

J A M A I C A

IN THE COURT OF APPEAL

R. M. C. A. No. 11/70

Before: The Hon. Mr. Justice Waddington - Presiding
The Hon. Mr. Justice Luckhoo
The Hon. Mr. Justice Smith (Ag.)

R E G I N A v. LINDEN ROBINSON

COUNSEL: Mr. A. Gillman for the Appellant
Mrs. M. Forte for the Crown.

13th February, 1970.

WADDINGTON, J.A.:

This is an appeal from a conviction by the learned Resident Magistrate for the parish of St. Catherine on the 4th of November, 1969, when he convicted the appellant of being in unlawful possession of goods, and imposed a fine of \$30.00 or thirty days imprisonment at hard labour.

The case against the appellant was contained in the evidence of Det. Cons. Lloyd Donaldson, who said that on the 15th of August, 1969, at about 5.30 p.m. he went to the St. Catherine Parish Council building, where apparently he received some information, as a result of which he obtained a warrant under the Unlawful Possession of Property Law, to search the premises of the accused at Homestead in St. Catherine. He went to the home of the accused where he saw the accused and read the warrant to him and searched his house. In the kitchen, he found 21 terrazo tiles and 33 other tiles. He asked the

accused how he came in possession of them, to which the accused replied: "Me is a poor man. I just have to try. I buy them from a man, me don't even know his name or where he lives". The detective told the accused that he suspected that he had obtained the tiles unlawfully, to which the accused made no reply. The accused was then taken to the police station along with the tiles, where he was formally arrested for unlawful possession of the tiles, and on being cautioned, he said, "That is true, sah, I am a poor man, I just a try."

On that evidence, the learned resident magistrate ruled, after a submission by Mr. Gillman, that there was no case to answer, that the accused should account by what lawful means he came into possession of the tiles, and the accused elected to account before him on that same day, the 4th of November.

The accused then gave sworn evidence in which he said that on the 15th of August, 1969, he was standing at the intersection of Young Street and Beckford Street in Spanish Town at about 11.00 o'clock in the morning, and while there he saw Altimont Davis with a crocus bag. He asked Davis, "What happen?", and Davis said that he was waiting on a man, and that he, Davis, had tiles in the bag. He said to Davis, "Give me the tiles man". Davis said, "All right", and gave him the tiles, and he, the accused, gave Davis Ten Shillings. Just at that moment he saw a parish council cart passing. He knew the driver of the cart, and asked him to take the tiles to his premises. Later that day, Mr. Allman, from the Parish Council, came to his yard and took possession of the tiles.

In cross-examination, he said that he knew Altimont Davis before, and that he was a painter. He denied that he had told the police that he never knew the man from whom he had bought the tiles.

Altimont Davis was called as a witness, and he said that he used to work with a Mr. Anderson of 48, Andeworth Avenue, who was a contractor and builder. He worked with him in August 1969, and he got some board, tiles and zinc (presumably from Mr. Anderson). On the 15th of August, 1969, he said he was standing at the corner of Beckford Street and Young Street in Spanish Town, when he saw the accused, Robinson. At that time, he said, he was taking the tiles for his cousin. Robinson asked him what he was doing with the tiles and asked him to give him the tiles. Davis told him he could not give him, but then Robinson offered him a drink and he gave him the tiles, and Robinson gave him Ten Shillings.

In cross-examination, he said that he knew Robinson for about one year and that Mr. Anderson had got the tiles from a building that he was constructing at that time.

The learned resident magistrate did not accept the explanation that was given by the accused and held that the accused had not accounted to his satisfaction by what lawful means he had come in possession of the tiles, and he accordingly convicted the appellant.

Two grounds of appeal have been taken on behalf of the appellant, and are as follows:-

- (i) That the verdict is unreasonable and can not be supported, having regard to the evidence.
- (ii) That the evidence of the appellant and of Altimont Davis, the defence witness, establishing that the

appellant had received the said tiles from the said Altimont Davis was a satisfactory explanation of the appellant's possession of the tiles, bearing in mind that the proper standard to be applied is whether any explanation given is one which may reasonably be true.

Mr. Gillman submitted that the real question in the case was whether in the circumstances of this case the explanation that was given by the accused was one which may reasonably be true, and he submitted that the explanation given ought to have raised a doubt in the mind of the Court, and that that would have the effect of shifting the onus back to the Crown to negative that explanation.

Speaking for myself, I agree that that is the proper principle to be applied, and the question is whether in the circumstances of this case the accused had given an explanation which may reasonably be true, and which would accordingly raise a doubt in the mind of the Court. However, in examining the explanation which was given by the accused, the resident magistrate had to consider all the evidence in the case, including (and this is most important) the explanation which was given by the accused at the first opportunity that he had to give such an explanation. I have already referred to the evidence as to what he said, when asked by the detective how he came in possession of the tiles. The explanation then was, "Me is a poor man, I just have to try. I buy them from a man, me don't even know his name or where he lives". Now the learned resident magistrate had to consider that explanation, with the explanation which was subsequently given by the accused when he came to give his evidence, and it does seem to us that

those two explanations can not be reconciled.

It seems to us that if the appellant's subsequent story was true, then on the first occasion when he gave his explanation he would not have said: "Me don't even know his name or where he lives", bearing in mind that he admitted in cross-examination that he had known this man Davis before, and that Davis himself, in cross-examination, admitted that he had known Robinson for about one year.

In our view there was sufficient material before the learned resident magistrate on which he could find that the accused had not satisfactorily accounted for his possession, and, in the circumstances, we see no reason to interfere with the conviction. The appeal is therefore dismissed.