section 4 of the Law, the Minister of Health issued an Order whereby he confirmed the list of Controlled Pharmaceutical Preparations prepared by the Drugs Council. The Minister's aforesaid Order was published in Part 1 of Supplement No. 3 to the Official Gazette (Κ.Δ.Π. 274/70) dated 10 April 1970. Vitamins are included in the aforesaid list. Antianaemic preparations were included in the Supplementary List of Controlled Pharmaceutical Preparations published on 3 November 1972. See Κ.Δ.Π. 204/72.

The appellant was found guilty and was convicted accordingly. He now appeals against his conviction alleging that (i) as no analysis of Exhs. 1 or 4 was made, there was no evidence before the trial Court to establish the true contents thereof; (ii) the inscriptions on Exh. 1 and 4 constitute inadmissible hearsay evidence; (iii) the belief formed by P.W. 1 Xeros and the admission made by the accused on reading the inscriptions on Exhs. 1 and 4 that the latter contain iron and vitamins are of no more evidential value than the inscriptions themselves; and (iv) in the absence of any admissible and sufficient evidence to establish the contents of Exhs. 1 and 4, one of the ingredients of the offence, namely, that the things sold are controlled pharmaceutical preparations has not been proved.

In support of his proposition counsel cited the decisions of the Privy Counsel in *Patel v. Comptroller of Customs* [1965] 3 All E.R. 593, and *Comptroller of Customs v. Western Lectric Co. Ltd.*, [1965] A.C. 367. Patel's case concerned a prosecution against the appellant charging him with the making of a false declaration on a customs import entry in respect of five imported bags of corriander seed, the origin of which was declared to be India instead of Marocco. Each bag was contained in an outer bag which was marked with appellant's name. On the inner bag, however, there was written «Produce of Marocco», and this legend constituted the

only evidence regarding the alleged falsity of the declaration which consisted in the entry of the word «India». Their lordships in the Privy Council were asked by the respondent to say that it could be inferred from the aforesaid legend that the goods contained in the bags were produced in Marocco. Their lordships refused to draw such an inference, their opinion being that from an evidentiary point of view the words written on the bags were hearsay and that the list of exceptions to the hearsay rule cannot be extended judicially to include such things as labels or markings.

In the *Western Lectric* case (supra) the respondents were convicted for making a false declaration in a customs import entry form regarding the origin of certain goods which were found to be stamped with the words «made in U.S.A.» and «Denmark». The goods had been ordered from New Zealand and on the invoices received from New Zealand it was stated that the country of origin was either Australia or the United Kingdom. Acting innocently and having those invoices as the sole source of information on the matter, the appellants' authorised agent made the entry, the subject of the prosecution, stating Australia or United Kingdom as the countries of origin of the goods imported. A few days later, after the markings on the goods were discovered the authorised agent of the respondents presented a post entry form for additional duty in which the place of origin of the same goods was stated to be Denmark or the U.S.A. The respondents' appeal against their conviction by the trial Court was allowed by the Court of Appeal of Fiji The Prosecutor appealed to the Privy Council seeking the restoration of the conviction on the ground of the admission on the post entry form that the place of origin of the goods was Denmark or the U.S.A. It was held, dismissing the appeal, (i) that there was no evidence that the entry as to the country of origin was false in the case of any of the articles, (ii) that the markings on some of the goods must be excluded from consideration as being no more than hearsay, (iii) that an admission by a man of something of which he knew nothing was of no real evidential value, and (iv) that the admission made by the respondents' agent on reading the marks and labels on the goods was of no more evidential value than the marks and labels themselves, so that the conviction ought not to be allowed to rest on the admission alone.

Learned Counsel for the Republic submitted (i) that the facts of the cases relied upon by the appellant are distinguishable from the facts of the case now under consideration and (ii) that in the

testimony given by prosecution witness Xeros and by the appellant at the trial and in the written statement of the appellant to the Police, Exh. 8 at the trial, there is to be found evidence which is sufficient to establish that Exhs. 1 and 4, admittedly imported and sold by the appellant, contain vitamins and iron which have been duly declared controlled pharmaceutical preparations in accordance with the Law. He cited in support of his submission the decision in *Bird v. Adams* [1972] Crim. L.R. 174, where the facts were shortly these: The appellant had been arrested for having had in his possession L.S.D. tablets. Whilst in the police station he admitted having had 15 tablets of L.S.D. and supplying them to other persons. L.S.D. was a substance included in the list of prohibited drugs set out in the Schedule to the Drugs (Prevention of Misuse) Act 1964 and appellant was charged with having in his possession the aforesaid drug without being duly authorised, contrary to section 1 of the Act. The only presecution witness on the nature of the substance which constituted the subject-matter of the charge was the police constable to whom the appellant had made his admission. At the close of the case for the prosecution appellant's counsel submitted that there was no case to answer in as much as there was no proof that the appellant had been in possession of a prohibited drug, for there had been no analysis of the tablets and the appellant was incompetent to say what was the substance of the tablets. The trial Court ruled that there was a prima facie case to answer. The appellant chose not to give evidence. The Court found him guilty as charged. He appealed by case stated to the High Court and the question stated was whether the evidence offered by the posecution was sufficient to prove that the substance in the appellant's possession was in fact a substance mentioned in the Schedule to the Act.

