

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO: 68/79

BEFORE: The Hon. Mr. Justice Zacca, J.A.
The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

REGINA

v.

MICHAEL ANDERSON

Mr. W. Rhoden for Appellant

Mr. H. Cooke for Crown

July 16, 1979

ROWE J.A. (Ag.)

The appellant was convicted in the Resident Magistrate Court, Spanish Town in the parish of St. Catherine before His Honour Mr. C.H. Berry for unlawful possession of one Mecca radio and tape and fined \$75.00 or three months imprisonment at hard labour. At 9:30 p.m. on April 13, 1979 Police Constable Winston Blair saw a group of 5 men under a tree near the button factory in Spanish Town. He over-heard one of the group say "Watch it, see a police boy there". He approached the group and when about 10 yards from them he saw the appellant drop a bag which he had on his shoulder behind a nearby tree. When asked why he had dropped the bag, he replied "nothing officer". Cons. Blair took up the bag, opened it and found a Mecca Radio and tape therein. The constable asked the appellant how he came into possession of the radio and tape and he said he had bought it in Kingston about 3 months before for \$150.00. He was asked for his receipt and he said he did not get any. The appellant was

arrested for unlawful possession of goods and cautioned. He replied "Is all right - all police do now-a days is to fool around people who is more educated than them, so you will have to tell my lawyer wey you arrest me for."

The appellant was ordered to account for his possession of the radio and tape. At trial he said the articles were given to him by his aunt some 5 years earlier and he had had them in use ever since. He admitted having lied to the police by saying he had a receipt when in fact he had none but denied that he had ever told the constable that he had bought the radio and tape in Kingston.

Soon after the appellant's arrest his mother went to the police station and spoke to the police and according to constable Blair on the following morning she told him that the articles belonged to the appellant, being a present from his aunt in the U.S.A. At trial, the appellant's father gave evidence of how his sister brought the radio and tape from the U.S.A. and gave it to the appellant, of how he had often played the tape over the years and he even referred to identifying marks on the radio. The learned Resident Magistrate found that the constable had reasonable cause to be suspicious at the time when he approached the appellant. We agree. The appellant admitted that one of his group had used the words attributed by the constable, "watch it see a police boy there," and when this was followed by the appellant's attempt to dispossess himself of the bag, there was ample evidence to arouse the reasonable suspicion of the constable.

Did the appellant give a reasonable explanation for his possession of the radio and tape? Here is what the learned resident

magistrate found:-

"From the accused evidence it is plain that the story of the tape being given to him by his aunt is an after-thought. It came near the end of his evidence in chief. He said in his evidence "my father explained to them how I got the tape".

This finding of fact gave rise to Mr. Rhoden's fourth ground of appeal viz: "that the Learned Resident Magistrate did not apply his mind to properly assess the evidence of the appellant and his witness".

An accused person who is giving evidence and is being examined by an attorney-at-law is not at large, with freedom to give his evidence in the way he chooses. His attorney will structure the presentation of the defence in the manner which in his perception is most advantageous to the accused and no adverse inference can properly be drawn from the fact that something is said at the commencement, half-way through or at the end of the witness' testimony. One would expect evidence to be presented in some coherent sequence and when examined the appellant's evidence was so presented. If the learned Resident Magistrate meant to say that the appellant's explanation was an after-thought in the sense that he merely adopted the trumped-up explanation offered by his father and mother, one would have expected him to have made some adverse mention in his findings of the nature and quality of the evidence given by the appellant's father.

The appellant had been protesting his innocence from the moment of arrest and it behoved the learned Resident Magistrate to give careful consideration to the explanation he offered both as to why he had lied to the police and as to how he came into possession of the articles.

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From the manner in which the findings of fact are expressed, it seems clear to us that the learned Resident Magistrate did not direct his mind to a consideration of the evidence of the appellant's witness. If that witness' evidence was found to be credible it would provide a reasonable explanation for the accused's possession of the articles, thus leading to an acquittal. The Resident Magistrate having failed to consider all the evidence adduced by the defence, the conviction cannot stand. The appeal is allowed, the conviction quashed and the sentence set aside.