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J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 48/71

BEFORE: The Hon. Mr. Justice Fox, J.A. Presiding,
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Hercules, J.A. (Atg.)

R E G I N A vs. CARLTON WEIR

Mr. C. A. Harris for the Crown
Appellant appears in person

17th June, 1971

FOX, J.A.:

The record in this appeal reveals a sorry state of affairs existing at the Bar in this country. This appellant was charged with the offence of possession of ganja. He came up for trial before Her Honour Mrs. Eloise Sinclair, Resident Magistrate for the parish of St. Andrew, on the 10th of December, 1970. On that date the appellant appeared in person and pleaded not guilty. The crown was represented by the Clerk of the Courts. This is not an unusual situation in the Resident Magistrates' Courts of this country.

After hearing the evidence of the first witness for the crown, a Corporal of Police, the hearing of the case was adjourned to 20th January, 1971. When the hearing was continued on that date, Mr. McLean of counsel appeared for the defence. The court then heard the evidence of a second constable. He was extensively cross-examined by Mr. McLean. The crown then closed its case.

The appellant gave evidence and was followed by a witness on his behalf. At the close of the evidence of this witness, an adjournment was requested by the defence. The request was granted. Further hearing of the case was adjourned to the 3rd of February, 1971. The appellant had been on bail at the outset of the trial. Bail was extended.

On the 3rd February, 1971, Mr. McLean of counsel was absent. On the application of the appellant the magistrate again adjourned the case for further hearing on the 18th February, 1971; the bail of the appellant was again extended. On the 18th of February, Mr. Cruickshank of counsel appeared on behalf of Mr. McLean and applied for yet a further adjournment. This application was again granted and the bail of the appellant was again extended.

The case then came up for hearing on the 25th February, 1971. Mr. McLean was again absent. Up to noon the court had received no word from him. The midday adjournment was taken. The court resumed. At 2.22 p.m., Mr. McLean was still absent and at that hour the learned magistrate heard the evidence of the witness who was tendered by the appellant in person. The case for the appellant was then closed and the appellant was allowed to address the court. The magistrate found him guilty. He had no previous convictions. In accordance with the mandatory provisions of the Dangerous Drugs Law he was sentenced to imprisonment with hard labour for eighteen months.

On 10th March, 1971, a Notice of Appeal was filed in the Resident Magistrate Court, St. Andrew. This Notice is dated 4th March, 1971. It is signed by the appellant. It purports to be "filed by L. H. Bunny McLean of No.5 Duke Street, Kingston, counsel for and on behalf of the abovenamed appellant." On the same date, 10th March, 1971, grounds of appeal, signed by Mr. McLean, were also filed. These grounds are dated 8th March, 1971. They are three in number.

The first complained that the verdict is unreasonable and cannot be supported having regard to the evidence. The

second asked for "leave to have this matter retried on the ground that (the appellant) was prevented from having the benefit of being represented by counsel, as is his right under law." The third ground craved "leave to file supplementary grounds of appeal on receipt of the notes of evidence."

On the files of this court there is a summons to admit to bail. It was taken out on behalf of the appellant by "L. H. Bunny McLean of 5, Duke Street, Kingston, counsel for and on behalf of the abovenamed appellant." The return date of this summons was 20th April, 1971, at 10.00 o'clock. On that date at that hour, Mr. Justice Hercules sat in his Chambers to determine the matter of this summons. It was called. Mr. McLean of counsel failed to appear. There was no explanation for his absence. The summons was accordingly adjourned. It was again brought on before the same learned judge on 27th April, 1971. Again, there was no appearance of counsel for the applicant. The summons was accordingly struck out.

A second summons to admit to bail was again taken out by Mr. McLean. It was filed in this court on the 18th of May, 1971. It came before a judge in chambers on the 25th of May, 1971. On this occasion Mr. McLean appeared. The matter was heard. Bail was refused.

The records of this court also show that the usual notice advising that the appeal had been placed on the list for the court which commenced on the 14th June, 1971, was sent by registered post to Mr. L. H. McLean at his Chambers at 5, Duke Street, Kingston. On the matter coming up before us this morning, as listed on the list of cases for hearing during the week commencing 14th June, 1971, Mr. McLean of counsel did not appear. Neither did he think it necessary to advise this court of the reasons for his absence. The appellant himself argued his appeal. His sole complaint was that he had not been given a fair trial because, to use his own words, "the barrister was not in the case."

In the light of what transpired at the trial, we are wholly at a loss to understand how any counsel of responsibility

could have allowed himself to allege the particular ground of appeal: asking for a retrial because the appellant "was prevented from having the benefit of being represented by counsel, as is his right under law." The conduct of Mr. McLean of counsel in this case throughout the trial before the magistrate and the hearings before Mr. Justice Hercules in Chambers and in this court, are entirely at variance with the high traditions of integrity and responsibility which have been established by members of the Bar over the years, in England, in this country, and in any country in which a member of the English Bar practises.

Turning now to discuss the grounds of appeal. The evidence before the learned magistrate was to this effect: The appellant was seen by the two police constables who gave evidence, sitting on a bench in a Lane beside a shop. The two policemen went up to the appellant and identified themselves to him. Both policemen saw the appellant drop a small white paper parcel from his hand to the ground. One policeman picked up the parcel and opened it in the presence of the accused. It contained a quantity of vegetable matter resembling ganja. This was told to the appellant. He said nothing. He was arrested and charged for possession of ganja. Cautioned, he said, "Beg you a chance, mi ah working man, sah." The vegetable matter was subsequently examined by the Government Analyst and found to be ganja. It was tendered in evidence at the trial together with the certificate of the Government Analyst to this effect.

The defence of the appellant was a denial that anything had fallen from his hand. The case involved a resolution of a simple issue of fact. The issue was decided against the appellant. We can see nothing unreasonable in the verdict. It is fully supported by the evidence. Enough has already been said to indicate that the second ground of appeal is without merit. Nevertheless, we desire to refer to the Judgment of this court in R. v. Joseph Walker (unreported) R.M.C.A. No.134 of 1969, heard

October, 10, November 28, 1969. In that case complaint was made that an application for an adjournment to enable the attendance of counsel for the defendant was wrongly refused. It was contended that the appellant had been denied the right of an adjournment and that this rendered his trial unfair. In relation to this contention the court said this:

> "It is true that an accused is entitled, if he so desires, to be represented by counsel, and, if he so desires, a court should afford him a reasonable opportunity to retain and instruct counsel. To deny an accused such an opportunity, would be a denial to him of natural justice. (Vide Allette v. Chief of Police, (1967) 10.W.I.R. 243). However, once this opportunity has been afforded an accused, the question of any further postponement of his trial, for whatever reason, must be left to the discretion of the trial judge. Unless it can be shown that in refusing the application the judge acted unreasonably, having regard to all the circumstances of the case, and that there is some reason to doubt that a miscarriage of justice may have resulted from the ensuing trial, a Court of Appeal will be loathe to interfere with the conviction."

In this appeal the magistrate clearly exercised her discretion in the most favourable way possible to the appellant. If the appellant has a grievance, it is not against the court, but his counsel. This appeal is dismissed; the conviction and sentence are affirmed.