

10

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CRIMINAL APPEAL No. 77/70

BEFORE: The Hon. Mr. Justice Luckhoo - Presiding
The Hon. Mr. Justice Fox
The Hon. Mr. Justice Smith (Ag.)

R E G I N A v. MONICA WILLIAMS
Possession of Ganga

Mr. Frank Phipps, Q.C. and Miss Beverley Walters for Appellant
Mr. Courtney Orr for the Crown.

1st, 2nd and 10th July, 1970.

FOX, J.

The appellant was convicted in the Resident Magistrate's Court for the parish of Saint Andrew for being in possession of ganga contrary to the provisions of section 7 (c) of the Dangerous Drugs Law. The single ground of appeal which was argued was that the evidence was not sufficient to fix her with possession of the ganga.

Clifford Gayle, a Corporal of Police stationed at Harmon Barracks, Saint Andrew, said in evidence that at about 11.30 a.m. on the 30th of December, 1969, he went with Acting Corporal Scott and other policemen to 170 Barbican Road, Saint Andrew, where he saw the appellant 'sitting in her living room'. He was in plain clothes. He identified himself, told her that he 'had a search warrant to search her premises for dangerous drugs', and read the warrant to her. He searched the house with the assistance of Corporal Scott. On the tiled floor of the bathroom which adjoined the living room, he saw a carton box which, when opened, was found to contain seventeen newspaper parcels. One parcel was opened by Corporal Gayle. It contained vegetable matter resembling ganga. The policemen searched

the two bedrooms in the house, the dining room and the kitchen and found nothing. The search moved to the living room. A trap door in the ceiling was removed. Concealed in the ceiling the two policemen found five carton boxes. One box was opened. It contained sixteen newspaper parcels. A parcel was opened. It contained vegetable matter resembling ganga. The other four boxes were also opened. One box contained a paper bag with vegetable matter resembling ganga, another contained a paper bag of ganga seeds, and the other two boxes contained vegetable matter resembling ganga. The search was extended to the yard of the premises. In a fowl pen about three yards north of the house, the policemen found two crocus bags which, when opened, were found to contain vegetable matter resembling ganga.

The appellant was present throughout the search. She witnessed the discovery of the six carton boxes in the house, and the two crocus bags in the fowl pen. On each occasion she was shown the vegetable matter at the moment of discovery and told by Corporal Gayle that it was ganga. On each occasion when this was done, she made no statement. The appellant was arrested and charged with the offence. Cautioned, she made no statement. She was taken to the Constant Spring Police Station where the exhibits were marked and sent to the Government Chemist. His analysis of samples taken from each exhibit showed that all the vegetable matter found was ganga.

Under cross-examination, Corporal Gayle admitted that he saw male and female apparel in the bedrooms. He made no enquiries and the appellant told him nothing about this. Corporal Scott also gave evidence of the search. He and Corporal Gayle entered the living room through an open door. The appellant was sitting in the room. Corporal Gayle asked her if she was Monica Williams and if she owned the premises. She replied in the affirmative to both questions. Corporal Gayle told her that he had a warrant to search the premises, and read the warrant to her. Corporal Scott corroborated the evidence of Corporal Gayle as to the search in the presence

of the appellant; as to the discovery of one carton box on the floor of the bathroom, five carton boxes in the ceiling of the living room, and of the two crocus bags in the fowl pen; as to the showing of the vegetable matter to the appellant and the statement by Corporal Gayle to her on each occasion that it was ganga; and as to her silence on each occasion.

Under cross-examination, Corporal Scott admitted that he saw male clothing in a bedroom. He had no reason to believe that a man lived in the house. He heard no one say that a man lived there. The appellant said that the fowl pen was hers.

Counsel for the Appellant argued that the finding of male clothing in either one or both bedrooms showed that a man lived on the premises, and this fact so weakened the other evidence as to render it incapable of establishing beyond reasonable doubt that the appellant was in control of the entire premises so as to make her the occupant thereof. We do not agree that the mere presence of male clothing in the house shows that a man lived there. The appellant admitted that she was the 'owner' of the premises. The word 'own' may be used in several senses; one such being to describe control over, and it is beyond question that throughout the search the appellant allowed the policemen to believe that she was the sole occupier of the house and adjoining yard.

