

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 135/1974

BEFORE:

The Hon. Mr. Justice Luckhoo, P. (Ag.)
The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Robinson, J.A.

R. v. FRANCIS CHIN-LOY

W. Bentley Brown for the appellant.

W.L. Morris for the Crown.

December 18, 19, 1974;
January 31, 1975

LUCKHOO, P. (Ag.):

The appellant Francis Chin-Loy was convicted on June 12, 1974 on an information charging that he, not being a person licensed so to do, unlawfully did keep for the purpose of sale by retail alcoholic liquor, to wit rum, in a certain house at 1 Park Avenue in the parish of St. Andrew, contrary to the provisions of s. 61(2) of the Spirit Licence Law, Cap. 364. He was fined the sum of \$40 in default imprisonment for three months at hard labour. He now appeals against his conviction.

The case for the prosecution was that at about 10.30 p.m. on Friday, March 15, 1974 Inspector of Police Stewart had in his possession a search warrant issued under the provisions of s.61 of the Spirit Licence Law, Cap. 364 authorising entry upon those premises by day or by night and search for alcoholic liquor and the bringing before a resident magistrate of the appellant and any person found in such premises assisting in the retailing of alcoholic

liquor, to be dealt with according to law. On arrival at the premises the appellant was seen behind the counter of a bar. There were about six or eight persons drinking in the bar. The search warrant was read to the appellant. There were bottles which were labelled as containing rum, gin, wine, beer and soft drinks displayed on shelves in the bar. Some of the bottles had measures attached to them. The appellant was informed that he was being arrested for breach of the Spirit Licence Law, to wit, selling rum without a licence and for keeping rum for sale on unlicensed premises. He was cautioned. He told Inspector Stewart "Neither you nor your bigger boss can stop me from selling." The appellant and the bottles labelled as containing rum, gin and wine were taken to Cross Roads Police Station. The contents of those bottles upon analysis by the Government Analyst turned out in all cases, save in the case of the bottle labelled as containing Wincarnis wine, to be spirits as defined by the Spirit Licence Law. The glasses from which the six or eight men seen in the bar were drinking did not contain sufficient liquid for the purpose of analysis though those glasses according to Inspector Stewart smelt of rum. Inspector Stewart testified that he knew that the appellant's premises were not licensed because when premises are recommended for licences he was the person who would have to recommend them and the appellant's premises at 1 Park Avenue fell within the area which he would have to inspect and recommend for the grant of spirit licences. In this connection see s. 18 of Cap.

346.

The case for the appellant was that during the previous year - 1973 - he operated a private members' club at the premises. That club was registered as such for the year 1973. Being so registered it was not necessary for a spirit licence to be obtained for the sale of spirits to its members. In April, 1973, he applied for a club licence in respect of a proprietary members' club at the same premises instead of a private members' club. Opposition was

entered to the grant of that application and the hearing of that application had not yet been completed at the time the search warrant was executed. The bottles containing spirits found in the premises were from old stock and were not intended for sale. It was not intended to sell spirits there until a club licence was granted. In the meanwhile no sale of spirits took place at the premises. The persons present that night were there as "friends." They were not in the bar but were playing bridge in an adjoining room.

It was first submitted that the search warrant was bad in law in that it was not directed to a named person but was directed to "all members of the Jamaica Constabulary Force, of Cross Roads in the parish of St. Andrew" and that the apprehension of the appellant and so the information laid against the appellant under s. 61(2) of the Spirit Licence Law, Cap. 364 was also bad in law.

Section 61 of the Spirit Licence Law, Cap. 364 provides as follows -

"61.--(1) If upon information given on oath it appears to any Justice that there is reasonable cause for suspecting that any alcoholic liquor is kept for the purpose of sale by retail by any person not duly licensed in that behalf or by any licensed person in any premises not specified in his licence, such Justice may, by warrant under his hand directed to any Revenue officer or Excise officer, or any constable, authorize such officer, or constable to enter and search such premises, and by the said warrant, may, if he thinks fit, specially authorize such officer or constable to enter and search such premises at any time of the day or night, and moreover, if he thinks fit, may specially authorize such officer, or constable, with or without assistants, after having made known his authority to break open or otherwise use force in order to effect an entry to such premises.

(2) If, upon search under this section, any such alcoholic liquor or any vessel used for holding or measuring the same is found, it shall be lawful for the Revenue officer or Excise officer, or the constable executing the warrant to take possession of and secure such liquor or vessel; and they may apprehend and bring before a Magistrate not only the person in whose premises the same are found, but also

every other person found in such premises, who appears to have been employed or assisting in the retailing of alcoholic liquor, and unless it be made to appear to such Magistrate that such alcoholic liquor was not deposited for the purpose of being sold by retail in such premises, the person in whose premises such alcoholic liquor is found, and every person so appearing to have been employed or assisting in the retailing thereof in such premises, shall be guilty of an offence and on summary conviction be liable to a penalty not exceeding one hundred pounds."

