C.A. Criminal Law – R.M.'s Appeal – Dr. Drug Drugs Act – (a) unlawful possession of ganja (b) unlawfully taking steps preparatory to exporting (c) unlawfully using a conveyance for the purpose of dealing in ganja (2 informations) (d) dealing in ganja.]

✓ Whether verdict unreasonable:
✓ whether statement attributed to appellant admissible against them or of any probative value – Judges Rules
✓ whether any evidence subject matter of charge was ganja – S.27 Dangerous Drugs Act – certificate signed by Government Analyst sufficient evidence of facts stated therein
✓ whether evidence appellants in possession of ganja
[Appeals dismissed]

✓ Comp.

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 28/87

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE WHITE, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (Ag.)

Cases referred to
DPP v Wishart Brooks 12 J.L.R. 1376
R v Zaveckas (1970) 1 All E.R. 774

REGINA

VS.

GLASSINGTON OUTAR &
MORRIS OUTAR

Mr. Frank Phipps, Q.C., Mr. George Soutar and Mr. Ernest Smith for appellants

Mr. Winston Douglas for Crown

April 30; May 1 and July 31, 1987

WHITE J.A.:

The appellants, Glassington Outar and Morris Outar, have appealed against the decision by the Resident Magistrate for the parish of Manchester convicting them for the following offences against the Dangerous Drugs Act, viz., (a) unlawful possession of ganja; (b) unlawfully taking steps preparatory to exporting ganja from the Island of Jamaica; (c) unlawfully used a conveyance for the purpose of dealing in ganja (2 informations) [4] Dealing in ganja. They were jointly tried, and, upon conviction, the following sentences were imposed:

(1) For the possession of ganja, each was fined $1,000; in the alternative, 6 months imprisonment at hard labour, and in addition 3 years imprisonment at hard labour.

(2) For dealing in ganja each was fined $10,000; with the alternative of 6 months imprisonment at hard labour; in addition, 3 years imprisonment at hard labour.

(3) For trafficking in ganja, each was fined $1,000 or 6 months imprisonment at hard labour; in addition, 3 years imprisonment at hard labour.

(4) For trafficking in ganja, each was sentenced to pay a fine of $1,000 or to 6 months imprisonment at hard labour; in addition to 3 years imprisonment at hard labour.

(5) For taking steps preparatory to exporting ganja, each was sentenced to pay a fine of $1,000 or 6 months imprisonment at hard labour; and in addition to imprisonment for 3 years at hard labour.

The sentences of imprisonment imposed on all the informations in respect of each accused were ordered to be concurrent. If the fines imposed were not paid, the Court ordered that the alternative sentences of imprisonment on all the informations in respect of each accused were to run consecutively.

The subject matter of the charges was ganja contained firstly, in 22 packages which were found in a green Land-Rover; secondly, in 48 packages which were in a yellow Dodge van. The contents of these packages weighed in total 2973 lbs. 5 ozs. These were seized on November 16, 1986 during a raid on a property at Marlie Hill in the parish of Manchester. This raid was carried out by a party of policemen and J.D.F. personnel which was transported to the district in three helicopters. According to Police Corporal Radcliffe Lewis, and Frank David Hall, a Lieutenant-Commander stationed at Jamaica Defence Force Headquarters, Up Park Camp, Kingston, they knew the land before that day. Corporal Lewis said the 16th November, 1986 was not the first time he was going to those premises. He knew both appellants from 1983. He had been to the property on several occasions before, since May 1986 - "at least on 3-4 times a week". On those several

occasions he had seen the accused in the house on the property and on an airstrip on the land; "Sometimes I see Morris, sometimes I see Glassington". Lieutenant-Commander Hall testified that he had been to those premises by helicopter on 1st September, 1986, when he met Glassington Outar on an airstrip on that property at Marlie Hill. According to him, this airstrip was the destination of the party in the three helicopters on the 16th November, 1986. No further inquiry was made regarding the reason for these visits, but as shall appear later in this judgment, the evidence discloses certain remarks made by the appellants regarding a previous encounter between the dramatis personnae.

While the helicopters were flying at a very low altitude, the corporal said he saw several persons run away from inside a house on the premises in question. The corporal was able to identify the appellants among those persons who ran away from the house. The lieutenant-commander said that when his helicopter was at tree-top level (30-40ft from the ground) he was able to identify one of those running as the appellant Glassington Outar; he ran on a road in a north-westerly direction away from the house.

