JAMAICA

IN THE COURT OF APPEAL

R.M.C.A. No. 215/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Ag.)

R. v. JOYCE WILLIAMS

Mr. E. L. Miller appeared for the Crown.
Mr. E. C. L. Parkinson, Q.C., appeared for the Crown.

19th November, 1965.

MOODY, J.A.(Ag.):

In this case the appellant was charged before the learned Resident Magistrate for St. Andrew on an indictment containing two counts: first count charged that the appellant, on the 31st day of July, 1965, stole a pair of black shoes, 2 bathroom curtains, the property of John Fisher. The second count charged that the appellant, on the 31st day of July, 1965, stole a blouse, a boy's shirt, two pounds of salt fish, half a pound broad beans and a pound of mackerel, one pound of salt beef, one box of macaroni, together at a value of £3. 1. 6d, the property of Margaret Martin. On this indictment the appellant was convicted on the second count on the 3rd of September, last year, and sentenced. A fine of £7 or ten days was imposed.

The case for the prosecution was that Margaret Martin a housewife residing at 14 Sullivan Avenue, had employed the appellant as a domestic servant. On the 31st day of July, 1965, her employment had come to an end, and she was then on this Saturday, the 31st of July, about 11.30 in the morning, on the veranda with a bag and a suitcase waiting for her money in order to leave. While she was there waiting, Mr. Fisher, who had formerly been a lodger in that house arrived along with the policeman and there was some talk and subsequently all left for the Half Way Tree Police Station.

At the Half Way Tree Police Station, these bags were opened, that is, the bag and the suitcase and there was observed in them, salt

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fish, broad beans, salt preserves - mackerel - a boy's shirt; and Margaret Martin, the householder claims these things were belonging to her. From the Police Station they went to Ashton Road, where they saw the daughter of the appellant wearing a blouse claimed by Margaret Martin. Margaret Martin claimed her total loss of things amounted to about £2.

Evidence was also given by Mr. John Fisher and also by Clive Fullerton, constable attached to the Half Way Tree Police Station. He said that on this Saturday he went to these premises and saw the accused's grip. They went from there to the Half Way Tree Police Station, the grip was opened and he found in it the articles referred to before. He said that the appellant then said that she took the foodstuffs because she knew that Miss Martin did not want them and she said she did not know who had put the shirt in the cocomalt bottle. He also gave evidence of going to Ashton Road and seeing the appellant's daughter wearing the blouse claimed by Margaret Martin. He arrested the appellant for larceny, cautioned her and she made no statement,

At the close of the case for the prosecution, counsel for the appellant made certain submissions to the learned Resident Magistrate. He submitted that the indictment should be quashed or, alternatively, that there was no case to answer. He maintained that there was no evidence to support larceny of these articles as stated in the indictment. The learned Resident Magistrate, at that stage, dismissed the appellant in respect of count one of the indictment and said that there was a case to answer in respect of count two.

The appellant then gave evidence on oath and she said that she had been employed to Margaret Martin from the 1st of May, 1965, until that day, the 31st of July; that Margaret Martin had very indifferently paid her wages and that, indeed, she was owed an amount of £18. 4/- for wages. She said that on the 31st of July, she was awaiting her pay from Margaret Martin. She asked her what time she was going to be paid and Martin had told her that she had a cheque which she would have to change and she did not know when the bank closed. Well, following on this, a quarrel ensued between herself and Margaret Martin and thereupon

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Martin telephoned to Mr. Fisher who arrived about an hour later with a police constable. They all then, that is with the exception of the appellant,-Martin, Fisher and the policeman - went inside the house, they were in there for some time and they came out to the veranda where the appellant was sitting. She said that the constable asked her name and in their presence she, the appellant, asked Martin for her pay and Martin said she wasn't paying her because she had lost some things; and that she, the appellant, asked Martin what things she had lost as she, the appellant, had been working there for such a long time and had not heard of any loss of items and Martin, in reply, said that Mr. Fisher had lost two pairs of shoes and some shirts. The appellant said that she knew nothing about Mr. Fisher's things and that Mr. Fisher had removed from those premises, say three weeks or on or about the 8th of July. Williams said she told Martin that she knew nothing about Mr. Fisher's things; that the only thing that she knew about was a little old blouse and she Martin had given her a little shirt for her little boy and that had been given to her the day before, that is, the 30th of July, as a present for Independence Day.

Then, she said, after this they went in the car, she asked to be taken to her mother and she was taken to the mother but not allowed to speak to the mother and after that, to the Half Way Tree Police Station. At the station, the policeman then said to her: "What you do with the people's things?" She told the police that she did not take it. She said, in the presence of Martin, Fisher and Fullerton, that the foodstuff that had been found in the suitcase had been given to her because Martin had told her to clear out her cupboard and she had taken these things, put in a bag to take away. She was taken to Ashton Road where her daughter was seen wearing this blouse which was taken from her, the daughter, and she the appellant then said: "Miss Martin, didn't you give me that blouse?" Her house was searched and nothing was found; Martin had employed other maids beside herself and that one of these maids had gone to the country; nobody told her what she was being locked up for and until now she had not received her pay.

