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ON APPEAL FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

THE DIRECTOR OF PUBLIC PROSECUTIONS
OF JAMAICA Appellant

- and -

WISHART BROOKS Respondent

CASE FOR THE APPELLANT

Record

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| 10 | 1. This is an appeal by special leave from a Judgment of the Court of Appeal of Jamaica (Luckhoo, J., Smith and Graham-Perkins, JJ.A.) dated the 2nd July, 1971, which quashed the Respondent's conviction in the Resident Magistrate's Court (His Hon. Mr. Lloyd Ellis) for the Parish of Trelawny, holden at Falmouth in Jamaica, of unlawfully having in his possession ganja (namely, 18 crocus bags and one bag containing ganja) contrary to section 7(o) of Chapter 90 (the Dangerous Drugs Law) of the Revised Laws of Jamaica and his sentence to 18 months hard labour. | pp.18-32 |
| 20 | 2. The Respondent and one Gary Palmer were tried together before the Resident Magistrate upon an information which charged them with the following offence, namely, on the 7th October, 1970, unlawfully having in their possession 19 bags of ganja contrary to section 7(o) aforesaid. The trial took place on the 27th January and the 10th February, 1971. | pp.1-2 |
| 30 | 3. Four witnesses gave evidence for the prosecution: the material facts as they emerge from that evidence may be summarised as follows. On the 7th October, 1970, Corporal Lakeman, Constable Hemmings, Corporal Wynter and other police officers set out in two cars from Rio Bueno for Braco in Trelawny arriving there at about 11.30 a.m. On reaching a point on the main road about one-quarter of a mile east of a point where a road leads from this road to the Braco airstrip, Corporal Lakeman saw a Ford Transit van X 559 parked on what appeared to be a lay-by some 20 yards ahead. Lakeman brought his car to a stop and he and Hemmings got out and ran towards | p.14 |
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the parked van. As they did so, either four men (according to Lakeman and Hemmings) or two men (according to Wynter) went from the cab of the van and ran into some bushes. The Respondent, on Lakeman's evidence, was one of those four men. When Lakeman reached the van he saw no one in it. Hemmings said that he apprehended the Respondent about eight feet from the left side of the van near some bushes; he said that he did not hold the Respondent round the steering wheel. Wynter said that he saw Hemmings holding the Respondent around the steering wheel. On reaching the van, Lakeman noticed that the engine was running; he switched off the engine and took the keys. He then looked into the body of the van, which was of the closed type without windows on the body. He saw eighteen crocus bags and one plastic bag from which emanated what he described as a strong odour; he said that it smelt like ganja. He could not be sure without opening the bags. Hemmings brought the Respondent to Lakeman who asked him why he ran from the vehicle. The Respondent said that a man named Reid employed him to drive the van to Brown's Town, that Reid took the van leaving the Respondent at Brown's Town; Reid returned with it loaded as it was, handed the van back to the Respondent and told him to drive it to Braco. Lakeman asked the Respondent if he knew what was in the bag; from the record, it does not appear that the Respondent made any reply. When the van was pushed from its position, Gary Palmer was found under it.

4. The Respondent and Gary Palmer together with the 19 bags were taken to Falmouth Police Station where, in their presence, Lakeman opened the bags. In each Lakeman saw vegetable matter resembling ganja. He sealed the 19 bags. He then arrested the Respondent and Gary Palmer and charged them with possession of ganja. The bags were taken to the Government Analyst who took a sample of the contents of each. He certified that his examination revealed the contents of the bags to be ganja. The weight of vegetable matter found in each of the 19 bags varied between $3\frac{1}{2}$ lbs. and 70 lbs. totalling in all some $1,079\frac{1}{2}$ lbs. of ganja.

5. At the conclusion of the case for the prosecution, counsel for the Respondent and Gary Palmer submitted that there was no case to answer. On the 10th February, 1971, the Resident Magistrate rejected the submission and ruled that there was a case both for the Respondent and Gary Palmer to answer. In the course of his ruling, the Resident Magistrate said :-

'.... It is true that there are discrepancies between the statements of the

three policemen. But to my mind these discrepancies do not really affect the important fact that the two accused were on the scene where the van was found

10 The men, i.e. the accused, were apprehended after they were seen to run from the vehicle. The discrepancies between the statements are not serious enough to allow me to agree with the submission put forward by Mr. Ramsay (Counsel for the Respondent) that the Crown's case fails Counsel for the defence submits that the Crown's case was contradictory on the issue of whether Brooks did run What if . . . I say that Brooks did run or did not run. Where would that leave the defence? That he did or did not run would not assist Brooks bearing in mind that he said he was the driver.

