JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 107/85

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

REGINA

v.

ANTE-TONI NINCIVIC
ANGELLA BRAMWELL

F.M.G. Phipps, Q.C., & Tom Tavares-Finson for appellant Ante-Toni Nincivic

P.J. Patterson, Q.C., & Miss B. Waren for appellant Angella Bramwell

P.A. Smith, Deputy Director of Public Prosecutions & Miss Y. Sibble for the Crown

November 6, 7, 8, 1985 & May 3, 1986

WHITE J.A.

The appeals of the appellants Ante-Toni Nincivic and Angella Bramwell were dismissed by this Court on the 8th day of November, 1985. The judgment of the Resident Magistrate for St. Andrew was affirmed in respect of the convictions of both appellants. With regard to sentence, we affirmed the sentences imposed on the appellant Nincivic, viz., (1) on Information 1898/85, which charged the unlawful possession of ganja, imprisonment for 3 years hard labour and a fine of $1,000.00 or imprisonment for six (6) months at hard labour. (2) On Information 1899/85, the conviction for unlawfully taking steps preparatory to exporting ganja, the sentence was imprisonment for twelve (12) months at hard labour, which was made concurrent with the term of imprisonment

imposed for the offence of possession of ganja. In addition, he was fined $1,000.00 or six (6) months imprisonment at hard labour. If the fine was not paid, the alternative term of imprisonment was to be consecutive to that in respect of (1) above. (3) On Information 1900/85, dealing in ganja - the term of imprisonment imposed was three (3) years at hard labour and he was fined $10,000.00 or six (6) months at hard labour. If the fine was not paid, the alternative sentence of imprisonment was to be consecutive to the sentence imposed on Information 1899/85.

It was recommended that Nincivic be deported at the expiration of the sentence.

Although we dismissed the appeal by Angella Bramwell against convictions recorded against her, we set aside the custodial sentences imposed by the Resident Magistrate. In effect, therefore, the pecuniary penalties imposed on her still stand, so that on (a) Information 1898/85 possession of ganja, she will pay a fine of $1,000.00 or serve a term of imprisonment for six (6) months at hard labour; (b) Information 1899/85, for taking steps to export ganja, the fine to be paid is $1,000, or imprisonment for six (6) months at hard labour, and (c) Information 1900/85 the fine to be paid by Angella Bramwell will be $10,000.00 or six (6) months at hard labour. She was given three (3) months to pay these fines totalling $12,000.00 and was ordered to enter into recognisances with one or two sureties. The Court took this stand because the notes of evidence disclose that she is the mother of two small children aged four years and one-and-a-half years. We were asked to consider that her incarceration would be disastrous for the children. With this we agreed.

The foregoing was the aftermath of a raid effected by Detective Corporal Cecil Morand, and other policemen, including Deputy Superintendent of Police, Gladstone Grant, on premises 11 East Road, in the parish of Kingston, at 6:00 a.m. on the 30th April, 1985. Detective Corporal Morand had earlier been

issued with written authority signed by Deputy Superintendent Grant to search those premises under section 21 (4) of the Dangerous Drugs Act.

On arrival at the premises the police party surrounded the house thereon which was securely grilled. At the outset of the raid, the police party knocked at a door and shouted 'Police'. For about five minutes no answer came from inside the house, although they heard sounds and movements from inside the house. The door to the north-western section of the building was opened by Angella Bramwell, standing beside her was the appellant Nincivic; he was barefooted and was holding a baby in his arms. According to Deputy Superintendent Grant, the male appellant was dressed only in pyjama trousers. The upper portion of his body was bare.

Detective Corporal Morand read the authority and enquired whether they were the only persons living in the house. Angella Bramwell called out; four other persons - who were originally charged with the two appellants, but were acquitted at the trial - appeared. Again the Detective Corporal read to all the occupants the authority for him to search the building.

