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O N A P P E A L  
FROM THE COURT OF APPEAL  
OF JAMAICA

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B E T W E E N :

ROY DILLON Appellant  
-and-

THE QUEEN Respondent

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CASE FOR THE RESPONDENT

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RECORD

1. This is an appeal from the judgement of the Court of Appeal dated 5th March,1977. The majority judgment of (Robinson P,Robotham (JA Acting) reported as R.v. Roy Dillon (1977) 26 W.I.R. 473 dismissed the appeal and affirmed the conviction and sentence of six months hard labour while the dissenting judgement of Watkins, J.A unreported R.M.Criminal Appeal No.7 of 1977 would have set aside the conviction and sentence with respect to both counts of the indictment which charged the appellant Roy Dillon with the common law offence of permitting an escape. pp. 22-29  
pp.22-29
  
2. The appellant at that time a member of the constabulary force was tried on indictment before His Honour Mr. A.J.Lambert on two days viz 26th November, 1976 and 3rd January, 1977 after which he was convicted and sentenced pp. 1 & 2

to six months imprisonment on each count, the sentences to run concurrently.

3. In so far as it is necessary to advert to the facts of the case to identify the points of law to be considered by Your Lordships' Board, they are admirably set out in the majority judgment of Robotham, JA (Acting). They are as follows:-

On 25th April, 1976 Constable Dillon was one of the officers responsible for the safe custody of the prisoners Paul Bryan and Robert Blackwood. The appellant Dillon was the sentry in the downstairs block of cells and kept the individual keys for those cells. Sergeant Jarrett, then a corporal was in charge and left the main entrance keys in the hands of the appellant Dillon. When Corporal Jarrett returned the appellant Dillon informed him "Corporal after you left for upstairs I opened the gate which leads towards the kitchen to allow attendant Gilzene to take in food for the prisoners. I then opened entrance gate to male adult section downstairs, I opened one of the cells to allow two prisoners to take out rubbish after looking around I did not see the two prisoners." A check revealed that the two missing prisoners were Bryan and Blackwood. The appellant sought no assistance in performing his duty contrary to a recognised practice. It should also be noted that the prisoners were fed before Corporal Jarrett left.

p.5.  
ll. 34-40

4. An important aspect of the facts was as to how Bryan and Blackwood came to be in the lock-up at the Central Police Station. The unchallenged evidence of Constable Leslie Grant was that he had arrested Bryan and charged him for shooting with intent and he thereafter placed him in custody. As regards Blackwood the evidence was that he was at the remand section of the General Penitentiary and was transferred on 23rd April to the Central lock-up with a view to placing him on an identification parade in connection with a murder case.

p. 9  
ll. 32-36  
  
p. 10  
ll. 14-23

5. By an order No.177 (Exhibit 1) made under Section 4 of the Prison's Act published in the Jamaica Gazette Supplement (Proclamations, Rules and Regulations) dated the 21st August, 1958, the Central lock-up in Kingston was declared to be a lock-up for the confinement of persons awaiting trial, remanded in custody or sentenced to a short term sentence.

p.42

And Order No.176 (Exhibit 1) made under Section 3 of the Prisons Act published in the Jamaica Gazette declared the General Penitentiary to be "a prison for the imprisonment or detention of persons in custody ..  
....."

p. 41

Thus both the Central Lock-up and the General Penitentiary were places in which persons could be lawfully confined, detained, remanded or imprisoned.

6. The appellant Dillon appealed to the Court of Appeal and the appeal was dismissed by a majority decision on March 5, 1977. Thereafter leave to appeal to Your Lordships' Board was refused on 30th March, 1977 by the Court of Appeal (Robinson P., Melville and Watkins) JJ.A.

7. Subsequently the Appellant successfully petitioned Your Lordships' Board and was granted special leave to appeal on 10th May, 1979, the formal order of which was dated 23rd May, 1979.

8. Your Respondent respectfully submits that the point of law to be decided in this appeal is as follows:-

Whether on the true construction of Section 16 of the Prisons Act criminal liability attaches to a constable for permitting a prisoner to escape from a prison or lock-up once he may lawfully be confined therein.

