

J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 199/62.

R E G I N A

VS.

NEVILLE BURGESS

BEFORE: MR. JUSTICE LEWIS, JUDGE OF APPEAL

MR. JUSTICE DUFFUS, JUDGE OF APPEAL

MR. JUSTICE WADDINGTON, JUDGE OF APPEAL (AG.)

16th and 28th
26th November, 1962

Mr. W.T. Tomlinson for Appellant

Mr. J.S. Kerr for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE DUFFUS.

The appellant was convicted on an information under the Unlawful Possession of Goods Law Cap. 401 which charged that -

"on Tuesday the 25th day of September in the year 1962, one Neville Burgess of 148 Princess St. of the said parish of Kingston with force at 1 Half Way Tree Road and within jurisdiction of this Court was a suspected person within the meaning of Sec. 5(4) of Cap. 401 and was found in possession of three table clocks, 3½ dozen table knives which there is reasonable cause to suspect were stolen or unlawfully obtained."

The evidence for the prosecution showed that Trevor Lawrence a police constable was on point duty at Cross Roads when he was called by a woman to Nelson's Drug Store where he saw the appellant being held by one Rupert Duncan. A report was then made to the constable by one Ionie Johnson that the appellant had taken up some powder in the shop and that when he was accosted he had dropped a bag and run away.

The constable opened the bag and in it he saw the powder referred to by Ionie Johnson together with the three clocks and 3½ dozen knives the subject of the unlawful possession charge.

The appellant said that he knew nothing about the bag or its contents. He was thereupon arrested by the constable on two separate charges:-

(1) Larceny of the powder and

(11) Unlawful possession of the clocks and knives. On the 26th of September 1962 he was taken before one of the Resident Magistrates for Saint Andrew who after hearing the evidence from constable Trevor Lawrence and Ionie Johnson ordered the appellant to account for his possession of the clocks and knives.

The appellant informed the Court - " I don't wish to account for possession. I don't care if you want me to account for possession. I am calling no witnesses. That is the end of my defence." He was then convicted and sentenced to a term of imprisonment. It is against this conviction that the appeal lies.

It is submitted that the appellant was wrongly convicted as he, not having been found in possession of the articles by the arresting constable, was not a suspected person as defined by the Unlawful Possession of Property Law Cap. 401.

Sec. 2 defines suspected person -

"suspected person' means any person who -

- (a) *place* has had in his possession or under his control *in any* anything being an article of agricultural produce; or
- (b) has in his possession or under his control *in any* place anything *being* an article of agricultural produce; *under such circumstances as shall reasonably* *cause any constable or unauthorized person to suspect* that that thing has been stolen or unlawfully obtained."

It is to be observed that suspected persons are placed in two distinct categories and that the Law draws a distinct line between things which are articles of agricultural produce, listed in detail in the schedule to the Law, and things which are not agricultural produce.

A person who has had- note the past tense - articles of agricultural produce in his possession may be a "suspected

person" but this is not so in the case of a thing other than an article of agricultural produce, which thing must be in the possession or control of the person at the time that the constable or authorized person has reasonable cause to suspect that the thing has been stolen or unlawfully obtained.

The interpretation of 'suspected person' under this Law was considered by the Court of Appeal in *Murphy v. Richards* [1960] 2 W.I.R. 143 which was an appeal concerning a civil suit for damages for assault and false imprisonment brought against a police constable who had arrested the plaintiff for the unlawful possession of a cow which the constable had not found him in possession of at the time of the arrest. In the judgment of the Court which was delivered by Coolidge J, the learned Judge said at p. 145:

"The first point raised for our consideration by learned Counsel for the appellant was that the appellant, at the time of his arrest, was not in fact in possession of any cow; that he was consequently not a 'suspected person' as defined under the Unlawful Possession of Property Law Cap. 401 and that therefore his arrest was unlawful."

The judgment then sets out the definition of "suspected person" in Sec. 2 and proceeds -

"It appears to us obvious in view of that definition that the appellant was not a 'suspected person' at the time of his arrest. Moreover learned Counsel for the respondent conceded that the respondent had no power to arrest the appellant under the Unlawful Possession of Property Law as he purported to do".

The facts in the instant case show that the arresting constable, Trevor Lawrence, did not find the appellant in possession of the things for which he was charged. It was the witness Ionie Johnson, who said that she had seen him in possession of the bag in which the things were later found and that she held on to the bag and the appellant let it go in her hand. Ionie Johnson was not a constable or an "authorized person" duly appointed under the provisions of the Law, therefore her suspicions, if any, would not make the appellant a "suspected person".

In these circumstances the appellant was not a suspected person within the meaning of the law, and the Constable had no power to arrest him under Sec. 5(1) of the Law as he purported to do. It follows that the learned Resident Magistrate was wrong in making an order for the appellant to account for his possession of the articles.

The appeal therefore succeeds and the conviction and sentence in the court below are set aside.

For the purposes of the record we wish to mention that the appellant was convicted on the charge of larceny of the powder and that the appeal therefrom was heard by us on the 16th instant and dismissed.

Dated this 28th day of November, 1962.

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Judge of Appeal

[Handwritten Signature]
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Judge of Appeal

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Judge of Appeal.