

In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2018: No. 046

BETWEEN:

RILEY CORREIA

Appellant

-and-

**FIONA MILLER
(POLICE SERGEANT)**

Respondent

Before:

Hon. Assistant Justice Diel

Appearances:

**Mr Marc Daniels, Marc Geoffrey Barristers &
Attorneys Ltd., for the Appellant
Ms Simons, Department of Public Prosecutions, for the
Respondent**

Date of Hearing:

17 April 2019

Date of Judgment:

27 May 2019

JUDGMENT

Introduction

1. This is an appeal from a decision of the Magistrates Court dated 12th October 2018, whereby the Appellant was convicted of twelve counts, which all related to the misuse of controlled drugs.
2. The offences for which he was convicted were as follows:-

- (1) Possession of Cocaine with Intent to Supply, contrary to Section 6(3) of the 1972 Act.
 - (2) Possession of Delta 9 with Intent to Supply, contrary to Section 6(3) of the 1972 Act.
 - (3) Possession of LSD, with Intent to Supply, contrary to Section 6(3) of the 1972 Act.
 - (4) Possession of Cannabis with Intent to Supply, contrary to Section 6(3) of the 1972 Act.
 - (5) Possession of Cannabis Resin with Intent to Supply, contrary to Section 6(3) of the 1972 Act.
 - (6) Possession of a black grinder, contrary to Section 9 of the Act.
 - (7) Possession of a Metal Grinder, contrary to Section 9 of the Act.
 - (8) Possession of a three part grinder, contrary to Section 9 of the Act.
 - (9) Possession of a two part grinder, contrary to Section 9 of the Act.
 - (10) Possession of a four part grinder, contrary to Section 9 of the Act.
 - (11) Possession of a scale, contrary to Section 9 of the Act.
 - (12) Possession of a bong, contrary to Section 9 of the Act
3. The Appellant's issues on appeal relate only to counts 1 to 5 inclusive. Thus for completeness and the avoidance of any doubt I dismiss the appeal in relation to counts 6 to 12 inclusive.
 4. The defence raised by the Appellant at trial was essentially that he accepted that the drugs were his and further that they were for his own personal use. The Learned Magistrate in what was clearly a carefully considered decision at paragraph 35 of her judgment states:-

“35. I am compelled to decline the Defence's invitation to

find the Defendant not guilty of all offences appearing on the information sheet. I also decline the Defence's invitation to find Mr. Correia guilty of simple possession. I take this position for the following reasons:

Firstly, it is clear (and the Defendant admits) to being in possession of over 59 grams of cannabis, over 3 grams of cocaine, over 10 grams of cannabis resin, over 8 grams of Delta 9 Tetrahydrocannabinol and over 200 LSD paper squares. All of which the Defendant admits buying at different times from different people.

Secondly, the Defendant admitted in his evidence to spending the following:

originally he stated \$600 per week on cocaine but then changed to \$300 - \$600 per week depending on usage

originally he stated \$400 per week on Delta 9 Tetrahydrocannabinol but then said no as it's not always available in Bermuda, but that was then

\$800 - \$1,200 per month on all of the drugs depending on how much he uses

The Defendant also admitted purchasing cannabis quite frequently although he doesn't provide figures. However, by the Defendant's evidence, the amounts spent on cocaine and Delta 9 Tetrahydrocannabinol alone adds up to much more than the \$800 - \$1,200 per month which he states is the amount that he spends on all of these drugs per month - even though he was not receiving a full-time salary and his pay check was only \$500 - \$800 per week. I therefore do not accept the Defendant's evidence that he spends between \$800 - \$1,200 per month on his

drugs.

Thirdly, the Defendant admits in cross examination that taking these drugs makes his seizures worse and that the discussion was had between him and Dr. Cousins that his seizures could be drug related. Yet in the Defendant's evidence in chief, he states that he takes so much marijuana as it helps him more with his seizures than his anti-seizure meds.

Lastly, the Defendant admits in cross examination that in June 2017 he probably only worked a couple days a week due to his seizures and further his arm was in a cast. The Defence submissions state that he received approximately \$130 per day. By the Defendant's own admission of working only a couple days a week that equates to \$260 per week or \$1,040 - \$1,300 per month without deductions. Even with the Defendant paying very little in to his grandmother, his income does not appear sufficient to sustain his drug habit, even if he did sometimes ask his dad for money. From the Defendant's own evidence of the amount of drugs purchased, he would have had to get quite a bit of money from his father and quite frequently to support his drug habit."

In essence, the Learned Magistrate found that the Appellant could not possibly support his drug habit (assuming all this material was for personal use) from his salary, even with financial assistance from his family. Accordingly, the Learned Magistrate found that he was in possession of all these drugs with the intent to supply.

5. Mr Daniels in his written and oral submissions pointed out the difference between the expert's evidence in chief and in cross examination concerning the value of the various drugs in the possession of the Appellant and the fact that this was not apparently considered properly or at all by the Learned Magistrate.

6. There may well be some merit in those points and in isolation they would, I think, have considerable force. However, part of the items seized comprised two scales which tested positive for cocaine and cannabis (page 39 of the Appeal Record). Mr Daniels quite fairly and correctly accepted that the scales were more consistent with supply than with possession and sought, nevertheless, to argue that the Appellant could have used it to ensure that the amounts he was purchasing were in fact accurate as far as weight was concerned. Valiant though the effort, I do not find it credible.
7. I do accept however his contention that it is not right or fair to simply bundle all the drugs together and consider that they all must have been for the purposes of supply.
8. With that in mind, I consider counts 1 to 5 separately;

Count 1

Possession of Cocaine with Intent to Supply, contrary to Section 6(3) of the 1972 Act.

Given Cocaine residue was found on the scales, I do find that this is consistent with possession with intent to supply and dismiss the appeal in relation to this count.

Count 2

Possession of Delta 9 with Intent to Supply, contrary to Section 6(3) of the 1972 Act.

This had a street value of some \$80.00 and I am not aware of any evidence that would demonstrate that this was intended for supply. Accordingly I set aside the conviction on this count and substitute a conviction of simple possession.

Count 3

Possession of LSD, with Intent to Supply, contrary to Section 6(3) of the 1972 Act.

Despite counsel for the Appellant's arguments and submissions, I cannot accept that possession of 219 tabs of LSD are only for personal use. Some or all of them had to have been intended for supply. Accordingly, I dismiss the appeal in relation to this count.

Count 4

Possession of Cannabis with Intent to Supply, contrary to Section 6(3) of the 1972 Act.

As with count 1 above, residue of the drug was found on the scales. I thus dismiss the appeal in relation to this count.

Count 5

Possession of Cannabis Resin with Intent to Supply, contrary to Section 6(3) of the 1972 Act.

The Cannabis Resin like count 2 above has no evidence supporting the charge of possessing this drug with intent to supply. I allow the appeal on this count and substitute a conviction of simple possession.

Conclusion

9. The appeal(s) in relation to Counts 2 and 5 are accordingly allowed with convictions of simple possession substituted therefore.
10. The appeal(s) in relation to counts 1, 3 and 4 are dismissed.
11. I decline the invitation to remit these matters back to Magistrates Court for retrial and remit the matter for sentencing on all counts.

Dated 27 May 2019

MARK DIEL
ASSISTANT JUSTICE