JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 78/1971

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

R. v. TEDDY CAMPBELL

P.T. Harrison for Crown.

Richard Small for Appellant.

6th, 7th, 8th October 1971
7th and 21st July 1972

HERCULES J.A.

On 7th July, 1972, we allowed this appeal and promised to put our reasons for so doing in writing. This we now do.

The Appellant and his lady friend, Ouida Pinnock, were both charged with possession of ganja contrary to Section 7 (c) of the Dangerous Drugs Law, Chapter 90. The learned Resident Magistrate for Westmoreland dismissed the case against the female Defendant, convicted Appellant and sentenced him to 2 years with hard labour.

The evidence of Sgt. Williamson and Const. Graham was that they went to 41 Hudson Street, Savannah-La-Mar, on 14th February, 1971, armed with a search warrant under the Dangerous Drugs Law directed towards searching premises of the Appellant. Appellant admitted them to a back room of the house in which room the female Defendant also appeared. In executing the search warrant, the Police found in that back room a pan containing 9 large and 45 small packets of vegetable matter resembling ganja. Both Appellant and the female Defendant were arrested and charged as aforesaid. Baldwin Mootoo, Government Analyst, gave evidence that all the packets contained ganja.

Learned Defence Attorney contended that the Crown did not prove exclusive occupancy of the back room by Appellant. Therefore there was no question of exclusive possession.

Grounds of appeal 1 (b) and (c) were based on that contention raised at the trial. They read as follow:-

"1(b) - The Learned Resident Magistrate having rejected the Prosecution's witnesses evidence that the female accused Ouida Pinnook was in possession of Exhibits 4 and 5 (ganja) his finding of possession in the Appellant was unreasonable;

(c) - The Learned Resident Magistrate failed to properly assess the evidence in concluding that the effect of Detective Sergeant Williamson's evidence amounted to exclusive possession in the Appellant."

Those two were the only grounds found to be of substance and in his argument in support thereof Mr. Small attacked the findings of fact set out by the learned Resident Magistrate in his reasons for convicting Appellant.

The findings read:-

"Court accepts evidence of Detective Sergeant Williamson that the male Defendant was in exclusive occupancy of the 2 rooms to the back of the premises in which both Defendants were seen on 14th February 1971 that from the circumstances in which tin pan and ganja were found the male Defendant knew or ought to have known that it was there in the back room and there is sufficient evidence from which possession can be inferred on the part of the male defendant. <u>The Search Warrant however, being directed towards searching the premises of the male defendant excludes any question of control of the female defendant and she is accordingly</u> not guilty."

Mr. Small argued that there was other evidence on which the Crown relied to establish possession in the female defendant and in dismissing her because her name was omitted in the search warrant, the learned Resident Magistrate must have attached some weight to this omission. Inversely therefore he must have attached some weight to the fact that the name of Appellant was on the search warrant.

Learned Attorney for the Crown urged that it was the premises that mattered and not the name. He added that since the warrant had been in evidence before the close of the Crown's case, the learned Resident Magistrate did not base the dismissal of the female defendant entirely on the non-inclusion of her name in the search warrant.

We took the view that improper use was made by the learned Resident Magistrate of the presence or absence of a name in the search warrant. It was neither right nor logical to conclude that possession was ipso facto either excluded or constituted. In addition there was the erroneous statement by the learned Resident Magistrate that on the evidence of Sgt. Williamson the male Defendant (Appellant) was in exclusive occupancy of the 2 rooms to the back of the premises. There was no evidence by the Sergeant to that effect and his finding based on that statement was totally unfounded.

In the circumstances we felt constrained to quash the conviction and set aside the sentence imposed on this Appellant.