JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 18/05

BEFORE: THE HON. MR. JUSTICE P. HARRISON, P.
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE K. HARRISON, J.A.

REGINA
v
MARK MYRIE

Delano Harrison, Q.C. and Earl Witter for Appellant instructed by Frater Ennis and Gordon

Miss Tanya Lobban, Acting Assistant Director of Public Prosecutions, for the Crown.

July 27, 2005 & March 22, 2006

K. HARRISON, J.A:

This is an appeal by the appellant Mark Myrie, who on February 12, 2004 was convicted and sentenced in the Resident Magistrate's Court for the Corporate Area, St. Andrew, on informations charging him for possession of and cultivating ganja. For possession of ganja, contrary to section 7 (c) of the Dangerous Drugs Act, he was fined $3,000 or 30 days imprisonment at hard labour. For cultivating ganja contrary to section 7(b) of the Dangerous Drugs Act, he was fined $6,000 or 30 days imprisonment at hard labour. The Court ordered

that the sentences should run concurrently if the fines were not paid. From these convictions and sentences the appellant now appeals.

The grounds of appeal

The original grounds of appeal were abandoned. Leave was sought and granted to argue five supplementary grounds of appeal as set out hereunder:

> "1. In light of the fact that (a) possession, as contemplated by the criminal law, was central to proof of both offences with which the appellant was charged, and (b) the prosecution had adduced no, or no sufficient, evidence, to ground possession, the learned Resident Magistrate erred in law in rejecting the submission, made at the close of the prosecution case, that there was no case for the appellant to answer.
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> 2. Having wrongly rejected the submission of no case to answer, made on the appellant's behalf, the learned Resident Magistrate effectively shifted the onus of proof on to the appellant by relying, virtually entirely, on his defence evidence, in convicting him of the offences charged.
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> 3. The conviction of the appellant for the offence of cultivating ganja was in any event, bad in law for that, in its totality, the evidence adduced before the learned Resident Magistrate (direct or inferential) was incapable of establishing cultivation of ganja, in fact or in law, by the appellant.
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> 4. In all the circumstances of the case, the learned Resident Magistrate erred in law in convicting the appellant of both offences charged i.e, cultivating ganja and possession of ganja, "the possession being merely incident, a necessary incident to" the cultivation of ganja (R v Brickligge (1964) 8 JLR 496, at 497F).

5. The verdict is unreasonable having regard to the evidence."

The case for the prosecution

The charges arose out of an incident on December 3, 2003, at about 7:30 pm, when a party of policemen who were on special duty in the Constant Spring area, in the parish of St. Andrew went to premises known as Gargamel Recording Studio situate at No. 10 Carlyle Avenue.

Detective Cpl. Phillip Dodd who was a member of the police party and the arresting officer, said he saw a group of men standing at the entrance of these premises. On the approach of the police, one man, who stood at the gate, looked in Dodd's direction and ran inside the compound. Cpl. Dodd immediately alerted the other policemen of his observation and drove up to the gate. Cpl. Dodd and other police officers entered the premises.

The appellant who is a well known recording artist in the music industry and who goes by the name of "Buju Banton", approached Cpl. Dodd and said to the men on the compound:

"what kinda idiot thing this unoo a gwaan wid? Whey so much police a do pon me property?"

The Corporal said he told him about the man who ran into the premises on the approach of the police.

The appellant, it is said, got aggressive and demanded the police to leave his premises. The Superintendent of Police, who was in charge of the team of

policemen, disregarded what the appellant said and gave instructions for the premises to be searched.

Cpl. Dodd, other policemen, and the appellant went to the rear of the premises where there was a garden which had banana trees, sugar cane, and other plants. The Cpl. said that the garden was well tended and a garden hose was attached to a pipe.

Cpl. Dodd went into the garden and pointed out three plants resembling ganja to the appellant. The tallest of the three plants was about three (3) feet in height. Cpl. Dodd said he told the appellant that they were ganja plants. He cautioned him and he replied:

> "yeh man go lock me up a station fi little weed a dat give me the inspiration fi write my music and enhance my meditation".

The three ganja plants were uprooted by the Corporal and taken to Constant Spring Police Station along with the appellant. He was charged with the offences of possession of ganja and cultivating ganja. After a further caution was administered, the appellant said: "Yes I am charged because I am black."

The exhibits were taken to the forensic laboratory and on a subsequent date, the paper package containing the ganja plants were retrieved from the laboratory as well as a forensic certificate. The exhibits and certificate were tendered and admitted in evidence at the trial.