The helicopter descended; Corporal Lewis and a member of the J.D.F., disembarked and the helicopter took off again. The lieutenant-commander said that from the helicopter he saw Glassington Outar, while he was running, jump on to the back of a red tractor which moved off in a north-westerly direction. While hovering just over the western side of the house, he saw an open trench approximately 100 yards from the house in a southerly direction, and further, to the south of the house, he saw two vehicles parked in the bushes approximately 300 yards south of the house. One vehicle was a green Land-Rover with a cream top; the other was a yellow panel Dodge van.

On closer inspection, the lieutenant-commander said he saw brown packages in both vehicles. He testified also that he saw two persons running away from the general direction of the two vehicles. These two were not identified. They disappeared into the undergrowth. The lieutenant-commander returned to and landed in the vicinity of the house.

Before returning to that area of the raid operations, mention should be made of the evidence of J.D.F. Corporal Winston Fearon, who travelled in one of the helicopters (not the one in which the lieutenant-commander and the police corporal were flying). He,also, saw people running from the house, but more than that, in his surveillance from his airborne helicopter, he said he saw men running from a tractor to the bushes. It is not clear whether it was the same tractor identified by Lieutenant-Commander Hall. After alighting from his helicopter Corporal Fearon searched the bushes, and saw a man lying down in some bamboo. This man he identified as the appellant Glassington Outar, whom he did not know before, and whom he detained. He said up to this point he, the witness, was alone.

Donovan Creary, who is described as a Corporal of Police attached to Headquarters, J.D.F., Up Park Camp, testified that he was a member of the raiding party. He saw a number of persons running in different directions from the house. Except for the pilot and co-pilot of the helicopter in which he had travelled, he and all the members of his group alighted from the helicopter. The helicopter then went up again and responding to signals from the helicopter pilot, he ran to a particular area over which the helicopter hovered. He said when he went to the spot, he saw a man, whom he identified as the appellant Glassington Outar, lying down in the bushes of small trees and shrubs. This was about 5 chains from the house

and about one chain from a parochial road. He ordered the man to come out. He took a licenced firearm from the appellant. He handed the firearm to Corporal Anglin who had joined him to go to the spot indicated by the hovering helicopter. The J.D.F. member said he was alone when he found the appellant who he did not know before. He did not see Morris Outar until about one hour after he had handed Glassington over to Corporal Anglin by the parochial road.

The conflict between these last two witnesses as to who discovered Glassington Outar and where he was discovered is very clear.

However, to go back to Corporal Lewis, he gave evidence that after he had alighted from the helicopter he had joined in a search of the house; no ganja was found in the house. The appellants were brought to him by Corporal Anglin and Police Acting Corporal Dwyer. The witness asked the appellants why they ran. Glassington's reply was "Officer, me 'fraid ah helicopter". The reply from Morris was that Mr. Hall told him he was going to take away his gun. Significantly, only the two appellants were held although as said before, several other persons - about 15-20 persons - were seen running from the house; although too, the members of the police-military raiding party spoke to persons inside and outside the house.

After the lieutenant-commander had alighted from his helicopter he spoke to Corporal Lewis in the presence and hearing of the appellants. He identified Glassington Outar as the man he had seen run and jump on to the tractor. There was no reply by that appellant. The lieutenant-commander also informed that he had seen two vehicles parked in the bushes down the road. This 'down the road' was not identified either with the parochial road which was nearby or with any

other road. However, Corporal Lewis accompanied the lieutenant-commander and others of the raiding party to a spot about 300 yards from the house, where the vehicles already mentioned, were seen. The packages earlier seen were still on the vehicles. On close examination, the ignition keys were in the switch of the green Land-Rover with the cream top licensed 3923 AJ. The steering of the other vehicle, the yellow Dodge van, licensed 4114 AJ, was locked, but there was a C.B. radio in it. This radio was attached by wires to a barrier behind the driver's seat. When the radio was turned on, it was on Channel 21. Both vehicles bore white licence discs. At the vehicles, Corporal Lewis opened one parcel from each vehicle, and saw therein vegetable matter resembling ganja.