p.11 11.9-14

p.11 11.17-20

p.11 11.23-27

20 I hold therefore that the evidence led by the Crown establishes that the two accused were in the van and were seen by the police. Now that I have come to the above conclusion a question of law arises as to whether the accused were in possession of the ganja as charged

p.11 11.27-33

The submission was that to constitute Possession in Criminal Law three principles must be satisfied

p.11 11.34-45

- 30 (a) Exclusive Control
(b) Animus Possidendi
(c) Knowledge that there was possession of the thing and knowledge of what was possessed

It is the law that the cited principles must be satisfied before one can be convicted of being in possession of ganja

40 In the circumstances was Brooks in possession of the loaded van? It is of some moment that Brooks was not an ordinary 'porter'. He was the driver of a vehicle and was in occupation of that vehicle from Brown's Town to Bracco. He was seen in the van.

p.12 11.19-24

I cannot see a man in control of a van as its driver for such a distance and in occupation of that van described as only being in 'mere custody'

p.12 11.25-28

Record

p.12 1.35 -
p.13 1.2

The case of R. v. Maragh (1964) 2 G.L.R. 9 laid down the principle that the mere occupancy of premises without more could not be sufficient to establish that the occupants were in possession of ganja found on the premises. But the case of Cavendish (1961) 2 All E.R. 856 shows how slight is the evidence which is necessary to constitute the 'more' referred to in Maragh. Recently also R. v. Duncan et al has followed Cavendish's case. I hold that Brooks driving the van from Brown's Town and both himself and Palmer occupying the van for that distance is the 'more' required to ground possession in both accused

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p.13 11.14-16

Having decided that the accused were in possession, did they have knowledge that what they possessed was ganja? Was there mens rea?

p.13 11.17-37

On this point the case of R. v. Cyrus Livingston 6 J.L.R. 95 is very instructive. In that case at p.99 it was held that there are two degrees of knowledge which are enough to establish mens rea in cases of this kind.

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- (a) Actual knowledge which may be inferred from the facts of possession or from things done or from both.
- (b) the second degree of knowledge i.e. where the defendant deliberately shut his eyes to an obvious means of knowledge

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I have no hesitation in this case that the accused had actual knowledge that they had ganja.

I come to that conclusion in deference to a statement in the Livingston case - 'There was enough ganja to fill half the sack It would be remarkable if such a quantity of ganja passed unnoticed when handled even in the dark.' In the instant case it is not half a sack but 19 bags and so the cited statement in my opinion is most applicable to the case.'

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6. The Respondent called no witnesses but elected to make a statement from the dock in the following terms :-

p.13 1.38 -
p.14 1.3

'What I told Lakeman was true. I did not run from the van. Lakeman held me

around the steering wheel. That is my statement.'

Gary Palmer also called no witnesses but elected to make a statement from the dock. p.14 11.4-8

7. The Resident Magistrate found the Respondent and Gary Palmer guilty of the offence with which they were charged. He said :-

10 'I do not accept the stories put forward by the accused. I believe the police statements of Lakeman and Hemmings.'

They were both sentenced to 18 months hard labour. p.14 1.27

8. It is respectfully submitted that the proper inference to draw from the Resident Magistrate's acceptance of the evidence of Lakeman and Hemmings is that the Respondent ran from the van when the police officers approached, that he was apprehended by Hemmings and brought back to the van by him.

20 9. Both the Respondent and Gary Palmer appealed against their conviction and sentence to the Court of Appeal of Jamaica (Luckhoo, J., Smith and Graham-Perkins, JJ.A.). By a Judgment dated the 3rd July, 1971, the Court of Appeal allowed the appeals and set aside both convictions and sentences. The Appellant did not seek to support the conviction of Gary Palmer. pp.15-17
pp.18-32
p.27 11.5-8

30 10. The Court of Appeal found that the Respondent 'denied ownership of the bags, and any knowledge as to their contents.' There was no evidence that the Respondent said anything apart from giving his explanation that one Reid had employed him to drive the van. It is respectfully submitted that while such explanation may have amounted to a denial of ownership it did not constitute a denial of possession or knowledge. According to the record of Lakeman's evidence, the Respondent made no reply when asked 'if he knew what was in the bag.' p.19 11.40-42
p.3 11.36-37

40 11. The Court of Appeal held that the Resident Magistrate had found that the Respondent was in occupation of the van, driving the same from Brown's Town to Bracco, and that from the fact of that occupation the Respondent was in possession of the 19 bags found in the van. The Court of Appeal decided that the Respondent was not shown to have anything more than mere custody or charge of both the van and its contents. The Court of Appeal held that there was no evidence of possession by the Respondent (in the sense that he was shown to have knowledge that the van was loaded or that its contents were ganja) as distinct from being in p.25 11.7-15
p.31 11.35-39
p.32 11.10-14

charge of whatever the loaded van contained. In the view of the Court of Appeal, all that the prosecution proved was that the Respondent had driven the van on Reid's instructions and that there were 19 bags of ganja in the van.