The section authorises any constable to whom the warrant is directed by day or by night to enter the premises named in the information on oath leading the warrant to search the premises and where alcoholic liquor is kept for the purpose of sale is found to take possession of such liquor and to apprehend and bring before a magistrate the person in whose premises the liquor is found as well as every other person found in such premises who appears to have been employed in or assisting in the retailing of alcoholic liquor.

The search warrant in the possession of Inspector Stewart was in the following terms -

"SEARCH WARRANT UNDER THE SPIRIT LICENCE LAW CHAPTER 364

JAMAICA, SS

To: All Members
of the Jamaica Constabulary Force, of Cross Roads in the parish of St. Andrew

WHEREAS it appears to me Gilbert Haughton Francis the undersigned, one of Her Majesty's Justices of the Peace in and for the parish of St. Andrew by the Information and Complain on oath of Osmond Stewart Inspector of Police of Cross Roads in the parish aforesaid, that Alcoholic liquor is kept for the purpose of sale by retail by Francis Chin-Loy a person not duly licensed in that behalf, in a certain premises kept by him as a (Grocery and provision shop) at 1 Park Avenue in the parish aforesaid contrary to the provisions of Chapter 364, section 61 of the Revised Laws of Jamaica.

" THESE ARE THEREFORE in Her Majesty's name to authorize and command you, with proper assistance, at any time of the day or night, to enter the said premises of Francis Chin-Loy situate at 1 Park Avenue in the parish aforesaid, and if necessary, after having made known your authority, to break open or otherwise use Force in order to effect an entry to such premises, and there diligently search for the said alcoholic liquor, or any vessel used for holding or measuring the same, and if the same shall be found after such search, you may apprehend and bring before the Resident Magistrate the said Francis Chin-Loy and also any person found in such premises assisting in the retailing of alcoholic liquor, to be dealt with according to Law.

GIVEN under my hand at Half Way Tree in the parish of St. Andrew this 14th day of March one thousand nine hundred and seventy four.

(Sgd.) G. Haughton Francis

Justice of the Peace for the
parish of St. Andrew."

It was contended by Mr. Bentley Brown that the instant case was covered by the authority of Herman King v. The Queen (1968) 12 W.I.R. at p. 271 where it was held that a search warrant issued under s. 21(2) of the Dangerous Drugs Law, Cap. 90 was defective because no constable was "named" in the warrant. The provisions of s. 21(2) of Cap. 90 empowered the grant of a search warrant authorising "any constable named in the warrant" to enter and search the premises named in the warrant. In the instant case the provisions of s. 61(1) empowered the grant of a search warrant "directed toany constable to enter and search" the premises in respect of which upon information given on oath it appeared to any Justice of the Peace that there was reasonable cause for suspecting that any alcoholic liquor was kept for the purpose of sale by retail by any person not duly licensed in that behalf. The warrant was directed to "all members of the Jamaica Constabulary Force of Cross Roads in the parish of St. Andrew."

In our view the words "directed to any constable to enter and search" are to be given a wider meaning than the words "any constable named" and would bear the wider meaning such as "designated", "specified", or "identified" referred to by Lord Hodson in his judgment in Herman King v. The Queen (1968) 12 W.I.R. at p. 271 where the search warrant was directed to "any Lawful Constable of the parish of Kingston".

We are of the view that this ground of appeal fails.

Next it was submitted that there was no evidence that spirits were exposed for sale. It was contended that the appellant operated a private members club on the premises and by reason thereof there was no sale within the meaning of the meaning of that term in the Spirit Licence Law when alcoholic liquor was "sold" to members and so no licence was required for the "sale" of alcoholic liquor to members of the club. The appellant had testified that the private members club he operated on those premises was registered for the year 1973 and that in April of that year he applied for a club licence in respect of a proprietary club at those same premises. He also testified that since making that application he has ceased to sell alcoholic liquor on the premises and that he was aware that the police were watching to see if he was selling liquor at the premises. When in June 1974 the search warrant was executed it is clear that he was no longer conducting a private members club but instead had formed a proprietary members club (see s. 16(2) of Cap. 364) in respect of which he had in April 1973 made application for the grant of a club licence. No club licence had been granted as at that date. It is also of interest to observe that in the second ground of appeal filed the appellant referred to the premises as "a private home" and did not purport to have carried on a private members club (registered or unregistered) at the material time. There was evidence which the learned resident magistrate accepted that rum and gin were exposed for sale on those premises by the appellant. This ground of appeal also fails.

Lastly it was submitted that Inspector Stewart under cross-examination "displayed a particular bias against the accused in connection with the motive for the raid and the manner and time at which it was carried out. This ought to have given rise to great doubts in the mind of the Resident Magistrate, especially since the accused was supported in every material particular by his two supporting witnesses. The benefit of the doubt should have been resolved in favour of the accused leading to an acquittal." This ground we find is unsupported by the evidence and is without merit.

In the result the appeal is dismissed. The conviction and sentence are affirmed.