

THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE  
(CRIMINAL JURISDICTION)

CASE NO. ANUHCR2022/0062

BETWEEN:

THE KING

-and-

TROY CHRISTIAN

Appearances:

Mr. Cedric Dyer for the Crown  
Mr. Vere Bird for the Defendant

2023: November 7<sup>th</sup>, 28<sup>th</sup> 29<sup>th</sup> 30<sup>th</sup>.  
December 1<sup>st</sup>.  
January 16<sup>th</sup> 2024

JUDGMENT

[1] **BAKRE, J.:** By an Amended Indictment dated the 1<sup>st</sup> of June 2023 the Director of Public Prosecutions charged Defendant, Troy Christian with the following offences:-

- (a) **POSSESSION OF CANNABIS**, Contrary to Section 6(2) of the Misuse of Drugs Act CAP 283 of the Revised Edition (1992) of the Laws of Antigua and Barbuda. The particulars of the offence are that **TROY CHRISTIAN**, on the 20<sup>th</sup> day of November 2020, at Bendals in the Parish of Saint Mary, in the State of Antigua and Barbuda, did have unlawfully in your possession a certain controlled drug, to wit, 42 pounds (19.1kg) of Cannabis.
- (b) **DRUG TRAFFIKING**, Contrary to Section 19A (1) (a) of the Misuse of Drugs (Amendment) Act No. 13 of 2008, Laws of Antigua and Barbuda. The particulars of the offence are that **TROY CHRISTIAN**, on the 20<sup>th</sup>

day of November 2020, at Bendals in the Parish of Saint Mary, in the State of Antigua and Barbuda, did have unlawfully in your possession a certain drug, to wit 42 pounds (19.1 kg) of Cannabis.

- [2] The Defendant pleaded not guilty to both counts and the prosecution called three witnesses to prove their case. The first witness is a neighbor of the Defendant while the other two are police officers who conducted a search on the premises of the Defendant.
- [3] The prosecution also read into evidence the report of the Government Analyst; Walston Vincy Bowen to support the case. The Defendant gave evidence on oath to deny the charge.

### **The Crown's Evidence**

- [4] The first prosecution witness was **Brenon Williams**. He is a neighbor of the Defendant at Bendals. The testimony of the first witness is that he knows Defendant for the past three or four years as his neighbor and that he sees him around.
- [5] He gave evidence that there is a small field of cannabis to the east of his house and that he once saw the Defendant in the field, he could not recall exactly when he saw the Defendant in the field. Under cross examination, Mr. Williams said he only saw the Defendant in the field only once.
- [6] The second witness, **Jamie Charles** is a Sergeant of Police. He gave evidence that he was handed a search warrant on the premises of Troy Christian which he carried out with other officers on the 20<sup>th</sup> of November 2020 at about 4:30am. He said on arrival at the Defendant premises, he identified himself, read the search warrant to the Defendant and gave him a copy of the warrant.
- [7] He said on searching the premises a quantity of plant-like material resembling the controlled drug cannabis was discovered in the southern bedroom. To the south of the house on approaching that area he was able to smell the strong aroma of what appeared to be marijuana. With the aid of search lights an extensive search was carried out in the said area where a quantity of marijuana plants amounting to about 920 plants were seen.
- [8] He also said that they found an electric extension cord which ran from the kitchen of the house to a cultivation field nearby. The Defendant was asked if he knows it

is an offence to cultivate more than four marijuana plants on his premises to which he replied, "Officer me nah know nuttin bout dat".

[9] The witness stated that they also saw a water hose which ran from the pipe in the house to the field with a water tank and some watering jugs. The field was said to be about 50 to 70 feet from the house.

[10] Other items like a cell phone and an electrical bill were found in the house and taken along to the police station. The witness tendered the search warrant as **Exhibit MJ1**.

