

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 179 of 1970

BEFORE: The Hon. President
The Hon. Mr. Justice Smith J.A
The Hon. Mr. Justice Hercules J.A. (Ag.)

R. v. OSCAR ROBINSON

Roy Taylor for the appellant

C.A. Patterson and H. Downer for the Crown

1971

April 22, May 20

SMITH, J.A.:

Melvin Leopold Webster, a sergeant of police, was at the Rollington Town police station in Kingston on October 28, 1970 at 12.15 p.m where he saw the appellant wearing a "gold Bulova gents wristlet watch" and a number of rings on his fingers "including a 14 carat gold ring." He asked the appellant how he came into possession of the watch. The appellant said he had bought it from his landlord. The sergeant thereupon obtained a search warrant under the Unlawful Possession of Property Law (Cap. 401) authorising the search of the appellant's premises at No.47, Mountain View Avenue in Kingston. He took the appellant to these premises and, after reading the warrant, searched a room there which the appellant told him he occupied. He found a cassette set on a table in the room. Cassette sets were among the articles named in the warrant. He questioned the appellant about the cassette set and then asked him about the 14 carat gold ring which he had seen him wearing at the police station. The sergeant made inquiries about what the appellant had told him relative to the cassette set and the ring and afterwards arrested him "for unlawful possession" of both articles.

On the following day, October 29, sergeant Webster laid an information charging that the appellant was, on October 28, "found in possession of one 14 carat gold ring one gents Bulova gold watch one Panasonic cassette recorder, under circumstances as to cause this complainant reasonable (sic) to suspect to have been unlawfully obtained -

contrary to section 8 of Cap. 401." On the same day, the appellant was taken with the articles before one of the resident magistrates for Kingston. The learned resident magistrate heard evidence from the sergeant and ordered as follows: "Let the accused be called upon to account to me whereby he came in possession of the within named articles on the 5th day of November, 1970." This order was endorsed on the information. On November 9 and 12 the learned resident magistrate heard a statement from the appellant and evidence from witnesses called by him and on the latter date he was convicted. The following endorsement signed by the resident magistrate appears on the information:

"The accused having failed to account how he came into possession of the cassette tape recorder and the gold ring is found guilty & is ordered to pay a fine of \$20. or 4 months imp. hard labour."

When the appellant's appeal against his conviction came on for hearing on April 22, 1971, leave was granted for his counsel to argue, as an additional ground of appeal, that "the learned resident magistrate was wrong in law in convicting the appellant for unlawful possession of :

(a) the ring, in view of the fact that the appellant was charged in respect thereof under section 8 of Chapter 401 whereas the evidence disclosed that he must have been arrested and could only have been charged under section 5 of Chapter 401; (b) the cassette, in view of the fact that the appellant manifestly gave a reasonable explanation of his possession of the said cassette; (c) the ring and the cassette, in view of the fact that the information was bad for duplicity."

On the Court discussing with learned counsel for the Crown, Mr. Patterson, whether he required an adjournment to be able to answer the point taken in relation to the information, of which he had had no prior notice, Mr. Patterson conceded that the order made by the resident magistrate embraced the procedure envisaged by s.5 of the Law whereas it appeared that at least in respect of the cassette set the order should have been in terms of s.10. He said that as only one order was made the Crown could not safely say that the conviction was good in law. For the reasons which will appear hereafter, we agreed that the conviction was bad in law. We allowed the appeal and quashed the conviction and sentence.

Under the Unlawful Possession of Property Law, persons may be taken, or made to appear, before a resident magistrate in three different sets of circumstances. These are set out in ss. 5, 8 & 9 of the Law. The resident magistrate is empowered to call upon, or order, any such person to give an account to his satisfaction in relation to the goods or articles, reasonably suspected to have been stolen or unlawfully obtained, in respect of which such person is before him. The account to be given differs according to whether the person is brought or appears under s.5 or under s. 8 or 9. In a case under s.5, sub-s.(4) of that section requires the person to give an account "by what lawful means he came by" the goods or articles which he had in his possession or under his control. In a case under s. 8 or 9, s.10 requires him to give an account: "(a) by what lawful means anything reasonably suspected to have been stolen or unlawfully obtained came to be in the house, store, yard, place or vessel or on the land where it was found; or (b) that he was not privy to the placing of the thing in such house, store knowing or having reasonable cause to suspect the same to have been stolen or unlawfully obtained." Failure to give a satisfactory account in either case makes the person guilty of an offence against the Law. But it is not the same offence of which he is guilty in both cases. An offence is created by sub-s.(4) for cases under s.5 and a separate offence is created by s.10 for cases under ss. 8 & 9.

In our opinion, a conviction under either section should record the fact of the failure to give the appropriate account to the satisfaction of the resident magistrate. This is of especial importance in cases under s.10 where, depending on the circumstances, an account may be required to be given as provided either in para (a) or (b) of that section. This opinion is supported by that of the Full Court of the Supreme Court in R. v. Lester Beckford, (1934) 2 J.L.R. 18, an appeal from a conviction for unlawful possession of goods. In his judgment, with which the other members of the Court agreed, Brown, J. said, at p.21:

"In this case a formal conviction correctly forms part of the record. It merely recites the terms of the information but it does not state that the appellant failed to give an account to the satisfaction of the resident magistrate by what lawful means he came by the articles of which he was in possession and which were suspected of being unlawfully obtained. It was therefore incurably defective."

In the case under consideration, it is quite clear that the ring should have been dealt with as provided in s.5 and the cassette set as provided in ss. 8 & 10. Instead, by the nature of the order which was made by the learned resident magistrate on October 29 and the form in which the conviction was recorded by him, both were dealt with under s.5. The information charged the appellant with an offence under s.8 and the search warrant was admitted in evidence. The appellant was, therefore, not liable to be convicted under s.5 for the cassette set, as it appears he was. In any event, he was convicted of one offence in circumstances in which, if he was being convicted in respect of both articles, he should have been convicted of two separate offences, under ss. 5(4) and 10 respectively. It is for these reasons that we held the conviction to be incurably bad and allowed the appeal.