

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL No. 22/74

BEFORE: The Hon. Mr. Justice Edun, J.A. (Presiding).  
The Hon. Mr. Justice Swaby, J.A.  
The Hon. Mr. Justice Zacca J.A. (Ag.).

REGINA v. ANTHONY EDWARDS

Mr. V. Grant, Q.C. for Appellant.

Mr. P. Harrison for Crown.

May 3, July 19, 1974

ZACCA, J.A.(Ag.):

This is an appeal against conviction and sentence by the learned Resident Magistrate for the Parish of St. Catherine for unlawful possession of a quantity of motor car parts, contrary to s.8 of the Unlawful Possession of Property Law Cap.401.

On Monday October 1, 1973 Detective Corporal Gladstone Grant obtained a search warrant under the Unlawful Possession of Property Law, and proceeded to the premises of the appellant at Church Pen in St. Catherine. The appellant was seen at these premises whereupon the Detective read the warrant to the appellant and searched the premises. During this search a large quantity of old motor car parts were found in the living room, the kitchen and in a large box in the kitchen, and to the front of the house. Amongst the articles found in the kitchen were four motor car front seat frames and in the large box, four Cortina seat sponges. The relevance of this is that the seat sponges matched the seat frames. A total of 101 items in all were found. On being asked to explain where he got the items found in the living room and the kitchen the appellant is alleged to have replied "Is a friend give me them." Asked to explain his possession of the articles found in the box the appellant said "Is buy I buy them from different people. I dont remember their names." As to the articles found in front of the house the appellant said "Is a boy named Paul give me them." In his testimony before the Resident Magistrate on October 5, 1973 Detective Grant stated, inter alia,

that he did not have information to the effect that the appellant was a mechanic, nor did he observe that the premises were being used by a mechanic (i.e. as a mechanic's workshop or place). The Detective was cross-examined by the Attorney-at-Law who appeared on behalf of the defendant and the notes of evidence disclose that further cross-examination was to be allowed if the Attorney so wished. More will be said about this aspect of the case, later.

The learned Resident Magistrate on October 5, 1973 made an order for the appellant to account for his possession of the motor car parts on October 25, 1973. It was not, however, until January 16, 1974 that the trial was concluded and on that day the accused accounted for possession of the 101 motor car parts. The appellant in accounting for his possession of the motor car parts stated that when he was asked by the Detective to explain his possession of the motor car parts he told the Detective that they were old parts which he had changed off jobs. It appeared that what the appellant was saying was that all the motor car parts were old parts which came from cars on which he had worked as a mechanic and for which new parts had been supplied. The learned Resident Magistrate found him guilty and sentenced him to six months imprisonment with hard labour.

Several grounds of appeal were argued by Mr. Grant who appeared on the appellant's behalf. At the outset of the hearing of the appeal he made an application to call further evidence with a view to the tendering in evidence of four receipts, which it was contended related to the purchase of some of the motor car parts. Three affidavits were filed in relation to this application which the Court considered.

The principles on which a Court of Appeal will exercise its discretion to allow further evidence to be called are as follows:

(i) the evidence must be evidence which was not available at the trial, (ii) it must be evidence relevant to the issues, (iii) it must be credible evidence, i.e. well capable of belief. (See Archbold's

Criminal Pleading Evidence & Practice, 36th Edition at p.334;

R. v. Preston Williams - Supreme Court Cr. App. 16/73, January 17, 1974.)

Applying these principles to the matter before us it appeared that the evidence was available at the time of the trial. In giving his account to the learned Resident Magistrate the appellant stated that the motor car parts were old parts which he had changed off jobs. At no time in his accounting did he state that he had bought any of these motor car parts. The question of tendering in evidence the four receipts could not therefore be said to be relevant to the issues. The Court was satisfied that the present facts did not meet any of the principles enunciated above and the application for adducing further evidence was therefore refused.

It was argued that the trial of the case was unsatisfactory. It was submitted that because of the non appearance of Detective Grant on seven occasions the appellant's attorney-at-law was denied the right to further cross-examine him and that this would be a good ground for allowing the appeal. Mr. Grant, however, informed the Court that in so far as this aspect of the case was concerned he was prepared to accept the state of the Records as it existed. The records disclose that there were six adjournments between the 5th October 1973 and the 16th January 1974, all of which Mr. Grant stated were as a result of the non appearance of Detective Grant who was required for further cross-examination. It further appears from the records that the attorney-at-law for the defendant decided to have the matter concluded on the 16th January 1974 despite the non appearance of Det. Grant on that date.

