

judgment no. 8, 1974

8

IN THE PRIVY COUNCIL

No. 33 of 1972

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

WISHART BROOKS

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 4 JAN 1975
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LONDON, W.C.1.

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Appellant

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Respondent

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1.

IN THE PRIVY COUNCIL

No. 33 of 1972

O N A P P E A L

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

10

RECORD OF PROCEEDINGS

In the
Resident
Magistrate's
Court

No. 1

No. 1

INFORMATION

Regina vs. Wishart Brooks and
Garry Palmer

Information No. 2525/70

Information
No. 2525/70
7th October
1970

Parish of Trelawny

20

The Information and Complaint of Owen S. Lckeman Cpl. of Police of the parish of Trelawny made and taken upon oath before the undersigned this 7th day of October in the year of Our Lord One thousand nine hundred and seventy who saith that on Wednesday the 7th day of October in the year aforesaid one Wishart Brooks and Gary Palmer of the said parish of Trelawny with force at Brace Road and within the jurisdiction of this Court Unlawfully had in their possession Ganja, (18 crocus bags and one plastic bag containing ganja) Contrary to Section, 7 (c) of Chapter 90 of the revised Laws of Jamaica against the form of the Statute in such case made and provided, and against

30

2.

In the
Resident
Magistrate's
Court.

the Peace of Our Sovereign Lady the Queen Her Crown
and Dignity, and thereupon the said Complainant
prays that the said Wishart Brooks and Gary Palmer
may be made to answer unto the said Complaint
according to Law.

No. 1

X Sgd. O.S. Lakeman

Information
No. 2525/70
7th October
1970
(cont.)

Taken and sworn to before me at Duncans in the
parish of Trelawny this 7th day of October One
thousand nine hundred and seventy.

Sgd. L.G. Cooke,

10

Justice of the Peace for the Parish
of Trelawny.

No. 2

Proceedings

No. 2

PROCEEDINGS

Information No. 2525/70

Reg vs. Wishart Brooks and Gary Palmer

for

POSSESSION OF GANJA

Mr. I. Ramsay for BROOKS

Mr. Howard Hamilton and P. Atkinson for PALMER

20:

PLEA: NOT GUILTY

PLEA: NOT GUILTY

No. 3

CORPORAL OWEN LAKEMAN

Prosecution
evidence

No. 3

Corporal
Owen
Lakeman
Examination

Owen Lakeman Sworn Corporal of Police at
Duncans in Trelawny. On 7th October, 1970 at
about early morning I got certain information
and communicated with Inspector Smith. It was
about 8 a.m. After I spoke to Smith he and
Constable Grant joined me at Duncans Police
Station. After that I took Constable Hemmings
in my car and Inspector Smith went with Grant

30

in his car. We went to Braco where we made observations.

In the
Resident
Magistrate's
Court.

Prosecution
evidence

No. 3

Corporal
Owen
Lakeman
Examination
(cont.)

10 Braco is in Trelawny. After observations we went to Rio Bueno station and picked up Acting Corporal Wynter. At 11.30 a.m. we motored back towards Braco. Reaching about $\frac{1}{4}$ mile from the entrance of the Airstrip from Rio Bueno side. At a part of the road which is straightened out about 10-15 yards into the old road I saw a red and white Transit Ford Van X559. It's front was turned into old road towards Braco - the airstrip.

This van was parked with four (4) men on the front seat. I was then about 20 yards. I stopped my car and Hemmings and I got out as did the Inspector Smith. We ran to the van. I was in uniform. Before reaching the van the four (4) men came out and ran into some bushes.

20 Wishart Brooks one of the accused here today was sitting behind the wheel. On reaching the van I noticed that the engine was running. I switched off the vehicle and took keys. I looked in the van. I noticed a number of crocus bags and very strong odour coming from the van.

In going to the van they ran out. Soon after that I saw Hemmings bring back Brooks. The bags I saw I looked in them at the Station. I spoke to Brooks at Bracco. I asked him why he ran from the vehicle.

MR. RAMSAY OBJECTS

30 ? objection to admission of evidence
He said a man named Reid employed him to drive the van to Brown's Town, Reid took the van leaving him Brooks at Brown's Town. Reid returned with it loaded as it was, handed it back to him and told him to drive to Braco where I saw him.

40 I asked him if he knew what was in the bag. I spoke to him further. I put him to sit in Inspector's Car and waited for fifteen (15) minutes. I did not see anyone turn up. Acting Corporal Wynter tried to start the van. The van had to be pushed. After we pushed the vehicle we saw Gary Palmer under the vehicle. I held him. He begged for a chance. He said he was hungry and travelling

In the
Resident
Magistrate's
Court.

Prosecution
evidence

No. 3

Corporal
Owen
Lakeman
Examination
(cont.)

he saw the vehicle parked with the men and he went to beg something. But seeing the Policemen he ran and went under the vehicle. I handed him over to Constable Grant. Palmer was one of the four (4) men I saw in the vehicle. After I held Brooks and Palmer, Wynter drove the van in front followed by Inspector Smith with Brooks. I followed with Palmer. We drove to Falmouth Examination Depot with vehicles.

We took the prisoners out of the vehicles. Vehicle was unloaded and eighteen (18) filled crocus bags and a small plastic bag was taken from the vehicle. The two men and the bags were taken into Sergeant's Office adjoining guard room. In presence of Defendants I opened the bags. In each I saw Green Vegetable matter resembling Ganja. I sealed all nineteen (19) bags with sealing wax and labelled them in accused's presence. I arrested both men for possession of Ganja. Cautioned them they made no statement. I handed over defendant's to station guard and the exhibits to Sergeant Johnson:

18 filled bags
1 plastic bag

On 8th October, 1970 I accompanied Sergeant Johnson and a party to the Government Chemist's at Hope, in St. Andrew. I saw the Chemist open each bag separately and took samples from each bags separately placed the samples in nineteen separate envelopes which were sealed in my presence.

The bags were also sealed and handed back to Sergeant Johnson. I noticed that the chemist labelled the envelopes. He gave Sergeant Johnson receipts for them. These are the bags I found in the van. The one I handed over to Johnson. The ones I took to Government Chemist at Hope.

For Identification. I made other checks as to ownership of the van. I saw the owner of the van. I spoke to him he told me something.

Cross-
Examination

XXD BY RAMSAY

I opened bags at the station. I am aware that I must caution persons suspected before I arrest. At the scene I did not caution Brooks. I did not

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30

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suspect him of any offence. His actions caused me to suspect him of an offence but not for a specific offence. I had certain information re: ganja.

In the
Resident
Magistrate's
Court.

