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SUP. COURT CRIM. APPEAL NO. 50/72
IN THE COURT OF APPEAL

BEFORE: The Hon. Mr. Justice Fox - presiding
The Hon. Mr. Justice Smith
The Hon. Mr. Justice Hercules

HERMAN BENNETT v. REGINA

Donna McIntosh for the Apellant

Chester Orr, Q.C., for the Crown

6th March, 1973

SMITH J:

This is an appeal by leave of a single judge from convictions of the appellant on an indictment containing six counts. The appellant was convicted on all six counts of the indictment in the Portland Circuit Court on the 15th day of March last year. Leave to appeal was granted in relation to the first five counts and refused in relation to count six. Miss McIntosh appearing for the appellant sought to apply for leave in relation to the conviction on count six but did not pursue this application.

In relation to the first four counts, the first count charges the larceny of a motor car on the night of the 1st of December, 1969. The second count charged warehouse-breaking and larceny, namely a storeroom at the St. Margaret's Bay All Age School, on the same night, that is, the night of the 1st of December, 1969. The motor car stolen in the first count was the property of the principal of the St. Margaret's Bay All Age School. On that same night the house of Mr. Rudolph Reece was broken into and a number of articles stolen from it and a cow, the property of Lycidius Matthews, was stolen from Mr. Reece's property. These were the subject of counts three and four, which charged the appellant with larceny of cattle and housebreak-

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ing and larceny, respectively.

It was sought to convict the appellant on these first four counts from these circumstances. A fingerprint proved to have been a fingerprint of the appellant was found on a drinking glass in a cupboard in the house of Mr. Reece and on the morning after these offences were committed, that is to say, on the morning of the 2nd of December, 1969, a number of articles in relation to all the offences in counts two, three and four were found in the motor car which was stolen and which was the subject of count one. This motor car was found at Above Rocks in St. Catherine. It appears that the witness whom it was proposed to call to connect the appellant with this motor car and its contents was unavailable, and there was no such evidence in fact called at the trial. The Crown was, therefore left merely with the evidence that the fingerprint of the appellant was found on a glass in Mr. Reece's house.

In relation to these four counts the learned judge left the matter to the juty in this way, at page 26 of the summing-up:

> "Now to be be brief the fingerprints on exhibit 6 which refer to the thumb of the accused is the connecting link between the accused and the four counts, one, two, three and four, in that when the car of the principal was stolen the goods from the school-house were in the car; when the cow was stolen the carcass was in the trunk or in the car; after the house of the Reeces was broken a number of articles missing therefrom: bedspreads, curtains, ganzi, beachrobe, they were in the car. So you see, those are the articles which came from Reece's house where a glass had on the fingerprint, so

> one draws the inference from this observation and says: well, if the fingerprint of a strange person who is not a tenant in the house and not a visitor is seen there, they must account for that fingerprint - and after th the place is ransacked - then it would seem a reasonable inference to draw that anyone you find bearing that fingerprint should know if it were connected with the breaking of the house".

What the learned judge was doing here, although he did not say so specifically, was suggesting that the jury could use the fact of the fingerprint which was relevant to count four to connect the appellant with counts one, two and three. We are of the view that that evidence was not capable of so connecting the appellant on counts one, two and three. The convictions on those counts are, therefore, quashed and the sentences set aside.

In relation to count four, the matter which gave some concern is the fact that on the evidence as appears in the summing-up it was not stated that anything in this cupboard in which the frinking glass was found was disturbed. We have heard Miss McIntosh on this count. She has suggested that the finger-print could have gotten on to the glass innocently and unconnected with the breaking of the house and thereafter put into the cupboard. This is possible but scarcely probable. In our view the jury could reasonably infer guilt on this count, count four, from the presence of the appellant's fingerprint on the drinking glass.

In relation to counts five and six, these offences were alleged to have been committed on a separate occasion altogether. This was on the night of the 10th May, 1970. These counts charged club-house breaking and larceny and officepbreaking and larceny, respectively. Both buildings

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which arer alleged to have been broken and articles stolen from them were on one premises, the premises of the Rafters Rest Limited in the St. Margaret's Bay area of Portland. There was evidence given that a fingerprint identified as that of the appellant was found on the blade of a louvre from a window through which entrance was gained to an office on the premises. This was the subject of count six and this was ample evidence on which the appellant could properly be convicted on this count. In relation to count five, this was a building adjoining. There was no evidence at all from which any inference of guilt of the appellant could be drawn. It appears that it was sought to convict the appellant of this offence merely by inference from the fact that it was he who committed the offence on count six in the office which was nearby. We are in no doubt that no such inference could properly be drawn. The conviction of the appellant on count five is also quashed and the sentence set aside.

In the result the appeal is allowed in respect of the convictions on counts one, two, three and five, the convictions are quashed, the sentences set aside. The appeal against conviction on count four is dismissed and the application which was sought to be made in relation to count six is refused.