JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 120/69

REGINA v. GILBERT ANDERSON

Before: The Hon. Mr. Justice Waddington - Presiding
The Hon. Mr. Justice Luckhoo
The Hon. Mr. Justice Edun (Ag.)

Mr. Millard Johnson, for the Applicant
Mr. P. Robinson, for the Crown.

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19th February, 1970

WADDINGTON, J.A.:

This is an application for leave to appeal against a conviction in the Westmoreland Circuit Court on the 16th of October, 1969, when the applicant was convicted of the offence of shopbreaking and larceny and sentenced to imprisonment at hard labour for nine years, to be followed by two years police supervision.

The case for the Crown shortly, was, that sometime between the 29th and the 31st of March, 1969, a furniture store in Savanna-la-mar known as the Norbrook Furniture Company was broken into, and a quantity of articles stolen therefrom, including a phonograph record player, also called a record changer. On the morning of the 31st of March, 1969, the accused went to one Eurith Watson, who operates a restaurant and bar at 120, Great George Street in Savanna-la-mar, and offered to sell her a record changer. It was agreed that he should bring it along to her shop the following morning. In the meantime Eurith Watson reported the matter to Constable Lloyd Walker. The following morning, the accused came to Watson's shop with a record player wrapped in newspaper, which he placed on the counter. Just then, Cons. Walker came up and asked Watson where she had got the record player from, and she,

pointing to the accused, replied that she had got it from him. The accused then, without saying anything, ran from the shop. He was later held by Cons. Walker and arrested and charged with this offence.

Eurith Watson gave evidence at the preliminary enquiry, but at the time of the trial she was in New York, and, on proof being given that she had left the Island and had not returned, and that her deposition had been properly taken at the preliminary enquiry, and that the accused there had an opportunity to cross-examine her, the learned trial judge allowed the deposition to be read in evidence in accordance with the provisions of Section 34 of the Justices of the Peace Jurisdiction Law, Cap. 188.

The accused gave evidence on oath, in which he denied all knowledge of the charge. He denied that he had spoken to Eurith Watson about any phonograph or had arranged to sell her any, and he denied that he had ever had the record player in his possession. He said that he had gone to Watson's shop to purchase ripe bananas, and that after he had left, Cons. Walker accosted him on the street and asked him for his name and address, which he appeared to write down. He then continued on his way, and a police car then came up, and he was stopped, and he was then taken back to Watson's shop, and then to his home, and then to the police station. He said that when he was taken back to Watson's shop, Walker asked Watson "Where is the changer this man left with you?" and Watson said, twice, that he, the accused, had not left anything with her.

The grounds of appeal may be summarized under two heads: firstly, that the verdict of the Jury was unreasonable, having regard to the evidence of the Crown, and secondly, that the learned trial judge had exercised his discretion wrongly in allowing the deposition of Eurith Watson to be read in evidence. In support of the first ground of appeal, learned counsel for the applicant referred the Court to what he termed "four major contradictions" in the evidence of the witnesses for the Crown, and he submitted that the verdict was unreasonable having regard to these contradictions.

We need only say in respect of this submission that we do not

consider the so called contradictions to be material, having regard to the totality of the evidence. Moreover, it appears from the summing up that the accused himself had made comments on these discrepancies in his address to the Jury, and that the learned trial judge in his directions had reminded the Jury of these discrepancies and had given them adequate directions on how they should deal therewith.

In our view, this ground of appeal fails.

With regard to the second ground, learned counsel submitted that although section 34 of Cap. 188 gave authority for the deposition of Eurith Watson to be read in evidence, the proviso to the section required the consent of the Court before this could be done. He submitted that the term 'Court' meant not only the Judge, but also Crown Counsel and Counsel for the Defence, or the accused himself if he was unrepresented. Learned counsel did not submit any authority in support of this novel submission. As was pointed out to him during the course of his arguments, the answer to this submission is to be found in sections 36 and 37 of the Judicature (Supreme Court) Law, Cap. 180, which provides as follows:-

> "Section 36: A single Judge of the Supreme Court may exercise, in Court or in Chambers, any part of the jurisdiction of the Court which before the passing of this Law might have been exercised in like manner, or which may be directed or authorised to be so exercised by Rules of Court to be made under this Law. In such cases a Judge sitting in Court shall be deemed to constitute a Court.
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> "Section 37: A Judge of the Supreme Court holding a Circuit Court shall constitute a Court of the Supreme Court."

Learned counsel submitted further, that the evidence of Eurith Watson was vital to the Crown's case as it was only her evidence which established possession of the record changer in the accused. He submitted that there would have been no case to go to the Jury in the absence of her evidence, and that in those circumstances the trial judge ought not to have admitted the deposition in evidence. In support of this submission, learned counsel cited the case of R. v. Linley, (1959) Criminal Law Review, 123, in which Mr. Justice Ashworth refused to permit the reading of a deposition of a witness who was so ill that he would

never be in sufficiently good health to attend the trial, on the ground that his evidence was substantially the case for the Prosecution and would have to be challenged as to its accuracy.

We agree with the submissions which were made by learned counsel for the Crown, to the effect that although the evidence of Eurith Watson was a very important feature of the Crown's case, it would be quite wrong to say that without her evidence there would be no case to go to the Jury. Constable Walker said in evidence that he did in fact receive a report from Watson, as a result of which he went to her shop. He saw the accused there in the shop, and on the counter he saw a record changer. The accused was three feet away. Walker asked Watson how she came in possession of the record changer and she pointed to the accused and said, "I got it from 'Baby G'", (which is a pet name by which the accused is known). The accused at that point, without making any comment, walked out of the shop, and when Walker went after him he ran away.

It is our view that on that evidence alone, the case would have to go to the Jury for them to say whether they could regard the conduct of the accused, in the face of the accusation which Watson had made against him, as amounting to an acceptance of Watson's statement that she had got the record changer from him. It is clear, in our view, that although the deposition evidence of Eurith Watson was an important part of the Crown's case, it was not the only evidence in the case implicating the accused, and in these circumstances we do not think that the learned trial judge erred in any way in exercising his discretion to admit the deposition in evidence.

Learned counsel on behalf of the applicant submitted finally, that there was not sufficient proof that Eurith Watson had not in fact returned to Jamaica. The evidence of her paramour was that she had written from New York the week before, and she could very well have returned to Jamaica since then. He also submitted that the evidence as to her departure from Jamaica should have been given by some Government official and not by her paramour, and, in the circumstances, her paramour could not be regarded as a credible witness.

It is only sufficient to say that the Court does not agree with these submissions. In the result, this ground of appeal also fails, and the application is accordingly refused.

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