

No report. 617

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. No. 149/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Ag.)

R. v KENNETH WILLIAMS

Mr. M. Tenn represented the Appellant.
Mr. E. L. Green appeared for the Crown

4th November, 1965.

MOODY, J.A.(Ag):

The appellant was convicted on the 25th of May and sentenced on the 1st of June, for the offence of one: having ganja in his possession; two: unlawfully having a pipe used in connection with the smoking of ganja in his possession. He was sentenced on the first information to eighteen months imprisonment with hard labour, and on the second he was fined £25 or three months.

The circumstances were that two police constables, who were a part of a search party or a raiding party gave evidence that they went to a dance hall in North Gully, St. James, where a dance was in progress. They took up a position in hiding about three yards from the northern corner of this building. They observed the appellant running towards them and they held him; they saw in his hand a pipe and afterwards they searched him and found the packages of ganja. The appellant in his defence before the learned Resident Magistrate said that he went outside for the purpose of relieving himself and he heard a voice saying "watch out," and he turned around. He saw two men running up the street in front of the dance hall; he turned and he saw Detective Lloyd Taylor come out of the bush, the same side where the dance hall building was and Detective Taylor held him, pulled him over the bush and there he saw Detective Graham and others; and to a spot, about ten yards

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from the street, they took him and turned on a flash light on the ground, and when they did that he saw a basin turned on its face; the Detective took his baton and turned over the basin and he saw a cow horn and somebody told him that it was a chillum pipe and he said he doesn't smoke. He was then taken to the station and arrested.

There are two accounts as to what took place on that night. The learned Resident Magistrate by his verdict appeared to have accepted the prosecution's version of the case. Before us here, Mr. Tenn, conceding that it was a question of fact for determination by the Resident Magistrate, nonetheless admitted that in cases where there is a complete denial of the prosecution's case by the appellant, one should examine the evidence of the prosecution to see whether there were conflicts in the evidence on any important or vital matter, because if there were, they would lend strength to the appeal. Well, we have examined here the examination in chief and cross-examination of the two witnesses for the prosecution as to what they said they saw, and the positions in which they said they saw the appellant before he was held. It is clear that a large portion of the evidence between these two witnesses as to what they said they saw, namely, the appellant running on the eastern side of the building - in that respect they agree. Where they appeared to disagree was in the cross-examination where the question apparently had been asked and an answer had been given one suggesting that the appellant left the dance hall from a different position from that in which the other said he left.

These were matters which the learned Resident Magistrate had before him and it was open to him to say that he accepted the evidence of these witnesses and did not regard any discrepancy as being vital. In the circumstances we see no reason to disturb the conclusion to which he arrived. The appeal is therefore dismissed.

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