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IN THE COURT OF APPEAL

R.M.C.A. No. 150/65

BEFORE: The Hon. Mr. Justice Duffus (President)  
The Hon. Mr. Justice Waddington  
The Hon. Mr. Justice Moody (Ag.)

R. v. T R E V O R B A I L E Y

Mr. I. Ramsay, Q.C., appeared for the appellant.

Mr. E. L. Miller appeared for the Crown.

9th November, 1965.

WADDINGTON, J.A.:

The appellant was convicted in the Resident Magistrate's Court for the parish of Kingston on the 24th of June, 1965, of the offence of larceny from the person, and fined ~~£25~~ or three months' imprisonment at hard labour.

The case for the Crown depended substantially on the evidence of the complainant, Klaus Schubert, a German sailor, who was taking a walk in the forenoon of 12th June, 1965, along East Queen Street. He said that while he was walking along that street, a man came from behind him and grabbed his watch off his left hand and ran away with it. He ran after the man and he said that that man was the man who was then in the dock of the Court. He chased this man for about 100 metres and caught him, but the man picked up a stone and attempted to hit him with it and threatened to kill him and so he had to let him go. The man then jumped over a wall and disappeared from view, but about five minutes later the complainant said he saw this man, whom he said was the accused, on the opposite side of the road. He recognized him and went towards him. The man ran away and he chased him, shouting for "Police, police." Acting Corporal Gayle who was then in the vicinity, saw the accused being chased by the complainant, and joined in the chase and held the accused some distance away from where the complainant had chased him. The complainant then came up, and in the presence of the appellant he told Gayle that the appellant had grabbed his watch from his hand about one block away. When asked if he had

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done so, the appellant said that he had no watch and that he had taken no watch off the foreigner's hand."

Evidence was also given by Detective Acting Corporal Reynolds. His evidence was to the effect that the appellant was brought to the Police Station - C.I.D., at about 11.45 that day, and in his presence and hearing, a report was made by Acting Corporal Gayle, and a report was also made by the complainant, and when he had asked the appellant if that report was true, the appellant said it was not true, that he was coming from Rockfort and he knew nothing at all about the man's watch.

In cross-examination, Reynolds was asked whether or not the appellant had said at the station that he had not troubled the man's watch and he said, "Yes, he did," and then this question was put: "Did the sailor then say 'If no you, must be your friend,'" and the answer was "Yes, he said that more than once." At the close of the case for the prosecution, Counsel for the appellant submitted that there was no case to answer, because from the complainant's statement - "If no you, must be your friend," there was obviously a doubt in the mind of the complainant as to whether or not the appellant was the man who had grabbed the watch. On this submission the Court ruled that there was a case to answer, and the learned Resident Magistrate said that the complainant had identified the appellant by face, as well as by his dress, beyond reasonable doubt. With regard to the submission in respect of the words that had been used by the complainant: "If no you, must be your friend," the learned Resident Magistrate said that those words were not unequivocally referable to a doubt in the mind of the complainant, and the expression could have been used in a sarcastic manner. Thereupon, the defence rested, and did not answer the case which the learned Resident Magistrate had found to exist.

Before us, learned Counsel for the appellant has submitted that having regard to the evidence of the complainant, there was an obvious doubt as to the identity of the <sup>appellant</sup> sailor, and there being that doubt, the Crown had not discharged the onus which was on it to prove

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the guilt of the accused beyond a reasonable doubt.

It is our view, when the evidence in this case is examined, that there was clearly evidence given by the complainant that he had seen the appellant face to face; he had identified the clothing which he was wearing at the time - I have not mentioned that before, but he said that he was wearing a black pull over shirt and dark pant, and in answer to a question put by the Court, he said that at the time he chased the accused with the help of Corporal Gayle, he was then dressed in the same way as he was dressed when he grabbed his watch from his hand.

It appears to us that at that stage, at the close of the case for the prosecution, there was a prima facie case made out against the appellant. Indeed, up to the point before Detective Reynolds said that the complainant had said "If no you, must be your friend," a very strong, overwhelming case had been made out against the appellant. That bit of evidence, of course, undoubtedly would have had the effect of weakening the evidence of the complainant, but it is our view that it was a question of fact for the Court as to whether or not that weakening of the complainant's evidence could be said to have created such a doubt as to be a reasonable doubt, and such that it could be said that the Crown had not established the onus on it. The learned Resident Magistrate held that there was a prima facie case in spite of the weakening effect of this bit of evidence and in our view it was incumbent upon the appellant to have answered that prima facie case. He failed to do so, and in our view the learned Resident Magistrate was quite justified in recording a finding of guilt on the case as it then stood.

For these reasons, we think that this appeal should be dismissed and the conviction and sentence affirmed.

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*B. E. ...*  
J.A.