I saw a vehicle, we ran to it with guns. Men ran from vehicle. I saw crocus bags in vehicle and smell odour. I think I was smelling dry bush. It was not cerase. It smell like ganja. Without opening it I could not say. That applies to Defendant also. I held on to both men and took them to the station. Up to then they were not charged with any offence. What I told the Court is true. This quantity of ganja would reap plenty money. The accused did not own the ganja.

Prosecution
evidence

No. 3

Corporal
Owen
Lakeman

Cross-
Examination
(cont.)

XXD BY MR. HAMILTON

The van was a closed up van. It had no windows on the body. There is a seat in front where the driver sits and passengers. The only windows would be to the front. The rest of the body is enclosed. I saw four (4) people in the van all sitting in front no one was around the back. I could not see in the cab from the back. I went straight to the van. I drove up abreast of the van. I ran to side of the van. Van was at an angle to main road. Where van was, was like a lay by. I can't say who was next to driver. I am sure all four (4) were in the van. I can't say Palmer was on the outside. All four got out and ran into bushes.

They left van from left side. I ran up to van and took out keys. No one was in the cab. I would not say all four ran into the bush. I could not swear that I saw four (4) men ran into the bush. It was a mistake when I told Clerk of Courts that four (4) men ran into the bush. I agree that Palmer went under the vehicle. I discovered him when vehicle was pushed away. No one said "See one lilly one yah". I did not see Palmer run under the van. I saw four men ran from van. I did see him leaving the vehicle. I can't say that I saw Palmer under the van. I saw four men ran from van. I can't swear that I saw Palmer in the van.

RXXD

Re-
examination

When I found bags I did not know who drop them.

In the Resident Magistrate's Court.

Coming from Rio Bueno I could only see back. I did not see anyone outside of the van. When my vehicle stopped no one was outside the van.

Prosecution evidence

RESUMPTION AT 2.05

Mr. Atkinson also for Palmer enters.

No. 3

Corporal Owen Lakeman

Re-examination (cont.)

No. 4

Corporal G. Wynter

Examination

No. 4

CORPORAL G. WYNTER

G. Wynter Sworn Acting Corporal at Ulster Spring in Trelawny. I remember 7th October, 1970 on the morning of that day at about 11.30 a.m. I went left with a party of police from Rio Bueno led by Inspector Smith and Corporal Lakeman and we went towards Braco in Trelawny. We did not reach Braco. About 1/4 mile from Braco on a side road. That was the part we stopped. I travelled in Inspector Smith's car.

10

When we got to this place I saw a red and white Ford Transit Van parked on the side road. It's front was facing Duncans. Cpl. Lakeman stopped a little below the van on the main road. We stopped above on the same main road. Corporal Lakeman and his men alighted and went towards the van. Inspector Smith and I alighted from his car and went towards the van also. While going to the van I saw 2 men run towards a thick clump of bushes. They came from the front of the van.

20

I saw no one else in the van. The men went in the bushes. The van is a right hand drive. Constable Hemmings went to the right hand side of the van. I saw him hold on to the accused Brooks. Brooks was held around the steering wheel. I saw no one else. Before I got out of my car I saw the van. I did not see anybody in van before I got

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out. After Brooks was held, Corporal Lakeman switched off van and took possession of ignition keys. I looked in the van. I saw some crocus bags in the van and each bag appeared to contain something. I tried to get van started but it proved fruitless. The van was pushed and it started. After that I reversed the van into the road and I saw Corporal Lakeman holding the other accused Palmer.

In the Resident Magistrate's Court.

Prosecution evidence

No. 4

Corporal G. Wynter

Examination (cont.)

10

On the same day I drove car towards Falmouth with Inspector Smith and Corporal Lakeman driving their cars behind me. The bags were still in the back of the van. I went to Police Station. Bags were unloaded in Sergeant's room. The men Brooks and Palmer were taken into the room with the bags. I watched and saw Corporal Lakeman seal the bags and also a little plastic bag. This was done in accused's presence. Keys were handed to Inspector Smith.

20

XXD BY RAMSAY

Cross-examination

The van was parked on a side road facing Duncans. We were going towards Duncans. Van was slanting. I could see van from Main Road. I called it a side road. It is called a lay by also. Corporal Lakeman stopped below. My below means front and above means back. Lakeman was in front of the vehicle. He would have to run back to it. Our vehicle was behind. I did not have to run back. Hemmings held Brooks when he was around the driver's wheel. I saw him held right there. Lakeman stretched across Brooks. The van was running but a little later it could not start.

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When it was pushed and started I saw Palmer. I can't say where he came from. I did not hear anyone say see one lilly one deh. I only saw two men running to clump of bushes. I can't say who the men were.

XXD BY MR. HAMILTON

NONE

40

To Court:

Matter of seconds.

I have not seen any of the men who run to the bushes.

In the
Resident
Magistrate's
Court.

No. 5

CONSTABLE S.J. HEMMINGS

Prosecution
evidence

S.J. Hemmings Sworn stationed at Wakefield station in Trelawny. I remember 7th October, 1970 I went to Braco in Trelawny. I travelled in Corporal Lakeman's car. This was about 11-11.30 a.m. When I got there I saw nothing. I did something that morning. I did not get out of my car.

No. 5
Constable S.J.
Hemmings

Examination

I went to Braco and looked the Rio Bueno added A/C Wynter and we were going back to Braco. I was in Lakeman's car. Inspector Smith was behind us. At about the vicinity of Braco I saw a Ford Transit van parked at the entrance of a side road near the main road. Corporal Lakeman stopped about 10 feet in front of the van. I got out of the car. I saw four men sitting in the front of the van. As I came out they started running out of the left door of the van. I rushed around to where they were exiting [sic] and about 8 feet from left door of the van. I held on to Defendant Brooks. I took him to Lakeman who was by the van. Brooks was eight (8) feet from the left side of the van near some bushes. I had seen him before I held him.

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He was around the driver's wheel when I saw him. After I held Brooks he spoke to Lakeman. After that while I was in Inspector Smith's car with Brooks Corporal Lakeman told Wynter to drive the car. Wynter went in. The van gave trouble to start. We pushed it and it started.

30

Then I saw Palmer lying under the van. Lakeman held him. Lakeman went to Falmouth.

Cross-
examination

XXD BY RAMSAY

I went to Braco at 11.30 a.m. and I saw nothing unusual at the time. We went back to Braco nearing midday or about midday.

It would not be about 3 hours that elapsed between my first visit and the second. I was with Lakeman at 8.00 a.m. to 11.30 and 12.

I have not heard the phrase, "Oh what a tangled web etc". I saw four (4) men towards

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a clump of bushes. All four did not go in the bush. I heard footsteps in the bushes. I saw men run towards the bushes and I heard two men running in the bush. I held Brooks in the bushes By the bushes. He was by the bush, He was not in the bush. It was by the bush. I did not hold Brooks around the wheel. I am the one who held Brooks. I did not see Lakeman switch off engine. I did not see him stretch across Brooks and take out keys. I took Brooks to Lakeman who was by the van. The right side. The front was towards Duncans.

