

UNLAWFUL POSSESSION - Search warrant for goods of
certain description - JAMAICA goods of that description found
in a place where they can reasonably be found -
IN THE COURT OF APPEAL Whether circumstances of finding reasonable
R.M. CRIMINAL APPEAL No. 104/70 Warrant Suspicion that goods were
stolen.

BEFORE: The Hon. Mr. Justice Shelley, Presiding
The Hon. Mr. Justice Luckhoo J.A.
The Hon. Mr. Justice Fox J.A.

R. v. JUNE WILLIAMS

Mr. W. Spauldings for appellant

Mr. C.A. Patterson for Crown

1st October, 1970; 6th November, 1970

SHELLEY J.A.

June Williams and her husband Jack Williams were charged with having in their possession at 7 Wellington Road, St. Andrew, "twenty tins pear nectar, six tins buttered beans, thirty-three tins pear nectar, twenty tins Grace tomato juice, thirty tins Grace pineapple juice, sixty-eight tins Grace sweet corns, thirty-four tins Grace green peas, forty-nine tins Grace carrot juice, five tins mango nectars and three tins Eve carrot juice under circumstances as to reasonably cause Dudley Reynolds a Constable to suspect that they were stolen or otherwise unlawfully obtained, contrary to section 8 of Chapter 401."

The husband was acquitted. The wife was found guilty and fined \$10.00 and in default 10 days imprisonment. She has appealed.

On the complaint of Detective Corporal Dudley Reynolds, a Justice of the Peace issued a warrant under the provisions of section 8(1) of Cap. 401 authorising search for a quantity of assorted Grace and Eve brand products and granulated sugar at a shop at 7 Wellington Road St. Andrew. Detective Corporal Reynolds searched the shop operated by the appellant, one section being a spirit shop the other a grocery. He found various items of canned food and drink laid in the information. He cautioned the appellant and her husband and asked them how they came in possession of the goods: the appellant replied she had had them a long time; they were asked if they had receipts for the goods and the appellant said she did not

know where to find them then. They were taken with the goods to Hunt's Bay police station where they were arrested upon the charge.

At the close of the Crown's case Counsel for the defence submitted that the defendant ought not to be called upon to account for possession because, inter alia, there was no ground for nor evidence of suspicion before arrest, meaning no doubt that there was no evidence that Detective Corporal Reynolds had reasonable cause to suspect the articles found to have been stolen or unlawfully obtained as required by section 8(3) Cap. 401. Counsel's submission was over-ruled; the defendants were ordered to account for possession. That submission suitably worded has been argued as a ground of appeal.

We think counsel's submission should have been upheld and both defendants should have been discharged at the end of the case for the Crown.

We repeat and affirm the remarks of Duffus J. (as he then was,) in R. v. Parkinson 2 W.I.R. 454 at p.457D "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 (R. v. Walters (1948) 5 J.L.R. 110); and if such evidence is not given the resident magistrate should not call on the person charged to account."

The same learned judge said in R. v. Stephens 6 W.I.R. 311 at p.315D "as this court has said time and again and mentioned in particular in R. v. Parkinson in charges laid under the Unlawful Possession of Property Law evidence must be given either specifically or inferentially that immediately prior to arrest the constable had reasonable cause to believe or suspect that the goods were unlawfully obtained. Reference was made to R. v. Walters and it was said that R. v. Parkinson merely reiterated the decision in Walters' case; but Parkinson's case went further and made it clear that if evidence of reasonable cause for suspicion is not given the resident magistrate should not call upon the person charged to account for his possession."

This statement of the law applies with equal force in the trial of suspected persons under section 5 of the law and in the trial under section 10 of persons brought before the resident magistrate under sections 8 and 9 of the law.

There appears to be some misunderstanding of the following statement of Lewis J.A. (as he then was) in R. v. Stephens (ubi. sup.) at p.312, "The warrant was put in evidence and set out on its face that the justice who issued it was satisfied that there was reasonable cause. The court does not think that it is necessary when a person is brought before the resident magistrate with a view to his being called upon to give an account for goods found on his premises, that any enquiry should be made which would seek to go behind the warrant and to question whether the justice who issued it ought to have been satisfied on the facts which he heard.

When an information is laid to found such a warrant the duty is cast upon the justice who is asked to issue the warrant to satisfy himself by evidence upon oath that there is in fact reasonable ground. Once he is satisfied and he issues a warrant, that is a sufficient authority for the search to be made in pursuance of it."

We are told that some resident magistrates understand that statement to mean that in a case where a warrant is issued under section 8(1) and upon search made pursuant thereto goods are found and a person is arrested under section 8(3) there is no need for proof that the constable had reasonable cause to suspect that the goods so found were stolen or unlawfully obtained. Nothing could be further from the correct interpretation.

In considering another point immediately following the passage quoted above from Stephens's case Lewis J.A. analysing section 8 said:

"Sub-section (1) of section 8 requires, as I have said, the constable swearing out the warrant to satisfy the magistrate or justice that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in the premises. The reasonable cause for suspicion was directed towards concealment or lodging in the house. The magistrate or justice must be satisfied that the constable had information about stolen goods and that he has reasonable cause for believing that those stolen goods are lodged in a particular place."

Clearly the inquiry which the court did not think it should make was as to the informant's suspicion as to concealment or lodging in the premises of anything stolen or unlawfully obtained. Perhaps we should point out that the informant may be anybody - not necessarily the constable to whom the warrant is directed and who would, of course, carry out the search. If

then when the constable carries out the search he finds anything which he, the constable, has reasonable cause to suspect to have been stolen or unlawfully obtained, he shall arrest etc. It then becomes necessary for the constable to give evidence directly or inferentially that he had reasonable cause to so suspect. This holds good whether or not the constable making the search happens to be the person, the informant, on whose information the magistrate or justice issued his warrant.

Section 10, we think, confirms the view that evidence must be given to show that the goods the subject of the charge were reasonably suspected to have been stolen or unlawfully obtained. It says

"A Resident Magistrate may call upon any person brought or appearing before him under the provisions of sections 8 or 9 of this law to give an account to the satisfaction of the Resident Magistrate. -

- (a) by what lawful means anything reasonably suspected to have been stolen or unlawfully obtained came to be in the house," etc.

It is implicit in that section that before calling upon the person brought or appearing before him to account the resident magistrate must be satisfied that

- (a) goods were in the house, etc
- (b) that those goods were reasonably suspected to be stolen or unlawfully obtained.

It is only upon evidence given before him that a resident magistrate may be so satisfied. In this case there was no such evidence as to (b) above.

For these reasons we allowed the appeal and quashed the conviction.