

L/Cpl Atkinson. If these cigarettes are not identified as the property of L/Col Atkinson then the accused can't be in improper possession. I ask that both charges be dismissed.

Prosecution

The Prosecution contends that they have produced evidence first that three out of five people in the house were issued with Buckingham. The month of Aug was the first general issue of cigarettes wrapped in this manner, Exhibits "ONE" and "ONE A", that the cupboard was cleaned out and empty one month previous, that 800 cigarettes disappeared from upstairs in this house, that shortly after 640 cigarettes were found in this cupboard and the same brand and type and shortly after Stanley had access to them after which some of these, 8 packets, were missing. We have produced evidence that a few minutes later the accused denied having any cigarettes on him but upon being apprehended was found to be in possession of two packages (Exhibit "TWO") which he failed to produce on being asked to empty his pockets and claimed that he had none on him but upon being searched they found these. The Prosecution contends that there is enough proof of ownership here for the first charge to stand up to and upon being found in possession of two packages which obviously came from this cache that he therefore was in improper possession of same.

Judge Advocate

I am not certain that the remarks of the Prosecution are strictly speaking in answer to the motion. The motion of the Defending Officer is in essence that there is no prima facie case against the accused. In other words that there is nothing to show any connection between him and the cigarettes of L/Cpl Atkinson. On a motion of this kind the Court is not called upon to determine whether the accused is guilty or not guilty. They are called upon to say whether there is or there is not evidence that without answer by the accused would not justify the Court in finding him guilty. All they must say now if they are to grant the motion of the Defending Officer is that there is no evidence at all that Stanley stole cigarettes that have been proved to be the property of L/Cpl Atkinson or that he was in improper possession of such cigarettes. Improper possession may be improper possession of stolen goods or it may be improper possession in that the accused has more items of equipment than he is authorized to have. I would say as a matter of law the charge itself of theft must be proven but further than that the particulars alleged as part of the charge must also be proven and that is the pure law. As to whether that has been proven or not is a question of fact and definitely for decision by the Court and the determination of which is the motion of the Defending Officer.

The Court is closed to consider the motion by the Defending Officer of no prima facie case.

The Court re-opens.