10

In the Resident Magistrate's Court.

Prosecution evidence

No. 5

Constable S.J.

Cross-examination (cont.)

Van was at the entrance of side road. It was at the entrance. That road would lead back to the main road. Lakeman was not going to main road when I handed over Brooks. I ran to left side of the van. I left Lakeman in the car. I went around the front of the van. The car was not abreast of the van. It was close. My vehicle was in front. My vehicle stopped on main road. The van could not have been 10-15 yards up the side road. I did not run back to the van. Where my car stopped I would have to go back to the van. I got to right hand side of van first. I have spoken the truth About 4 - 5 minutes. It was not a matter of seconds.

20

No XXN BY HAMILTON

REXD

Re-examination

It was not at the same time. I saw four men first and then heard two in the bushes. Brooks was not one of the men. Apart from the police and the four (4) men did you see anyone else that day?

30

No.

No. 6

No. 6

SERGEANT JOHNSON

Sergeant Johnson

Examination

Sergeant Johnson Sworn Stationed at Falmouth in Trelawny. On 7th October, 1970 I was at Falmouth Police Station. Corporal Lakeman and other police men came there. They brought eithteen (18) Crocus filled with Green vegetable matter resembling ganja and one (1) small plastic bag with

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In the Resident Magistrate's Court.

Prosecution evidence

No. 6

Sergeant Johnson

Examination (cont.)

green vegetable matter resembling ganja. Both accused were there. The bags were sealed by Lakeman in accused's presence. After the bags were sealed they were given to me by corporal Lakeman. I kept them in safe custody. I locked them in store room and I kept the key. I took them on the 8th to the Government Chemist at Hope. He took samples from the bags. Bags were given to me on the eighth. I went to Government Analyst and got Certificate signed by Mr. Mootoo. I saw him sign the certificates. These are the bags. All 19 (nineteen) bags. EXHIBIT 1.

10

These are certificates EXHIBIT 2.

XXD. No EXAMINATION.

NO XX BY HAMILTON

CASE FOR PROSECUTION

No. 7

Convictions and sentences

10th February 1971

No. 7

REASONS FOR CONVICTIONS AND SENTENCES

The accused in this case have been charged with being found in possession of Ganja. Contrary to Section 7 (a) of Chapter 90. At the close of the prosecution case on 27th January, 1971, Mr. Ian Ramsay of Counsel for the accused Brooks made a submission that there was no case made out against Brooks and also that in fact there was none against Palmer. Counsel elected to call no witnesses but to stand on his submission. Mr. Howard Hamilton of Counsel with whom was associated Mr. Patrick Atkinson adopted Mr. Ramsay's legal submissions and made some further submissions on the facts in respect of accused Palmer.

20

30

Mr. Ramsay has placed his submissions in two (2) sections.

- (a) Facts
- (b) Law

On the first section he submits that there is a conflict between the statements of the three (3) policemen who were called as witnesses and so the prosecution's case was in three (3).

40

The crown he says should present it's case as a composite whole and if one part of the Crown's case is bad the case fails in its entirety.

It is true that there are discrepancies between the statements of the three (3) policemen. But to my mind those discrepancies do not really affect the important fact that the two accused were on the scene where the van was found. Furthermore that fact that the accused were apprehended by the officers at the scene was not challenged.

In the Resident Magistrate's Court.

No. 7

Convictions and sentences
10th February 1971
(cont.)

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 - that the Crown's case fails. I am aware of the principle that where two (2) inferences can be drawn one unfavourable to an accused and the other favourable the latter should be drawn. Counsel for the defence submits that the Crown's case was contradictory on the issue of whether Brooks did run and I am asked to say that because Wynter said Brooks was apprehended behind the steering wheel that lets in the principle of the two (2) inferences. What if in difference to the principle 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. I hold therefore that the evidence lead by the Crown
20 establishes that the two (2) accused were in the van and were seen by the police. Now that I have come to the above conclusion a question of law now arises as to whether the accused were in possession of the ganja as charged.
30

The certificates stated that the exhibit was ganja as defined in Cap. 90. The certificate was not challenged. The submission was that to constitute Possession in Criminal Law 3 (three) principle must be satisfied.

- 40 (a) Exclusive Control
(b) Animum Possidonte
(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. It is now necessary to

In the
Resident
Magistrate's
Court.

(examine) (consider) carefully whether the principles were satisfied.

EXCLUSIVE CONTROL

No. 7
Convictions
and
sentences
10th
February
1971
(cont.)

Defence submits that the presence of other persons negatived such control in anyone person. Joint possession cannot be assumed before specific possession in one or the other was proved. In support of that argument R. vs. Mulvin Brown 3G.L.R.1. Reg vs. Hutchinson et al. R.M.C.A. 322/66, Peter Burkner and R.V. Dennis Hall S.C.C.A.358/66 WERE Cited.

10

Lakeman stated that the accused Brooks said "A man named Reid employ me to drive the van to Brown's Town. Reaching Brown's Town, Reid took the van and left me at Brown's Town. Reid come back with it loaded as it was handed it back to me and told me to drive to Braco." The defence has not denied making that statement. (In fact proved by Crown). 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 Braco. He was seen in the van.

20

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

In other words it is my opinion that Brooks cannot be said to be a "subordinate", in the sense the defence seeks to put forward. I do not accept Palmer's story that he was merely seeking food. I believe that he was in occupation with Brooks and 2 (two) others who were not apprehended.

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The case of R. v. Maragh (1964) 2 G.L.R. 9 laid down the principle that 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) 2A16 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

40

the van for that distance is the more required to ground possession in both accused.

In the Resident Magistrate's Court.

It is of some note that most of the cases relied on by the defence are cases dealing with receiving stolen property and so come under the law of Larceny. To my mind therefore those cases are not strictly relevant to possession under the Dangerous Drugs Law.

No. 7

Convictions and sentences

10th February 1971 (cont.)

10 Hobson v. Impett was cited by the defence support of it's submission. But the case of R. v. Gleed (1916) 12 Cr. APPR32 should also be examined. The Facts in Gleed were similar to Hobson vs. Impett but Gleed was convicted.

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

20 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 2 degrees of knowledge which are enough to establish mens rea in case of this kind.

(a) Actual knowledge which may be inferred from the fact of possession on form 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. I have no hesitation in this case that the accused had actual knowledge that they had ganja.

30 I come to that conclusion in difference 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 1/2 a sack of ganja but 19 bags and so the cited statement in my opinion is most applicable to the case.

