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1 OF 1967

IN THE PRIVY COUNCIL

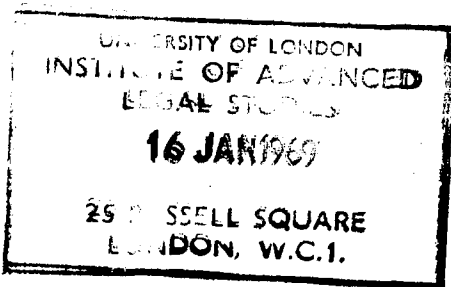
ON APPEAL FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

HERMAN KING Appellant

- and -

THE QUEEN Respondent



CASE FOR THE RESPONDENT

- |    |  | <u>Record</u>                |
|----|--|------------------------------|
| 10 | 1. This is an appeal by special leave of the Judicial Committee granted on the 30th January, 1967 from the judgment of the Court of Appeal of Jamaica (Henriques, Ag.P. and Moody and Eccleston JJ.A.) dated the 29th July, 1966 dismissing the appeal of the Appellant from his conviction by the Resident Magistrate, Kingston, Jamaica, on the 2nd February, 1966. The Appellant was convicted under the Dangerous Drugs Law, c.90 of the Revised Laws of Jamaica, Section 7 (c) of having ganja in his possession.                       | p.22<br><br>p.12<br><br>p.10 |
| 20 | 2. On the 11th January, 1966 a Justice of the Peace for Kingston, upon the information of Police Sergeant Henry Isaacs, granted Isaacs "with proper assistance" a warrant to enter the premises of one Joyce Cohen and there search for dangerous drugs. It would seem that the warrant was granted under the provisions of the Dangerous Drugs Law, Section 21 (2). On the same day Sgt. Isaacs accompanied by Acting Corporal Gayle, Acting Corporal Linton and other police officers entered the premises of Joyce Cohen. Acting Corporal | p.24<br><br>p.2              |
| 30 | Gayle and Linton searched the person of the Appellant, who was on the premises, and according to their evidence, found packets of a substance upon him. The contents of the packets were subsequently analysed and found to contain ganja.   | p.2 ls.19-<br>21<br><br>p.25 |
|    | 3. The substantial questions raised on this appeal are : (a) whether or not the search warrant referred to in paragraph 2 above permitted the police officers to search the Appellant;(b) whether  |                              |

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in any event, the acts of the police were covered by the Constabulary Force Law, c.72, Section 18: (c) if the police were not entitled to search the Appellant under (a) or (b) above, whether the failure of the police to take the Appellant before a Justice of the Peace for search, as provided by the Constabulary Force Law, c.72, Section 22, rendered inadmissible the evidence of the police as to the presence of ganja upon the Appellant; (d) whether, if the police had acted wrongfully in obtaining their evidence, such evidence ought to have been excluded from the trial. 10

4. The following are the relevant statutory provisions:

(a) The Jamaica (Constitution) Order in Council 1962, S.I. 1550 of 1962, Second Schedule.

Section 19 (1) "Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises" 20

(2) "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required - 30

(3) for the purpose of preventing or detecting crime ..."

(b) The Constabulary Force Law (C.72).

Section 18 "It shall be lawful for any Constable, without warrant, to apprehend any person found committing any offence punishable upon indictment or summary conviction and to take him forthwith before a Justice who shall inquire into the circumstances of the alleged offence, and either 40



Record

(b) that any document directly or indirectly relating to or connected with any transaction or dealing which was, or any intended transaction or dealing which would if carried out be, an offence against this Law or, in the case of a transaction or dealing carried out or intended to be carried out in any place outside the Island, an offence against the provisions of any corresponding law in force in that place, is in the possession or under the control of any person in any premises;

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he may grant a search warrant authorising any constable named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein, and if there is reasonable ground for suspecting that an offence against this Law has been committed in relation to any such drugs which may be found in the premises or in the possession of any such persons, or that any document which may be so found is such a document as aforesaid, to seize and detain those drugs or that document, as the case may be".

