

Criminal Law Forgery of document - intent -
whether trial judge should have left case to jury -
whether jury's verdict unreasonable - App Ct. held question
of fact for jury - appeal dismissed.

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 98/85

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. FABIAN HURST

Norman Samuels for applicant

Miss Heather Dawn Hylton for the Crown

February 3, 1987

WHITE, J.A.:

The applicant, Fabian Hurst, has made this application for leave to appeal against his conviction for forgery of a document of transfer of a motor vehicle, uttering that document which was alleged to have been forged, and procuring the transfer of the motor vehicle on that document. The matters which have been adverted to very strongly by Mr. Samuels in his arguments are contained in the supplementary grounds of appeal which indicated additional grounds to what was originally filed, viz., that the verdict was unreasonable and cannot be supported by the evidence. The two additional grounds were particularly; Ground 2, which contended that the Crown failed to prove the required intent to secure convictions on all counts, and the learned trial judge ought not to

have left the case to the jury, for, alternative to the dishonest intent required for forgery, there was sufficient evidence that the accused could have considered himself as acting in good faith and under a claim of right if in fact he did sign Mr. Moulton's name to the transfer; and Ground 3(c), which complained that the learned trial judge misdirected the jury in respect of the use of similarities in suspect documents.

The facts put very shortly are, that Mr. Eaton Moulton, a truck owner, operated a truck in partnership with another man, Eros Rattray. That truck was being used to draw bauxite, but because of the slow-down of the bauxite mining and shipping, the partners were unable to meet the demands of a loan which they had obtained from the bank. The balance outstanding on this loan was the sum of \$9,000.00. Therefore, to alleviate the situation, Mr. Moulton went to Mr. Hurst and asked him, as he put it, to come and buy out the half share of Mr. Rattray, which would be in replacement of the security which Mr. Rattray had provided by his title. Acceding to that request, Mr. Moulton and Mr. Hurst went to the bank; \$5,000.00 was paid to the bank and Mr. Moulton gave Mr. Hurst the documents - the licences and the certificate - relating to the truck. The \$5,000.00 having been paid at the bank, and he having received Insurance papers and the booklet from Mr. Moulton, Mr. Hurst apparently took the truck and was operating the truck. Sometime after, Mr. Moulton said he went to White River and he saw the licence which was then in the applicant's name. He asked the applicant how he got the licence in his name and the applicant said that was nothing. The defence denied that anything like that happened. The defence case was that it was an outright purchase of the truck by Mr. Hurst from Mr. Moulton.

Now, further investigations revealed that there was a transfer document for the truck at the office of the Collector of Taxes.

This transfer bore Mr. Moulton's signature. Mr. Moulton said, "I did not sign that." Mr. Hurst admitted having had that document, but said that when he got this document, to use the judge's description, "the entirety of it, the upper portion of it, in any event was written up, and the left hand-side, by Mr. Moulton." As I said before, Mr. Moulton said he did not write it; he insisted at the trial that he did not write it, but the handwriting expert, Assistant Superintendent Major, carried out an examination of the handwriting on the document, comparing it with C.I.B. forms which contain the finger-prints of the applicant, and the signatures that the applicant made on those forms, and he came to the conclusion that the writing on the C.I.B. forms was signed by the applicant, and the writing on exhibit 2, the document of transfer, was done by one and the same person, and it was his opinion that exhibit 2 was in fact written by the accused.

The account given by the applicant at the trial was substantially that he didn't sign Mr. Moulton's name; he didn't write up any of the document of transfer. He got it from Mr. Moulton. All he did was to write up the lower section; he signed as transferee. He wrote in his name and tendered the document to the collectorate and got the truck transferred to him. This was in completion of the transaction of the purchase by him of the truck. As the learned trial judge put it to the jury, they had to decide whether the transaction was one of a genuine sale, or just a mere arrangement for relieving the financial stress under which Mr. Moulton was labouring. Mr. Rattray gave evidence on behalf of the defence. Mr. Rattray's evidence was that the truck was operated in partnership between himself and Mr. Moulton, and in effect, as he understood it, the transaction between Mr. Moulton and Mr. Hurst was "a half and half arrangement in respect of the truck." Although he supports the applicant that the sum of \$1,500.00 was to be paid to himself and a

similar sum to Mr. Moulton and that in fact he received \$1,000.00, the fact remains that the sum total of his evidence is to deny what the defence wished to convey, that it was an outright sale of the truck to Mr. Hurst.

Mr. Samuels who argued the appeal, submitted that it was unreasonable for the jury not to have accepted the evidence by the defence as to the lack of intent, and that Mr. Hurst was in fact the purchaser. But it must be remembered that the question of intent could only arise if Hurst had said, "I wrote it, but I thought I had some authority to write it." That wasn't his defence. His defence was that "I never wrote it at all, I got it from Moulton, I got the relevant document from Moulton", and as such he submitted it to the collectorate. Mr. Samuels was concerned to point out that it wasn't the Collector of Taxes who was misled because there was some question of ownership involved. But of course, the important thing is that when he submitted the document to the Collector of Taxes he must have intended that the Collector of Taxes should accept it as a valid document, properly evidencing the transfer by Mr. Moulton as it purported to be signed by him, so that Mr. Hurst could be registered as the owner of the truck.

As far as it appears, the learned trial judge put all the relevant questions to the jury. He was repetitious, maybe no doubt anxious to get across to the jury the nature of each offence, and he put to the jury not only individually what the prosecution was saying, but also what the defence was saying. He put to them the questions: Was the document forged? Was there an intent to defraud? And was there an intent to deprive a person by deceit? He dealt with the evidence of Assistant Superintendent Major, the witness who gave expert evidence about handwriting, and in fact he indicated to the jury that Mr. Hurst in his defence was saying that it was an

outright purchase from Mr. Rattray, and it was not in fact a partnership - like an agreement where Mr. Hurst came in automatically and bought out Mr. Rattray's portion.

All those were questions of fact for the jury. Although Mr. Samuels set out his grounds of appeal as I have read on the question of intent, there was nothing to show either on the evidence out of cross-examination of the complainant, or even on the evidence of Mr. Hurst, that he was acting in good faith thinking he had a claim of right; that he was justified in doing what was alleged. There is nothing in the evidence from which one could counter the allegations of the prosecution that he forged the document, that he did so with intent to defraud and well-knowing that the document was forged, that he used it to procure the transfer of the truck.

There was much discussion between the bench and Mr. Samuels and I have no doubt that it is well understood that this Court did not accept the arguments by Mr. Samuels, and we, therefore, dismiss the application.