[11] Under cross examination, Sergeant Charles said cannabis was found throughout the house and that a small amount was found in the living room and in the northern bedroom. The cannabis in the living room and northern bedroom were in small packages. When asked what was in the southern bedroom other than cannabis, he said there were pictures on the wall and on the dressing table. The police did not ask the Defendant who was in the pictures, nor did they investigate who the pictures belonged to. The Defendant denied knowledge of the marijuana. The Defendant did not mention that he smokes marijuana to the police.

[12] **Milton Jeremy** was the third witness of the prosecution. He is a Police Constable. He confirmed that police carried out a search on the premises of the Defendant based on **Exhibit MJ1**. He stated that in the premises of the Defendant, there was a strong odor of marijuana. He narrated how the Sergeant Charles read out and explained the search warrant to the Defendant and handed him a copy. He said they started the search in the northern bedroom in the presence of the Defendant and found plant material resembling the controlled drug cannabis hanging from the roof. He said he asked the Defendant what the plant material was and who it belongs to, the Defendant indicated that he did not know and said that he had never seen these things in his life. The Defendant was cautioned and when asked he indicated that he was in control of the house. He said at that point, the Defendant was told that it is an offence to have more than 15 grams of cannabis in his possession and he was arrested while the search continued.

[13] The witness stated that the search continued in the northern bedroom and the police found items. The items included, one black bucket, one blue bucket, two black shopping bags, one purple shopping bag, one pink shopping bag and one green shopping bag. He said all these bags contained what appeared to be cannabis. Two transparent plastic bags containing cannabis seeds were also found. He said when they showed the Defendant the items, he denied being aware of them.

[14] Mr. Jeremy said he search continued into the yard and on the southern end of the house he saw a pipe attached to the house and a water hose affixed to the pipe. He also observed that the pipe ran under the ground and in a southern, an electrical cord was also found running in the same direction as the pipe. The Defendant was asked who the pipe and electrical cord belonged to and he said he did not know.

[15] He said the pipe ran underground towards the said adjoining land. He said in the presence of the Defendant, they followed the pipe and the cord which led them to a foot path of about 50 feet from the house of the Defendant into a field where what appeared to them to be marijuana plants was being cultivated.

[16] The field was about 150 feet away from the Defendant's house.

[17] It was stated that there was a foot path from the house to the field. He said they cautioned the accused and asked who the farm belongs to, the Defendant replied, "me nah know nothing about behind there, there is a dispute with the land, so I don't go behind there".

[18] The witness said he called a Constable Gerald of the Criminal Investigations Unit who came and processed the scene by taking photographs of the plants in the field. Upon completion of the photographing, the plants were uprooted and tied in bundles of 20. The plants along with the items found in the Defendant's house were packaged in police vehicles transported along with the Defendant to the Police Headquarters.

[19] The items were weighed in the Defendant's presence and amounted to 42 pounds and valued at EC\$168,000 (One Hundred and Sixty-Eight Thousand Eastern Caribbean Dollars). The items were packaged, and notes were made on the packages and the Defendant and Constable Jeremy signed the packages.

[20] On 21<sup>st</sup> November 2020 Constable Jeremy met with the Defendant and his counsel in the office of the Criminal Investigation Department along with a Constable Massicot in continuation of the investigation. The Defendant was told of his rights, his statement was recorded on an Accused Statement Form and read over to him. The witness tendered the statement form as **Exhibit MJ2**.

[21] Subsequent to this, the witness met with the Defendant and his attorney again and a question-and-answer session was conducted after the procedure for same had been fulfilled. The question-and-answer was recorded and tendered as **Exhibit MJ3**.

[22] The witness stated that he also had another interview with the Defendant on 2<sup>nd</sup> December 2020 in respect of the incident and same was recorded with the required procedure. He tendered the said recorded interview as **Exhibit MJ4**.

[23] The Defendant was officially arrested at this point and charged.

[24] The witness stated that on the 23<sup>rd</sup> day of November 2020, he gave the recovered items to the Government Analyst, Mr. Walston Vincy Bowen to test the items. On the 18<sup>th</sup> day of February 2021, the Analyst gave him a report of the items tested which confirmed the items to be cannabis. The witness said he handed a copy of the Analysis Report to the Defendant on the 19<sup>th</sup> of February 2020 with a notice of intention to tender same into evidence.