At the outset of the appeal, comments were made on the fact that the authority for search was signed by Deputy Superintendent Grant who was himself a member of the search party, and in fact, during the search was present in the room where the parcels of ganja and hashish, the subject matter of the several charges were found. It was said that suspicion was cast upon the actions of the police, where a person who signs the authority for search is a member of the search party. It was said that the position of the Deputy Superintendent should be equated more properly with that of a Justice of the Peace. By being present he put himself in the position of a person with an interest to serve. Accordingly, the evidence for the Crown should be viewed

with suspicion. It must specifically be mentioned that although Grant was present as leader of the raiding party, the authority to search was not issued to himself but to Morand. We do not see that the Resident Magistrate failed to consider the evidence carefully. Indeed, any defect in the authority to search would not exclude the reception of any evidence relating to the result of the search: see R. v. King (1966) 10 W.I.R. 19 R. v. Francis (1969) 10 J.L.R. 265 pp. 267E - 267C; R. v. Sutton (1967) 10 J.L.R. 278 at pp. 280-281-282.

The police party entered the house through a grilled gate which was opened by the appellant, Bramwell. They went into a passageway, along which, as one enters, there are three rooms on the right, and another on the left straight ahead. According to Det. Corporal Morand, once one enters the passage one has access to any room without going through any other room.

Deputy Superintendent Grant and Detective Corporal Morand entered a room to the rear of the building. On entering the room the Detective Corporal enquired who occupied the room, and the appellant Bramwell, answered that she and Nincivic and their son occupied that room. Nincivic who was present said nothing. When the policemen first entered the room, there were, according to Morand, signs of habitation. There was a bed, a dresser, and the floor was carpeted. Male and female clothing was in the room, and from the condition of the bed it appeared as if someone had just got out of bed. It should be observed that none of this was challenged as part of the factual situation at the trial before the Resident Magistrate.

Before a search of this room was actually made, the appellants were invited into this room. Incidentally, the other four accused came from separate rooms in the house, when they responded to the call from Angella Bramwell.

After all the occupants of the house had gathered in the room, the police evidence was that they saw on the floor of this room, and to the southern section, two parcels. One was white and the other pink and blue. In the presence of all the occupants and of Deputy Superintendent Grant, Detective Corporal Morand cut open those packages described by the Deputy Superintendent when he first saw them as "compressed packages." The Detective Corporal sliced open both parcels. He discovered brown paper under the white wrapping. He directed the attention of the accused to the fact that each parcel contained vegetable matter resembling ganja. All were cautioned. Each disclaimed any knowledge of how the parcels got into the room.

Significantly, Corporal Morand's attention was directed by the Deputy Superintendent to a partially closed trap-door in the ceiling of the room. This trap-door was over the spot where the two packages were seen on the floor.

The Corporal by climbing on to a chest of drawers was able to raise himself up to the trap-door. By sitting on a ledge in the ceiling at the open trap-door, he was enabled to take seven parcels from the other side of the ceiling. They were taken down through the trap-door. Six of the parcels taken from the ceiling were each cut open, and vegetable matter resembling ganja was found in it. The seventh parcel was a brown plastic bag which itself contained a blue plastic bag within which were found eighteen plastic bags. These last contained what was variously described as 'semi-solid substance' or a 'tar-like substance', but stated to resemble hashish. The Corporal showed all these parcels and their contents to the occupants of the house including the appellants, and informed them that there was vegetable matter resembling ganja in the first six parcels; and that what was found in each of the eighteen plastic bags was hashish. To neither of these demonstrations did the accused say

anything. Except that after the Corporal spoke about hashish, the evidence disclosed that Nincivic spoke to Deputy Superintendent Grant. According to the Corporal the appellant said, 'Is who tell you boss?' The Deputy Superintendent said he could not tell him that. The other accused said nothing. Even after caution none of the six said anything. It would appear from the evidence of Detective Corporal Morand that the appellant Nincivic made this query immediately upon the disclosure of hashish as the contents of the blue plastic bag. Corporal Morand did, however, testify that he cautioned all six persons. They said nothing. He continued:

> "Nincivic pulled aside Deputy Superintendent Grant in my presence and hearing and said 'Boss, this thing can't done out of Court Sah? Does it have to go to Court?"