40 Defence calls no witnesses but makes a statement from Dock. Wishart Brooks of 36 Thompson Street, Montego Bay.

What I told Lakeman was true. I did not run

In the Resident Magistrate's Court.

from the van. Lakeman held me around the steering wheel.

That is my statement.

GARY PALMER of Glendevon in Montego Bay. I did not in the van. I went to beg something and when I saw the men coming with guns and went under the van side to hide.

No. 7 Convictions and sentences

That is my story.

10th February 1971 (cont.)

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

10

RAMSAY - Wishart Brooks says. - We have the statement of Brooks. A statement which he made to Lakeman. Wynter also said he was held behind steering wheel.

HAMILTON - No evidence of Palmer being in the van. Lakeman first identified Palmer under the van.

The accused Palmer said he ran because he saw guns. The Crown has not in any way negatived Palmer's statement and therefore he ought not to be convicted.

20

I cannot agree with the submissions. I find abundant of circumstantial evidence to place Palmer in the van.

BOTH GUILTY

Plea in mitigation by Ramsay.

11

Each to serve 18 months Hard Labour.

No. 8

GROUNDS OF APPEAL

IN THE RESIDENT MAGISTRATE'S COURT
FOR THE PARISH OF TRELAWNY
HOLDEN AT FALMOUTH

REGINA

VS

WISHART BROOKS

&

GARY PALMER

In the Court
of Appeal

No. 8

Grounds of
Appeal

23rd
February
1971

10

1. Possession of Ganga

TAKE NOTICE that the following are the
Grounds of Appeal on which the Appellant Brooks
will rely, inter alia, at the hearing of his
Appeal herein:-

20

1. That the Learned Resident Magistrate failed
to make a finding on the important issue on
which there was conflict in the Crown's case,
viz: whether the Defendant Brooks ran or not:
and that this was material to an inference of
guilty knowledge or otherwise.

2. Although paying lip-service to the principle
that mere "occupatio" or presence does not
constitute possession the Learned Resident
Magistrate in effect proceeded on and
convicted on mere "occupatio" and presence.

30

3. That the Learned Resident Magistrate confused
Livingstone's case (6 J.L.R. 95) with the
instant one in order to arrive at the
"something more" required by the authorities
in addition to "occupatio"; while ignoring
the distinctions in Livingstone's case, viz -

(a) In Livingstone the Appellant was on the
facts a Common Carrier or agent of a
Common Carrier - a special legal
category which has possession by law,
as opposed to custody or charge.

In the Court
of Appeal

No. 8

Grounds of
Appeal

23rd
February
1971
(cont.)

(b) In Livingstone the Appellant, actually handled the goods in question. In the instant case neither of the above conditions were proved in relation to Brooks.

4. The whole approach of the Learned Resident Magistrate was unjudicial, in that he appeared to operate not by strict law and reasoning, but on suspicion, predilection or speculation; drawing inferences where none were possible or were wholly unreasonable, e.g. (a) The sole fact that the Defendant Palmer was found hiding beneath the van means that -

10

(i) he was in the van at that spot.

(ii) Not only that, but it meant as well that he was in the van for miles before.

(b) The positive rejection of the statements of the accused persons though these were not opposed by any contrary fact proved by the Crown.

20

(c) The fact that a man drives a vehicle means that he is in "Possession" of the goods therein rather than in "charge" of them. (custodia)

5. That there was evidence proving beyond reasonable doubt -

(a) That without opening the bags in the van no one could know that the contents were Ganga: that the "smell" referred to by the Police officer was equivocal, i.e. could relate to Ganga as well as to other vegetable products.

30

(b) That the van did not belong to the Defendant Brooks.

(c) That the van belonged to someone else.

(d) That that man was interviewed by the Police.

40

That there was evidence showing to a probability: (at the least)

In the Court
of Appeal

No. 8

Grounds of
Appeal

23rd
February
1971

(cont.)

- (e) That the man the van belonged to was a man named Reid.
- (f) That the goods therein were the goods of the said Reid, and not of the Defendant Brooks.
- (g) That the Defendant Brooks had driven the van at the request and instruction of the said Master - Reid.

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- 6. That no charge of Possession was made out against the Defendant Brooks; and that the better or nearer charge disclosed upon the evidence for the Prosecution would have "Using a vehicle for Carrying Ganga" under S.22 of the D.D. Law as amended by S. 3 (c) of the D.D. Amendment Act, Law 10, of 1964.

WHEREFORE THIS APPELLANT HUMBLY PRAYS:-

- 1. That his conviction and sentence be set aside.
- 2. That this Honourable Court may grant him such other and further relief as may be just.

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Dated the 23rd day of February, 1971.

Sgd. IAN RAMSAY

Counsel for the Defendant Appellant

Filed by Ian Ramsay, Esq., of No. 53 Church Street,
Kingston P.O.

In the Court
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No. 9

JUDGMENT

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 25/1971

BEFORE: The Hon. Mr. Justice Luckhoo, Presiding
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

REGINA

v.

WISHART BROOKS & GARY PALMER

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Ian Ramsay, for the Appellant Brooks

Howard Hamilton and Patrick Atkinson, for the
Appellant Palmer

Henderson Downer, for the Crown

2nd July 1971

GRAHAM-PERKINS, J.A.

On the 26th of May last we allowed this appeal against the conviction and sentence of the appellants on an information which charged them jointly with possession of ganja contrary to section 7(c) of Cap.90. We promised to put our reasons in writing and, accordingly, we set them out hereunder.

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At the trial of the appellants before His Hon. Mr. Lloyd Ellis Resident Magistrate for Trelawny, the prosecution led evidence through three material witnesses. From the evidence-in-chief and cross-examination of these witnesses there emerged the following picture: On the 7th October, 1970 Cpl. Lakeman, Constable Hemmings, Cpl. Wynter and other police officers set out in two cars from Rio Bueno for Braco in Trelawny

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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 main road to the Braco airstrip Cpl. Lakeman saw a Transit Ford Van X 559 parked on what appears to be a lay-bye some 20 yards ahead. Lakeman brought his car to a stop and he and Hemmings got out and, armed with guns, ran towards the parked van. As they did so, either four men (according to Lakeman and Hemmings), or two men (according to Wynter), came from the cab of the van and ran into some bushes. The appellant Brooks, on Lakeman's evidence, was one of those four men. According to Wynter, however, Brooks did not run from the van. - "Brooks was held around the steering wheel". However, when Lakeman reached the van he saw no one in it. He opened a door in the body of the van and saw some eighteen crocus bags and one plastic bag from which emanated what he described as a strong odour. He could not determine, without opening the bags, what they contained. At first he thought he "was smelling dry bush", but later he thought the odour was that of ganja. It is of some importance to note here firstly, that Lakeman did not appear to have detected any particular odour until he opened the door of the body of the van, and secondly, that there was no means by which one could see anything inside the body of the van without opening the door. Shortly after the discovery of the bags in the van Hemmings, who had gone in search of the men, came up to the van holding the appellant Brooks. Lakeman questioned Brooks about his connection with the van. Brooks explained that a man named Reid, the owner of the van, had employed him to drive the van to Brown's Town, that on reaching there Reid took the van leaving him (Brooks) at Brown's Town, that Reid returned with it loaded as it was, and handed it back to him and told him to drive it to Braco. Brooks denied ownership of the bags, and any knowledge as to their contents. The appellant Palmer who was not identified as one of the men seen running from the van, was discovered to have been under the van when it was pushed from its position. He said, on being questioned by Lakeman, that he was hungry and had approached the men in the van "to beg something" but on seeing armed policemen approaching he sought refuge under the van.

