

REPUBLIC OF TRINIDAD AND TOBAGO

PORT OF SPAIN MAGISTRATES' COURT
ST. GEORGE WEST MAGISTERIAL DISTRICT

CASES: 07844-07871 OF 2013

BETWEEN

WOMAN POLICE CORPORAL NO. 14145 TRICIA SMITH

COMPLAINANT

AND

LINCOLN GOPIECHAND
SHAWN DAVIS
SUMMER BRISTOL
LEON GOMES

ACCUSED/DEFENDANTS

APPLICATION PURSUANT TO
SECTION 41(4) OF THE SUMMARY COURTS ACT CHAP. 4:20
FILED MAY 17, 2013

Appearances:

Ms. S. Chote, SC and Mr. T. Clarke for the Applicant

Mr. B. Winter, Senior State Attorney for the Commissioner of Police

THE APPLICATION

1. This is an application made by the virtual complainant in related matters, First Citizens Bank (FCB), for the Court to make an order for moneys seized under a search warrant to be retained by FCB or the Central Bank until further order of the Court. The moneys seized amount to over two million dollars and is alleged by the Prosecution in the related matters to have been stolen from FCB.
2. The application is made under Section 41(4) of the Summary Courts Act, Chap 4:20. The Applicant asks the Court to exercise its powers to direct that the moneys seized be detained by FCB or the Central Bank for production in evidence or to be otherwise dealt with as the case may require. The Applicant submits that FCB or the Central Bank would be safe and proper places for the large sums of moneys seized to be kept until further order of the Court.
3. The Director of Public Prosecutions, seeking the interests of the Commissioner of Police, submits that the Court has no jurisdiction to entertain this application as the Summary Courts Act does not give the Court the power to make orders as to the detention of goods seized by the Police under a Search Warrant. Further, in the event that the Court finds that it has the power to make an order as to the detention of things so seized, there is no reason to suggest that the moneys seized and now in the custody of the Police would not be produced in evidence as the case requires. Consequently, the Court should maintain the orthodox position that things seized by the Police under search warrants should stay in the custody of the Police until they become evidence in Court.

THE LAW

4. As I intend to embark on an examination of the Court's powers regarding Search Warrants, it is proper to set out the full text of section 41 of the Summary Courts Act, Chap 4:20 which is the principal Act guiding the Magistrate in the exercise of the powers of the Court. The terms of a Search Warrant contained in Form 48 are also set out below.

SEARCH WARRANTS

41. (1) Any Magistrate or Justice who is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place—

- (a) anything upon or in respect of which any summary offence has been or is suspected to have been committed;
- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground for

believing is intended to be used for the purpose of committing any offence against the person punishable on summary conviction,

may at any time issue a warrant under his hand authorising any constable to search such building, vessel, carriage, box, receptacle, or place for any such thing, and to seize and carry it before the Magistrate or Justice issuing the warrant or some other Magistrate or Justice, to be dealt with by him according to law.

(2) Any search warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) When any such thing is seized and brought before any Magistrate or Justice, he may detain or cause it to be detained, taking reasonable care that it is preserved till the conclusion of the case; and if any appeal is made, he may order it further to be detained for the purpose of or pending an appeal. If no appeal is made, the Magistrate or Justice shall direct such thing to be restored to the person from whom it was taken, except in the cases mentioned below, unless he is authorised or required by law to dispose of it otherwise.

(4) If, under any such warrant, there is brought before any Magistrate or Justice any forged bank note, bank note paper, or instrument, or any thing the possession of which, in the absence of lawful excuse, is an indictable offence according to any Act for the time being in force, the Magistrate or Justice may direct such thing to be detained for production in evidence or to be otherwise dealt with as the case may require.

(5) If, under any such warrant, there is brought before any Magistrate or Justice any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an offence according to any Act for the time being in force, every such thing shall be delivered up to the Commissioner of Police or to any person authorised by him to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced.

(6) If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protection as are given by any Act for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the same manner as directed by any such Act or, in default of such direction, as the Commissioner of Police may direct.

FORM 48
SEARCH WARRANT

REPUBLIC OF TRINIDAD AND TOBAGO.

County of

To all Constables

Whereas it appears, on the oath of A.B., of that there is reasonable ground for believing that (1) are concealed in at: This is therefore to authorise and require you to enter into the said premises at any time and to search for the said things, and to bring the same before me or some other Magistrate [*or Justice*].

Dated this day of, 20.....

(Signed)

(Magistrate or Justice)

5. On a complete reading of section 41 and the related Form 48 it is clear that the power lies with a Magistrate or Justice to direct "all Constables" to search premises and seize things under the Search Warrant and to bring the things so seized before the Magistrate or Justice to be dealt with according to law. The Magistrate or Justice, being satisfied by evidence under oath that the premises to be searched contain things that can ground a summary criminal charge, may issue a search warrant at anytime, even on a Sunday. When the things so seized are brought before the Magistrate or Justice he may detain the things or cause them to be detained but must take care to preserve them until the end of the case or pending an appeal, if there is an appeal. If there is no appeal the Magistrate will deal with the things according to law.

6. Subsections 4, 5 and 6 respectively provide further directions and exceptions to this procedure, as follows:

- (i) where the things seized are any forged bank note, bank note paper, or instrument, or any thing the possession of which, in the absence of lawful excuse, is an indictable offence according to any Act, the Magistrate or Justice may direct such thing to be detained for production in evidence or to be otherwise dealt with as the case may require;
- (ii) where the things seized include any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an offence according to any Act every such thing shall be delivered up to the Commissioner of Police or to any person authorised by him to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced.