Counsel submitted further that in deciding the question of occupancy of the premises the evidence adduced by the defence could not be ignored, and that this evidence established the following facts which the Crown was unable to contradict:

1. The land was owned by one Cyrion Samuels.
2. Samuels leased a house spot to one Keith Gordon.
3. Gordon built a house on the land.
4. Gordon rented one bedroom to the appellant and lived in the other; the appellant's control in the house did not extend beyond this room and she kept her things in this room only.
5. This was the house the police searched.

6. Gordon also built a shop on the premises and rented it to one Morrell.
7. There was another occupied building on the premises.
8. The land was at the edge of a gully and accessible to a large number of persons.

Counsel contended that in the light of the evidence of the appellant, Samuels, Morrell and Gordon these eight basic facts had been so firmly established that the Magistrate was bound to conclude that the Crown had not discharged the burden of showing that the appellant was in exclusive or joint occupation of the entire house and yard. The Magistrate should have considered that since nothing was found in any of the bedrooms, there was no material upon which a finding could be made that the appellant was in possession of ganga.

The Magistrate did not give reasons for her decision. The printed record contains no statement of facts found or of inferences drawn from such facts, and no statement of the law applied to the findings of fact in arriving at the verdict of guilty. This is in accordance with the prevailing practice in Magistrates' Courts. Magistrates are under no legal obligation to record their findings of fact in criminal cases, or to give reasons for their decisions. They may be as inscrutable as the sphinx, and as in this case, they generally are. There have been exceptions. Sometimes Magistrates do record their findings of fact, and indicate the reasons which have led them to convict. On several occasions this Court has expressed its appreciation of the guidance available in such a record. Nevertheless, the practice of recording findings in criminal cases remains in the realm of the exceptional.

All this has been said to show that this Court is thoroughly familiar with a situation in which it has to try to find out from the printed record of the testimony of the witnesses and the verdict of guilty, what must have been the Magistrate's findings as to those facts which depend upon the reliability of the oral evidence. The approach which this Court adopts to the

problem is to assume that the Magistrate found all such disputed facts (that is facts depending upon the truthfulness of the witnesses) in favour of the Crown's case as is consistent with the admitted facts. There is nothing in the evidence for the Crown which contradicts facts 1, 2, 3, 5 and 6, and so these facts are undisputed. This is not to say however, that they were admitted by the Crown, and if any one of them were inconsistent with the verdict of guilty which was found, this Court would conclude that the Magistrate did not accept that fact. The rightness of her decision to disbelieve that particular evidence may then have to be examined in the light of well known principles. But there is no real inconsistency between these facts and the verdict of guilty, and it is not really important to determine the Magistrate's view as to their credibility. Facts 7 and 8 emerged from the testimony of the Crown's witnesses, and these two facts therefore fall within the category of 'admitted' facts. Fact 4 is disputed. It conflicts with the overall effect of the testimony of Corporal Gayle and Corporal Scott. It is inconsistent with the verdict of guilty. It is the critical fact and must have been rejected by the Magistrate. Was she entitled to do this? The answer is clearly in the affirmative. For fact 4 is a primary fact. Its value depended essentially upon the Magistrate's use of the advantage which she had (and this Court has not) of having seen and heard the witnesses. If having regard to their demeanour the Magistrate was inclined to the conclusion that the witnesses who attested to fact 4 were not speaking the truth, she would be entitled to reject fact 4 unless such a course was in conflict with reasonable inferences to be drawn from other relevant evidence which he believed. The relevant evidence here is that of the two policemen as to the behaviour of the appellant at the time of the search and her admission that she was the 'owner' of the premises. The evidence must have been believed by the Magistrate, and if she took the view that the reasonable inferences to be drawn therefrom strengthened her inclination to disbelieve the witnesses who attested to fact 4, this Court, which is in as good a position as the Magistrate to

draw inferences from established primary facts, would entirely agree with her. But even if the Magistrate gave the appellant the benefit of the doubt, and found that she was a tenant of Gordon, it would still have been open to the Magistrate to conclude, on the evidence which she accepted, that at the least, the appellant was in joint occupation of the entire house and the yard at the time of the search, and that the evidence which sought to restrict the appellant's occupancy to one room was concocted for the purpose of deceiving her.