[25] The witness Jamie Charles identified the items allegedly recovered at premises of the Defendant and tendered the following:

1. One black bucket
2. One blue bucket
3. Two black shopping bags
4. Two transparent bags
5. One pink shopping bag
6. One purple shopping bag
7. One green shopping bag

[26] The items were admitted and marked as **Exhibits MJ5 A-I**. He further identified the Defendant physically in court as the person he carried out the search warrant in his house.

[27] Under cross examination, he was asked how many persons were on the premises when he carried out the search and he said only the Defendant and his girlfriend were there. He denied that there was anyone called Gayle on the premises. He stated that they found items like the Birth certificate of one Nischa Gayle issued from Jamaica, pictures, money transfer receipts in the name of the same Nischa Gayle all in the northern bedroom but he could not remember in whose favor the transfer was done. He denied that a cell phone was recovered from the site.

[28] When he was asked if anyone ran out of the premises, he said he does not know if anyone ran out of the premises during the search.

[29] Then, it was put to the witness that one Mr. Gayle ran out of the premises while the search was going on, he denied this. Counsel for the Defendant indicated to this witness that he had written in his report that one Gayle or Merone or Errol fled the scene, he admitted that this is what the Defendant told him at the police station the day after the search. He was further confronted about the fact that he wrote in his statement that he carried out a search for Gayle, the individual who allegedly fled the scene of the raid was on the next day.

[30] The witness said he could distinguish between what he found in the northern bedroom and what was found in the southern bedroom. He confirmed that all the items before the court in this case (**Exhibit MJ5 A-I**) were all found in the northern bedroom. He said with respect to items in the southern bedroom, the Defendant had been convicted in another charge.

[31] He denied the knowledge that one Nischa Gayle is the son of Gayle, Merone or Errol who was alleged to have fled during the search.

[32] The witness said he had other officers with him at the point of the search and that one Nischa Gayle was later arrested by his colleague and subsequently charged but later discharged.

[33] This was the case of the prosecution.

### **The Case for the Defendant**

[34] The Defendant gave evidence on oath. He said he remembered clearly the incident of the 19<sup>th</sup> of November 2020 when he was sleeping in his living room, and woke up to take medication as he had a headache. At about 4am he heard a bang on his door and the police men invaded his house.

[35] The Defendant said his door was kicked open before he could open it and Officer Jamie Charles handed him a search warrant. He told the police that the warrant was not addressed to him as his name was not on it but they insisted on searching the premises.

[36] He said he was asked which of the room was his and he directed them to the room on the right (the southern bedroom). He said he told them that the other room was occupied by Merone Gayle his tenant. The Defendant also told the police that his fiancé was in his room.

[37] The Defendant said they knocked on the northern room while he was with them and Merone Gayle opened the door and they all saw through the door plants that look like marijuana hanging from his roof. Officer Jamie Charles took Gayle out of the room and asked for his passport upon realizing that he was not from Antigua. He said shortly after this, he heard one of the officers saying, "he is running". One of the officers pursued Gayle and he also heard a shot being fired. He turned and said "what yall did yall kill a guy over a few marijuana". He said he saw the officer who had pursued Gayle returned with an injury.

[38] The Defendant said the officers later took down the plants in the northern bedroom and packed them. He said he was subsequently taken to the field on the southern side of the house where he discovered marijuana was being cultivated.

[39] According to the Defendant, the officers took him to the land where he saw cannabis being cultivated and asked him about the land and he told them he does not go on the land as there is a dispute regarding the ownership of the land. He said the issue of ownership had escalated after his aunt who owned the property died and thus he could not know what is going on in the land. He said he showed the officers the boundary to his property and told them that he knows nothing about the cannabis farm.