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5. Evidence was given for the Respondent as follows :

p.2 ls.5-  
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(a) Clifford Gayle, Acting Corporal of Police, said that on the 11th January 1966, in the company of Sergeant Isaacs, (who held a search warrant under the Dangerous Drugs Law), Acting Corporal Linton and other police, he went to 20, Ladd Lane, Kingston. He and Corporal Linton went to the eastern end of the premises where he saw two men, one of whom was the accused. Sergeant Isaacs read the warrant. He identified

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himself and said he was there to search for ganja. He searched the other man and found nothing. He then searched the accused and in his left side trouser pocket found two small brown, and one white paper packets. The white packet was burnt at one end. He opened the packets, in the accused's presence, and found they contained vegetable matter resembling ganja. (The substance was later analysed and found to be ganja). He arrested the accused who said "Lord, a the last of Herman now".

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p.2 1.27

10 In cross-examination he said that he had heard of the accused and knew he had once successfully sued the police, but he did not know the accused and had never seen him before. He only searched the room in which he found the accused. Ten or twelve policemen went: the others went into other rooms. The warrant was to search Joyce Cohen's premises; it did not refer to the search of anyone else. He did not offer to take the accused before a Justice. He first frisked the accused, then searched his  
20 pockets. The accused had a pack of cigarettes, a box of matches and a handkerchief or perhaps two handkerchieves in his trouser pockets. He had a cheque book in his shirt pocket. He did not send the second man out of the room and demand a second search. He did not make a second search. He did not grab a handkerchief from the accused's hand, turn away, then confront accused saying he had found the packets in a handkerchief. The other man was sent out of the room when they were about to go  
30 off with the accused.

p.3 1s.10-15

p.3 1s.25-30

p.3 1s.31-39

p.4 1s.2-4

Recalled, the witness put in the warrant.

p.6 1.13

(b) Ezra Linton, Acting Corporal of Police, was with Cpl. Gayle. Gayle first searched the second man and found nothing. He then searched the accused and the witness saw him take two brown paper packets and a white packet, burnt at one end, from the accused's left trouser pocket. Gayle opened these in the presence of the accused, who said; "Lord, is the last of Herman now". Gayle arrested the  
40 accused and charged him with possessing ganja.

p.4

p.5 1.1

In cross-examination he said Sergeant Isaacs read the warrant in front of the room they entered. He saw a handkerchief in accused's hand at one time.

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Gayle had taken it out of a pocket. Accused held one part of the handkerchief and Gayle the other. There was nothing special about the handkerchief. It was not true that the accused held it and Gayle grabbed it. Gayle searched the other man first. A preliminary search of the accused was made for weapons. Then he was searched properly. There were not two searches and the other man was present throughout. The latter might have left the room when the police left. The witness knew the accused. It was not true that the latter said: "Don't frame me for you search me already." 10

p.5 ls.33  
& 34  
p.6 ls.7-  
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6. Evidence was given for the Appellant as follows :

(a) The accused said that 20 Ladd Lane was a beer garden. He had a boy child of one year of age living there and had gone to see the boy. He was playing with the boy in the room. The maid was feeding the boy. After the boy left he and Price were left alone with the police. The police frisked Price first then searched him, finding nothing. The accused was searched next, he was asked to turn out his pockets. He turned out his side pockets first; there was nothing in them. He had a handkerchief in each of his back pockets and he took them out and shook them. He had cigarettes and matches in his chest pocket. The police looked on while this was being done, then told Price to leave the room and demanded a second search. Gayle grabbed a handkerchief from his hand, turned round, then back, and said he had found ganja, showing two brown paper packets and one white one. He had no ganja in his handkerchief. He never said : "This is the last of Herman". He said: "Don't frame me". 20 30

p.6 ls.21-  
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p.7 ls.10-  
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In cross-examination he said he thought the police were going to frame him and he was on the alert. As far as he knew neither policeman had anything against him. He did not see Gayle take anything from his (Gayle's) pockets. He could not be certain. The packets might have been in Gayle's hands. 40

(b) Victor Price said he was in the room with the accused. The police searched him first after knocking his hands. They then told the accused to turn out his pockets. The accused produced two handkerchieves from his back pockets. He also had cigarettes, matches and a cheque book. The police then chucked him (the witness) outside. While outside he heard a voice say : "I want a next search".