It is a reasonable inference from the evidence that neither of the accused was taken to the spot where the vehicles were found, but when the two Crown witnesses returned to where the appellants were left under guard, Lieutenant-Commander Hall asked in a loud voice, "Who had the keys for the yellow van?" Glassington Outar said he knew nothing about the yellow van. A little later on, after a set of keys were found on the ground, the vehicles were driven up to and were parked before the house. At that stage, to further questions, Glassington told the Corporal that he had sold the yellow van to a worker but the transfer was not yet completed. To a specific enquiry he did not say who was the worker.

In fact, the lieutenant-commander took from that vehicle a licence disc 657745 which was tendered in evidence. This was inscribed with the name of Stanley Mitchell. He was known to Corporal Lewis, who said he was a handyman for the Outars; the Corporal had seen Mitchell at work on the farm. The licence disc 727625 for the Land-Rover bore the name "Simplex Brothers Limited". This was a company in

respect of which the appellants and their brother were subscribers to the memorandum of association. There was no evidence that there were any directors of this company.

Further operations at the site were to draw the attention of the appellants to the contents of the parcels in the vehicles. Corporal Lewis said he opened several of the parcels in the presence of both appellants, and told them that what was disclosed was vegetable matter resembling ganja. Morris Outar said, "Officer, we no know 'bout it".

During the time that the raiding party was on the property, the evidence of both Corporal Lewis and Lieutenant-Commander Hall was that a white and blue aircraft, while airborne, circled over the airstrip earlier mentioned. This airstrip had a long run-way which was more than thirty yards (according to Corporal Lewis) away from the house from which both appellants had run. The aircraft hovered for about twenty to twenty-five minutes. This was the airstrip on which the lieutenant-commander said he had met Glassington Outar on the 1st September, 1986. He said it is 300-400 yards, in a southwesterly direction, from the house. According to the lieutenant-commander, the airstrip is approximately 3,500ft long and 60-80ft wide. There was a turning circle at the northern end. It was constructed of compacted limestone and marl over a limestone aggregate, and was smooth and flat. The vehicles had been parked about 300 yards from the airstrip. It was the evidence of Hall that "I spoke to Glassington in general terms about the airstrip on the property", he replied, "Is not an airstrip, we use it as a race track". The witness admitted knowing that Glassington was a race-horse owner. There was no further enquiry regarding utility or usefulness of this strip of land. Corporal Lewis said further under cross-examination, "I saw cattle on the place I visited on

the 16th November, 1986. I didn't observe chicken house. I can't recall if I observed hog-pens. I walked about on the property. I saw some building being constructed. I don't know they were chicken houses. I didn't see any building containing chickens. I don't agree there is a long road on that property. I couldn't say if there were chicken houses on either side. The buildings I saw were not near the runway .....I didn't observe an area where the cane grows. Just in front of the verandah [of the house] there is a gate. Grass grows on the left hand side of the gate".

While the aircraft hovered over the airstrip, many of the persons who were on the land at Marlie Hill, waved their arms, jumping up,and motioning to the pilot not to land the aircraft. The aircraft flew away. All this time the two appellants were at the front of the house in custody of the police. There is no note of their reaction to the hovering airplane, or to the warning referred to earlier.

There was a shed near to the house. In that shed was found a C.B. radio similar to the one which was found in the yellow van. Both were on Channel 21. On the outside of the shed there was a High Frequency Omni directional antenna which was connected to the C.B. radio. Long after the aircraft had disappeared, Lieutenant-Commander Hall responded to the transmission. He said he heard someone asking if it was alright to bring in the stuff. He replied in the affirmative, but the voice on the other end said that "it doesn't sound like Harold". Although there were further conversations by means of the C.B. band transceiver, nothing eventuated from that. It should be stated that the appellants at this point were nearby (variously put by Corporal Lewis as 5ft away from the shed, and by the lieutenant-commander as "about 15 or 20 feet or more away from physically where I was").

The transceiver and C.B. radio were exhibits at the trial.

At the end of the raid which had lasted about three hours the vehicles and their contents were driven to Kingston. There the appellants were arrested on the several charges, and shown the contents of the parcels which had not been opened at Marlie Hill. When cautioned, Glassington pleaded his hunger, but Morris remarked, "Officer, you can't charge us and you don't find us in possession of the ganja".

