

ANDREAS GEORGHIOU ECONOMIDES, *Appellant*,  
*v.*  
THE POLICE, *Respondents*.

(*Criminal Appeal No. 2220*).

1958  
Dec. 22  
1959  
Jan. 5.

—  
ANDREAS  
GEORGHIOU  
ECONOMIDES  
*v.*  
THE POLICE

*Possessing property reasonably suspected of being stolen—Criminal Code, Cap. 13, Section 303—Property pawned—Possession of, the pawnee is not, for the purposes of Section 303, possession of the pawnor—Criminal Code, Section 4—Suspicion—It must be entertained: (1) by someone other than the accused, (2) at the time the property is in the possession of the accused.*

The Appellant was convicted by the District Court of Larnaca of possessing a suit reasonably suspected of being stolen property, contrary to Section 303 of the Criminal Code, Cap.13. Section 303 reads as follows: "Any person who has in his possession any chattel, money, valuable security or other property whatsoever, which is reasonably suspected of being stolen property, is, unless he establishes to the satisfaction of a Court that he acquired the possession of it lawfully, guilty of a misdemeanour and is liable to imprisonment for six months".

The suit in question was found in the possession of A, a pawnbroker with whom the Appellant had pledged it. The police officer who found the incriminating articles, on being informed by the pawnbroker that they were the Appellant's conceived the suspicion that they were stolen property. It was contended by the Appellant that, inasmuch as he was not in possession of the articles at the time the police officer suspected them of being stolen, he was entitled to an acquittal. On the other hand it was argued for the Crown that, having regard to the definition of "possession" in Section 4 of the Criminal Code, Cap.13, possession by the pawnbroker was possession by the Appellant-pawnor and so the suspicion in the mind of the police officer was linked up with possession by the Appellant. The definition of "possession" in Section 4 is as follows:

Section 4. In this Law— "Possession" —

- (a) "be" or "have in his possession" includes not only having in one's own personal possession, but also knowingly having in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person;
- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or posses-

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sion, it shall be deemed and taken to be in the custody and possession of each and all of them :

On appeal it was, —

*Held:* (1) The requisite suspicion must be entertained by some person other than the accused such as the person who sees or finds the property in the possession of the accused.

*The Police v. Haralambous and Yanni* 14 C.L.R. 109, followed

(2) To support a charge under Section 303, the reasonable suspicion that the property is stolen must be conceived by somebody while the property is still in the possession of the accused.

*Kamilaris v. The Police* 18 C.L.R. 78, and *The Police v. Skoufaris*, Case Stated No. 124 (now reported in 23 C.L.R. 187.) followed.

(3) In the instant matter the police officer did not see or find the Appellant in possession of the property. The possession had already passed at the time he conceived a suspicion to the person with whom he found the suit, namely, the pawnbroker, who not only had a full right to possession as against the pledgor—Appellant, but also a special property or interest in the articles arising under the contract of bailment. Therefore, no case was made out against the Appellant.

*Appeal allowed. Conviction quashed.*

Cases referred to:

*The Police v. Haralambous and Yianni* - 14 C.L.R. 109.

*Kamilaris v. The Police* 18 C.L.R. 78.

*The Police v. Skoufaris* Case Stated No. 124, now reported in 23 C.L.R. 187.

### Appeal against conviction.

The Appellant was convicted on the 2nd December, 1958, by the District Court of Larnaca (M. Michaelides, D.J., in Criminal Case No. 2439/58) of the offence of unlawful possession of property reasonably suspected of being stolen property contrary to Section 303 of the Criminal Code, Cap.13, and was sentenced to six months imprisonment.

*The Appellant in person.*

*J. Ballard* for the respondent.

On December, 22, 1958, the Court allowed the appeal and quashed the conviction, intimating that the reasons therefor would be given later. Those reasons were read on the 5th of January, 1959, by :

BOURKE, C.J. : This appeal was allowed and we undertook to give our reasons later, which we now proceed to do.

The appellant was convicted of the offence of unlawful possession of property contrary to section 303 of the Criminal Code.

The appellant was found in possession of the coat and trousers by the witness Haji Andoniou, a pawnbroker, with whom the appellant pledged the articles. If this witness

conceived any suspicion that the property was stolen he did not testify to that fact. He was later visited by the Police and the suit was seized by Police Constable Haji Philippo, who testified as a witness for the prosecution as follows:—

“I know the accused. He is a person who hates work and is always unemployed. Knowing his means of life I did not expect him to possess the suit of clothes exhibit 1. As I had all good reasons to suspect that exhibit 1 was stolen property, I seized it”.

In a very brief judgment, that can hardly be said to comply with the requirements of section 110 of the Criminal Procedure Law, the learned Judge of trial found “as a fact that the police had good reasons to suspect this property as being stolen”. By “the police” is meant Police Constable Haji Philippo, who never saw or found the appellant in possession of the property and his suspicion formed against the appellant rested upon what he had been told by the pawnbroker as to the fact of possession by the appellant.

It has been argued for the Crown that having regard to the definition of “possession” in section 4 of the Criminal Code, possession by the pawnbroker was possession by the appellant and so the suspicion in the mind of the police officer was linked up with possession by the appellant.

The strict and cautious way in which section 303 of the Criminal Code, which puts the onus on an accused to establish that he acquired possession lawfully, has been construed and applied by this Court, is to be observed from such cases as *The Police v. Haralambous & Yanni* 14 C.L.R. 109, and *Kamilaris v. The Police* 18 C.L.R. 78 — see also *The Police v. Skoufaris*, Case Stated No. 124. (*now reported in 23 C.L.R. 187*). As was decided in *Haralambous’* case (*supra*) the requisite suspicion must be entertained by someone such as the person who finds or sees the property in the possession of the accused; the prosecution must be in a position to prove that on a given date the accused had in his possession property which some other person reasonably suspected to be stolen property. *Kamilaris’* case (*supra*) made it plain that to support a charge under the section, a reasonable suspicion that the property is stolen must be conceived by somebody while the property is still in the possession of the accused.

On the facts of the instant matter the police officer did not see or find the appellant in possession of the property. The possession had already passed at the time he conceived a suspicion to the person with whom he found the suit, namely, the pawnbroker, who not only had a full right to possession as against the pledgor, that is, the appellant, but also a special property or interest in the articles arising under the contract of bailment.

In the circumstances this Court came to the conclusion that the appeal must be allowed and the conviction set aside.

*Appeal allowed. Conviction quashed.*