JAMAICA

IN THE COURT OF APPEAL

TURKS & CAICOS ISLAND APPEAL 1/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. vs ALBERT SEYMOUR

Mr. A.G. Gilman for the Crown

Applicant appeared in person.

23rd March, 1966.

DUFFUS, P.,

In this matter there are really two applications for leave to appeal. The first application is in connection with a conviction for burglary, contrary to section 36(1) of the Turks and Caicos Islands Larceny Ordinance, Chapter 119, that the applicant Albert Seymour in the night of the 5th of May, 1965, broke and entered the dwelling house of Andrew Bennett with intent to steal therein and stole therein $38.60 U.S. currency, equivalent to £13.10/- sterling, the property of Evelyn Bennett.

The second application is in connection with a second indictment which contains three counts - the first count charged burglary - that Seymour in the night of the 31st of May, 1965, broke and entered the dwelling of Araminta Tatem with intent to commit a felony therein, that is, with intent to rape. Count 2 charged assault with intent to rape, in respect of the same Araminta Tatem on the same occasion and count 3 charged indecent assault in respect of the same incident. I shall proceed to deal with the first indictment and then I will deal with the second indictment.

/On the first...

On the first indictment, the applicant pleaded 'not guilty', and a jury was empanelled. The first two jurors who were called, were challenged and stood down. The third juror called was one Sarah E. Skippings, and the applicant challenged her, and on oath, he said that Sarah Skippings knew him and so also did the other jurors, and this meant he could not get justice in the Turks and Caicos Islands, as everybody knew his record. The learned Judge considered the matter, and in the exercise of his discretion, refused the application to stand down Sarah Skippings and she was sworn as a juror and the trial proceeded. Evidence was given on behalf of the Crown, and evidence was given by the applicant in the form of an unsworn statement from the dock.

The applicant did not deny entering the home of the Bennetts on the night of the 5th of May, but his defence was that he was friendly with Mrs. Bennett, and that he entered with her knowledge and permission. These matters were quite clearly put before the jury by the learned trial judge in the course of his summing-up, and the jury convicted the applicant on this charge.

The first ground of appeal on which we heard the applicant today was that the learned judge was wrong in permitting Sarah Skippings to sit as a juror. We have given the matter consideration and we are satisfied that the learned judge acted properly when he inquired into the matter, and in the exercise of his discretion refused the applicant's application and permitted Skippings to be sworn.

The applicant then proceeded to make submissions to us on the facts of the case, in an effort to show that the verdict of the jury was unreasonable, but the Court has

/not been .....

~~this indictment, and that~~

not been impressed with these submissions. The Court is satisfied that the applicant had a perfectly fair trial on this indictment, and that the summing-up was adequate and eminently fair. In these circumstances, the application for leave to appeal in respect of the conviction on that indictment is refused.

The position with regard to the other indictment is not very simple. It appears from the record of the proceedings which has been transmitted to this Court that the applicant first pleaded 'not guilty' on count one, which charged burglary, but pleaded 'guilty' to counts two and three, which charged assault with intent to rape and indecent assault. The records shows that the prosecutor indicated that he was prepared to accept the plea on the second count and to enter a nolle prosequi on the other two counts. Had he done so, it would have been in order, but the record then indicates that the prosecutor had a change of mind.

It states: 'The prosecutor then indicated that he on reflection would not accept either plea on counts 2 and 3, and count no. 1, which charged burglary was again put to the accused and he pleaded guilty.' The prosecutor then narrated the facts in brief, and the applicant then stated to the Court as follows:

> " Very much in love with Miss Tatem. Heard she was going on holiday and wanted to say good-bye. Found half door open. Found the Tatem family decent to him in the past. Did not intend to do what it is alleged he did,"

whereupon the learned judge proceeded to sentence the applicant to 6 years imprisonment to run consecutive to the sentence of 12 years imposed on the other indictment, and to certain other short sentences which the applicant was then serving,

/imposed by....

imposed by the Magistrate in the Turks and Caicos Islands.

Before us the applicant has stated that the record is wrong, that he did not plea guilty to count one for burglary. Such of the records as have been transmitted to this Court are not very helpful. On the face of the indictment, which is signed by Mr. B.A. Manuel, Registrar, appears the following: "guilty on all three counts", but this does not agree with what the learned judge has noted in his notes at the start of the proceedings, namely, that the prosecutor indicated that he, on reflection would not accept either plea, that is, the plea of guilty on counts two and three, and the certificate which has been attached to the proceedings signed by the learned judge speaks only of burglary and makes no mention of the assault counts.

It would seem, therefore, from this that no pleas were entered in respect of the assault counts, and that the only plea which was entered, was that of guilty on the burglary count, which was the first count of the indictment.

This Court has examined carefully the unsworn statement which the applicant made to the Court below and we find that this statement does not support a plea of guilty of burglary. In the first instance, the applicant quite clearly does not admit breaking into the house. He stated that he found the half-door open and secondly, his statement that he "did not intend to do what it is alleged he did" clearly negatived the intent which would be necessary to support the charge for burglary, as laid in this indictment.

It seems to us that at this stage the learned judge ought to have pointed out to the applicant that if that was his defence, that his correct plea was one of not guilty, and he should have invited him then to withdraw his plea of

/guilty and for....

guilty and for a plea of not guilty to have been entered on the record and the trial proceeded with, but this was not done.

In these circumstances, the Court is of the view that a plea of guilty was not the plea which the prisoner intended to enter in respect of this charge. The applicant was not represented at his trial and apparently had no legal advice either then or thereafter. In his notice of appeal, he appealed against sentence only, but on the matter coming before us today, he sought leave of the Court to permit him to appeal against the conviction(that is, on the burglary charge concerning Miss Tatem) out of time and the Court in pursuance of its powers granted him such leave.

The Court, therefore, treats the application as the hearing of the appeal and allows the appeal in respect of the conviction on the second indictment for burglary of the premises of Araminta Tatem, and quashes the conviction which has been entered thereon and sets aside the sentence; but as the interest of justice appears to so require - orders a new trial on this indictment to take place at the next sitting of the High Court of Justice in the Turks and Caicos Islands.

The first application which concerns the burglary of the premises of Bennett having been refused, the applicant will therefore remain in custody as he will be serving the sentence of 12 years imposed thereon.