It is worthy of consideration that in cross-examination Lieutenant-Commander Hall was asked a question which presumably related to the time when the vehicles were brought up from the bushes, and the appellants were first apprised of the contents of the parcels. The question and the answer are stated here:

> "Q. Isn't it a fact that Glassington Outar said to you 'make sure you note well where the vehicle was taken from", or words to that effect?
>
> A. He did so quite forcefully".

This remark by the appellant is peculiar when it is recalled that, as pointed earlier, he had not been taken down to where the vehicles were first seen, and, indeed, does very well raise the question whether the appellants knew where the vehicles were parked with their contents. In the context of this judgment this must be a factor in the determination of whether the Resident Magistrate rightly concluded that the appellants were guilty of the afore-mentioned offences.

The evidence discloses that on the 24th November, 1986, Mr. Fitz Oates, the Government Analyst attended at the Narcotics Division, 230 Spanish Town Road; there in the presence of Corporal Lewis, he took samples from each of the above-mentioned packages. The samples he took were put in small envelopes - those containing samples taken from the 22 packages were put in one large envelope; those containing

samples taken from the 48 packages were placed in another large envelope. The remainder of the packages were locked in a storeroom at the Narcotics Division. Mr. Oates stapled the two large envelopes, and he put the letters, 'F.L.' on the small envelopes containing the samples, as well as on the large envelopes into which the former were placed. Corporal Lewis produced these envelopes and samples as exhibits 6 and 7 at the trial, together with two certificates (exhibits 10 & 11) signed by Mr. Oates, and which he had received from the Forensic Laboratory on the 12th December, 1986. The corporal had himself marked the 22 packages taken from the Land-Rover with the letter 'J'. The 48 packages from the van he marked with the letter 'V'. The 22 packages were admitted into evidence as Exhibit 8, and the 48 packages as Exhibit 9.

At the end of the prosecution's case, each appellant made an unsworn statement. Glassington described himself as a part-owner of a gas station and part-owner of a cattle farm "along with my brothers Morris and Jonathan Outar". He said that on the 16th November, 1986 he was on his farm together with his brothers and about six farm workers and 10 visitors. They were having a curry goat feed at the farm house. He told of a helicopter arriving; from it armed men alighted. He admitted that everyone ran in different directions. He ran, he said, "because four weeks before the 16th November, 1986, a helicopter came to the property beat us up and destroyed seven vehicles. I was afraid this might happen again". He denied that any ganja was found on the farm. He knew nothing about any ganja being found on the farm on that day or at all. Nor did he know anything about any aircraft hovering around or any person waving to any such aircraft.

Morris Outar confirmed his joint ownership of the farm as stated by the co-appellant. He told of the arrival of

the helicopter with armed police and soldiers on November 16, 1986. He told of the feasting on that day. His reason for running was the fact that four weeks before the 16th November, 1986, "an helicopter arrived on the property, beat us up all, and destroyed 7 farm vehicles. These men turned out to be police and soldiers. They say they would take away my licenced firearm, so I was afraid it might happen again". He denied that the raiding party had found any ganja on the property at that time or at any time at all. He knew nothing about the plane hovering, or of any person shouting and waving at any plane "at that time or no time at all".

The Resident Magistrate set out his findings of fact in the following manner: (pages 60 & 61)

"FINDING OF FACTS

The Court believes the witnesses for the Prosecution to be truthful and finds the following facts proved.

1. That on Sunday the 16th November 1986 a party of Policemen and military personnel departed from Up Park Camp in three helicopters bound for Marlie Hill, in the parish of Manchester.

2. That while the helicopters were coming in several persons including the two accused were seen running from a house.

3. That the helicopters with its occupants-pilot, Captain Millwood, Major Franz Hall, Sergeant Fagan and Corporal Lewis landed near to this house. Corporal Lewis and Sergeant Fagan disembarked and the helicopter went airborne with Captain Millwood and Major Hall.

4. The house was searched.

5. Afterwards, both accused who (sic) were apprehended and escorted back to where Corporal Lewis was.

6. That approximately three hundred yards from the house, two vehicles were seen parked about five feet apart.

One of the vehicles was a green Land Rover bearing registration No 3923 AJ.

"The other was a Yellow Dodge Van bearing registration No 4114 AJ.