The defence requested the Court to visit the locus in quo and this was granted. Two triangular gardens measuring approximately, 30' x 30' x 15' and 20' x 20' x 12' respectively were observed at the rear of the premises.

A no case submission was made on behalf of the appellant after the prosecution closed its case. It was submitted inter alia, that the Crown had not presented a sufficient case for the appellant to be called upon. Counsel also submitted that of the seventeen (17) police officers who entered the premises, not one was called to corroborate the evidence of Dodd. It was further submitted by Counsel for the appellant that apart from the statement ascribed to the appellant as to his ownership of the premises, the arresting officer did not make any further investigations to satisfy himself or the Court that the appellant was indeed the owner of the premises. The learned Resident Magistrate rejected the submission and ruled that there was a case for the appellant to answer.

The case for the defence

The appellant gave evidence and called a witness on his behalf. He testified that he had recently returned to the Island and was at the recording studio working on an album. A number of his friends and employees were present at the studio and were relaxing after the day's work. He overheard someone say: "a bare police a come up the road".

The appellant said that a number of policemen entered his premises and asked him if he was the owner of the premises to which he replied in the

affirmative. He left the verandah and went to the middle of the premises where a conversation took place between the police and himself.

The appellant testified that persons who were on the compound were searched by the police and his licensed firearm and rounds of ammunition were taken from him. He said he demanded that the police leave the premises. There was "a lot of commotion in the yard" and he went and sat under an almond tree.

Cpl. Dodd then came up to him with a large ganja plant in his hand and said to him, "me a charge yu for dis." The appellant said he did not know from where the Cpl. got the ganja plant. He said he was told by the Cpl. that he had found it in the back of the yard. He was taken to Constant Spring Police Station where he was processed and charged.

The appellant also testified that he did not look after the plants at the back of the premises and that the garden was attended to by his gardener whose name was Elder. He also said that several persons were employed by him at this premises and that members of the public had access to the compound. He said he was unaware of the ganja plants at the back of the studio.

Under cross-examination, the appellant said that access to the rear of the premises was "restricted somewhat". A tabernacle and two gardens amongst other things were at the back of the premises. He was unable to recall when was the last time before the 3rd December that he went to the rear of the premises. He agreed that the garden was well tended but it was "set up" without his instructions. He admitted further under cross-examination that the two gardens

at the rear of the premises belonged to him but he did not supervise what took place in them.

The appellant said that number 10 Carlyle Avenue, was not his principal place of business or abode. He disagreed with the suggestion that the back of the premises was private. He agreed that the ganja plant shown to him by Cpl. Dodd would have been easily seen by anyone who went to the back of the premises but he denied that that plant was taken from his garden.

The appellant disagreed that he had accompanied Cpl. Dodd to the rear of the premises. He said he did not see the ganja plants being uprooted and he denied that he told Dodd under caution that they were locking him up for little weed that gave him inspiration to write his music and to enhance his meditation.

Findings of fact by the Resident Magistrate

The learned Resident Magistrate after hearing full submissions by Counsel, both for the appellant and the Crown, made a number of "findings of fact" on the important issues. He found that the appellant was at all material times the legal owner of the premises 10 Carlyle Avenue which housed a music recording studio.

The Magistrate accepted that the appellant travelled abroad regularly and spends much of his time off the Island. He nevertheless found that 10 Carlyle Avenue was the appellant's principal place of residence while in Jamaica.

With regards to the garden at the rear of the premises, the learned Magistrate said:

> "37. The accused asserted that the garden was set up without his instructions, "someone took the initiative."

However even if this is true the evidence discloses clearly that the accused was concerned with the state of the garden, took an active interest in what took place there and was concerned with its management by giving instructions as to things to be done there and "quarreled" when the state of the garden was not to his satisfaction.

38. The accused's defence is that he had no knowledge of the presence of ganja plants in the garden at 10 Carlyle Avenue. In fact the accused says the plant which Cpl. Dodd had (which the accused contends was used to slap his engineer) was not in his garden.

39. The court had the opportunity of viewing the gardens first hand and observed the well organized, extremely neat layout of the gardens, with well spaced plants enabling the court to easily view and to distinguish the various plants therein. There was no tall grass or weeds between the various plants.

