

1. A. Criminal Law - by dealing in ganja, taking steps preparatory to exporting ganja and possession of ganja - ss 2(1) and 3(1) of D.D. - whether search and seizure were alleged - Evidence - whether notes from which were reflected in the case and other evidence - whether on SENTENCE: Appellants Gray and Glaze given the same sentences - whether on basis of which to vary customary JAMAICA sentences - Sentences varied on compassionate grounds - non-usual sentences imposed

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 25/93

COR: THE HON MR JUSTICE RATTRAY PRESIDENT  
THE HON MR JUSTICE DOWNER J A  
THE HON MR JUSTICE GORDON J A

REGINA VS DAVID GRAY  
JONATHAN GLAZE  
ANITA FLETCHER

Ian Ramsay & Valrie Neita-Robertson  
for Gray

Delroy Chuck for Glaze

Patrick Bailey for Fletcher

Kent Pantry, Senior Deputy Director of Public  
Prosecutions & Mrs M Ramsay-Hayle for the Crown

2nd, 3rd, 4th May & June 27 1994

DOWNER J A

The appellants were convicted on three informations for breaches of the Dangerous Drugs Act by Her Honour Mrs Shirley Lewis, at the Half-Way-Tree Resident Magistrate's Court. The specific charges were dealing in ganja contrary to section 7(B)(a); taking steps preparatory to exporting ganja contrary to 7(A)(1) and being in possession of ganja contrary to 7(C)(b).

The Resident Magistrate was persuaded to make a finding of guilt on the basis of the convincing evidence of the police officers and the quantity of ganja found and exhibited. On 20th November 1992, a search party from the Narcotics Squad entered the office and warehouse of Mlatec Trading Company Limited and accosted the managing director, David Gray and his secretary, Anita Fletcher. In addition to being secretary to Gray, Fletcher was also company secretary and responsible for recruiting staff for the company, which was engaged in the manufacture and export of syrup. The two appellants were then taken to the warehouse by Sergeant Winston Henderson where Glaze, the other appellant, was found. Also in the warehouse at that time were three female

workers who were acquitted at the trial.

It was at the warehouse that the incriminatory evidence was found, namely fifty-six packages of ganja. Be it noted that there was no denial in this regard.

The crucial evidence on the Crown's case which implicated all three appellants is best addressed by quoting from the learned Resident Magistrate's notes. It emerges from the evidence of Sergeant Henderson and is supported by Sergeant Hugh Lawrence:

"Having looked at notes in my book I now read from it what accused Gray said, he said 'Mr. Henderson leave those three girls, they don't know nothing about it.'

As he spoke he indicated to accused Hearne, Miller and Edwards. Mr. Glaze said (reading from my note book) 'Officer is our business, those girls are not in it.'

Glaze also indicated to the said three accused women as he spoke. Miss Fletcher said, 'Those three girls are not in this.' She was indicating to the said three accused women."

Here it should be observed that the appellant Glaze, a Jamaican who lives in England and holds a British passport denies he was found in the warehouse. His defence was that he was outside in the yard and was forcibly taken to the warehouse. He also stated that his purpose there that morning was to effect a business transaction with Gray for the importation and sale of vehicle parts. There was a denial by all three appellants that they used the words attributed to them.

Since the learned Resident Magistrate's findings was based on her assessment of the witnesses' credibility, these findings will not be disturbed.

It is now pertinent to examine the crucial words uttered and draw the logical inference. As managing director, Gray the appellant was stating emphatically - the three girls should be left alone as they knew nothing about the ganja. Such a statement could only be made by a man in control of what he knew

to be ganja. The retort of Glaze who came to do business, was even more telling. He asserted that it was "their business" and the girls were not in it. So he must have been in joint possession of "the business" because these words were uttered after caution. So the appellants must have known what the charges were. As for the third appellant, Anita Fletcher, she said that the girls were not in "that." In the context of the caution and the large quantity of the ganja found, she must have been a full participant in the possession of the ganja. Additionally, she was the appellant who had employed the girls so the inference was that she knew what they were assigned to do and that their duties did not include the confidential work pertaining to illicit drugs.