It is clear, however, that mere occupation of a dwelling house, without more is not sufficient to invest the occupant with possession of ganga found therein. In R v. Duncan R.M. Criminal Appeal 103/69, 15th April, 1970^(unreported) this Court pointed out that "the 'something more' which when added to the fact of occupancy may enable the inference of possession in the occupants, need not be substantial. It may be something 'just a little more' as the case of R.v. Cavendish [1961] 2 All E.R. 856 shows!"

In this appeal, material from which this 'something more' may be inferred, is not lacking. Firstly, the defence advanced. In her evidence, the appellant said that she was not in the living room when the police came. She and her children slept away from home the night before. In returning home the following day, she saw several policemen in the premises. A 'jeep' was at her gate. A man pointed her out to the police as a person who lived on the premises. The police ordered her into the jeep. The appellant was asking the Magistrate to believe that she was not in the living room when the police arrived. She was not asked and she did not say that she was the owner of the premises. No warrant was read to her. She did not witness the finding of ganga, and none was shown to her. If this evidence had been accepted, or if it had raised doubts as to the truthfulness of the testimony of the policemen, the Magistrate would have been bound to acquit the appellant, because, to put it in the form in which it was argued by counsel at the trial, and before us, the defence of alibi would have been successfully raised. More precisely, the appellant would have been entitled to the benefit of the uncertainty as to her position at the time of the search to exercise control over, and therefore

to be in possession of the ganga. The evidence must have been rejected as false. The Magistrate would have been entitled to wonder at this attempt to deceive her, and to consider that a possible cause of the appellant's desire to place herself outside the environs of the premises was her knowledge of the existence of the ganga, and her awareness of the incriminating significance of that fact.

The quantity of ganga found, the obvious position of the two crocus bags in the fowl pen, and moreover the carton box in the bathroom, and the circumstance that some of the ganga had been parcelled, were also matters capable of showing guilty knowledge in the appellant. The common link between the ganga in the bathroom and the ganga in the ceiling is the fact that ganga in parcels was found in both. The Magistrate would have been entitled to think that the ganga had been put in parcels (apparently $\frac{1}{2}$ lb. each) for the purpose of sale, and that the position of the appellant as the only adult person present in the house at the time of the visit by the police pointed to her as the vendor.

The consistent failure of the appellant to say anything at all when she was shown the ganga is another fact which 'strengthens' the inference of possession in her. (vide Lewis J.A. in R. v. Maragh, 6W.L.R. 235 at p.239) The situation created by:

- (1) the reading of a warrant under the Dangerous Drugs Law by the police to an occupier of premises;
- (2) the search of those premises by the police;
- (3) the finding of ganga in the presence of the occupier;
- (4) a statement by the police to the occupier that the vegetable matter found was ganga;

is in all essential respects similar to the situation in which a person is accused to his face of a crime. Some explanation or denial may reasonably be expected from the person accused.

Silence may be construed as an admission of guilt. In this case, if the appellant had no prior knowledge of the existence of the ganga, or if having such knowledge, it was not under her control, it would be in her interest to speak rather than remain silent.

A statement to either effect may have cleared her of suspicion, and given new direction to the police enquiries. In any event, an instant denial or explanation would have had to be considered at her trial. As it is, in the face of a sequence of events which was tantamount to an accusation that she was in possession of ganga, she remained silent. This was conduct which the Magistrate could properly take into account in determining the question of her guilt.

In our view, therefore, there was sufficient evidence from which the Magistrate could have found that the appellant was in possession of the ganga which was found on the premises, and her verdict should not be disturbed. The appeal is dismissed and the conviction and sentence affirmed.