It is not clear from this whether, factually, this pulling aside of the Deputy Superintendent was after the caution or immediately after the hashish was disclosed. Corporal Morand himself seems to have been so unsure of, and unclear about, what was said that he used the phrase 'words to that effect'. The lack of clarity increases bearing in mind that he added: 'When Nincivic pulled Grant aside I heard all that was said'.

Yet he did not remember all that Nincivic said, nor did he make a note of it.

Turning to the evidence of Deputy Superintendent Grant on this point with particular reference to when Corporal Morand showed the contents of the parcels to the occupants -

> ".....accused Nincivic said, 'How you caught me. I want to know who gave me away to the police. Is it one of my friends? I told him I could not disclose who told me. He said tell me because I treat the police nicely and I treat my friends nicely. I am surprised to see that they gave me away to the police'. He also said, 'From what you told me you know that I am only a courier. And I was just trying to get back the stuff I lost on the first occasion so I could go back to my country."

After Corporal Morand had on the spot arrested all the six persons for possession of ganja, dealing in ganja, and preparing ganja for exportation, he cautioned each on each count. None of the accused made a statement but the Deputy Superintendent stated:

> "Nincivic said, 'Can I speak to you Chief? I told him yes. He took me aside and said, 'Tell me something, this thing has to go to Court? Can't it be finished here?' I asked him what he meant. He said, 'You know already, 'I told you I have treated the police nicely.' I told him we could talk about that at my office."

In the account of this conversation given by Grant, part of which he said, took place in the presence of the six persons arrested Corporal Morand could have heard; although when Nincivic took him aside Corporal Morand might not have heard the ensuing conversation, during which Nincivic spoke softly, compared to when he earlier questioned the police as to the source of their information. Deputy Superintendent Grant described the Detective Corporal as 'having an impediment of hearing'. The Deputy Superintendent informed the Resident Magistrate that after the aside conversation, he told Detective Corporal Morand what Nincivic had said to him. This may very well account for the inability of Morand to state fully what he said he heard.

At the end of the Crown's case, the Resident Magistrate rejected a no case submission and called upon all the then defendants to answer. Each of the defendants made an unsworn statement from the dock. Each denied any knowledge of the exhibits allegedly found in the room. More specifically, Nincivic stated his home to be in Florida, U.S.A., but he visits Jamaica from time to time. Admittedly, he was at the premises, 11 East Avenue, on the morning in question, when the police carried out the raid. He denied that anything at all was found

on the floor of the room in which he slept after a party on the preceding night. He did not know how the bundles that were found in the ceiling pot there, nor was he aware of anything at any time. He denied ever telling Deputy Superintendent Grant anything.

Angella Bramwell, also gave her home address as in Florida. She identified Detective Corporal Morand as one of a group of policemen who came to the premises at East Avenue. When the police identified themselves she opened the door for all of them. "They searched in the bedroom as said but nothing was found. I asked what they were looking for and said (sic) "If I tell you will you help me?" I said may be. But he did not reply to that so I said nothing further."

Before us it was submitted that nothing was said by any of the defendants which could have improved the Crown's case, or even detract from it. It is clear, was the argument, that the convictions of the appellants as well as the acquittals of the other four defendants were based upon the evidence for the Crown, in which condition of fact, the case established against the four persons acquitted was the same as that against the appellants with the distinguishing element of an admission as to joint occupation made by Angella Bramwell.

In our view these submissions ignore certain other important factors which are strongly indicated by the circumstances of the search of the bedroom, the conditions of that room and the finding of the parcels therein. Further, the sections of the building from which the other accused came did not, upon search of those rooms disclose any incriminating matter. Nor was there any admission or statement capable of being so interpreted by any of the other four persons to be considered by the Resident Magistrate.

