J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 116/71

BEE F O R E: The Hon. Mr. Justice Fox - Presiding
The Hon. Mr. Justice Smith
The Hon. Mr. Justice Graham-Perkins

RICHARD LEE v REGINA

R. Henriques for the Appellant.
S. Panton for the Crown.

14th January, 1972

FOX, J.A.

The appellant was convicted by the Resident Magistrate for St. James on an Indictment which charged him with larceny of $1.75, the property of Vivian Irving. The evidence in support of the Crown's case showed that Irving was a waiter at the Colony Hotel in Montego Bay. At about 6.15a.m. on the 21st June, 1971, he was at Coral Wall, Montego Bay awaiting transportation to work. The appellant came up driving a motor vehicle. He came from the vehicle and said, "Half Moon, Rose Hall and Colony". Irving entered the motor car and was taken to the Colony Hotel as a passenger. There were other passengers in the car. Irving gave the appellant a dollar. He was then the only passenger in the car. He said that he usually paid 25¢ for that particular journey. He asked the appellant for his change. The appellant said, "Go rest man, cool it, you hire me". Irving said, "You crazy". The appellant drove off. Irving ran beside the car and asked for change; the appellant said: "rest man, you hire me, move your !!!!!"

Irving made a report at the Police station at Montego Bay. Corporal Neville Wallfall gave evidence. He said that at about 1.00p.m. on the 21st June, 1971, he received a report from Irving. At about 7.30p.m.

.../ that .../

that day, he saw the car on Barnett Street in Montego Bay. He asked who was the driver and owner. The accused was standing nearby and he said, "I am the owner and driver". Corporal Wallfall told the appellant of the report which Irving had made to him. The appellant said that he did not drive any car that day. The Corporal asked the appellant to accompany him to the Police Station. He did so. Irving came to the Station and on being asked by Corporal Wallfall if the appellant was the man who had taken his dollar bill, Irving said yes. The appellant said he did not carry Irving that morning, and had not taken any money from him.

So that the facts may be fully stated, it should be added that prior to the attendance of Irving at the Police Station, and whilst the Constable was making a telephone call to summon Irving to the Station, the appellant drove away in the car which had been parked in front of the station. The Corporal then went in search of the appellant. He found the car in the bushes at Granville. He also saw appellant there. At that stage, the Corporal asked the appellant why he had driven the car away and the appellant replied, "I don't suppose to wait because I did not carry any man or collect any money". The appellant was then taken to the station where the confrontation took place between himself and Irving. The appellant was arrested for larceny and cautioned. He said, "Officer don't worry take the car". This car was a private car and was not licensed for the purpose of carrying passengers for hire.

There is some conflict in the evidence as to whether the appellant was handed one dollar or two dollars. In the evidence of Irving, the figure is recorded as one dollar; in that of Wallfall, as two dollars. In the light of the view which we take of this case, this discrepancy in the evidence is of no significance.

At the trial, no evidence was called on behalf of the appellant. His counsel relied upon a submission that there was no case to answer. In noting his ruling that there was a case to answer, the Magistrate recorded: "subsequent actions of an accused show <u>animus furandi</u>". The appellant was convicted and fined.

Before .../

Before us, the attorney for the crown stated that he did not propose to support the conviction. We agree with his stand. The subsequent actions of the appellant are indeed relevant to the question of animus furandi but they are not unequivocally so relevant. These actions are also consistent with the behaviour of a person who knew that he was in breach of the Road Traffic Law by operating a car for hire without being the holder of the necessary licence for that purpose. That offence under the Road Traffic Law makes the car liable to seizure by the Police. This apparently was the consideration operating in the mind of the appellant when having been arrested and cautioned, he said, as stated above, "Officer, don't worry take the car".

But in our view, the conviction is defective for an even more fundamental reason. The case of R v. Lawrence [1970] 3 All.E.R.993 was cited at the trial. The accused in that case was found guilty under the Theft Act in England when he knowingly overcharged a passenger whom he had taken up in his taxi. In that case, there was evidence as to the proper fare for the journey and of the difference between that fare and the money received by the accused from the passenger. By way of this evidence, the precise amount which the driver had knowingly misappropriated was ascertainable.

In this case, there is no evidence as to the appellant's understanding, or any agreement of the proper fare to be charged. There was therefore no evidence that he had knowingly misappropriated any particular balance. There was no evidence that the motor vehicle was equipped with a meter by which the fare could be ascertained or any agreement between Irving and the appellant as to the fare which should be charged. There is therefore no evidence that the appellant was entitled to any change at all, and no evidence upon which a charge of larceny could be based.

For these reasons, the appeal is allowed. The conviction is quashed and the sentence is set aside.