[40] The Defendant said the officers removed the plants and packed them and took him along with the plants to the police station. He said he smokes marijuana and that he buys it from Rastafarians who are allowed to grow marijuana.

[41] The Defendant said he lives in the house with Gayle to whom he had sublet the northern room while he (the Defendant) lived in the southern room.

[42] He said he rented the whole house from his aunt for the sum of \$700 a month and sub-let the northern room to Merone Gayle for \$200. The men lived together for about a year. He described Gayle as someone who is usually by himself but that his girlfriend comes to see him.

[43] The Defendant said that this was the living arrangement between him and Gayle during the Covid pandemic. He also said that during that time he would usually stay at his girlfriend's home due to the curfew restrictions.

[44] The Defendant said he was not aware that Nischa Gayle was a son of Merone Gayle and that he only got to know Nischa Gayle when he was charged with him. He denied planting the marijuana in the field or being aware of its existence, neither did he know who planted them.

[45] With respect to the marijuana found in the northern room, he said he saw them for the first time during the police search when Mr. Gayle opened the door for the officers. He said there were about eight officers when the search of his house was carried out.

[46] Under cross examination, he admitted that there was reasonable amount of cannabis found in his living room. He said his girlfriend had called his attention to the strong smell of cannabis from the northern room two days prior to the police search, but he had not had the opportunity to confront Mr. Gayle before the search warrant was executed. He did not realize that quantity of marijuana in that room and thus he did not contact the police.

[47] He denied being aware of the pipe of water running from the house to the cannabis farm. He reiterated that he does not go to the field. He said the police headquarters was close to the house but he did not suspect anything thus he did not make a report. He agreed that he planted a few seeds of marijuana around his house for his consumption, but he did not know Gayle had planted so much on the field and that he could not see the field from the house.

## **CLOSING SUBMISSIONS**

[48] Counsel for the Defendant addressed the court first. He urged on the court to acquit the Defendant on the ground that his guilt was not proved by the Prosecution. Counsel stated that the evidence set before the court by the three prosecution witnesses' when taken together does not meet the requirement of proof beyond reasonable doubt as required by the law. He said the evidence of all the witnesses put together are inadequate in this instance to ground a conviction.

[49] Counsel stated that the third prosecution witness, Milton Jeremy stated in his evidence that no one ran away from the premises of the Defendant on the day of the search. He stated that this evidence is contrary to the statement made by the said witness in his report after the search was carried out. He stated that clearly the witness deliberately suppressed the fact that Merone Gayle who occupies the northern bedroom fled at the point the house was being searched. Counsel stated that the witness admitted in evidence that he wrote in his statement that a search was carried out on the premises for the occupant that fled during the search. He concluded that certainly Merone Gayle who is the occupant of the northern bedroom actually fled during the search.

[50] Counsel referred to the case of the Defendant in respect of the cannabis farm. He said the Defendant denied knowing about the existence of the farm cultivated by the said Merone Gayle because the Defendant stated clearly that he did not visit the portion of land as there was a dispute over the ownership with the neighbors. Counsel stated that the Defendant showed the officers the boundary of the house he occupied. Mr. Bird stated that the evidence of the Defendant about the land being in dispute was not discredited.

[51] Counsel referred the court to the northern room where personal items of Mr. Gayle were said to have been found. He said photographs and all other items including a funds transfer document found in the room were shown to be property of Mr. Gayle and that there was no evidence that the Defendant had control over the room and actions of Mr. Gayle.

[52] Counsel argued that the Defendant did not have possession of the cannabis found in the northern room as suggested by the Prosecution. He referred the court to the testimony of the Defendant where he said the during the Covid pandemic; the Defendant was most usually at his girlfriend's home and was rarely at his own home and so may not have noticed the activities Mr. Gayle.

[53] Counsel referred the court to the evidence of the third prosecution witness that the cannabis in evidence were all taken from the northern room over which the Defendant had no control.