40. The individual plants were separated from each other by a sufficient distance which would enable anyone at the rear of the premises to easily distinguish the various plants. The court finds that a 3ft ganja plant could have been easily seen and recognized as being a ganja plant by anyone who knows what a ganja plant looks like if they went to the rear of the premises.

41. On the court's visit to the locus in quo two gardens were seen. Both gardens were small and triangular approximately 30 x 30 x 15 and 20 x 20 x 12 respectively. The evidence of the accused in answer to a question posed by the court is that the garden was in substantially the same conditions on the day the court visited the locus in quo as it was on the 3rd of December 2003 in his words "nothing has charged (sic) even until today."

42. The accused agreed that a ganja plant of the size the officer had would have been easily seen by anyone

> who went to the back, but asserted that plant was not in his garden".

The learned Resident Magistrate then dealt with other aspects of the case and said:

> "47. The court recognizes that the occupation or ownership premises (sic) without more is generally not sufficient to show control of the contents thereon, particularly where others have access. In this matter the evidence against the accused is not merely ownership or occupation.
>
> 48. Notwithstanding the accused's frequent absence from the jurisdiction the court finds that the accused being so integrally involved in the management of the gardens must have had knowledge of the fact that the ganja plants and 3ft. ganja plant in particular was growing there at some point during its growth.....
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> 49. Even if the accused did not himself physically plant the ganja in the gardens the court finds that he certainly would have aided, abetted, counseled or procured their cultivation. Of course the court wishes to expressly state that this finding is not based solely on the accused (sic) ownership of the property, but on the inferences drawn from the other facts found and outlined and the fact of ownership.
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> 50. The court recognizes that the Crown bears the burden of the proof in the case to prove its case beyond a reasonable doubt and the court finds that the Crown has discharged its burden to the requisite standard."

The Magistrate was not impressed with the evidence of the appellant and his witness. He found the appellant to be deliberately evasive and his demeanour poor. He found Cpl. Dodd on the other hand, to be a witness of truth. He accepted that the appellant did use the words "yeh man go lock me up a station

fi little weed a dat give me the inspiration fi write my music and enhance my meditation" and that the Court could infer from those words that the appellant knew of the growing ganja plants. The Magistrate said:

> "54. The court accepts that the (3) plants found were plants which had their roots in the ground. These plants were uprooted and subsequently taken to the Government Forensic Laboratory. I accept the analyst's findings contained in the forensic certificate, exhibit #1 that these plants were ganja weighing one (1) lb. 13.80 oz.
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> 55. Based on the court's finding as indicated I also find that the accused was in possession of these plants having the requisite knowledge custody, and control of them, and that his frequent absence would not destroy his possession but at the very least make such possession constructive."

The appeal

Ground 1

Mr. Harrison, Q.C, opened his attack on the convictions by submitting that the prosecution had adduced "no, or no sufficient, evidence, to ground possession". He submitted that the learned Resident Magistrate erred in law in rejecting the submission, made at the close of the prosecution case, that there was no case for the appellant to answer.

Mr. Harrison, Q.C., further submitted that no evidence was adduced by the prosecution as to the nature and extent of the appellant's occupation of the premises. He contended that: (i) there was no evidence that he lived at 10 Carlyle Avenue and (ii) there was no evidence how often he 'frequents' there.

Further, he submitted that all the evidence disclosed was just the appellant's *ipse dixit* as to proprietorship.

It was clear, he said, that the prosecution had failed to prove that the appellant enjoyed exclusive physical control or custody of the premises and, thus the ganja plants in issue. He argued that neither could it be said that the "reaction" attributed to the appellant by Cpl. Dodd could constitute a clear and unambiguous admission of exclusive custody or control of the ganja plants and/or knowledge of their existence on the premises. He referred us to the cases of ***D.P.P. v Brooks*** (1974) 12 JLR 1374 at 1376 letter "H" and ***R v Daley and Whyte*** (1990) 27 JLR 171 at 174 letter "D".

On the question of inferences, Mr. Harrison, Q.C., submitted that it may have been reasonable to infer from the statement made by the appellant upon being shown the ganja plants, that, the appellant could have been referring to ganja in general and not to the actual plants shown to him. He submitted that for the appellant to have been properly called upon to answer the charges, the statement would have had to be capable of giving rise to the following inferences:

> "(i) the appellant knew that the plants shown to him were growing or being raised at the rear of the premises exclusively occupied or controlled by him.
>
> (ii) that he had planted and/or tended the plants himself and;
>
> (iii) he aided and or abetted or counseled and/or procured another or others to have planted and/or tended the plants."

