

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 96/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

R. vs. DONALD HALL

Appellant in person

Garth McBean for Crown

October 24, 1988

CAREY, P. (Ag.):

The appellant, Donald Hall, was convicted in the St. Catherine Resident Magistrate's Court before His Honour, Mr. M.A. Reckord sitting in Spanish Town on the 25th of May, on a charge of shop breaking and larceny and sentenced to a term of two years imprisonment at hard labour. He complains that he had got an "Innocent sentence". When interpreted and expanded that ground of appeal meant that the evidence was insufficient to convict him. He also complains about the sentence saying that he has "a youth and somebody outside to look after".

So far as the prosecution facts go, Mr. Glenville Nolan, owns and operate a grocery shop along Walkers Avenue in Gregory Park in the parish of St. Catherine. On those premises, Mr. Wardley Falconer lives. The owner of the premises, Mr. Nolan, secured the shop on the night of the 20th. When he returned the following morning, having got a report, the shop was not in that secured condition in which he had left it. In the

early morning of the 21st of April, Mr. Falconer was awakened by the barking of dogs and when he looked through the window outside into the premises which were clearly lit, floodlights being turned on, he was able to see a number of persons coming into the premises. Among them, was this appellant, whom he recognised. He knew him as "Chink foot". He passed quite close to Mr. Falconer, about 1½ yards away from where Mr. Falconer was hiding and from where he could observe these intruders. They broke into the shop and they stole a large quantity of articles including, 2 tyres, cigarettes, amplifiers, balance scales, altogether, with a value of \$23,500.00. When he was arrested and interviewed by the police officer on the 27th of April he said - "Officer, let me and you reason about what happen", but afterwards he said he knew nothing about the matter.

The defence was succinct; it was an alibi - "I went to bed at my house at about 8:30 p.m., I woke up about 7:30 p.m.," (I do not understand that, I suspect he means a.m.), "I never left home during that night." He is a man who obviously loves his bed, because the police took him from its comfort when they went in search of him.

In his findings of fact the learned Resident Magistrate noted that he was impressed by the evidence of identification given by Mr. Falconer. He held that he could rely on it and he wholly rejected the alibi put forward by the appellant.

We have examined the evidence with great care. If the learned Resident Magistrate believed, as is stated he did, the evidence of Mr. Falconer, then there was cogent identification evidence on which he could have come to the conclusion at which he had arrived. There was evidence of the proximity of appellant and viewer; acquaintance with the appellant before the event, and the lighting.

We can see no reason whatsoever to interfere with the verdict at which the learned Resident Magistrate arrived. The appellant has previous convictions for dishonesty. In the circumstances, the appeal is dismissed, the conviction and the sentences are affirmed, and the Court directs that sentence begins to run from the date of its imposition.