12. It is respectfully submitted that for the purposes of the Dangerous Drugs Law there must be (a) possession de facto, (b) knowledge of the existence of the goods in question - in the present case, knowledge that the van was loaded, and (c) knowledge of the nature of the goods in question. In the absence of evidence to the contrary (b) and (c) may be inferred from (a). It is respectfully submitted that the Resident Magistrate was right in rejecting the submission of no case to answer because the circumstances in which the bags of ganja were found by the police and the Respondent's connection with such bags justified the conclusion, in the absence of explanation by the Respondent, that he knew the bags of ganja were in the van.

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13. It is respectfully submitted that the following circumstances called for an explanation by the Respondent in the sense that they disclosed a prima facie case of possession of the ganja, namely :-

- (i) that the Respondent had driven the van 16 miles from Brown's Town to a point near to Braco (a private airstrip) loaded with 19 bags of ganja;
- (ii) that the 19 bags contained in excess of 1,000 lbs. of ganja;
- (iii) that the body of the van was in no way sealed, the doors to the same being easily opened;
- (iv) that at least two of the men with the Respondent ran away when the police approached;
- (v) that the statement made to the police by the Respondent did not explain what instructions were given as to delivery and to whom the load in the van was to be delivered; nor did such statement explain who the men with the Respondent in the van were and why they ran away;
- (vi) that the Respondent had apparently made no enquiries as to what the van contained, although he knew, according to his statement to the police, that the van was loaded with something;

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(vii) that when asked by Lakeman 'if he knew what was in the bag', the Respondent made no reply.

10 14. In the circumstances set out in paragraph 13 hereof, it is respectfully submitted that the Resident Magistrate was entitled to find that there was a prima facie case against the Respondent of possession of the ganja which included knowledge that the load contained ganja.

20 15. It is respectfully submitted that, having rejected the submission of no case to answer, the Resident Magistrate was entitled to accept the evidence of the police officers, Lakeman and Hemmings, as he did. The acceptance of their evidence involved a finding that the Respondent sought to run away from the police when they approached, at a time when the engine of the van was still running. It is respectfully submitted that the additional factor of the Respondent's running away together with the matters set out in paragraph 13 hereof provided ample justification for the Resident Magistrate's conclusion that the offence was proved against the Respondent. It is respectfully submitted that the Court of Appeal was wrong as a matter of law in holding that there was no evidence of possession.

30 16. That it is respectfully submitted that the case of R. v. Cyrus Livingston is relevant to this appeal. The Resident Magistrate cited that case towards the end of his Ruling to illustrate the principle that it matters not by what means a defendant's mind is adverted to the presence of ganja whether by sight or smell or information received or by general circumstances such as to put a reasonable man upon his enquiry. It is respectfully submitted that, while there was no evidence that the Respondent actually handled any of the bags, the general circumstances were such as to put the Respondent upon his enquiry and to justify the Resident Magistrate in finding a prima facie case against him and in finding the case proved. p.13 11.17-37

40 17. It is respectfully submitted that this is an important case for the proper administration of justice in the Island of Jamaica. There is an increasingly large illicit export trade in ganja between Jamaica and the United States of America; the usual method is to transport the ganja by motor vehicle to meet small aircraft at private airstrips (such as Braco in this case). It is usually only in transit that the police are able

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to carry out successful investigations leading to arrest and prosecution, detection at the cultivation being difficult because the farming is carried out surreptitiously in remote hilly areas. The conviction of the Respondent was quashed on the principal ground that there was no evidence that he had knowledge that the load in the van he was driving consisted of ganja. It is respectfully submitted the grounds of this decision are wrong and are likely to be drawn into an evil precedent for the future, thereby impeding the due and orderly administration of the law in the Island of Jamaica.

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18. The Appellant therefore respectfully submits that this appeal should be allowed and the conviction and sentence of the Respondent restored for the following among other

REASONS

1. BECAUSE the Court of Appeal was wrong in holding that there was no evidence that the Respondent had anything more than mere custody or charge of the van and its contents. 20
2. BECAUSE the Court of Appeal was wrong in holding that there was no evidence of possession of both the van and its contents.
3. BECAUSE the Court of Appeal was wrong in holding that the Resident Magistrate had inferred knowledge by the Respondent of the contents of the van from the fact of the Respondent's 'occupation' of it and from that alone. 30
4. BECAUSE the Resident Magistrate was entitled on the evidence to find a prima facie case of possession in the Respondent of both the van and its contents and to convict the Respondent.

STUART N. McKINNON

IN THE PRIVY COUNCIL

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- and -

WISHART BROOKS Respondent

CASE FOR THE APPELLANT

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