

CA. CRIMINAL LAW - Breaches Dangerous Drugs Act - Possession of Ganja,
Dealing in Ganja and Taking Steps Preparatory to Exporting Ganja -
Silence of appellant - whether silence of appellant who was present at incident
sufficient basis for conviction - whether evidence sufficient to establish possession
in appellant's bag.
Sentence: Offences committed eight weeks before amendment to Dangerous Drugs Act
providing for heavier penalties came in force. Whether Resident Magistrate erred in law
in holding that offences caught JAMAICA by the amendment and imposing
sentences under amendment - whether unconstitutional ss. 20(7) Constitution
An appeal of appellant's conviction allowed. Conviction quashed
IN THE COURT OF APPEAL
An appeal of appellants Riley and Prendergast against sentences passed under
amendment allowed. New sentences substituted.
RESIDENT MAGISTRATES CRIMINAL APPEAL NO. 78/88

BEFORE: THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

v

EVERALD LAING
EDWARD RILEY
HENRY PRENDERGAST

R. Pickersgill and H. Williams for Appellants

V. Grant for the Crown

November 1, 2, and 22, 1988

WRIGHT, J.A.:

On November 2, we disposed of these appeals in manner which will
hereafter appear and promised to put our reasons in writing. This we
now do.

The three appellants were tried and convicted in the Resident
Magistrates Court holden at Linstead in the parish of St. Catherine on
June 1, 1988 for breaches of the Dangerous Drugs Act viz. Possession of
Ganja, Dealing in Ganja and Taking Steps Preparatory to Exporting Ganja
and were sentenced as follows:-

Possession of Ganja: Each fined \$15,000.00 or 3
years imprisonment at hard
labour and in addition to be
imprisoned and kept at hard
labour for 12 months.

Dealing in Ganja : Each fined \$50,000.00 or 3
years imprisonment at hard
labour and in addition to
be imprisoned and kept at
hard labour for 12 months.

✓ comp
① EVIDENCE
② LEGAL DRAFTING
AND INTERPRETATION
(consolidation of law
giving relevant effect to criminal
legislation)
③ Constitutional law
(lawyer
no plan)

Taking Steps
Preparatory to
Exporting Ganja

: Each fined \$50,000.00 or
3 years imprisonment at
hard labour and in addition
to be imprisoned and kept
at hard labour for 12 months.
(The sentences to run concurrently)

From these convictions and sentences, the appellants have appealed on
two grounds, viz.:-

- Ground 1. The evidence adduced by the prosecution
was insufficient to fix Laing with
possession of ganja.
- Ground 2. The Learned Resident Magistrate was wrong
in law in sentencing the appellants pursuant
to a legal enactment subsequent to the
commission of the alleged offences.

Apart from these there were three other Grounds of appeal filed but which
were abandoned as being unmeritorious.

The facts of the case are that on 4.6.87 about 11.30 p.m. a
contingent of Police from Operations Base at 230 Spanish Town Road,
Kingston carried out a raid on premises at Main Street, Ewarton in the
parish of St. Catherine at the back of which premises the three appellants
and another man were seen in the vicinity of a disabled Hillman car.
It was raining at the time. The appellant, Riley was seen with a
tarpaulin in his hand with which he was covering the right front window
of the car from which the glass was missing. On the approach of the
police, Riley and Prendergast ran but were apprehended by other policemen
of whose presence they were not aware and taken back to the car. Laing
and the other man stood their ground. Laing was not seen to do anything
in connection with the car which was found on investigation to contain
54 packages of ganja weighing 1027 lbs. 4 oz. The four men were then
arrested and charged as listed above. After caution, Prendergast is
alleged to have said:-

"A wi boss Stevie pay we fi press it and
watch it."

Riley said:-

"A rain me a shelter from sah."

Laing made no statement.

The other man made a statement but we are not concerned with him and, if we may say so, we think his acquittal was justified. No evidence was given as to the ownership of the disabled car but the evidence does not suggest that it belonged to Laing or that he was in any way connected with the car or its contents. On the evidence therefore, the case against Laing rested on his presence, his silence and, possibly, knowledge that there was ganja in the car. Indeed, the police were attracted to the car because of the smell of ganja.

The learned Resident Magistrate in stating the findings of fact so far as Laing is concerned stated the reason for the conviction to be "the silence of Laing in the face of all the others providing an explanation". On that basis both knowledge and control were inferred. It is trite law that silence alone in such circumstances cannot be the basis for a conviction. Indeed before us Counsel for the Crown quite correctly conceded the point.

Ground 1 of the Grounds of Appeal succeeds and accordingly, we had no difficulty in allowing Laing's appeal quashing his conviction and setting aside the sentences imposed on him.

Mr. Williams conceded that on the evidence, such grounds as he had intended to argue against the convictions of Riley and Prendergast would be unavailing and were abandoned. However, he submitted quite correctly that as regards their sentences the learned Resident Magistrate had erred in imposing on them sentences which could not have been imposed on the day the offences were committed.

The Dangerous Drugs Amendment Act, Act 17/87 providing for severer penalties for breaches of the Dangerous Drugs Act came into force on July 27, 1987 almost eight weeks after the commission of the offences under consideration. In error, the learned Resident Magistrate held that these offences were caught by the Amendment and proceeded to impose sentences in accordance with the Amendment. So to hold would be to give retroactive effect to a criminal legislation in contravention of Section 20(7) of the Jamaica Constitution which provides:-

"No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."

It is clear, therefore, that there was no competence to pass the sentences which became available only under the Amendment. Accordingly, such sentences had to be and were set aside and in substitution therefor we imposed the following sentences:-

1. For Possession of Ganja: Each fined \$1,000.00
or 1 year imprisonment
at hard labour.
2. For Dealing in Ganja : Each fined \$10,000.00
or 2 years imprisonment
at hard labour.
3. For Taking Steps : Each fined \$1,000.00 or
Preparatory to 1 year imprisonment at
Exporting Ganja hard labour.

The additional sentence of 12 months imprisonment at hard labour in respect of each charge is affirmed. Sentences to commence from the date of conviction.

We agree with the obvious intention of the learned Resident Magistrate in imposing maximum sentences. This accords with the intention of the legislators that such offences must be severely punished. Hence the need to increase the penalty above the maximum extant at the date of the commission of the offence. An added factor is that the appellants were clearly engaged, in whatever capacity, in a large illegal commercial enterprise on the main street of a small town in Jamaica which could not be very far from the Police Station in that town. If anything, this seemed to be a reckless confrontation with the law and calls for condign punishment.

To the extent that the sentences were varied, the Second Ground of Appeal succeeds.