

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO: 2/87

BEFORE: The Hon. Mr. Justice Rowe - President
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

R. v. DOUGLAS SCARLETT

B.E. Frankson for Appellant

John Moodie for Crown

February 18, & November 19, 1987

ROWE: P.

On February 18, we dismissed the appeal, confirmed the conviction and the sentence of twelve months imprisonment at hard labour. The order for police supervision of two years to follow the expiration of the term of imprisonment is not approved as it is in excess of the jurisdiction of the Resident Magistrate who is not empowered by section 47 of the Criminal Justice (Administration) Act to impose such a condition unless upon conviction on indictment where a previous conviction of a crime is proved. We now reduce our reasons into writing in fulfilment of a promise made then.

From the infrequency of reported cases in the last decade concerning offences of unlawful possession of goods, it is to be inferred that police officers are reluctant to prosecute under the Unlawful Possession of Property Act. In the instant case, a detective corporal of police gave evidence that he was investigating recent reports of motor car thefts in St. Catherine and on June 30, 1986 he received reports that stolen cars were kept on the premises of the appellant and were in the process of being scrapped. After obtaining a Search Warrant under section 8 of the Unlawful Possession of Property Act, Det. Cpl. Pennycooke, with a party of policemen, went to premises at Caymanas Bay in St. Catherine on July 2, 1986. There the detective saw the appellant,

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who was the only person on those premises, in the act of removing parts from a blue Ford Escort motor car. The officer told the appellant that he had a warrant to search his premises for cars and car parts, whereupon the appellant said:

"Officer Halstead and Burnett involved a
nuh me alone."

Detective Pennycooke read the Warrant to the appellant and asked him how he came into possession of the blue Ford Escort motor car. He said:

"Officer me nuh tell you earlier on that
a the man dem bring the car come here,
dem wouda have fi tell you where them
get the car from."

As the search continued, the police came upon a white Ford Escort motor car, which the appellant claimed to be his, but upon the police finding an engine in the trunk of the car, the appellant said:

"Officer a my car dis you know but me
gwine tell you the whole truth. The
engine inside the car hot."

He said further that the engine found in the trunk was originally in the car but he had replaced that engine. Asked how he came into possession of these engines, the appellant replied:

"Officer me nuh tell you seh a the man dem
bring the cars come yah and me work by
scrapping them, I don't know where they
get them from."

A large quantity of items including car doors, tyres, gear boxes, windshield rubbers, windshields, car seats, bonnets, bumpers, grills and driving shafts were found in a room on the premises. The appellant's explanation for his possession of these articles was:

"A when the cars come me scrap them and
the men come and pick up the parts and
went (sic) away with them."

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3.

On this state of the evidence the learned Resident Magistrate made an order for the appellant to account for his possession of the motor cars and motor cars parts. Put shortly his explanation was that the white Ford Escort motor car belonged to him, that when the police party arrived he was engaged in repairing the control arm on his white Ford Escort, that an engine block found under the verandah was his property, that the police placed this engine block in the trunk of the white Ford Escort, that he did not see the police find or remove any other car or car parts on those premises, and that he was a mere visitor and by no means the sole occupier of the premises. He denied making the admissions sworn to by the police officers and attributed to him.

Mr. Frankson submitted in support of the first ground of appeal which complained that the prosecution failed to lead and establish evidence of suspicion on the part of the Constable when he conducted the search pursuant to the Warrant, that the Resident Magistrate erred as a matter of law in forming the view that when the police officer attended upon the Justice of the Peace and laid his complaint that that was sufficient to establish suspicion so as to bring the case within the provisions of the Unlawful Possession of Property Act.

The learned Resident Magistrate made ten separate findings of fact. These are:

1. That Detective Corporal Pennycooke received information that cars were stolen then they were scrapped at premises of accused Scarlett and then abandoned in canefields in St. Catherine.
2. That accused Scarlett did the scrapping of the motor cars brought to the premises and that he was at the premises doing this at the time.
3. That as a result of the information received Detective Corporal Pennycooke obtained a warrant Exhibit 1 under the Unlawful Possession of Property Act.

- "4. That suspicion can be inferred from the fact that information was received and Exhibit 1 the warrant was obtained.
5. That Detective Corporal Pennycooke armed with warrant Exhibit 1 went to accused Scarlett premises at Caymanas Bay on the 2nd July, 1986.
6. That accused Scarlett was seen removing car parts from a blue ford escort car which has been identified.
7. That in the premises a white ford car Exhibit 3 was seen with an engine in the trunk, rims, three tyres, tube jack. Exhibit 3A.
8. That a number of car parts were found in a room Exhibit 5.
9. That accused Scarlett was the only person on premises when police arrived there.
10. That the accused Scarlett knew that the cars brought to him to be scrapped were stolen cars.

Only one of these findings was attacked, that is to say, finding No. 4. In developing his submissions, Mr. Frankson said that the police officer's suspicions must exist at two separate and distinct times. Firstly, when he received information and obtained the warrant to search and ~~secondly~~ when he visited the premises and before he commenced his search. He said that when the officer visits the premises he must see the goods in circumstances which cause him to become suspicious, therefore if upon arrival he sees nothing to justify suspicion, he must return the warrant.

In his submission there was a failure on the part of the prosecution to give evidence of suspicious circumstances surrounding the finding of the motor cars and motor car parts and this failure was fatal to the conviction.

It is convenient to refer to the decision in R. v. Melvin Spragg (1975) 13 J.L.R. 97 in which all the leading cases on Unlawful Possession were reviewed by this Court. There the appellant was charged, as in the instant case, under sections 8 and 10 of the Unlawful Possession of Property Law, on evidence that a police officer having obtained information that whisky and other articles believed to be stolen were at premises occupied by the appellant, obtained a search warrant, searched the appellant's premises and in a Vault under a fowl coop in the yard, he found a quantity of whisky, rum and cigarettes. The police officer asked the appellant where he got those articles and the appellant replied that he had bought them on a ship whose name he did not know. The officer gave no evidence either directly or inferentially that he suspected that the articles he found in the Vault were stolen or unlawfully obtained. In allowing the appeal the Court held that it must always be demonstrated by evidence that an arresting constable did in fact suspect, and that he had reasonable cause to suspect, that the thing found had been stolen or unlawfully obtained since it was the state of his mind that was called in question. The Court held that there was no evidence of the state of mind of the constable at the time of the finding of the articles and so allowed the appeal.

An earlier case of R. v. Parkinson (1960) 2 W.L.R. 454 has been quoted and followed in all cases since then. In that case, Duffus J., said:

"In charges laid under the Unlawful Possession of Property Law, evidence must be given either specifically or inferentially to show that the Constable, prior to arrest, had reasonable cause to suspect that the goods were either stolen or unlawfully obtained and if such evidence is not given the Resident Magistrate should not call on the person charged to account."

It appeared to us that the evidence was overwhelming that detective Corporal Pennycooke, having seen the appellant scrapping a car, and having heard the admission of the appellant that he was scrapping the car at the instructions of two absent men, was presented with information from which he could reasonably infer and he did infer, that the cars and car-parts were stolen or otherwise unlawfully obtained. There was direct evidence as to the suspicions of the police officer at the time when he obtained the warrant and there was evidence to satisfy the test which the Court laid down in R. v. Parkinson and R. v. Spragg supra. The appeal accordingly failed, except to the limited extent of the variation of the sentence to set aside the order for police supervision.