The Green Land Rover had affixed to it a licence Disc 727625 with the name Simplex Brothers Ltd. on it.

The Yellow Dodge van had affixed to it a licence Disc 657745 with the name Stanley Mitchell on it.

The Green Land Rover had its ignition keys in the switch, while the Yellow Dodge Van had in no keys and the steering locked.

7. 22 packages of Ganja were found in the Green Land Rover.

48 packages of ganja were found in the Yellow Dodge Van.

8. That in the cab of the Yellow Dodge Van was a citizen's Band Radio which was on and set on Channel 21.

9. That approximately 300-400 yards in a south-westerly direction from the house was an Airstrip made of compacted limestone marl, about three and a half thousand feet long, 60-80 feet wide and a turning circle at its northern end.

10. That Major Hall enquired about the keys for the Yellow Van. Accused Glassington Outar said he don't know anything about any van.

Shortly after the keys were found about 5-6 yards from the house and about 2 feet from a shed.

11. Both vehicles were driven and parked in front of the house.

12. That when both accused were asked who are the owners of the vehicles - accused Glassington Outar said he did not know anything about the Yellow Van. The other accused said nothing.

When asked about the Green Land Rover Glassington Outar replied that he had sold it to a worker but the transfer did not come through yet. When asked who the worker was he didn't answer.

13. That there is a she' (or hut) near to the house and inside this shed was a CB Transmitter also set on Channel 21.

Several Transmissions were heard among which a voice was heard asking if it was alright to bring the stuff in.

"14. On the outside of the hut, there was a HF High Frequency Omni directional antenna which was connected to the CB Transceiver in the shed.

15. That Simplex Brothers Ltd. is a Company incorporated in Jamaica and the subscribers to the Memorandum of Association are the two accused Glassington and Morris Outar and their brother Jonathan Outar.

16. That on the 21st November, 1986 in the Guard Room at Christiana Police Station, the accused Morris Outar and Corporal Lewis had a conversation and that the accused Morris Outar did use the words attributed to him by Corporal Lewis namely "Officer ah who bust pon wi".

17. Court finds that these words were said voluntarily.

The Court advises itself on the law regarding Possession Constructive Possession and circumstantial evidence and conclude on the basis of the abovementioned facts and the reasonable inferences to be drawn therefrom that both accused were guilty as charged on all the information".

The arguments on the hearing before us were based on the following additional grounds of appeal which elaborated the common ground of appeal filed on the 23rd January, 1987 that:-

"1. The verdict was unreasonable and cannot be supported having regard to the evidence.

a) No evidence of possession, actual or constructive possession in either or both appellants had been established in respect to exhibits 6, 7, 8 and 9, the subject matter of the charges.

b) No evidence that exhibits 6, 7, 8 or 9 were found on the premises of either or both accused.

c) There was no evidence to connect either or both appellants with exhibits 6, 7, 8 or 9. Such a connection could not be established by the fact that the appellant was seen running from a house where nothing illegal was found especially in circumstances where exhibits 6, 7, 8 and 9 were found in motor vehicles not belonging to the appellant some 300 to 400 yards from the house. Neither could the connection be established by the fact that

" the radio in one of the motor vehicles was fixed on a channel, the same as that on a radio in a hut.

2. There was no evidence that the subject matter of the charges, that is, samples exhibits 6 and 7, or packages exhibits 8 and 9, were ganja, as defined by law.

3. The statement attributed to the appellant, Morris Outar by Corporal Lewis, "a who bust pan me" was inadmissible against the appellant. Alternatively this statement was of no probative value".

As regards Ground 2, it must be said right away that the Court did not consider it necessary to call for a reply by attorney-at-law for the Crown. Suffice it to say that the procedure adopted of taking samples from the individual packages was eminently a practical way of testing the contents of the 70 packages. Otherwise, it would entail a detailed check of every particle of the contents of each package, which would be an enormous and time-consuming task. It cannot be cogently argued that it is imperative for the Government Analyst to say that he had tested the samples - and for him to state what is the result of the test on the samples themselves - before he can certify that the contents of the packages were as stated in the certificates, exhibits 10 and 11. Mr. Phipps argued alternatively: even assuming that he had given a certificate of the result of his analysis of the samples, there is no presumption that the bulk corresponds with the samples. This argument cannot be sustained bearing in mind that "the production of a certificate signed by the Government Analyst, shall be sufficient evidence of all the facts therein stated" (s 27 of the Dangerous Drugs Act). The certificates state that examination and tests were carried out on the vegetable matter. There was no request by the person charged that the Analyst should attend the trial as a witness. In so far as this case is concerned, it is noticeable that experienced

and learned Counsel who appeared at the trial did not take any objection to the reception of the certificate into evidence.

