JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 36/1972

BEFORE: The Hon. President.
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Hercules, J.A.

REGINA v. LOGAN McLEOD

Raymond Alexander for the Crown.

Richard Small for Appellant.

5th October, 1972 and
13th April, 1973

HERCULES J.A.:

On 6th May, 1971, the Appellant herein was convicted by the Resident Magistrate, Westmoreland, of unlawfully being in possession of ganja - contrary to Section 7(c) of the Dangerous Drugs Law. He was sentenced to 18 months imprisonment at hard labour and also fined $250.00 or 6 months hard labour.

Although at the trial heavy weather was made of the evidence of the Crown witnesses by Defence Attorney, on appeal only one ground was argued as to conviction as follows:-

> "The verdict was unreasonable and cannot be supported having regard to the evidence in that
> (a) The evidence before the Court was such that the Learned Resident Magistrate ought not to have found that Exhibit "2" was ganja as defined by Section 2 of the Dangerous Drugs Law Chap.90."

The whole argument in support of the ground turned on the evidence of the Government Analyst, Mr. Mootoo, at the end of cross-examination. The Analyst stated:

> "From the test that I conducted I would not be able to say conclusively that the exhibit was pistillate. I would not be able to say conclusively that it came specially from what the botanist call a pistillate plant or what they call a monoecious plant. I would say conclusively that it was ganja."

Section 2 of the Dangerous Drugs Law defines ganja as including "all parts of the pistillate plant known as cannabis sativa from which the resin has not been extracted ....." It was held by this Court in R. v. George Green (1969-1970) 14 W.I.R. 204 that this definition restricts ganja to the pistillate plant cannabis sativa and no part of the staminate plant is included.

The burden of Mr. Small's submissions was that the Analyst's evidence quoted above was not clear and convincing that the exhibit was pistillate or exclusively pistillate as the law requires and as was stated in the George Green case (supra). It was submitted that it was not established to the degree of proof required in a criminal case that the exhibit was ganja.

Mr. Small referred to the cases of R. v. Pansford Wilson - R.M. Crim. Appeal 43/1970 and R. v. Fenwick Tucker R.M. Crim. App. 116/1970 where similar submissions were made regarding the effect of the expert evidence. Without setting out the facts of those two cases we agree with the contention that they can be distinguished from the instant case, resting as they did on different facts and in neither case did the ratio go beyond the particular facts.

In view of the definition of ganja quoted above, it seems that the expert must prove beyond reasonable doubt that the exhibit was pistillate. Here Mr. Mootoo said in examination in chief that it was ganja within the meaning of the law, but in cross examination he said that he would not be able to say conclusively that the exhibit was pistillate. He could not even say conclusively whether it came from a pistillate plant or a monoecious plant. But he proceeded to say conclusively that it was ganja - on what basis was by no means apparent. The critical question is whether the learned Resident Magistrate, on the state of the evidence, could really say that it was ganja within the meaning of the law. To put it at its highest, this crucial matter was not proved beyond reasonable doubt. Mr. Alexander conceded that all the Crown had to prove was that the exhibit was from the pistillate plant. But in that regard, Mr. Mootoo's evidence clearly fell short of the required standard.

For that reason we allow the appeal, quash the conviction and set aside the sentence.