10 In cross-examination he said he went about seven yards away down a passage. The accused flashed the handkerchieves when he took them out. He was in the room when the accused arrived. The accused came in alone. Nobody came in before the police arrived.

p.2 ls.1-8

20 (c) Phyllis Reid said she was a barmaid at 20 Ladd Lane. The accused, Price and the baby were in the room. The police rushed in and she heard them say they wanted a search. They searched Price first. She was at the kitchen door facing the room. They searched the accused next. They asked him to turn out his pockets and he did so. Price was sent outside and she heard the police say they wanted a second search. The accused said he had been searched already. She saw the police take a handkerchief from the accused, then the policeman turned his back and she could not see. After that the police said they had found something and they took the accused away.

30 In cross-examination she said that when the police found something the accused said : "Don't frame me". Price left the room. The accused had been playing with the baby, the mother of whom was Joyce Cohen. The maid took the baby away after the police came.

p.10 ls.4-  
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40 7. The learned magistrate accepted the police evidence. He said that even if Section 22 (of the Constabulary Force Law) was not complied with, the evidence was admissible on the basis of R. v. Kuruma. He sentenced the accused to 18 months hard labour.

8. The judgment of the Court of Appeal was given by Moody, J.A. The learned Justice of Appeal said

p.12

<u>Record</u>	that the ground of appeal that the verdict was unreasonable having regard to the evidence was not argued. It was argued that the search was unlawful and the evidence thereby obtained was inadmissible, alternatively, if admissible it ought to have been excluded in the exercise of the magistrate's discretion. The warrant did not entitle the police to search persons. The only other way in which the police should have moved was under the Constabulary Force Law, but they did not take the accused before a Justice; and this was mandatory. For the Crown it was argued that even if the warrant was defective, Section 22 of the Constabulary Force Law was wholly enabling, but whether mandatory or enabling, evidence of the search was admissible, and the magistrate rightly exercised his discretion in admitting it.	10
p.16 ls.1-7		
p.18 ls.20-22		
p.19 ls.10-15	9. In the view of the Court, the evidence was relevant and admissible and the magistrate acted correctly in admitting it. Further, in the view of the Court, the police could have acted under the Constabulary Force Law, Section 18. Under Section 7 (c) of the Dangerous Drugs Law, having ganja in possession was an offence. If, on search, a person is found to have ganja, he is found committing an offence, and is liable to be arrested without warrant. As to the argument on Section 22, this Section was designed primarily to give protection to a constable in circumstances which would otherwise create a trespass. If the constable did not comply he was open to civil action. But there was nothing in the Section to render inadmissible evidence obtained without taking the suspected person before a magistrate. Only if there was evidence that the evidence was obtained by oppression, fraud, force, false representations, a trick, and the like, could the trial Judge be asked to exercise his discretion and exclude the evidence.	20
p.20 ls.8-11		30
	10. It is respectfully submitted that the Court of Appeal were correct in holding that the evidence was relevant and admissible and that the learned magistrate acted correctly in admitting it. Further, that the Court of Appeal were correct, for the reasons they gave, in holding	40



that the police might have acted under Section 18 of the Constabulary Force Law, and in holding that failure to take before a Justice did not, without more render inadmissible evidence obtained when the police acted under Section 22 of the Constabulary Force Law.

10 11. It is further respectfully submitted that the police acted quite properly and in accordance with the terms of the warrant granted to them under  
 20 Section 21 (2) of the Dangerous Drugs Law. Counsel for the accused at the trial, presumably on the strength of Corporal Gayle's answer that the warrant did not authorise the search of anyone else beside Joyce Cohen's premises, addressed the learned magistrate on the basis that the police acted under Section 22, and the magistrate gave judgment therefore on that basis. In the Court of Appeal the Respondent did not concede that the Section 21 (2) warrant was bad, but the argument proceeded along  
 30 other lines and therefore the Court of Appeal were not prompted to consider the validity of the warrant.

12. It is therefore respectfully submitted that the judgment of the Court of Appeal was right and ought to be upheld for the following among other

R E A S O N S

- (1) Because the police were entitled to act under Section 18 of the Constabulary Force Law.
- 30 (2) Because failure to meet the requirement of Section 22 of the Constabulary Force Law did not render the evidence inadmissible.
- (3) Because the evidence was relevant and admissible in any event, there being no reason for the magistrate to exercise his discretion in rejecting the evidence.
- (4) Because the warrant was valid and all the acts of the police were done in conformity with it.

GERALD DAVIES

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- and -

THE QUEEN                        Respondent

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CASE FOR THE RESPONDENT

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