The sum of the other submissions made to us by Mr. Phipps was that the appellants were not physically in possession nor was the ganja under their physical control. He argued that the two vehicles could not be seen from the house considering that they were 300 yards from the house and in the bushes. In his submission there was no evidence direct or circumstantial that either vehicle was in the custody of either or both the appellants at any material time, and not before or on the day of the raid. When the police searched the house no ganja was found. Not only was there nothing to connect them with the vehicles, there was no evidence to connect the appellants with the land; no evidence to show occupation in them. So that their appeal should be allowed on the ground that possession in the terms of the judgment of the Privy Council in D.P.P. v. Wishart Brooks 12 J.L.R. at page 1376 letter I has not been proved.

Turning to Ground 3, Mr. Phipps scored the admissible nature of the words by Morris Outar, "Officer, ah who bus pon we". The background to this question is the terms of a conversation between Morris Outar and Corporal Lewis in the presence and hearing of Glassington Outar, after their second appearance before the Court on the 21st November, 1986. On that day, during the luncheon adjournment of the Resident Magistrate's Court at Christiana, and while the appellants were in the guard-room at the Christiana Police Station, Corporal Lewis spoke to Morris Outar. He said he asked that appellant about the air-strip. The appellant replied, "Officer cool; you nuh know how it go". Morris then asked if he could get bail. The witness said he told the appellant "that it depends on the judge, and he said we must can get up and talk to the judge and if him

get bail him wi
/set me up". The witness added that the appellant, Morris, then said, "Officer ah who hus pon we?" The witness averred that he did not threaten or in any way used violence, nor did he hold out any promise of favour to theappellant to induce him to ask "Officer a who bus pon we". When Morris used those words, which the witness understood to mean an enquiry as to who gave the police party the information about the ganja, the witness said he did not respond to the question by the appellant. However, he did observe that while Morris was talking, his brother Glassington looked in a furious manner, which he described as "he just knit up his eyebrow". The witness said there was no particular reason why he spoke to the appellants. "I did not want to interrogate them", but according to him, they gave him the information which he accepted.

Mr. Phipps stressed that the corporal instigated the conversation while the appellants had been in custody for over 5 days, and had appeared in Court on two occasions. He argued that the interpretation of the remark would not necessarily be that it is an admission of guilt. In the final analysis, on this aspect, Mr. Phipps contended that the questioned remark is inadmissible by reason of the breach of the Judge's Rules.

Before the Resident Magistrate, the reception of the remark into evidence was objected to, on the grounds that at the time of the conversation, Morris Outar was a person in custody charged with a number of offences. The police officer, it was argued, sought to extract from the appellant certain statements in the absence of a caution. Counsel for the defence urged then that the evidence should have been expunged from the record. In reply Crown Counsel, who appeared then, contended that the statement, even in the absence of a caution, did not make it inadmissible, as the cardinal test of

admissibility of such statements by an accused person is voluntariness. Crown Counsel argued that it is a matter of weight and whether it was unfair to admit it in evidence. At the end of the debate on admissibility, during which the attorney-at-law for the defence directed the attention of the Resident Magistrate to the Judge's Rules, the Magistrate ruled that he would exercise his discretion, not to exclude the evidence as to the question by Morris Outar, and the meaning which the question conveyed to the witness. It should here be commented that the meaning of the question would eventually be for the Resident Magistrate to decide.

Before this Court, Mr. Douglas for the Crown submitted that although there might have been a breach of the Judge's Rules, the Resident Magistrate still had a discretion to exclude or admit. He asserted that even allowing for the matters complained of, the question must be whether in the absence of a specific refusal by the police officer to assist in obtaining bail, the prisoner could have understood that any hope or inducement was being held out to him. The further contention by Mr. Douglas was to the effect that the last remark by the accused was not a response to an inducement; it was merely an enquiry, but inferentially it is an admission, which the Resident Magistrate had first to categorise as voluntary, and in the final analysis he would have to consider its value according to the circumstances of the case.

