

No. 798
7/10/66

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 3/66

BEFORE: The Hon. Mr. Justice Duffus, President
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Shelley (Acting)

R. vs A L V I N W I L L O U G H B Y

Mr. C. Raymond for the Crown

Appellant appeared in person

8th February, 1966.

DUFFUS, P.,

This appeal of Alvin Willoughby disclosed a strange state of affairs. The evidence given for the Crown by the two police constables, Herve Roberts and Leslie Juleye, was to the effect that they went to the home of the appellant. They made a search and in his presence discovered 696 packages of ganja, and at the same time when they searched the appellant personally, they discovered in one of his trousers pockets a small paper package of ganja.

According to the police officers, the appellant made certain statements establishing that he knew that ganja was in his house and on his person. The police also found two pipes in the appellant's house, which the Government Chemist stated did not disclose any residue of ganja which is normally found in pipes that are used for smoking ganja.

The case for the defendant was that the police made two searches at his home. On the first occasion, it was his case that the police found a number of books and other literature which were prohibited and that the police arrested him, took him to the police station and while he was locked up there they went away, made a further search of his premises in his absence and then came

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to the police station and said they had found ganja in his house and charged him.

He denied that he was in possession of 696 packages of ganja and he denied that any ganja had been found in his pocket.

The evidence for the police officers, if it had been accepted by the learned Resident Magistrate in toto was overwhelming, but the learned Resident Magistrate at the conclusion of the hearing made some notes as to what his findings were, and his findings were that the police had found the 696 packages of ganja, on the occasion of the second visit when the appellant and his concubine, who had also been arrested, were at the police station.

The learned Resident Magistrate made no findings whatever with regard to the ganja which the police said they had found in the pocket of the appellant. The effect of these findings is that the learned Resident Magistrate must have completely discredited the police witnesses, when they stated that the ganja had been found on the occasion of their first visit to the appellant's house, when he was present and made certain admissions, and if the evidence for the police was discredited by the Resident Magistrate on this vital issue in the case, then clearly they could not be regarded as witnesses of truth, and there would have been no justification whatever for the findings of the learned Resident Magistrate in these circumstances that the appellant was in possession of ganja, whether the 696 packages which the magistrate decided had been found on the second search made in the absence of the appellant, or in respect of the ganja in his pocket, on which there were no findings at all.

Learned Counsel for the Crown has quite frankly indicated to this Court that he is quite unable in the circumstances to support the conviction, in view of the written findings of

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the Resident Magistrate, and this Court agrees with him whole-heartedly. In these circumstances, the appeal is allowed, the conviction for possession of ganja quashed and the sentence set aside.