9. So formulated Your Respondent must now construe Section 16 of the Prisons Act subsection 2 of which reads:

16(2) Every person whenever he is confined in any lock-up in which he may lawfully be confined, or whenever he is being taken to or from, or is working in the custody or under the control of any person in charge of any lock-up, beyond the limits of such lock up they are under a greater protection of the law than private persons, are often justified in making an arrest without a preliminary, or simultaneous, statement of the charge. The law does not encourage the subject to resist authority of one whom he knows to be an officer of the law. In MacKalley's case where a serjeant-at-mace who made the arrest, it was said that if the party knows the person arresting him to be an officer he must not offer resistance 'and if he has no lawful warrant he may have his action for false imprisonment.

By parity of reasoning the deeming provision of Section 16 of the Prisons Act is intended to discourage escape from custody as the civil remedy for false imprisonment is available.

13. Your Respondent respectfully submits that once the law gives special powers to a constable to arrest without warrant then as Bryan's arrest was authorised by law he was a person confined in a lock-up in which he might lawfully be confined.

14. The next set of relevant words is "shall be deemed to be in the legal custody of the person in charge of such lock-up" and it is submitted that by the use of this deeming section, the law gives to the person in charge of the lock-up legal custody of every person who may lawfully be confined therein.

15. The object and intention of the subsection it is submitted is to promote the effective administration of the penal system as the law provides that "Every person awaiting trial or remanded in custody may be committed to and detained in either a prison or lock-up"

see Section 15 (2) of Prisons Act.

Further Section 20 provides the lawful means of release and Section 64 expressly preserves the remedy of habeas corpus.

16. Additionally one may point out that by virtue of Section 13 (7) of the Prisons Act the appellant Dillon was deemed to have all the powers and privileges of a prison officer in relation to the safe custody of persons detained in a lock-up and it would run counter to the object and intendment of Section 16(2) if he could perform those duties negligently and then raise the defence in a criminal matter that there was no sufficient evidence as to the circumstances by which persons were confined to his charge. As an illustration of the fallacy of the dissenting judgment of Watkins J.A. one may point out that since Dorset Yacht Co. v. Home Office (1970) A.C. 1004 it is possible to sue prison authorities for damage due to their negligence if prisoners in their custody escape and cause damage to whom a duty of care is owed. It would be an odd result if a defence not open to him or the prison authority in a civil suit were to be available in comparable criminal proceedings.

17. It is on this basis that the majority judgement decided that this as the evidence in respect of Bryan that he was arrested and placed in custody at the Central lock-up was unchallenged. section 16 (2) enables the Court to rely on presumptive evidence that all the formalities concerning arrest were carried out and the ratio decidendi of the decision is to be found in the following paragraphs:-

"It is not unreasonable to presume that a constable who arrests a man for shooting with intent acted regularly in performing that function. It is a presumption, of law, albeit a rebuttable presumption, that a man who has acted in a public capacity or situation was duly appointed and has properly discharged his official

p.27  
11. 15-45

duties. See paragraph 1156 of Archbold - 37th Edition . In the instant case, no attempt was made to rebut the presumption that the arresting constable had acted properly. If at a later stage it turns out he was activated by malice or any other false motive, the person so arrested has his remedy in the Civil Courts. In my view once a man has been arrested or remanded and is restricted to a place of legal confinement such as the Central lock-up the question in such a case to be considered in so far as culpability for his escape goes is not whether he is guilty or not of the charge; not what false or misconceived notices may or may not have caused the charge to be initiated, but whether having been so arrested, and confined, and not having been delivered by due course of law, he was in legal custody at the time of his escape. It would lead to nothing short of a chaos if in every case in which a constable makes an arrest and places his prisoner in a place of lawful confinement, an officer in charge of such a place would have to stop and satisfy himself that a person who was attempting to walk out of the lock-up (without having gained his liberty by due course of law) had been justifiably arrested. In many cases it could easily be ascertainable eg. if he had been arrested on a warrant but there would be cases in which it might not be so easily discoverable. In the case of Bryan, the evidence that he was arrested for shooting with intent, and placed in custody at the Central lock-up, is quite clear. I do not consider that the Crown need have gone any further to establish that he was on the 25th April, 1976 a person lawfully in custody."

