IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL NO. 117/65

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

R. v. C A R L T O N B R O W N

Mr. H. Edwards for the appellant

Mr. A.G. Gilman for the Crown.

10th November, 1965

DUFFUS, P.,

The appellant Carlton Brown was charged on an indictment, together with a man named Cupidon Bailey for the offence of warehouse breaking and larceny, that on either the 7th or 8th of September, 1964, they broke and entered the warehouse of K. Chandiram Limited, and stole therefrom a very large quantity of goods, which included certain small transitor radios. Both men were convicted.

The evidence for the Crown, in respect of the two men, Bailey and Brown was not identical. There was evidence against Bailey that one of his finger prints was found on a bottle of whisky, which was found in the broken warehouse very shortly after the crime was committed. His explanation was that his finger print had got on the bottle because the police made him take up the bottle after he had been arrested and was in custody at the Police Station. In addition, there was evidence from two Police Constables that they had seen Bailey handling a cardboard carton in which were a number of the transistor radios on the morning after the breaking into Chandiram's Warehouse. Bailey has not appealed against his conviction. The other accused party, Brown, has, however,

/appealed and...

appealed and that is the matter with which this Court is concerned today.

As I stated, the evidence against Brown was different to the evidence against Bailey. The only evidence against Brown came from the two police witnesses, and the evidence is stated clearly by the learned Trial Judge in the course of his summing-up on page 6, when he said as follows:-

> " On the 8th of September, 1964, he"(that is, Detective Corporal Vivian Richards)
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> " was with Constable Walker and Corporal Whittaker, and he went to a scrap iron yard in Marcus Garvey Drive; there he saw a box covered with green bush, and he had a quick look at it and saw inside some transistor radios. He left the box there and Walker and himself hid about eight or ten feet from the box. He said that was about 9 a.m. The next thing is that he saw the accused Bailey come up, take up the box - well, he said, Bailey came first and took up the box and shortly after Brown came up. Bailey went up to the box and took it up and was about to pass it to Brown - Bailey lifted the box and chucked it in Brown's direction, Brown saw them when he looked around and called out, 'Police!' Walker rushed up and Brown ran. Walker pulled his service revolver and pointed it at Bailey. He, Richards, chased Brown but did not catch him,"

and that is the only evidence which connects the appellant, Brown with this crime.

Brown, who was not represented by Counsel in the Court below, in his evidence, stated that on that morning

/at about...

at about 9.15 a.m., he saw Bailey come to the yard where he was at the Industrial Terrace and there was some talk between them about going to the railway. He said he did not want to go but afterwards he joined Bailey and went up with him to the railway line, and at a point where there was a main line and a branch line he stopped and remained by that main line. He said that he did not go up with Bailey and a little while after, whilst he waited there, he saw Bailey coming up with his hands a little raised and then he was asked certain questions about what he was doing there. He could not hear what Bailey was saying, and with that he left the scene. He denied that he ever ran, and he denied that he was ever near Bailey at the relevant time when Bailey was handling the box.

A number of grounds of appeal have been taken on behalf of the appellant by learned Counsel who appears for him today, but in the view of this Court, it is not necessary to deal with these grounds in any detail. The matter can be very shortly disposed of. In the first place, on the Crown's case it is perfectly plain that the appellant, Brown was never at any stage of the proceedings in physical possession of the card-board box. There was no evidence whatever given by the Crown to show that Brown knew what the contents of the box were and there was no evidence whatever to show that Brown knew of the breaking of Chandiram's warehouse on the previous day, but the Crown endeavoured to connect Brown with the matter by suggesting that the fact that he was near to the cardboard box on the day after the crime, and the fact that the other accused Bailey was observed in the act of throwing this cardboard box at Brown, was sufficient evidence of a common design from which it could be inferred that Brown was in joint possession of the box with Bailey, and the Crown, it would seem, also put forward in the Court below the case that it could be found by the jury that Brown's mere presence on the scene and the fact that Bailey

/was throwing...

was throwing the box at him, would give rise to an inference that there was a common design, or common purpose, in which Brown was concerned in respect of the breaking of the warehouse and the stealing of goods on the preceding day.

In the view of this Court, there was really no evidence whatever to support either of these propositions, and for that reason alone the appeal would succeed, but it appears that the directions of the learned trial Judge were inadequate in several respects, the most important of these being, that the learned trial Judge failed completely to give the jury any directions as to how they should treat circumstantial evidence. It has been conceded by learned Counsel for the Crown that adequate directions on this point should have been given by the learned Judge, but Counsel has endeavoured to show that the words used by the learned Judge at the very end of his directions might be considered adequate . These words are -

> " Only if you find that they were both acting in concert can you find that they were in joint possession of the box in that place. If you find a joint possession you apply the question, were the premises broken into, were things stolen from there and shortly after - very shortly after, were they found in possession of the stolen property? If that is so, well then, you can infer that either or both of them had been the warehouse breaker or the thief."

This Court does not agree that by any stretch of the meaning of the words "only if" can it be said that these directions were adequate directions in respect of circumstantial evidence. Such directions were eminently desirable in a case of this nature, and that is assuming there had been

/evidence...

evidence on which the jury could properly have drawn the inference that Brown was in possession of stolen property, and clearly the evidence showed that he was not in possession of stolen property. In these circumstances, the appeal succeeds. The conviction is quashed and the sentence set aside.