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Well, at the close of the defence, the learned counsel for the appellant made further submissions to the learned Resident Magistrate and at the end of those submissions the learned Resident Magistrate said that he was satisfied that Margaret Martin was a witness of truth and that she did not give the accused any of the articles mentioned. However, he said he was satisfied that the accused took the blouse and it seemed clear that it was taken on a day other than that charged in the indictment, namely the 31st of July; and, he said, it ought not to have been included in count two of the indictment; and learned Resident Magistrate there, referred to the case of R. v. Ballysingh and he went on to say that he was satisfied that the articles, exhibit 2 - those were the foodstuffs - were taken by the accused, that he was satisfied that the articles were taken without the permission of Margaret Martin; but, he said, they were taken in circumstances in which the appellant could have thought that these articles had been abandoned; but, he said, he was satisfied andfelt sure that the accused had stolen the shirt, exhibit 3, - that is the little boy's shirt - that it was a new shirt and it had not been given to the appellant, and that the appellant had taken the shirt with the intention of permanently depriving Martin of the shirt.

Before us the learned counsel for the appellant argued nine grounds of appeal. The first ground dealt with the date, the 31st of July, charged in the indictment and said the indictment ought to have been quashed as there was no evidence to prove that the appellant stole any of the items charged on the 31st of July, 1965. The second ground was that the witness Margaret Martin was unreliable and that the learned Resident Magistrate ought not to have called on the appellant to answer on count two having regard to the evidence given by Margaret Martin. The third ground was a ruse by Margaret Martin as she was unable to and did not have the money to pay the appellant which was due to her for wages. The fourth ground is that the appellant had been arrested without reason and that she was arrested really and truly because Margaret Martin was not able to pay wages due to her. The fifth ground

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of appeal endeavours to point out that Martin had been demonstrated to be untruthful in that in the course of her evidence she denied having sent a telephone call to Mr. Fisher on the 31st of July, 1965, Mr. Fisher having said in his evidence that Margaret had telephoned him the day before, on the 30th of July, 1965. The sixth ground of appeal dealt with the fact that there was no report of any loss of any items by Margaret Martin, which he regarded as a most significant fact. The seventh ground of appeal is in relation to the shirt. He said that it was quite likely in the context of things, for Margaret Martin to have made a gift of this shirt to the appellant as she Martin had constantly been out as late as 4 or 5 o'clock in the morning and the appellant had baby sat until that hour. The eight ground of appeal said that the conviction was unreasonable and based on improbabilities and inconsistent with the acquittal of the appellant on the first count.

Well, the learned counsel, in arguing those grounds of appeal, raised all those points and these points had in fact, substantially been raised before the learned Resident Magistrate. In regard to the time stated in the indictment as to the time of the larceny - 31st of July, we are of the opinion that there was sufficient evidence for the learned Resident Magistrate to have drawn the inference that the shirt, which is in respect of the shirt upon which this appeal lies, that this shirt was taken on the 31st of July.

In regard to the question that these items should have been charged in several counts in the indictment, learned counsel again referred us to the case of R. v. Ballysingh which is reported as 37 C.A.R. p. 28. It is clear on reading that case that the mischief the Court is endeavouring to avoid was that there had been separate and several takings and that each of those separate and several takings should have been charged in a separate count. We do not think that it applies to the circumstances of this case.

In regard to the question of complainant being unreliable, learned counsel for the appellant referred to the evidence which showed that Martin was being cross-examined as to whether or not she had telephoned to Mr. Fisher and her reply was that she had not. In our

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view, that question was addressed to her in context of events taking place on the 31st of July.

Mr. Fisher gave evidence that he had received a telephone call from Miss Martin but on the 30th of July, the preceding day. We feel that so far as the evidence is concerned it was opened to the learned Resident Magistrate to draw the inference that the evidence given by Mr. Fisher as to the 30th of July, was acceptable and to view the evidence of Miss Martin on that point as being inconclusive, namely, that she did not telephone on the 31st of July, as the learned counsel for the appellant urged, but there was no precise answer given to the question as to whether she had telephoned Mr. Fisher on the 30th of July. Then learned counsel said, the whole reason for this prosecution was impecuniosity and her inability to pay wages when she was dismissing this maid; and he also pointed to this question of the unreliability of Miss Martin to the fact that in the room, not in the hearing of the appellant, she referred to having lost dresses and shoes; and she had not given evidence of having lost this shirt prior to its having been found in the appellant's suitcase, and in the context of the way in which matters were run at 14 Sullivan Road, that Miss Martin had made gifts of small items to her maid, it was reasonable that she might have given this shirt to the appellant.

He also mentioned that there was no evidence of the value of this shirt. As I indicated before, evidence was given that Martin's total loss amounted to £2; and, finally, his submissions were that the learned Resident Magistrate was wrong to regard Miss Martin as a witness of truth.

Well, in the course of these submissions as to whether the learned Resident Magistrate should have accepted Martin as a witness of truth, learned counsel referred us to the case of Watt v. Thomas reported at 1947 (1) A.E.R. p. 583 and that case deals with the principles that should prevail when a Court of Appeal is reviewing the evidence of a single Judge on the questions of fact. In our view, all of these items that were raised before us had been thoroughly ventilated before the learned Resident Magistrate; there was ample

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ground for him to reach the conclusion that he did reach in this matter. That the mischief in regard to several items being charged in one count of the indictment was avoided in this case, in as much as the learned Resident Magistrate dismissed the appellant in respect of all the other items charged in count two.

We see no reason, having regard to the provisions of the case Watt v. Thomas, we see no reason, to find any fault with the manner in which the learned Resident Magistrate reached his conclusions. These have been sufficiently ventilated here and no cause has been shown to us to say that he was wrong. In the circumstances, the appeal is dismissed and the conviction and sentence affirmed.

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