Mr. Harrison, Q.C., also submitted that the inferences even at the close of the prosecution's case were not inescapable. He submitted that on the basis of the authority of ***R v Sophia Spencer*** (1985) 22 JLR 238, if a critical ingredient which must be proved by the prosecution was founded upon more than one reasonable inference, the prosecution would not have made out a case.

Miss Lobban in her usual style, made the following submissions in response to ground 1:

> "(1) There was more than sufficient evidence at the close of the Crown's case to establish a prima facie case with respect to both informations.
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> (2) The fact of possession, actual or constructive, of a prohibited substance, gives rise to an inference in the nature of a rebuttable or provisional presumption which may be displaced by any fact or circumstance inconsistent therewith, whether such fact or circumstance arises on the case for the prosecution or the defence (***Bernal and Moore v R*** (1996) 50 WIR 296).
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> (3) The fact that the prohibited substance was found on the premises of the appellant, without more is unsustainable. (***R v Cavendish*** (1961) 2 All E.R 856). However, the words attributed to the appellant, at a pivotal juncture, i.e. upon being shown the prohibited item, and after being cautioned by the police, provided that "something more", from which the trial judge was entitled to find on a balance of probability that a prima facie case was made out in respect of both informations. (***R v Monica Williams*** (1970) 12 JLR 116; ***R v Miller and Wright*** (1973) 12 JLR 1262).
>
> (4) There was evidence at the end of the prosecution's case that the plants were found in a well tended garden with a hose nearby. The learned

> Resident Magistrate correctly found that the ganja plants in the garden was 'deliberate and designedly done and not accidental (page 47 of the transcript) (***R v Boucher*** (1966) 9 JLR 326).
>
> (5) The learned Resident Magistrate found that even if the appellant did not plant the ganja himself, he aided and abetted counseled and or procured their cultivation.....this is a reasonable inference on a balance of probabilities, given the manner in which the appellant sought to assert/exercise control over the premises.....(***Taylor v Chief Constable of Kent*** (1981) 1 WLR 606, 607). By virtue of section 6 of the Justice of the Peace Jurisdiction Act the learned Resident Magistrate was entitled to proceed as he did, regarding the evidence adduced to establish a prima facie case for cultivation. (***R v Cragie, Hyman et al*** (1986) 23 JLR 172, 196).
>
> (6) Whether or not the premises was a 'public place' was a question of fact for the learned Resident Magistrate and not merely an opinion given by Corporal Dodd."

Now, one of the critical issues for determination by the learned Resident Magistrate, in the instant case, concerned the statement made by the appellant after caution, to wit:

> "yeh man go lock me up a station fi little weed a dat give me the inspiration fi write my music and enhance my meditation."

In his findings of fact, the Magistrate found that the words were in fact used by the appellant. He also found that the statement by itself, was not a clear and unambiguous admission of guilt but, it provided material for drawing the inference that the appellant had knowledge of the plants growing on the premises.

In ***D.P.P. v Wishart Brooks*** (supra) their Lordships in the Privy Council said at p. 1376:

> "In the ordinary use of the word 'possession' one has in one's possession whatever is to one's own knowledge physically in one's custody or under one's physical control."

And later at p. 1377:

> "The only actus reus required to constitute an offence under Section 7 (c) is that the dangerous drug should be physically in the custody or under the control of the accused."

We quite appreciate that, although ganja was found on premises owned by the appellant, this could not by itself mean that the appellant was guilty of an offence.

In ***R v Monica Williams*** (1970) 16 WIR 74, the Court held inter alia, that while the mere occupation of a dwelling-house without "something more" is not sufficient to invest the occupant with possession of ganja found therein, there was in this case material from which "something more" might be inferred. Fox J.A at page 77 of the judgment stated:

> "It is clear, however, that mere occupation of a dwelling-house *without more* is not sufficient to invest the occupant with possession of ganja found therein. In *R v Duncan* ((1970), unreported RMCA No 103 of 1969 decided 15 April 1970) this court pointed out that the "something more" which when added to the fact of occupancy may enable the inference of possession in the occupants, need not be substantial. It may be something "just a little more" as the case of *R v Cavendish* ([1961] 2 All ER 856, [1961] 1 WLR 1083, 125 JP 460, 105 Sol Jo 709, 45 Cr App Rep 347, CCA) shows."