[54] He explained that the position of the Defendant is that, though his girlfriend had mentioned to him that she perceived the strong smell of marijuana two days earlier the house was searched by police before he had the opportunity to confront his sub-tenant.

[55] On the part of the prosecution, Mr. Cedric Dyer referred the court to the case of **Hughes v Guild [1990] JC 359** where the court held that the basic elements to prove possession are control and knowledge. Relying on **Hughes** Counsel submitted that once knowledge had been established it was a relatively short step to say that there was control.

[56] He said the Defendant was identified by the witnesses as the person on whose premises the items were found. Counsel referred the court to the fact that the Defendant was said to have been seen on the field by the first prosecution witness who is his neighbor.

[57] He also referred the court to the fact that there is evidence that the Defendant was earlier informed of the strong smell of cannabis coming from the northern bedroom.

[58] He called the attention of the court to the electrical cord and the water pipe that ran from the Defendant's premises to the field where cannabis was being cultivated and the prominent foot path that ran from the house to the field. Counsel stated that all these pieces of evidence point to the fact that the Defendant had knowledge of the existence of the marijuana on his property.

[59] In reference to the fact that Constable Jeremy wrote in a report that one Merone Gayle fled from the premises and was searched for, Counsel urged on the court to believe the position of the witness that it was the next day at the station that he was informed by the Defendant that Mr. Gayle fled the house. He said the fact that he later stated in this same report that they searched for him was only his poor writing style which seem to give the impression that the search was conducted on the day of the search on the premises.

[60] Prosecution Counsel, Mr. Dyer urged the court to find the Defendant guilty of the offences as charged.

### **ANALYSIS**

[61] The offences for which the Defendant is charged as stated are drug possession contrary to Section 6(2) of the Misuse of Drugs Act, Cap 283 and also drug trafficking contrary to Section 19A(1)(a) of the Misuse of Drugs (Amendment) Act 2008.

[62] ***The Misuse of Drugs Act, Cap 283 at Section 6(2) states:-***

***“Subject to subsection (4) and section 31, it shall be an offence for any person to have a controlled drug in his possession in contravention of section (1).”***

[63] This section of the Act is made subject to section 4 and 31. Section 4 states:-

***“In any proceedings for an offence under subsection (2) in which it is proved that the person charged had a controlled drug in his possession, it shall be a defence for him to prove-***

***(a) That, knowing or suspecting it to be a controlled drug, he took possession of it the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that, as soon as possible after taking possession of***

*it, to destroy the drug or to deliver it into the custody of a police officer; or*

- (b) That knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into custody of a police officer and that, as soon as possible after taking possession of it, he took all such steps as were reasonably open to him to deliver it into the custody of such a police officer.*

[64] Section 31 reads:-

*“1. This section shall apply only to offences under sections 5(2), 5(3), 6(2), 6(3), 8(2) and 11(1).*

*2. Subject to subsection (3), in any proceedings for an offence to which this section applies it shall be a defence for the person charged to prove that he neither knew of nor suspected nor had a reason to suspect the existence of some facts alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.*

*3. Where, in any proceedings for an offence to which this section applies, it is necessary, if the person charged is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or product in question was that controlled drug, the person charged-*

*a. shall not be acquitted of the offence charged by reason only of proving that he neither knew, nor suspected, nor had reason to suspect that the substance or product in question was the particular controlled drug alleged; but*

*b. shall be acquitted thereof-*

*(i). If he proves that he neither believed, nor suspected, nor had a reason to suspect that the substance or product in question was a controlled drug; or*

*(ii). If he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description such that it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.*

***4. Nothing in this section shall derogate from any other defence which is open to a person charged with any offence to raise.***

[65] The section under which the Defendant is charged makes it an offence to be in possession of controlled drugs. In this instance, the Defendant was said to be in possession of 19.1kg of cannabis which is outside the limit of cannabis allowed by law.

[66] It is obvious from the law that the offences are not strict liability offences as the proviso stated defences that an accused may rely on. The most essential element of the offence is possession of the said controlled drugs.