In that regard, he expressly found (1) that accused Nincivic and Angella Bramwell occupy the room in which ganja was found. (2) that two parcels were found on the floor of that room. (3) There was trap-door above where parcels found and that Corporal Morand who entered ceiling through that trap door took from the ceiling six (6) parcels wrapped with material similar to other two (2), and a plastic bag with eighteen (18) packets of hashish. This was the factual matrix at the end of the Crown's case. In the end, the learned Resident Magistrate accepted the evidence of Deputy Superintendent Grant that Nincivic made the statements attributed to him by Grant. He assessed Grant as a more reliable witness than Detective Corporal Morand and preferred Grant's evidence where there was a discrepancy between them on this aspect of the case.

There were several grounds of appeal filed. These compassed the complaint against the rejection of the no-case submission, and the ruling that the evidence adduced by the Crown impelled the defendants to answer that case. It was also a matter for complaint that the Court ought not to have accepted the purported admission of Nincivic having regard to the serious discrepancies as to the contents thereof as given by the Corporal and the Deputy Superintendent and the circumstances under which they were allegedly made. Additionally, there was no evidence to establish possession, whether singly or jointly and, having regard to the other evidence adduced in the case, the conviction of Angella Bramwell is unreasonable and ought not to stand. So too, was the argument framed, the learned Resident Magistrate erred in law, as there was no evidence upon which he could find that the appellants were guilty of preparing ganja for export or of dealing in ganja.

When considering these grounds of appeal, it must be appreciated that the Resident Magistrate had to decide whether the two appellants, or either of them, occupied the room. What was not challenged was the evidence regarding signs of habitation in the room, giving due importance to the hour of the day when the police went to the premises, bearing in mind also, that, according to the unsworn statement of Nincivic, there was a party the night before. Nincivic described it - 'It was a big party, it was over one hundred and fifty all over the house'. The presence of the two appellants with their young baby at the door of the room when the police first saw them, and the statement of joint occupation by Angella Bramwell had to be considered by the Resident Magistrate. Significant too was the absence of anything said as an acceptance or denial of her assertion of joint occupancy.

The evidence of the remarks which Angella Bramwell gave as regards joint occupation was challenged in cross-examination but the challenge resulted in a reassertion of that claim. It was not said that Nincivic was not living in that room, or that he was not present when she made her remark. She spoke in his presence, and at the time he was dressed only in pyjama trousers, was barefotted and he was then holding the baby. The notes of evidence do not disclose what Angella Bramwell herself was wearing at the time, but Deputy Superintendent Grant gave evidence that before the appellants were taken away from the premises by the police, she changed the baby's clothes and fed the baby. Nincivic changed his clothes. Angella changed her clothes in the same room.

It is clear that in the particular circumstances of this case the learned Resident Magistrate could ineluctably conclude that the appellants were in control of the room and its contents. Accordingly, there was sufficient credible evidence

to support the learned Resident Magistrate's rejection of the no case submission in respect of the appellants. This view is fortified by the opinion of Luckoo, J.A., in giving the judgment of this Court in R. v. Nicholson (1971) 12 J.L.R. 568 at p. 571D-G:

> "We are in agreement with the view taken by the Court of Appeal in R. v. Cyrus Livingstone (1952) 6 J.L.R. 95 that mens rea is a necessary ingredient in proof of a charge of possession of ganja. Once the prosecution adduces evidence in proof (i) of the 'fact of possession', that is that the accused person had the thing in question in his charge and control and knew that he had it, and (ii) that the thing is ganja, it may be inferred that he knew that the thing he had was ganja. This inference if drawn is in the nature of a rebuttable or provisional presumption arising from the fact of possession of a substance the possession of which is prohibited and may be displaced by any fact or circumstance inconsistent therewith whether such fact or circumstance arises on the case for the prosecution or for the defence. If displaced by reason of any fact or circumstance inconsistent therewith on the case for the prosecution then a prima facie case is not made out. Where a prima facie case is made out, the evidential burden shifts to the defence to displace the inference of knowledge in the accused person even though the legal burden of proof remains throughout on the prosecution."

In R. v. Connell (1971) 12 J.L.R. 578 at p. 581, Fox J.A., extracted three points from the judgment of O'Connor, C.J., in R. v. Cyrus Livingstone (supra)

> "(i) The Crown may discharge its legal burden of proving an accused guilty of having ganja in his possession by establishing facts from which it may be inferred beyond reasonable doubt that the accused was knowingly in control of ganja.