In our view, we do not regard this as an instance of inducement or of extraction or oppression. When the corporal raised the question of the airstrip with the appellant, the reply of the latter was certainly nothing more than a non-committal statement which could not have been used against him. There is, moreover, nothing appearing in the notes of evidence to show that there was anything further said by the

corporal which would induce or even encourage the appellant to raise the question with the corporal of his helping the appellant to get bail. Nothing at all was said either in examination-in-chief by the witness, or under challenge from the defence by cross-examination, by which it could be said that the appellant was moved to say if he got bail "we" would set up the corporal. There is nothing on the notes of evidence from which it can be deduced that the corporal replied to the appellant's plea and offer, except to say that the corporal told the appellant that it depends on the judge. Yet it was argued that the corporal should have told him in no uncertain terms that he could not do anything for bail! This is not a case like e.g. R. v. Zaveckas [1970] 1 All E.R.714, in which the police gave an assurance regarding bail if the appellant would give a statement.

His last question "A who bus pon we?" came immediately after the offer 'to set up' the corporal. It is clear that the defence seemed to accept the witness' account without any detailed cross-examination. In the event, the cross-examination was limited to re-iterating the time and place when the conversation took place. In the light of our comment and the fact that there is evidence that no threats inducing fear were used, we do not accept that the Resident Magistrate erred in finding that the words were used voluntarily. We do not accept the submission that all the evidence on this point is unfavourable to the Crown. The Resident Magistrate, in our considered view, properly exercised his discretion and, therefore, by his ultimate finding must be considered to have taken into account all the matters raised prior to his ruling. This reported question is of great importance to the final outcome of this appeal, particularly on the central and pivotal point of the Crown's case.

That central question which has been raised by the appellant is whether in all the circumstances there was such evidence from which the Resident Magistrate could reasonably conclude that both appellants were in possession of the ganja which was discovered on the 16th November, 1986. That finding is perforce of first importance, in the sense that unless the finding of fact is that they were in possession of the ganja, the Court would have no jurisdiction to consider the other alleged breaches of the Dangerous Drugs Act. In this regard the question can be more direct: can it be said that the dangerous drug was physically in the custody or under the control of the appellants, they well-knowing that they had the ganja in question? Here, it is relevant to be reminded that counsel for the Crown in his opening before the Resident Magistrate said that the Crown is not alleging that both accused were found in actual possession of ganja, the subject of these charges. He said the Crown's case will be structured on a constructive possession, in that, from the circumstantial evidence, the Court will be asked to draw the inference that the accused men had dominion and control of the ganja.

In the first place, let it be said that although the appellants in their unsworn statements denied categorically that each knew anything about ganja being found on the 16th November, 1986, it is clear that there is strong evidence from which the Resident Magistrate could find, that the ganja was found on the land at Marlie Hill, and, which is implicit in his findings of fact, that the ganja which was discovered, was shown to them. Again in their unsworn statements, there is a denial that any ganja was found on their farm at that time or at all.

But two bits of evidence must be weighed against this stated lack of knowledge. The first is the forceful

challenge to the lieutenant-commander by Glassington Outar that he hoped that that witness had made a careful note of where the vehicles were found - a fact of which he would have had firsthand knowledge on the 16th November, 1986. Of course, it could be reasonably inferred from this that he had previous knowledge of the spot where the vehicles had been parked. The record must repeat that these vehicles and their contents were found about 300 yards southwesterly of the house, and 300 yards away from the airstrip. The second additional fact is the 'denial' that the appellants knew anything about any aircraft hovering around or any person waving to or shouting at any aircraft advising that it should not land. Although there was no specific finding on this, the learned Resident Magistrate did find as a fact that there was an airstrip as described by the witnesses for the Crown.

The lieutenant-commander said that on the 16th November, 1986, he spoke to Glassington in general terms about the airstrip on the property. He replied, "No it's not an airstrip; we use it as a Track". Apropos, Corporal Lewis did not agree that there is a long road on that property. It is not clear whether the question sought to identify this 'long road' on the property with the airstrip or race-track. Surely, the length of the airstrip and its proximity to the house, together with the other measurements related by the evidence strengthen the view that the vehicles and their contents were found on the farm at Marlie Hill. A cattle farm could in no way be limited to only 300ft within the area of the house on the farm, or even within the area of 3500ft, which observation is underlined by the cross-examination as to what buildings were on the land and their proximity to the house.