[67] It is the duty of the prosecution to show beyond reasonable doubt that the items seized are controlled drugs and that the Defendant was in possession of the items.

[68] In proof of the case against the Defendant, the prosecution has stated the quantity of the drugs seized as 19.1kg which is well above the quantity permitted by law for personal use. The Misuse of Drugs Act Cap 283 criminalizes the possession of cannabis in excess of the quantity allowed.

[69] The prosecution in further proof of the content of what was tendered relied on the analysis of the Government Analyst. The third prosecution witness stated that on the 21<sup>st</sup> of November 2020, he gave the said items taken from the home of the Defendant to Mr. Walston Vincy Bowen the Government Analyst who gave a report of his analysis in February 2021 and confirmed that the items were cannabis. The analysis of the said Mr. Bowen was read into evidence and it clearly shows the content of the said items.

[70] Having fulfilled the first element as it relates to the quantity and content of the controlled drugs, the doctrine of possession as it relates to the offence is now considered.

[71] The courts over the years have considered what amounts to possession in relation to the law on misuse of controlled drugs. In **Regina v Nicole Martin ANUHCR2018/0123**, Morley J considered the meaning of possession in relation to Section 6 of the Misuse of Drugs Act. The court in that ruling relied on the case of **R v Monica (1970) 16 WLR 74** and stated that a mere occupation of a dwelling-house without something more, is not sufficient to invest the occupant with possession of cannabis found there.

[72] In **Fitzroy Farrell vs. The Queen MNIHCRAP2015/005**, the Eastern Caribbean Court of Appeal also held that:-

**“Mere presence in the house where drugs are found may not be sufficient in some cases of multiple occupancy or single occupancy.”**

[73] It is clear from cases that possession is proved when knowledge and control can be established. Without a proof that the Defendant had knowledge of and control over the drugs found in his house, possession may not be established. The simple arithmetical theory is Control + Knowledge = Possession.

[74] In order to establish control, the prosecution has relied on the fact that the Defendant is the main tenant of the property in question. The evidence before this court is that the Defendant had rented the apartment from his aunt who is now deceased. He gave testimony that he sublet a room out of the two rooms in the house to someone called Merone Gayle. It is the case of the Defendant that the items in question were found in the room occupied by Merone Gayle and that he was not in possession of the drugs.

[75] In **R v Kousar [2009] All ER (D) 289 (Mar)**, it was stated that control refers to the ability to demand that such item be removed or ability to remove it oneself from home.

[76] Also in the case of **R vs. Skoog 2002** reported in the text **The Law of Dangerous Drugs in the Commonwealth Caribbean, by Desiree C. Alenne**, it was stated that if the main tenant has permitted the sub-tenant who is said to be in possession of such drugs to use the premises for the illicit act, he would be said to have control over the drugs.

[77] The concept of control as stated in the case of **R v Kousar (supra)** particularly in a situation of joint occupancy requires both knowledge and acquiescence. It was established that where the Defendant who ordinarily had the knowledge of the presence of the drugs failed or neglected to remove or make conscious effort to have it removed, he would be said to have control in the circumstances.

[78] It is interesting to note that in proof of possession, the concept of control and knowledge are interrelated. In **Hughes v Guild (supra)** a case of the High Court in Scotland, it was stated that:-

***“Once knowledge had been established it was relatively short step to say that there was control.”***

[79] It is clear that the concept of control and knowledge in proof of possession are interwoven. It is the position of the law that knowledge is an essential element of the doctrine of possession. It is mandatory that the state of mind (*mens rea*) should be established. Where it was not proved that the Defendant had knowledge of the existence of such items within his control the proof of possession would fail.

[80] The Defendant is said to be the occupant of a rented apartment in Bendals which he shared with one Merone Gayle. The prosecution witnesses gave evidence of how they acted on a search warrant to carry out a search on the premises of the Defendant and found the exhibited controlled drugs.

[81] It is the duty of the prosecution to show that the Defendant was not only in control of the premises but also had knowledge of the presence of the drugs on the premises.