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The two appellants, together with the bags, were taken to the Falmouth police station where, in the presence of the appellants, Lakeman opened the bags. In each Cpl. Lakeman saw vegetable matter resembling ganja. He sealed the nineteen bags. He then arrested the appellants 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.

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Lakeman, no doubt as a result of what the accused Brooks had told him, saw and spoke with the owner of the van. This person, Reid, was not called by the prosecution. This, then, was the case for the Crown. At this point, Mr. Ramsay for Brooks and Mr. Hamilton for Palmer submitted that no prima facie case had been made out to justify the learned Resident Magistrate in calling upon either appellant. In a somewhat lengthy ruling in writing the Resident Magistrate did not uphold the submission. For the sake of completeness it is desirable to set out certain extracts from the Resident Magistrate's ruling:

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(a) "It is true that there are discrepancies between the statements of the three policeman. 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. Furthermore the fact that the accused were apprehended by the officers at the scene was not challenged. The men were apprehended after they were seen to run from the vehicle."

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(b) "What if in deference to the principle 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. 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 now arises as to whether the accused were in possession of the ganja ..."

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(c) "The submission was that to constitute possession ... three principles must be satisfied; exclusive control, animus possidendi, knowledge that there was possession of the thing and knowledge of what was possessed. ... It is now necessary to examine carefully whether these principles are satisfied."

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10 (d) "Lakeman stated that the accused Brooks said
'a man named Reid employed me to drive the
van to Brown's Town. Reaching Brown's Town
Reid took the van and left me at Brown's
Town. Reid came back with it loaded as it
was handed it back to me and told me to
drive to Braco'. The defence has not
denied making that statement - in fact proved
by the Crown. In the circumstances was
Brooks in possession of the loaded van? It
20 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 Braco. He was seen in
the van. 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. In other words, it
is my opinion that Brooks cannot be said to
be a subordinate in the sense the defence
30 seeks to put forward. I do not accept
Palmer's story that he was merely seeking
food. I believe that he was in occupation
with Brooks and two others who were not
apprehended."

40 (e) "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 ... Having decided that the accused
were in possession did they have knowledge
that what they possessed was ganja? Was there
mens rea? On this point the case of R. v.
Livingston is very instructive. In that
case it was held that there are two degrees
of knowledge which are enough to establish
mens rea in a case of this kind. Actual
knowledge which may be inferred from the
fact of possession or from things done or
from both. The second degree of knowledge,

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i.e. where the defendant deliberately shut his eyes to an obvious means of knowledge. I have no hesitation in this case in finding 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 of ganja but nineteen bags and so that the cited statement in my opinion is most applicable to the case."

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The record discloses that "Defence calls no witnesses but makes a statement from the dock". Brooks made an unsworn statement in which he said "What I told Lakeman was true. I did not run from the van. Lakeman held me around the steering wheel."

Palmer, too, made an unsworn statement. He said "I was not in the van. I went to beg something and when I saw the men coming with guns I went under the van side to hide."

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At the close of the case for the defence the record discloses that the learned Resident Magistrate said "I do not accept the stories put forward by the accused. I believe the police statements of Lakeman and Hemmings."

It is now necessary to examine the above quoted extracts in order to determine firstly, the precise factual situation which the learned Resident Magistrate found to be established by the evidence, and secondly, how he related the law to that factual situation. We observe, parenthetically, that his ruling on the no case submission quite clearly involved a certainty and finality of resolution of all issues in favour of the prosecution. Unquestionably, this must have effectively precluded him from forming any balanced and impartial assessment of the unsworn statements of the appellants. That this is so, appears from his "finding" noted above; "I do not accept the stories put forward by the accused. I believe the police statements of Lakeman and Hemmings". But having accepted Lakeman's evidence as to the admission by Brooks this

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evidence would have been receivable to establish the truth of what Brooks said. It is not easy to understand, therefore, what the Magistrate meant when he said that he did not accept the "story" put forward by Brooks. Neither Mr. Ramsay nor Mr. Hamilton invited us to consider this aspect of the case.

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10 Extracts (a), (b) and (e): These extracts make it clear that the learned Resident Magistrate reached the conclusion that both appellants travelled in the van from Brown's Town to Braco. As far as the appellant Palmer is concerned there is clearly not a scintilla of evidence from which the Magistrate could have drawn any such conclusion. This conclusion must have been born of the wildest speculation. As to Brooks the conclusion was perfectly legitimate. Although Brooks did not, in so many words, say that he had driven the van from Brown's Town to Braco the inference that he had
20 done so was inescapable.

30 Extract (d): The Magistrate is here saying that he finds it to be the fact that Brooks told Lakeman at Braco exactly what Lakeman quoted Brooks as having said. Indeed Brooks maintained in his unsworn statement that what he had said to Lakeman was true. The Magistrate finds further, apparently on the basis of what Brooks admittedly said to Lakeman, and on the further basis of his finding that Palmer had travelled with Brooks from Brown's Town to Braco, that the relationship of Brooks and Palmer to the van was a relationship involving something more than "mere custody". It is by no means clear to what fact the Magistrate was adding this "something more". Whatever the relationship was, it was, however, by his finding, limited to the van. So that up to this point it may be said that he has found both Brooks and Palmer to have been in occupation of the van.

40 Extract (e): It is not a little difficult to follow the reasoning of the Magistrate here. Having found that the "occupation" of the van by Brooks and Palmer over the distance between Brown's Town and Braco was "the something more" required to fix them with "possession", he posed the question: "Did they have knowledge that what they possessed was ganja?" His further question: "Was there mens rea?" must be taken to be a re-statement of the first question in

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different terms. He then turned to R. v. Livingston, 6 J.L.R. 95, for the answer. But certainly it was imperative for him, before seeking an answer to the question as to mens rea, to find whether the appellants, or either of them, were in possession of the 19 bags of ganja in the van. We will assume, nevertheless, that he did so find. He arrived at that conclusion in this way: The accused were in occupation of the van. They had actual knowledge of some fact. This actual knowledge was to be inferred from the "fact" of occupation.

