COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 6/78

BEFORE: The Hon. Mr. Justice Robinson P.

The Hon. Mr. Justice Zacca J.A.

The Hon. Mr. Justice Henry J.A.

RONALD McLEAN

v

REGINA

Mr. W. K. Chin See instructed by Messrs. O.L. Panton & Co. for Appellant

Mr. David Ritch, Crown Counsel for the Attorney General

November 16, 1978

HENRY J.

The appellant was convicted in the Magistrate's Court of two offences under the Misuse of Drugs Law 1973

(1) selling or otherwise dealing in a controlled drug; and

(2) unlawful possession of a controlled drug,

the drug in each case being methaqualone. On appeal to the Grand Court the first conviction was set aside but the second was not disturbed the sentence however being varied to imprisonment for 3 years and a fine of $5000 or in default of payment 6 months imprisonment to follow. This is an appeal against the decision of the Grand Court.

Two grounds of appeal were filed

(1) that the learned judge erred in his judgment that the verdict of the Magistrate was supported by the evidence

(2) that the learned judge erred in his judgment that the evidence given on the trial of appellant pointed to the irresistible conclusion that the appellant was in joint possession of methaqualone tablets.

The main thrust of the submissions before us however was directed to that portion of the Magistrate's reasons for decision in which he stated "Having listened to all the evidence adduced, there was no doubt whatever in my mind at the end of the trial that this defendant was in possession of this dangerous drug about which he had knowledge and over which he

was able to exercise control." It was argued that the second part of this passage indicated the basis on which the learned Magistrate concluded that the appellant was in possession and that since it was necessary for him to find that the appellant was exercising control over the drugs before he could find that the appellant was in possession of them, a mere finding that the appellant "was able to exercise control" was not sufficient to justify a finding that he was in possession of them. It was submitted that the ability to exercise control must be distinguished from the exercise of that control, that a person may have the ability to exercise control without actually exercising it, and that until he exercises control over an article he cannot be said to be in possession of that article. In our view the ability to exercise control is normally a prerogative of a person in control. What the learned Magistrate was saying therefore was that the appellant had the prerogative of a person in control or, to put it another way, that he was able to exercise control over the drug because the drug was under his control. If the statement by the Magistrate is viewed in this light the only question to consider is whether the evidence supports his conclusion. The evidence which the Magistrate accepted indicates

(1) The appellant and his brother entered a room of the Holiday Inn Hotel together

(2) Hotel records disclosed that the room was occupied by someone else but at the relevant time that person was not in the room

(3) The appellant's brother left the room about 10 minutes later and after approximately 15 minutes returned by car carrying with him a bag with a Marlboro cigarette advertisement on it

(4) The appellant's brother re-entered the room and shortly after both the appellant and his brother emerged

(5) The Police thereupon accosted them and, with some reluctance, they returned to the room

(6) In the room 5 plastic bags containing some 4,200 methaqualone tablets were found on a table, another 10 tablets were found in the bag with the Marlboro cigarette advertisement, and in an ash tray were the

remains of a tablet, a hypodermic syringe and a bottle with liquid chemical indicative of the tablets having been tested for barbituates

(7) In the Marlboro cigarette bag were the keys to the appellant's car

(8) The car which the appellant's brother had driven to the hotel was not the car to which the keys related

(9) When confronted with the situation as found in the hotel room the appellant remained silent.

At the trial the appellant gave an unsworn statement in which he made no mention whatever as regards the tablets, the Marlboro bag or the keys allegedly found in the bag.

In our view on this evidence the learned Magistrate was justified in concluding that the appellant was in possession of this dangerous drug.

There is however another basis on which the appeal ought to be dismissed. An appeal lay from the Magistrate to the Grand Court. That court by virtue of section 170 of the Criminal Procedure Code, Law 13 of 1975, has power to draw inferences of fact from the evidence given before the Magistrate. In dealing with the appeal the learned judge of the Grand Court after reviewing the evidence concluded that "the evidence points irresistibly to the two brothers being in joint possession of the methaqualone tablets". In our view the evidence supported that conclusion. In those circumstances the appeal which is primarily an appeal from the decision of the Grand Court must fail.

The appeal will therefore be dismissed and the conviction and sentence as modified by the Grand Court affirmed.