It was held, dismissing the appeal, that «there were many instances where an admission made by a defendant on a matter of law in respect of which he was not an expert was really no admission at all, e.g. a defendant could not know in a bigamy case whether the foreign marriage was valid, and there were cases where an admission of a fact was valueless because the circumstances were such that a defendant could not possibly have the necessary knowledge, but here the defendant admitted that he had in his possession a dangerous drug and had been peddling it. The defendant had certainly sufficient knowledge of the circumstances of his conduct to make his admission at least prima facie evidence of its truth which was all that was required at the

stage of the proceedings when the submission of no case was made and, accordingly, the justices, had correctly ruled that there was a case to answer.»

The decision in *Bird v. Adams* (supra) was approved by the Court of Appeal, Criminal Division in *R. v. Chatwood and others* [1980] 1 All E.R. 467, C.A., where another decision on the point, namely that in *R. v. Wells* [1976] Crim. L.R. 518, C.A. is inter alia considered.

The principles that may be derived from the several authorities are briefly these:

(1) Evidence concerning marks and labels written on containers of articles in the possession of the defendant is inadmissible as hearsay if it is offered for the purpose of establishing the identity or the nature of the articles.

(2) An admission in the nature of an opinion or belief, made by a person regarding the identity or nature of such articles is of no more evidential value than the marks and labels themselves if it is derived solely from the aforesaid marks or labels, because in such a case the person making the admission lacks the necessary background knowledge to be able to make the admission at all.

(3) If, however, the expressed opinion concerning the identity or nature of the articles is an informed opinion because the person expressing it has sufficient knowledge of relevant background circumstances so as to be able to form an opinion, an admission in respect thereof provides at least prima facie evidence as to the identity or the nature of the goods.

In view of the foregoing principles, the question whether an admission of this nature by an accused person carries sufficient weight from an evidential point of view or not will depend on the particular circumstances of every given case.

Though, in giving an answer to a leading question put to him by his counsel in re-examination, the appellant stated that his knowledge that Exhs. 1 and 4 contain vitamins is derived from the labels thereon, the trial Court rightly attributed sufficient weight to the appellant's opinion and admission that the exhibits do contain vitamins, taking into consideration the circumstances of the present case which include;

(a) The appellant is well conversant with foodstuffs and vitamins. Evidence emanating from the appellant on this matter is

to the effect that vitamins are one of five species of food having nutricious qualities. His knowledge as to the contents of Exhs. 1 and 4 was not limited to the fact that they contained vitamins but it was extended to the exact proportion of vitamins contained in each substance. He expressed, however, his disagreement to the decision of the Drugs Council to include vitamins in the list of pharmaceutical preparations, insisting that they are simply a substance supplementing food. He stated more than once that he did not consider himself bound to abide with the aforesaid opinion of the Drugs Council to which he does not recognise the right to legislate.

(b) The appellant had himself placed the order with the English manufacturers for the import of the tablets, Exhs. 1 and 4 with the specifications and contents with which they finally arrived in Cyprus and were cleared from the Customs and carried to his store. He then sold them as a nutricious supplement of food. He cannot now be heard saying that he did not know what he had imported and marketed in the island.

In view of the above the appellant did possess the necessary background knowledge to be able to make the admission regarding the contents of Exhs. 1 and 4 upon which his subsequent conviction was mainly based.

His opinion and belief to which he had admitted qualify as informed opinion and correct belief which have not derived solely from the inscription on the packing of the substance which he imported and sold. He had sufficient knowledge of the circumstances of his conduct. The circumstances pertaining to the admission of the appellant made in the present case are clearly distinguishable from the circumstances in the case of *Comptroller of Customs v. Western Lectric Co. Ltd.* (supra), where the authorised agent of the defendants-respondents on reading the labels and markings on the inner bags containing the imported goods, made an admission of which he knew nothing.

The conviction of the appellant in the present case was based on legally admissible evidence of sufficient weight to prove all the ingredients of the offence with which he was charged. Therefore, the appeal is dismissed and the conviction affirmed.

Appeal dismissed.