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As to the statement by Brooks the Magistrate appears from his findings to have treated this as an admission that Brooks drove a loaded van from Brown's Town to Braco, and no more. He does not appear to have addressed his mind to the implications of this statement. We say this because he makes it clear that his inference of "actual knowledge" was founded on the "fact of possession". It would follow, therefore, on his findings, that he identified occupation of the van with possession of the bags in the van. There were two possible implications contained in Brooks' statement to Lakeman. Firstly, that he was aware when he left Brown's Town that the van was loaded. On this interpretation it would have been necessary for the Magistrate to consider the relevant circumstances with a view to drawing certain inferences. For example, did Brooks, apart from being aware that he was being asked to drive a loaded van, know what the load comprised? If he did not know, did he have an opportunity to ascertain the nature of this load to which he deliberately shut his eyes? Or, again, did he merely neglect to make such enquiries as a reasonable and prudent man would make? The other possible implication is that Brooks first became aware of the nature of the load, as distinct from the fact of the load, when he saw the bags in the body of the van at Braco. His statement could, in this case, have been interpreted to mean: "I have, on Reid's instructions, driven this van, loaded as it is now, from Brown's Town. I was aware that it was loaded but I did not know that the load comprised these bags, nor did I know what these bags contained." In this connection it is not without significance that Reid, the owner

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of the van, and whose name was given to Cpl. Lakeman immediately upon the apprehension of Brooks, was not called as a witness by the prosecution. Brooks' statement was found by the Magistrate to have been made, and indeed remained unchallenged by the prosecution.

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(cont.)

10 We arrive, nonetheless, at this point. The factual situation as found by the Magistrate is as follows: Brooks and Palmer set out from Brown's Town in a loaded van which Brooks drove to Braco on the instructions of Reid. From this fact Brooks and Palmer are found to be in occupation of the van. And from this fact of occupation over that distance Brooks and Palmer are found to be in possession of the 19 bags found in the van.

20 Since the Magistrate relied on R. v. Livingston (supra) for an answer to the question that he had posed for himself it becomes necessary to ascertain precisely what that case decided with regard to this question. The two relevant questions which the Court of Appeal sought to answer in Livingston's case were:

- (a) Does possession in section 7 (c) of the Dangerous Drugs Law require that a defendant, before he can be convicted, must be shown to have had knowledge that he had the thing in question?
- (b) If so, must a defendant, before he can be convicted, be further shown to have had knowledge that the thing which he had was ganja?
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In the Court's view the answer to both questions was in the affirmative because it concluded that the prohibition contained in the section was not absolute. In resolving the question whether there was evidence of knowledge in the appellant in that case upon which the Magistrate could properly have found him guilty, the Court said (at p. 100):

40 "The defendant, so he says, was paid one shilling and sixpence for its carriage. There was nearly enough ganja to fill half the sack. It was first put inside the bus and later was moved on to the top of the bus by the appellant where it travelled with a bed and a mattress. It would

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be remarkable if such a quantity of ganja passed unnoticed when handled, even in the dark."

It is this passage that, in the Magistrate's opinion, in the instant case, was "most applicable to the case". From that passage, however, it is demonstrably clear that the crucial fact was that the accused had handled the bag containing the ganja. Unless, in the Court's view, he had x-ray vision, how else could the appellant be said to have had the means of knowledge necessary. There was, however, in the instant case, no evidence of any facts from which the Magistrate could infer that either Brooks or Palmer had laid hands on any of the bags in the van. We fail, therefore, to see the applicability to this case of the passage above quoted.

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The authority of Livingston's case, so far as it enunciates the principles above stated, has never been doubted in Jamaica. Indeed, it has been consistently followed by this Court and its predecessor ever since the decision was handed down nearly twenty years ago. What has been questioned, and repeatedly so, is the application of the principles enunciated therein to the facts as found. That, however, is not our concern.

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From the factual situation as found by the Magistrate it is not easy to understand his conclusion that Brooks and Palmer, or either of them, had actual knowledge of the contents of the bags. It may be that Brooks at any rate did, but it cannot, in our view, be put any higher than that. Equally consistent with that factual situation is the mere neglect of Brooks to enquire of Reid as to the nature of the load he was being asked to take in the van. Such neglect in the view of the Court in Livingston's case (see p.99), as indeed in the view of this Court, would not be sufficient to fix either Brooks or Palmer with the requisite knowledge.

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But the matter does not end there. An even more vital question to be examined is whether in the circumstances of this case Brooks can be said to have acquired possession of the 19 bags of ganja, whatever may be the conclusion as to the relationship between Brooks and the van. For the

purpose of finding an answer to this question we will assume, without deciding, that Brooks acquired possession of the van when Reid "handed" it to him at Brown's Town. Did he thereby acquire possession of the bags and their contents? Mr. Downer conceded quite properly in our view that he could not attempt to support the conviction of Palmer. But in relation to Brooks he asked this Court to be guided by the decision in Warner v. Metropolitan Police Commissioner (1968) 2 A.E.R. 356 in its attempt to answer this question. He contended, or so it appeared, that Livingston's case (*supra*) was wrongly decided.

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We must, therefore, examine Warner's case. The facts, briefly stated, were as follows: The appellatant was driving a van when he was stopped by a Police Officer. He had with him three boxes which he said contained rubbish. These were opened and one was found to contain 20,000 amphetamine sulphate tablets. The appellatant explained that he had called at a cafe where a friend had promised to leave a box containing scent which he sold as a sideline. He found two boxes, instead of the one box he expected, under a counter at the cafe and he took both but did not know that the smaller box contained drugs. At his trial at the Inner London Quarter Sessions on a charge of being in unlawful possession of drugs, contrary to section 1(i) of the Drugs (Prevention of Misuse) Act 1964, the Chairman directed the jury that if the box was under the appellatant's control, then he also had control of the tablets. If he did not know that the box contained drugs that would be a fact to be considered in connection with sentence. This direction was held to be wrong by the House of Lords. The appellatant moved the Court of Appeal to set aside his conviction. Diplock L.J., who delivered the judgment of the Court thought that the judgment of the Divisional Court in *Lockyer v. Gibb* (1967) 2 Q.B. 243, was directly in point. In *Lockyer's* case the defendant was stopped by the police and was found to be carrying a bag containing several items among which was a bottle of morphine sulphate tablets. She claimed that she did not know what the tablets were as they had been dumped on her by a friend who asked her to look after them for him when the police entered a cafe in which they were sitting. The

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defendant was convicted by the Magistrate. Lord Parker, C.J., in delivering the judgment of the Divisional Court dismissing the appeal, was in no doubt that section 13 of the Dangerous Drugs Act 1965 created an absolute offence once possession of the tablets had been proved. He held that "While it is necessary to show that the defendant knew that she had the articles which turned out to be a drug it is not necessary that she should know that in fact it was a drug or a drug of a particular character.

