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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO. 14/93

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

REGINA vs. ASHTON FRASER

Lancelot Clarke, Assistant Director of Public
Prosecutions, for the Crown

Appellant in person

June 14 and 28, 1993

WOLFE, J.A.:

This appellant was jointly charged along with one Anthony Williams on an indictment which contained two counts: count 1 charged both men for the offence of housebreaking and larceny and count 2 for receiving stolen goods. When they were arraigned before His Honour Mr. D. O. McIntosh, Senior Resident Magistrate for the parish of Westmoreland, on 5th January, 1993, Anthony Williams pleaded not guilty to count 1 but guilty to the lesser offence of receiving stolen goods. His plea was accepted by the court. Thereafter he became a witness for the prosecution in the trial of Ashton Fraser, who pleaded not guilty to both counts of the indictment. Fraser was convicted on count 1 of the indictment and sentenced to three years imprisonment at hard labour on January 6, 1993. He now appeals from that decision and on June 14, 1993, we allowed the appeal, quashed the conviction and ordered that the sentence be set aside and promised to put our reasons for so doing in writing. That promise has now been fulfilled.

The factual background to this case requires only a brief summary of the evidence for the purpose of this judgment. On Sunday August 9, 1992, David Chandlon, a Minister of Religion, residing at Hartford in the parish of Westmoreland, returned to his home at approximately 11:45 p.m. No doubt he had been away from home all day proclaiming the Good News. He retired to bed having securely locked up his house. Next morning, Monday August 10, he awoke to find that his house had been broken into and his television set, video cassette recorder and tapes missing. The matter was reported to the Whithorn Police Station.

Anthony Williams, the co-accused, now clothed with respectability by the Crown, having pleaded guilty, testified that on a day between August 9 and 18, 1992, the appellant brought to his home at George's Plain a television and video cassette recorder and offered them to him for sale at a price of \$6,000. He was not able to accept the offer, as he was impecunious. The appellant requested him to keep the articles for him until he returned from Grange Hill where he was going to see a lady who was interested in buying the articles. On the Tuesday following the police arrived, took possession of the articles and detained him. At the police station, he saw the appellant and in his presence told the police that he had received the television and video cassette recorder from the appellant. This the appellant denied.

Williams' mother, Jasmine Ruddock, and his girlfriend, Veta Malcolm, who gave evidence at the trial, supported Williams' evidence.

Detective Corporal Milland Davidson of the Frome Police Station, armed with a search warrant, went to the home of Williams on Tuesday August 18, 1992, and recovered a television and video cassette recorder, which were subsequently identified by David Chandlon, as the articles stolen from his home at the time of the breaking. These articles were shown to the appellant, in the presence of Williams. He

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denied ever having seen them prior to that day. He was informed by the officer that Williams had said that he, the appellant, had left the goods at his home. The appellant remained resolute in his denial, "A lie him a tell pon mi, sah." He was released and Williams was charged with the offence of unlawful possession of property. When Corporal Davidson was cross-examined, a significant piece of evidence was unearthed. He said that when Williams was first asked how he came into possession of the articles, he replied that he had received them from his sister, then later on varied that statement to say that he had received them from "Black Boy", meaning the appellant. The police also recovered from Williams' home fifty feet of electrical cable with a hook attached to it. This is capable of being used for the illegal extraction of electricity.

Following identification of the articles on Sunday August 30, 1992, both Williams and the appellant were arrested on the charges. Williams, when cautioned, said, "Mi guilty for receiving them, sah." The appellant stood firm in his denial, "Mi noli know nothing bout them, sah." At the trial, the appellant gave evidence on oath denying having broken into Rev. Chandlon's house and stealing his property. He also denied the allegations by Williams and the other witnesses of his household.

The learned Resident Magistrate, in his findings of fact, recorded, inter alia:

- "1. The Court accepted the evidence of the Prosecution and rejected the Defence."

We regard as significant the evidence of Corporal Davidson who had testified that the witness Williams had said, at first, that he had obtained the articles from his sister, and then subsequently implicated the appellant. This evidence, in the context of the consistent denial of the appellant, ought to have raised serious doubts in the mind of the learned Resident Magistrate as to the reliability of Williams as a

witness. Corporal Davidson's evidence made the evidence of Williams very suspect indeed. This takes on even greater significance when one considers that he was a person charged jointly with the appellant, an accomplice, and that his evidence should be viewed with a great deal of caution.

"2. The witness, Anthony Williams, was regarded as an accomplice and his evidence was carefully scrutinized. There was ample corroboration by his mother and his girlfriend in all material particulars."

In considering the evidence of the mother and the girlfriend, regard should be had to the fact that the appellant, on oath, said that Williams told him that it was Williams' mother who had urged him to implicate the appellant. This is not far-fetched, as the evidence in the case is that Williams, at first, did say he got the articles from a sister and then subsequently implicated the appellant. The nature and source of the evidence which is capable of amounting to corroboration is a very important factor in deciding whether or not it is actually corroborative. This was clearly a case where the mother and the girlfriend might have been acting in collusion with Williams.

The purpose of corroborative evidence is best expressed in the words of Lord Morris in D.P.P. v. Hester (1973) Cr. App. R. 212 at 229:

"The essence of corroborative evidence is that one credit-worthy witness confirms what another credit-worthy witness has said... The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible and corroborative evidence will only fill its role if it itself is completely credible evidence."

Also Lord Hailsham, L.C. in D.P.P. v. Kilbourne (1973) 57

Cr. App. R. 381 H.L. at 402 said:

"Corroboration is only required or afforded if the witness requiring corroboration or giving it is otherwise credible."

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We are of the view that the evidence of the mother and the girlfriend did not assist, as the evidence of Williams himself was not credible. In the circumstances, we concluded that the conviction should not be allowed to stand.