

C.A. CRIMINAL LAW - Unlawful possession of property - 2. as for the appellant
to be proved - reasonable suspicion - whether or not Canadian
whether R.M. erred in making order for apprehension to a court -
whether the Crown proved on a balance of probabilities that the appellant was in possession
whether R.M. erred in rejecting appellant's account.
APPEAL DISMISSED - Cases referred to - R.A.M. 86/13 - 1/4/74
R. Doreen Hill - King v Brown - Clarke Report 301.
JAMAICA ✓ Comp

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 31/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. STANFORD SHIRLEY

R.F. Golding for appellant

Miss S. Richards for Crown

25th May, 1989

GORDON, J.A. (AG.)

This is an appeal from a conviction for unlawful possession of property before Her Hon. Miss E.E. Francis at the Sutton Street Court in Kingston on 18th August, 1988.

The prosecution's case was that on Friday 8th July, 1988 Detective Acting Corporal Donovan O'Connor went to the office of the appellant at Kingston Industrial Works in Kingston. He identified himself and informed the appellant that he was investigating a report of housebreaking and larceny and invited the appellant to accompany him to the Flying Squad Office. He observed that the appellant was wearing four gold rings among other items of jewellery. The officer left the appellant in the Flying Squad office and on his return observed that he was not wearing three of the rings. Subsequent enquiry and investigations led to the preferment of the charge of unlawful possession of the three rings.

Before us Mr. Golding obtained leave of the court to argue two grounds of appeal. Ground 1 is:-

"The Learned Resident Magistrate erred in making an order for the appellant to account herein in that the prosecution failed to establish that the arresting constable had reasonable cause to suspect that the rings the subject of the charge, had been stolen or unlawfully obtained."

Second ground is:-

"That the Learned Resident Magistrate erred in fact and in law in rejecting the appellant's account as to the lawful means by which he had come into possession of the said rings."

On a review of the facts Mr. Golding conceded that he could not pursue ground 1 of the supplementary grounds but would argue ground 2. He submitted that this case is on all fours with the decision of this court in the case of R. v. Doreen Hill, R.M.C.A. No. 86/73 in which judgment was given by Henriques P. on the 1st of April, 1974. In that case the learned President referred to the case of King vs Brown reported in Clarke's Reports 301. That was a case which dealt with unlawful possession of agricultural produce. The case he found, was of persuasive value in assessing and arriving at a decision in the case of Doreen Hill. The learned President referred to a passage in the judgment of Brown J. recorded on p. 301:-

"I venture, however, to think that though the burden of proof is on the prisoner, the evidence must be viewed reasonably, and if it appears that the account given by the prisoner is one which appears to be reasonably true he should not be convicted. I agree that in most cases that this is a matter in which the opinion of the Resident Magistrate would not be disturbed, but I am not dispensed from the duty of analysing the evidence myself, and, in so far as it does not depend on

conflicting evidence, in which the trial judge has the advantage of a Court of Appeal, of coming to my own conclusion." (emphasis supplied)

Further in his judgment, the learned President quoted from the judgment of Adrian Clarke J. at p. 301:-

"Nevertheless, I think, the ordinary rule must apply and the Resident Magistrate should be prima facie satisfied by any explanation which is reasonable and could be true not necessarily only by one that convinces him of its truth."

We think the law is correctly stated in the case of Doreen Hill by the learned President but we are of the view that the facts and circumstances of this case can be distinguished from that of Doreen Hill. The learned Resident Magistrate in this case said in his findings that "although the defendant's account as to how he came into possession of the exhibit is on a balance of probabilities, I reject his account and also that of his witness." The Resident Magistrate here applied the proper test of the balance of probabilities but what did he have before him in the nature of evidence by way of an accounting? He had the evidence of the officer who said when he first confronted the appellant, the appellant was wearing four gold rings. When he discovered the appellant was sitting in the office without three of the rings the appellant denied that he ever had them. Then the officer searched and found the rings hidden under a desk and the appellant said that he had got one ring from a man on Ivy Lane and that he had paid him \$300.00 for the rings and when he was invited to assist the officer in locating this man he said that this man had removed. He admitted that he had them but he had no papers for them and then he said "officer it no mek no sense mi tell yu no lie, is a man mi

"si a hustle an mi buy dem from him." Those are the accounts he gave to the officer which were given in evidence. Then in court his evidence was, that he got two from one "Captain Jeff" and one he got from the jewellery to whom he had given some jewellery for his children and who had mislaid them.

The Resident Magistrate saw the witnesses and was in a better position to assess the credibility of the witnesses as they gave the evidence before him. It is his finding of fact that he was not satisfied with the explanation given by the appellant for his possession of the rings. This is not a case in which the "account given by the prisoner is one which appears to be reasonably true" because the accounts were varied and conflicting. We see no reason to interfere with his finding of fact and in the circumstances, the appeal is dismissed, the conviction and sentence affirmed.