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J A M A I C A

IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL No. 267/65

BEFORE: The Hon. Mr. Justice Henriques, Presiding  
The Hon. Mr. Justice Moody  
The Hon. Mr. Justice Eccleston (Acting)

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R. vs I V Y B E N J A M I N

Mr. R.O.C. White for the Crown

Mr. K. Von-Cork for the appellant

27th May, 1966.

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ECCLESTON, J.A.,

The appellant was convicted in the Resident Magistrate's Court for the parish of Clarendon, on an indictment charging her, "that on the 13th day of August, 1965, in the parish of Clarendon, did by means of certain false statements, to wit: that on the 13th day of August, 1965, one Egbert Adams whose description she then gave entered her shop at York Pen in the parish of Clarendon and went towards the till, stole £10.15/-, made up of two five pound notes, one ten shilling note and one five shilling note, the property of the said Ivy Benjamin, causing Acting Corporal Getfield of the Four Paths Police maintained at public expense for the public benefit to devote his time and service to investigation of false allegations thereby temporarily depriving the public of the service of the said Officer and rendering liege subjects of the Queen liable to suspicion, accusation and arrest, and in so doing did unlawfully effect a public mischief."

The facts presented by the prosecution disclosed that

/Egbert Adams,.....

Egbert Adams, a furniture dealer of May Pen, went to the shop of the defendant to collect a sum of money, being arrears on her statement on a Frigidaire which she had in her shop. He told her she owed a balance of £12 and asked for same. She said she did not have the money. He went to take the Frigidaire and did not succeed in doing so, as he was prevented by the appellant. Later that night the appellant went to the Police Station at Four Paths where she complained of the conduct of Adams to the police, and gave a statement in which she said Adams came into the shop with one of his boys around the counter where I was sitting. They were going towards the Fridge when I used my hands and feet to prevent them passing. Adams pushed me away. I fell to the ground. He was stepping over me, I held his foot. I again got up and stood beside the fridge and held the handle. Adams thumped me on my hand for me to release the hold. He then held on to the electric cord into which the fridge and the radio are plugged. As a result the radio fell to the floor and was damaged. Adams then went towards the till and pulled it out. I saw Adams took out £10.15/-. Adams pushed the money in his pocket. When Adams took the money from the shelf 4/9 in silver dropped on the floor and I took it up. When Adams and the boy came in the shop and Adams took the money, Altimond Stewart and David Dean were present in the shop. I did not give anyone permission to remove my money - £10.15/- from my till.

David Dean called by the prosecution gave evidence that he heard Adams say "I want my things now," and called a man from outside. He then heard something dropped. He went in the shop and saw a radio on the ground. He saw the appellant leaning on the fridge, and heard her say "you mash up my radio." Then she went to her money till and say that her money had been taken out, but he never saw Adams take away money from the till.

/Alpheus Bennett...

Alpheus Bennett gave evidence saying, Adams go behind the counter, pushed defendant and she went down. He went to the fridge, draw the wire, the radio dropped and smashed, but he never saw Adams opened the till and take money.

In cross-examination, Adams said, I never pushed her, I never saw the radio that night, she never fell down in my presence, I never pulled the radio down, I never took any money from her till, telling her that I was taking money for the fridge.

Corporal Getfield to whom the report was made, went out, and that night interviewed Adams, who denied taking the money. The Corporal afterwards took the statement from the appellant.

Appellant gave evidence that she owed money on the frigidaire which was to be paid at the end of August as arranged with Adams, but, on the evening of the 13th August, he came to the shop and said he wanted some money. She told him that was not the arrangement. Adams said "money or fridge tonight," and pushed her off the chair on which she was then sitting, went towards the fridge behind the counter. She said she fell to the floor bouncing her hip. Her watch fell off, he held the cord as she held the fridge and flung the radio to the floor. She objected to his taking the fridge, and he went to the till and took out £10.15/-, and that she then went to the police. In cross-examination she said I thought he took the money for the frigidaire. I told this to the police.

Mr. Ven-Cerk for the appellant, dealt firstly with grounds one and six together. Number one, that the judgment entered against the defendant so preponderates against the weight of the evidence that such judgment was manifestly unreasonable. Ground six, that the Crown has not satisfied the standard of proof required in criminal cases. He points out that whereas the witnesses Dean and Bennett for the prosecution gave evidence of the radio falling and being damaged

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as also the watch, both of which, were exhibits in the case. Adams in his evidence denied any of these happenings. Further, that the certificate of Doctor Wright which was tendered in evidence showed that the appellant had a painful discoloured area on the outer side of left thigh which was consistent with falling on a hard surface, and Adams denied that she fell in his presence; that Bennett does speak of Adams giving appellant a hard push and her two watches breaking off, and that he heard money drop in the shop. Counsel submits that Adams' evidence ought not to be accepted, in view of the evidence of Dean and Bennett, the evidence of the appellant and also the exhibits, in that, Adams denies that he pushed the appellant and that she fell. He says he never saw the radio, and he asserts that she took up an ice pick which Dean and Bennett did not observe.

Counsel for the Crown submitted that it was important to ascertain with what intention the appellant made the report to the police, namely, that she went to complain, particularly about the loss of the money and the witness Adams had stated that he had not taken the money, and it was clear on the evidence that the appellant had made a false report, and it was for the learned Resident Magistrate to decide on the falsity of the statement.

It does not appear that the appellant's report unequivocally related to an allegation of larceny, in as much as she stated in cross-examination as stated above that she thought he took the money for the frigidaire, and contradicts the evidence of the police corporal when he says that she reported that Adams stole money from her drawer.

In our view, the prosecution had not established the charge beyond a reasonable doubt, and the conviction cannot

be....

be allowed to stand. It is unnecessary for our decision to deal with the other grounds of appeal. The appeal is allowed and the conviction and sentence quashed.