In ***R v Hopeton Morgan*** (1986) 23 JLR 484, the appellant after his arrest for possession of ganja and attempting to export ganja, said under caution: "We no can talk about dat sah." This Court said that in all the circumstances there was sufficient evidence to draw the inference that the appellant had some measure of control and possession "whether exclusive or joint".

In this appeal, we hold that the words used by the appellant after being cautioned by the police:

> "yeh man go lock me up a station fi little weed a dat give me the inspiration fi write my music and enhance my meditation",

provided that 'something more' from which the learned Resident Magistrate was entitled to find that a prima facie case was made out in respect of the offence of possession of ganja. We are unable to agree with Mr. Harrison Q.C when he submitted that one reasonable inference that may be drawn from the statement is that ganja per se, gives the appellant the inspiration to write his music. In our view, the words used by the appellant are unambiguous and were clearly referable to the ganja plants that were uprooted by Cpl. Dodd in the garden and shown to the appellant. The inescapable inference is, that there was clearly knowledge on the part of the appellant as to what was going on in the garden at the rear of the premises which he said belonged to him. Furthermore, the plants having been "reaped" by Cpl. Dodd, the appellant was assuming ownership and possession.

Further, it is our view that the learned Resident Magistrate could have properly inferred from the evidence, that the appellant had control of the premises. Cpl. Dodd's evidence was unchallenged where he testified that the appellant had said, "Whey so much police a do pon me property"? The words "me property" would have left no doubt in one's mind that he was referring to his ownership of the premises. He had also demanded that the police leave the premises. When these facts in addition to the words (supra) attributed to him are looked at together, this shows clearly that the appellant had knowledge and custody of the ganja plants that were on the premises.

We have carefully considered all the evidence and arguments offered on this ground and have concluded that in all the circumstances there was sufficient evidence to support the conviction on the information charging the appellant with the possession of ganja. Ground 1 therefore fails.

Ground 2

In this ground of appeal the complaint is that the learned Resident Magistrate having wrongly rejected the submission of no case to answer, effectively shifted the onus of proof on to the appellant and by doing so, he relied "virtually entirely" on his evidence in convicting him.

Interestingly, Mr. Harrison, Q.C., did not argue this ground until close to the end of the submissions made on behalf of the appellant. It would appear however, that he did not place much emphasis on it. He referred us to his skeleton submissions where he stated that the learned Resident Magistrate felt

appellant's guilt, not by virtue of any cogency of the evidence adduced by the prosecution against the appellant, but by virtue only of his rejection of the appellant's own evidence in defence.

Miss Lobban submitted however, that it is incorrect to say that the onus of proof was shifted to the appellant. She argued that the prosecution having discharged its legal burden to establish a prima facie case at the close of the Crown's case, the evidential burden shifted to the defence to displace the inference of knowledge in the accused. See ***Bernal and Moore v R*** (supra) and ***R v Outar and Senior*** RMCA No. 47/97 (un-reported).

The burden upon the Crown to prove the guilt of an accused must be carefully distinguished from the evidential burden of adducing evidence. The burden of proving guilt is always upon the Crown. The evidential burden, on the other hand, consists of an obligation to produce evidence to raise up a particular issue. The evidential burden may shift, and during a criminal trial may at one or more stages rest upon the Crown, at other stages rest upon the accused, with this difference, an accused is never required to go so far as to make out a case. Initially, therefore, the evidential burden is upon the Crown to raise what is called a prima facie case. ***R v Smith*** 10 Cox C.C 82 states that it requires more than a scintilla of evidence. Consequently, in ruling in favour of the Crown upon a submission of no case to answer, the judge is not required to be convinced beyond a reasonable doubt, but only to be satisfied that the evidence offers

proof of the prisoner's guilt on a preponderance of probability. See ***R v Miller and Wright*** (1973) 12 JLR 1263 at 1267.

We find that there is merit in the submissions of Miss Lobban and accordingly, this ground also fails.

Grounds 3 and 4

These two grounds of appeal were argued by Mr. Witter on behalf of the appellant. The complaint here was two-pronged. Firstly, it was contended that the conviction for the offence of cultivating ganja was bad in law because in its totality, the evidence adduced (direct or inferential) was incapable of establishing cultivation of ganja. We were referred to the case of ***R v Brickligge*** (1964) 8 JLR 496, at 497 letter F. Mr. Witter submitted that the prosecution had to prove that there was some overt act of tilling of soil and of nurturing and/or tending of the relevant plants and this was not established by the evidence.

