JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 237/65

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. vs RUDOLPH ABRAHAMS

Mr. M. Tenn for the appellant

Mr. C. Orr for the Crown

1st February, 1966.

HENRIQUES, J.A.,

The appellant was convicted by the learned Resident Magistrate for the parish of Saint Mary, on the 20th of October, last year, of the offence of unlawful possession of ganja, and sentenced to three months imprisonment at hard labour.

According to the evidence which was tendered at the trial, a police party which included Constable Basil Dickson of the Highgate Police Station on the 27th of July at about 4.30 in the morning went to the home of the appellant at Harmony Hall. They had in their possession a search warrant. They called to the appellant, he came and opened the door. The warrant was read to him and they proceeded to search the premises. In a safe in the house in the appellant's bedroom a tin containing marbles and a plastic bag was found. When the plastic bag was opened inside were thirty-five small parcels, which when opened revealed some vegetable matter, which was subsequently analysed by the Government Analyst and found to be the dangerous drug, ganja. It was pointed out at the time to the appellant that this matter resembled ganja, and he is alleged to have said "yes, but I don't know how it reached there." He was

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arrested by the constable and when cautioned he said, "They set Babylon upon me." The evidence of constable Dickson was supported by one Herman Beckford, a Corporal of Police.

The appellant gave evidence on his own behalf and testified to the effect, that about 4.30 in the morning he was at home; that he heard a calling outside; that he opened the door and the police came in and that they searched the premises and took out a tin, and in the tin they took out a bag, out of which they eventually took the 35 packets, and he said at the time that he knew nothing at all about it, and that the tin and the marbles belonged to one Delroy Williams who worked with him as some sort of a cook. He called as his witness, Delroy Williams who testified that he worked with the appellant; that he was accustomed to play marbles, and keep his marbles in this tin which he kept in the food safe in the appellant's room, and he testified that at 5 'clock on the Monday evening, which would be the evening of the 26th, he had placed the tin of marbles there and there were no other contents in the tin.

Mr. Tenn, on h[illegible]lf of the appellant has submitted that, to say the least of it, the evidence against the appellant was highly equivocal, and in the circumstances of the particular case it could not be said that the appellant was in possession of the tin, in view, particularly, of the evidence of Delroy Williams. Further, that there was no evidence that the appellant knew that ganja was in the tin.

It has been submitted by learned Counsel for the Crown that there was sufficient evidence to justify the learned Magistrate in coming to the conclusion that the appellant was in possession of the tin, and also knew of its contents.

We have considered carefully the submissions made by learned Counsel for the appellant. The appellant suggested by his defence, in effect this is what it amounted to, that somewhere

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between 5.00 p.m. on the Monday afternoon and 4.30 a.m. on the Tuesday morning someone had entered those premises and planted the ganja there. They had in fact, according to him planted no fewer than thirty-five packets. There was no evidence before the learned Magistrate to support this suggestion.

We are of the view that it was an improbable suggestion, and that the learned Resident Magistrate was well within his rights in rejecting it. There was sufficient evidence, we think, to justify the Magistrate in drawing the inference that the appellant was in possession of this tin and also had knowledge of the contents of the tin. He was, therefore, in our opinion entitled to come to the conclusion to which he did. The appeal, therefore, will be dismissed.