

C.A. Criminal Law - Shopbreaking and Larceny -  
whether inadequacy of evidence of breaking -  
whether gains in circumstantial evidence -  
whether R M failed to consider defence.  
10EL Dismissing the appeal - evidence pointed in one direction  
only, the guilt of the accused, question of fact.

JAMAICA

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 37/88

No case referred to

BEFORE: The Hon. Mr. Justice Rowe, P.,  
The Hon. Mr. Justice Carey, J.A.  
The Hon. Mr. Justice Forte, J.A.

R. vs. BERNARD PRINGLE

Leonard S. Green for appellant

Miss V. Grant for the crown

June 13, 1988

CAREY, J.A.:

The appellant Bernard Pringle was convicted in the Westmoreland Resident Magistrate's Court in Savanna-la-mar on the 27th of January, 1988 for Shopbreaking and Larceny and was sentenced to imprisonment for 18 months at hard labour.

The facts are quite short: On the 17th November, 1987, Mr. Morris Daley who is a shopkeeper in Negril in Westmoreland, locked up his premises and went about his affairs. Early the next morning, about 1 o'clock, a witness Mr. Hudson Marslyn, who plies his taxi, apparently, in the Savanna-la-mar and Negril area, was requested by this appellant to transport ten cases of beer from a location, one and a half chains distance from Mr. Daley's shop. Mr. Marslyn was told by the appellant that he had ten cases of beers to be picked up and Mr. Marslyn collected these cases of beer and took the appellant a mile out of town towards Sheffield where there is a shop. The defence was a

denial of the charge and the appellant said that indeed at the material time, on the 17th of November after 5 o'clock - "I was approximately at the Negril Village on my way to Lucea; I stayed at Midway Village until the 19th."

Before us this morning, Mr. Green has put forward two Grounds of Appeal. In the first he complains of the gross inadequacy as to the evidence of breaking by this appellant. He said that the circumstantial evidence has gaps and one of the gaps to which he alluded, was the fact that no goods were found on him. The evidence in this case, in our view, was all one way.

The location where the goods were picked up and that they were seen in the possession of this appellant, and ten cases of beers were missed by the owner of the shop. It was the appellant who requested that the goods be removed from a spot near to the shop that had been broken into. It was wholly unnecessary for the prosecution to show that Mr. Pringle was still in possession of these cases of beer when the police chose to interview him.

Circumstantial evidence, as learned counsel correctly pointed out, must point in one direction and one direction only. In our view, the evidence before the learned Resident Magistrate pointed in one direction and one direction only, and that was to the guilt of this appellant.

It was also put forward by Mr. Green that no consideration was given to the defence put forward. The defence put forward was single. "I was not the person there; I was not there; I did not break." Learned counsel acknowledged that he addressed the learned Resident Magistrate in that regard. It is difficult to see how the learned judge could have failed to consider that simple fact.

it is plain when one looks at the findings he made that  
he must have, and indeed did, wholly reject the defence put forward.

There really is no merit whatever in this appeal, which we will dismiss.