

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CRIMINAL APPEAL NO. 30/71

BEFORE: The Hon. Mr. Justice Luckhoo - Presiding
The Hon. Mr. Justice Fox
The Hon. Mr. Graham-Perkins.

R E G I N A v. ISAIAH SMITH
NEVILLE BALLENTINE

Mr. W. Spaulding for the Appellants
Mr. R. Alexander for the Crown.

25th June, 1971.

FOX, J.A.:

The appellants were jointly charged for unlawful possession of ganja.

The case for the crown consisted of the evidence of two constables who went to premises at 25 Hunts Bay Road, St. Andrew, at about 11.30 a.m. on the 23rd of May, 1970. Constable Gayle said that he saw both accused standing in the yard; he spoke to them about a report he had received; they then sat on a 'trunk bed foot' which was in the yard. Constable Gayle said he asked the appellant Ballentine if he owned the bed-foot. Ballentine said yes. He asked him what he stored in the bed-foot. Ballentine said nothing. He asked him to open it. Ballentine didn't open it; he said the appellant Smith had the key for the trunk bed. Constable Gayle asked Smith for the key. Smith said he didn't have it. Both men and the trunk bed were taken to the Hunts Bay Police Station. There Constable Gayle again asked for the key. After some pressure, Smith took a key from his trousers pocket. The trunk bed was opened with the key. In it was found paper parcels containing vegetable matter which, upon examination, was found to be ganja. Also found were loose paper, leather and some money.

Sergeant Hinds, the other policeman, gave evidence which, in the main, corroborated that of Constable Gayle. There were some minor discrepancies. He said he saw both defendants sitting on the trunk bed. He was present at the C.I.D. office. There he saw Constable Gayle, the two accused and the trunk bed. He said he asked both accused who owned the trunk bed. The accused Smith said it was his. He told him to open the trunk. He said he didn't have the key. He told Smith he was going to break the trunk; Smith then took a key from his right trousers pocket which he used to open the trunk.

Smith gave evidence. He said he was a cabinet maker. He had made the trunk bed some days before the police came. He had left it unlocked in the yard. In effect, he said 'I don't know how these things got into the trunk; I didn't put the vegetable matter there; I wasn't a party to this.' He denied the events which Gayle related as having taken place at the yard. He admitted that he had refused to open the trunk bed at the C.I.D. office. He gave as his reason that he did not know why he was taken to the police station.

Ballentine said in his defence that he didn't own this trunk bed. He did not know who was the owner. To the best of his knowledge he thought Smith had made it. He had put nothing in the trunk bed and he denied that he had admitted ownership of it.

The essential contention of the appeal is that the evidence is insufficient to sustain a conviction against either accused. In relation to Ballentine, it seems clear that despite the evidence of his admission to this effect, he is not the owner of the bed. The crown's case is that Smith is the owner of the bed. It is he Smith who produced the key and admitted ownership. At the trial Smith admitted ownership. In this situation it is impossible to conclude that Ballentine had control over the trunk bed or its contents. His behaviour on the occasion is evidence which could show that he knew that the trunk bed contained incriminating material, namely, the ganja which was subsequently found, but this knowledge by itself would not make him a possessor of the ganja. The essential element of control

is not established. His conviction must therefore be set aside.

Smith is in a different position. He is the owner of the bed. He is the person who was in effective control of it as shown by the fact that he produced the key. The inference that he was in control of the contents of the bed is entirely capable, and must have been made by the learned magistrate. His total conduct on the occasion is evidence from which it could have been reasonably inferred that he knew that ganja was in the bed, so that the crown would have established, in relation to Smith, a control over the ganja and a knowledge in him of the existence of ganja in the bed. We think that his conviction was right and should be sustained. The appeal of Ballentine is allowed. His conviction and sentence are set aside. The appeal of Smith is dismissed. His conviction and sentence are affirmed.

LMA
JA.
J. W. Luckins JA