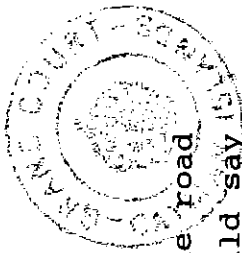


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The officer testified that when Ebanks went across the road Rivers would stay where he was and if a car approached would say "Watch that Pepo, it might be a police car." Once a vehicle drove up and Rivers left in it and returned after five minutes. About ten minutes before they arrested Ebanks, Rivers rode off on his bicycle towards his home. When the officers emerged they arrested the appellant Ebanks, searched him and recovered ganja in a plastic bag from the base of the tree which Ebanks had been visiting. The ganja on later examination proved to weigh 5.8 grammes.

The evidence of Sergeant Ebanks was supported by that of Police Constables Crawley and Whyte, who observed the scene from different points and at a greater distance than Sergeant Ebanks.

After arrest Ebanks was interviewed under caution. He denied being in possession of the ganja. When asked why he kept going to the tree by the Jewellery Factory he said he went there twice to urinate. At the end of the interview he was asked to provide a specimen of urine and he refused to do so.

Rivers was also interviewed after arrest and admitted he visited the scene several times on the night in question and said the last time he did so he went to tell Ebanks about a football match on television. He denied knowledge of the drug.

Both appellants elected to remain silent. The learned Magistrate reviewed the evidence carefully and directed his mind to certain minor inconsistencies between the evidence of the three police witnesses. He concluded that they were on matters which did not lead him to disbelieve them. The officers were not discredited. On my review of the written word I consider he was right in his assessment. The evidence of the police officers was clearly not rehearsed. They were observing the scene from different vantage points and were endeavouring to remain concealed. On the arrest of Ebanks they were each going about a search of the general area. It would be strange indeed if their evidence corresponded exactly on all points. Such discrepancies as there were did not detract from their credibility. The case against Ebanks was overwhelming on both counts. There is no doubt he was peddling the ganja on that evening. A sample of urine was properly called for and was refused.

It is argued for Rivers that the Crown did not prove he had possession of the ganja in that custody and control were not proved to lie with him. It is argued that no action of Rivers demonstrated custody and control and the evidence of the

conversations between him and Ebanks did not prove such custody and control of the drug. Counsel has pointed out that in his ruling after a no case submission the learned Magistrate said than the evidence against Rivers "went beyond just words" yet in his remarks on sentencing Rivers the learned Magistrate said that without the conversation he would not have been convicted. There is no inconsistency in the Magistrate's approach. It is true that the evidence against him went beyond the evidence of the conversations. He was present at the scene of the supply and must have known what Ebanks was up to. However, without the evidence of the words passed between the two men there would have been insufficient upon which to base a conviction.

As it was the evidence of River's actions together with his words to Ebanks put him in joint custody and control of the ganja.

The case against both appellants were properly proved.

The sentence on both men for the possession with intent to supply was twelve months imprisonment and the sentence on Ebanks for refusing the specimen of crime was a six month consecutive sentence. The learned Magistrate concluded without any evidence to support it, at least from the record, that Rivers was the guiding hand in this matter. The magistrate must have come to that conclusion by his observation of the two in Court. Both appellants had previous convictions, although Ebanks' record shows two offences under the Misuse of Drugs Law.

At the end of the day I am unable to say that the resulting sentence was wrong in principle or manifestly excessive.

The appeals are dismissed.



Judge



Dated this 15th day of October, 1993