[82] It is the evidence before the court as stated by the third prosecution witness that all the items before the court were found in the northern room. The Defendant gave evidence that the northern room was occupied not by him but by his house mate called Merone Gayle who he said fled the premises during the search.

[83] In my view, the case of the prosecution seems to be that the Defendant and his girlfriend alone were found on the premises and that the Defendant being the only occupant of the premises had possession of the controlled drugs found.

[84] This position was contradicted by the Defendant who introduced the evidence that all the particulars found in the northern bedroom were property of one Merone Gayle. It was the position of the Defendant that Merone Gayle was found on the premises during the search, and that he actually fled while the search was being conducted.

[85] The testimony of the Defendant was that when the police came, he was in the living room, and they searched the living room and the southern room where he occupied. He did not dispute the fact that certain quantity of controlled drugs was found in his room and the living room but gave evidence that he was already tried and convicted for those drugs. The position of the Defendant is that the large quantity of drugs found in the northern bedroom and on the field was not his and that he had no knowledge of their existence.

[86] It is important to state again that the drugs in question in this case were found either on the field or in the northern room not in the southern room or the living room.

[87] Now, in the determination of whether the Defendant is liable in this instance, this court is expected to look at the circumstances to determine if the Defendant was actually in possession of the drugs before the court.

[88] It seems to me that the prosecution tacitly admitted that the premise was jointly occupied as I see that a substantial part of Counsel's final address was in respect of joint occupation of the premises. In addition to the evidence of the Defendant on whether Merone Gayle was found by the police on the premises, under cross examination, the third prosecution witness was confronted with a question about the statement he made about the search shortly after the incident where he wrote that one Merone Gayle actually fled the premises during the search.

[89] At this point, permit me to state that I would have totally discountenanced this evidence in this regard because statement of Milton Jeremy, though forms part of the depositions filed by the prosecution in their case, was never tendered in exhibit either by the prosecution nor by the Defendant counsel who chose to rely on it in evidence. It is my respectful view that the mere front loading of a document with the Indictment in the deposition would not automatically make it an exhibit to which the court could rely unless the document was properly tendered.

[90] In this instance however, even though this court cannot rely on the content of the said report of the third prosecution witness, the witness admitted under cross examination that he actually stated in the written statement that Merone Gayle fled in the course of the search. He stated however that he wrote in his statement because he was told same by the Defendant the day after the search was conducted. When asked why he wrote that they made a search for the man that fled if actually no one fled from the premises he said the search was on the next day after he was told that someone fled.

[91] In my view, this explanation makes no sense despite the submission of the Prosecution Counsel that it was a matter of writing style to have written what transpired on the 21<sup>st</sup> of December 2020 while reporting an event that happened on the 20<sup>th</sup> of December 2020.

[92] The account of the Defendant that Merone Gayle was found in the northern room in the course of the search with all the drugs by him and the police officers and that he later fled the premises seems more plausible in my view. This is coupled with the fact that all the particulars found in the northern room belong to him and that this was captured as the position of the fact initially by the third prosecution witness in his report.

[93] I have found as a conclusion of fact that the Defendant had a sub tenant in the name of Merone Gayle, who was the occupant of northern bedroom and that he actually was on the premises when the search party got there but fled in the course of the search.

[94] In view of my position above, it is clear that the premises was jointly occupied. This notwithstanding, where the Defendant had knowledge of the drugs in the premises, he may still be liable for possession. In **Hughes v Guild (supra)** the court stated:

***“In this respect, of cases of joint occupancy are not different from any other case in which the elements of knowledge and control must be established by inference. In some cases it may be possible to distinguish the position of one occupier from another if drugs are concealed or if one occupier is absent at the critical time.....”***

[95] This is to show that notwithstanding that the northern bedroom is occupied by the said Merone Gayle, the Defendant may still be liable if it can be proved that he had knowledge of and control over the drugs. See **Fitzroy Farrell v The Queen (supra)**.

