JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 16/1972

BEFORE: The Hon. Mr. Justice Luckhoo, Ag.P.
The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

R. v. BUCKLEY WILLOCKS

The appellant in person.

Courtney Orr for the Crown.

16th, 24th March 1972

LUCKHOO, Ag.P.:

On March 16, 1972 we allowed this appeal, quashed the appellant's conviction, set aside the sentence imposed on him and ordered that he be retried before another resident magistrate. We now proceed to give our reasons for so doing.

The appellant was tried before a resident magistrate for the parish of St. James on January 24, 1972 on a charge of possession of ganja, contrary to s.7 (c) of the Dangerous Drugs Law, Cap. 90. He was found guilty and sentenced to imprisonment for 3 years, having admitted three previous convictions under the Dangerous Drugs Law, Cap. 90.

According to Inspector of Police Jacob Smith the appellant had been "detained" by the police on December 24, 1971 "for questioning". He was placed in a cell at the Montego Bay Police Station. On December 29, 1971 there were other prisoners with the appellant in the same cell, four according to Inspector Smith, six according to the appellant. At about 10 a.m. on that day Constable Oldacre who was on cell guard duty observed an odour coming from that cell and so informed Inspector Smith. The inspector ordered the prisoners in the cell to be searched. He told them that he observed what appeared to be the smell of ganja being burned in the cell and that he had been informed by Constable Oldacre that he had also observed a similar smell. The first person searched was the appellant and according to the case for the prosecution Inspector Smith found in the

appellant's left hip pocket a small brown paper parcel which on examination and analysis turned out to be 24 grains of ganja. The appellant who gave sworn testimony stated that Inspector Smith did not search him and did not find anything in his pocket. He had been called by the inspector and told to take off his pants which he did and he pulled up his merino. He put on back his pants. He heard the inspector say "is this I find" and the inspector showed him a parcel like the one tendered in Court as having been found in his hip pocket.

The appellant's defence in essence was that the parcel was not in fact found on his person but rather that having been detained for 5 days he had been falsely accused of having the packet of ganja in his possession.

The appellant was unrepresented at the hearing before the learned resident magistrate. The latter was apprised in the course of the cross-examination of Inspector Smith by the appellant that the appellant had been in police custody for 5 days before the incident having been "detained for questioning". The resident magistrate other than eliciting from Inspector Smith that there were 4 other prisoners sitting in the cell in which the appellant was confined asked no questions of the witness seeking enlightenment about what the police wished to question the appellant and why after the lapse of 5 days of what clearly appears to be an illegal detention the appellant still remained in detention. In the light of the appellant's defence which clearly emerged in the course of the short cross-examination of Inspector Smith by the appellant it was important that the learned resident magistrate in the absence of questions put by the appellant on these matters should have sought enlightenment thereon so as to be in a position fairly to give adequate consideration to the appellant's defence.

The Court should in such circumstances assist an undefended prisoner in putting questions by way of cross-examination. R. v. Barker (1927) 20 Cr. App. R. 70.

It was elicited from Inspector Smith by the appellant that prisoners are always searched before they are confined in a cell and it was not sought to show that this routine and obviously necessary procedure was neglected in the case of any of the persons (including the appellant) who were all confined in one cell. The prosecution did not seek to show any circumstance whereby the possibility of the packet of ganja coming into

the appellant's possession after he had been lodged in the cell could be envisaged. Questions put by the learned resident magistrate on these matters would have elicited answers, which might well have assisted him in resolving the puzzling features of this case.

Had the appellant been legally represented these matters would certainly have been probed on his behalf and it cannot be said that the learned resident magistrate would inevitably have reached the same conclusion he did had he sought to assist the appellant in his conduct of his defence in this regard.

In the result we were of the view that the appellant's conviction could not stand. We therefore allowed the appeal and made the orders already stated.