p.28  
11. 1-6

18. As regard the dissenting judgment, Watkins J.A. concurs that the only issue is as to whether there was evidence that Bryan was lawfully arrested and the evidence concerning this was given by Leslie Grant. The judgment correctly set out the procedural steps necessary for a valid arrest and cites Christie v. Leachinsky and other cases to illustrate the contention. It is respectfully submitted however that the learned Justice of Appeal misconstrued Section 16 (2) of the Prisons Act because he equated

p. 30  
11. 37-40

'may lawfully be confined' with proof that there was a valid arrest in accordance with the appropriate statutory provisions. Moreover the learned Judge in his effect to construe the subsection consistent with the liberty of the subject failed to take into account that the deeming of a person to be in lawful custody for purposes of the Prisons Act does not deprive him of his remedies to establish that the custody was unlawful or disentitle him to damages in an action for false imprisonment.

19. Somewhat different considerations apply to Blackwood. According to the uncontradicted evidence of Assistant Superintendent Albert Richards he was at the remand Section of the General Penitentiary where by virtue of Section 6 (3) of the Prisons Act the Superintendent is an ex officio Justice of the Peace. The same analysis of S. 16 (2) must also apply to S.16 (1) and Blackwood who was initially found at the General Penitentiary was so deemed to be in legal custody of the Superintendent of Prisons.

p.10

11. 10-23

20. The evidence of Assistant Superintendent Albert Richards further states that he had him transferred to the lock-up at the Central Police Station for the holding of an Identification Parade in connection with a murder case. Here the Court was entitled to presume that Blackwood's removal must have been in accordance with Section 22 of the Prisons Act and no formal proof of the Minister's order was necessary - see Boyd Gibbins v. Skinner (1951) 2. K.B. 379.

p.10

As Blackwood was in actual custody at the Central lock-up when escape was permitted he is within the ambit of S. 16 (2) of the Prisons Act and deemed to be in lawful custody.

21. Robotham J.A. (Acting) for the majority disposed of the point thus:-

" In the case of Blackwood, he was located in the remand section of the General Penitentiary, a place declared a prison for the imprisonment or detention of persons in custody. Whilst there he was deemed under Section 16 (1) of the Prisons Act to be in the legal custody of the Superintendent of the prison. When he was transferred to the Central lock-up he was deemed under Section 16 (2) to be in legal custody of the person in charge of that lock-up."

p. 28  
11. 7-15

22. The dissenting judgment of Watkins, J.A. puts the matter differently. He again seeks to find express evidence concerning the initial arrest of Blackwood and fails to note that prima facie evidence would be appropriate because of the legal effect of Section 16 of the Prisons Act. Because of his approach he found it necessary to carry out a detailed examination of the cases concerning the extent of the omnia praesumuntur rule. Your Respondent does not find it necessary to examine critically the analysis of the learned trial judge as the basis of Your Respondent's case is the true construction of Section 16 of the Prisons Act and the effect this has on the evidence necessary to establish the initial arrest of the person who escapes from prison.

p. 36  
11. 19-40

23. Your Respondent will further contend that the passages from Russell on Crime, Archbold and Halsbury's cited by Robotham J.A. for the majority which stipulate that a lawful arrest is a necessary ingredient for escape are correct statements of the common law. The effect of Section 16 of the Prisons Act however is to make actual custody in a prison or lock-up lawful custody by means of a deeming provision. On this aspect R.v. Abbot (1956) Crim. L.R. 337 is of some assistance.

pp. 25-27

24. Your Respondent would further add that although particulars of both counts in the indictment do not



specifically state that the accused was detained in a lock-up no objection was taken in either of the courts below and the unchallenged evidence coupled with the submissions and judgements were based on custody in a lock-up.

25. In the light of the foregoing submissions Your Respondents respectfully contends that the appeal should be dismissed and the conviction and sentence affirmed for the following among other:

REASONS

- (i) Because on a true construction of Section 16 of the Prisons Act once a person may lawfully be confined in a prison or lock-up and is so confined then the law deems such a person to be in lawful custody.
- (ii) Because the majority decision of the Court of Appeal is correct.
- (iii) Because the dissenting judgment of Watkins J.A. is wrong in law.

Ian X. Forte

F. Algernon Smith

IN THE PRIVY COUNCIL      No.19 of 1981

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