[96] The fact before the court was that the Defendant was informed by his girlfriend two days earlier that there was a strong smell of cannabis from the northern room. He said he was not always in the house and that he had plans to confront the occupant of the room, the house later searched and the drugs were found in the room.

[97] Clearly from the definition of possession, knowledge is a key factor. In **Farrell v The Queen (supra)** the court held:-

***“On a charge of possession of drugs the prosecution has a duty to prove that the appellant has knowledge of the presence of drugs. Whether an appellant has knowledge is fact intensive and depends on circumstances in each case. Mere presence in the house where the drugs are found may not be sufficient in some cases of multiple occupancy or single occupancy.”***

[98] See also the case of **The Queen v Galbraith (1981) 1 WLR 1039**.

[99] The circumstance of this case based on the evidence is that the Defendant said he is not the occupant of the room where the drugs were found and that he saw the large amount of cannabis in the northern bedroom at the same time with the officers when the said Merone Gayle opened his door for the officers to search. He said the occupant normally kept to himself and that he (the Defendant) did not usually stay in the house as he was mostly at his girlfriend's home.

[100] These set of fact does not seem to suggest to me that the Defendant had knowledge of the drugs in the northern bedroom. Despite the evidence that the Defendant was told a few days earlier that there was a strong smell of cannabis coming from the room, he admitted that he also smokes cannabis and was not aware of the strong smell until he his attention was called to it and before he could deal with the situation, the premises were searched.

[101] In the case of **White v HM Advocate (1991) SCCR 555**, a case which facts are similar to the case at hand. The issue of possession on jointly occupied premises was considered. The facts of that case were that the appellant was the owner of the apartment where the drugs were found but other occupants lived on the premises. Cannabis was found in a bag in the kitchen cupboard. There was evidence that the accused had moved to her parent's house two years prior to that time but sometimes stayed at the apartment. On the day of the search, she had spent the night on the premises after returning from a party, the crown conceded that there was not sufficient evidence to convict her for possession.

[102] I am of the opinion in this regard that the Defendant had no knowledge of the presence of cannabis in the northern bedroom and even though he was the substantive tenant in the house and would have had some level of control on the premises.

[103] With regard to the cannabis field, if I were to consider it at all despite the evidence of the third prosecution witness that all the drugs tendered as exhibit in this case were found in the northern room. My position is that the Defendant was vehement in his evidence that he never visited the field because that portion of land was in dispute. He maintained that he only realized that the field was being cultivated for cannabis when he followed the officers there for the search. The first prosecution witness had given evidence that he saw the Defendant on the field once. Under cross examination, the Defendant mentioned that he was seen on the field by the first prosecution witness with the police the day of the search when he was escorted to the field by police.

[104] In my respectful view, the Defendant had no knowledge of the existence of the items on the premises thus he could not have exercised control. In the circumstance he cannot be said that he was in possession of the drugs found in the northern bedroom which is the issue before the court.

[105] The Defendant, Troy Christian is thus discharged and acquitted of the offence of possession of cannabis, Contrary to Section 6(2) of the Misuse of Drugs Act, Cap 283 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

[106] With respect to Count Two, it is contingent on the liability of the offence in Count One.

**Section 19A (as amended) reads:-**

***“1. A person commits the offence of drug trafficking if he-***

***(a) Commits the offence of under Sections 4, 5, or 6 and the controlled drug-***

***(i) is 5 kilograms or more in weight; or***

***(ii) is 1 litre or more in volume.***

***(b) conspires to commit any of the offences in paragraph (a);***

***(c) attempts to commit any of the offences under paragraph (a);***

***(d) aids, abets, counsels or procures the commission of the offences under paragraphs (a) to (c).***

[107] It is in the light of the fact that the liability in Count Two is contingent on liability to Count One I also discharge and acquit the Defendant, Troy Christian of the charge in Count Two on the Indictment.

**Justice Tunde A. Bakre**  
High Court Judge

By the Court

Registrar