- (iii) where the things seized is gunpowder or any other explosive or dangerous or noxious substance or thing, the thing shall be handled and disposed of according to any related Act and where such Act does not give specific direction, the thing may be dealt with as the Commissioner of Police may direct.

JURISDICTION

7. Section 41 then, gives to the Magistrate or Justice the jurisdiction to deal with things seized under a search warrant and brought back before the Court, except in the ways provided under the stated exceptions. This jurisdiction to deal with the things seized is given to the Magistrate or Justice with the expressed intent that the things so seized be detained and preserved until the end of the case and pending an appeal, if any. The Magistrate or Justice is therefore statutorily responsible for the preservation of the things seized under a search warrant issued by the Court.

PRACTICE AND PROCEDURE

8. In every matter involving things seized under a search warrant the Police bring the things before the Court and the Court records a description of each thing, commonly stated as a "first description". The things brought before the Court in this way are usually ordered by the Court to remain in the custody of the Police until they are taken into the Court's custody during the course of the trial. In practice, the Police do not make a formal application for the things to be detained by them until the trial but the Complainant does have to sign for the items upon taking them away from the Court. This underscores the fact that the things so seized remain under the direction and control of the Court.

9. Can an application to the Court be made by anyone for the things seized to be dealt with in a particular way? The short answer is yes. As already noted, the Police routinely make applications the Court for things so seized to be bound over in their custody until the items are put into evidence at the trial or committal proceedings, when the things are taken into the custody of the Court as exhibits. The Court can entertain applications from interested persons as to how the Court may detain things seized under a search warrant. The guiding principle for the Court in hearing such an application is ensuring the preservation of the things seized for the conduct and conclusion of the case and any pending appeal. For instance, in cases where the things seized are perishable, like endangered birds, the Court can entertain an application by a Games Warden for an order that photographs of the birds be taken and used in evidence and the captive birds freed.

10. Where the things seized are bank notes or instruments the Court is directed by the provisions of subsection 4. The Court is directed to make inquiry as to the status of the bank notes. In particular, the Court must ascertain whether they are counterfeit notes or instruments. If they are not counterfeit notes or instruments then the Court must ascertain whether there is an absence of any lawful excuse for the possession of the notes and whether the possession of such notes is an indictable offence. Having carried out this exercise the Magistrate or Justice may direct such thing to be detained for production in evidence or to be otherwise dealt with as the case may require. It is in this context that the Court may hear from interested parties as to the most prudent way for the things seized to be preserved for production in evidence or as the case requires.

11. In the instant matter the Applicant is the named virtual complainant in the related indictable charges laid as a result of the seizure, under search warrant, of the subject moneys. Accordingly, the Court heard the application. The Court also recognized the interests of the Police in respect of things seized by them under a search warrant and heard from State Counsel seeking the interests of the Commissioner of Police.

WHERE SHOULD THE BANK NOTES BE KEPT

12. This matter involves a large sum of bank notes and the Court must deliberate on the safekeeping of the subject bank notes. State Counsel submits that the Court should continue to order the detention of the bank notes in the custody of the Police, as the Police have proved capable of safekeeping things seized under search warrants. This, it was submitted, is the "orthodox position" and there is no reason for the Court to order otherwise. State Counsel further submitted that the bank notes should not be lodged with the Applicant because no possessory title in them had been established. This was a strange position since State Counsel did not contest that it was the allegation in the substantive charges that the bank notes were stolen from the Applicant. Senior Counsel for the Applicant submits that the safest place for the bank notes is a bank; the virtual complainant bank or the Central Bank.

13. The Central Bank is a statutory body and has as its purpose the promotion of such monetary credit and exchange conditions as are most favourable to the development of the economy of Trinidad and Tobago. The Central Bank acts as the Banker to the Government of Trinidad and Tobago and can engage in banking business with other financial institutions, local and international. The Central Bank Act Chap. 79:02 does not make the Central Bank a repository for bank notes seized under a search warrant and which are the subject of criminal proceedings. In those circumstances, the Court will not make an order that the subject bank notes be detained by the Central Bank for safekeeping pending the outcome of the trial in the substantive matter.

14. It may be the commercial business of the virtual complainant to hold bank notes for safekeeping on behalf of its clients. However, the bank notes are now the subject of ongoing criminal proceedings and the Applicant is an interested party as the virtual complainant. It may be argued that the virtual complainant would have no real interest in pursuing the prosecution of the criminal charges as they would have been restored to their position before the commission of the alleged offences. In the circumstances, the Court would not make an order for the bank notes to be detained at the virtual complainant bank.

15. The subject bank notes represent a large sum of money and the Court is not satisfied that the Police have the capacity to safely and prudently store them. The Comptroller of Accounts receives, on behalf of the Minister of Finance, fees and penalties collected by the Court but does not hold bank notes in escrow for the Court. The bank notes cannot therefore be sent for safekeeping to the Comptroller of Accounts.

ORDER

IT IS NOW ORDERED that the bank notes seized by the Police under Search Warrant sworn to on the 7th day of April, 2013 by Joseph Sutherland Police Corporal Number 12221 and brought before this Court on the 15th day of April, 2013 in the sum of TWO MILLION TWO HUNDRED AND FIFTY FIVE THOUSAND EIGHT HUNDRED AND NINETY DOLLARS (\$2,255,890.00) Trinidad and Tobago currency be deposited by and in the name of the Clerk of the Peace, St. George West into an interest bearing account at the Unit Trust Corporation of Trinidad and Tobago and to be held there *in escrow* until further order of the Court.

Marcia Murray
Magistrate
St. George West

June 6, 2013