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IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL No. 4/65

BEFORE: The Hon. Mr. Justice Duffus (President)  
The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Moody (Acting)

R. v. J O S E P H R O W E

Messrs. F. Phipps and L. Miller appeared for the Crown.  
Mr. G. Ramsay appeared for the appellant.

7th October, 1965.

HENRIQUES, J.A.:

The appellant was convicted in the Home Circuit Court of the offence of shopbreaking and larceny on the 15th day of January, and was sentenced to five years hard labour. He was charged along with three other men, one of whom was acquitted.

According to the evidence which was tendered at the trial, a certain Percival King, who has a dry goods store at 60½ Asquith Street, Jones Town, locked it up on the 2nd of May; when he returned on the 4th of May, he found a large hole in the roof - large enough to admit an adult person and the contents of the shop in considerable disarray. He checked his goods and found a number of articles missing, amounting in value to some £400 odd. Subsequently, he was shown certain articles which formed the subject matter of Exhibit 6 in the case and also other articles which formed the subject matter of Exhibit 7 in the case; and he stated that he had identified those articles by their general appearance, that is, that he had no special marks upon them, but they were similar in description and character to goods which he had in his shop on the evening of the 2nd of May, and which were missing from the shop on Monday, the 4th of May.

One Dorothy Williams gave evidence that at about 3 o'clock in the morning on the 2nd of May, that the appellant, Rowe came and woke her and conducted her to Trench Town, where in a room she saw the appellant and the other persons who were charged along with the appellant, and she also saw three grips, and in the course of

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conversation the appellant Rowe said, "I hope it is a clean job," and one of the other accused said, "them nah pop till Monday." She said she saw in the room a pair of pliers and a large pair of scissors, and these were removed by the appellant, Rowe.

Now, one Beryl Smith also testified at the trial and her evidence was to the effect that around three o'clock in the morning of the 3rd of May, she was in bed when the appellant - Rowe came to her, that she saw him with Dorothy Williams and there was a conversation in which the appellant asked her to lend him a comb, which she did. He went away and later at about 6 o'clock he came again to her home; he had this time a parcel with him which he asked her to put down and that parcel formed the subject matter of Exhibit 7.

Sergeant Robertson gave evidence that he went with the appellant Rowe to premises 70 East Road, and there he saw Lucille Drummond and one Fung Bow, another accused person who was charged with the appellant; that the appellant then went into a room after whispering to Drummond, opened a grip and took out some merinos, shirt, trousers, three vests, four shirts, one belt (which were all part of Exhibit 6 at the trial). According to Detective Roy Green who accompanied Robertson, the appellant said at the time, "these are the things that Fung Bow gave me and Cubana." At the time of his subsequent arrest, Rowe was found to be wearing a pair of socks which was taken from him and which was subsequently claimed by Percival King.

The appellant's defence was a complete denial of the evidence of the witnesses for the Prosecution and he completely denied possession of any of the articles. Learned Counsel for the appellant has taken one ground of appeal, and it is to the following effect, that the prosecution failed to discharge the onus resting on it to tender the positive proof of the identification of the articles found in the possession of the accused, which is necessary before the doctrine of recent possession applies and he prays in his aid the case of the Queen against Brown, cited by this Court and reported in the 1964 6 W.I.R. at page 369 to the effect - "that where the Crown relies on /the.....

the doctrine of recent possession, there must be some evidence of positive identification of the article alleged to be stolen and whether the evidence given in Court amounts to such identification is essentially a matter for the jury."

Learned Counsel has gone carefully through the evidence and has drawn to our attention the particular passages of the evidence which bear upon this matter. It is true that it can be said that there were no positive marks upon these articles, but when the articles which were found with the appellant are compared with other articles found elsewhere, which were of similar character and appearance and which indeed in some instances were positively identified, then the jury were entitled to link the articles found with him with those other articles which were identified as part of the stock of Mr. King and which were missing from his store.

In the course of this morning's exercise, Mr. Ramsay has quite candidly admitted that from a close examination of the evidence given at the trial, he is unable to submit that the jury came to an unreasonable conclusion in this matter. That being so, the appeal fails. The appeal is therefore dismissed. The sentence will run from the date when the Court granted the appellant leave to appeal, that is, from the 7th of July this year.

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