JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 121/84

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Ross, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

R. v. PATRICIA GEDDES

Mr. Anthony Spaulding & Mr. Patrick Bailey for Appellant.

Mr. Norman Davis for Crown.

January 24, & February 7, 1985

ROWE, P.:

The appeal herein was dismissed on January 24 and I proceeded to give oral reasons for judgment. These reasons were not recorded and at the request of counsel for the appellant, I will now set out quite shortly the reasons which impelled us to come to the conclusion we did.

Detective Acting Corporal McNab went with a large party of policemen to premises 9 Norbrook Crescent, in the Kingston 8 area of St. Andrew, at about 7.30 a.m. on October 8, 1983. Their declared mission was to search the premises for firearms. Mrs. Geddes was about to leave home for her place of work when the police arrived and at their invitation she accompanied them into the house where for about 90 minutes they carried out a painstaking search. This house was described as a very large one of two floors, containing several bedrooms and supported by rooms for the maids and gardeners. As on all issues of disputed fact the learned resident magistrate, with opportunity to assess the demeanour and credibility of the witnesses, accepted the evidence of Acting Corporal McNab and rejected the evidence of the appellant, I can confine myself

to the evidence given by the Acting Corporal and indeed the appeal proceeded on the basis that on the totality of the evidence accepted by the learned magistrate, the offence charged was not proved. No firearms were discovered. In the course of the search, the appellant led the way upstairs and stopping at a bedroom at the top of the stairs, she identified it as her own and pointed to another bedroom as that occupied by her husband, who incidentally was not present at home on the morning of the search. Three other persons were seen in the house, two girls in one room and a boy in another, all of whom were children of the appellant.

Among the matters rejected by the learned magistrate was the evidence of the appellant that she shared a bedroom with her husband. A search was made of the bedroom which the appellant pointed to Acting Corporal McNab as in her occupation. On top of a dressing table in that room the police found a small brown card-board box. The appellant was present at the time and the box was opened in her presence. Acting Corporal McNab saw in that box vegetable matter resembling ganja. He showed the box to the appellant and told her it was ganja. To this the appellant replied:

> "Yes, I know a use to use it
> first time but I stop now. "

As the search continued more vegetable matter was found in exposed areas within the curtilage but not in the house itself, and as to these the appellant made no statement. When the vegetable matter found in the card-board box in the appellant's room was examined by the Government Analyst it proved to be ganja as defined in the Dangerous Drugs Act of a quantity less than half an ounce.

At trial the appellant challenged the police account that the incriminating drug was found in her room and denied that she made any response of the nature sworn to by the police officer or at all. She was found guilty and a small fine of two hundred

dollars or 2 months hard labour was imposed. Indulgently, the learned magistrate allowed her 7 days within which to pay the meagre fine. Verbal notice of appeal was entered and in due course, counsel filed and argued one ground of appeal, viz, "The evidence adduced by the prosecution is insufficient to establish possession in the appellant."

Mr. Spaulding, who was making a welcome return to the Court of Appeal, argued that on the Crown's case the house searched was a family house and even if the appellant slept alone in that room other persons had access thereto and there was no evidence that the door to that room was locked at the time of the police raid. From this he asked the Court to draw the inference that the appellant was not shown to have had sole occupation of the room.

Counsel's major point was that the statement attributed to the appellant by the police officer, when properly interpreted, did not prove the essential element of knowledge on her part. He criticized the police officer for not pursuing his interrogation of the appellant to determine when the box was placed on the dresser, or whose box it was, or whether the appellant was privy to the placing of the ganja in that box. Counsel said that as the appellant's statement stood, the reasbnable inference was that she knew the substance called ganja, that she once used it, but had desisted from such practice. On that interpretation of the statement, said he, why would she continue to possess something the use of which she had discontinued. As in counsel's view, the opportunity existed for some unauthorised person to have placed the box with its contents on the appellant's dressing table up to that very morning without her knowledge or consent, there was an insufficiency of evidence adduced by the Crown to prove either possession or knowledge in the appellant.

Our attention was directed to some Jamaican authorities which Mr. Spaulding considered relevant. R. v. Inez Chambers and Andrew Chambers [1963] G.L.R. 459 was decided on facts quite different from those in the present case. A policeman using marked coins purchased ganja from Andrew Chambers, as a precursor to a police raid upon his premises. In his vain hope to prevent the police from coming into possession of the remainder of the ganja, Andrew Chambers threw the parcel of ganja to his daughter Inez, instructing her to pick it up and run. This she did; was chased and captured by the police. Upon appeal against her conviction for possession of ganja, it was contended on her behalf that at the highest she had mere custody or charge of the parcel thrown to her by her father and from the circumstances no inference of knowledge on her part could reasonably be drawn. The Crown agreed that the evidence to show knowledge was very slight. In delivering judgment, Henriques J.A. regarded her conduct as suspicious, but as she had taken no part in the earlier transaction between her father and the constable, the Court held that "On the evidence as it stood, with no other evidence" it was not enough to constitute guilty knowledge.

We did not find this authority helpful. The bizzare nature of this unexpected confrontation and the father-daughter relationship are far removed from the statement of the appellant after the substance found in the box was identified as ganja.

We entirely agree with the statement of principle enunciated by the Court of Appeal in R. v. Monica Williams [1970] 12 J.L.R. 117 where Fox, J.A. said at page 119:

> "It is clear, however, that mere occupation of a dwelling house without more is not sufficient to invest the occupant with possession of ganja found therein. In R. v. Duncan [1970] unreported RMCA No. 103 of 1969 decided April 15, 1970, 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. "

Despite the fact that Monica Williams denied all knowledge of the ganja found on the premises, denied that she occupied the portion of the house where the ganja was found, denied that she was present at the time of the search, the learned magistrate in returning a verdict of guilty must have accepted the police evidence that she was present during the search, was shown the ganja and had said nothing. In dismissing the appeal, Fox, J.A. said:

> "In this case if the appellant had no prior knowledge of the existence of the ganja, 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 ganja, she remained silent. This was conduct which the magistrate could properly take into account in determining the question of her guilt."

In the instant case the appellant made a statement when the box found on her dressing table was opened and the police told her it contained ganja. She did not say the box was not hers. She did not say it was the first time she was seeing that box. She did not say she did not know how it had come to be present in her room on her dressing table. She did not say the box was hers but she did not know how the ganja got in there. Indeed, she made no denial whatever.

When she said, "Yes, I know" it could not reasonably be interpreted that that meant I know the substance called ganja and what you have shown to me appears to be ganja. We think that the learned magistrate was entitled to infer that she meant that she knew and had known before that the box contained ganja. The explanation to account for its presence followed when the appellant said:

"A use to use it one time but I stop now"

indicating that it was the residue left behind from her drug-abuse days. As I said in giving oral judgment, the inescapable inference to be drawn from the finding of the box on the appellant's dressing table in the appellant's bedroom and her statement to the police, was that the box was in her physical custody and under her control, that she knew that it contained ganja and this led inexorably to the finding of guilt. We found the conviction unassailable. We had absolutely no hesitation in dismissing the appeal and confirming the conviction and sentence. The "something more" of which Fox J.A. spoke in R. v. Monica Williams, supra, was to be found in the statement of admission by the appellant.