The records do not disclose that any application was made to the Court to have the case further adjourned for the purpose of once more attempting to get Detective Grant to attend the court. Nor was it suggested in this Court that the learned Resident Magistrate refused any application for a further adjournment. We wish to state that it is highly desirable that charges under the Unlawful Possession of Property Law should be concluded as early as possible. In view of the above we consider that there is no merit in the submission and it must therefore fail.

It was also argued on behalf of the appellant that the Information which was charged under section 8 made no reference to section 10 which is the penal section. On this point the Court re-states the views expressed by the Court in the case of R. v. Stephens

6 W.I.R. 311, at p. 312, that it is desirable that a reference to section 10 should be made as well as to section 8 when these informations are laid under section 8 of the Law.

Two other submissions were made by Mr. Grant: (1) that the learned Resident Magistrate should not have made the order for the appellant to account for possession as there was not sufficient evidence on which he could be satisfied that there was reasonable cause for the Detective suspecting that the motor car parts found in the possession of the appellant were stolen goods or goods unlawfully obtained; (2) that the account given by the appellant was a reasonable one and therefore the learned Resident Magistrate should have accepted **it** and so discharged him.

Dealing with the first of these two submissions, the evidence before the learned Resident Magistrate was that a large quantity of old motor car parts were found not only in the yard but also inside the house and kitchen of the premises. There was also the evidence of the explanations given to the Detective on the goods being found.

In R. v. Stephens 6 W.I.R. 311 at p. 315 D Duffus, J. (as he then was) said:

"As this Court has said time and again and mentioned in particular in R. v. Parkinson in charges laid under the Unlawful Possession of Property Law evidence must be given either specifically or inferentially that immediately prior to arrest the constable had reasonable cause to believe or suspect that the goods were unlawfully obtained. Reference was made to R. v. Walters and it was said that R. v. Parkinson merely reiterated the decision in Walters' Case, but Parkinson's Case went further and made it clear that if evidence of reasonable cause for suspicion is not given the Resident Magistrate should not call upon the person charged to account for his possession."

See also R. v. Parkinson 2 W.I.R. 454.

In R. v. June Williams R.M. Cr. A. No. 104/70, Shelley J.A. stated "This statement of the Law (supra) applies with equal force in the trial of suspected persons under s.5 of the law and in the trial under section 10 of persons brought before the Resident Magistrate under sections 8 and 9 of the law.

In dealing with s.10 of the law, Shelley J.A. also stated "It is implicit in that section that before calling upon the person brought or appearing before him to account the Resident Magistrate must be satisfied that

- (a) goods were in the house, etc.,
- (b) that those goods were reasonably suspected to be stolen or unlawfully obtained."

Undoubtedly if there was no evidence before the Resident Magistrate on which he could find that the Det. Cpl. had reasonable cause for suspecting that the goods found were stolen or unlawfully obtained, then it would have been the duty of the Resident Magistrate not to have called on the appellant to account for possession of the goods so found.

However in our view we are satisfied that there was sufficient evidence adduced before the Resident Magistrate on which he could have come to the conclusion that there was reasonable cause for suspecting that the motor car parts found in the possession of the appellant were stolen goods or goods unlawfully obtained. The Resident Magistrate was therefore justified in making the order as he did for the appellant to account for his possession.

In so far as the second submission is concerned, the learned Resident Magistrate having convicted the appellant must have reached the conclusion that the account given by the appellant was unsatisfactory. In doing so he could properly have taken into account the evidence of Det. Cpl. Grant as well as the evidence of the appellant and he would have had the opportunity of observing the demeanour of the witnesses. The learned Resident Magistrate must also have taken into account the quantity and variety of motor car parts found.

In our view, on the evidence before him, he was justified in coming to the conclusions that he did.

The appellant also appealed against the sentence of 6 months with hard labour imposed by the learned Resident Magistrate.

It was argued on behalf of the appellant (1) that he had no previous convictions; (2) that the motor car parts were all old parts;

(3) that the value of the parts was grossly exaggerated; and that

therefore a sentence of imprisonment for a first offence was manifestly excessive. We have considered the question of sentence and in our view a sentence of 6 months imprisonment at hard labour in all the circumstances cannot be said to be manifestly excessive.

The appeal against conviction and sentence is therefore dismissed and the conviction and sentence affirmed.