

JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL NO. 70/66

BEFORE: The Hon. Mr. Justice Lewis, Presiding
 The Hon. Mr. Justice Henriques
 The Hon. Mr. Justice Moody.

R. vs V I N C E N T Y O R K

Mr. M.L. Wright for the Crown

Appellant appeared in person.

1st April, 1966.

HENRIQUES, J.A.,

In this appeal the appellant was charged before the learned Resident Magistrate for the parish of St. James on the 26th day of October last year, with the unlawful possession of a sum of money amounting to £54.

According to the evidence which was tendered at the trial, a Detective Corporal Wilbert Walker, who prior to the 23rd of November, had been making certain inquiries into the larceny of money amounting to £321, as a result of certain information given to him, commenced to look for the appellant, and on the 23rd of November, at about 2.30 a.m., the corporal discovered the appellant in a parked car. As he approached the car, the appellant made to run. He was held and the corporal informed him as to the fact that he was making inquiries into a case of larceny of money. The appellant then said: "I don't steal sir, all I do is hustle." He was searched, and in his right back trousers pocket was found the amount of £54.

The appellant was asked by the corporal how he had come into possession of the money, and the appellant said first: "Is pants length I sell and save it." The corporal then informed him that he had known him for some time previously and he had never known him to sell pants.

The appellant.....

The appellant then said: "I don't have a licence so I sell it on the quiet." The corporal then asked him if he could mention two or three persons to whom he had sold the pants lengths, and the appellant is alleged then to have said: "to tell the truth sir is little weed I sell and get the money." The corporal then arrested the appellant for the unlawful possession of money and on his arrest after cautioning him, he said: "Is really the little weed I sell and get the money."

The appellant was taken before the learned Resident Magistrate and an order to account for the possession of the money made. The 8th of December, 1965 was the date fixed. When he came before the Court on that date, he gave an explanation which was entirely different to the previous explanations he had given as to the possession of this money, namely, that he had received the amount of £50 from an uncle of his and the other £4. was his own money. The learned Resident Magistrate rejected the explanation which he had given in Court, and convicted him and sentenced him to three months hard labour.

The question as to whether the circumstances were of such a nature as to cause the corporal to have reasonable suspicion in relation to the appellant's possession of the money and so justify his arrest under the particular section of the law, has caused the Court a certain amount of concern. I am satisfied, however, from a close examination of the evidence, particularly, the fact that the appellant gave two conflicting statements as to his possession of the money, and looking at that evidence - against the general background of the evidence in the case, I am satisfied that the corporal was justified in arresting the appellant under the Unlawful Possessions Law, and therefore I would dismiss this appeal.

C. R.

89

LEWIS, J.A.,

As my learned brother said, I myself have been much concerned as to whether in the circumstances the police corporal was entitled to arrest this man. It is true that when first challenged, when the money was found on him in police custody and he was first asked how he came by it, he said that he had sold pants, but he afterwards said that he had got it by selling ganja. Now, it is significant that ganja was found in his possession, apparently at the time and he was actually charged on the same occasion with possession of ganja. That possession of ganja was consistent with the story that he gave to the policeman, that he got this money by selling ganja.

The point of time at which one has to look to see whether there was any reasonable ground for suspicion, is the time when the money was found on him. There was, however, a background: that this was a man who - to use a figurative expression - was known to the police, that he was found with a fairly substantial sum of money in his pocket at a time and in circumstances which might arouse the suspicions of the police, and that when questioned he did give two different explanations, and I think that that might be just enough to create reasonable suspicion and to entitle the police to take him into custody and to entitle the learned Resident Magistrate to call on him for an explanation as to how he came lawfully by the money.

What I am particularly concerned about is that the impression should not go abroad that the police can call on anybody in the street to say how they got possession of anything that they may happen to have in their pocket, without some good ground for suspecting that that person may have come by it unlawfully.

In this case, all the policeman said was: "I didn't believe him." He has said that he was investigating a case of larceny, and that he had received certain information, but he has not revealed to the Court how that information concerned the appellant, whether it pointed to his being a likely person or anything, and I don't think that where the police have withheld the information from the Court that the Court is entitled to assume against the person brought before it that that

90 information involves.....

4.

information involves the person so brought.

With these remarks, I am prepared to leave the case as it stands.

As far as the conviction is concerned, of course, this man changed his story when he went into Court and gave a completely different explanation, which the learned Resident Magistrate was entitled to disbelieve - and did in fact disbelieve - and that being so I would dismiss the appeal.



MOODY, J.A.,

I also have some anxiety over the matter that has been referred to by my learned brothers. In this case the Information charges that the appellant is a suspected person as defined by Chapter 401, sec. 5, and had in his possession money, under such circumstances which caused this informant to believe that the said sum was stolen or dishonestly obtained. The view that I have taken in this matter is that the appellant when first accosted in relation to the money at the station said that he did not steal the money, all he does is to hustle, and it turns out that the type of hustling that he carried on was the selling of pants length and the selling of ganja.

While the sale of ganja is unlawful and illegal, and a Court will not lend assistance to an illegal transaction - in my view the explanation that he gave was not one such as would cause suspicion to arise in the mind of a reasonable person, and in my view the learned Resident Magistrate erred in making the order calling upon him to explain the position.

In my view the appeal should be allowed.



LEWIS, J.A.,

The judgment of the Court is that the appeal is dismissed.