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In Warner's case Diplock L.J., said:

"In the view of this court there is no half-way house provided that it is shown that the appellant knew he had a box - that was undisputed, he took it from under the counter and took it to the van himself - and also knew that the box was not empty but had something in it - and that is undisputed because he said he thought it contained scent. The fact that he did not know that what it contained was drugs is no defence to the absolute offence created by the section."

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It should be noted here that whereas the Court of Appeal in Warner's case concluded that the prohibition under the 1964 Act was absolute the view of the Court in Livingston's case was that the prohibition under our Law was not. It should be noted too that the facts in Warner's case bore very little similarity, if any, to the facts in the instant case.

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The Court of Appeal in Warner's case granted leave to appeal to the House of Lords. The question that the House of Lords was required to consider was:

"Whether for the purposes of section 1 of the Drugs (Prevention of Misuse) Act 1964 a defendant is deemed to be in possession of the prohibited substance when to his knowledge he is in physical possession of the substance but is unaware of its true nature."

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It is important to note that the question as framed assumed that the appellant knew that he was

in physical possession of the box. It was quite unnecessary, therefore, for their Lordships to decide anything outside the scope of the question. For this reason much of what their Lordships said must be treated as obiter.

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(cont.)

10 A majority of their Lordships (Lord Reid dissenting rather emphatically) held that the section of the Act with which they were concerned created an offence involving absolute liability, thereby agreeing with the Court of Appeal. As a matter of construction and for the reasons set forth in their speeches they held that the United Kingdom Parliament intended an absolute offence when it enacted section 1 (i) of the Act of 1964.

20 As to the quite separate question concerning the meaning to be attributed to the words "have in his possession" as used in the 1964 Act all their Lordships agreed that these words meant something more than mere physical control. Some mental element was required.

Lord Reid said at p.368:

30 "The problem here is whether the possessor of a house or box or package is necessarily in possession of everything found in it, or, if not, what mental element is necessary before he can be held to be in possession of the contents. This problem has given rise to a great deal of legal discussion and the numerous authorities are not at all easy to reconcile. I shall not attempt the task."

To relate the problem to the instant case the question may be asked: Is the possessor of a van necessarily in possession of everything found in it? Lord Reid continued, at p.368:

40 "In considering what is the proper construction of a provision in any Act of Parliament which is ambiguous one ought to reject that construction which leads to an unreasonable result. As a legal term 'possession' is ambiguous at least to this extent: there is no clear rule as to the nature of the mental element required. All are agreed that there must be some mental element in possession, but

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there is no agreement as to what precisely
it must be."

And at p.369 Lord Reid shows that once this mental
element is recognised,

".... that destroys any contention that mere
physical control or custody without any
mental element is sufficient to constitute
possession under that enactment. If some-
thing is slipped into my bag I have as much
physical control over it as I have over
anything else in my bag."

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One may well ask: If some mental element is
necessary to constitute possession of a van or box
or package, why should it be unnecessary, as is
the view of their Lordships it appears to be, to
require that same mental element in relation to
the contents? Lord Reid demonstrates, by way of
several illustrations, the remarkable consequences
that could ensue if it be held that there is one
rule as to mens rea concerning the van, or box, or
package, and another rule with regard to the
contents. These illustrations show the fallacy of
any rule as to absolute liability predicated on a
theory that it can be easily split into two
inconsistent parts.

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Lord Wilberforce, with whom Lord Pearce
agreed, said at p.391:

"I can say at once that I am strongly
disinclined, unless compelled to do so, to
place a meaning on the Act of 1964 which
would involve the conviction of a person
consequent on mere physical control,
without consideration, or the opportunity
for consideration, of any mental element.
The offence created by the Act of 1964 is
a serious one and even though nominal
sentences, or conditional discharges, may
meet some cases, there may be others of
entirely innocent control where anything
less than acquittal would be unjust. This
legislation against a social evil is
intended to be strict, even severe, but
there is no reason why it should not at the
same time be substantially just. One may
venture to regret that Parliament has not,

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in defining this and other offences relating to the possession of drugs, been more specific - as it has, for example, in relation to explosives - as to the facts required to be proved to show guilt or innocence."

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(cont.)

10 Lord Wilberforce then proceeds to discuss the distinction between possession and control, and the necessity for establishing, in the case of the former, an intention to possess, among other things.

20 When the speeches of their Lordships are carefully examined and analysed it becomes clear that they would have answered the second question posed in Livingston's case in the affirmative. As to the third question their Lordships would, no doubt, have given a negative answer. But the answer to this latter question would have resulted from the conclusion of the majority that the 1964 Act by section 1(i) had created an absolute offence.

30 We see no justification for departing from the principle enunciated in Livingston's case. Their Lordships in Warner's case appear to have had not a little difficulty in deciding precisely what the mental element involved in possession is. For the reasons which they advanced they were driven to hold that possession, under the 1964 Act, may be satisfied by knowledge of the existence of the thing itself in the control of the possessor, but without his knowledge of its qualities. In so holding their Lordships clearly recognized that their decision, while giving rise to certain grave problems, left unresolved several other problems no less grave.

40 In our view the appellant Brooks was not, on the evidence in this case, shown to have anything more than mere custody or charge of both the van and its contents; and this assumes that he was aware that the van was loaded as distinct from any knowledge actual or constructive of the nature of the load. He was not a common carrier as was the appellant in Livingston's case. He was a person who had been hired by the owner of a loaded van to drive that van from Brown's Town to Braco. There was certainly no evidence that he had handled the bags.

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It is important to emphasize here that the learned Resident Magistrate did not base his findings merely on evidence that the police came upon the appellant Brooks and others sitting in a van loaded with ganja from which the occupants ran on the approach of the police. He accepted as true, and acted upon, Brooks' statement to Cpl. Lakeman. There was no evidence, apart from the statement of Brooks, as to the circumstances under which he was hired to drive the van. Nor was there evidence of possession, in the meaning attributed to that word in Livingston's case, as distinct from being in charge of whatever the loaded van contained. This distinction clearly recognized in Pollock and Wright on Possession (see pp. 59-60, 129, and 138-140), was also recognized in Livingston's case (see p.98). All that the prosecution proved was that Brooks had driven the van on Reid's instructions (and this, on Brooks' own admission), and that there were 19 bags of ganja in the van. It seems to us that, assuming a finding that he knew that he was "transporting" ganja, it would have been proper to charge him with that offence. It was precisely in order to meet such a case that the Parliament of this country created the offence of using a vehicle to transport ganja. In creating that offence Parliament clearly recognized the possibility of cases where a driver or person in charge of a vehicle used to transport ganja was not necessarily in possession of the ganja.