In relation to ground of appeal 4, Mr. Witter submitted that since possession was a necessary incident to the cultivation of ganja the learned Magistrate erred in law in convicting the appellant of both offences. He further submitted that the preferment of charges both of cultivation and possession amounted to an abuse of process and/or was oppressive and that this rendered the appellant being punished twice.

Miss Lobban submitted however, that the learned Resident Magistrate did not err in finding the appellant guilty on both informations. We were referred to the case of ***R v Kenneth Codner*** (1955) 6 JLR 338. In that case the police

armed with a search warrant, went to the home of the appellant at Devon in St. Ann. There was a cultivation about 12 yards from the house, which he said was his. When he led the police into his house he ran through the back door towards the cultivation where he uprooted two plants and threw them over a wall. The police pursued and held him; they retrieved the plants and recognized them as ganja. His appeal was dismissed in respect of both charges of cultivating and possession of ganja.

The learned Magistrate found in the instant case that the presence of the ganja plants in the garden, was, 'deliberate and designedly done and not accidental'. He also found that the ganja plants and other plants were in a garden which was "well organized". He accepted Cpl. Dodd's evidence that at the time he went to the premises that there was a garden hose attached to a pipe nearby to the garden. In the circumstances, the Magistrate held that the Crown had discharged its burden of proving beyond a reasonable doubt, that ganja was cultivated in the garden.

Cultivating ganja, in law, like possession, appears to require some mental element. Certainly, if one is unaware of the appearance of a certain plant in one's garden, one cannot be said to be cultivating it. In many ways, however, "cultivation" is a stronger word than possession, involving active participation in the process of growth. Just how active the participation must be is a matter for the tribunal of fact. Should the absence of such aids to cultivation as forks, machetes and the like, be an obstacle to a conviction for cultivation?

The word cultivating is not defined in the Dangerous Drugs Act but, in "C.T Onions" 3rd Edition, "The Shorter Oxford English Dictionary", the word, cultivate is defined inter alia:

> "to bestow labour and attention upon (land) in order to the raising of crops; to till"

In an old English unreported case (***Rotherham***) at Kent Crown Court, the question whether or not one act of watering amounted to cultivation was said to be a matter for a tribunal of fact.

We are of the view that for the Crown to succeed in a case where the charge is cultivating ganja, evidence must be adduced to establish that the plants are tended and nurtured and that the appellant know that the ganja plants were growing in the garden. There must be evidence of caring for the plant during growth. The evidence of Cpl. Dodd, which the learned Resident Magistrate accepted, is that, the garden in which the ganja plants were uprooted was well tended. There was also evidence that other plants were growing in the garden and that a garden hose was attached to a pipe nearby to the garden. The Magistrate found that the evidence disclosed clearly that the appellant was concerned with the state of the garden, took an active interest in what took place there, and was concerned with its management by giving instructions as to things to be done there. There was also the evidence of what the appellant said to Cpl. Dodd when he was shown the ganja plants. He is alleged to have said:

> "yeh man go lock me up a station fi little weed a dat give me the inspiration fi write my music and enhance my meditation."

We hold therefore, that the evidence in this case did support a finding that the appellant was cultivating the ganja plants. Even if the appellant did not himself physically plant the ganja plants in the garden he would certainly have aided and abetted, counselled or procured their cultivation. The appellant therefore fails on ground 3 of the supplementary grounds of appeal.

Miss Lobban submitted in response to ground 4 that the case of ***R v Brickligge*** (supra) is distinguishable from the facts of the instant case and relied on ***R v Karrer et al*** (1970) 11 JLR 505 in which the ***Brickligge*** case was considered. In Karrer the Court held that the act of being in possession of ganja was a single act, complete in itself but some further act was necessary to constitute the other offence. The appellants in that case were therefore properly convicted of separate and distinct offences of possession and attempting to export ganja.

We have also given serious consideration to ground of appeal 4 but are of the view, that on the authority of ***R v Karrer et al*** (supra) he was rightly convicted of both offences.

However, seeing that the said plants are the subject of both offences, it is undesirable to inflict a further punishment for the offence of possession.

Conclusion

Appeal against conviction on each information is dismissed. Appeal against sentence for cultivating ganja is dismissed, and fine of $6,000.00 or 30

days imprisonment remains. Fine of $3,000.00 or 30 days for possession of ganja is set aside and appellant admonished and discharged thereon.