

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S
CRIMINAL APPEAL NO. 86/73

Before: The Hon. President
The Hon. Mr. Justice Hercules
The Hon. Mr. Justice Swaby

Regina v. Doreen Hill

Mr. H. Small for the Appellant

Mr. F.A. Smith for the Crown

1st April, 1974

HENRIQUES. P.

The appellant in this matter, Doreen Hill, was charged before the learned Resident Magistrate for the parish of St. James on information which alleged that she had unlawfully in her possession, one gold ring valued at Twenty-five Dollars, one Girad Perseguax watch valued at Twenty-five Dollars, one gold chain valued at Thirty Dollars, under such circumstances as to reasonably cause a constable to suspect that they had been unlawfully obtained. She was convicted and fined the sum of Forty Dollars or two months hard labour.

According to the case which was presented by the prosecution, Venryes Smith, a Detective Constable, received certain information on the 23rd of May; that information being in respect of reports of robbery, housebreaking and larceny, and breaking and larceny, shop-breaking, all committed in the Montego Bay area. On that day he went to Market Street, Montego Bay, and there he saw the appellant, she was standing on Market Street just about half a chain away from him. As the constable approached the appellant she put her hand behind her back, suddenly. The constable went up to her, held on to her and informed her of the information that he had received. He noticed that she was wearing a gold ring, a gold Perseguax ladies watch and a gold chain and pendant, as well as other jewelry. She was asked how she came into possession of the articles and she said that she had bought them from a fellow from Kingston. The constable then informed her that he did not believe her story and she was placed

in a motor car and taken to the Montego Bay Police Station.

On the way the appellant jumped out of the car and ran up Market Street. The constable gave chase, held her and took her to the Montego Bay Police Station and there she was informed that he believed that the articles had been unlawfully obtained. She was then arrested, charged for unlawful possession. When cautioned she made no statement. The appellant told the constable that she had bought the gold ring from a fellow for Ten Dollars. She said she did not know the name of the fellow but if she saw him again she would recognise him. She also said that the gold chain and pendant had been bought from the same fellow for Ten Dollars and that she had also bought the watch from him for Ten Dollars.

The learned Resident Magistrate after hearing the constable give his evidence, made an order for the appellant to account satisfactorily for her possession of the articles. The order for account was made on the 25th of May, 1973, and the appellant was supposed to give her account on the 29th of May, 1973. On the 23rd of May the appellant was unrepresented, conducting her own cross-examination of the constable, and on the 29th of May, Mr. Lenseley Wolfe, appeared for the appellant. And then it appeared a somewhat unusual procedure took place, in that Mr. Wolfe was allowed to cross-examine the constable once more with regard to the grounds of suspicion for having detained the appellant.

Now the appellant gave an account before the learned Resident Magistrate in which she described herself, whilst being unemployed, that she was at the same time a 'sport' when she worked. The chain which she was wearing had been given to her by a boy off some ship who had been wearing a similar type of chain which she admired and which he promised he could, on a subsequent trip to Jamaica, bring her back one, which he did. The ring she said she bought from a travelling salesman in Montego Bay, paying Eight Dollars for it, and she had also bought a watch as well from the same fellow, and that she had paid Ten Dollars for it.

The learned Resident Magistrate, as I have mentioned, was not satisfied with the account given by her and proceeded to convict her. During the course of the hearing of the appeal, the court desired to see the exhibits in the case but they were not at the time forthcoming, but they have since been produced and the court has had the opportunity of examining them. They do not appear to be expensive.

Well the court has considered all the evidence in the case, and in particular the type of exhibits in the case, and has come to the conclusion that the learned Resident Magistrate erred in not being satisfied of the possession given him by the appellant of these articles. The court is fortified in its view by certain passages from the judgment of the court in the King v. Brown, which is to be found reported at page 301, of Clark's Supreme Court judgments. In the course of his judgment, Mr. Justice Brown had this to say - though that case is not entirely on all fours with this case in that it dealt with an offence under the Agricultural Produce Law of 1909, but it was a law which was similar in its terms and provisions, to the law which we now have under examination. The passage reads as follows:

"When the case came before the learned Resident Magistrate the evidence was substantially what I have already referred to. It thereupon became the duty of the appellant to prove that he became honestly possessed of the fustic and on his failure to prove such honesty of possession, it was open to the Magistrate to convict him of the offence charged. 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."

Again, there is the passage in the same case in a judgment given by Mr. Justice Adrian Clark which appears at page 307:

"The last point taken was, however, the one of most importance. It was argued that the defendant having given before the Resident Magistrate an explanation of his possession which was at any rate a reasonable one, the burden of proving his innocence was prima facie discharged so as to shift the burden of proving his guilt back on to the prosecution.

It is true that the language of Law 4 of 1909 in this respect is strong. It is for the suspected person to "satisfy" the Resident Magistrate that his possession was "honest."

Nevertheless, I think the ordinary rule must apply and that 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."

For these reasons, therefore, we feel that viewing the circumstances as a whole, that the appellant in this case gave a reasonable explanation; one which may reasonably be true with regard to the possession of these articles and the learned Resident Magistrate should have so held. In the circumstances, therefore, the appeal will be allowed and the conviction quashed and the sentence set aside.