On a factual basis it is difficult to envisage any other finding but guilty as regards possession. Mr. Ramsay however, sought to challenge that finding on the ground that the search and entry were illegal. The basis of his submission was that the written authorisation exhibited had a fatal flaw. It did not name a specific constable as was required in section 21(5) of the Dangerous Drugs Act. That subsection requires the constable who sought the warrant to have given sworn information to a justice of the peace. Parliament has entrusted the Constabulary Force with wider ranging powers to enter, search and seize by virtue of section 21(4) of the Act.

The relevant sub-section reads:

"(4) If any member of the Constabulary Force of or above the rank of Sergeant is satisfied that there is reasonable cause to believe that an offence against this Act is being committed in any premises, he may give directions in writing to any constable to enter such premises, search the premises and seize and detain—

- (a) any drug to which this Act applies;
- (b) anything in which such constable reasonably suspects a drug to which this Act applies is being concealed;

(c) any other thing by means of which or in respect of which such constable reasonably believes an offence against this Act has been committed or which may be evidence of the commission of such offence, and such constable shall have power to carry out such directions."  
(Emphasis supplied)

There is safeguard for the citizen in the proviso:

" Provided that it shall be the duty of such constable in the execution of any such directions to produce the instrument containing the same to the owner or occupier of any premises entered pursuant to such directions if required by such owner or occupier to do so, and to permit a copy thereof to be taken by, or on behalf of, such owner or occupier either at the time of the entering and search of such premises or at any time afterwards whilst such instrument remains in the custody of the constable."

Since it was found by the Resident Magistrate that the authorisation was read to the appellants, the entry, search and seizure was valid.

The other attack on the findings below was made by Mrs. Neita-Robertson. She contended that notes from which Sergeant Henderson refreshed his memory with regards to words used by the appellants were not recorded contemporaneously and they were probably penned by different hands. The extract from the diary which was used as a note-book was carefully examined below and by this Court and we find the criticism was not justified. In any event, Sergeant Hugh Lawrence gave similar evidence without recourse to refreshing his memory from a note-book, so on this aspect of the case, the appellants have failed.

It is now appropriate to turn to the other charges of dealing and taking steps preparatory to exporting. It is clear that having regard to the quantity of ganja found, the clear inference must be that all three appellants were dealing in ganja. An additional fact was that, Glaze was a man from abroad, or as he describes himself, a visitor. The finding on this charge ought not be disturbed.

With regard to steps preparatory to exporting, in the light of the finding of fifty-six packages, the statutory provision of 7 A (2) of the Act comes into play. That section reads:

"(2) Where there is evidence—

(a) that the ganja for which an accused person has been charged under this section is packaged in such a way as to make it reasonably suitable for exporting;...

that evidence shall be prima facie evidence of steps being taken preparatory to the exporting of the ganja by the person charged."

So the upshot is that the Resident Magistrate's finding of guilty in respect of each appellant on the three informations ought to be affirmed.

#### Sentence

Anita Fletcher did not appeal against sentence and it is easy to see why. Here are the Resident Magistrate's finding in that regard:

"Possession of Ganja - Fletcher - fined  
\$15,000 or six months

Gray - fined  
\$15,000 or six months

Glaze - fined  
\$15,000 or six months

Dealing in Ganja - Fletcher - fined  
\$40,000 or eighteen months

- Gray - sentence to 12  
months imprisonment at  
hard labour

Glaze - sentence to 12  
months imprisonment at  
hard labour

Taking Steps - Fletcher - fined \$30,000  
or 18 months imprisonment  
at hard labour

Gray - fined \$50,000 or 6  
months imprisonment

Glaze - fined \$50,000 or 6  
months imprisonment

Fletcher - sentences concurrent.

Gray and Glaze - sentences on possession and dealing are concurrent and that on taking steps consecutive to those on other two charges.

