JAMAICA

IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL NO. 185/66

BEFORE: The Hon. Mr. Justice Henriques, Ag.President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Eccleston

R. vs. ROY DALLAS

Mr. I. Ramsay, Q.C. for the appellant

Mr. C.F.B. Orr for the Crown

30th September, 1966.

HENRIQUES, Ag. P.,

The appellant in this case was convicted by the learned Resident Magistrate for the parish of St. Andrew of the possession of ganja and sentenced to 3 years hard labour.

The facts as testified to at the trial were that a police party under Superintendent Brown, as a result of certain information which they had received, kept observation of premises 14B O'Mara Road in St. Andrew between the 14th and the 22nd of February this year. On the 14th of February, at about 11.15 p.m., a car was driven into the premises by the appellant; the appellant came out and went into the house. Again a party kept watch on the 21st of February when the appellant at about 9.15 p.m. was seen to drive a car into those premises and entered the house by the same door by which he had previously entered and on the 23rd of February after having obtained a search warrant on the 22nd of February, police party went there. The house was surrounded, the Superintendent knocked at the door and called out the christian name of the appellant.

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He answered and opened the door. The appellant was clothed in merino and underpants. The search warrant was read to him, and the appellant said: "Take it easy, me have weed, cool it off for '500." He was then cautioned and the police party started to search the premises.

In the front room, to the east of this room, three cartons were observed. They were examined and found to contain ganja or vegetable matter resembling ganja; under a bed in the same room there were two grips which when opened was seen to contain also vegetable matter resembling ganja. The police then went to another room accompanied by the appellant, and on top of a hanging press they found a paper parcel which when opened seemed to contain ganja; also in that room there were some six carton boxes, which when opened seemed to contain ganja, and under a bed in the room there were a further three grips which when opened and examined seemed to contain ganja. Beside a hanging press in the same room, there was a plyboard box which when opened and examined appeared to contain ganja. This box was resting on a trunk, inside that trunk, there was vegetable matter resembling ganja. The police then went to the toilet and bath room. In the toilet there were two grips, a cardboard box and two cartons - and in all of those parcels were vegetable matter resembling ganja.

Eventually, the appellant was asked to put on his clothes and accompany the police party outside. They went outside to the rear of the building, where the car in which the appellant had previously been seen driving on the two occasions on which the police kept

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observation was. The Corporal of Police asked the appellant whose car it was. He said it was his. He was requested to open the trunk of the car. He took a key from his pocket and opened the trunk. Inside the trunk was a crocus bag, and in that crocus bag was vegetable matter resembling ganja. The appellant was then arrested.

At his trial, the appellant gave evidence - denied that he was living at those premises, that he had merely been spending the night there with a young lady and that he never had any ganja in his possession and knew nothing at all about the considerable quantity of ganja which was found upon those premises.

Learned Counsel has urged before the Court two grounds of appeal. The first ground is that the verdict of the learned Resident Magistrate was unreasonable and cannot be supported, having regard to the evidence, and he pointed out that though the Resident Magistrate in the findings which he has recorded at the conclusion of the case stated that he found that the appellant introduced ganja into the house, there was in fact no evidence of such introduction. He further submits that the evidence points to the fact that the accused was in charge of the premises, and therefore had mere custody, as distinct from possession, of the ganja found upon the premises, and he referred to R. vs. Eli Grossett, decided in this Court in 1964, and which is to be found reported 6 W.I.R., p. 350.

So far as the case of R. v. Eli Grossett is concerned, it suffices to say that that case deals with an entirely different set of circumstances, and we are of the view that it is not applicable to the circumstances of this case. We are of the view that there was ample

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evidence from which the learned Resident Magistrate could draw the reasonable inference that the appellant was in possession of the ganja found upon those premises and also knew that it was ganja. That ground of appeal, therefore, fails.

The second submission laid on behalf of the appellant, that the learned Magistrate relied on inadmissible evidence, to wit, the statement the appellant is alleged to have made immediately after the reading of the search warrant to him by Superintendent Brown, namely, "Take it easy, me have weed, cool it off for £500."

It was submitted that the statement amounted to a confession and that the evidence had been tendered without the proper foundation having been laid, namely, that the prosecution had not shown that it was free and voluntary and made without the prisoner being induced to make it about any promise of favour.

We have considered Counsel's submission and in order to determine the admissibility or otherwise of the statement, regard must be had to the particular setting in which it was made. In the instant case, immediately the search warrant was read and without any questions being directed to him, the appellant uttered the statement in question. In other words, the appellant's remarks followed spontaneously upon the reading of the search warrant.

Learned Counsel who appeared for the appellant at the time did not object to the admissibility of the statement, and there was no evidence to the effect that any inducement or threat had been used. As I have said

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the warrant was read and the statement was made spontaneously; as a result there is nothing to show the existence of any fear of prejudice or hope of advantage, and in the circumstances, we are of the view that the prosecution had discharged the onus which rested upon it of showing that the statement was made voluntarily.

We are of the opinion that the learned Magistrate therefore properly admitted the evidence, and so was entitled to rely on it on reaching his conclusion. This ground of appeal also fails.

Apart from this particular piece of evidence, the case against the appellant was an overwhelming one, and had we found it necessary we would have been minded to apply the proviso as set out in Section 305(c) of Cap. 179. The appeal is dismissed.