(ii) The defence could inhibit this inference by showing other facts suggesting a contrary conclusion.

(iii) The function of the Court was to weigh all the facts and arrive at a decision in accordance with the incidents of the burden and of the degree of proof in criminal cases."

In the circumstances of this case, the foregoing reminders are pertinent in view of the argument that joint occupation between the appellants was not established, and in fact no proper inference thereof can be drawn from the evidence. So, it was said, if there was no joint occupation it was necessary to prove exclusive possession considering that the admission of Angella Bramwell of joints occupancy of the room was an admission against herself only. However, if the fact was otherwise, why then did not Nincivic deny that he shared the room with her? In the circumstances of this case, the learned Resident Magistrate had to consider the locus of a room, not a house, in which there were abundant signs of the appellants being joint occupants of that room.

In their unsworn statements neither of the appellants denied occupancy. In fact, it is not far-fetched to infer that they did admit being in that room together. Nincivic stated that in room where he slept nothing was found on the floor. And she informed the Court that the police 'searched the room, as said'.

It is not inappropriate to quote again from the judgment of Fox, J.A. in R. v. Connell (supra) at p. 521 H:

> "It is helpful to have an accurate appreciation of this position, because it is an intelligible setting in which to assess the significance and the value of facts including the fact of occupation of premises, in relation to proof of a charge of possession of ganja. In attempting such proof, the fact of occupation is relevant and, admissible but as numerous decisions affirm, by itself it is incapable of giving rise to a sure inference that the occupier was in possession of ganja found on his premises. Proof is required of other facts which, when considered together with the fact of occupation may enable the inference of possession to be drawn. This is all that is involved in the statement to be found in some of the decisions that mere occupation of premises without more was insufficient to establish that the occupier was in possession of ganja found thereon."

There is something more on the facts of this instant case which will inescapably lead us to agree with the findings of fact by the Resident Magistrate. He found as a fact 'that two parcels found on the floor of that room, and the six (6) parcels wrapped with material similar to the other two, which were taken from the ceiling by Detective Corporal Morand and the plastic bag with the eighteen packets of hashish, contained a large quantity of ganja and hashish. He also found as the result of visiting the locus in quo, and upon evidence properly given and received, that the 'ceiling not very high'. 'Court could easily reach trap-door when Court put one foot on door nearby.' Importantly, he found that 'furniture rearranged and some removed from room between date of offence and visit to locus by Court'. This finding was material not only because of the defence that the appellants knew nothing about the parcels and their contents, but also because that defence challenged the policemen on the impossibility of Detective Corporal Morand being able to get at the ceiling in the manner he described on the 30th April, 1985. When he saw the chest of drawers on which he climbed it was actually under the trap-door. The Resident Magistrate must have taken into account the evidence of

Deputy Superintendent Grant that when he first saw the two parcels on the floor one was on top of the other, and he had further to couple with that the sound of movements in the room over a period of 5 minutes while the police waited for someone to answer their knock and shouts. And, though a small point, the evidence that when the police entered the room they observed the partially closed trap-door. No argument could be mounted against the conclusion that the two large parcels under that trap-door and the seven large parcels taken from the ceiling together with the chest of drawers, could combine to indicate a connection with the movements which were heard by the policemen.

There is something more in the statements made by Nincivic to the Deputy Superintendent of Police. As regards this, the notes of the evidence of Grant after stating the fact of the finding of the exhibits in the case, reads:

> "I saw Corporal Morand showed all this to them and told them it is ganja. At this point I told six persons that we were investigating case. ..... (witness told not to speak of anything ruled as inadmissible earlier). And accused Nincivic said ..... "

and the witness thereafter said what has already been set out in this reasons for judgment. Under cross-examination he admitted that he had in fact told Nincivic something which could form the basis for saying 'from what you told me you know me to be a courier'. Grant admitted also that statement could be contained in what does not form part of the testimony in Court.