Re Fletcher - two weeks with surety to pay.

Verbal notice of Appeal on behalf of all three accused indicated by Mr. Finson."

It is clear that Anita Fletcher's involvement in the offences was the same as the other two appellants. It is equally clear that if there were no qualifications, the custodial sentence imposed on Gray and Glaze for dealing in ganja were appropriate for these very serious offences. Was there then any basis to vary the custodial sentences imposed?

The starting point for such an enquiry must be to determine the reasons for the Resident Magistrate's leniency with respect to Anita Fletcher. Counsel's submission in mitigation below was recorded as follows:

"Fletcher - 27 years old, employed to Miatec for some two years before incident.

Single woman - has symptoms of Parkinson's disease."

It was in those exceptional circumstances that the Resident Magistrate who had the opportunity of observing the symptoms did not on compassionate grounds, impose a custodial sentence.

The issue therefore on appeal was, whether there were equally exceptional circumstances, adduced on behalf of the appellants by Mr. Ramsay and Mr. Chuck, which ought to persuade us to vary the sentences of the appellants Gray and Glaze. A medical certificate prepared by Dr. Gray, the Prison Medical Officer was presented in respect of Gray and the relevant part reads as follows:

"Mr. Gray also suffers from the following problems:-

1. MIGRAINE
2. NERVOUS BOWEL SYNDROME
3. PAROXYSMAL ARTERIAL TACHYCARDIA (PAH)"

In conclusion, Dr. Gray whom we were told was not a relation wrote:

"These same recommendations were made on Mr. Gray's behalf by me regarding BAIL during his stay at the General Penitentiary."

Another medical certificate by Mr. W.F. Blake F.R.C.S., Consultant Orthopaedic Surgeon reads as follows:

"TO WHOM IT MAY CONCERN

RE: DAVID GRAY

This is to certify that this patient has been under my care since the 28th of February 1994, for cervical pains and numbness radiating to the medial 2 fingers of his right hand.

Nerve conduction studies suggested involvement of the lower roots of the Bronchial Plexus. The symptoms have eased slightly but he is still under regular treatment and is still receiving physiotherapy. He is due to be re-evaluated on the 19th of May 1994.

Yours sincerely,

WARREN BLAKE, F.R.C.S."

This certificate must be read in the light of the initial part of Dr. Gray's certificate which tells its own story. It states:

" RE: MR. DAVID GRAY

On the 13th August 1993, the first day Mr. Gray went to the General Penitentiary, he was placed in a cell with FOURTEEN other detainees.

A fight broke out in the cell between two inmates and during the fracas, ONE INMATE fell on him hitting him at the back of his neck. Since then he has been experiencing from time to time severe pains at the point of impact, with sharp shooting pains along the right upper limb associated with numbness and burning of the right small and ring fingers.

This problem has been affecting him ever since then, causing him much discomfort and has gotten to the point where it has affected his normal daily duties and his sleep.

Subsequent X-Ray of the neck shows that there is an injury at C4-C5 Cervical Vertebrae, which can in fact cause compression of the spinal nerves in the neck which are distributed to the entire upper limb."

Needless to say, this aspect of the matter would not have been available to the resident Magistrate.

It is perhaps this cogent medical statement which induced two judges of this Court to grant the appellants bail pending appeal and in these exceptional circumstances, we considered it appropriate to impose a fine as an alternative, which was the sentence meted out to Anita Fletcher when her medical condition was brought to the attention of the Resident Magistrate.

In the case of the appellant Glaze, the submissions were not as cogent. Mr. Chuck told this Court that his client had diabetes and because he is a United Kingdom resident there would be some difficulty in securing a report on his medical history. It was therefore decided that since the involvement of all three were equal, it would be proper also on compassionate grounds to impose a non-custodial sentence in his case.

So the end result was that the appeals against conviction were dismissed at the conclusion of the hearing. The sentences in respect of Gray and Glaze with regard to dealing are varied so as to read \$50,000 or 12 months hard labour. These are the reasons for our judgment.