No. 790

17/2/66

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL NO. 232/65

BEFORE: The Hon. Mr. Justice Henriques (Presiding)

The Hon. Mr. Justice Waddington

The Hon. Mr. Justice Moody

R. vs E R I C P A U L

Mr. C.F.B. Orr for the Crown

Mr. N. Hill for the appellant

3rd February, 1966.

WADDINGTON, J.A.,

The appellant was convicted in the Resident Magistrate's Court for the parish of Portland on the 1st of October, 1965, of the offence of larceny and sentenced to pay a fine of £25 and Costs £25, or four months imprisonment at hard labour. From this conviction he has appealed to this Court.

The case for the Crown briefly was, according to the evidence of Clifford Williams, that on Sunday, 6th of June, 1965, he bought 19 bags of tobacco from one Milton Rashford, and he said that he had delivered those 19 bags to the defendant at Milton Rashford's home at Swift River, in order that they should be conveyed to his, Williams' home at Sherwood Forest. He said that later that evening when the tobacco was delivered at his home only 18 bags were delivered, that he had spoken to the defendant about the missing bag, and that the defendant said that perhaps it was left at Rashford's home.

Although Williams said that he delivered 19 bags to the defendant, it is clear when one looks at the rest of the evidence, particularly, the evidence of Milton Rashford and his wife, Hilda Rashford, that the 19 bags were not in fact delivered to the defendant at Milton Rashford's home, but that only 15 bags were delivered there, and the balance of 4 bags were delivered at the home of Milton Rashford's brother,

/ Fortescue Rashford,.....

Fortescue Rashford.

Hilda Rashford, said that she was present when the 15 bags were delivered at her husband's home. She said that the appellant, his two brothers, Eric and Sandy, and also her son, Arthur, helped to load the jeep with these 15 bags, and she said that she checked the amount. She went on to say that the following day, that is to say, 7th of June, at about 10 A.M. she was at home and she saw the appellant come there in the jeep. She saw him step over a wire fence into her husband's place and saw him returning with a bag loaded with something. She said she called to him and suggested that it was one of the bags of tobacco that should have been taken the night before, and the appellant said no, it was dry trash that he had come to look for. She said that the bag had something in it - she didn't see what was in it - but it resembled the other bags which had been delivered the previous night.

Leroy Laidley, a Shop-keeper of Bybrook, said that on the 18th of June the appellant came to him and asked if he wanted to buy some tobacco. He said no, and the appellant went away but returned some time after with a bag of tobacco and asked Laidley to put it up for him. Laidley said that the appellant returned on the 26th of June and asked him to lend him two pounds, which he did, and the appellant went away. On the 30th of June, according to Laidley, the police came to his premises and he handed over the bag of tobacco which the appellant had left with him, but which in the meantime he had removed from the bag and placed in two boxes. He said that he did not notice that there was any tobacco in the bag rolled up in the shape of a cotter.

I should have mentioned previously, that Williams had said that in the missing bag of tobacco, there was a string of tobacco rolled up, which was put in, in order to provide a mark to identify the tobacco.

There was also evidence given by two police constables to the effect that after they received the report fro

/ Clifford Williams.

Clifford Williams about the missing bag of tobacco, they went to the home of the appellant's mother, where apparently the defendant lived, and they questioned the appellant about the tobacco, and he then said that he did not handle tobacco, or deal in it, nor did he cultivate or smoke it.

In his defence, the appellant denied first of all that the 19 bags of tobacco had been delivered to him. He said that the tobacco had been delivered to his brother, Maxwell, whom Williams had engaged to take the tobacco to Sherwood Forest, but, he said, that he was present and saw when the tobacco was loaded on to the jeep, 15 bags at Rashford's premises and 4 at Fortescue's shop. He said, however, that he was not present when the tobacco was delivered at the complainant's premises and he denied that he had told the police that he did not cultivate or deal in tobacco.

His brother Maxwell, also gave evidence for the defence, and he confirmed that the engagement to transport the tobacco to Sherwood Forest was made with him, and he said that he had delivered 19 bags of tobacco to the complainant at Sherwood Forest.

On this state of the evidence, the learned Resident Magistrate found as follows: namely, that Williams had delivered 19 bags of tobacco on the 6th of June, and that only 18 bags were received by him, that is, that one bag was missing. The learned Resident Magistrate did not state to whom the 19 bags were delivered by Williams. He also accepted Hilda Rashford's evidence, that she saw the defendant on the 7th of June removing from her land a bag of "something", and that she had accused the appellant within a half-an-hour of stealing a bag of Williams' tobacco. He also accepted the evidence of the police that the defendant had denied that he dealt in or cultivated tobacco at all.

On behalf of the appellant, Mr. Hill submitted that the evidence against the appellant was entirely presumptive and circumstantial, and that before there could be a conviction,

/there must be.....

there must be evidence identifying the tobacco which had been taken from Laidley, with the tobacco which Williams claimed was missing. He submitted that there was a break in the chain of the evidence which should point only at the appellant, and that on the state of the evidence the guilt of the appellant was inconclusive.

Mr. Orr, on the other hand, has submitted that there was ample evidence justifying the conviction, as, he said, it could be presumed that the defendant had either hidden a bag at the time when the 15 bags were loaded on the jeep at Rashford's house, or, that when he discovered that one bag had not been delivered, he had returned the following morning and removed it and was then seen by Hilda Rashford with a bag, when she challenged him.

It is our view that although the evidence created a great deal of suspicion against the appellant, it lacked that degree of cogency which the Court would expect to find in supporting a conviction for the offence of larceny. For one thing, although there is evidence that there was this mark in the missing bag of tobacco, quite clearly, Leroy Laidley said that when he removed the tobacco from the bag and placed it in the box, there was no string of tobacco rolled up in that bag.

It is our view that the evidence of identification of the tobacco was not sufficient. Hilda Rashford did not see what was in the bag; she merely saw a bag containing 'something', and it is our view, as I have said, that the evidence of identification of the tobacco was not sufficient. In the circumstances, we consider that the conviction is unsafe and should not stand. That being so, the appeal will be allowed, the conviction quashed and sentence set aside.