Apart from the interpolation of the warning about inadmissible evidence, there is really nothing on the notes of evidence to show that an earlier ruling had been made in respect of evidence being given by Deputy Superintendent Grant. The statements related by Grant were described as being in conflict with the account of those remarks given by Detective Corporal Morand.

The latter's account is obviously not the full account given by Grant. In fact, Morand was not clear as to what Nincivic said. When one looks at this, what at first sight appears to be a conflict between witnesses, turns out not to be so, especially when one bears in mind Grant's saying that after Nincivic took him aside he spoke in a softer voice than before. It was not argued that Grant posed any intimidatory question to Nincivic. There is no note that he asked any question of the appellant so as to elicit the enquiry by Nincivic.

However, it was argued before this Court that if whatever Grant had said had been given in evidence it may have established that the response by Nincivic was not voluntary, and what Grant said might have given a different complexion to the case. In the state of the evidence the further argument propounded that there was a breach of the Judge's Rules, and the judge should therefore have exercised his discretion to exclude what could be and no doubt was, accepted as an admission by Nincivic. The Resident Magistrate was wrong to have used this admission as the basis for his finding of guilty because Nincivic's statement was inadmissible since there was no evidence of what Grant had said to him. It was posited that it may not have been voluntary.

No cases were cited to us in support of this tentative submission (as it appears to us.) But interestingly enough we recall the case of R. v. Dallas (1966) 9 J.L.R. 488 in which the appellant was charged with the possession of ganja. When the search warrant was read to him, the accused spontaneously made the remark, "Take it easy, me have weed, cool it off for /500." No objection was taken by counsel for the appellant at the trial to the admissibility of the statement, and the appellant was convicted of the charge. It was contended that as no formal evidence was given that the statement was free and voluntary and without inducement by promise of favour, the statement should not have been received into evidence. Henriques, J.A. said this at . 490 B-F:

> "The second submission on behalf of the appellant is that the learned magistrate relied on inadmissible evidence, to wit, the statement the appellant is alleged to have made immediately after the reading of the search warrant to him by Superintendent Brown, namely, 'Take it easy, me have weed, cool it off for $500.'
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> It was submitted that the statement amounted to a confession and that the evidence had been tendered without the proper foundation having been laid, namely, that the prosecution had not shown that it was free and voluntary and made without the prisoner being induced to make it by any promise of favour.
>
> We have considered counsel's submission and in order to determine the admissibility or otherwise of the statement, regard must be had to the particular setting in which it was made. In the instant case, immediately the search warrant was read and without any questions being directed to him, the appellant uttered the statement in question. In other words, the appellant's remarks followed spontaneously upon the reading of the search warrant.
>
> Learned counsel who appeared for the appellant at the time did not object to the admissibility of the statement, and there was no evidence to the effect that any inducement or threat had been used. As I have said the warrant was read and the statement made spontaneously; as a result there is nothing to show the existence of any fear of prejudice or hope of advantage, and in the circumstances, we are of the view that the prosecution had discharged the onus which rested upon it of showing that the statement was made voluntarily.
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> We are of the opinion that the learned magistrate therefore properly admitted the evidence, and so was entitled to rely on it in reaching his conclusion. This ground of appeal also fails."

In dealing with this question we are influenced by the comments of Lord Widgery, L.C.J., when he delivered the judgment of the Court of Appeal, Criminal Division, in R. v. Isequilla (1975) 1 All E.R. 77. In that case the appellant had been violently arrested and handcuffed, by a Sergeant of police who was armed with a gun. The police had acted thus speedily in an attempt to foil a proposed armed robbery. Resulting from this rough handling, the appellant became extremely frightened, which

condition developed into hysterical behaviour, and sobbing, so much so that it was not possible for the police to ask him questions. However, at the time of the police apprehending him, the appellant uttered words which were accepted as an admission of his involvement in the proposed armed robbery. In commenting on the arguments presented to the Court, the Lord Chief Justice said:

> "What counsel for the Crown has said, which to some extent has been made out by the reference to authority included in this judgment, that under the existing law the exclusion of a confession as a matter of law because it is not voluntary is always related to some conduct on the part of authority which is improper or unjustified. Included in the phrase 'improper or unjustified' of course must be the offering of any inducement, because it is improper in this context for those in authority to try to induce a suspect to make a confession Counsel for the Crown says, and we agree, that if one looks to the authorities there is no case in the books which indicates that a confession can be regarded as not voluntary by reason of the present grounds, unless there is some element of impropriety on the part of those in authority. That seems to be the case, and we can see no justification for extending the principles today."

