

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CRIMINAL APPEAL NO. 43/71

BEFORE:       The Hon. Justice Fox - Presiding  
              The Hon. Mr. Justice Smith  
              The Hon. Mr. Justice Hercules (Actg.)

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R E G I N A   v.   R O L D A   R I C K E T T S

Mr. H. A. Harris for the Appellant  
Mr. C. A. Harris for the Crown.

16th June, 1971.

FOX, J.A:

Convictions under the Unlawful Possession of Property Law, Chapter 401, have resulted in innumerable appeals to this and former Courts of Appeal in this country. As a consequence, a large body of law has been developed. There seems no end to the new points which are constantly arising. Such a new point came before the court in this appeal. It emerges in this manner:

The appellant was convicted by one of the resident magistrates for the parish of Kingston, for an offence under the Law. The evidence shows that in accordance with the provisions of S.8(1) of the Law, a warrant was directed to Constable Wilbert Brown by a Justice of the Peace for Kingston. Constable Brown then went to the premises of the appellant at Salt Lane in Kingston. He was accompanied by Detective Constable Manley Findlater. At these premises the Constables saw the appellant. Constable Brown read the search warrant. A search was made by Constable Findlater. Having read the warrant, Constable Brown took no part in the search. He left the premises. Constable Findlater made the search. He found a number of articles. They were made the subject of the charge. Constable Findlater asked the appellant how he came in possession of the articles. The appellant said that he got them 'from a man who went to a fire-burn'. Constable Findlater asked for the name and address of the man. The appellant said; 'I do not know but I know him personally'. Constable Findlater told the appellant that he did not believe his story and that he came into possession of the articles unlawfully. He arrested

/the appellant...

the appellant, laid the information which is the basis of the charge, and took the appellant before the resident magistrate.

The first ground of appeal questions the procedure which was followed. Under the provision of S.8, a resident magistrate or a Justice is empowered to issue a search warrant to any constable in the circumstances described by provisions of Sub-s. 1. Sub-s. 2 empowers the resident magistrate or the Justice issuing the warrant to give authority to the constable 'with such assistance as may be found necessary, to use force for the purpose of effecting an entry'. Sub-s.3 provides that,

'if upon a search made in accordance with the provisions of Sub-ss. 1 & 2 of this Section, anything which the constable has reasonable cause to suspect to be stolen or unlawfully obtained is found, the constable shall arrest and bring before a resident magistrate,

(a) the person in whose house, etc. such thing is found, and

(b) any other person found in such house, etc.,

if the constable has reasonable cause to suspect that such person placed or was privy to the placing of the thing in such house, etc., knowing or having reasonable cause to suspect the same to have been stolen or unlawfully obtained'.

Counsel for the appellant contended that the constable who is empowered to act in the way directed by the provisions of Sub-s.3 is the constable to whom the warrant was directed; in this case to Constable Wilbert Brown. The constable who had acted in this manner was Constable Findlater. This was not in accordance with the law.

We think that this contention is sound. Numerous decisions make it clear that the procedure laid down in the law must be strictly followed.

Consequently, when a search is undertaken by a constable to whom there has been issued a warrant under the provisions of S.8, it is that constable and no other constable who must have a reasonable cause to suspect that the things found were stolen or unlawfully obtained. It is he who must arrest and bring the person before the resident magistrate, and it is he who must have reasonable cause to suspect that such person placed or was privy to the placing of the things on the premises in which the things

/were found.....

were found. This procedure was not followed, and on this ground alone the conviction is bad and must be quashed.

The second point argued was that there was no evidence of any ground upon which a reasonable suspicion could have been entertained. There is considerable merit in this complaint. In R.M. Criminal Appeal 104/70 R. v. June Williams (unreported) dated 1st October and 6th November, 1970, Shelley J. said that in the absence of anything to support the existence of a reasonable suspicion, an arrest is not warranted. The constable did not state the ground for suspicion and we have difficulty in identifying any such ground.

The third point argued is also unanswerable. The information laid by Detective Constable Findlater alleges that the appellant 'was a suspected person in whose possession was found' (naming the goods) 'which there is reasonable cause to suspect was unlawfully obtained, stolen or lodged in the said premises by the said Rolda Ricketts, or that he was privy to it, contrary to Ss.8 & 10 of Chapter 401'. The particulars in this information, it should be observed, are in effect a combination of the provisions of S.5 and S.8(3)(a). In calling upon the appellant to account, the magistrate directed as follows: 'Let the accused be called upon to account to me whereby he came in possession of the within named articles on the 8th day of January, 1971.' This is the form of order which is to be made for proceedings under the provisions of S.5. So also is the form of the order of conviction. It is in these terms: 'The accused having failed to account whereby he came in possession of the within named articles -----is found guilty-----'.

In R.M. Criminal Appeal 179/70 R v. Oscar Robinson (unreported) dated 22nd April, and 20th May, 1971, it was pointed out that,

'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 persons 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..

'person is before him. The account to be given differs according to whether the person is brought or appears under S.5 or under SS.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 (etc.) where it was found; or
- (b) that he was not privy to the placing of the things in such house --, 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.'

The Court went on to express its opinion that,

'a conviction under either Section should record the fact of the failure to give the appropriate account to the satisfaction of the resident magistrate.'

The charge against the appellant purports to be contrary to SS 8 & 10 of the law. The order calling upon him to account, and the order recording the conviction are in accordance with the provisions of S.5. This, too, is a fatal error. For these reasons, the appeal is allowed; the conviction is quashed and the sentence is set aside.

*LBA*  
*JA*