Indubitably, the appellants had not only knowledge of the vehicles, but the proper inference from the evidence is that the vehicles were in their custody and control. For instance, the licence disc 727625 of the green Land-Rover, was inscribed with the name 'Simplex Brothers Ltd.'. This company was formed and registered by the three Outar brothers, who subscribed their names to the memorandum of association and each of whom had an equal number of shares as shareholders. There are no other shareholders. When Glassington Outar told Corporal Lewis that this green Land-Rover had been sold to a worker but the transfer had not come through yet, it is a reasonable inference therefrom that the vehicle was still in the possession of that company, and that the fact of Glassington's allegedly selling it was indicative of dominion and control, he being considered the alter ego of Simplex Brothers Ltd.

As regards the yellow Dodge van, bearing licence disc 657745 inscribed with the name Stanley Mitchell, attention must again be directed to the evidence of Lieutenant-Commander Hall that he had indicated to Corporal Lewis that he had seen two vehicles parked in the bushes down the road. After confirming this fact by going to where the vehicles had been seen and returning to where the accused had been left under guard, the lieutenant-commander enquired in a loud voice and in the presence and hearing of the accused, who had the keys for the yellow van; it was Glassington who replied that he knew nothing about any van. Thus inferentially strengthening the view of his custody of the other vehicle. According to the lieutenant-commander, after the vehicles were brought up, Glassington Outar emphasised the point that he knew nothing about the yellow van. Throughout all this Morris Outar said nothing.

Upon scrutinising the notes of evidence, we agree that there is strong ground for the Resident Magistrate's finding that the vehicles were found on the land belonging to the appellants. When each appellant said that he was on his farm, he must be referring to the property upon which the raid was carried out. And, of course, there is the evidence of Corporal Lewis and Lieutenant-Commander Hall that they knew the land before, and their evidence gave the Resident Magistrate every ground for finding that the appellants were in occupation of the land in question.

It is clear that at no time was there any challenge or denial of the evidence that the appellants were seen on the land in question. They did claim the land in question as their farm; one of them spoke of it as a cattle farm, and, as already demonstrated, the several distances would ineluctably fall within the confines of that farm which is their property.

In his submission, Mr. Douglas contended that from the fact of occupation of the premises, a Court can infer control of a prohibited substance which is found thereon, and this principle is applicable to a joint occupancy. He said that in this case the Resident Magistrate was entitled to infer control of the ganja from the fact of occupation and ownership. He would be entitled to infer guilty knowledge also from the conduct of both appellants, viz., the running from the house, and the question asked by Morris, as well as his brother's reaction. We do not agree that Glassington's reply about the motor vehicles, and Morris' non-reply, cannot establish ownership of the vehicles or the land. Those are factors which had to be considered along with the other factors, adverted to in his judgment.

It is significant that the Resident Magistrate starts his 'Finding of facts' with the words 'The Court believes the

witnesses for the prosecution to be truthful witnesses and finds the following facts'. It is to be observed that those 'Findings of facts' do not set out all the facts which obviously arise from the notes of evidence. We have in the words of section 300 of the Judicature (Resident Magistrates) Jurisdiction Act, read those notes of evidence and received them as the evidence in the case. In considering the printed evidence and in endeavouring to ascertain its significance, this Court cannot be oblivious to the proper inferences which can be drawn from the finding of facts. In the examination of that evidence, we have been concerned to ascertain what the evidence really portrays, and to give due proportion to the facts in evidence, which as matter of law, would justify the conclusion by the Resident Magistrate that 'the Court advises itself as to the law regarding possession, constructive possession and circumstantial evidence, and concludes on the basis of the above-mentioned facts and the reasonable inferences to be drawn therefrom that both men are guilty as charged on all the informations.'

In our judgment, there is no basis for saying that the Resident Magistrate assumed facts which were not tenable. We do not, upon our detailed analysis of the evidence, find that his verdict was unreasonable.

We, accordingly, dismiss the appeals and affirm the several sentences imposed by the Resident Magistrate.