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For these reasons we allowed the appeal and set aside the conviction and sentence of both appellants.

No. 10

ORDER GRANTING SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 28th day of November 1972

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

In the Privy
Council

No. 10

Order
granting
special
leave to
appeal to
Her Majesty
in Council

28th
November
1972

10 WHEREAS there was this day read at the
Board a Report from the Judicial Committee of the
Privy Council dated the 16th day of November 1972
in the words following viz.:-

20 "WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was
referred unto this Committee a humble
Petition of the Director of Public
Prosecutions of Jamaica in the matter of an
Appeal from the Court of Appeal of Jamaica
between the Petitioner and Wishart Brooks
Respondent setting forth that the Petitioner
prays for special leave to appeal from a
Judgment of the Court of Appeal of Jamaica
dated the 2nd July 1971 which quashed the
Respondent's conviction in the Resident
Magistrate's Court for the Parish of Trelawny
holden at Falmouth of having in his
possession ganja contrary to section 7 (c)
of Chapter 90 of the Revised Laws of Jamaica
30 for which he was sentenced to eighteen months
hard labour: And humbly praying Your Majesty
in Council to grant the Petitioner special
leave to appeal from the Judgment of the Court
of Appeal of Jamaica dated the 2nd July 1971
and for further or other relief:

40 "THE LORDS OF THE COMMITTEE in
obedience to His late Majesty's said Order in
Council have taken the humble Petition into
consideration and having heard Counsel in
support thereof and in opposition thereto
Their Lordships do this day agree humbly to
report to Your Majesty as their opinion that

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Order
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special
leave to
appeal to
Her Majesty
in Council

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leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Jamaica dated the 2nd July 1971 on condition of the Petitioner lodging in the Registry of the Privy Council an undertaking to pay the Respondent's costs of the Appeal in any event:

"AND Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor-General or Officer administering the Government of Jamaica for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW

EXHIBIT 1

CERTIFICATE No. E 870/70

The Dangerous Drugs (Amendment) Law, 1954,
Law 28 of 1954

Exhibits
Exhibit 1
Certificate
No.E 870/70
26th
October
1970

I, the undersigned Government Analyst, do hereby certify that I received on the 8th day of October, 1970, from Sgt. M. Johnson exhibits for analysis contained in nineteen knitted bags.

The seals were intact on delivery.

10 Regina vs. Wishart Brooks et. al. for Breach of the Dangerous Drug Law.

Knitted bag "A" contained:

- (a) a piece of newspaper;
- (b) loose vegetable matter
Weight of vegetable matter = 43 lbs.

The resin constituent characteristics of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "B" contained:

- 20
- (a) part of a brown knitted bag;
 - (b) loose vegetable matter
Weight of vegetable matter = 59 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "C" contained:

- (a) part of a knitted bag;
- (b) loose vegetable matter
Weight of vegetable matter = 61 lbs.

30 The resin constituent characteristic of the pistillate plant

Exhibits

Exhibit 1
Certificate
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26th
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1970
(con't.)

Cannabis sativa was detected - Ganja.

Knitted bag "D" contained:

- (a) a piece of newspaper;
- (b) loose vegetable matter
Weight of vegetable matter 55 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "E" contained:

- (a) two pieces of cardboard; 10
- (b) loose vegetable matter
Weight of vegetable matter = 70 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "F" contained:

- (a) a piece of brown knitted bag;
- (b) loose vegetable matter
Weight of vegetable matter = 65 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja. 20

Knitted bag "G" contained:

- (a) a piece of brown knitted bag;
- (b) loose vegetable matter
Weight of vegetable matter = 60 lbs.

The resin constituent characteristic of the pistillate plant Cannabis Sativa was detected - Ganja.

Knitted bag "H" contained: 30

- (a) a piece of newspaper;
- (b) loose vegetable matter
Weight of vegetable matter = 63 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "I" ("Shell, Kingston etc. written on it) contained:

(a) loose vegetable matter

Weight of vegetable matter =
3½ lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "J" contained:

(a) a piece of newspaper;

(b) loose vegetable matter

Weight of vegetable matter =
68 lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "K" contained:

(a) a piece of brown paper (with
Grace etc. written on it in red);

(b) loose vegetable matter

Weight of vegetable matter =
52 lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "L" contained:

(a) a piece of brown knitted bag;

(b) loose vegetable matter

Weight of vegetable matter =
69 lbs

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "M" contained:

(a) a piece of brown knitted bag;

Exhibits

Exhibit 1

Certificate
No.E 870/70

26th
October
1970
(cont.)

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20

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Exhibits

Exhibit 1
Certificate
No.E 870/70
26th
October
1970
(cont.)

(b) loose vegetable matter

Weight of vegetable matter =
59 lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "N" contained:

(a) two pieces of cardboard;

(b) one piece of brown paper;

(c) loose vegetable matter

10

Weight of vegetable matter =
64 lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "O" contained:

(a) two pieces of cardboard;

(b) loose vegetable matter

Weight of vegetable matter =
64 lbs.

20

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

Knitted bag "P" contained:

(a) part of a brown knitted bag;

(b) loose vegetable matter =
52 lbs.

The resin constituent
characteristic of the pistillate plant
Cannabis sativa was detected - Ganja.

30

Knitted bag "Q" contained:

(a) a translucent piece of plastic;

- (b) a piece of cardboard;
- (c) loose vegetable matter
Weight of vegetable matter =
69 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Exhibits
Exhibit 1
Certificate
No.E 870/70
25th
October
1970
(cont.)

Knitted bag "R" contained:

10

- (a) a translucent piece of plastic;
- (b) loose vegetable matter
Weight of vegetable matter =
49 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

Knitted bag "S" contained:

20

- (a) a piece of brown paper;
- (b) loose vegetable matter
Weight of vegetable matter =
54 lbs.

The resin constituent characteristic of the pistillate plant Cannabis sativa was detected - Ganja.

As witness my hand this 26th day of October,
1970.

At the Government Laboratory, Kingston 6.

sgd.....

Government Analyst.

30

appointed under the provisions of section 12 of the Adulteration of Food and Drugs Law.

IN THE PRIVY COUNCIL

No. 33 of 1972

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

WISHART BROOKS

Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London WC2A 3UL

WILSON FREEMAN,
6/8 Westminster Palace
Gardens,
London SW1P 1RL

Solicitors for the
Appellant

Solicitors for the
Respondent