JAMAICA

IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL NO. 259/65

BEFORE: The Hon. The President

The Hon. Mr. Justice Waddington

The Hon. Mr. Justice Shelley (Acting)

R. vs IRENE MESSAM

Mr. C. Raymond for the Crown

Mr. H.G. Edwards for the appellant.

10th February, 1966.

SHELLEY, J.A. (Acting),

The appellant, Irene Messam was convicted by the learned Resident Magistrate for the parish of Kingston on the 7th of December, 1965, on an information, which charged her with having in her possession certain dangerous drugs, to wit ganja, contrary to Section 7c of Chapter 90.

The facts for the Crown are, shortly, that on the 23rd of October, 1965, at about 6.30 in the morning Police Corporal Ezra Linton and another policeman went to premises 15 West Road in Kingston, where this appellant occupied a room. They had a search warrant and they identified themselves as policemen to the appellant and told her that they had a warrant. They made certain that the room where the appellant was, was, in fact, her room, read the warrant to her and asked her to get off the chair on which they saw her sitting when they got there. She appeared reluctant; however, she got up, but as she was about to do so, she took a brown paper parcel from between her legs.

Corporal Linton took this parcel from her, examined it and found in it 24 packages containing ganja. He told her it was ganja; she said nothing. He made a further search in this room and found nothing more. She was arrested for being in possession of ganja; she was cautioned in the usual fashion,

/she said....

she said nothing. That briefly is the Crown's case.

The defence amounted to an admission that she had this parcel, although, it is argued, not in her possession, merely in her custody, but the defence conflicted sharply with the Crown's case as to what exactly was her position when the police got there. She says that she had just returned to her room from the pipe where she had gone for water, that she had seen this parcel on a chair under the open window of her room, and that she had just picked it up when the house was suddenly full of police.

Her story is that she had been threatened by one Morris, because she had rebuked him for trying to be familiar with her maid servant, he had threatened to plant ganja on her and, in fact, she had seen Morris outside the gate of the premises where she lived when she got up at about 4.45 that morning. The maid, Icilda Wright, gave evidence that Morris had interferred with her and that the appellant had spoken to him and that he had said he was going to set ganja on her. One Ida Bent also gave evidence that she saw this incident between Morris and the maid, and that she had witnessed the appellant's rebuke of Morris, and she had heard Morris' threat. She said that on this 23rd of October, at about 4.45 in the morning, she was with Messam, the appellant, when Messam went to the pipe. The house was left open as Messam said it was, window open, and the chair was under the window, and she also said that when they got to the gate she saw Morris, and it was on the return from the pipe that the police came in.

Learned Counsel for the appellant has submitted quite rightly that the Crown must not only prove that she had possession of the parcel of ganja, but the Crown must also prove that she had knowledge that the thing possessed was ganja, and he cites in support of that the well-known case of R. vs Cyrus Livingston, reported at 6 J.L.R., page 95.

/That is.....

That is undoubtedly an accurate statement of the law, but this question of whether or not she had guilty knowledge turned upon what facts, surely, the learned Resident Magistrate accepted.

The evidence for the Crown is that she was reluctant to get up when she was asked to do so by the police. Learned Counsel for the defence submits that her reluctance is of no probative value, all it means is that she got up slowly, but she did eventually get up, and she took up the parcel and made no attempt whatsoever to conceal it, and he urges that she picked up the parcel in the way any innocent person would have done. He also urged and no doubt accurately too that all a defendant need do is to give an explanation which the Court may think is probably true, and if that is the situation, then the defendant is then entitled to the benefit of the doubt which in effect arises if the Court thinks that the explanation is probably true. In R. vs Cyrus Livingston (supra at p. 99), the learned Chief Justice said -

> " Merely to say 'we did not know that we had ganja' is not however, so easy a way out for persons found in possession of ganja as might at first sight appear. As was pointed out by Mr. Justice Devlin in Roper v. Taylor's Central Garages (Exeter) Ltd., there are two degrees of knowledge which are sufficient to establish mens rea in cases of this kind. The first is actual knowledge, which the magistrate may find because he infers it from the fact of possession, or from the nature of the acts done, or from both. The magistrate may find this even if the defendant gives evidence to the contrary. The magistrate may say 'I do not believe him: I think that that was his state of mind.' "

In the instant case, it is our view that there was

/evidence..

evidence from which the magistrate could infer guilty knowledge, and in the instant case the magistrate was perfectly entitled to say: 'I do not believe the defendant. I think that she had a guilty mind.'

This turns on a question of fact, and as I said there was evidence upon which the magistrate was justified in coming to the decision that he came to.

We do not propose to interfere; the appeal is therefore dismissed, the conviction and the sentence are affirmed.