A sentence in a passage, quoted by Lord Widgery (id. p. 84c) from the judgment in the New Zealand case of Naniseni v. R. (1971) N.Z.L.R. 269 is telling - 'The will of some other person is essential; the involuntariness cannot be produced from within'.

In our case there is nothing to show that any inducement was held out to the appellant, Nincivic. Even if it is possible to say that an accusation was made by the Deputy Superintendent indicating that he knew the appellant to be a courier ('From what you told me you know I am only a courier') it has not been demonstrated that it was said in such manner as could have been regarded as a threat to compel the appellant to confess. Indeed, there is no note that at the trial this was ever raised as an issue, nor was an attempt made to find out what was said by the Deputy Superintendent, or what were the exact circumstances

leading up to the remark. Let it also be remarked that in his unsworn statement the appellant denied saying anything to the Deputy Superintendent. He denied telling him "You caught me", and if anyone told Grant anything it was not he. This was the sum-total of what evidence there was in respect of the challenge to the admissibility of what Nincivic said. It is well to point out that the issue of admissibility of the extra-judicial statement by an accused person, must be raised by the defence as appears from all the cases on the point. The trial judge should be adverted to it during the taking of the evidence.

Mr. Smith, who appeared for the Crown, on this appeal, rightly pointed out that Angella Bramwell did not deny knowledge of the ganja or hashish found in the room. The learned Resident Magistrate would of necessity have to ask himself that if she did not under the circumstances - i.e. the locus, the time of day - take steps to inquire how they got there, he could properly infer from that that she was in possession, or at any rate, was aiding and abetting the person in possession. On the other hand, if what she said was a denial that she knew that they were there, the Resident Magistrate was equally entitled, on his finding that they were there, to infer that she was in possession or aiding and abetting the person in possession. After all, it is significant that when she made her unsworn statement she did not say, 'Yes, I knew they were there, but they were Nincivic's'. What she clearly did was, firstly, on the scene to join in saying she did not know how they got there, and at the trial, to deny that anything at all was found in the room.

As regards the other appellant, we were not persuaded that his remarks to the Deputy Superintendent were made under such circumstances as would render them inadmissible in evidence. In fact, the learned Resident Magistrate did find that Nincivic made the statements attributed to him by Grant. He rejected the

defences and found that there was not only factual possession, but also knowledge in the accused. He was amply aided to this conclusion by the large quantity of vegetable matter and the large quantit of hashish, w.ich correctly led him to find that those quantities inescapably signified dealing in ganja.

The evidence supplied by the passport of Nincivic showed frequent travels by him as a visitor to Jamaica. His passport was issued on the 7th February, 1985 at Atlanta, Georgia. He came to Jamaica on the 8th February, 1985. He left Jamaica on the 18th February, 1985, but returned on the 20th February, 1985. On the 7th March, 1985 he left Jamaica. He returned on the 9th March, 1985. He departed from Jamaica on the 13th March, 1985 returned on the same day. But he left on the 24th April, 1985 and returned on the same day. All this shows that he is not an ordinary resident here. Therefore, it was not inappropriate for the Resident Magistrate to find that as a fact, as well as that he made frequent trips abroad. This would lead him to the finding that, having regard to the nature of the packaging, the quantity and the foreign connections of both accused, and the statements of Nincivic, the vegetable matter and the hashish found were intended for export.

In the result therefore, we were satisfied that the appeals should be dismissed, and in the terms set out at the beginning hereof.